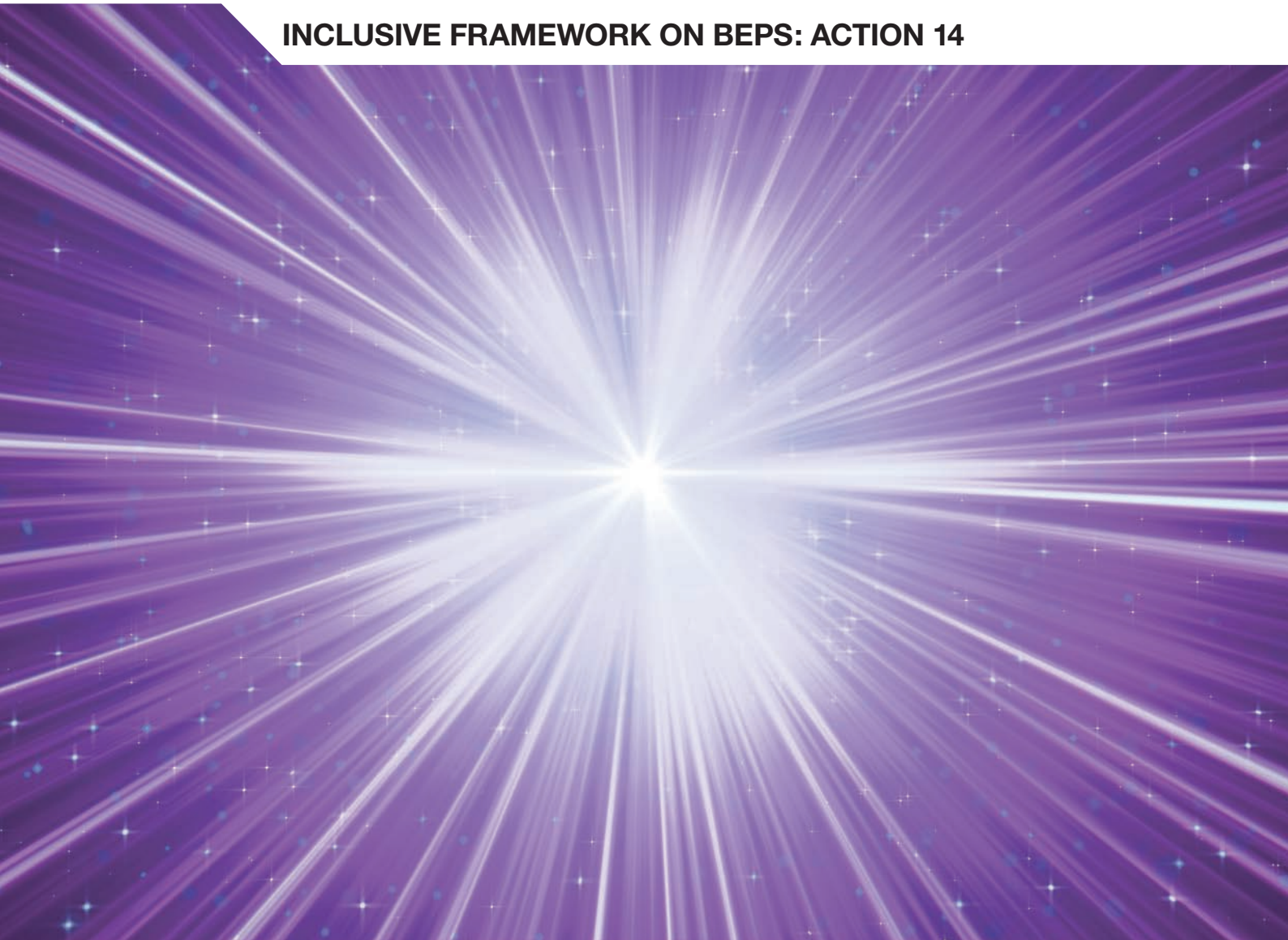


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Malta (Stage 2)

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 90 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 OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), 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 135 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 28 October 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Malta has an extensive tax treaty network with over 80 tax treaties and has signed and ratified the EU Arbitration Convention. It has an established MAP programme even though it has a small MAP inventory, with a small number of new cases submitted each year and six cases pending on 31 December 2018. Of these cases, 50% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Malta met almost all of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Malta has worked to address them, which has been monitored in stage 2 of the process. In this respect, Malta has solved almost all of the identified deficiencies.

All of Malta's tax treaties include a provision relating to MAP, which mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except for the fact that approximately 7% 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, Malta signed and ratified the Multilateral Instrument. Furthermore, Malta opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument, Malta 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. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

Malta meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request roll-back of bilateral APAs and such roll-backs are granted in practice.

Furthermore, Malta also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2015 not yet received any MAP request concerning transfer pricing cases or cases where taxpayers and the tax authorities have already entered into an audit settlement. It further has 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, although no such cases have surfaced since 1 January 2015. Malta also 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 Malta for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018	Average time to close cases (in months)
Attribution/allocation cases	0	3	0	3	n.a.
Other cases	2	2	1	3	2.00
Total	2	5	1	6	2.00

The number of cases Malta closed in the period 2016-18 is 20% of the number of all cases started in those years. During these years, the one post-2015 MAP case that was closed was closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the time necessary was two months. However, Malta's MAP inventory as on 31 December 2018 increased to six cases as compared to two cases on 1 January 2016. Malta should therefore continue to closely monitor whether the available resources for the competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed necessary resources should be devoted to cope with the increase in the number of MAP cases.

Furthermore, Malta meets all other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Malta's competent authority operates fully independently from the audit function of the tax authorities and adopts a co-operative approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Malta almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Malta monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, albeit that no problems have surfaced regarding implementation throughout the peer review process.

Introduction

Available mechanisms in Malta to resolve tax treaty-related disputes

Malta has entered into 81 tax treaties on income (and/or capital), 77 of which are in force.¹ These 81 treaties apply to 81 jurisdictions. All of these 81 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, seven of the 81 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Malta is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³ Furthermore, Malta adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union⁴, which has been implemented in its domestic legislation on 1 July 2019 as per Legal Notice 159 of 2019.⁵

Under the tax treaties that Malta has entered into, the competent authority function is assigned to the Minister responsible for finance. On the basis of Regulation 8 of The Co-operation with Other Jurisdictions on Tax Matters Regulations (Legal Notice 295 of 2011) the competent authority function is delegated to the Director General, Legal and International within Malta’s Revenue, which is competent to handle both attribution/allocation cases as well as other MAP cases.

Malta issued guidance on the governance and administration of the MAP process in December 2017, which was updated in June 2019 and which is available at (in English):

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

Developments in Malta since 1 January 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Malta notes that it had signed new treaties with Botswana (2017) and Curaçao (2015). Since the adoption of this report, the treaty with Botswana has entered into force. The treaty with Curaçao has up to now only been ratified by Malta and therefore has not yet entered into force.

Furthermore, on 7 June 2017, Malta 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. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 18 December 2018, Malta deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Malta on 1 April 2019. With the deposit of

the instrument of acceptance of the Multilateral Instrument, Malta also submitted its list of notifications and reservations to that instrument. In relation to the Action 14 Minimum Standard, Malta has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).⁶

In addition, Malta reported that since 1 January 2018 it has signed new treaties with Armenia (2019), Ethiopia (2018), Ghana (2019), Kosovo (2019) and Monaco (2018) which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. Of these treaties, the treaties with Monaco and Kosovo have entered into force, while the remaining treaties have not yet been ratified by Malta or the concerned treaty partners. The treaties with Armenia, Ghana and Kosovo contain Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017). The treaties with Ethiopia and Monaco contain Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

For those seven tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that have not been or will not be modified by the Multilateral Instrument, Malta reported that it intends to update them via bilateral negotiations. In that regard, Malta reported that it has reached out to all seven relevant treaty partners with a view to initiate bilateral negotiations to amend Article 25(1-3) in the relevant tax treaties to be compliant with the Action 14 Minimum Standard. The outcome of this outreach is as follows:

- Italy and San Marino have not responded.
- With Bulgaria, meetings are being scheduled for commencing negotiations on a new tax treaty with Malta.
- With Romania, internal procedures have been started in Romania to obtain authorisation to begin negotiations on the tax treaty with Malta.
- With Mexico, an amending protocol to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) has been initialled and is awaiting signature.
- With Poland, an amending protocol to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) has been initialled and is awaiting signature.
- With Switzerland, an amending protocol to include Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and the alternative provisions for Article 9(1) and 7(2) setting a time limit for making transfer pricing adjustments has been initialled and is awaiting signature.

Other developments

Malta has reported that it has changed its domestic law to increase the amount of tax for which collection may be suspended during the period a MAP case is pending (where a notice of objection or appeal has been submitted against an assessment that is subject of the MAP process), from 90% to 100% of the tax in dispute. Further, Malta reported that it has updated its MAP guidance to reflect these changes as well as to:

- clarify that the MAP process is also available for multilateral disputes and in cases where there is a bona fide foreign-initiated self-adjustment

- clarify that taxpayers may request for the multi-year resolution of recurring issues through MAP for filed tax years
- detail the process for the implementation of MAP agreements.

Basis for the peer review process

Outline of the peer review process

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Malta's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 14 August 2018. This report identifies the strengths and shortcomings of Malta in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁷ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Malta. In this update report, Malta reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Malta 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, were taken into account, even if it concerns a replacement of an existing treaty. Reference is made to Annex A for the overview of Malta's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Malta was launched on 29 December 2017, with the sending of questionnaires to Malta and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Malta in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 14 August 2019, Malta submitted its update report, which initiated stage 2 of the process.

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Malta opted to provide information and requested peer input on a period starting as from 1 January 2015. The period for evaluating Malta's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 and formed the basis

for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2018 and depicts all developments as from that date until 31 August 2019. In addition to the assessment on its compliance with the Action 14 Minimum Standard, Malta also addressed best practices and asked for peer input on best practices.

