

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Luxembourg (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



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## Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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



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*Abbreviations and acronyms*

|             |  |
|-------------|--|
| <b>APA</b>  | Advance Pricing Arrangement                            |
| <b>BEPS</b> | Base Erosion and Profit Shifting                       |
| <b>EU</b>   | European Union   |
| <b>MAP</b>  | Mutual Agreement Procedure                             |
| <b>OECD</b> | Organisation for Economic Co-operation and Development |



## Executive summary

Luxembourg has a large tax treaty network with more than 80 treaties and has signed and ratified the EU Arbitration Convention. Luxembourg has an established MAP programme and long-time experience with resolving MAP cases. It has a considerable MAP inventory, with a substantial number of new cases submitted each year and more than 200 cases pending on 31 December 2016. Of these cases, only 10% concern attribution/allocation cases. Overall Luxembourg meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Luxembourg is working to address them.

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

- Almost one quarter of its tax treaties do not include a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments; and
- Almost 10% of its tax treaties provide a shorter period than three years for taxpayers to submit a MAP request.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Luxembourg needs to amend and update a certain number of its tax treaties. In this respect, Luxembourg reported that it is currently in negotiations with a number of jurisdictions to replace or amend existing tax treaties bilaterally. Luxembourg also signed the Multilateral Instrument, potentially covering all of its tax treaties. Luxembourg did not make any reservation to the modifications related to the article on mutual agreement procedure and opted for the introduction of a mandatory and binding arbitration provision in tax treaties through the Multilateral Instrument.

Concerning the prevention of disputes, although Luxembourg can provide bilateral APAs and enables taxpayers to request rollbacks of bilateral APAs in theory, during the review period no requests for roll-back of APAs were received, by which it was not possible to assess the implementation of this element of the Action 14 Minimum Standard in practice.

Luxembourg meets the majority of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard but it needs to issue more comprehensive MAP guidance. In particular, Luxembourg has recently introduced a notification and consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, where the tax treaty does not enable the taxpayer to submit its MAP request to the competent authority of either contracting state. While information on access to MAP is available, Luxembourg needs

to publish clear and comprehensive guidance on how the MAP function is construed and applied in practice.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

| 2016                          | Opening inventory | Cases started | Cases closed | End inventory | Average time to resolve cases (in months)* |
|-------------------------------|-------------------|---------------|--------------|---------------|--|
| Attribution/ allocation cases | 15                | 9             | 1            | 23            | 40.70                                      |
| Other cases                   | 270               | 272           | 334          | 208           | 8.52                                       |
| <b>Total</b>                  | <b>285</b>        | <b>281</b>    | <b>335</b>   | <b>231</b>    | <b>8.62</b>                                |

\* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Luxembourg used as a start date the date of receipt of the MAP request and as the end date, one of the following ones: the date when the competent authority orders the office responsible for the implementation of the MAP agreement or, if no agreement was reached, the date of receipt of the closing letter from the other competent authority or, in cases where Luxembourg denies access to MAP, the date when the taxpayer is informed of the outcome of the MAP process.

These figures show that Luxembourg resolved a high number of MAP cases in 2016, being 20% higher than the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 decreased by approximately 20% as compared to its inventory as per 1 January 2016 and is lower than the number of cases resolved during the year. Although the resources allocated to the resolution of MAP cases in Luxembourg are in principle adequate to handle the significant number of new cases, the number of attribution/allocation cases in inventory as of 31 December 2016 increased by more than 50% by comparison with the number of cases in inventory as of 1 January 2016. Moreover, only one of such cases was resolved in 2016 and the time needed for the resolution of such case was higher than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). However, Luxembourg provided an explanation and specified that more resources have recently been assigned to the competent authority for the resolution of such cases.

Furthermore, Luxembourg's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function. Consequently, Luxembourg meets the Action 14 Minimum Standard with respect to the resolution of MAP cases.

Lastly, Luxembourg also meets the Action 14 Minimum Standard as regards implementation of MAP agreements. Although Luxembourg does not monitor the implementation of MAP agreements, no issues have surfaced regarding implementation throughout the peer review process. Additionally, Luxembourg intends to implement a monitoring system in the future.

## *Introduction*

### **Available mechanisms in Luxembourg to resolve tax treaty-related disputes**

Luxembourg has entered into 81 tax treaties on income (and/or capital),<sup>1</sup> 79 of which are in force. These 81 treaties apply to 81 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Furthermore, 12 of these 81 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure and are in force.<sup>3</sup> Moreover, Luxembourg 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.<sup>4</sup>

In Luxembourg, the competent authority function responsible for the mutual agreement procedure is the Minister of Finance or his authorised representative. In practice, this is the Executive Committee of the Directorate of Direct Tax Administration, specifically the Economic Division for Transfer Pricing cases and the International Relations Division for all other cases.<sup>5</sup> In total, 10 people work on mutual agreement procedures within the competent authority of Luxembourg.

### **Recent developments in Luxembourg**

Luxembourg recently concluded tax treaties with Brunei Darussalam and Uruguay, both of which entered into force in 2017. In assessing Luxembourg's position with respect to the elements of the Action 14 Minimum Standard that relate a specific treaty provision, the tax treaties with Serbia and Uruguay were taken into account.

Furthermore, Luxembourg reported that it signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) inter alia with a view to make the necessary amendments to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. In particular, Luxembourg did not make any reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure) or of Article 17 (concerning corresponding adjustments), and included in the scope of tax treaties to be covered all its treaties. In addition, Luxembourg also indicated that it would ratify the Multilateral Instrument as soon as possible.

Luxembourg also indicated that it is currently conducting bilateral negotiations with Albania, Cabo Verde, Cyprus,<sup>6</sup> France, Kosovo, Oman, Uzbekistan and the Slovak Republic and that it intends to include in these treaties the first three paragraphs of Article 25 of the *OECD Model Tax Convention* (OECD, 2015) as well as the second paragraph of Article 9 of the *OECD Model Tax Convention* (OECD, 2015).

Luxembourg also specified being currently preparing a circular to describe how to access the MAP and how it functions in practice in Luxembourg.<sup>7</sup>

## Basis for the peer review process

The peer review process entails an evaluation of Luxembourg’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 Luxembourg and its peers. The period for evaluating Luxembourg’s implementation of the Action 14 Minimum Standard ranges from 1 January 2015 to 31 March 2017 (“**Review Period**”). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Luxembourg’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics provided below, in assessing whether Luxembourg complies with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if they concerned a modification or a replacement of an existing treaty currently in force. In particular, the analysis of Luxembourg’s tax treaties includes the treaty concluded with former Czechoslovakia as this treaty continues to be applied by Luxembourg to the Slovak Republic (see above). Reference is made to Annex A for the overview of Luxembourg’s tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Luxembourg and the peers on 7 March 2017. While the commitment to implement the Action 14 Minimum Standard only starts from 1 January 2016, Luxembourg wished to provide information on the period starting as from 1 January 2015 (the “**Look-back period**”) and also opted for the peers to provide input relating to the Look-back period. In addition to the compliance with the Action 14 Minimum Standard, Luxembourg also requested that its peers provide information on these best practices.

In total, 12 peers provided input: Belgium, Canada, France, Germany, Italy, Japan, Portugal, Russia, Slovak Republic, Spain, Sweden and Switzerland. These peers represent almost 100% of the number of post-2015 MAP cases in Luxembourg’s MAP inventory as of 31 December 2016.

Broadly, peers indicated that their experience with Luxembourg was very good and several peers indicated Luxembourg’s competent authority was effective.

Luxembourg provided adequate answers in its questionnaire which was submitted on time. Luxembourg also responded promptly and accurately to requests for additional information and provided further clarity where necessary. In addition, Luxembourg provided the following information:

- MAP profile:<sup>8</sup>
- MAP statistics<sup>9</sup> according to the MAP Statistics Reporting Framework (see below).

Finally, Luxembourg is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Luxembourg provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions.

## Overview of MAP caseload in Luxembourg

The analysis of Luxembourg’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by Luxembourg, on 31 December 2016 its MAP inventory was 231 cases, 23 of which concern attribution/allocation cases and 208 other cases. During the Statistics Reporting Period 281 cases started and 335 cases were closed.

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”)<sup>10</sup>. Apart from analysing Luxembourg’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Luxembourg. Furthermore, the report depicts the changes adopted and plans shared by Luxembourg to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

## Notes

1. The tax treaties Luxembourg has entered into are available at: [www.impotsdirects.public.lu/fr/conventions/conv\\_vig.html](http://www.impotsdirects.public.lu/fr/conventions/conv_vig.html) (accessed on 22 August 2017).
2. Luxembourg continues to apply the treaty concluded by former Czechoslovakia to the Slovak Republic.

