

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



# **Making Dispute Resolution More Effective - MAP Peer Review Report, Slovak Republic (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



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**Please cite this publication as:**

OECD (2019), *Making Dispute Resolution More Effective - MAP Peer Review Report, Slovak Republic (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<https://doi.org/10.1787/9789264309890-en>

ISBN 978-92-64-30992-0 (print)

ISBN 978-92-64-30989-0 (pdf)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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## *Foreword*

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

As a result, the OECD established the Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework,

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

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

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## *Abbreviations and Acronyms*

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
EU	European Union
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
TRNC	Turkish Republic of Northern Cyprus



## *Executive summary*

The Slovak Republic has an extensive tax treaty network with 70 tax treaties and it has signed and ratified the EU Arbitration Convention. The Slovak Republic has an MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 31 cases pending on 31 December 2017. Of these cases, 45% concern allocation/attribution cases. Overall, the Slovak Republic meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, the Slovak Republic is working to address them.

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

- Approximately half of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Approximately 15% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty, and
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), whereby half of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the final report on Action 14.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Slovak Republic needs to amend and update a significant number of its tax treaties. In this respect, the Slovak Republic signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, the Slovak Republic reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but it has not a specific plan in place thereto.

The Slovak Republic in principle meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs. However, no such cases have occurred during the period of review.

The Slovak Republic meets most requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. The Slovak Republic's policy is to

provide access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP request concerning transfer pricing cases or cases where anti-abuse provisions are applied. The Slovak Republic has not in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Furthermore, the Slovak Republic has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention.

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

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to close cases (in months)(*)
Attribution/allocation cases	9	8	3	14	11.69
Other cases	15	3	1	17	32.75
<b>Total</b>	<b>24</b>	<b>11</b>	<b>4</b>	<b>31</b>	<b>16.96</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, the Slovak Republic used as a start date the receipt of the Map case and as the end date the date of the closing letter.

The number of cases the Slovak Republic closed in 2016 or 2017 is significantly less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased by about 30% as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, the Slovak Republic's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 16.96 months. Although the current available resources for the MAP function in the Slovak Republic are in principle adequate, more resources may be necessary to achieve a net reduction of its MAP inventory.

Furthermore, the Slovak Republic meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. The Slovak Republic's competent authority operates fully independently from the audit function of the tax authorities, its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, as the Slovak Republic did not enter into MAP agreements in 2016 and 2017 that required an implementation in the Slovak Republic, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

## Introduction

### Available mechanisms in the Slovak Republic to resolve tax treaty-related disputes

The Slovak Republic has entered into 70 tax treaties on income (and/or capital), 69 of which are in force.<sup>1</sup> These 70 treaties apply to 71 jurisdictions.<sup>2</sup> All of these treaties, except for one, provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the 70 treaties provides for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

Furthermore, the Slovak Republic 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 addition, the Slovak Republic also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in the Slovak Republic's domestic legislation as per 1 July 2019.<sup>5</sup>

In the Slovak Republic, the competent authority function to conduct MAP is delegated to the Ministry of Finance for both attribution/allocation cases and other MAP cases, as well as requests for APAs. The competent authority of the Slovak Republic currently employs seven employees, which deal besides MAP also with other international tax matters.

The Slovak Republic issued guidance on the governance and administration of the mutual agreement procedure ("MAP") in February 2018, which is available (in Slovak language) at:

<http://www.finance.gov.sk/Default.aspx?CatID=11638>

### Recent developments in the Slovak Republic

The Slovak Republic is currently conducting tax treaty negotiations with several jurisdictions, which concerns both newly negotiated treaties as replacements of or amendments to existing treaties. The Slovak Republic recently signed a new tax treaty with Barbados (2015), Ethiopia (2016) and Iran (2016). The treaties with Ethiopia and Iran have already entered into force, while the treaty with Barbados has not yet entered into force but has been ratified by the Slovak Republic.

Furthermore, on 7 June 2017 the Slovak Republic signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, the Slovak Republic also submitted its list of notifications and reservations to that instrument.<sup>6</sup> In relation to the Action 14 Minimum Standard, the Slovak Republic reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent

authorities of either contracting state.<sup>7</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard.

