

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 80 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the 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 120 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 19 October 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Hungary has an extensive tax treaty network with over 80 tax treaties and has signed and ratified the EU Arbitration Convention. Hungary has a MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 20 cases pending on 31 December 2017. Of these cases, 60% concern allocation/attribution cases. Overall Hungary meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Hungary is working to address most of them.

All of Hungary's tax treaties contain a provision relating to MAP. Those treaties mostly 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^[1]). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that approximately 15% of its tax treaties neither contain 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), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Hungary needs to amend and update a certain number of its tax treaties. In this respect, Hungary signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Hungary reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but has not a plan in place thereto.

Hungary in principle meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. As of 1 January 2018 this APA programme also enables taxpayers to request rollbacks of bilateral APAs. However, no such cases have occurred yet.

Hungary meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Hungary's policy is to provide access to MAP in most eligible cases, although it has since 1 January 2016 not received any MAP request concerning transfer pricing cases or cases where anti-abuse provisions are applied. Notably it does not provide access to MAP in cases where the MAP request is filed after the expiration of Hungary's domestic time limits, even if the MAP request is filed within the filing period provided in the applicable tax treaty. Hungary has not in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Furthermore, Hungary has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention.

Concerning the average time needed to close MAP cases, the MAP statistics for Hungary for the period 2016-2017 are as follows:

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to close cases (in months)(*)
Attribution/allocation cases	11	4	3	12	13.31
Other cases	7	5	4	8	23.10
Total	18	9	7	20	18.90

(*) 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, Hungary uses as start date the following: the date on which Hungary received the request by the taxpayer to initiate the MAP procedure (irrespective of whether Hungary had to ask more information from the taxpayer in order to be able to determine whether to initiate the MAP or not); and as end date either (i) the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request; or (ii) the date the competent authority receives a notification from the taxpayer on the withdrawal of its MAP request.

The number of cases Hungary closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, Hungary's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 18.90 months, following which Hungary's competent authority is considered to be adequately resourced.

Furthermore, Hungary meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Hungary's competent authority operates fully independently from the audit function of the tax authorities, its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. However, Hungary's competent authority is not willing to discuss cases when they are filed after the expiration of its domestic time limit, even if they are submitted to the treaty partner's competent authority.

Lastly, Hungary also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. In addition, Hungary monitors the implementation of MAP agreements.

Introduction

Available mechanisms in Hungary to resolve tax treaty-related disputes

Hungary has entered into 81 tax treaties on income (and/or capital), 80 of which are in force.¹ These 81 treaties apply to 82 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of the 81 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

Furthermore, Hungary 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.³ In addition, Hungary also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Hungary's domestic legislation as per 1 July 2019.⁴

In Hungary, the competent authority function to conduct MAP is delegated to the Central Administration of the National Tax and Customs Administration for attribution/allocation cases and to the Ministry of National Economy for other cases. The competent authority of Hungary currently employs 14 employees (ten of them handling attribution/allocation cases and the remaining handling other cases), who all deal with other international tax matters in addition to MAP cases.

Hungary issued guidance on the governance and administration of the mutual agreement procedure ("MAP") in 2016 and updates it annually, which is available (in Hungarian) at:

http://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html

Recent developments in Hungary

Hungary is currently conducting tax treaty negotiations with several jurisdictions. Hungary recently signed a new treaty with Iraq, which has not yet entered into force.

Furthermore, on 7 June 2017 Hungary signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Hungary reported that it strives updating them through future bilateral negotiations. Hungary, however, reported not having in place a specific plan for such negotiations as the final effect of the Multilateral Instrument is currently still under analysis. With the signing of the Multilateral Instrument, Hungary also submitted its list of notifications and reservations to that instrument.⁵ In relation to the Action 14 Minimum Standard, Hungary reserved, pursuant to Article 16(5)(a), the right not to apply

Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁶ This reservation is in line with the requirements of the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Hungary's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Hungary, its peers and taxpayers. The questionnaires for the peer review process were sent to Hungary and the peers on 10 April 2018.

The period for evaluating Hungary's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 30 April 2018 ("**Review Period**"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Hungary's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Hungary 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 it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the 1985 tax treaty with former Socialist Federal Republic of Yugoslavia and the 2001 tax treaty with former Republic of Yugoslavia for those jurisdictions to which these treaties are still being or to be applied by Hungary. As it concerns the same tax treaties that are applicable to multiple jurisdictions, each of these two treaties is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Hungary's tax treaties regarding the mutual agreement procedure.

In total nine peers provided input: Austria, Belgium, Canada, Germany, Italy, Spain, Switzerland, Turkey and the United Kingdom. Out of these nine peers, five had MAP cases with Hungary that started on or after 1 January 2016. These five peers represent 56% of post-2015 MAP cases in Hungary's inventory that started in 2016 or 2017.

Generally, most peers indicated having good relationships with Hungary, some of them however emphasising the difficulties they encountered to resolve MAP cases in a timely manner with Hungary's competent authority. In this regard, some peers reported having experienced recent improvements in their communication with Hungary's competent authority.

Hungary provided informative answers in its questionnaire, which was submitted on time. Hungary was responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Hungary provided the following information:

a) MAP profile⁷; and

MAP statistics⁸ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Hungary

The analysis of Hungary's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 ("**Statistics Reporting Period**"). According to the statistics provided by Hungary, its MAP caseload during this period was as follows:

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	11	4	3	12
Other cases	7	5	4	8
Total	18	9	7	20

General outline of the peer review report

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

- Preventing Disputes;
- Availability and Access to MAP;
- Resolution of MAP cases; and
- Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").⁹ Apart from analysing Hungary's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Hungary. Furthermore, the report depicts the changes adopted and plans shared by Hungary to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Hungary 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 Hungary has entered into are available at: http://en.nav.gov.hu/taxation/double_taxation_treaties. The tax treaties that are signed but have not yet entered into force are with Iraq (2016) and the United States (2010). These newly negotiated

treaties are taken into account in the treaty analysis. While the tax treaty with Iraq (2016) is a new treaty, the tax treaty currently in force with the United States will be replaced by the newly negotiated treaty once the latter enters into force. Reference is made to Annex A for the overview of Hungary's tax treaties.

² Hungary continues to apply the 2001 tax treaty with the former Federal Republic of Yugoslavia to both (i) Serbia and (ii) Montenegro as well as the 1985 tax treaty with former Socialist Federal Republic of Yugoslavia to Bosnia and Herzegovina.

³ Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

⁴ Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.

⁵ Available at: <http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf>.

⁶ *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Hungary 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”.

⁷ Available at: <http://www.oecd.org/tax/dispute/country-map-profiles.htm>.

⁸ The MAP statistics of Hungary are included in Annex B and C of this report.

⁹ Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>

Part A. Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention 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 Hungary tax treaties

2. Out of Hungary's 81 tax treaties, 79 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ Two of Hungary's tax treaties are considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). One tax treaty does not include the term "application" and the second tax treaty does not include both the terms "doubt" as well as "interpretation".

3. Hungary reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), there are under its domestic legislation and/or administrative practices no obstructions to resolve any difficulties or doubts regarding the interpretation or application of its tax treaties.

Anticipated modifications

Multilateral Instrument

4. Hungary signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[11]). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i),

the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

5. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Hungary listed both of them as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Therefore, at this stage, none of the two tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

Bilateral modifications

6. Hungary reported that for the two tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. Hungary, however, reported not having in place a specific plan for such negotiations as the final effect of the Multilateral Instrument is currently under analysis. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) in all of its future tax treaties.

Peer input

7. Of the peers that provided input on this element, seven peers indicated in a general manner that their tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element A.1 the relevant tax treaties are in line with the Minimum Standard. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis described above.

8. For the two tax treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), the relevant peers did not provide input.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Two out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]).	<p>As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015^[11]) will at this time not be modified via the Multilateral Instrument, Hungary should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating these two tax treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision in all future tax treaties.</p>

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

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

9. 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.

Hungary’s APA programme

10. Hungary is authorised to enter into bilateral or multilateral APAs and has implemented an APA programme. The legal basis of the bilateral APA programme is to be found in the MAP article of the underlying tax treaty as well as in Chapter XXI (Section 174-183) of Hungary’s Act on the Rules of Taxation, in Government Decree 465/2017 (Sections 111-116) on specific rules of taxation and in Decree 32/2017 of the Minister for National Economy on transfer pricing documentation requirements.

11. Hungary reported that the request for a bilateral APA should generally be submitted before the transaction is entered into and a contract is concluded. A request for a bilateral APA could be accepted after entering into a transaction/concluding a contract, if the transaction/contract is performed on a continuous basis. According to Hungary’s law a continuous contract has to be concluded for at least six months and under which (a) a transaction has to occur at least every month; or (b) a credit facility is maintained for a related party; or (c) a requirement for a continuous availability of either related party is prescribed. Following these explanations Hungary reported that a bilateral APA takes effect as from the APA application and that bilateral APAs generally run for a period of three to five years.