3. This concerns treaties with: Estonia, Germany, Guernsey, Hong Kong, Isle of Man, Jersey, Liechtenstein, Mauritius, San Marino, Seychelles, Switzerland and Uruguay.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.
5. [www.impotsdirects.public.lu/fr/conventions/map.html](http://www.impotsdirects.public.lu/fr/conventions/map.html) (accessed on 22 August 2017).
6. 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.
7. This Guidance was published on 28 August 2017 and is available in French at [www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lg-convdi-60.pdf](http://www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lg-convdi-60.pdf) (accessed on 22 August 2017).
8. Available at: [www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf).
9. The MAP statistics of Luxembourg are included in Annex B and C of this report.
10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ([www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf)).

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## *Part A*

### Preventing disputes

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

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

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

#### *Current situation of Luxembourg’s tax treaties*

2. Out of Luxembourg’s 81 tax treaties, 80 contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining tax treaty only refers to “application” and does not include “interpretation” to define the circumstances that could give rise to a mutual agreement procedure.

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

#### *Anticipated modifications*

4. Luxembourg indicated that bilateral negotiations were underway with some jurisdictions to conclude tax treaties in line with the Action 14 Minimum Standard or amend existing treaties to fulfil this objective. For those treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), Luxembourg indicated that it intends to implement element A.1 for all its existing tax treaties by signing the Multilateral Instrument. In that regard, Luxembourg reported that it signed the Multilateral Instrument and that it did not make any reservations on the modifications made by Article 16 of the Multilateral Instrument concerning the mutual

agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. If the tax treaty referred to previously will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to update it via bilateral negotiations and by doing so be compliant with element A.1. In addition, Luxembourg indicated that it will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

### **Conclusion**

|       | <b>Areas for Improvement</b>  | <b>Recommendations</b>   |
|-------|---|--|
| [A.1] | One tax treaty does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015). | <p>If the treaty that does not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, then Luxembourg should request the inclusion of the required provision via bilateral negotiations.</p> <p>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties.</p> |

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

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

5. 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.<sup>1</sup> 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.

#### ***Luxembourg’s APA programme***

6. Luxembourg does not have a formal bilateral APA program but considers that bilateral APAs can be concluded by the competent authority of Luxembourg on the basis of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015).

7. In practice, Luxembourg applies bilateral APAs from the first year covered by the application, under the conditions set out above, irrespective of the date when the agreement was concluded by the competent authorities.

#### ***Roll-back of bilateral APAs***

8. Luxembourg may grant an extension of the bilateral APAs for previous financial years, subject to compliance with the applicable statute of limitation.

### ***Practical application of roll-back of bilateral APAs***

9. All peers indicated that they had not received a request for roll-back of bilateral APAs with Luxembourg.

### ***Anticipated modifications***

10. Luxembourg did not indicate that it anticipates any modifications in relation to element A.2.

### ***Conclusion***

|       | Areas for Improvement  | Recommendations |
|-------|--|-----------------|
| [A.2] | Luxembourg is in theory able to extend bilateral APAs to previous fiscal years. However it was not possible at this stage to assess the effective implementation of this element in practice since no request for roll-back of a bilateral APA was submitted during the Review period. |                 |

### **Note**

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines.

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## *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.

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

#### ***Current situation of Luxembourg’s tax treaties***

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

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

13. These tax treaties that contain a provision based on the first sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) can be broken down as follows:

| Provision  | Number of treaties |
|--|--------------------|
| Equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the Action 14 final report, OECD (2015b).                      | 66                 |
| Variation 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). | 15 <sup>1</sup>    |

14. 15 tax treaties contain a modified version 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). Among these 15 tax treaties:

- two tax treaties provide that the mutual agreement procedure may be opened only in the case of “double taxation” and not in the case of “taxation not in accordance with the provisions of the treaty”.
- one tax treaty contains a protocol<sup>2</sup> which results in the request for the opening of a mutual agreement procedure cannot be made irrespective of domestic remedies
- the remaining 12 tax treaties provide that taxpayers may only submit their cases to the competent authority of the Contracting State of which they are residents and to the competent authority of the State of which they are nationals if their case falls under the non-discrimination article.
  - For 11 tax treaties<sup>3</sup> this follows that these treaties do not include an article on non-discrimination for nationals or by the fact that these treaties contain the provision version of the article on non-discrimination, the scope of which is limited to residents of the contracting states;
  - one tax treaty contains a non-discrimination article that applies to non-residents of the contracting states but does not include the full version of the first sentence of Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a).

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

15. Of Luxembourg’s 81 tax treaties, 74 contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty or do not provide for a deadline for such a request.<sup>4</sup>

16. The remaining seven tax treaties provide for a two year deadline for submitting an application for the initiation of a mutual agreement procedure.

#### *Anticipated modifications*

17. Luxembourg indicated that bilateral negotiations were underway with some jurisdictions to conclude tax treaties in line with the Action 14 Minimum Standard or to amend certain tax treaties to fulfil this objective. In addition, Luxembourg indicated that it intends to implement element B.1 by signing the Multilateral Instrument. In that regard, Luxembourg reported that it signed the Multilateral instrument and that it did not make any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to propose the inclusion of Article 25(1) in current or future negotiations on existing tax treaties. In addition, Luxembourg indicated that it will seek to include Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

## Conclusion

|       | Areas for Improvement   | Recommendations   |
|-------|---|---|
| [B.1] | <p>Nine out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a).</p> <p>Of those nine tax treaties:</p> <ul style="list-style-type: none"> <li>two tax treaties do not include the equivalent of Article 25(1), first sentence and provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the tax treaty (two years);</li> <li>two conventions do not include the equivalent of Article 25(1), first sentence; and</li> <li>five tax treaties provide that the timeline to file a MAP request is shorter than three years</li> </ul> | <p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the Action 14 final report, OECD (2015b); or</li> <li>b. As it read prior to the adoption of the Action 14 final report, OECD (2015b); and</li> </ul> </li> <li>a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties.</p> |

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

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

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

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

### ***Domestic bilateral consultation or notification process in place***

19. None of Luxembourg’s 81 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b) allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

20. Luxembourg indicated that it had implemented a notification process as from 1 April 2017, after the end of the Review Period.

### ***Practical application***

21. Since 1 January 2015, Luxembourg has considered an objection not to be justified in one MAP request (submitted in 2016). No consultation regarding this case has been performed with Luxembourg’s treaty partners.

22. Peers generally indicated that they are not aware of cases where Luxembourg’s competent authority has refused to open a MAP since 1 January 2015. One peer mentioned that Luxembourg was one of the countries most inclined to opening a MAP.

### ***Anticipated modifications***

23. As previously discussed under element B.1, Luxembourg recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(a)(i) of that instrument – those tax treaties that 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). By doing so these treaties will allow taxpayers to submit a MAP request to the competent authority of either contracting state. Luxembourg is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. In the meantime, Luxembourg will apply its recently introduced notification process for those cases where its competent authority considers the objection raised in the MAP request not to be justified when the applicable tax treaty does not allow taxpayers to submit a MAP request to the competent authority of either contracting state.

### ***Conclusion***

|       | <b>Areas for Improvement</b>   | <b>Recommendations</b>   |
|-------|--|--|
| [B.2] | Luxembourg has not introduced a notification or bilateral consultation process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter). | Luxembourg should ensure that it will actually use the notification process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request is not justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state. |

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

Jurisdictions should provide access to MAP in transfer pricing cases.

24. 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***

25. Out of Luxembourg’s 81 tax treaties, 63 treaties contains a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is made by the other treaty partner. Furthermore, three treaties stipulate that the corresponding adjustment referred to in Article 9(2) is made by the competent authorities and two other treaties provide implicitly or hypothetically for a corresponding adjustment.

26. Luxembourg 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.

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

### ***Practical application***

28. According to Luxembourg, it provides access to MAP in all transfer pricing cases. Since 1 January 2015, Luxembourg’s competent authority has not denied access to MAP on the basis that the case concerned a transfer pricing case.

29. Peers indicated not being aware of a denial of access to MAP by Luxembourg on the grounds that it was a transfer pricing case since 1 January 2015.

### ***Anticipated modifications***

30. Luxembourg indicated that it has signed the Multilateral Instrument and that it did not make any reservations against the modifications made by Article 17 of the Multilateral Instrument concerning the corresponding adjustments for all of its existing tax treaties to be covered by that instrument. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to propose the inclusion of Article 9(2) in current or future negotiations on existing tax treaties. In addition, Luxembourg indicated that it will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

### ***Conclusion***

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

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

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

31. 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***

32. None of Luxembourg's 81 tax treaties specifically 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, no provision in Luxembourg domestic law would limit access to MAP in cases of discussion as on whether the conditions for the application of a treaty anti-abuse provision have been met, or on whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. Luxembourg stated that both the application of a treaty anti-abuse provision and of a domestic anti-abuse provision are within the scope of MAP.