In total five peers provided input during stage 1: Germany, Italy, Sweden, Switzerland and Turkey. Out of these five peers, one of them had a pre-2016 MAP case with Malta, which represented 50% of the MAP cases in Malta’s inventory on 1 January 2016.⁸ During stage 2, the same peers provided input. For this stage, these peers represent 40% of post-2015 MAP cases in Malta’s inventory that started in 2016, 2017 or 2018.⁹ Generally, all peers noted the ease of contact and co-operation in resolving disputes with Malta’s competent authority. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Malta fully reflects the experiences these peers have had with Malta since 1 January 2018 and/or that there was no addition to previous input given. Of the peers that provided additional input, all voiced positive experiences with Malta in the handling of MAP cases.

Input by Malta and cooperation throughout the process

During stage 1, Malta provided extensive answers in its questionnaire which was submitted on time. Malta was very 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, Malta provided the following information:

- MAP profile¹⁰
- MAP statistics according to the MAP Statistics Reporting Framework (see below).¹¹

Concerning stage 2 of the process, Malta submitted its update report on time and the information included therein was extensive. Malta was very co-operative during stage 2 and the finalisation of the peer review process.

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

Overview of MAP caseload in Malta

The analysis of Malta’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Malta, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2018
Attribution/allocation cases	0	3	0	3
Other cases	2	2	1	3
Total	2	5	1	6

General outline of the peer review report

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

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹² Apart from analysing Malta’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Malta, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Malta 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Malta relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Malta should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. The tax treaties Malta has entered into are available at: <https://legislation.mt/>. The treaties that are signed but have not yet entered into force are with Armenia (2019), Curaçao (2015), Ethiopia (2018) and Ghana (2019). Reference is made to Annex A for an overview of Malta’s tax treaties.
2. This concerns treaties with Botswana, Curaçao, Liechtenstein, Moldova and Switzerland.
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: <https://legislation.mt/eli/sl/123.191/eng/pdf>.
6. Available at: www.oecd.org/tax/treaties/beps-mli-position-malta-instrument-deposit.pdf.
7. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-malta-stage-1-9789264304321-en.htm>.
8. Malta only had pre-2016 MAP cases and had not received any request for a post-2015 MAP case.
9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
10. Available at www.oecd.org/tax/dispute/Malta-Dispute-Resolution-Profile.pdf.
11. The MAP statistics of Malta are included in Annex B and C of this report.
12. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017) 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 Malta’s tax treaties

2. Out of Malta’s 81 tax treaties, 79 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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. The remaining two tax treaties are considered not having the equivalent of Article 25(3), first sentence, as in one of these treaties the term “interpretation” is not contained, whereas the other treaty misses the terms “doubts” as well as “interpretation”.

3. Malta 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, 2017), 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.

4. All peers that provided input reported that their treaty with Malta meets the requirements under element A.1. For the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

Recent developments

Bilateral modifications

5. Malta signed new treaties with five treaty partners since 1 January 2018, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. All these five treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Two of these newly signed treaties have already entered into force. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

6. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019.

7. 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, 2017) – 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, 2017). 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, 2017).

8. With regard to 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, 2017), Malta listed all of them as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Both relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Malta as covered tax agreements under that instrument and also made notifications on the basis of Article 16(6)(d)(i). Both relevant treaty partners also have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Malta and these treaty partners, and therefore has modified them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

9. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Malta. None of this input, however, relates to element A.1 as the treaties to which these peers are signatories are in line with this element.

Anticipated modifications

10. Malta reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

[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.

11. 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.¹ 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.

Malta’s APA programme

12. Malta reported that it does not have established a formal bilateral APA programme, but that its competent authority is authorised to enter into bilateral and multilateral APAs. Malta reported further that it considers Article 25(3) of the OECD Model Tax Convention (OECD, 2017) as the legal basis for entering into such APAs. In that regard, Malta specified that the provisions of Article 52 of the Income Tax Act, providing for unilateral advance revenue rulings, are interpreted broadly to allow its competent authority to enter into bilateral and multilateral APAs.

13. Malta further reported that there are no fees charged to taxpayers when submitting an APA requests and there are no specific timelines for filing such requests. However, it also noted that the application should ideally be made before the start of the first fiscal year to be covered by the APA. In that regard, Malta reported that a unilateral advanced ruling takes effect as of the date of issuing the ruling, which rules also applies to bilateral APAs (e.g. the date of signing the agreement). Typically, in Malta bilateral APAs run for a period of no more than five years. Malta reported that they can be renewed upon request by the taxpayer if no material changes to the facts and circumstances have occurred and insofar the treaty partner agrees therewith.

Roll-back of bilateral APAs

14. Malta reported that it is possible to grant a roll-back of bilateral APAs when the competent authority of the other jurisdiction agrees herewith. The number of tax years for which the bilateral APA will be applied retroactively depends on the domestic laws of the involved jurisdictions as well as on the agreement reached between their involved competent authorities. In general, Malta specified that any year prior to the conclusion of the bilateral APA is considered to be a roll-back year and that due to its domestic statute of limitation roll-backs are limited to five years starting at the end of the year following the fiscal year in which the tax has been arisen. Malta, however, noted that in practice it is unlikely that it would consider more than two to three years as eligible for a roll-back.

Recent developments

15. There are no recent developments with respect to element A.2.

Practical application of roll-back of bilateral APAs

16. Malta reported it publishes statistics on APAs on the website of the EU JTPF, but that it has not yet concluded a bilateral APA.²

Period 1 January 2015-31 December 2017 (stage 1)

17. Malta reported having received one request for a bilateral APA during the period 1 January 2015-31 December 2017, which included a request for roll-back. The APA request as well as the request for roll-back are both still under consideration due to awaiting confirmation by the treaty partner. Overall, Malta mentioned having limited experience with bilateral APAs, including roll-backs.

18. All but one peer that provided input indicated that they have not received a request for a roll-back of a bilateral APA concerning Malta in the period 1 January 2015-31 December 2017. The remaining peer confirmed the receipt of the aforementioned roll-back request of an APA and stated that according to its understanding a roll-back is possible in Malta.

Period 1 January 2018-31 August 2019 (stage 2)

19. Malta reported having received one request for a bilateral APA since 1 January 2018, which included a request for roll-back. Malta also reported to having received a request for a multilateral APA. Both requests are currently under consideration. With respect to the roll-back request mentioned in paragraph 17 above, Malta reported that the APA request has been superseded as the relevant years are being considered in a MAP case between Malta and the treaty partner.

20. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer noted that it has no input as regards roll-back of bilateral APAs, but in its experience Malta has been positive as regards the possibility of multilateral APA discussions.

Anticipated modifications

21. Malta did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. The most recent statistics published are up to 2017.

References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

22. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties contain 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 Malta's tax treaties

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

23. Out of Malta's 81 tax treaties, four contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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. Furthermore, 69 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

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

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	7
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

25. The seven tax treaties mentioned in the first row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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 five of those seven 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 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 (three treaties).

26. For the remaining two tax treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) is therefore not clarified by a limited scope of application of the non-discrimination article, following which both tax treaties are considered not to be in line with this part of element B.1.

27. Furthermore, the tax treaty mentioned in the second row of the table incorporates a provision in the protocol to this tax treaty, which reads:

With reference to paragraph 1 of Article 24, the expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative to the national contestation proceedings which should, in any case, be initiated within the time limits of the national law.

28. As pursuant to this provision a domestic procedure has to be initiated concomitantly 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Therefore, this tax treaty is considered not to be in line with this part of element B.1.

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

29. Out of Malta’s 81 tax treaties, 75 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) 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.

30. The remaining six 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	4
Filing period less than 3 years for a MAP request (two years)	2

Peer input

31. Of the peers that provided input, four indicated that their tax treaty with Malta is in line with the requirements under element B.1, which is consistent with the above analysis for this element.

32. For the five tax treaties identified above that are considered not to contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b), only one of the relevant treaty partners provided peer input. This peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. However, the tax treaty with this peer will not be modified with respect to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as the peer made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument.

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

33. As follows from the above analysis, all but one of Malta’s tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. In this respect, Malta reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending or were already concluded.

34. Malta’s MAP guidance, in the section titled “Appeal Rights”, stipulates that the taxpayer may request MAP assistance irrespective of the remedies provided by Malta’s domestic law. In this section it is also clarified that where such a MAP request follows from actions taken by Malta’s Commissioner for Revenue in specific cases, its competent authority cannot derogate in MAP from an assessment issued by this Commissioner and that such assessment would become final pursuant to Article 38 of the Income Tax Management Act. This involves cases where:

- a. The taxpayer objected to an assessment, but no agreement was reached and the taxpayer subsequently appealed before the administrative review tribunal and the tribunal has issued its decision on the case, which becomes final owing to the taxpayer choosing to not appeal it further.

b. The taxpayer appealed to the tribunal’s decision before the court of appeal and the court has issued its final decision on the case.

35. Malta clarified that while access to MAP will be granted in both situations, its competent authority is not in a position to derogate from the final decision issued by the tribunal or the court. In those situations, Malta’s competent authority will explain this position to the other competent authority concerned, which may provide for relief of double taxation.

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

36. Malta reported that for those tax treaties that do not contain a filing period for MAP request, it applies a three-year time period on the basis of the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2017). This policy is explicitly stated in Malta’s MAP Guidance in the chapter “Making a request for MAP”.

Recent developments

Bilateral modifications

37. Malta signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. Two of these newly signed treaties have already entered into force.

38. Concerning the first sentence of Article 25(1), three of these five newly negotiated treaties contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 Final Report (OECD, 2015b). The remaining two treaties contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

39. Concerning the filing period for MAP requests, all five newly negotiated treaties also contain the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2017).

40. The effects of these five newly signed treaties have been reflected in the analysis above where they have relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from one to three.