Roll-back of bilateral APAs

12. Hungary reported that roll-backs of bilateral APAs are possible since 1 January 2018. The conditions necessary for the roll-back of bilateral APAs are provided in Section 181(2) of Hungary's Act on the Rules of Taxation, in Government Decree 465/2017. Hungary further reported that any period prior to the submission of the bilateral APA request is considered to be a roll-back and might be granted, provided the prior fiscal year is not closed by an audit and has not been subject to an audit resulting in a period closed by an audit in progress. In addition, Hungary reported that the fiscal year to be covered should not be time barred at the time of conclusion of the agreement of the competent authorities. In this respect, Hungary reported that its domestic time limit expires five years after the last day of the calendar year in which the taxes should have been declared or reported, the latter being generally the year following the fiscal year concerned.

Practical application of roll-back of bilateral APAs

13. Hungary publishes statistics on APAs on the website of the EU JTPF.³

14. Hungary reported having received six requests for bilateral APAs since 1 January 2016 and that none of these requests included a request for a roll-back, which can be explained by the fact that roll-backs are only possible as of 1 January 2018.

15. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Hungary during the Review Period.

Anticipated modifications

16. Hungary indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Hungary is, as of 1 January 2018, in theory able to provide for roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Hungary did not receive any request for roll-back of bilateral APAs during the Review Period.	

Notes

¹ These 79 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

² This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

³ Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf. The most recent statistics published are up to 2016.

References

- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

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.

17. 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 Hungary's tax treaties

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

18. Out of Hungary's 81 tax treaties, 73 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) 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, 2015^[2]), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ None of Hungary's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), as changed by the Action 14 final report (OECD, 2015^[2]) and allowing taxpayers to submit a MAP request to the competent authority of either state.

19. The remaining eight tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]) 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.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	7

20. With respect to the one tax treaty mentioned in the first row of the table above, the provision incorporated in the protocol to this tax treaty reads:

“with reference to paragraph 1 of Article 26 the term ‘notwithstanding the remedies provided for by the domestic laws’ shall be construed as meaning that, where the mutual agreement procedure has been put in motion, recourse to the judicial procedures under national law shall not be precluded and that, in any case, where a dispute involves taxation not in accordance with the Convention recourse should be in the first place to those national procedures”

21. As according to this provision a domestic procedure has to be initiated analogously to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This tax treaty is therefore considered not to be in line with this part of element B.1.

22. The remaining seven tax treaties are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report (OECD, 2015^[21]), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons all of those seven tax treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision (two tax treaties)
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (five tax treaties).

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

23. Out of Hungary’s 81 tax treaties, 71 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]) 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.

24. However, Hungary made a reservation with respect to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]), which reads as follows:

“Hungary reserves its position on the last sentence of paragraph 1 as it could not agree to pursue a mutual agreement procedure in the case of a request that would be presented to its competent authority outside the prescription period provided for under domestic legislation.”

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

Provision	Number of tax treaties
No filing period for a MAP request	6
Filing period less than three years for a MAP request (two years)	4

Practical application

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

26. All but one of Hungary’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. However, with regard to a decision rendered by a Hungarian court, Hungary made an observation to the OECD Model Tax Convention (OECD, 2015^[1]), which reads:

“Hungary does not fully share the interpretation in paragraph 27 of the Commentary on Article 25 and is not in a position to pursue a mutual agreement procedure where a Hungarian court has already rendered a decision on the merits of the case.”

27. To clarify its reservation, Hungary reported that it would grant access to a MAP case, whose underlying issue has already been decided by a court in Hungary. However, Hungary further reported that its competent authority is not able to deviate from the decision of the Hungarian court during the MAP. Subsequently, Hungary clarified that the taxation not in accordance with the underlying treaty would only be (fully) eliminated, if the treaty partner adopts Hungary’s position. However, as discussed under element B.9, Hungary’s MAP profile provides that MAP assistance is not provided if the Hungarian court has already decided.

28. Additionally, one peer, reported that Hungary is not willing to discuss a MAP case relating the attribution of profits to a permanent establishment in Hungary because such permanent establishment no longer existed in Hungary when the MAP request was submitted to the competent authority of this peer. The peer considers this approach not to be in line with the underlying treaty (being the EU Arbitration Convention in the case at stake) as the foreign taxpayer is still in existence in its country and taxation not in accordance with the tax treaty may not be resolved. While it is not Hungary’s competent authority that will deny access to MAP in such cases, as the request has not been filed in Hungary, by not discussing the case, Hungary factually deprives the taxpayer from having effective access to MAP in such situations and having its case to be resolved accordingly. This is, in line with the peer’s conclusion, contrary the requirements under the Action 14 Minimum Standard.

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

30. In case the underlying tax treaty does not contain Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2015^[1]), Hungary reported that its general domestic statute of limitation applies for filing a MAP request. According to Section 202(1) of Hungary’s Act on the Rules of Taxation the general domestic time limit to

amend a tax assessment expires five years after the last day of the calendar year in which the taxes should have been declared or reported, which is typically the year following the fiscal year concerned.

31. Hungary further reported that this domestic timeline also applies in addition to a timeline when such is prescribed in a tax treaty. This is governed by Section 205(1) of Hungary's Act on the Rules of Taxation and in line with its reservation on Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]). Hungary's MAP Guidance provides further guidance regarding this issue under chapter five, emphasising that a MAP request should not only be filed within the domestic time limit but also being duly received by Hungary's competent authority within such time limit.

32. In this respect, one peer indicated that in several cases with Hungary, which are all based on the EU Arbitration Convention, even where the MAP request was not filed in Hungary, Hungary's competent authority was not willing to discuss certain fiscal years of the MAP request after exchanging position papers, arguing that the MAP request was filed after the expiration of Hungary's domestic time limit, even though the request was filed within the filing period provided by the EU Arbitration Convention. The peer stated further that this practice is not in line with the rules on access to MAP of the EU Arbitration Convention.

33. Hungary's approach leads to the situation as reported by the peer that even if a tax treaty contains the equivalent of Article 25(1), second sentence of the OECD Model Tax Convention (OECD, 2015^[1]) and a MAP request has been filed within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty, but after the expiration of Hungary's domestic time limit, Hungary would refuse such a MAP case without any investigation on the merits of the case. To be more specific, Hungary's competent authority would deny access if the MAP request has been filed in Hungary or would refuse to discuss the MAP case if the case has been filed in the treaty's partner jurisdiction stating that the application was received outside the domestic time limit. This approach is not in line with the Action 14 Minimum Standard, which prescribes that taxpayers that meet the requirements of paragraph 1 of article 25 can access the MAP, while one of these requirements is that taxpayers submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

Anticipated modifications

Multilateral Instrument

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

34. Hungary signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) as amended by the final report on Action 14 (OECD, 2015^[2]) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015^[2]). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary,

pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 (OECD, 2015_[2]) Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

35. Hungary reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.² In this reservation, Hungary 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, 2015_[1]), as it read prior to the adoption of the final report on Action 14 (OECD, 2015_[2]). 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. The introduction and application of such process will be further discussed under element B.2.

36. In view of the above, following the reservation made by Hungary, the one treaty identified in paragraph 19 above that is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015_[2]), will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

37. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

38. In regard of the four tax treaties identified in paragraph 25 above that contain a filing period for MAP requests of less than three years, Hungary listed four treaties as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the four relevant treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Hungary as a covered tax agreement under that instrument. The remaining two tax treaties partners also made such notification. Therefore, at this stage two of the four treaties identified above will be modified by the Multilateral Instrument, upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

Bilateral modifications

39. Hungary reported that for the one tax treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) as it read prior to or after the adoption of the final report on Action 14 (OECD, 2015_[2]) and that will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with this part of element B.1. Hungary, however, reported not having in place a specific plan for such negotiations as the final effect of the Multilateral Instrument is currently under analysis. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the final report on Action 14 (OECD, 2015_[2]), in all of its future tax treaties.

40. Hungary reported that for the two tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with this part of element B.1. Hungary, however, reported not having in place a specific plan for such negotiations as the effect of the Multilateral Instrument is currently still analysed. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) in all of its future tax treaties.

Peer input

41. Of the peers that provided input on this element, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.1 the relevant tax treaties are in line with the Minimum Standard with two exceptions described below. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis described above.