***Practical application***

33. Luxembourg indicated that since 1 January 2015 it has not denied access to MAP in cases where 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.

34. Peers indicated not being aware of a case that would have been denied access to the MAP in Luxembourg on the grounds that it was about an anti-abuse provision since 1 January 2015.

***Anticipated modifications***

35. Luxembourg did not indicate it anticipates any modification relating to element B.4.

***Conclusion***

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

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

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

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

***Legal and administrative framework***

37. Audit settlements are not available in Luxembourg.

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

***Practical application***

39. Due to fact that audit settlements are not available in Luxembourg, there are no cases where Luxembourg has denied access to the mutual agreement procedure in cases where a transaction would have been concluded following a tax audit.

40. Peers indicated not being aware of denial of access to MAP by Luxembourg where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities since 1 January 2015.

***Anticipated modifications***

41. Luxembourg did not indicate it anticipates any modifications relating 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.

42. 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***

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

### ***Practical application***

44. Luxembourg indicated that it has limited access to MAP for one case since 1 January 2015 on the grounds that information provided was insufficient (this case was submitted in 2016). In this case, Luxembourg's competent authority sent a letter to the taxpayer concerned requesting him to complete its application. In general, the taxpayer must provide the additional information within a time limit set by the competent Luxembourg authority between one week and two months, which varies according to the content of the information required.

45. Peers indicated not being aware of denial of access to MAP by Luxembourg in situations where taxpayers complied with information and documentation requirements since 1 January 2015.

### ***Anticipated modifications***

46. Luxembourg did not indicate that it anticipates any modifications relating to element B.6.

### ***Conclusion***

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

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

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

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

### ***Current situation of Luxembourg's tax treaties***

48. Out of Luxembourg's 81 tax treaties, 77<sup>5</sup> contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Four tax treaties contain no provision equivalent to Article 25(3), second sentence of the *OECD Model Tax Convention* (OECD, 2015a).

### *Anticipated modifications*

49. Luxembourg indicated that bilateral negotiations were underway with some jurisdictions to conclude tax treaties in line with the Action 14 Minimum Standard or to amend certain tax treaties to fulfil this objective. In addition, Luxembourg indicated that it intends to implement element B.7 by signing the Multilateral Instrument. In that regard, Luxembourg reported that it signed the Multilateral Instrument and that it did not make any reservations against the modifications made by Article 16 of the Multilateral Instrument concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to propose the inclusion of Article 25(3), second sentence, in current or future negotiations on existing tax treaties. In addition, Luxembourg indicated that it will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

### *Conclusion*

|       | Areas for Improvement  | Recommendations  |
|-------|--|--|
| [B.7] | Four out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a). | Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision via bilateral negotiations.<br><br>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties. |

## **[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.

50. 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.

### *Luxembourg's MAP guidance*

51. Luxembourg's rules, guidelines and procedures are available in French at:

[www.impotsdirects.public.lu/fr/conventions/map.html](http://www.impotsdirects.public.lu/fr/conventions/map.html).

52. This contains information on:

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

- b. The manner and form in which the taxpayer should submit its MAP request; and
- c. The specific information and documentation that should be included in a MAP request (see also below).

53. This information is the information the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance,<sup>6</sup> 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 MPA request.

54. The above-described guidance mentions that

“in practice, MAP requests should be sent to:

- the Management Committee for all MAPs;
- the Economic Division for Transfer Pricing cases; and
- the International Relations Division for all other cases.”

55. Luxembourg clarified that only one MAP request to one of these three addressees was necessary and that requests for MAPs addressed to the wrong entity would be redirected to the correct one where appropriate.

56. At this stage, Luxembourg has not issued any other guidance relating to the MAP. In particular, no information on the availability of the MAP in the cases of transfer pricing disputes, the application of anti-abuse provisions, multilateral disputes, and bona fide taxpayer-initiated foreign adjustments. Likewise, no information is published on the effects of the MAP with respect to the conditions for suspension of tax collection during the course of MAP, the availability of domestic remedies or the consideration of interest and penalties in the MAP. Finally, the multi-year resolution of recurring issues through the MAP is not addressed, nor is the implementation of the agreements resulting from the MAP and a timetable for the various steps envisaged, including the required actions, if any, by the taxpayers.

### ***Information and documentation to be included in a MAP request***

57. 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.<sup>7</sup> This agreed guidance is shown below. Luxembourg's MAP Guidance enumerates the items that must be included in a request for MAP assistance (if available), which are checked below:

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

- ☑ A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

58. In addition, Luxembourg requires the taxpayer to provide detailed information on any administrative or litigation appeals, if any, and any APA or judicial decision concerning the case.

### *Anticipated modifications*

59. Luxembourg indicated that a circular on the MAP is currently being prepared and is expected to be published in the course of 2017. One peer welcomed this initiative. According to Luxembourg, this circular will specifically contain information on:

- How to access to the MAP, how it operates and how it is closed, including:
  - The availability of MAP in cases of transfer pricing disputes and in cases where an anti-abuse provision would apply;
  - The consideration of interest and penalties in the MAP;
- Availability of MAPs for the interpretation or application of a tax treaty;
- The functioning of arbitration;
- The relationship between MAP and domestic remedies;
- The implementation of MAPs, including the actions required, if any, by taxpayers.

### *Conclusion*

|       | Areas for Improvement   | Recommendations  |
|-------|---|--|
| [B.8] | <p>Only the contact details of the competent authority and the information to be included in a MAP request are published. The use of the mutual agreement procedure is not described in published information.</p> <p>It is not sufficiently clear that the taxpayer can choose only one of the different recipients of the request for the opening of MAP.</p> | <p>Luxembourg should clarify in the published information and in the forthcoming circular to be published that the taxpayer has a choice between the listed recipients to submit a MAP request.</p> <p>Additionally, although not required by the Action 14 Minimum Standard and in order to further improve the level of details of its forthcoming circular, Luxembourg could consider including information on:</p> <ul style="list-style-type: none"> <li>• the availability of MAP in cases of multilateral disputes and in cases of bona fide taxpayer-initiated foreign adjustments;</li> <li>• the potential effects of initiating a MAP on the suspension of tax collection;</li> <li>• multi-year resolution of recurring issues, and;</li> <li>• the timing of the steps needed for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul> |

**[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.

60. 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<sup>8</sup> further promotes the transparency and dissemination of the MAP programme.

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

61. Luxembourg’s MAP Guidance can be found at:

[www.impotsdirects.public.lu/fr/conventions/map.html](http://www.impotsdirects.public.lu/fr/conventions/map.html).

62. This document is accessible by searching for the words “double imposition” or “mutual agreement procedure” in the search engine of the website of the Direct Tax Administration.<sup>9</sup>

***MAP Profile***

63. The MAP profile of Luxembourg is published on the website of the OECD. This profile includes the necessary information and detailed explanations are provided where necessary.

***Anticipated modifications***

64. Luxembourg indicated that a circular on the mutual agreement procedure is currently being prepared and is expected to be published in 2017.

***Conclusion***

|       | Areas for Improvement  | Recommendations   |
|-------|--|---|
| [B.9] | Only the contact details of the competent authority and the required information to be included are published on the website of the Luxembourg Direct Tax Administration. The use of the mutual agreement procedure is not described in published information. | Luxembourg should publish its circular on MAP under preparation when available and make it easily accessible.<br><br>As Luxembourg has so far published and updated its MAP profile, Luxembourg should ensure that its MAP profile continues to be published on the shared published platform and is updated if needed. |

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

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



65. 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***

66. As previously mentioned in B.5, audit settlements are not available in Luxembourg.

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

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

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

68. It is not necessary to notify treaty partners since Luxembourg does not limit access to MAP in audit settlement cases or internal statutory dispute settlement resolution processes.

### ***Anticipated modifications***

69. Luxembourg did not indicate that it expects any modifications relating to element B.10.

### ***Conclusion***

|        | Areas for Improvement | Recommendations |
|--------|-----------------------|-----------------|
| [B.10] | -                     | -               |

## Notes

1. This includes the tax treaty with former Czechoslovakia.
2. The Protocol to this tax treaty provides that: “It should be noted that the term “irrespective of the remedies provided by the domestic law” means that the introduction of a mutual agreement procedure is not an alternative to the national legal procedures to which, in all cases, recourse must first be had when the conflict relates to an application of Italian taxes which is not in accordance with the Convention.”
3. This includes the tax treaty with former Czechoslovakia.

4. These include the tax treaty with former Czechoslovakia.
5. This includes the tax treaty with former Czechoslovakia.
6. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
7. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
8. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).
9. Available in French at: [www.impotsdirects.public.lu/fr.html](http://www.impotsdirects.public.lu/fr.html) (accessed on 22 August 2017).