Multilateral Instrument

41. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019.

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

42. 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, 2017) as amended by the Action 14 final report (OECD, 2015b) 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, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

43. With the depositing of its instrument of ratification, Malta opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Malta's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Malta opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Malta listed 73 of its 81 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

44. In total, eight of the 73 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with Malta as a covered tax agreement under that instrument and 22 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 41 treaty partners listed their treaty with Malta as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

45. Of these 41 treaty partners, 27 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Malta and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). For the remaining 14 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

46. In view of the above and in relation to the three treaties identified in paragraphs 25-28 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), one is included in the 27 treaties mentioned above that has been modified via that instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

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

47. 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, 2017) – 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, 2017).

48. With regard to the two tax treaties identified in paragraph 30 above that contain a filing period for MAP requests of less than three years, Malta listed both of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Both treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Malta as a covered tax agreement and also made such notification. Both of these treaty partners have also already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Malta and these treaty partners, and therefore have modified them to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

49. Malta reported that for the two remaining tax treaties that do not contain the equivalent of the first sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b), and which have not been or will not be modified by the Multilateral Instrument, it has contacted the relevant treaty partners in 2018 and 2019 with the request to initiate bilateral negotiations with a view to be compliant with element B.1. So far it has not received a response from one relevant treaty partner. For the other relevant treaty partner, dates for negotiation are being scheduled.

Peer input

50. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Malta. One of these peers concern a treaty partner relating to the two treaties identified above that do not contain Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b) and which has not or will not be modified by the Multilateral Instrument. This peer reported that there has been an exchange of letters between the jurisdictions with the aim to address the requirement in the protocol to the treaty to initiate domestic remedies when submitting MAP request. The peer added that it has proposed to Malta to enter into a memorandum of understanding. As clarified above, Malta reported that it has approached this treaty partner to modify the treaty (or the protocol provision to address this requirement. Furthermore, a second peer mentioned that a protocol amending the treaty with Malta has been initialled in 2018 and awaiting signature following which the treaty will include Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b).

Anticipated modifications

51. Malta reported that it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 81 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one a response from the treaty partner is pending to express interest in initiating bilateral negotiations with a view to including the required provision. - For one, negotiations are envisaged, scheduled or pending. 	<p>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Malta should:</p> <ul style="list-style-type: none"> • for one treaty continue (the initiation of) negotiations with the treaty partner with a view to including the required provision • for the other treaty, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision. <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

[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).

52. 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:

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

Domestic bilateral consultation or notification process in place

53. As discussed under element B.1, out of Malta’s 81 treaties, four currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 41 of these 81 treaties have been or will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. Malta reported that it has introduced a bilateral consultation process which allows the other competent authority concerned to provide its views on the case when Malta’s competent authority considers the objection raised in the MAP request not being justified, or any other instances where access to MAP will not be granted. Malta clarified that this process is described in Malta’s internal instruction for staff in charge of MAP. In this respect, Malta reported that in considering a MAP request its competent authority will take the following steps:

- notify, where possible, in writing the taxpayer of receipt of the MAP request within 30 days from the date of receipt of the request (or from receipt of additional information, if requested, or from the date the consultation with the other competent authority concerned have been concluded – see below) alongside a statement whether the request is accepted or declined, the latter including a specification of the reasons for such decline
- notify in writing the other competent authority concerned of the received MAP request, such within 30 days from the date of receipt of the request (or receipt of additional information, if requested), including: (i) the identification of the taxpayer and (ii) a description of the case put forward by the taxpayer.

55. Where its competent authority intends to deny access to MAP on the basis that the objection raised in the MAP request is not justified, Malta reported that its competent authority is instructed to inform the other competent authority concerned of the reason(s) leading to the consideration of rejecting the MAP request, thereby inviting the latter to give his opinion on the specific MAP request.

56. Malta’s MAP Guidance, in the chapter “Considerations by the Competent Authority upon receiving a MAP request”, also describes the above process. Furthermore, this chapter also includes a description of the requirements that need to be fulfilled for an objection to be considered as being justified. This concerns: (i) reasonable grounds upon which a taxpayer wishes to seek assistance from Malta’s competent authority, (ii) a timely filed MAP request and, in case of double taxation, (iii) a probability of occurrence of such taxation rather than a mere possibility.

Recent developments

57. There are no recent developments with respect to element B.2.

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

58. From the 2016 and 2017 MAP statistics provided by Malta, it follows that it has neither denied access to any cases nor considered any objection raised by the taxpayer as not justified. In this respect, Malta reported that in the period 1 January 2015 and

31 December 2017 its competent authority did not, for any of the MAP requests it received, considered that the objection raised by taxpayers in such request was not justified.

59. All peers that provided input indicated not being aware of any cases for which Malta’s competent authority denied access to MAP in the period 1 January 2015-31 July 2017. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Malta during that period.

Period 1 January 2018-31 August 2019 (stage 2)

60. Malta reported that since 1 January 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2018 MAP statistics submitted by Malta also show that none of its MAP cases was closed with the outcome “objection not justified”.

61. All peers that provided input during stage 1 also indicated in stage 2 that since 1 January 2018 they are not being aware of any cases for which Malta’s competent authority denied access to MAP. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Malta since that date.

Anticipated modifications

62. Malta did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

64. Out of Malta’s 81 tax treaties, 71 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, seven tax treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), one of which does not contain in its entirety a provision that is based on Article 9 of the OECD Model Tax

Convention (OECD, 2017) with regard to associated enterprises. For the remaining three treaties the following analysis is made:

- One tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but which does not contain the last part of the second sentence that allows competent authorities to consult each other where necessary.
- Two tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but whereby a corresponding adjustment is only optional, as the phrase “... shall make an appropriate adjustment” is replaced by “may make an appropriate adjustment”.

65. Furthermore, Malta 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.

66. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in Malta’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, Malta indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. Furthermore, Malta’s internal instructions for staff in charge of MAP also explain that MAP officers have to grant access to MAP in cases of economic double taxation, even if Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is not included in a specific tax treaty. In that regard, Malta reported that it will also grant access in transfer pricing cases related to the one tax treaty identified above that does not contain Article 9 of the OECD Model Tax Convention (OECD, 2017), based on the MAP provision in Article 25 of that tax treaty.

67. Malta’s MAP Guidance explicitly states in the chapter “MAP: How does it work” that access to MAP is granted among others for matters related to (a) transfer pricing adjustments and (b) attribution of profits to a permanent establishment.

Recent developments

Bilateral modifications

68. Malta signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. All these treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Two of these newly signed treaties have already entered into force. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

69. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019.

70. 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, 2017) – 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 (OECD, 2017). 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(1) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(1) 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, 2017). 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, 2017)).

71. Malta has, pursuant to Article 17(3), not reserved the right not to apply Article 17(1) 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, 2017). With regard to the nine tax treaties identified in paragraph 64 above that are considered not to contain this equivalent (disregarding the one treaty that does not contain Article 9 at all), Malta listed all of them as a covered tax agreement under the Multilateral Instrument and made, with respect to one treaty, a notification on the basis of Article 17(4) that it does contain a provision described in Article 17(2). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Malta as a covered tax agreement under this instrument, but has, on the basis of Article 17(3), reserved the right not to apply Article 17(1) as it considered that their treaty with Malta already contains the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Therefore, at this stage, the Multilateral Instrument will not replace the provisions in this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

72. With regard to the remaining eight treaties, all relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Malta as a covered tax agreement under this instrument, but two have, on the basis of Article 17(3), reserved the right not to apply Article 17(1). Of the remaining six treaties, three treaty partners have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Malta and these treaty partners, and therefore has superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The provisions in the other three treaties will, upon the entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in

those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

Period 1 January 2015-31 December 2017 (stage 1)

73. Malta reported that in the period 1 January 2015-31 December 2017, it had not denied access to MAP on the basis that the case concerned was a transfer pricing case. However, no such cases in relation hereto were received in that period.

74. All peers that provided input indicated not being aware of a denial of access to MAP by Malta in the period 1 January 2015-31 December 2017 on the basis that the case concerned was a transfer pricing case.

Period 1 January 2018-31 August 2019 (stage 2)

75. Malta reported that also since 1 January 2018 it has not denied access to MAP on the basis that the case concerned was a transfer pricing case. While no such cases in relation hereto were received from taxpayers in that period, those transfer pricing cases that were initiated at the level of the treaty partner and are accepted into the MAP process and currently under negotiation.

76. All peers that provided input during stage 2 reported that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer noted that Malta has granted access to MAP in transfer pricing cases.

Anticipated modifications

77. Malta reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. Other than this, Malta did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

[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.

78. 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

79. None of Malta’s 81 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Malta 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.

80. Malta reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, Malta’s MAP Guidance specifically addresses in the chapter “MAP: How does it work?” that access to MAP has to be granted 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 treaty anti-abuse 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.

Recent developments

81. There are no recent developments with respect to element B.4.

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

82. Malta reported that it has in the period 1 January 2015-31 December 2017 not denied access to MAP in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

83. All peers that provided input indicated not being aware of a denial of access to MAP by Malta in relation to the application of a treaty or domestic anti-abuse provision in the period 1 January 2015-31 December 2017.

Period 1 January 2018-31 August 2019 (stage 2)

84. Malta reported that since 1 January 2018, it has also not denied 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. Malta further reported that during this period, its competent authority received one MAP request relating to the application of domestic or treaty anti-abuse provisions and that access to MAP was granted in such case.

85. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

86. Malta did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[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.

87. 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

88. Malta reported that under its domestic law it is possible that taxpayers and the tax administration enter into settlement agreements during the course of or after an audit has ended. In this respect, Malta specified that it operates a self-assessment taxation system, whereby the Commissioner for Revenue can challenge the taxpayer's self-assessment by launching an investigation. In case the Commissioner disagrees with the initial self-assessment, it will issue a formal assessment on the basis of Article 33(4) of the Income Tax Management Act. If the taxpayer agrees to this formal assessment, it will become final. If the taxpayer disagrees with the assessment, it has the right to object within 30 days. In such a situation discussions between the Commissioner and the taxpayer may continue, possibly resulting in a settlement agreement. If a settlement could be reached the Commissioner will issue a revised formal assessment, which then becomes final.