42. For the three treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015_[1]), two relevant peers provided input. The first peer stated that to the extent its tax treaty with Hungary will not be modified via the Multilateral Instrument, a bilateral solution will be explored. This tax treaty will for element B.1 be modified by the Multilateral Instrument with regard to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]). The second peer claimed that its tax treaty with Hungary will be modified with regard to element B.1, which is, however, not in line with the above analysis.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>Five out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]). Of those five tax treaties:</p> <ul style="list-style-type: none"> ○ One tax treaty does not contain the equivalent to Article 25(1), first sentence; ○ Four 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. 	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining three tax treaties that do not contain the equivalent of either the first sentence or the second sentence, Hungary should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015^[1]) either: <ol style="list-style-type: none"> a) As amended in the final report of Action 14 (OECD, 2015^[2]); or b) As it read prior to the adoption of final report on Action 14 (OECD, 2015^[2]), thereby including the full sentence of such provision; 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>To this end, Hungary should put a plan in place on how it envisages updating these three tax treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015^[2]) in all future tax treaties.</p> <p>Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2015^[1]) can access the MAP. In particular, Hungary should ensure (1) that, as its domestic time limit applies for the filing of MAP requests, even when a provision hereon is contained in its tax treaties, this time limit does not prevent taxpayers from having 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; and (2) that MAP cases where a permanent establishment ceased to exist in Hungary are effectively discussed in MAP with the other competent authority concerned to whom the MAP request was filed.</p> <p>In addition, for clarification purposes, Hungary could consider withdrawing its reservation on Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]).</p>
	<p>The policy is to deny access to MAP in eligible cases where the MAP request is filed after the expiration of Hungary's domestic time limit, even if the MAP request is filed within the filing period provided in the applicable tax treaty. In addition, Hungary's policy is not to discuss cases where a permanent establishment ceased to exist in Hungary and where a MAP request was submitted at the level of the competent authority of the treaty partner.</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).

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

- A. of either treaty partner; or, in the absence of such provision,
- B. 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

44. As discussed under element B.1, none of Hungary's 81 tax treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) as changed by the Action 14 final report (OECD, 2015^[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. Moreover, as was also discussed under element B.1, none of these tax treaties will, due to Hungary's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

45. Hungary reported that it informs the foreign competent authority about any MAP request submitted in Hungary. Hungary further reported, however, that it has not yet introduced a bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when Hungary's competent authority considers the objection raised in the MAP request not to be justified.

Practical application

46. Hungary reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such requests was not justified. The 2016 and 2017 MAP statistics submitted by Hungary also show that none of its MAP cases were closed with the outcome "objection not justified".

47. All peers that provided input indicated not being aware of any cases for which Hungary's competent authority denied access to MAP.

Anticipated modifications

48. As previously discussed under element B.1, Hungary has signed the Multilateral Instrument. Specifically regarding element B.2, Hungary 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 existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Hungary further reported that it currently has no intention to replace existing tax treaties that include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015_[1]) as it read prior to the adoption of the Action 14 final report (OECD, 2015_[2]) with Article 25(1) of the OECD Model Tax Convention (OECD, 2015_[1]) as it read after adoption of that report. As tax treaties will not be amended via the Multilateral Instrument, Hungary declared it will introduce a bilateral consultation or notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified in 2018.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	All of the 81 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) as changed by the Action 14 final report (OECD, 2015 _[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Hungary should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not being justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) as amended by the final report on Action 14 (OECD, 2015 _[2]).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

50. Out of Hungary's 81 tax treaties, 44 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015_[1]) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 30 do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015_[1]).³ The remaining seven tax treaties do contain a provision that is based on

Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]), but deviate from this provision for the following reasons:

- One tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but which includes additional language, providing that such a corresponding adjustment is subject “to the time limits provisioned in the domestic law of each Contracting State”.
- Six tax treaties contain the term “may” instead of “shall” when it concerns the granting of a corresponding adjustment.

51. With respect to Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]), Hungary reserved the right to specify in paragraph 2 that a correlative adjustment will be made only if Hungary considers that the primary adjustment is justified. This addition to the tax treaty provision would neither affect access to MAP nor is it in conflict with the Action 14 Minimum Standard.

52. In addition, Hungary 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.

53. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Hungary’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Hungary indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

54. Hungary’s MAP Guidance refers to transfer pricing cases and states that applications for transfer pricing cases should be done via a specific form called TPMAP. In this respect Hungary reported that transfer pricing cases are typical MAP cases.

Application of legal and administrative framework in practice

55. Hungary reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

56. Generally, peers indicated not being aware of a denial of access to MAP by Hungary on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

57. Hungary reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Hungary signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model

Tax Convention (OECD, 2015^[1]), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[1]). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[1])).

58. Hungary has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[1]). In regard of the 37 treaties identified in paragraph 49 above that are considered not to contain such equivalent, Hungary listed 34 as a covered tax agreement under the Multilateral Instrument and included seven of them in the list of treaties for which Hungary has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 27 tax treaties Hungary did not make, pursuant to Article 17(4), a notification that this treaty does contain such equivalent. Of the relevant 27 treaty partners, four are not a signatory to the Multilateral Instrument and two have not listed its treaty with Hungary under that instrument. Of the remaining 21 treaty partners, one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) to all its covered tax agreements. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining 20 treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).⁴

Conclusion

	Areas for Improvement	Recommendations
[B.3]	Hungary reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Hungary is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

59. 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

60. None of Hungary's 81 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Hungary do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

61. Hungary's MAP Guidance does not specifically address whether taxpayers have access to MAP in cases in which there is 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 whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Practical application

62. Hungary reported that since 1 January 2016 it did not deny access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

63. Peers indicated not being aware of cases that have been denied access to MAP in Hungary since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

64. Hungary indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

[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.

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

Legal and administrative framework***Audit settlements***

66. Hungary reported that according to its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement.

Administrative or statutory dispute settlement/resolution process

67. Hungary reported also that it has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Practical application

68. Due to fact that audit settlements are not available in Hungary, there are no cases where Hungary has denied access to MAP in cases where a transaction would have been concluded following a tax audit.

69. All peers indicated not being aware of a denial of access to MAP in Hungary since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

70. Hungary indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	-

[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.

71. 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

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

73. Hungary reported that if a MAP request is incomplete it follows up with the taxpayer to request the missing information without delay. Hungary further reported that taxpayers are usually given 30 days to provide the requested information. Hungary reported that an extension of this deadline can be granted, if adequate justification is given by the taxpayer.

74. Hungary further reported that in case the taxpayer does not provide the requested information, Hungary's competent authority is allowed to initiate an audit involving a local auditor with the aim of collecting the outstanding information. However, this audit is exclusively aimed at obtaining the outstanding information and Hungary reported that no unrelated issue will be assessed. Alternatively, Hungary reported that its competent authority might inform the taxpayer that its position for the specific MAP case might be formulated based on the available information. If this is not possible due to very limited available information, the MAP request might also be denied by Hungary's competent authority.

Practical application

75. Hungary reported that it has received six MAP requests since 1 January 2016 for other cases and that it provided access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

76. All peers that provided input indicated not being aware of a limitation of access to MAP by Hungary since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

77. Hungary indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

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

78. 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, 2015_[1]), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Hungary's tax treaties

79. Out of Hungary's 81 tax treaties, 78 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.⁵ Of the remaining three tax treaties, two do not contain any provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]). The third tax treaty is based on Article 25(3), second sentence, of the OECD Model Tax Convention, but contains additional language that "double taxation may be eliminated through an amendment of this agreement". The requirement to eliminate double taxation by an amendment of the underlying tax treaty is more restrictive and therefore this treaty provision is considered not being equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

Anticipated modifications

Multilateral Instrument

80. Hungary signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

81. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax

Convention (OECD, 2015^[1]), Hungary listed all of them as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, also listed its treaty with Hungary as a covered tax agreement and made such notification. Therefore, at this stage, one of the three tax treaties identified above will be modified by the Multilateral Instrument, upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]).

Bilateral modifications

82. Hungary reported that for the two tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Hungary, however, reported not having in place a specific plan for such negotiations as the final effect of the Multilateral Instrument is currently under analysis. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) in all of its future tax treaties

Peer input

83. Of the peers that provided input, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.7 the relevant tax treaties are in line with the Minimum Standard with one exception discussed below. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis described above.

84. For the three treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), one relevant peer provided input. This peer indicated in a general manner that its tax treaty with Hungary will be modified via the Multilateral Instrument if it is not in line with the Action 14 Minimum Standard, which is actually the case.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	Three out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]).	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]), Hungary should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating these two treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision in all future tax 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.

85. 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.

Hungary's MAP guidance

86. Hungary has issued in 2016 guidelines for the mutual agreement procedure based on Hungary's tax treaties ("**MAP Guidance**"), which are updated annually. This guidance is available at:

http://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html

87. In addition, Hungary also issued in 2016 guidelines for the mutual agreement procedure with an arbitration procedure as final stage of such a MAP based on the EU Arbitration Convention. This guidance is available at:

http://nav.gov.hu/nav/ado/egyeb/ac-map_tajekoztato.html

88. This guidance applies to tax treaties it entered into as well as the EU Arbitration Convention. In more detail, the guidance contains information on:

- Contact information of the competent authority or the office in charge of MAP cases

- The manner and form in which the taxpayer should submit its MAP request
- The specific information and documentation that should be included in a MAP request (see also below)
- How the MAP functions in terms of timing and the role of the competent authorities
- Information on availability of arbitration (including the EU Arbitration Convention)
- Relationship with domestic available remedies
- Access to MAP in transfer pricing cases,
- Implementation of MAP agreements (in general terms),
- Rights and role of taxpayers in the process.