Where treaties will not be modified by the Multilateral Instrument, the Slovak Republic reported that it strives updating them through future bilateral negotiations. In this regard the Slovak Republic shared its general plan of bilateral tax treaty negotiations, thereby classifying future negotiations into one of the following three categories: (i) short-term (2018-2020), (ii) mid-term (2020-2023) and (iii) long-term (2023-open) actions. Such a general plan of treaty negotiations is considered not to be a specific plan to update existing tax treaties with regard to the Action 14 Minimum Standard, however it automatically includes several of the tax treaties, which are not in line with the Action 14 Minimum Standard.

### Basis for the peer review process

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

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

For the purpose of this report and the statistics below, in assessing whether the Slovak Republic is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaties with former Yugoslavia and the former Republic of Yugoslavia concerning Serbia and Montenegro for those jurisdictions to which these treaties are still being or to be applied by the Slovak Republic. As it concerns the same tax treaties that are applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of the Slovak Republic's tax treaties regarding the mutual agreement procedure.

In total ten peers provided input: Austria, Belgium, Canada, Denmark, Germany, Italy, Spain, Switzerland, Turkey and the United Kingdom. These peers represent only a low percentage (approximately a third) of post-2015 MAP cases in the Slovak Republic's inventory that started in 2016 or 2017.

Generally, most peers indicated having a good relationship with the Slovak Republic's competent authority with regard to MAP, and almost all of them emphasised the ease of

communication in resolving disputes, although the Slovak Republic is for almost all of the peers not a significant treaty partner.

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

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

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

## Overview of MAP caseload in the Slovak Republic

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

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	9	8	3	14
Other cases	15	3	1	17
<b>Total</b>	24	11	4	31

## General outline of the peer review report

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

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

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

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review

report includes recommendations that the Slovak Republic 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

<sup>1</sup>The tax treaties the Slovak Republic has entered into are available at: <http://www.finance.gov.sk/en/Default.aspx?CatID=285>. The Slovak Republic continues to apply the tax treaties of former Czechoslovakia to Austria, Brazil, People's Republic of China, Cyprus,\* Denmark, France, Germany, Greece, India, Italy, Japan, Luxembourg, Mongolia, the Netherlands, Nigeria, Norway, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom. The tax treaty that is signed but has not yet entered into force is with Barbados (2015). Reference is made to Annex A for the overview of the Slovak Republic's tax treaties.

\* Footnote by Turkey:

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

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

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

<sup>2</sup> The Slovak Republic continues to apply the 2001 tax treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro to both (i) Serbia and (ii) Montenegro. Furthermore, the Slovak Republic also continues to apply the 1981 tax treaty between Czechoslovakia and former Yugoslavia to Bosnia and Herzegovina.

<sup>3</sup> This concerns the tax treaty with Switzerland.

<sup>4</sup> Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

<sup>5</sup> Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>

<sup>6</sup> <http://www.oecd.org/tax/treaties/beps-mli-position-slovak-republic.pdf>

<sup>7</sup> *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Slovak Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual



*agreement procedure case was presented does not consider the taxpayer's objection to be justified".*

<sup>8</sup>. Available at: <http://www.oecd.org/tax/dispute/country-map-profiles.htm>.

<sup>9</sup>. The MAP statistics of the Slovak Republic are included in Annex B and C of this report.

<sup>10</sup>. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

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



## Part 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<sup>[1]</sup>) 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 the Slovak Republic's tax treaties*

2. Out of the Slovak Republic's 70 tax treaties, 66 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) 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.<sup>1</sup> Four of the Slovak Republic's tax treaties are considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). Two tax treaties do not include the term "interpretation" and a third tax treaty does not include both the terms "doubt" as well as "interpretation". The last tax treaty does not contain any treaty provision that is based on or is the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. The Slovak Republic reported that in the absence of a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), it is not allowed to enter into a general MAP as its competent authority requires a specific authorization to do so in the tax treaty (or domestic legislation, which does not exist).

#### *Anticipated modifications*

##### *Multilateral Instrument*

4. The Slovak Republic signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax

agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

5. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), the Slovak Republic listed three treaties as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). This treaty partner is a signatory to the Multilateral Instrument, listed its treaty with the Slovak Republic as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage, one of the four tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

#### *Bilateral modifications*

6. The Slovak Republic further reported that for the three tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. In this regard, the Slovak Republic reported that one of these tax treaties is included in its general schedule of future tax treaty negotiations, but that it does not have in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. In addition, the Slovak Republic reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) in all of its future tax treaties.