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## *Part C*

### Resolution of MAP cases

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

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

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

#### ***Current situation of Luxembourg's tax treaties***

71. Out of Luxembourg's 81 tax treaties, 79<sup>1</sup> contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

72. The two tax treaties that include a modified version of the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2015a) provide that the objective of the procedure is to avoid taxation not in accordance with the tax treaty, consistently with the possibility of opening a MAP in such treaties.

#### ***Anticipated modifications***

73. Luxembourg indicated that bilateral negotiations were underway with some jurisdictions to conclude tax treaties in line with the Action 14 Minimum Standard or to amend certain tax treaties to fulfil this objective. In addition, Luxembourg indicated that it intends to implement element C.1 by signing the Multilateral Instrument. In that regard, Luxembourg reported that it signed the Multilateral Instrument and that it did not make any reservations against the modifications made by Article 16 of the Multilateral Instrument

concerning the mutual agreement procedure for all of its existing tax treaties to be covered by that instrument. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to propose the inclusion of Article 25(2), first sentence, in current or future negotiations on existing tax treaties. In addition, Luxembourg indicated that it will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

### Conclusion

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

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

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

74. 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

75. Statistics regarding all tax treaty related disputes are published on the website of the OECD<sup>2</sup> as of 2007 and as regards transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

76. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”) the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Luxembourg provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Luxembourg 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,<sup>4</sup> and should be considered jointly for an understanding of the MAP caseload of Luxembourg. With respect to post-2015 cases, Luxembourg reported having reached out to all its MAP partners with a view to have their MAP statistics matching. However, Luxembourg indicated that there is a risk that some MAP statistics do not match with the ones reported by one of their MAP partner who did not confirm the final statistics reported.

If those statistics would not match, this would concern less than 1% of Luxembourg’s MAP inventory as of 31 December 2016. Luxembourg also noted a difference of approximately 0.1% in the average times computed by another MAP partner.

### *Monitoring of MAP statistics*

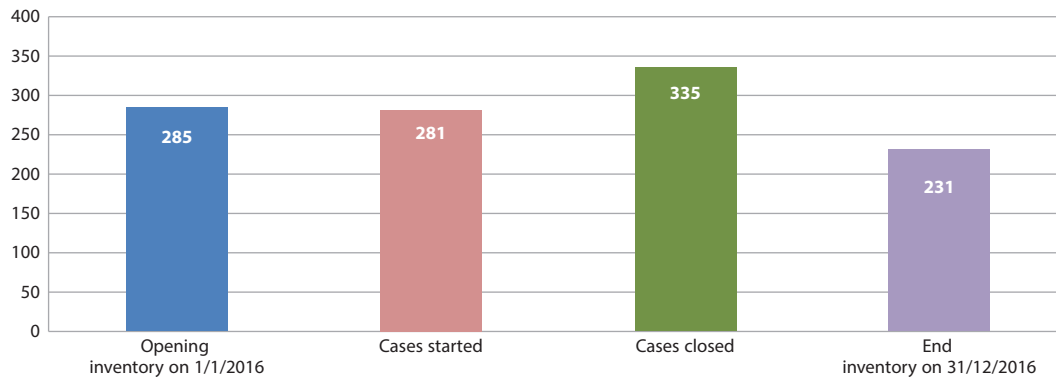
77. Luxembourg reported on a continuous basis (i) the number of cases in its MAP inventory, (ii) the number of new MAP requests and (iii) the time taken to resolve MAP cases.

### *Analysis of Luxembourg’s MAP caseload*

#### *Global overview of the MAP caseload*

78. The following graph shows the evolution of Luxembourg’s MAP caseload over the Statistics Reporting Period:

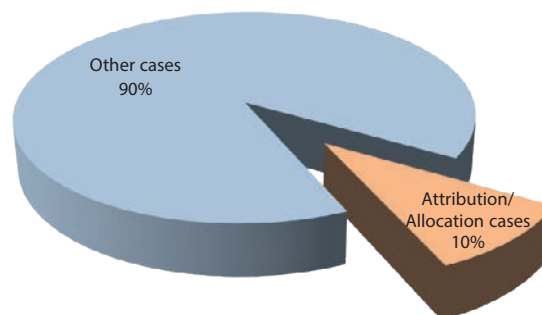
Figure C.1. Luxembourg’s MAP inventory



79. At the beginning of the Statistics Reporting Period Luxembourg had 285 pending MAP cases, of which 15 were attribution/allocation cases and 270 other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, Luxembourg had 231 MAP cases in its inventory, of which 23 are attribution or allocation cases and 208 other MAP cases. On the 335 cases that were resolved during the period, only one case was an attribution/allocation case. While the total number of cases decreased by almost 20% during the Statistics Reporting Period, the number of attribution/allocation cases has increased by more than 50% and the number of other cases decreased by around 20% during the same period.

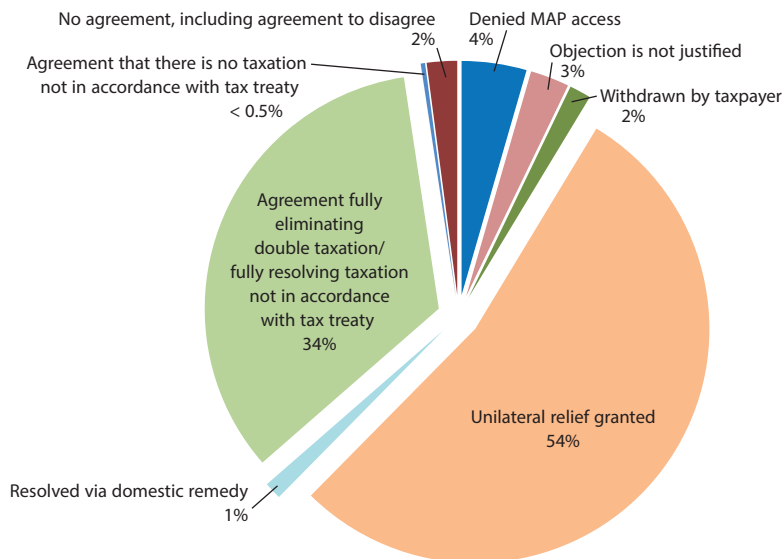
80. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. Inventory as of 31 December 2016 (231 cases)



81. During the Statistics Reporting Period, Luxembourg resolved 335 MAP cases and the following outcomes were reported:

Figure C.3. Cases resolved during the Statistics Reporting Period (335 cases)



82. This chart shows that during the Statistics Reporting Period, 180 out of 335 cases were resolved through a unilateral relief and 114 out of 335 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Pre-2016 cases*

83. At the beginning of the Statistics Reporting Period, Luxembourg's MAP inventory of pre-2016 MAP cases consisted of 285 cases, of which were 15 attribution/allocation cases and 270 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 137 cases, consisting of 14 attribution/allocation cases and 123 other cases. This decrease concerns around 50% of the total opening inventory, which can be broken down in a decrease by 7% of the number of attribution allocation cases and a decrease by more than 50% of the number of other cases.

#### *Post-2015 cases*

84. As mentioned previously, 281 MAP cases were started on or after 1 January 2016, nine of which concerned attribution/allocation cases and 272 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 94 cases, consisting of nine attribution/allocation cases and 85 other cases. Luxembourg in total resolved 187 post-2015 cases during the Statistics Reporting Period, all of them being other cases and representing 66.5% of the total number of post-2015 cases that started during the Statistics Reporting Period.

### *Average timeframe needed to resolve MAP cases*

#### *Pre-2016 cases*

85. Luxembourg reported that on average it needed 40.70 months to resolve attribution/allocation cases and 18.31 months to resolve other cases. This resulted in an average time needed of 18.46 months to close pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Luxembourg used:

- as the start date, the date of receipt of the MAP request; and
- as the end date, the date when the competent authority orders the office responsible for the implementation of the MAP agreement or, if no agreement was reached, the date of receipt of the closing letter from the other competent authority or, in cases where Luxembourg denies access to MAP, the date when the taxpayer is informed of the outcome of the MAP process.

#### *Post-2015 cases*

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

87. It is noted that Luxembourg closed 66.5% of post-2015 cases during the Statistics Reporting Period. During these 12 months, Luxembourg did not close any post-2015 attribution/allocation cases and the average time to resolve other cases was reported as 0.83 months.