89. Hungary reported that it also follows the OECD Manual on Effective Mutual Agreement Procedure (MEMAP)⁶ and for transfer pricing cases according to the EU Arbitration Convention the Code of Conduct to the EU Arbitration Convention.⁷

90. The above-described MAP guidance of Hungary includes information on the availability and the use of MAP and how its competent authority conducts the procedure 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.⁸

91. Although the information included in Hungary's MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in Hungary's MAP guidance. This concerns information on

- 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
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- The possibility of suspension of tax collection during the course of a MAP
- The consideration of interest and penalties in the MAP
- The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

92. 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 a request for MAP assistance.⁹ This agreed guidance is shown below. Hungary's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- Identity of the taxpayer(s) covered in the MAP request;

- The basis for the request;
- Facts of the case;
- Analysis of the issue(s) requested to be resolved via MAP;
- Whether the MAP request was also submitted to the competent authority of the other treaty partner;
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes;
- Whether the issue(s) involved were dealt with previously; 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.

93. Further to the above, Hungary's MAP Guidance in addition also requires the following minimum information:

- Power of attorney, if taxpayer is represented by a third party.

Anticipated modifications

94. Hungary indicated that it anticipates updating its MAP Guidance in 2018 following this Action 14 peer review as well as the implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union into domestic Hungarian legislation.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Hungary 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 • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP • The consideration of interest and penalties in the MAP, and • The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

[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.

95. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.¹⁰

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

96. Hungary’s MAP guidance is published and can be found at:

http://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html

97. This guidance was issued in 2016 and is updated annually. As regards its accessibility, Hungary’s MAP guidance can easily be found on the website of the National Tax and Customs Administration [<http://nav.gov.hu/>] under the section “Tax” under the sub-category “Other”.

MAP profile

98. The MAP profile of Hungary is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

99. As discussed under element B.1, Hungary reported it grants access to MAP in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law. However, its MAP profile

currently stipulates that access will not be granted in cases a Hungarian court rendered a decision, which is not consistent with the practice described previously.

Anticipated modifications

100. Hungary reported that it regularly reviews its MAP Guidance and will publish updates as required. Hungary further reported that it anticipates publishing an English translation of its MAP Guidance on the website of the National Tax and Customs Administration. Hungary also reported that it intends to clarify its MAP profile regarding access to MAP in cases where a Hungarian court has already rendered a decision.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	The MAP profile contains an inconsistency with Hungary's practice.	<p>Hungary should follow its stated intention to clarify in its MAP profile that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law.</p> <p>As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Hungary should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>

[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.

101. 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

102. As previously mentioned in B.5, Hungary reported that audit settlements are not available as it is under Hungary's domestic law not possible that taxpayers and the tax administration enter into audit settlements. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

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

104. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Hungary, which can be clarified by the fact that such process is not in place in Hungary.

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

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

Anticipated modifications

106. Hungary indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Notes

¹ These 73 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

² This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Hungary 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 Hungary's positions on the Multilateral Instrument is available at: <http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf>.

³. These 30 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

⁴. These 20 treaties include the tax treaty with the former Republic of Yugoslavia concerning Serbia and Montenegro that Hungary continues to apply to both (i) Serbia and (ii) Montenegro. Of both treaty partners, only Serbia is a signatory to the Multilateral Instrument. Therefore, the tax treaty will only be modified with respect to Serbia.

⁵. These 78 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

⁶. Available at:

<http://www.oecd.org/ctp/dispute/manualoneffectivemutualagreementprocedures-index.htm>

⁷. Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF>

⁸. Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

⁹. Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

¹⁰. The shared public platform can be found at: <http://www.oecd.org/ctp/dispute/country-map-profiles.htm>.

References

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

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.

107. 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, 2015_[1]), 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 Hungary's tax treaties

108. Out of Hungary's 81 tax treaties, 80 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹

109. The remaining tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “(...) provided that the competent authority of the other Contracting State is notified of the case within 4 (four) and a half years from the due date or the date of filing of the return in that other State, whichever is later.” This provision is therefore considered not being the equivalent of Article 25(2), first sentence.

Anticipated modifications

Multilateral Instrument

110. Hungary signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]). In other words, in the absence of this

equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary—that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

111. In regard of the one tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), Hungary listed it as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(c)(i), a notification that it does contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, the tax treaty identified above will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

Bilateral modifications

112. Hungary reported that for the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) and that will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element C.1. Hungary, however, reported not having in place a specific plan for such a negotiation as the final effect of the Multilateral Instrument is currently under analysis. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) in all of its future tax treaties.

Peer input

113. Of the peers that provided input on this element, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element C.1 the relevant tax treaties are in line with the Minimum Standard. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis described above.

114. For the tax treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), the relevant peer did not provide input.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	One out of 81 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[1]).	<p>As the one tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) will at this time not be modified via the Multilateral Instrument, Hungary should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating this tax treaty to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision in all future tax treaties.</p>

[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).

115. 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

116. Statistics regarding all tax treaty related disputes concerning Hungary are published on the website of the OECD as of 2007.² Hungary publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

117. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Hungary provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Hungary and of which its competent authority was aware.⁴ 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 respectively⁵ and should be considered jointly for an understanding of the MAP caseload of Hungary. With respect to post-2015 cases, Hungary reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Hungary reported that it could match its statistics with all of its treaty partners except one, who did not respond to Hungary’s request of confirmation.

Monitoring of MAP statistics

118. Hungary reported that Hungary’s competent authority regularly reviews the progress, number of cases and time to resolve Hungary’s MAP cases in quarterly reviews. As part of this process Hungary’s MAP statistics are annually reported to the OECD.

Analysis of Hungary's MAP caseload

Global overview

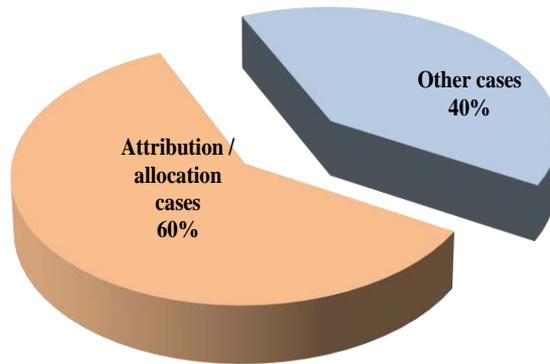
119. The following graph shows the evolution of Hungary's MAP caseload over the Statistics Reporting Period.

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



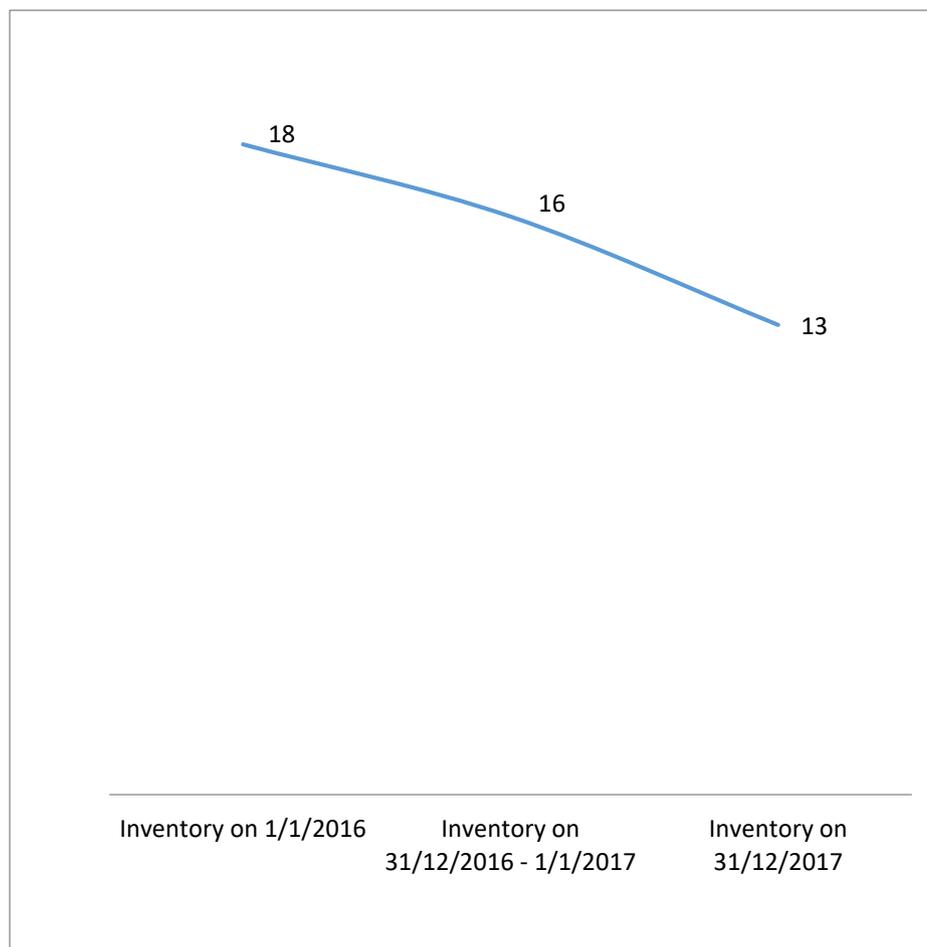
120. At the beginning of the Statistics Reporting Period Hungary had 18 pending MAP cases, of which 11 were attribution/allocation cases and seven other MAP cases.⁶ At the end of the Statistics Reporting Period, Hungary had 20 MAP cases in its inventory, of which 12 are attribution/allocation cases and eight are other MAP cases. Hungary's MAP caseload has increased by approximately 10% during the Statistics Reporting Period.