#### *Peer input*

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

8. For the four treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), one relevant peer provided input and acknowledged that its tax treaty with the Slovak Republic is not in line with element A.1 and will not be modified by the Multilateral Instrument.

## Conclusion

	Areas for Improvement	Recommendations
[A.1]	Four out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ).	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these three tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>

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

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

9. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>2</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.

#### *The Slovak Republic’s APA programme*

10. The Slovak Republic reported it has implemented an APA programme, which is outlined in the Internal Regulatory Guideline No. 35/2016 (“APA Guidance”) and pursuant to which it is authorised to enter into unilateral, bilateral and multilateral APAs and The legal basis of the bilateral APA programme is to be found in the MAP article of the underlying tax treaty as well as Section 17(7) and Section 18(4) and (5) of Act. No. 595/2003 Coll. on income taxes.

11. The Slovak Republic has published guidance on APAs in the Internal Regulatory Guideline 35/2016 of 23 June 2016 (“APA Guidance”) (in Slovak language), which can be found at:

[https://www.financnasprava.sk/img/pfsedit/Dokumenty\\_PFS/Profesionalna\\_zona/Dane/Metodicke\\_pokyny/Medzinarodne\\_zdanovanie/2014.09.22\\_MP\\_k\\_APA.pdf](https://www.financnasprava.sk/img/pfsedit/Dokumenty_PFS/Profesionalna_zona/Dane/Metodicke_pokyny/Medzinarodne_zdanovanie/2014.09.22_MP_k_APA.pdf)

12. The Slovak Republic reported further that an APA request has to be filed at least 60 days prior to the fiscal year for which the APA should take effect according to Section 18(4) of the Income Tax Act. Paragraph 9 of the APA Guidance stipulates that on the basis of Section 18(4) an APA cannot cover more than five fiscal years, but that typically, bilateral APAs run for a period of three to five years with an option of renewal for a subsequent period. In addition, the Slovak Republic charges fees for bilateral and multilateral APAs, on the basis of Section 18(4) of Act. No. 595/2003 Coll. on income taxes. These fees are EUR 10 000 in case of a unilateral APA and EUR 30 000 in case of a bilateral APA.

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

13. The Slovak Republic reported that it is, pursuant to Section 18(4) and (5) of Act. No. 595/2003 Coll. on income taxes, possible to obtain a roll-back of bilateral APAs in appropriate cases. The Slovak Republic clarified that any fiscal year prior to the fiscal year that is specified in the initial request for an APA is considered as a roll-back year. Granting of a roll-back is subject to domestic time limits and requires that facts and circumstances of the case in the years for which a roll-back is requested are identical to the years covered by the initial APA.

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

14. The Slovak Republic publishes statistics on APAs on the website of the EU JTPF.<sup>3</sup> The Slovak Republic reported having received five requests for bilateral APAs since 1 January 2016, which are all still being processed. None of these requests included a request for a roll-back.

15. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning the Slovak Republic since 1 January 2016, two of them thereby noting not having received any request for a bilateral APA either since that date.

#### *Anticipated modifications*

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

#### **Conclusion**

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

#### **Notes**

<sup>1</sup> These 66 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

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

<sup>3</sup>. Available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf).

The most recent statistics published are up to 2016.

#### Reference

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

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





## Part B: Availability and access to map

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

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

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

#### *Current situation of the Slovak Republic's tax treaties*

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

18. Out of the Slovak Republic's 70 tax treaties, 52 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the Action 14 final report (OECD, 2015<sup>[2]</sup>), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of the Slovak Republic's tax treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as changed by the Action 14 final report (OECD, 2015<sup>[1]</sup>) and allowing taxpayers to submit a MAP request to the competent authority of either state.