#### *All cases resolved during Reporting Period*

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

|                              | Number of cases | Start date to End date<br>(in months) |
|------------------------------|-----------------|---------------------------------------|
| Attribution/Allocation cases | 1               | 40.70                                 |
| Other cases                  | 334             | 8.52                                  |
| <b>All cases</b>             | <b>335</b>      | <b>8.62</b>                           |

#### *Peer input*

89. Several peers indicated that they were able to resolve MAP cases within a reasonable period of time with Luxembourg. One peer reported that cases submitted in 2015 with Luxembourg have already been resolved. In particular, one peer (who is also a significant partner for Luxembourg) has indicated that many cases involving Luxembourg are resolved within a few months after the taxpayer submits a MAP request. According to this peer, Luxembourg is very responsive and responds to letters in a very short time. As a result, the time to resolve cases with the peer varies between short and very short. Furthermore, in 2016, Luxembourg resolved unilaterally 80 cases that were submitted by natural persons in the same year, whereas the tax adjustment had occurred in the country of the pair (and not in Luxembourg).

90. However, one peer pointed out that intermediate steps (such as the submission of a position paper) were not always achieved within the expected timeframe (e.g. as provided for in the European Union Code of Conduct on the implementation of the arbitration agreement).

Another peer reported that Luxembourg had not forwarded to them all the information and elements necessary for the analysis and resolution of the file.

### *Anticipated modifications*

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

### *Conclusion*

|       | Areas for Improvement   | Recommendations |
|-------|---|-----------------|
| [C.2] | Luxembourg submitted timely comprehensive MAP statistics and indicated they have been matched with all of its MAP partners but one who did not confirm the final statistics reported. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Luxembourg’s MAP statistics match those of its treaty partners as reported by the latter. |                 |
|       | Within the context of the state of play outlined above and in relation to the MAP statistics provided by Luxembourg, it resolved during the Statistics Reporting Period 66.5% (187 out of 281 cases) of its post-2015 cases in 0.83 months on average. In that regard, Luxembourg is recommended to seek to resolve the remaining 33.5% of the post-2015 cases pending on 31 December 2016 (94 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.   |                 |

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

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

92. 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 Luxembourg’s competent authority*

93. In Luxembourg, the Executive Committee of the Directorate of Direct Tax Administration is responsible for the competent authority function. The Executive Committee is made of the director of the Direct Tax Administration and two deputy directors. Under the responsibility of the Executive Committee, the Economic Division handles Transfer Pricing cases and the International Relations Division handles all other cases. Luxembourg indicated that it regularly informs its treaty partners of any change in this respect. In addition, contact information is published on the OECD website (MAP profile)<sup>6</sup> and EU Joint Transfer Pricing Forum website.<sup>7</sup>

94. Overall, ten people are handling MAP cases within Luxembourg’s competent authority. These 10 people can be categorised as follows:

- Six people are responsible for MAP cases related to transfer pricing within the Economic Division that overall comprises 12 people. This team is made up of the head of division, the deputy head of division and four other members, who all have a university degree in economic science. The members of the Economic Division have a global training and a specific training in transfer pricing within the tax administration. These six persons work part time for MAP cases and part time for



other issues related to corporate income tax. The members of the Economic Division also attend, among others, the following working group meetings : (a) within OECD: Working Party 6 on the Taxation of Multinational Enterprises; FTA MAP Forum; Forum on Harmful Tax Practices and (b) with the European Union: Joint Transfer Pricing Forum; Code of Conduct and subgroups of the Code of Conduct. Depending on the evolution of needs, the Economic Division may allocate differently the tasks among its members and have one or several additional people handling MAP cases;

- Four people are responsible for other MAP cases within the International Relations Division, which consists of these four people, while two of them are the deputy heads of division. Most of these four people have more than ten years of experience within the International Relations Division, and some have more than 20 years. The four people referred to here are also involved in tax treaty negotiations for Luxembourg. Two members of the team are also participants in the works of OECD Working Party 1 on Tax Conventions. Another person working with the International Relations Division attends the OECD’s FTA MAP Forum as well as the Committee of Experts on International Cooperation in Tax Matters. Another person attends the Task Force on the Digital Economy.

95. The staff of Luxembourg’s competent authority is given a global training within the tax administration over six years as well as specific modules such as those proposed by the OECD. In addition, the budget that is dedicated to travel has always been sufficient for all the meetings that the competent authority wished to attend.

### ***Monitoring mechanism***

96. Luxembourg indicated assessing both on a continuous basis whether the resources allocated to the competent authority are adequate. In addition, the heads of division would inform their director in case of need of additional resources (staff, budget or training) on a yearly basis. This assessment is made with regard to (i) the number of MAP cases in inventory, (ii) the number of new MAP cases, (iii) the current time needed to resolve MAP cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks.

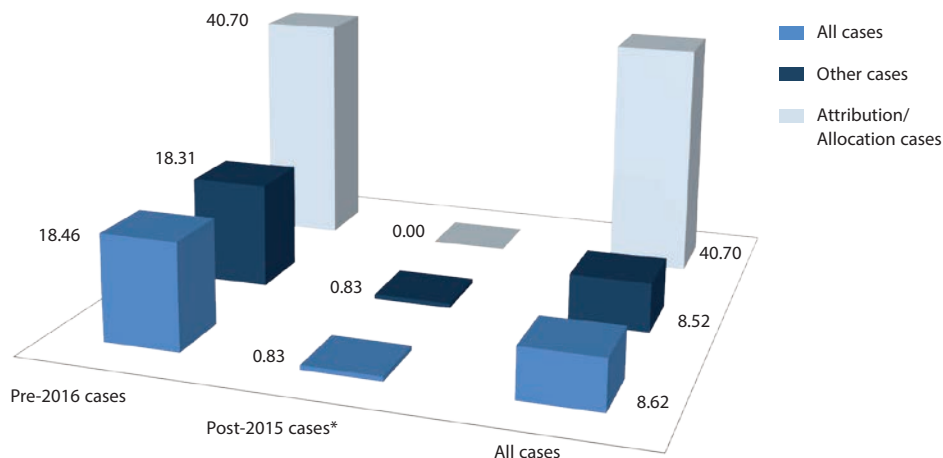
97. In this respect, Luxembourg specified that, before the end of the year 2016, the team responsible for handling attribution/allocation MAP cases was made of four persons and two more persons were hired to join the Economic Division, and the number of employees in this team then increased to six persons (being an increase by 50%). Among the new two members, Luxembourg reported that one person was assigned to handle the data base of MAP cases in order to increase the efficiency in the resolution of such cases.

### ***Practical application***

#### ***MAP Statistics***

98. As discussed under element C.2 Luxembourg resolved its MAP cases within the pursued 24-month average. A discrepancy can, however, be noted between the average time taken to resolve attribution/allocation cases and other cases. This can be illustrated by Figure C.4.

Figure C.4. Average time (in months)



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

99. Based on these figures, it follows that on average it took Luxembourg 8.62 months to resolve MAP cases. However, the average time needed to resolve attribution/allocation cases is 40.70 months, while the average time required to resolve other cases is 8.52 months. In practice, these elements seem to indicate that additional resources dedicated to the resolution of such cases, especially since the number of attribution/allocation cases in inventory on 31 December 2016 increased by more than 50% compared to the number of such cases in inventory on 1 January 2016. In addition, Luxembourg indicated that out of the 14 cases pre-2016 still in progress on 31 December 2016, 11 cases had been in progress for more than 24 months. Of these 14 cases, Luxembourg specified that:

- For three cases, Luxembourg has been informed by the other competent authority that an appeal is under way and that the mutual agreement procedure is suspended;
- For one case, Luxembourg is waiting for the position paper from the other competent authority; and
- For ten cases, Luxembourg is actively in contact with the other competent authorities with a view to resolving them, which includes three very complex cases requiring several exchanges between competent authorities before they can be resolved. Out of these 10 cases, Luxembourg indicated that two cases had been resolved in the first half of 2017, and another case was about to be resolved.

100. With respect to the average time taken to resolve cases of attribution/allocation, Luxembourg clarified that this was the time required to resolve a single attribution/allocation case closed in 2016. Additionally, Luxembourg clarified that the time taken to resolve this case is explained by the fact that the taxpayer had also filed an appeal in the other jurisdiction and that the other competent authority had wished to suspend the discussions on the mutual agreement procedure until the judgment had been rendered. Once the judgment has been rendered, the two competent authorities have closed the case as “resolved by domestic remedy”, taking into account that the competent authority of the other jurisdiction could not derogate from the solution resulting from that judgment.

*Peer input*

101. A lot of peers confirmed that their competent authorities are frequently in contact with Luxembourg’s competent authority and that communication was efficient, be it via mail, emails, phone conversations or, more rarely, via joint commissions. One of these peers specified that as the files are dealt with, there is no need for face-to-face meetings. Another peer mentioned that an annual meeting could be helpful as it has a high number of MAP cases with Luxembourg. In addition, this peer indicated that the staff of Luxembourg’s competent authority is very stable, which helps to solve MAP cases efficiently.

*Anticipated modifications*

102. Luxembourg specified that it noted an improvement in the resolution of attribution/allocation cases thanks to the recent reorganisation and expects an improvement in the time needed to the resolution of such cases.