89. While the above system allows taxpayers and Malta's tax administration to enter into settlements agreements, these agreements may reflect a settlement after an audit has been conducted, but do not per se entail an audit settlement in the meaning of element B.5. Regardless hereof, Malta reported that it grants access to MAP in cases where a (audit) settlement was entered into between the taxpayer and the tax administration. However, Malta further indicated that its competent authority is not able to deviate from a final

and conclusive tax assessment, which results from a settlement agreement. In these cases the possible resulting taxation not in accordance with the convention can only be fully eliminated if the competent authority of the treaty partner adopts Malta's position.

Administrative or statutory dispute settlement/resolution process

90. Malta reported 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.

Recent developments

91. There are no recent developments with respect to element B.5.

Practical application

Period 1 January 2015-31 December 2017 (stage 1)

92. Malta reported that it has in the period 1 January 2015-31 December 2017 not denied access to MAP for cases where the taxpayer and the tax administration have entered into an audit settlement. However, no such cases in relation hereto were received in that period.

93. All peers that provided input indicated not being aware of denial of access to the MAP by Malta in the period 1 January 2015-31 December 2017 in case there was already an audit settlement between the taxpayer and the tax administration.

Period 1 January 2018-31 August 2019 (stage 2)

94. Malta reported that since 1 January 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received since that date.

95. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given. In addition, one peer noted that they have seen no impediments from the side of Malta in such cases.

Anticipated modifications

96. Malta did not indicate that it anticipates 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.

97. 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

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

99. Malta reported that where taxpayers do not include all the required information and/or documentation in their MAP request, its competent authority, as a matter of administrative practice, will request outstanding information from the taxpayer. The taxpayer is given a timeframe of at least 30 days as from the date of the request to provide this information. If the taxpayer does not provide the requested information within this 30 day period, a reminder will be sent allowing the taxpayer a further ten days to submit the information. The taxpayer is allowed to request an extension of both deadlines, if an adequate justification is given. In cases where the information is not provided even after the taxpayer has been reminded, Malta's competent authority will consider the MAP request as not being timely submitted and will inform the taxpayer about its decision.

100. In view of the above, Malta's MAP guidance, in chapter "Considerations by the Competent Authority upon receiving a MAP request", explicitly notes that where a taxpayer has complied with the information requirements in its MAP request, Malta's competent authority will not deny access to MAP on the basis that insufficient information was provided.

Recent developments

101. There are no recent developments with respect to element B.6.

Practical application***Period 1 January 2015-31 December 2017 (stage 2)***

102. Malta reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation required requirements as set out in its MAP guidance. It further reported that in the period 1 January 2015-31 December 2017, its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

103. All peers that provided input indicated not being aware of a limitation of access to MAP by Malta in the period 1 January 2015-31 December 2017 in situations where taxpayers complied with information and documentation requirements.

Period 1 January 2018-31 August 2019 (stage 2)

104. Malta reported that since 1 January 2018 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

105. All peers that provided input during stage 1 stated during stage 2 that they are not aware of a denial of access to MAP in Malta since 1 January 2018 in cases where the taxpayer had not provided the required information or documentation. In addition, one peer noted that they have seen no impediments from the side of Malta in such cases.

Anticipated modifications

106. Malta did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

[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.

107. 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 contain the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for in these treaties.

Current situation of the Malta's tax treaties

108. Out of Malta's 81 tax treaties, 76 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining five tax treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence.

109. Of the peers that provided input during stage 1, four indicated that their tax treaty with Malta is in line with the requirements under element B.7, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element B.7, the relevant tax treaty is already in line with the requirements under this element.

Recent developments

Bilateral modifications

110. Malta signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. All these treaties contain a provision that is equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017). Two of these newly signed treaties have already entered into force. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

111. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019.

112. 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, 2017) – 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 (OECD, 2017). 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, 2017).

113. With regard to the five 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, 2017), Malta listed all five treaties as a covered tax agreement under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All relevant treaty partners listed their tax treaty with Malta as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii).

114. Of the five treaty partners mentioned above, four have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Malta and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified four treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

115. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Malta. None of these peers concerns a treaty partner to one of the treaties identified above that do not contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Anticipated modifications

116. Malta reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[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.

117. 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.

Malta’s MAP guidance

118. In December 2017, Malta issued guidelines for the mutual agreement procedure (“**MAP Guidance**”) on the basis of Article 96(2) of the Income Tax Act, which is legally binding on Malta’s competent authority. This guidance is available at (in English):

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

119. This guidance applies to tax treaties it entered into as well as the EU Arbitration Convention. The MAP Guidance further notes that Malta also applies the rules included in the Code of Conduct to the EU Arbitration Convention.¹ In more detail, the guidance includes the following items:

- a description of Malta’s competent authority and its function, and a link to the contact information of this competent authority
- an explanation of the MAP process
- examples of cases for which taxpayers can request MAP, which inter alia concern: transfer pricing cases, application of anti-abuse provisions and audit settlements
- 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 further below)
- how the MAP functions in terms of timing, process and the role of the competent authorities
- relationship with domestic available remedies
- implementation of MAP agreements

- rights and role of taxpayers in the process
- suspension of tax collection during the period a MAP case is pending
- consideration of interest in MAP
- confidentiality of information during the MAP process.

120. The above-described MAP guidance of Malta includes detailed 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. Information and documentation to be included in a MAP request

121. Malta has included in its MAP guidance information on how taxpayers should submit a MAP request and in what form and manner it should submit this request. In section "Making a request for MAP" is stated that taxpayers have to formally and in writing request for a MAP to be initiated. Where it concerns multiple taxpayers, or multiple cases, the MAP Guidance notes that for each taxpayer or case a separate MAP request has to be submitted. Furthermore, the guidance in that chapter also addresses that taxpayers are encouraged to promptly and simultaneously submit all supporting material to both competent authorities concerned, such to enable the expeditious resolution of their MAP cases.

122. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.² This agreed guidance is shown below. Malta'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
- 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.

123. Further to the above, Malta's MAP Guidance divides the minimum information requirements for a MAP request into general information to be provided (Section A) and additional information to be provided for transfer pricing cases (Section B). The minimum information required in these sections is indicated in the table below:

124. Concerning section A, Malta requires that the minimum information shown above as agreed by the FTA MAP Forum to be submitted and in addition also requires the following minimum information:

- date of the taxpayer’s MAP request
- a signed statement from the taxpayer that a representative is authorised to act for the taxpayer in submitting the MAP request (if applicable)
- in the case of withholding taxes:
 - full names, surname, address and contact details of the person levying the withholding tax
 - the taxpayer reference number of the person levying the withholding tax or was instructed to levy the withholding tax in the other jurisdiction concerned
- contact details of the foreign tax administration and/or branch office involved
- an identification of time limits in the relevant jurisdiction(s) and the applicable tax treaty in respect of the years for which relief is sought
- any copies of correspondence from the other tax administration, copies of letters, objections, etc., submitted in response to the action or proposed action by the other tax administration
- any other facts that the taxpayer may consider relevant
- supporting documentation:
 - schedule of the related amounts
 - all receipts of tax withheld
 - all relevant correspondence or dates, name(s) of person(s) with whom correspondence with the revenue authority took place.

125. Concerning section B, Malta’s MAP Guidance requires the following information to be provided in addition to the required general minimum information requirements listed above:

- details of the associated enterprises:
 - full names of the person
 - physical address of the person
 - contact details
 - if known, reference number of the person.
- details regarding the (proposed) adjustment
 - calculations setting out the (proposed) adjustment
 - an indication of any specific issues raised by the foreign competent authority, other than those listed under the general section
- statements indicating whether:
 - the taxpayer has (i) filed for a refund claim, or (ii) entered into a settlement agreement in either of the jurisdictions concerned that is related to the relief sought

- the taxpayer has made a prior request to the competent authority of either contracting state/party on the same or a similar matter
- the MAP request involves issues that are currently or were previously considered by the tax authorities of either contracting state as part of: (i) an advance pricing arrangement, (ii) a ruling, or (ii) a similar mechanism
- a copy of any other relevant request by the competent authority of the other contracting state and the associated documents filed, or to be filed
- supporting documentation:
 - copies of the relevant related party agreements
 - copies of the transfer pricing policies or documentation of the related parties resident in Malta and in the treaty partner’s state, whether at a group level or at a company level and including copies of: (i) the financial statements of both related parties and (ii) the tax return of the party resident in Malta.

Recent developments

126. Malta reported that in June 2019, it updated its MAP guidance to reflect the following:

- Taxpayers can request MAP for multilateral disputes and the multi-year resolution of recurring issues for filed tax years.
- MAP is available for cases (a) concerning bona fide foreign-initiated self-adjustment and (b) where there is an audit settlement between another tax authority and a taxpayer.
- The process for implementation of MAP agreements

Anticipated modifications

127. Malta did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[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.

128. 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.³

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

129. The MAP Guidance of Malta is published on the specific website of Malta’s tax administration and can be found at (in English):

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

130. This guidance was last updated in June 2019. As regards its accessibility, the information on MAP is logically grouped within the Section for “International Taxation” on the website of the Malta Commissioner for Revenue (<https://cfr.gov.mt/en/Pages/Home.aspx>) and as such is easily accessible. It can also be easily found by searching on that website for “double taxation” or “mutual agreement procedure”.