19. The remaining 18 tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ) as it read prior to the adoption of the Action 14 final report (OECD, 2015 <sup>[2]</sup> ), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as it read prior to the adoption of the Action 14 final report (OECD, 2015 <sub>[2]</sub> ), whereby the taxpayer can only submit a MAP request to the competent authority of the contracting state of which it is resident and whereby the provision requires double taxation instead of taxation not in accordance with the convention. Additionally, the taxpayer cannot submit such request irrespective of the remedies provided by the domestic laws of the contracting states.	1
No treaty provision at all that is based on or is the equivalent of Article 25(1), first sentence, of the OECD Model Tax either as it read prior to the adoption of the Action 14 final report (OECD, 2015 <sub>[2]</sub> ) or as changed by the Action 14 final report (OECD, 2015 <sub>[2]</sub> ).	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as it read prior to the adoption of the Action 14 final report (OECD, 2015 <sub>[2]</sub> ), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	15

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

*“with respect to paragraph 1 of Article 25, the term ‘irrespective of the remedies provided by the domestic law’ shall be construed as meaning that the commencement of a mutual agreement procedure shall not replace the litigation procedure under domestic law, which domestic procedure must, in any case, first have been instituted, where the dispute concerns an application of taxes not in accordance with the Convention.”*

21. As according to this provision a domestic procedure has to be initiated analogously to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[2]</sub>). This tax treaty is therefore considered not to be in line with this part of element B.1.

22. The tax treaty mentioned in the second row of the table above does not allow a submission of a MAP request in the state of which the taxpayer is a national, where the case comes under the non-discrimination article and whereby the provision requires double taxation instead of taxation not in accordance with the convention, and additionally does not provide that the taxpayer can submit a MAP request irrespective of the remedies provided by the domestic laws of the contracting states. Therefore, this tax treaty is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

23. The tax treaty mentioned in the third row of the table above does not contain any treaty provision that is based on or is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) and is therefore considered not to be in line with this part of element B.1.

24. The 15 tax treaties mentioned in the last row of the table above are considered not to have the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as it read prior to the adoption of the Action 14 final report (OECD, 2015<sub>[2]</sub>), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 13 of those 15 tax treaties are considered to be in line with this part of element B.1:

- the relevant tax treaty does not contain a non-discrimination provision (one tax treaty)
- the non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (12 tax treaties<sup>1</sup>).

25. The non-discrimination article is in the remaining two tax treaties almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the last part of Article 25(1), first sentence is then not clarified by a limited scope of application of the non-discrimination article. These treaties therefore are considered not to be in line with this part of element B.1.

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

26. Out of the Slovak Republic's 70 tax treaties, 50 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>2</sup>

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

Provision	Number of tax treaties
No filing period for a MAP request	14 <sup>3</sup>
Filing period more than three years for a MAP request (four years)	1
Filing period less than three years for a MAP request (two years)	4
Reference is made to domestic law for the period of filing a MAP request	1

28. The tax treaty mentioned in the last row of the table above does not specify the starting point for the filing period of MAP requests, as it omits the language “from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention”. In addition, for the period of filing a MAP request, reference is made to the “domestic laws of the Contracting States”. As this time period could potentially be shorter than three years the tax treaty is considered not having the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

### ***Practical application***

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

29. As noted in paragraph 19 above, in all but two of the Slovak Republic's tax treaties taxpayers can file a MAP request irrespective of domestic remedies, whereas in a third treaty no MAP provision is contained. With regard to a final court decision in the Slovak Republic, which cannot be appealed anymore, the Slovak Republic reported that it would grant access to a MAP case, even if the underlying issue has already been decided by a court in the Slovak Republic. However, as the Slovak Republic's competent authority is bound by a final decision of a Slovak court, it is not able to deviate from such decision in MAP and therefore would only initiate the MAP process to allow the treaty partner to provide for correlative relief.

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

30. The Slovak Republic reported that in the absence of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) it also applies a three year time limit from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. This rule is stipulated in the Slovak Republic's MAP Guidance in paragraph 3.1.3.

### *Anticipated modifications*

#### *Multilateral Instrument*

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

31. The Slovak Republic signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as amended by the final report on Action 14 (OECD, 2015<sup>[2]</sup>) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

32. The Slovak Republic reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.<sup>4</sup> In this reservation, the Slovak Republic declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

33. In view of the above, following the reservation made by the Slovak Republic, those five treaties identified in paragraphs 20 to 25 above that are considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>), will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

35. In regard of the four tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, the Slovak Republic listed three of them as a covered tax agreement under the Multilateral Instrument and for all three did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All three treaty partners are signatories to the Multilateral Instrument, listed their treaty with the Slovak Republic under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument, upon entry into force, will modify three of the four treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

36. With regard to the tax treaty identified in paragraph 27 above that includes a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as it refers to domestic laws of the contracting state for the filing period of for MAP requests, the Slovak Republic listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii) but did make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner also listed its treaty with the Slovak Republic under the Multilateral Instrument, but did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). Therefore, at this stage, the Multilateral Instrument will not modify or supersede this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

### *Bilateral modifications*

37. The Slovak Republic reported that for the five tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to or after the adoption of the final report on Action 14 (OECD, 2015b) and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with this part of element B.1. In this regard, however, the Slovak Republic reported not having in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. In addition, the Slovak Republic reported it will seek to include Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>), in all of its future tax treaties.