121. The breakdown of the end inventory can be shown as follows:

Figure C.2. End inventory on 31 December 2017 (20 cases)

Pre-2016 cases

122. The following graph shows the evolution of Hungary's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Hungary's MAP inventory in 2016/2017 Pre-2016 cases

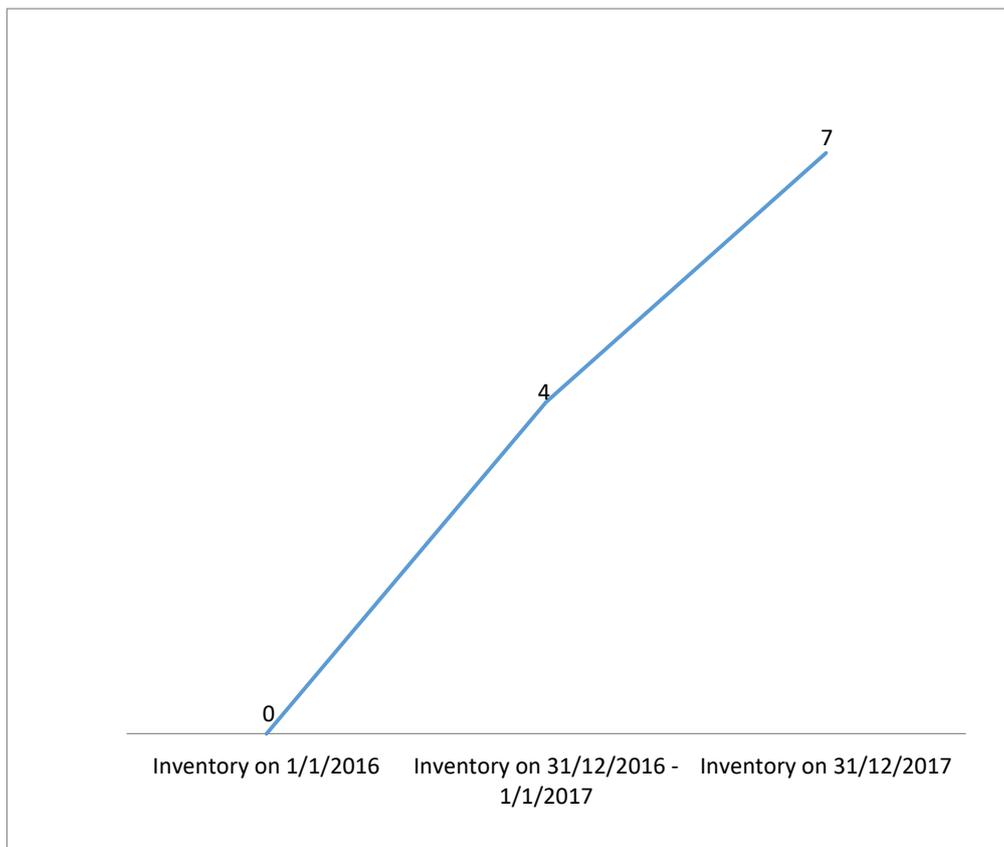
123. At the beginning of the Statistics Reporting Period, Hungary's MAP inventory of pre-2016 MAP cases consisted of 18 cases, of which 11 were attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 13 cases, consisting of nine attribution/allocation cases and four other cases. The decrease in the number of pre-2016 MAP cases is shown in the below table:

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution / allocation cases	0% (no cases closed)	-18%	-18%
Other cases	-29%	-20%	-43%

Post-2015 cases

124. The following graph shows the evolution of Hungary's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Hungary's MAP inventory in 2016/2017 Post-2015 cases



125. In total, nine MAP cases started during the Statistics Reporting Period, four of which concerned attribution/allocation cases and five other cases. At the end of this period the total number of post-2015 cases in the inventory was seven cases, consisting of three attribution/allocation cases and four other cases. Conclusively, Hungary closed two post-2015 cases during the Statistics Reporting Period, one of them being an attribution/allocation case and one of them being an other case. The total number of closed cases represents approximately 20% of the total number of post-2015 cases that started during the Statistics Reporting Period.

126. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the below table:

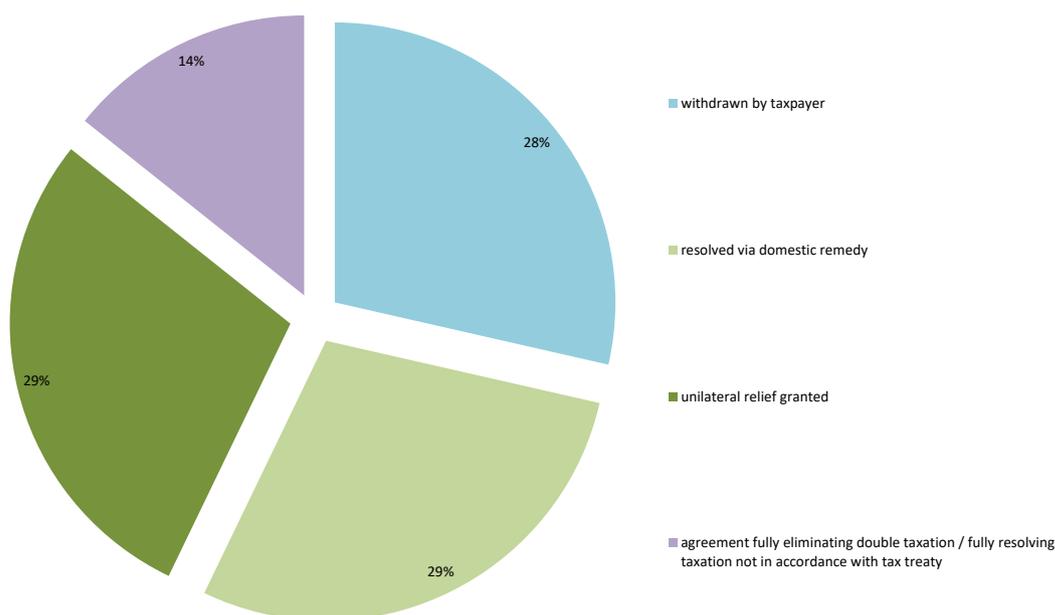
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution / allocation cases	0% (no cases closed)	50%	25%
Other cases	0% (no cases closed)	33%	20%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

127. During the Statistics Reporting Period Hungary in total closed seven MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during the Statistics Reporting Period (7 cases)



128. This chart shows that during the Statistics Reporting Period, one out of the seven cases was closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution / allocation cases

129. In total, three attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- Unilateral relief granted (67%)
- Resolved via domestic remedies (33%)

Reported outcomes for other cases

130. In total, four other cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- Withdrawn by taxpayer (50%)
- Resolved via domestic remedies (25%)
- Agreement that there is no taxation not in accordance with tax treaty (25%)

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

131. The average time needed to close MAP cases during the Statistics Reporting Period was 18.90 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	3	13.31
Other cases	4	23.10
All cases	7	18.90

Pre-2016 cases

132. For pre-2016 cases Hungary reported that on average it needed 18.67 months to close attribution/allocation cases and 25.50 months to close other cases. This resulted in an average time needed of 22.77 months to close five pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Hungary reported that it uses the following dates:

- *Start date*: the date on which Hungary received the request by the taxpayer to initiate the MAP procedure (irrespective of whether Hungary had to ask more information from the taxpayer in order to be able to determine whether to initiate the MAP or not); and
- *End date*: either (i) the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request; or (ii) the date the competent authority receives a notification from the taxpayer on the withdrawal of its MAP request.

Post-2015 cases

133. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 24 months.

134. For post-2015 cases Hungary reported that on average it needed 2.60 months to close attribution/allocation cases and 15.88 months to close other cases. This resulted in an average time needed of 9.24 months to close two post-2015 cases.

Peer input

135. Peers provided mixed input with regard to the time needed to resolve MAP cases with Hungary's competent authority. On the one hand some peers reported no impediments in resolving MAP cases and stated a professional and efficient working relationship with Hungary's competent authority. One peer explicitly mentioned that its

case with Hungary was closed within six months and was handled efficiently and effectively by the Hungarian competent authority. On the other hand several peers reported difficult communication and slow responses by Hungary as well as difficulties to set up face-to-face meetings and reaching agreements. One of these peers, however, reported a recent improvement with regard to the ease and speed of the communication since the establishment of a new unit in Hungary. Hungary replied to this peer input that the challenges with regard to communication relate all to cases before the establishment of the new unit for transfer pricing methodology. In addition, Hungary commented that it is a general challenge for attribution/allocation cases to receive late and incomplete information from the other competent authority that does not support the adjustment under discussion (missing transfer pricing documentation, calculations, database searches, etc.). The lack of such basic information is a significant impediment for Hungary to draft position papers.