MAP profile

131. The MAP profile of Malta is published on the website of the OECD, which was last updated in January 2020. Its MAP Guidance also includes a link to this MAP profile. This MAP profile is complete and often supplemented with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

132. The stage 1 report reflected that Malta’s MAP profile required several minor amendments. Specifically, as Malta reported to grant 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, the response to question 12 of the MAP profile was to be changed, as it stipulated that access would not have been granted in such cases. Furthermore, as Malta reported that penalties are not dealt with as part of a MAP, the response to question 21 of the MAP profile was to be changed, as it stipulated that they were part of MAP proceedings. As reflected above, Malta updated its MAP profile to clarify that (i) 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 and (ii) penalties are not dealt with in MAP. Taking this into account, Malta has addressed the recommendation that was included in its stage 1 peer review report.

Anticipated modifications

133. Malta did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[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.

134. 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

135. As previously discussed under B.5, it is under Malta's domestic law possible that taxpayers and the tax administration enter into an agreement in the course of the finalisation of an assessment procedure, which can be after an audit has been finalised in Malta. The relationship between access to MAP and audit settlements is described in Malta's MAP guidance in the chapters "MAP: How does it work?" and "Appeals Rights", which clarifies that access to MAP will be granted in cases of an audit settlement.

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

136. As previously mentioned under element B.5, Malta 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 the Malta's MAP Guidance the effects of such process with respect to MAP.

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

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

138. As Malta 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.

Recent developments

139. There are no recent developments with respect to element B.10.

Anticipated modifications

140. Malta did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. 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>.
2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

Part C

Resolution of MAP cases

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

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

141. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), 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 Malta's tax treaties

142. Out of Malta's 81 tax treaties, 76 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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.

143. For the remaining five tax treaties the following analysis is made:

- Three tax treaties omit the unilateral assessment of a MAP request by the competent authority of receipt (if “the objection appears to it to be justified”) and are therefore considered as being not equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017)
- One tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), 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”. Therefore, this tax treaty is also considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017)

- One tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “The mutual agreement procedure shall expire by the end of the third year following that in which the case was presented by the taxpayer”. Therefore, this tax treaty is considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017)

144. Of the peers that provided input during stage 1, three indicated that their tax treaty with Malta is in line with the Action 14 Minimum Standard, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element C.1, the relevant tax treaty already meets the requirements under this element.

145. For the five tax treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), none of the relevant treaty partners provided peer input.

Recent developments

Bilateral modifications

146. Malta signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. All these five treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Two of these newly signed treaties have already entered into force. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

147. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019.

148. 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, 2017) – 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, 2017). 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, 2017).

149. With regard to the five 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, 2017), Malta listed four treaties as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Malta as a covered tax agreement under that instrument and also made such a notification. Therefore,

at this stage the Multilateral Instrument will, upon entry into force, modify one out of five tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

150. Malta reported that for the four tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, it has contacted the relevant four treaty partners in 2018 and 2019 with the request to initiate bilateral negotiations with a view to be compliant with element C.1. One of these four treaty partners has not yet responded, whereas two have responded to Malta's request for renegotiations and meetings are being scheduled or pending. With the fourth treaty partner, Malta has finalised negotiations on an amending protocol to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This amending protocol has already been initialled and is awaiting signature.

Peer input

151. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Malta. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Anticipated modifications

152. Malta reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>Five out of 81 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these five treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Four will not be modified by the Multilateral Instrument to include the required provision. With respect to these four treaties: <ul style="list-style-type: none"> - for one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision - For two negotiations are being envisaged, scheduled or pending with a view to include the required provision. - For one treaty partner, negotiations on an amending protocol have been finalised to include the required provision. 	<p>For the four treaties that 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, 2017), Malta should:</p> <ul style="list-style-type: none"> • For one treaty, as quickly as possible sign and ratify the amending protocol to this treaty to have in place the required provision • For two treaties, continue negotiations with the treaty partners concerned with a view to including the required provision • For the remaining treaty, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision.

[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).

153. 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

154. Statistics regarding all tax treaty related disputes concerning Malta are published on the website of the OECD as of 2016.¹ Malta also publishes statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.²

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

156. With respect to post-2015 cases, Malta reported that for the years 2016-18, it has reached out to all its MAP partners with a view to have their MAP statistics matching. In that regard, Malta indicated that it could match its statistics with all of them.

157. One peer provided input on the matching of MAP statistics with Malta and stated that Malta responded to it in one day when asked to match statistics and that thus, they were able to match statistics.

158. Based on the information provided by Malta’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

159. Malta reported that it has an internal system in place to monitor progress of MAP cases. Given the small number of cases in Malta, an excel file is used to record and monitor pending MAP cases.

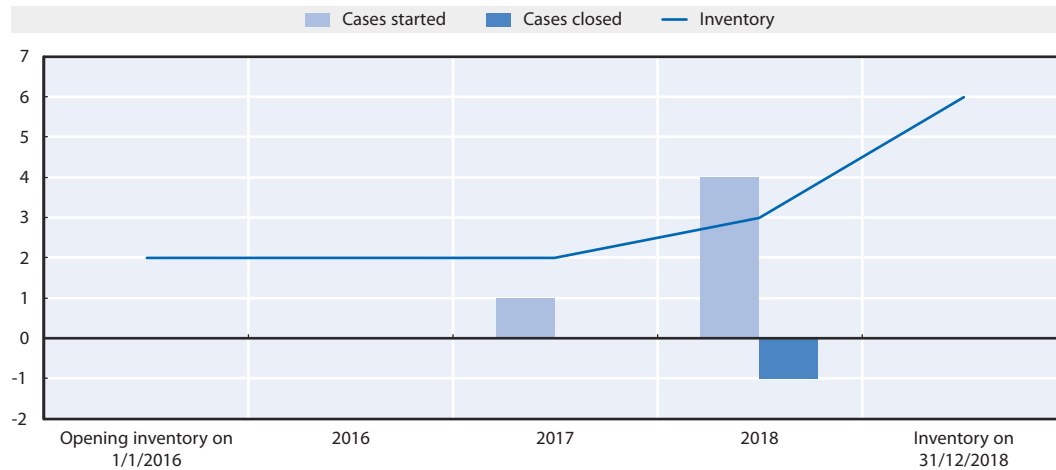
Analysis of Malta’s MAP caseload

Global overview

160. The analysis of Malta’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

161. Figure C.1 shows the evolution of Malta’s MAP caseload over the Statistics Reporting Period³.

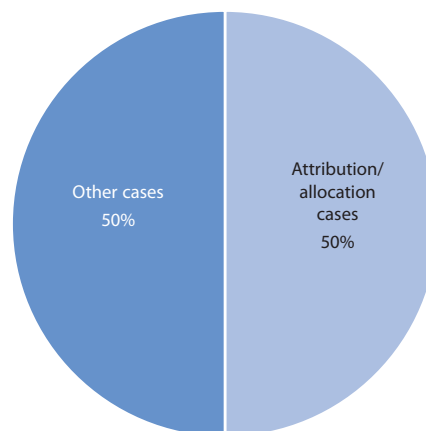
Figure C.1. Evolution of Malta’s MAP caseload



162. At the beginning of the Statistics Reporting Period Malta had two pending MAP cases, both of which concerned other MAP cases.⁴ At the end of the Statistics Reporting Period, Malta had six MAP cases in its inventory, of which three are attribution/allocation cases and three are other MAP cases. Consequently, Malta’s pending MAP inventory has increased by 200% during the Statistics Reporting Period.

163. The end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2018 (6 cases)

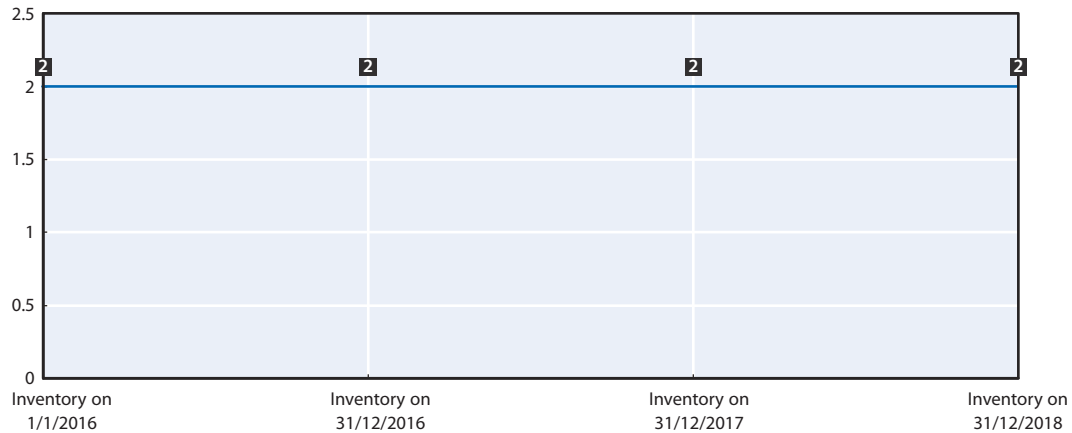


Pre-2016 cases

164. Figure C.3 shows the evolution of Malta’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Malta's MAP inventory

Pre-2016 cases



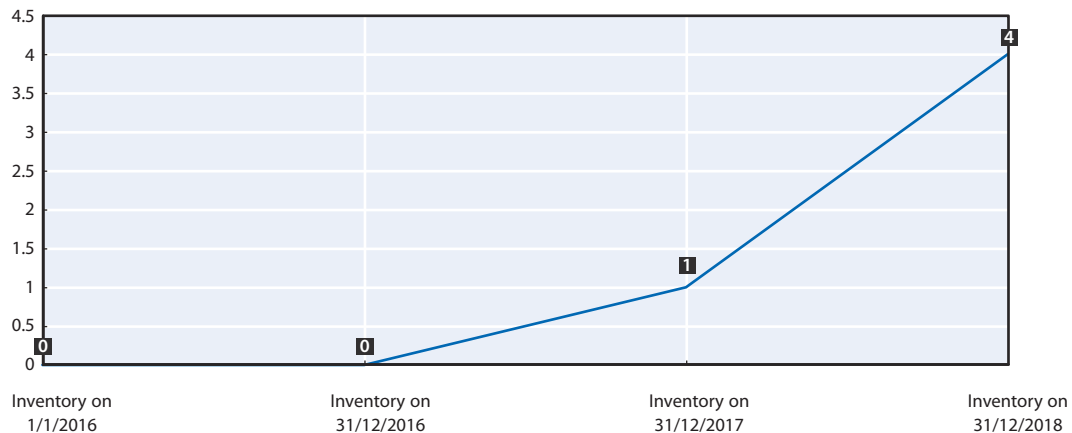
165. At the beginning of the Statistics Reporting Period, Malta's MAP inventory of pre-2016 MAP cases consisted of two cases, both of which were other MAP cases. At the end of the Statistics Reporting Period, this situation remained the same.