38. The Slovak Republic further reported that for the two tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax

Convention (OECD, 2015<sup>[1]</sup>) and that will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with this part of element B.1. In this regard, the Slovak Republic reported that one of these tax treaties is included in its general schedule of future tax treaty negotiations, but that it does not have in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. For the remaining tax treaty the Slovak Republic reported not yet having planned such negotiations. In addition, the Slovak Republic reported it will seek to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in all of its future tax treaties.

#### *Peer input*

39. Of the peers that provided input, five peers indicated in a general manner that their tax treaty with the Slovak Republic will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.1 three of these five relevant tax treaties are already in line with the Minimum Standard. Regarding the remaining two tax treaties, the peer input is stated below. A further peer indicated that its tax treaty with the Slovak Republic is already in line with the Action 14 Minimum Standard, which has been confirmed by the performed analysis.

40. For the nine tax treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), three relevant peers provided input. These peers indicated in a general manner that its tax treaty with the Slovak Republic will be modified via the Multilateral Instrument, which is only the case for two of the tax treaties regarding Art. 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

## Conclusion

	Areas for Improvement	Recommendations
[B.1]	<p>Nine out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). Of those nine tax treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty;</li> <li>• Four tax treaties do not contain the equivalent to Article 25(1), first sentence;</li> <li>• Four tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining seven treaties that do not contain the equivalent of either the first sentence, the second sentence or both sentences, the Slovak Republic 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, 2015<sup>[1]</sup>) either: <ul style="list-style-type: none"> <li>a) As amended in the final report on Action 14 (OECD, 2015<sup>[2]</sup>); or</li> <li>b) As it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; 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>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these six tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>) in all future tax 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).*

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

contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- of either treaty partner; or, in the absence of such provision,
- 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*

42. As discussed under element B.1, out of the Slovak Republic's 70 tax treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as changed by the Action 14 final report (OECD, 2015<sup>[2]</sup>), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, none of these tax treaties will, following the Slovak Republic's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

43. The Slovak Republic reported that it has not yet introduced a documented bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when the Slovak Republic's competent authority considers the objection raised in the MAP request not to be justified.

### *Practical application*

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

45. All peers that provided input indicated not being aware of any cases for which the Slovak Republic's competent authority denied access to MAP since 1 January 2016. They also reported not having been consulted / notified during the Review Period of a case where the Slovak Republic's competent authority considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in the Slovak Republic during this period.

### *Anticipated modifications*

46. As previously discussed under element B.1, the Slovak Republic has signed the Multilateral Instrument. Specifically regarding element B.2, the Slovak Republic reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, the Slovak Republic declared it will introduce a bilateral consultation or notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified later in 2018. The Slovak Republic further reported that it currently has no intention to replace existing tax



treaties that include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) with Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read after adoption of that report.

### *Conclusion*

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.2]	All of the 70 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as changed by the Action 14 final report (OECD, 2015 <sub>[2]</sub> ), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	The Slovak Republic should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not being justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as amended by the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ).

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

*Jurisdictions should provide access to MAP in transfer pricing cases.*

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

#### *Legal and administrative framework*

48. Out of the Slovak Republic's 70 tax treaties, 44 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner. Furthermore, 20 tax treaties do not contain such a provision that is based on or is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).<sup>5</sup> The remaining six treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision for the following reasons:

- In one tax treaty a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) is contained. However, this tax treaty also contains a protocol provision which stipulates that a contracting state is not obliged to make a corresponding adjustment until consultations took place with the contracting state making the adjustment and insofar the first state agrees with such a corresponding adjustment
- In five treaties the term "may" is used instead of "shall" when it concerns the granting of a corresponding adjustment.