136. As described under element B.1, one peer reported that Hungary is not willing to discuss a MAP case relating the attribution of profits to a permanent establishment in Hungary because such permanent establishment no longer existed in Hungary when the MAP request was submitted to the competent authority of this peer. The peer considers this approach not to be in line with the underlying treaty (being the EU Arbitration Convention in the case at stake) as the foreign taxpayer is still in existence in its country and taxation not in accordance with the tax treaty may not be resolved. This is indeed not in line with the Action 14 Minimum Standard, as Hungary does not seek to resolve such type of cases.

137. As described under element B.1 one of the aforementioned peers indicated that in several cases, even where the MAP request was not filed in Hungary, Hungary's competent authority was not willing to discuss certain fiscal years of the MAP request after exchanging position papers, arguing that the MAP request was filed after the expiration of Hungary's domestic time limit, even though the request was filed within the filing period provided by the EU Arbitration Convention. The peer stated further that this practice is not in line with the rules on access to MAP of the EU Arbitration Convention. This is indeed not in line with the Action 14 Minimum Standard, as Hungary does not seek to resolve such type of cases.

Anticipated modifications

138. Hungary indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Hungary submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Hungary's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Hungary's MAP statistics show that during the Statistics Reporting Period it closed 22% (two out of nine cases) of its post-2015 cases in 9.24 months on average. In that regard, Hungary is recommended to seek to resolve the remaining 78% of the post-2015 cases pending on 31 December 2017 (seven 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.

139. 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 Hungary's competent authority

140. Under Hungary's tax treaties the competent authority for other MAP cases (including the determination of the existence of a permanent establishment) is the International Taxation Division within the Ministry for National Economy by order of subsection 10, chapter 3.2.1.5 under the provision of the Ministry's rules of organisation and operation 1/2015 (I.21). The competent authority for attribution/allocation cases is the Central Administration of the National Tax and Customs Administration according to government decree no. 485/2015 (XII. 29) on the competency and authority of the National Tax and Customs Administration (article 7 (f)). Hungary reported that its competent authority consists of 14 people, who deal partly with MAP cases besides other international tax matters, among which the negotiation of tax treaties:

- three of the employees, plus the head of the division, are dedicated to other cases within the Ministry for National Economy (one of the staff was added since 2016), and
- nine employees, plus the head of division, deal with attribution/allocation cases as well as APAs within the National Tax and Customs Administration.

141. Hungary specified that a new unit (transfer pricing methodology department) was established in 2017, which can provide assistance in attribution/allocation cases to Hungary's competent authority.

142. Hungary reported that the employees working on MAP cases have master's degrees in law or economics and in general several years of experience in the area of international taxation. The case handlers for attribution/allocation cases are mostly trained tax experts with multiple years of transfer pricing experience. The members of Hungary's competent authority regularly participate in meetings of international working parties like OECD's working parties 1 and 6, the EU Joint Transfer Pricing Forum or the Intra-European Organisation of Tax Administrations. They also attend regularly specialised training on tax treaty application and transfer pricing (e.g. organised by the OECD). Hungary further reported that no additional funding is granted specifically for travels of the staff of its competent authority. However, the department to which the competent authority belongs has a general budget, which includes a travel budget, which Hungary reported can be used and that it is sufficient for competent authority meetings.

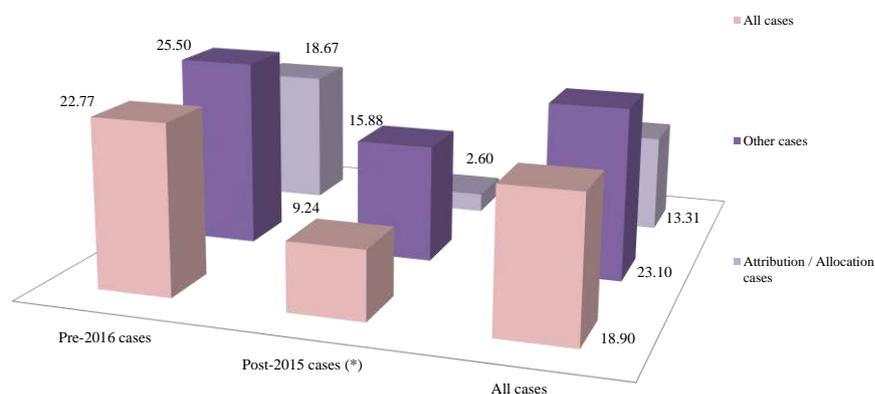
Monitoring mechanism

143. Hungary reported that its competent authority regularly monitors whether appropriate resources are allocated to resolve MAP cases. If required due to a permanent increase of MAP cases, Hungary's competent authority would request additional staff.

Practical application

MAP statistics

144. As discussed under element C.2 Hungary closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average.

Figure C.6. Average time (in months) to close cases in 2016 or 2017

145. Based on these figures, it follows that on average it took Hungary 18.90 months to close MAP cases during the Statistics Reporting Period.

Peer input

General

146. In total seven of the nine peers that provided input provided details in relation to their contacts with Hungary's competent authority and their experiences in resolving MAP cases since 1 January 2016. The remaining two peers stated that they have no experience dealing with Hungary's competent authority.

147. Contacts and correspondence with Hungary's competent authority

148. One peer reported having experienced a good working relationship with Hungary's competent authority, although on a low level of cases (two other cases). Another peer reported also a fluent communication based on emails, but also stressing that Hungary is not an important treaty partner. A further peer emphasised that the communication with Hungary worked very well. A fourth peer indicated that no problems were encountered in contacting the Hungarian competent authority. A fifth peer reported having a decent relationship with Hungary's competent authority stating that communication could be more timely and responses could be more complete. However, this peer emphasised being aware of the establishment of a new unit in Hungary in 2017 and reported a significant improvement of communication since then. A further peer reported that contact with Hungary's competent authority takes only place via traditional letters and that an e-mail address has only been provided very recently upon request.

149. Organisation of face-to-face meetings

150. One of the peers that provided input pointed out that it never had a face-to-face meeting with Hungary's competent authority given the low number of MAP cases. A second peer reported having had the last face-to-face meeting with Hungary's competent authority in 2012 at which one other case could be closed. This peer reported further that no additional cases could be closed since then and that attempts to schedule another face-to-face meeting remained unanswered. This peer finally reported that only very recently (in March 2018) this face-to-face meeting has been scheduled for July 2018.

Resolving MAP cases

151. One peer reported no impediments in timely resolutions of MAP cases. A further peer reported that its relationship with Hungary's competent authority is professional and efficient and the two attribution/allocation cases in the inventory have been progressed and are still below the 24 months timeframe to resolve MAP cases. One peer explicitly mentioned that its case with Hungary was closed by fully resolving the Map request within six months and that the case was handled efficiently and effectively by the Hungarian competent authority. Another peer reported that occasionally Hungary's competent authority takes time to react to position papers, which leads to challenges to meet set time frames. A further peer reported having MAP cases in its inventory with Hungary, which were initiated a long time ago, but that discussions were extremely slow due to slow responses from Hungary's competent authority. This peer, however, reported that communication has been improved significantly since 2017, although the discussions with regard to the old cases had to be restarted from the beginning. A last peer highlighted difficulties reaching agreements with Hungary's competent authority due to different positions on the timely submission of a MAP request as described in detail in the peer input for element B.1.

Anticipated modifications

152. Hungary indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

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

[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.

153. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment

and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

154. Hungary reported that when a MAP request is received by Hungary's competent authority the case handler in charge of the case analyses the MAP request with regard to: (i) the competence of the authority, (ii) the deadline for submitting the MAP request, (iii) the tax residence of the taxpayer and (iv) justification of the power of attorney (if applicable). Hungary's competent authority confirms receipt of the MAP request within two months to the taxpayer and also informs the foreign competent authority about the submission. If a MAP request was filed abroad and Hungary's competent authority is informed by the foreign competent authority about a MAP application, Hungary's competent authority acknowledges receipt of such a notification and informs the Hungarian taxpayer in transfer pricing cases.

155. Hungary further reported that in a first step Hungary's competent authority will try to resolve the MAP case unilaterally based on the provided information and other information available to its competent authority such as tax returns or previous tax audit reports. If information is missing, the case handler can ask the taxpayer to supplement the MAP request and to provide information as outlined in chapter 6 of Hungary's MAP Guidance. Alternatively, Hungary's competent authority is allowed to initiate an audit involving a local auditor with the aim of collecting the outstanding information. Hungary's legal system requires to formally initiating an audit. However, this audit is exclusively aimed at obtaining the outstanding information and Hungary reported that no unrelated issue will be assessed. Hungary further reported that tax auditors do not participate in competent authority discussions.