Post-2015 cases

166. Figure C.4 shows the evolution of Malta's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Malta's MAP inventory

Post-2015 cases



167. In total, five MAP cases started during the Statistics Reporting Period, three of which concerned attribution/allocation cases and two other MAP cases. At the end of this period the total number of post-2015 cases in the inventory was four cases, consisting of three attribution/allocation cases and one other MAP case. Accordingly, Malta closed one post-2015 case during the Statistics Reporting Period, which is an other MAP case. The total number of closed cases represents 20% of the total number of post-2015 cases that started during the Statistics Reporting Period.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

168. During the Statistics Reporting Period Malta in total closed one MAP case, which concerns an other MAP case, for which the outcomes reported was: “unilateral relief granted.”

Average timeframe needed to resolve MAP cases

169. The time needed to close the one post-2015 other MAP case that was closed during the Statistics Reporting Period was two months. No pre-2016 cases were closed during the Statistics Reporting Period.

Peer input

170. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Recent developments

171. There are no recent developments with respect to element C.2.

172. All peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2018.

Anticipated modifications

173. Malta did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

174. 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 Malta’s competent authority

Organisational structure

175. Under Malta’s tax treaties the competent authority function is assigned to the Minister responsible for finance. On the basis of Regulation 8 of the Cooperation with Other Jurisdictions on Tax Matters Regulations (Legal Notice 295 of 2011), this function is delegated to the Director General, Legal and International within Malta’s Revenue. Malta reported that this person has extensive experience in international tax and transfer pricing matters and is responsible for handling all MAP cases (allocation/attribution cases as well as other MAP cases).

176. Malta further reported that given its limited number of MAP cases (zero to three per year), it has not established a dedicated MAP office that functions as competent authority. The actual case handlers are usually personnel within the International & Corporate Tax Unit of Malta's Revenue that deal with international tax matters in their day-to-day business, including personnel involved in the interpretation of tax treaties, the negotiations of such treaties and the administration thereof (e.g. for exchange of information purposes). Overall, this involves a pool of five to six persons. However, due to the limited number of MAP cases, Malta reported the case handlers have little experience in handling such cases.

177. Concerning of the funding of its competent authority, Malta reported that this is provided as part of the budget of the Ministry for Finance and Financial Services, which includes funding for training and travel abroad for MAP negotiations, if required.

Handling and resolving MAP cases

178. Malta reported that it has issued an internal instruction note for staff handling MAP cases, which contains basic information on the legal basis for MAP, Malta's policy in relation to and a general outline of the MAP process and related subjects (e.g. relationship with domestic available remedies). It further includes specific instructions for staff on: (i) what steps they need to follow in reviewing a submitted MAP requests and any subsequent actions, (ii) the preparation of a position paper and (iii) what steps they need to follow when a MAP agreement is reached or where the MAP case is closed in the absence of an agreement.

179. In handling MAP cases, Malta clarified that after submission of a MAP request to Malta's competent authority, the case will be assigned to a case handler by the Director General, Legal and International. This case handler is then the main responsible person and will work closely with the Director General to resolve the case. As a first step the case handler acknowledges receipt of the MAP request to the taxpayer in writing and, where possible, within 30 days. This notification will include a statement whether the request has been accepted or rejected, including the reasons for such a decision. If further information is required, this will be requested within 30 days of receipt of the MAP request. Upon receipt of all minimum information, the case handler will decide in close co-operation with the Director General whether the MAP request will be accepted or rejected. Also the other competent authority will be informed in writing about the submission of a MAP request.

180. Malta also reported that its competent authority first aims at resolving the case unilaterally. Where this is not possible, the subsequent aim is to send a position paper to the other competent authority involved within 180 days after the receipt of a (complete) MAP request. In that regard, Malta noted it endeavours to resolve the case within an average of 24 months as from the date of the acceptance of the MAP request. Furthermore, it mentioned that each 90 days a status update will be made to the other competent authority concerned. This process is also reflected in Malta's MAP guidance, in the chapter "Commencing and Conducting the MAP". Concerning the issuing of a position paper, the MAP guidance noted that where such a paper cannot be issued within the targeted 180 days, Malta's competent authority will inform the other competent authority concerned hereof in writing, including a specification of the reasons and an indication of the likely timeframe when the paper is expected to be issued.

181. Where in a case a tentative MAP agreement is reached with the other competent authority concerned, Malta reported that the Director General, Legal and International decides on the approval of such tentative agreement.

Monitoring mechanism

182. Malta reported that it monitors whether the current available resources for the competent authority function are adequate, by analysing the amount of MAP requests, the time required for resolving MAP cases and the workload of MAP officers. In that regard, Malta noted that it considers that given the small number of MAP cases pending, the current available resources are considered adequate. If the workload related to MAP cases increase significantly in a permanent manner, Malta reported that the Commissioner for Revenue would request the addition of personnel and their training in MAP from the Ministry for Finance.

Recent developments

183. There are no recent developments with respect to element C.3, other than that Malta reported – as already mentioned in its stage 1 peer review report – that four staff members of the International & Corporate Tax Unit attended an internal ad hoc training course and that one also attended a MAP training organised by the OECD.

Practical application

MAP statistics

184. As discussed under element C.2 Malta closed only one MAP case during the Statistics Reporting Period while it has two pre-2016 MAP cases and four post-2015 MAP cases pending. The one MAP case was closed in two months. The two pre-2016 MAP cases that were pending on 1 January 2016 remain pending on 31 December 2018.

185. Further – as analysed in element C.2 – the MAP inventory of Malta increased substantially since 1 January 2016, with a 200% increase in cases which regards both type of cases. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	0	3	0	3	-
Other cases	2	2	1	3	50%
Total	2	5	1	6	200%

186. The figures in the above table show that even though the total inventory remains modest, the number of closed cases is only 20% of all cases started in the period 2016-18.

187. Malta clarified in this regard that it has taken the required actions for all of its pending MAP cases and that it is awaiting actions from its treaty partners in these cases.

Peer input

Period 1 January 2015-31 December 2017 (stage 1)

188. Five peers provided input, two of which mentioned having experiences with Malta in handling MAP cases. Those two peers reported that contacts with Malta's competent authority are easy and with timely responses. One of them also indicated that it received promptly a notification letter and a position paper with regard to the pending case. Upon request, Malta also provided the actual application at a short notice to this peer.

189. In view of the above, none of the five peers that provided input made any suggestions for improvement of the resolution MAP cases in Malta.

Period 1 January 2018-31 August 2019 (stage 2)

190. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given. One peer provided additional input and stated that it has one (multilateral) MAP case pending with Malta, for which its competent authority has responded timely to the peer's position paper and have been amenable to initiate multilateral discussions.

Anticipated modifications

191. Malta did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	While MAP cases were on average closed within 24 months, which is the pursued average for closing MAP cases that started on or after 1 January 2016, the MAP caseload has increased by 200% since 1 January 2016 and some MAP cases are pending for more than 24 months. This might indicate that additional resources may need to be devoted by Malta's competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner and to cope with this increase. .	Malta should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote necessary resources to be able to cope with the significant increase in the number of both attribution/ allocation and other MAP cases as well as to be able to close long-pending cases.

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

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

192. 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

193. As discussed under element C.3, Malta reported that after receipt of a MAP request, the Director General, Legal and International, who acts as Malta's competent authority, attributes the MAP request to a specific case handler. This case handler is in charge of all steps of the MAP process under the supervision of this Director General. Where position papers are issued, the Director General, Legal and International has to approve it before it can be shared with the other competent authority concerned. The same applies when entering into MAP agreements.

194. In the process of resolving MAP cases, Malta clarified that the case handler may consult with other personnel within Malta’s tax administration, particularly when the MAP case arises from an audit initiated by the Commissioner for Revenue. This is to receive the reasons for the adjustment and copies of all relevant underlying documents. Also if it concerns a question of interpreting tax treaties, the International and Corporate Tax Unit within Malta’s Revenue may be requested to give guidance. Malta emphasised that such consultation is only for purposes to obtain the relevant information for the case under review and that Malta’s position in a MAP case is always prepared by the case handler and authorised by the Director General. In relation hereto, Malta’s MAP Guidance, in the chapter “The Functions of the Malta Competent Authority” explains Malta’s position in handling and resolving MAP cases.

195. In view of the above, Malta indicated that staff in charge of MAP in practices 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 nor is the process for negotiating MAP agreements influenced by policy considerations. Malta clarified that the audit department is placed in the Directorate General, Compliance and Investigations, which is separated from the Directorate General, Legal and International. Furthermore, Malta also clarified that tax treaty policy falls within the competence of the Ministry of Finance, but that the Director General (Legal and International) is responsible for the negotiation of tax treaties. While the Ministry for Finance may ask for feedback in relation to tax treaty policy issues, Malta reported that final decisions concerning tax treaty policy remain with the Ministry for Finance and that MAP negotiations are not influenced by policy considerations.

196. Malta’s MAP guidance, in the chapter “The Functions of the Malta Competent Authority”, explicitly clarifies that its competent authority 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 negotiating MAP agreements is not influenced by policy considerations.