*Conclusion*

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [C.3] | -                     | Luxembourg should continue to closely monitor whether it has adequate resources to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, Luxembourg could closely monitor whether the additional resources provided to the attribution/allocation cases will contribute to the acceleration of the resolution of such MAP cases. |

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

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

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

*Functioning of staff in charge of MAP*

104. When a MAP request is received by the Luxembourg’s competent authority following a tax audit that occurred in Luxembourg, some information may be obtained from the relevant audit departments as regards the relevant taxpayers. Nevertheless, both the Economic Division and the International Relations Division make their decisions independently to resolve MAP cases.

105. As mentioned previously, two persons handling MAP cases in the International Relations Division are also in charge of negotiating tax treaties. However, Luxembourg reported that, in order to resolve MAP cases, Luxembourg’s competent authority takes into

account the treaty provisions that are in force, the *OECD Model Tax Convention* (OECD, 2015a) and the OECD Transfer pricing guidelines.<sup>8</sup>

### ***Practical application***

106. Broadly, peers indicated not being aware of any difficulty encountered in Luxembourg in relation to element C.4. One peer mentioned that its experience with Luxembourg does not reveal that the staff would be dependent on the approval or the direction of the tax administration personnel who made the adjustments that led to double taxation.

### ***Anticipated modifications***

107. Luxembourg did not indicate that it anticipates any modifications in relation to element C.4.

### ***Conclusion***

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [C.4] | -                     | As it has done thus far, Luxembourg should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, and being influenced by considerations of the policy that Luxembourg would like to see reflected in future amendments to the treaty. |

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

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

108. 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 Luxembourg***

109. Luxembourg indicated that it does not use performance indicators to assess the staff in charge of the mutual agreement procedures. However, a multi-year evaluation is carried out by the managers and is based on the cases handled and/or resolved by staff.

110. The *Action 14 final report* (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist. They are checked when they are taken into account by Luxembourg's competent authority:

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

- Time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

### *Practical application*

111. Peers generally indicated that they were not aware of any difficulty in Luxembourg in relation to element C.5. One peer indicated that his experience with Luxembourg did not show that Luxembourg would use inappropriate performance indicators for the evaluation of staff in charge of MAP.

### *Anticipated modifications*

112. Luxembourg did not indicate that it anticipates any modifications in relation to element C.5.

### *Conclusion*

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

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

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

113. 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*

114. Luxembourg reported it has no domestic law limitations for including MAP arbitration in its tax treaties. In addition, Luxembourg has been a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project and has committed to include a mandatory and binding arbitration procedure in its tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

115. In addition Luxembourg is a signatory to the EU Arbitration Convention,<sup>9</sup> which provides for the possibility of completing the mutual agreement procedure through arbitration for the settlement of transfer pricing disputes and the attribution of profits to permanent establishments.

### ***Practical application***

116. Luxembourg has incorporated an arbitration clause in 12 tax treaties.<sup>10</sup> All of these treaties include a provision equivalent to Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a).

### ***Anticipated modifications***

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

### ***Conclusion***

|       | Areas for Improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.6] | -                     | -               |

## **Notes**

1. This includes the tax treaty with former Czechoslovakia.
2. [www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20LUX.pdf](http://www.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20LUX.pdf).
3. [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf) (accessed on 22 August 2017).
4. For post-2015 cases, if the MAP inventory was more than five at the beginning of the reporting period, Luxembourg reported its MAP caseload on a jurisdiction-by-jurisdiction basis.
5. For pre-2016 cases and post-2015 cases, Luxembourg 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”.
6. [www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf](http://www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf).
7. [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/tpprofile-lu.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-lu.pdf) (accessed on 22 August 2017).
8. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
9. Convention 90/436/EEC on the elimination of double taxation in connection with the adjustment of profits of associated enterprises.
10. These concern treaties entered into with: Estonia, Germany, Guernsey, Hong-Kong, Isle of Man, Jersey, Liechtenstein, Mauritius, San Marino, Seychelles, Switzerland and Uruguay.

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## *Part D*

### **Implementation of MAP agreements**

#### **[D.1] Implement all MAP agreements**

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

118. 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***

119. Where a MAP agreement is concluded by the competent authorities, Luxembourg's competent authority requests the taxpayer to give its approval and, where appropriate, to withdraw any administrative or legal appeal in relation to both the substance and the form of the tax concerned. If the taxpayer accepts the MAP agreement, it is then implemented by Luxembourg, subject to the limits described below. Implementation of the MAP agreement is carried out by the local tax office for the taxpayer concerned, to which Luxembourg's competent authority gives instructions to carry out such implementation.

120. Luxembourg implements MAP agreements, with specificities depending on whether the implementation results in upward or downward adjustments. Downward adjustments are made irrespective of any time limitations in domestic laws. Upward adjustments, however, are only possible within the time limitation provided for in domestic law, generally five years (or ten years under certain conditions) from 31 December of the year for which the tax amount is due.<sup>1</sup>

#### ***Practical application***

121. Luxembourg reported that all MAP agreements reached on or after 1 January 2015 and accepted by taxpayers have been (or will be) implemented.

122. Peers generally indicated that they were unaware of any problems with the implementation of MAP agreements in Luxembourg since 1 January 2015.

#### ***Anticipated modifications***

123. Luxembourg indicated that it plans to carry out the tracking and checking of the implementation of MAP agreements.

**Conclusion**

|       | Areas for Improvement | Recommendations   |
|-------|-----------------------|---|
| [D.1] | -                     | As it has done thus far, Luxembourg should continue to implement all MAP agreements in the future.<br>In addition, Luxembourg could follow up its intention to introduce a tracking system to monitor the implementation of MAP agreements. |

**[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.

124. 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***

125. Luxembourg has not adopted a timetable to follow the implementation MAP agreements. In practice, Luxembourg's competent authority is not itself responsible for the implementation of MAPs. Furthermore, Luxembourg does not monitor and verify the implementation of MAP agreements.

***Practical application***

126. Luxembourg reported that all MAP agreements that were reached on or after 1 January 2015 have been (or will be) implemented timely.

127. Peers indicated that they did not know of any MAPs that had not been timely implemented by Luxembourg since 1 January 2015. In addition, a peer reported that MAP agreements were implemented in an efficient and rapid manner. Another peer reported that the agreements were implemented in a timely and correct manner by Luxembourg.

***Anticipated modifications***

128. Luxembourg indicated that it intends to carry out the tracking and checking of the implementation of MAP agreements.

**Conclusion**

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [D.2] | -                     | As it has done thus far, Luxembourg should continue to implement all MAP agreements on a timely basis. |

**[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.

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

***Legal framework and current situation of Luxembourg’s tax treaties***

130. Of the 81 tax treaties Luxembourg entered into, 62<sup>2</sup> contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Two of the 19 remaining tax treaties contain an alternative provision setting a time limit for making adjustments in Article 9(1).

***Anticipated modifications***

131. Luxembourg indicated that bilateral negotiations were underway with some jurisdictions to conclude tax treaties in line with the Action 14 Minimum Standard or to amend certain tax treaties to fulfil this objective. In addition, Luxembourg indicated that it intends to implement element D.3 by signing the Multilateral Instrument. In that regard, Luxembourg reported that it signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(b)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) stipulating that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the contracting states. In that regard, Luxembourg reported it has not, as is allowed pursuant to Article 16(5)(c) of the Multilateral Instrument, reserved the right not to apply the second sentence of Article 16(2) of that instrument. Luxembourg is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Furthermore, Luxembourg indicated it will ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to propose the inclusion of Article 25(2), second sentence, in current or future negotiations on existing tax treaties. In addition, Luxembourg indicated that it will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

## Conclusion

|       | Areas for Improvement   | Recommendations  |
|-------|---|--|
| [D.3] | <p>19 out of 81 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in both Article 9(1) and Article 7(2).</p> <p>Out of the 19 tax treaties:</p> <ul style="list-style-type: none"> <li>• 17 neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in Article 9(1) and Article 7(2).</li> <li>• two do not contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015) and include only the alternative provision in Article 9(1).</li> </ul> | <p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the two alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>In addition, Luxembourg should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternatives in all future treaties.</p> |