156. Hungary reported that for attribution/allocation cases the case handler can liaise with the transfer pricing methodology department, which was established in 2017. This transfer pricing methodology department is part of Hungary's tax administration and might provide general guidance on the application of transfer pricing principles. Hungary further reported that the transfer pricing methodology department does not perform direct tax audit activities and also has no authority to decide within the competent authority process.

157. In regard of the above, Hungary reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for discussing MAP agreements is committed not to be influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty while handling MAP cases.

Practical application

158. Peers generally reported no impediments in Hungary to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that they are not being aware that staff in charge of the MAP in Hungary is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

159. Hungary indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Hungary 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 adjustment at issue and absent any policy considerations that Hungary 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.

160. 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 Hungary

161. Hungary reported that all employees handling MAP cases are subject to an annual assessment of their performance, which takes into account the work on handling MAP cases even though there are no specific MAP related targets set. The number of MAP cases handled, the consistency and the time taken to resolve MAP cases by the employee are however considered to assess the performance of staff in charge of MAP cases.

162. The final report on Action 14 (OECD, 2015^[21]) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

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

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

Practical application

164. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. One peer particularly noted that they are not aware of the use of performance indicators by Hungary that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

165. Hungary indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

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

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

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

166. 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

167. Hungary reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. However, Hungary's tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. This is in line with Hungary's reservation to the OECD Model Tax Convention (OECD, 2015^[1]) not to include Article 25(5) of the OECD Model Tax Convention (OECD, 2015^[1]) in its tax treaties due to policy and administrative considerations. Hungary further reported that it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁷

168. However, Hungary is a signatory to the EU Arbitration Convention, which includes an arbitration procedure as a final stage to the MAP. Hungary's MAP Guidance includes comprehensive explanations on the arbitration procedure under the EU Arbitration Convention.

Practical application

169. Up to date, Hungary has incorporated an arbitration clause in none of its 81 tax treaties as a final stage to the MAP.

Anticipated modifications

170. Hungary indicated that it currently examines the possibility to incorporate mandatory and binding arbitration clauses in Hungary's tax treaty network to apply

arbitration outside of the EU Arbitration Convention to non-EU countries by opting for part VI of the Multilateral Instrument. However, Hungary further reported that these considerations have just started and the outcome is open.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

¹ These 80 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

² Available at: <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm>. These statistics are up to and include fiscal year 2016.

³ Available at https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_ac_statistics_en.pdf. These statistics are up to and include fiscal year 2016.

⁴ Hungary 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B and Annex C.

⁵ For post-2015 cases, if the number of MAP cases in Hungary'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, Hungary reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).

⁶ For pre – 2016 and post-2015 Hungary follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (OECD, 2015)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015)), which is also known as a transfer pricing MAP case”.

⁷ An overview of Hungary's position on the Multilateral Instrument is available at: <http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf>.

References

- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

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.

172. 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

173. Hungary reported that its statute of limitation applies to amend tax assessments. According to Section 202(1) of Hungary's Act on the Rules of Taxation Hungary's domestic time limit expires five years after the last day of the calendar year in which the taxes should have been declared or reported, which is typically the year following the fiscal year concerned. Hungary reported that this domestic time limit, however, is waived for the implementation of MAP agreements according to Article 211(3) of Hungary's Act on the Rules of Taxation, which reads: "The agreement reached in the MAP process has to be implemented notwithstanding the expiry of the time limitation for tax years in question." This waiver is applicable for both upward and downward adjustments.

174. Concerning the process of implementing MAP agreements, Hungary reported that when competent authorities reach a MAP agreement, its competent authority determines the amended tax liability and informs the taxpayer as well as the National Tax and Customs Administration. Hungary reported that MAP agreements are implemented either by the taxpayer via a self-assessment or by the tax authority, without asking the taxpayer for its consent. Implementation by the tax authority is technically performed via a tax audit/oversight tax inspection. However, this audit is exclusively aimed at implementing the MAP agreement (the tax audit is not allowed to deviate from the MAP agreement) and Hungary reported that no unrelated issue are assessed. Hungary reported that its tax laws do not prescribe any timeline for implementation.

175. Hungary's MAP Guidance describes the waiver of domestic time limits in chapter 9, but is silent on the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers.

Practical application

176. Hungary reported that since 1 January 2016 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	0
2017	1
2018 (until 30 April 2018)	1

177. Hungary reported that only the closed MAP case in 2017 required an implementation by Hungary and that Hungary has already refunded the tax in July 2017 according to the MAP agreement reached.

178. Hungary further indicated that it monitors the implementation of MAP agreements by requesting information either from the local tax office that is in charge of tax audits/oversight tax inspections for implementing transfer pricing MAP agreements or from the National Tax and Customs Administration for other cases.

179. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Hungary.

Anticipated modifications

180. Hungary indicated that it plans to introduce new rules in order to ask for consent from the taxpayer before implementing a MAP agreement.

Conclusion

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

181. will not officially be asked for his consent. For implementing MAP agreements Hungary's tax laws do not prescribe any timeline. Nevertheless, for MAP cases under the EU Arbitration Convention, Hungary reported that it follows the recommended three-month timeframe for implementation by the EU Joint Transfer Pricing Forum.

182. As explained under element B.8, Hungary's MAP Guidance does not specifically address the steps or the timing of the steps for the implementation of MAP agreements, including the potential requirement for taxpayers to file a self-assessment.

Practical application

183. As discussed under element D.1, since 1 January 2016, Hungary entered into one MAP agreement that required implementation by Hungary. In this respect, Hungary reported that the taxpayer requested for implementation within three months after the MAP agreement was reached and that this MAP agreement has then been implemented within four months after the taxpayer requested for implementation.

184. All peers that provided input have not indicated experiencing any problems with Hungary regarding the implementation of MAP agreements reached on a timely basis. One peer, however, remarked that no MAP agreements were reached between his competent authority and Hungary's competent authority in the Review Period.

Anticipated modifications

185. Hungary indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

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

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

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

186. 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_[1]) 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 the Hungary's tax treaties

187. Out of Hungary's 81 tax treaties, 67 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ In addition, two tax treaties do not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), but contain a provision in the MAP article setting a time limit for making primary adjustments, which is considered equivalent to containing both alternative provisions in Article 9(1) and Article 7(2). Furthermore, nine tax treaties do not contain such equivalent or any of the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making primary adjustments.

188. For the remaining three tax treaties the following analysis can be made:

- In one tax treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) is contained, but it also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this treaty therefore, is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).
- One tax treaty contains a variation to the provision of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) whereby the actual implementation of a MAP agreement is dependent on the notification of a MAP request to the other competent authority involved within six years from the end of the taxable year to which the case relates. This tax treaty is

therefore not considered being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]).

- One tax treaty contains a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]), but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (“except such limitations as apply for the purposes of giving effect to such an agreement”). This tax treaty therefore is being considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]).

Anticipated modifications

Multilateral Instrument

189. Hungary signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2)–of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

190. In regard of the 12 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) or both alternative provisions for Articles 9(1) and 7(2), Hungary listed 12 treaties as covered tax agreements under the Multilateral Instrument, but only for 10 treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 10 treaty partners, one is not a signatory to the Multilateral Instrument, one did not list their treaty with Hungary as a covered tax agreement and one made a reservation on the basis of Article 16(5)(c). Of the remaining seven treaty partners, seven made such notification. Therefore, at this stage, seven of the 12 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]).

Bilateral modifications

191. Hungary reported that for the six tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), or both alternative provisions in Articles 9(1) and 7(2), and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. Hungary, however, reported not having in place a specific plan for such negotiations as the final effect of the Multilateral Instrument is currently still under analysis. Hungary further reported that it is open to and will start bilateral treaty negotiations when approached by a treaty partner to bring a tax treaty in line with the Action 14 Minimum Standard. In addition, Hungary reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) in all of its future tax treaties.

Peer input

192. Of the peers that provided input on this element, five peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element D.3 one of the relevant tax treaties is already in line with the Minimum Standard as it contains both alternatives in Articles 9(1) and 7(2), three tax treaties will actually be modified by the Multilateral Instrument whereas the fifth tax treaty will not be modified by the Multilateral Instrument. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis described above. Two additional peers provided specific input for element D.3, which is discussed below.