Recent developments

197. There are no recent developments with respect to element C.4.

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

198. All peers that provided input reported not being aware of any impediments in Malta 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 not being aware that staff in charge of the MAP in Malta is dependent on the approval of MAP agreements by the personnel within the tax administration that makes the adjustment under review.

Period 1 January 2018-31 August 2019 (Stage 2)

199. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

200. Malta did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[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.

201. 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 Malta

202. Malta reported that all staff members handling MAP cases are, like all government personnel, generally subject to an annual assessment of their performance, which will take into account the work on handling MAP cases. In this respect, staff members handling MAP cases are informed of the content of Malta’s MAP guidance and the targets set for resolving MAP cases that are assigned to them, which concern the timelines for the case. Furthermore, it will be evaluated whether the staff followed effectively and efficiently Malta’s MAP guidance as well as the quality, consistency, timeliness and confidentiality of the work. Malta further reported that the performance review is carried out by the direct superior of the staff, which is the Director, Corporate & International Taxation and subject to review by the Director General, Legal and International.

203. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below and are for Malta presented in the form of a checklist:

- number of MAP cases resolved
- consistency (i.e. a tax treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- 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).

204. Further to the above performance indicators, Malta 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.

Recent developments

205. There are no recent developments with respect to element C.5.

Practical application***Period 1 January 2015-31 December 2017 (Stage 1)***

206. All peers that provided input not being aware that Malta uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

Period 1 January 2018-31 August 2019 (Stage 2)

207. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

208. Malta did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

209. 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

210. Malta reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. This position is clarified in Malta's MAP profile.

211. In addition, Malta is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in Malta's domestic legislation as per Legal Notice 159 of 2019.⁵

Recent developments

212. Malta signed the Multilateral Instrument and has deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument has entered into force for Malta on 1 April 2019. With the depositing of the instrument of ratification, Malta also opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

213. Malta also signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. Two of these five treaties contain an arbitration provision that is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2017). The effect of these arbitration provisions is included in the overview below.

Practical application

214. Malta has incorporated an arbitration clause in six of its 81 tax treaties as a final stage to the MAP. The arbitration clause in these six treaties is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2017).

215. Furthermore, one tax treaty contains in a protocol provision a most-favoured nation clause with regard to arbitration. It stipulates that an arbitration procedure modelled after Article 25(5) of the OECD Model Tax Convention (OECD 2017), albeit that the two-year period for the mutual agreement procedure is under this clause extended to three years, will be added to the tax treaty on the moment an arbitration provision between Malta and a third state is concluded after the date of signature of the protocol to this specific tax treaty. Malta indicated that the requirements under this most-favoured nation clause are fulfilled, following which an arbitration procedure is in effect under this treaty. Malta also reported that it has finalised negotiations with this treaty partner on an amending protocol that includes an arbitration clause that is based on the provision in the Multilateral Instrument. This amending protocol has been initialled and is awaiting signature.

216. In addition, with respect to the effect of part VI of the Multilateral Instrument on Malta's tax treaties, there are next to Malta in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Malta listed 25 as a covered tax agreement under the Multilateral Instrument and 24 of these 25 treaty partners also listed their treaty with Malta under that instrument.

217. With respect to these 24 treaty partners, Malta already included an arbitration provision in two of the relevant tax treaties. For these two treaties, Malta opted, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. For the remaining 22 treaties, 15 treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these 15 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties. For the other seven treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Malta reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all seven treaties.

Anticipated modifications

218. Malta did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2018.
3. Malta’s 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for these years. See further explanations in Annex B and Annex C.
4. For pre-2016 and post-2015 Malta follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
5. Available at: www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=13016&l=1.

Reference

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

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.

219. 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

220. Malta reported that where the underlying tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), it will implement all MAP agreements notwithstanding its domestic time limits. Where such equivalent is not contained, the implementation of MAP agreements, entailing a downward adjustment to be made in Malta is limited by its domestic statute of limitation. In this respect, Article 13(4) of Malta’s Income Tax Management Act stipulates that taxpayer can only amend their self-assessed tax return within five years as from the end of the year following the fiscal year in which the tax became due. There is no domestic statute of limitation when the MAP agreement entails an upward adjustment.

221. Concerning the process of implementing MAP agreements, Malta reported that when competent authorities reach a MAP agreement, the taxpayer will be notified thereof within 30 days and is asked to give its consent. While this is not explicitly established in Malta’s domestic law, it reported that it will, in practice, adhere to a 30-day period for given such consent. Once the taxpayer has accepted the resolution and the competent authorities concerned have exchanged closing letters, Malta reported that the Commissioner for Revenue shall implement the MAP agreement. Where the MAP request was submitted following an investigation initiated by this Commissioner and which led to the issuance of a tax assessment, Malta reported that the MAP agreement will be implemented via a revision of that assessment. In other cases, Malta requests the taxpayer to submit a revision of the filed tax return to have the MAP agreement implemented.

222. In view of the above, the chapter “Concluding the MAP” of Malta’s MAP Guidance explains the process of implementing MAP agreements.

Recent developments

223. There are no recent developments with respect to element D.1

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

224. Malta reported that there were no MAP agreements reached with another competent authority in the period 1 January 2015-31 December 2017. Malta further indicated that it would monitor the implementation of MAP agreements, although so far it has no experience in this regard due to fact that no MAP agreements have yet been entered into.

225. All peers that provided input reported not being aware of MAP agreements that were reached in the period 1 January 2015-31 December 2017 that were not implemented in Malta, which can be explained as no MAP agreement has been reached as of that date.

Period 1 January 2018-31 August 2019 (Stage 2)

226. Malta reported that also since 1 January 2018 no MAP agreements were reached with another competent authority.

227. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

228. Malta did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Malta's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Malta's relevant tax treaty, prevent the implementation of a MAP agreement, Malta should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Malta should for clarity and transparency purposes notify the treaty partner thereof without delay.

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

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

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

Theoretical timeframe for implementing mutual agreements

230. As discussed under element D.1, the actual implementation of MAP agreements in Malta is dependent on whether the MAP case was initiated following the issuing of a tax assessment by Malta’s Commissioner for Revenue. Where this is the case, Malta reported the Commissioner will issue a revised tax assessment, for which Malta estimates that this process will take about three months. In other cases, the taxpayer is requested to file an amended tax return in order to alter the previous filed tax return. Malta reported that there is no specific timeline to file this amended tax return, but it should be done within its domestic statute of limitation of five years for downward adjustments. To enable MAP agreements to be implemented in such a situation, Malta reported that it informs taxpayers immediately about the requirement to file an amended tax return.

231. As explained under element B.8, Malta’s MAP guidance does not specifically address the timing of the steps for the implementation of MAP agreements, including the requirement for taxpayers to file an amended tax return for MAP’s related to foreign initiated adjustments.

Recent developments

232. Malta reported that in January 2019 it has updated its MAP guidance to include further information on the process for implementing MAP agreements. In this respect, it is in section “Concluding the MAP” now stated that the Commission for Revenue shall give effect to the resolution in Malta without delay by:

- a. informing the taxpayer with immediate effect in order for the latter to submit the required adjustment form for the implementation of the MAP agreement; or
- b. by issuing a formal assessment that implements the MAP agreement.

233. With respect to sub b), the MAP guidance clarifies that that this process will take around three months from the date of the agreement and acceptance by the taxpayer.

Practical application

Period 1 January 2015-31 December 2017 (Stage 1)

234. Malta reported that there were no MAP agreements reached with another competent authority in the period 1 January 2015-31 December 2017.

235. All peers that provided input have not indicated experiencing any problems with Malta in the period 1 January 2015-31 December 2017 regarding the implementation of MAP agreements reached on a timely basis, which can be explained as no MAP agreement was reached in this period.

Period 1 January 2018-31 August 2019 (Stage 2)

236. Malta reported that also since 1 January 2018 no MAP agreements were reached with another competent authority.

237. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Malta fully reflects their experience with Malta since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

238. Malta did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[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.

239. 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, 2017) 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 Malta's tax treaties

240. Out of Malta's 81 tax treaties, 74 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. In addition, one tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains a provision in the MAP article setting a time limit for making primary adjustments, which is considered as having both alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).

241. For the remaining six tax treaties the following analysis is made:

- Five tax treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or the alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but 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, this tax treaty therefore is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

242. Of the peers that provided input during stage 1, two indicated that their tax treaty with Malta is in line with the requirements under element D.3, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element D.3, the relevant tax treaty already meets the requirements under this element.

243. For the six tax treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives in Articles 9(1) and 7(2), one of the relevant treaty partners provided peer input and noted that its tax treaty with Malta is not in line element D.3.

Recent developments

Bilateral modifications

244. Malta signed new treaties with five treaty partners, which are all newly negotiated treaties with treaty partners with which there were no treaties yet in place. All these five treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Two of these newly signed treaties have already entered into force. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

245. Malta signed the Multilateral Instrument and deposited its instrument of ratification on 18 December 2018. The Multilateral Instrument entered into force for Malta on 1 April 2019.

246. 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, 2017) – 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, 2017). 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, 2017). 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 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) of the OECD Model Tax Convention (OECD, 2017) concerning the introduction of a time limit for making transfer pricing profit adjustments.

247. With regard to the six 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, 2017) or the alternative provisions for Article 9(1) and 7(2), Malta listed all of them

as covered tax agreements under the Multilateral Instrument, but only for five 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). All of the relevant five treaty partners are signatories to the Multilateral Instrument, but only four of them listed their tax treaty with Malta as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(ii).

248. Of the four treaty partners mentioned above, three have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Malta and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these three treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining one treaty, the instrument will, upon entry into force for the treaty concerned, modify it to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

249. Malta reported that for the two tax treaties identified above that neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternatives provided for in Articles 9(1) and 7(2) of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, it has finalised negotiations with the relevant two treaty partners on an amending protocol to include either the second sentence of Article 25(2) or both alternative provisions. Both these amending protocols have already been initialled and are awaiting signature.