## Notes

1. Article 10 of the Law on the Collection of Taxes.
2. This includes the tax treaty with former Czechoslovakia.

## Bibliography

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

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

## Summary

|   | Areas for Improvement   | Recommendations   |
|---|---|---|
| <b>Part A. Preventing disputes</b>            |   |   |
| [A.1]   | One tax treaty does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).   | <p>If the treaty that does not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, then Luxembourg should request the inclusion of the required provision via bilateral negotiations.</p> <p>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties.</p>  |
| [A.2]   | Luxembourg is in theory able to extend bilateral APAs to previous fiscal years. However it was not possible at this stage to assess the effective implementation of this element in practice since no request for roll-back of a bilateral APA was submitted during the Review period.  |   |
| <b>Part B. Availability and access to MAP</b> |   |   |
| [B.1]   | <p>Nine out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a).</p> <p>Of those nine tax treaties:</p> <ul style="list-style-type: none"> <li>• two tax treaties do not include the equivalent of Article 25(1), first sentence and provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the tax treaty (two years);</li> <li>• two conventions do not include the equivalent of Article 25(1), first sentence; and</li> <li>• five tax treaties provide that the timeline to file a MAP request is shorter than three years</li> </ul> | <p>Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the Action 14 final report, OECD (2015b).; or</li> <li>b. As it read prior to the adoption of the Action 14 final report, OECD (2015b).; and</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties.</p> |
| [B.2]   | Luxembourg has not introduced a notification or bilateral consultation process prior to the expiration of the Review Period (whereas it introduced such procedure thereafter).  | Luxembourg should ensure that it will actually use the notification process recently introduced to notify the other competent authority in cases where it considers that the objection raised in the MAP request is not justified where the tax treaty does not permit the MAP request to be submitted to the competent authority of either contracting state.  |

|        | Areas for Improvement   | Recommendations   |
|--------|---|---|
| [B.3]  | -   | As Luxembourg has thus far granted access to the MAP in eligible transfer pricing cases, it should continue granting access for these cases.  |
| [B.4]  | -   | As Luxembourg has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.   |
| [B.5]  | -   | -   |
| [B.6]  | -   | As Luxembourg has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Luxembourg's information and documentation requirements for MAP requests, it should continue this practice.  |
| [B.7]  | 4 out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a).   | Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision via bilateral negotiations.<br><br>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties.  |
| [B.8]  | Only the contact details of the competent authority and the information to be including in a MAP request are published. The use of the mutual agreement procedure is not described in published information.<br><br>It is not sufficiently clear that the taxpayer can choose only one of the different recipients of the request for the opening of MAP. | Luxembourg should clarify in the published information and in the forthcoming circular to be published that the taxpayer has a choice between the listed recipients to submit a MAP request.<br><br>Additionally, although not required by the Action 14 Minimum Standard and in order to further improve the level of details of its forthcoming circular, Luxembourg could consider including information on: <ul style="list-style-type: none"> <li>• the availability of MAP in cases of multilateral disputes and in cases of bona fide taxpayer-initiated foreign adjustments;</li> <li>• the potential effects of initiating a MAP on the suspension of tax collection;</li> <li>• multi-year resolution of recurring issues, and;</li> <li>• the timing of the steps needed for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul> |
| [B.9]  | Only the contact details of the competent authority and the required information to be included are published on the website of the Luxembourg Direct Tax Administration. The use of the mutual agreement procedure is not described in published information.  | Luxembourg should publish its circular on MAP under preparation when available and make it easily accessible.<br><br>As Luxembourg has so far published and updated its MAP profile, Luxembourg should ensure that its MAP profile continues to be published on the shared published platform and is updated if needed.   |
| [B.10] | -   | -   |

|   | Areas for Improvement   | Recommendations   |
|---|---|---|
| <b>Part C. Resolution of MAP cases</b>          |   |   |
| [C.1]   | Two 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 (2015a).  | Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision via bilateral negotiations.<br><br>In addition, Luxembourg should maintain its stated intention to include the required provision in all future treaties. |
| [C.2]   | Luxembourg submitted timely comprehensive MAP statistics and indicated they have been matched with all of its MAP partners but one who did not confirm the final statistics reported. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Luxembourg's MAP statistics match those of its treaty partners as reported by the latter. |   |
|   | Within the context of the state of play outlined above and in relation to the MAP statistics provided by Luxembourg, it resolved during the Statistics Reporting Period 66.5% (187 out of 281 cases) of its post-2015 cases in 0.83 months on average. In that regard, Luxembourg is recommended to seek to resolve the remaining 33.5% of the post-2015 cases pending on 31 December 2016 (94 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.   |   |
| [C.3]   | -   | Luxembourg should continue to closely monitor whether it has adequate resources to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, Luxembourg could closely monitor whether the additional resources provided to the attribution/allocation cases will contribute to the acceleration of the resolution of such MAP cases.  |
| [C.4]   | -   | As it has done thus far, Luxembourg should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustments at issue, or being influenced by considerations of the policy that Luxembourg would like to see reflected in future amendments to the treaty.                           |
| [C.5]   | -   | As it has done thus far, Luxembourg should continue to use appropriate performance indicators.  |
| [C.6]   | -   | -   |
| <b>Part D. Implementation of MAP agreements</b> |   |   |
| [D.1]   | -   | As it has done thus far, Luxembourg should continue to implement all MAP agreements in the future.<br><br>In addition, Luxembourg could follow up its intention to introduce a tracking system to monitor the implementation of MAP agreements.   |
| [D.2]   | -   | As it has done thus far, Luxembourg should continue to implement all MAP agreements on a timely basis.  |

|       | Areas for Improvement   | Recommendations  |
|-------|---|--|
| [D.3] | <p>19 out of 81 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in both Article 9(1) and Article 7(2).</p> <p>Out of the 19 tax treaties:</p> <ul style="list-style-type: none"> <li>• 17 neither contain a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor include the alternative provisions in Article 9(1) and Article 7(2).</li> <li>• two do not contain a provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015) and include only the alternative provision in Article 9(1).</li> </ul> | <p>Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the two alternatives provided in Article 9(1) and Article 7(2) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, Luxembourg should request the inclusion of the required provision or be willing to accept the inclusion of both alternatives via bilateral negotiations.</p> <p>In addition, Luxembourg should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternatives in all future treaties.</p> |



## Annex A

### Tax treaty network of Luxembourg

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

|                                       |               | Action 25(1) of the OECD Model Tax Convention ("MTC")                     |  | Article 9(2) of the OECD MTC | Anti-abuse   | Article 25(2) of the OECD MTC   |                                      | Article 25(3) of the OECD MTC         |                                      | Arbitration                           |                                  |
|---------------------------------------|---------------|---|--|------------------------------|--|---|--------------------------------------|---------------------------------------|--------------------------------------|---------------------------------------|----------------------------------|
|                                       |               | B.1   |  | B.3                          | B.4  | C.1   | D.3                                  | A.1                                   | B.7                                  | C.6                                   |                                  |
| Column 1                              | Column 2      | Column 3  | Column 4   |                              | Column 5   | Column 6  | Column 7                             | Column 8                              | Column 9                             | Column 10                             | Column 11                        |
| Treaty partner                        | DTC in force? | Inclusion Art. 25(1)?<br>If yes, submission to either competent authority | Inclusion Art. 25(1) second sentence?<br>If no, please state reasons |                              | Inclusion Art. 9(2)?<br>If no, will your CA provide access to MAP in TP cases? | Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? | Inclusion Art. 25(2) second sentence? | Inclusion Art. 25(3) first sentence? | Inclusion Art. 25(3) second sentence? | Inclusion arbitration provision? |
| Brunei Darussalam                     | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Bulgaria                              | Y             | O   | Y  |                              | Y  | i   | Y                                    | N                                     | Y                                    | Y                                     | N                                |
| Canada                                | Y             | O   | ii   | 2 years                      | Y  | i   | Y                                    | ii                                    | Y                                    | Y                                     | N                                |
| China (People's Republic of)          | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Chinese Taipei                        | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Croatia                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Czech republic                        | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Denmark                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Estonia                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | Y                                |
| Finland                               | Y             | O   | Y  |                              | i  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Former Yugoslav Republic of Macedonia | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| France                                | Y             | N   | i  |                              | i  | i   | N                                    | N                                     | Y                                    | Y                                     | N                                |
| Georgia                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Germany                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | Y                                |
| Greece                                | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Guernsey                              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | Y                                |
| Hong Kong (China)                     | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | Y                                |
| Hungary                               | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |

|                                  |               | Action 25(1) of the OECD Model Tax Convention (“MTC”)                     |  | Article 9(2) of the OECD MTC   | Anti-abuse  | Article 25(2) of the OECD MTC        |                                       | Article 25(3) of the OECD MTC        |                                       | Arbitration                      |           |   |
|----------------------------------|---------------|---|--|--|---|--------------------------------------|---------------------------------------|--------------------------------------|---------------------------------------|----------------------------------|-----------|---|
|                                  |               | B.1   |  | B.3  | B.4   | C.1                                  | D.3                                   | A.1                                  | B.7                                   | C.6                              |           |   |
| Column 1                         | Column 2      | Column 3  | Column 4   |  | Column 5  | Column 6                             | Column 7                              | Column 8                             | Column 9                              | Column 10                        | Column 11 |   |
| Treaty partner                   | DTC in force? | Inclusion Art. 25(1)?<br>If yes, submission to either competent authority | Inclusion Art. 25(1) second sentence?<br>If no, please state reasons | Inclusion Art. 9(2)?<br>If no, will your CA provide access to MAP in TP cases? | Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? | Inclusion Art. 25(2) second sentence? | Inclusion Art. 25(3) first sentence? | Inclusion Art. 25(3) second sentence? | Inclusion arbitration provision? |           |   |
| Iceland                          | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| India                            | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Indonesia                        | Y             | O   | ii   | 2 years  | Y   | i                                    | Y                                     | N                                    | Y                                     | Y                                | N         |   |
| Ireland                          | Y             | O   | i  |  | i   | i                                    | Y                                     | N                                    | Y                                     | Y                                | N         |   |
| Isle of Man                      | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | i         |   |
| Israel                           | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Italy                            | Y             | N   | ii   | 2 years  | i   | i                                    | Y                                     | N                                    | Y                                     | N                                | N         |   |
| Japan                            | Y             | O   | Y  |  | i   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Jersey                           | Y             | O   | Y  |  | Y   | i                                    | Y                                     | N                                    | Y                                     | Y                                | Y         | i |
| Kazakhstan                       | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Korea                            | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Lao People's Democratic Republic | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Latvia                           | Y             |   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Liechtenstein                    | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | Y         | i |
| Lithuania                        | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Malaysia                         | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Malta                            | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Mauritius                        | Y             | O   | Y  |  | i   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | Y         | i |
| Mexico                           | Y             | O   | Y  |  | i   | i                                    | Y                                     | N                                    | Y                                     | Y                                | N         |   |
| Moldova                          | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Monaco                           | Y             | O   | Y  |  | Y   | i                                    | Y                                     | Y                                    | Y                                     | Y                                | N         |   |
| Morocco                          | Y             | O   | ii   | 2 years  | i   | i                                    | Y                                     | N                                    | Y                                     | Y                                | N         |   |
| Netherlands                      | Y             | N   | i  |  | i   | i                                    | Y                                     | N                                    | Y                                     | Y                                | N         |   |

|                     |               | Action 25(1) of the OECD Model Tax Convention (“MTC”)                     |  | Article 9(2) of the OECD MTC | Anti-abuse   | Article 25(2) of the OECD MTC   |                                      | Article 25(3) of the OECD MTC         |                                      | Arbitration                           |                                  |
|---------------------|---------------|---|--|------------------------------|--|---|--------------------------------------|---------------------------------------|--------------------------------------|---------------------------------------|----------------------------------|
|                     |               | B.1   |  | B.3                          | B.4  | C.1   | D.3                                  | A.1                                   | B.7                                  | C.6                                   |                                  |
| Column 1            | Column 2      | Column 3  | Column 4   |                              | Column 5   | Column 6  | Column 7                             | Column 8                              | Column 9                             | Column 10                             | Column 11                        |
| Treaty partner      | DTC in force? | Inclusion Art. 25(1)?<br>If yes, submission to either competent authority | Inclusion Art. 25(1) second sentence?<br>If no, please state reasons |                              | Inclusion Art. 9(2)?<br>If no, will your CA provide access to MAP in TP cases? | Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? | Inclusion Art. 25(2) second sentence? | Inclusion Art. 25(3) first sentence? | Inclusion Art. 25(3) second sentence? | Inclusion arbitration provision? |
| Norway              | Y             | O   | i  |                              | i  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Panama              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Poland              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Portugal            | Y             | O   | ii   | 2 years                      | Y  | i   | Y                                    | N                                     | Y                                    | N                                     | N                                |
| Qatar               | Y             | O   | Y  |                              | i  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Romania             | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Russia              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| San Marino          | Y             | O   | ii   | 2 years                      | Y  | i   | Y                                    | N                                     | Y                                    | Y                                     | Y i                              |
| Saudi Arabia        | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Senegal             | N             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Serbia              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Seychelles          | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | Y i                              |
| Singapore           | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Slovak Republic     | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Slovenia            | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| South Africa        | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Spain               | Y             | O   | Y  |                              | i  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Sri Lanka           | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Sweden              | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Switzerland         | Y             | O   | Y  |                              | i  | i   | Y                                    | ii                                    | Y                                    | Y                                     | Y i                              |
| Tajikistan          | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Thailand            | Y             | O   | Y  |                              | i  | i   | Y                                    | N                                     | Y                                    | Y                                     | N                                |
| Trinidad and Tobago | Y             | O   | Y  |                              | Y  | i   | Y                                    | Y                                     | Y                                    | Y                                     | N                                |
| Tunisia             | Y             | O   | Y  |                              | Y  | i   | Y                                    | N                                     | Y                                    | Y                                     | N                                |

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

## Annex B

### MAP statistics: Pre-2016 cases

| Category of cases       | No. of pre-2016 cases in MAP inventory on 1 January 2016 | Number of pre-2016 cases closed during the reporting period by outcome |                            |                       |                           |                              |   |   |   |   |                   | No. of pre-2016 cases remaining in MAP inventory on 31 December 2016 | Average time taken (in months) for closing pre-2016 cases during the reporting period |
|-------------------------|--|--|----------------------------|-----------------------|---------------------------|------------------------------|---|---|---|---|-------------------|--|---|
|                         |  | Denied MAP access  | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome |  |   |
| Column 1                | Column 2   | Column 3   | Column 4                   | Column 5              | Column 6                  | Column 7                     | Column 8  | Column 9  | Column 10   | Column 11                                     | Column 12         | Column 13  | Column 14   |
| Attribution/ Allocation | 15   | 0  | 0                          | 0                     | 0                         | 1                            | 0   | 0   | 0   | 0   | 0                 | 14   | 40.7  |
| Others                  | 270  | 1  | 7                          | 2                     | 34                        | 3                            | 92  | 0   | 1   | 7   | 0                 | 123  | 18.31   |
| Total*                  | 285  | 1  | 7                          | 2                     | 34                        | 4                            | 92  | 0   | 1   | 7   | 0                 | 137  | 18.46   |

*Notes:* There is one TP-related MAP case that has been closed during the reporting period. Given that the time taken for closing the case is above 24 months (minimum standard), further clarifications are provided hereafter: The taxpayer sent a MAP request to the other CA, while 2 appeals before the Tax Court of the other CA's country were pending. Due to this last fact, the other CA decided not to enter into a CA discussion. In the end, court decisions were reached after a time period of 40.7 months and it was decided to close the MAP case at hand (knowing that, the other CA is bound by its national legislation, being unable to deviate from court decisions in a MAP framework).

## Annex C

### MAP statistics: Post-2015 cases

| Category of cases       | No. of post-2015 cases in MAP inventory on 1 January 2016 | No. of post-2015 cases started during the reporting period | Number of post-2015 cases closed during the reporting period by outcome |                            |                       |                           |                              |   |   |   |   |                   | No. of post-2015 cases remaining in 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   | 9  | 0   | 0                          | 0                     | 0                         | 0                            | 0   | 0   | 0   | 0   | 0                 | 9   | 0  |
| Others                  | 0   | 272  | 14  | 2                          | 3                     | 146                       | 0                            | 22  | 0   | 0   | 0   | 0                 | 85  | 0.83   |
| <b>Total</b>            | <b>0</b>  | <b>281</b>   | <b>14</b>   | <b>2</b>                   | <b>3</b>              | <b>146</b>                | <b>0</b>                     | <b>22</b>   | <b>0</b>  | <b>0</b>  | <b>0</b>                                      | <b>0</b>          | <b>94</b>   | <b>0.83</b>  |





## *Glossary*

|   |   |
|---|---|
| <b>Action 14 Minimum Standard</b>         | The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective                             |
| <b>FTA MAP Forum</b>                      | Forum on Mutual Agreement Procedure in the Forum on Tax Administration  |
| <b>Look-back period</b>                   | Period starting from 1 January 2015 for which Luxembourg wished to provide information and requested peer input                                       |
| <b>MAP Statistics Reporting Framework</b> | Rules for reporting of MAP statistics as agreed by the FTA MAP Forum  |
| <b>Multilateral Instrument</b>            | Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting  |
| <b>OECD Model Tax Convention</b>          | OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014   |
| <b>OECD Transfer Pricing Guidelines</b>   | OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations  |
| <b>Pre-2016 cases</b>                     | MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015  |
| <b>Post-2015 cases</b>                    | MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016   |
| <b>Review Period</b>                      | Period for the peer review process that started on 1 January 2016 and ended on 31 March 2017  |
| <b>Statistics Reporting Period</b>        | Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016  |
| <b>Terms of Reference</b>                 | Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective |



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## OECD/G20 Base Erosion and Profit Shifting Project

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

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

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

Consult this publication on line at <http://dx.doi.org/10.1787/9789264285927-en>.

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