193. For the 13 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), or the alternatives in Articles 9(1) and 7(2), seven of the relevant treaty partners provided peer input. As described above one of the relevant tax treaties is already in line with the Minimum Standard as it contains both alternatives in Articles 9(1) and 7(2) and four peers indicated that their tax treaty with Hungary will be modified by the Multilateral Instrument, which is actually only the case for three of the four tax treaties. Another peer provided similar input specifically for element D.3 and its tax treaty with Hungary will actually be modified by the Multilateral Instrument. The fourth peer provided specifically input regarding element D.3 and noted that its tax treaty with Hungary is not in line element D.3, but that it already has submitted a draft of an amending protocol to bring the tax treaty in line with element D.3.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	12 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 ^[1]) nor any of the alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), Hungary should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating these six treaties to include the required provision or its alternatives.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

Notes

¹ These 66 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>. [3]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

Summary

Areas for Improvement	Recommendations
Part A: Preventing disputes	
<p>[A.1] Two out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.</p>	<p>As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will at this time not be modified via the Multilateral Instrument, Hungary should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating these two tax treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision in all future tax treaties.</p>
<p>[A.2] Hungary is, as of 1 January 2018, in theory able to provide for roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Hungary did not receive any request for roll-back of bilateral APAs during the Review Period.</p>	
Part B: Availability and access to MAP	
<p>[B.1] Five out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention. Of those five tax treaties:</p> <ul style="list-style-type: none"> ○ One tax treaty does not contain the equivalent to Article 25(1), first sentence; ○ Four 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. <p>The policy is to deny access to MAP in eligible cases where the MAP request is filed after the expiration of Hungary's domestic time limit, even if the MAP request is filed within the filing period provided in the applicable tax treaty. In addition, Hungary's policy is not to discuss cases where a permanent establishment ceased to exist in Hungary and where a MAP request was submitted at the level of the competent authority of the treaty partner.</p>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining three tax treaties that do not contain the equivalent of either the first sentence or the second sentence, Hungary should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ol style="list-style-type: none"> a) As amended in the final report of Action 14; or b) As it read prior to the adoption of final report on Action 14, thereby including the full sentence of such provision; 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>To this end, Hungary should put a plan in place on how it envisages updating these three tax treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 in all future tax treaties.</p>
	<p>Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP. In particular, Hungary should ensure (1) that, as its domestic time limit applies for the filing of MAP requests, even when a provision hereon is contained in its tax treaties, this time limit does not prevent taxpayers from having 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; and (2) that MAP cases where a permanent establishment ceased to exist in Hungary are effectively discussed in MAP with the other competent authority concerned to whom the MAP request was filed.</p> <p>In addition, for clarification purposes, Hungary could consider withdrawing its reservation on Article 25(1), second sentence, of the OECD Model Tax</p>

		Convention.
[B.2]	All of the 81 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Hungary should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not being justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the final report on Action 14.
[B.3]	Hungary reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Hungary is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Hungary reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, but its competent authority did not receive any MAP requests of this kind from taxpayers during the Review Period. Hungary is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.5]	-	-
[B.6]	-	As Hungary has thus far not limited access to MAP in eligible cases when taxpayers have complied with Hungary's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Three out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Hungary should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Hungary should put a plan in place on how it envisages updating these two treaties to include the required provision.</p> <p>In addition, Hungary should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Hungary 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 • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP • The consideration of interest and penalties in the MAP, and • The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).
[B.9]	The MAP profile contains an inconsistency with Hungary's practice.	<p>Hungary should follow its stated intention to clarify in its MAP profile that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law.</p> <p>As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Hungary should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	One out of 81 tax treaties does not contain a provision	As the one tax treaty that does not contain the equivalent of Article 25(2),

	that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	first sentence, of the OECD Model Tax Convention will at this time not be modified via the Multilateral Instrument, Hungary should request the inclusion of the required provision via bilateral negotiations. To this end, Hungary should put a plan in place on how it envisages updating this tax treaty to include the required provision. In addition, Hungary should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Hungary submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Hungary's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Hungary's MAP statistics show that during the Statistics Reporting Period it closed 22% (two out of nine cases) of its post-2015 cases in 9.24 months on average. In that regard, Hungary is recommended to seek to resolve the remaining 78% of the post-2015 cases pending on 31 December 2017 (seven cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Hungary should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Hungary 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 adjustment at issue and absent any policy considerations that Hungary would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Hungary should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Hungary should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, Hungary should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	12 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions provided for in Article 9(1) and Article 7(2).	Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Hungary should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Hungary should put a plan in place on how it envisages updating these six treaties to include the required provision or its alternatives. In addition, Hungary should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A. Tax treaty network of Hungary

		Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
Column 1	Column 2	B.1	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?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons				If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
	Y = yes	E = yes, either CAs	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes
	If N, date of signing	O = yes, only one CA	i = no, no such provision	i = no, but access will be given to TP cases	i = no and such cases will be accepted for MAP		i = no, but have Art 7 equivalent	N = no	N = no	N = no
			ii = no, different period	if ii, specify period			ii = no, but have Art 9 equivalent	-		ii-mandatory other

	N = signed pending ratification		N = No	iii = no, starting point for computing the 3 year period is different	- iv = no, others reasons	ii = no and access will not be given to TP cases	ii = no but such cases will not be accepted for MAP	N = no	iii = no, but have both Art 7 & 9 equivalent				iii - voluntary	
Albania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Armenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Australia	Y	N/A	O	Y	N/A	Y	i	Y	Y	N	N	N	N	N/A
Austria	Y	N/A	O	i	N/A	i***	i	Y	N**	Y	Y	Y	N	N/A
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Bahrain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Belgium	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	N**	Y	N	N/A
Bosnia and Herzegovina	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Brazil	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	ii**	2 years	Y	i	Y	iii	Y	Y	Y	N	N/A
China	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	Y	N	N/A
Czech Republic	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Egypt	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Finland	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	Y	N	N/A

Former Yugoslav Republic of Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O	Y	N/A	i***	i	Y	Y	N	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Hong Kong, China	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	N/A	O	ii	2 years	i	i	Y	Y	Y	Y	N	N/A
Iran	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Iraq	N	22-Nov-16	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Israel	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Italy	Y	N/A	N	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Japan	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Kazakhstan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Kosovo	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Liechtenstein	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	Y	N/A	Y	i	N	N	Y	Y	N	N/A
Moldova	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Mongolia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

Montenegro	Y	N/A	0	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Morocco	Y	N/A	0	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Netherlands	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Norway	Y	N/A	0	i	N/A	i	i	Y	Y	Y	Y	N	N/A
Oman	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Pakistan	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Philippines	Y	N/A	0	ii	2 years	Y	i	Y	iii	Y	Y	N	N/A
Poland	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Portugal	Y	N/A	0	ii**	2 years	Y	i	Y	N**	Y	Y	N	N/A
Qatar	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Romania	Y	N/A	0	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Russia	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
San Marino	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Slovenia	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	0	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Sweden	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	N/A	0	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Chinese Taipei	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Thailand	Y	N/A	0	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	N/A	0	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Turkey	Y	N/A	0	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Turkmenistan	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ukraine	Y	N/A	0	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
United Arab Emirates	Y	N/A	0	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

United Kingdom	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
United States	N	N/A	O	i	N/A	Y	i	Y	N	Y	Y	N	N/A
Uruguay	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	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 recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

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

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

** Treaties will be modified upon entry into force of the Multilateral Instrument for the treaties concerned.

*** Treaties will be modified upon entry into force of the Multilateral Instrument for the treaties concerned, but only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B. MAP Statistics Reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for Pre-2016 Cases

2016 MAP Statistics

number of pre-2016 cases closed during the reporting period by outcome:

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	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	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period
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	11	0	0	0	0	0	0	0	0	0	0	11	0.00
Others	7	0	0	2	0	0	0	0	0	0	0	5	24.00
Total	18	0	0	2	0	0	0	0	0	0	0	16	24.00

Notes:

The inventory of attribution/allocation cases has been increased by one case as Hungary was informed in 2018 by its treaty partner that a case was received in 2016 and unilaterally resolved in 2017.

2017 MAP Statistics

number of pre-2016 cases closed during the reporting period by outcome:

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2017	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	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing pre-2016 cases during the reporting period
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	11	0	0	0	1	1	0	0	0	0	0	9	18.67
Others	5	0	0	0	0	0	1	0	0	0	0	4	28.50
Total	16	0	0	0	1	1	1	0	0	0	0	13	21.95
													<u>Notes:</u>

Annex C. MAP Statistics Reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for Post-2015 Cases

2016 MAP Statistics														
category of cases	no. of post-2015 cases in MAP inventory on 1 January 2016	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing post-2015 cases during the reporting period
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution / Allocation	0	2	0	0	0	0	0	0	0	0	0	0	2	0.00
Others	0	2	0	0	0	0	0	0	0	0	0	0	2	0.00
Total	0	4	0	0	0	0	0	0	0	0	0	0	4	0.00

Notes:

2017 MAP Statistics

category of cases	no. of post-2015 cases in MAP inventory on 1 January 2017	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in on MAP inventory on 31 December 2017	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 / resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / 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	2	2	0	0	0	1	0	0	0	0	0	0	0	3	2.60
Others	2	3	0	0	0	0	1	0	0	0	0	0	0	4	15.88
Total	4	5	0	0	0	1	1	0	0	0	0	0	0	7	9.24
<u>Notes:</u>															

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Guidance on Mutual Agreement Procedures initiated on the basis of Double Tax Treaties and on Resolution of Possible Double Taxation Cases
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 21 November 2017
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 pending resolution on 31 December 2015
Post-2015 cases	MAP cases 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 30 April 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
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, Hungary (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

Consult this publication on line at <https://doi.org/10.1787/9789264309982-en>.

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