Peer input

250. Of the peers that provided input during stage 2, three provided input in relation to their tax treaty with Malta. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument. This peer noted that a protocol amending the treaty with Malta has been initialled in 2018 and awaiting signature following which the alternative provisions to Article 9(1) and Article 7(2) would be added to the treaty and the treaty would then be in line with element D.3.

Anticipated modifications

251. Malta reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>Six out of 81 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor, the alternative provisions to Article 9(1) and Article 7(2). Of these six treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) • Two are expected to be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) upon entry into force for the treaties concerned • Two will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these treaties, negotiations on an amending protocol have been finalised to include either the second sentence or the alternative provisions to Article 9(1) and Article 7(2). 	<p>For the remaining two treaties that have not been or 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, 2017) following its entry into force, Malta should as quickly as possible sign and ratify the amending protocol to those treaties to have in place this second sentence or the alternative provisions to Article 9(1) and Article 7(2).</p>

Reference

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Three out of 81 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one a response from the treaty partner is pending to express interest in initiating bilateral negotiations with a view to including the required provision. - For one, negotiations are envisaged, scheduled or pending. 	<p>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Malta should:</p> <ul style="list-style-type: none"> • For one treaty continue (the initiation of) negotiations with the treaty partner with a view to including the required provision. • For the other treaty, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision. <p>In both instances this concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>Five out of 81 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these five treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Four will not be modified by the Multilateral Instrument to include the required provision. With respect to these four treaties: <ul style="list-style-type: none"> - For one, the relevant treaty partner has been approached to initiate discussions on the amendment of the treaty with a view to including the required provision. - For two negotiations are being envisaged, scheduled or pending with a view to include the required provision. - For one treaty partner, negotiations on an amending protocol have been finalised to include the required provision. 	<p>For the four treaties that 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, 2017), Malta should:</p> <ul style="list-style-type: none"> • For one treaty, as quickly as possible sign and ratify the amending protocol to this treaty to have in place the required provision. • For two treaties, continue negotiations with the treaty partners concerned with a view to including the required provision. • For the remaining treaty, upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision.
[C.2]	-	-
[C.3]	<p>While MAP cases were on average closed within 24 months, which is the pursued average for closing MAP cases that started on or after 1 January 2016, the MAP caseload has increased by 200% since 1 January 2016 and some MAP cases are pending for more than 24 months. This might indicate that additional resources may need to be devoted by Malta's competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner and to cope with this increase. .</p>	<p>Malta should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote necessary resources to be able to cope with the significant increase in the number of both attribution/ allocation and other MAP cases as well as to be able to close long-pending cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	<p>As will be discussed under element D.3 not all of Malta's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.</p>	<p>When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Malta's relevant tax treaty, prevent the implementation of a MAP agreement, Malta should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Malta should for clarity and transparency purposes notify the treaty partner thereof without delay.</p>
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>Six out of 81 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor, the alternative provisions to Article 9(1) and Article 7(2). Of these six treaties:</p> <ul style="list-style-type: none"> • Two have been modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two are expected to be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) upon entry into force for the treaties concerned. • Two will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these treaties, negotiations on an amending protocol have been finalised to include either the second sentence or the alternative provisions to Article 9(1) and Article 7(2). 	<p>For the remaining two treaties that have not been or 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, 2017) following its entry into force, Malta should as quickly as possible sign and ratify the amending protocol to those treaties to have in place this second sentence or the alternative provisions to Article 9(1) and Article 7(2).</p>

Annex A

Tax treaty network of Malta

Treaty partner	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
	B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	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) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Albania	Y	O	Y	Y	I	Y	Y	Y	Y	N
Andorra	Y	O*	Y	Y	I	Y	Y	Y	Y	N
Armenia	N	E	Y	Y	I	Y	Y	Y	Y	N
Australia	Y	E*	Y	Y	I	Y	Y	Y	Y*	Y***
Austria	Y	O	Y	I***	I	Y	Y	Y	Y	Y***
Azerbaijan	Y	O	Y	Y	I	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Article 9(2) of the OECD MTC (MTC ²) B.3	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	Inclusion Art. 25(2) first sentence? (Note 3) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(2) second sentence? (Note 4)	Article 25(3) of the OECD MTC A.1	Article 25(3) of the OECD MTC A.1	Article 25(3) of the OECD MTC B.7	Arbitration C.6							
Bahrain	Y	O	Y	N/A	Y	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the 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?	Y	Y	Y	Y	Y	N								
Barbados	Y	O*	Y	N/A	Y	I	Y	Y	Y	Y	Y	N								
Belgium	Y	E**	Y	N/A	i***	I	Y	Y*	Y*	Y*	Y*	Y***								
Botswana	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y								
Bulgaria	Y	N	i	N/A	N/A	i	N	Y	Y	Y	Y	N								
Canada	Y	O	Y*	2-years	i	i	Y	iii	Y	Y	Y	Y***								
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								
Croatia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N								
Curaçao	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y								
Cyprus ^a	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								
Czech Republic	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								
Denmark	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y***								
Egypt	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								
Estonia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								
Ethiopia	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N								

Treaty partner	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	
	B.1	B.1			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
	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	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 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) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Finland	Y	E*	Y	N/A	i	Y	Y	Y	Y	Y***
France	Y	E*	Y	N/A	i	Y	Y	Y*	Y	Y***
Georgia	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Germany	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Ghana	N	E	Y	N/A	i	Y	Y	Y	Y	Y
Greece	Y	O*	Y	N/A	i	Y	Y	Y	Y	N
Guernsey	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Hong Kong (China)	Y	O*	Y	N/A	i	Y	Y	Y	Y	N
Hungary	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Iceland	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
India	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Ireland	Y	E*	Y	N/A	i	Y	Y	Y	Y	Y***
Isle of Man	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Italy	Y	N	Y	N/A	i	Y	Y	Y	Y	N
Jersey	Y	E*	Y	N/A	i	Y	Y	Y	Y	N

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	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		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration							
	B.1	B.1	B.3	B.4	C.1	C.1	D.3	A.1	A.1	B.7	C.6											
Jordan	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kosovo	E	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kuwait	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lebanon	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Libya	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Liechtenstein	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Lithuania	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Malaysia	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mauritius	E*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Mexico	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Moldova	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Monaco	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	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		Article 25(3) of the OECD MTC		Arbitration						
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	If no, please state reasons	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 abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?									
Netherlands	Y	E*		Y	N/A	Y	i	Y	Y	Y	Y	Y***									
Norway	Y	E*		Y	N/A	Y	i	Y	Y	Y	Y	N									
Pakistan	Y	O*		i	N/A	i**	i	Y	N*	Y	N*	N									
Poland	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	N									
Portugal	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									
Qatar	Y	E*		Y	N/A	i	i	Y	Y*	Y	Y	Y									
Romania	Y	O		Y	N/A	Y	i	N	Y	Y	Y	N									
Russia	Y	E*		Y	N/A	Y	i	Y	Y	Y	Y	Y									
San Marino	Y	O		Y*	2-years	Y	i	N	Y	Y	Y	N									
Saudi Arabia	Y	E*		Y	N/A	Y	i	Y	Y	Y	Y	Y									
Serbia	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									
Singapore	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									Y***
Slovak Republic	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									N
Slovenia	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									Y***
South Africa	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									N
Spain	Y	O		Y	N/A	Y	i	Y	Y	Y	Y	Y									N

Treaty partner	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	
	B.1	B.1			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
		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 abuse of the DTC or of the domestic tax law?	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?
	DTC in force?	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
Sweden	Y	E*	Y	Y	i	Y	Y	Y	Y	Y***
Switzerland	Y	O	Y	Y	i	Y	N	Y	Y	Y
Syrian Arab Republic	Y	O	Y	Y	i	Y	Y	Y	Y	N
Tunisia	Y	O*	Y	Y	i	Y	Y	Y	Y	N
Turkey	Y	O*	Y	Y	i	Y	Y	Y	Y	N
Ukraine	Y	E*	Y	Y	i	Y	Y	Y	Y*	N
United Arab Emirates	Y	E*	Y	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	E*	i	Y	i	Y	Y*	Y	Y*	Y***
United States	Y	E	i	Y	i	Y	Y	Y	Y	N
Uruguay	Y	E*	Y	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	Y	i	Y	Y	Y	Y	N

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

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

Legend

E*	The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
E**	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/ii*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been superseded by the Multilateral Instrument 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, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for Pre-2016 Cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	2	0	0	0	0	0	0	0	0	0	0	2	n.a.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	2	0	0	0	0	0	0	0	0	0	0	2	n.a.

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Malta's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 2 which consists of 2 attribution/allocation cases and 0 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 2 which consists of 0 attribution/allocation cases and 2 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics														
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no tax that is not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			Column 11
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	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	2	0	0	0	0	0	0	0	0	0	0	2	n.a.	
Total	2	0	0	0	0	0	0	0	0	0	0	2	n.a.	

Annex C

MAP Statistics Reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) 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	1	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	1	0	0	0	0	0	0	0	0	0	0	0	1	n.a.

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/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	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	1	0	0	0	0	0	0	0	0	0	0	0	0	1	n.a.

Note: Since it was discovered that one post-2015 case that was previously shown as initiated in 2017 was initiated already in 2016, the number of post-2015 cases pending on 31 January 2016 and 1 January 2017 have been corrected from Malta's reported statistics for 2016 and 2017.

2018 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	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 2018	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	1	2	0	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	2	0	0	1	0	0	0	0	0	0	0	0	1	2
Total	1	4	0	0	1	0	0	0	0	0	0	0	0	4	2

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	Mutual Agreement Procedure – Guidelines issued under the provision of Article 96(2) of the Income Tax Act
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
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
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

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Malta (Stage 2)

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 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard of Malta, which is accompanied by a document addressing the implementation of best practices.



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