49. The Slovak Republic 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.

50. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in the Slovak Republic's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, the Slovak Republic indicated that it will always provide access to MAP for transfer pricing cases and that it will unilaterally provide for corresponding adjustments even when the underlying tax treaty does not include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). In more detail, Section 17(6) of the Income Tax Act sets forth that a corresponding adjustment can be made if there is a tax treaty in place and insofar the tax administration of the treaty partner has made a transfer pricing adjustment that is in line with the arm's length principle as set forth in Section 18(1) of the Income Tax Act.

51. The Slovak Republic's MAP Guidance, in paragraph 2.1.3, explains the steps in a MAP process, thereby noting that the rules of the MAP provision also apply to double taxation cases arising in the transfer pricing area.

### *Application of legal and administrative framework in practice*

52. The Slovak Republic reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

53. All peers that provided input indicated not being aware of a denial of access to MAP by the Slovak Republic on the basis that the case concerned was a transfer pricing case.

### *Anticipated modifications*

54. The Slovak Republic reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, the Slovak Republic signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). Where such a

notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>)).

55. The Slovak Republic has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). In regard of the 26 treaties identified in paragraph 48 above that are considered not to contain a provision such equivalent, the Slovak Republic listed 25 as a covered tax agreement under the Multilateral Instrument and included seven of them in the list of treaties for which the Slovak Republic has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, the Slovak Republic did not make a notification on the basis of Article 17(4) for the remaining 18 treaties. Of the relevant 18 treaty partners, four are not a signatory to the Multilateral Instrument and one has not listed its treaty with the Slovak Republic under that instrument. Of the remaining 13 treaty partners, none has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with the Slovak Republic already contains the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining 13 treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).<sup>6</sup>

### Conclusion

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

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

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

56. 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*

57. None of the Slovak Republic's 70 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of the Slovak Republic do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision are in conflict with the provisions of a tax treaty.

58. The Slovak Republic reported that it will grant access to MAP in cases discussing whether the conditions for the application of a treaty anti-abuse provision have been met 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 this respect, its MAP Guidance clarifies in paragraph 2.3.5 that the application of anti-abuse provisions is not an obstacle to initiate a MAP.

### *Practical application*

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

60. All peers that provided input indicated not being aware of cases that have been denied access to MAP in the Slovak Republic since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

### *Anticipated modifications*

61. The Slovak Republic indicated that it does not anticipate any modifications in relation to element B.4.

### *Conclusion*

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

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

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

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

### *Legal and administrative framework*

#### *Audit settlements*

63. The Slovak Republic reported that according to its domestic law it is not possible that taxpayers and the tax administration enter into a settlement agreement during the course of or after ending of an audit.

#### *Administrative or statutory dispute settlement/resolution process*

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

### *Practical application*

65. Due to the fact that audit settlements are not available in the Slovak Republic, there are no cases where its competent authority has denied access to MAP in cases where a transaction would have been concluded following a tax audit.

66. All peers that provided input indicated not being aware of a denial of access to MAP in the Slovak Republic since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration.

### *Anticipated modifications*

67. The Slovak Republic indicated that it does not anticipate any modifications in relation to element B.5.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.5]	-	-

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

*Jurisdictions should 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.*

68. 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*

69. The information and documentation the Slovak Republic requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

70. The Slovak Republic reported that, in case additional information is required, the Slovak Republic's competent authority will request the outstanding information from the taxpayer. There is no specific timeline provided for in the Slovak Republic's domestic law for competent authority to follow up or for the taxpayer to provide any outstanding information. However, the Slovak Republic clarified that the taxpayer is reminded that the absence of the requested information prevents any progress and the resolution of the MAP case. It further reported that it keeps such cases open indefinitely and does not close them by denying access due to missing information.

### *Practical application*

71. The Slovak Republic reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

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

### *Anticipated modifications*

73. The Slovak Republic indicated that it does not anticipate any modifications in relation to element B.6.

### *Conclusion*

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

74. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

### *Current situation of the Slovak Republic's tax treaties*

75. Out of the Slovak Republic's 70 tax treaties, 59 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>7</sup> The remaining 11 tax treaties do not contain a provision that is based on or is the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

### *Anticipated modifications*

#### *Multilateral Instrument*

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

77. In regard of the 11 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), the Slovak Republic listed 10 treaties as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 10 treaty partners, three are not a signatory to the Multilateral Instrument and one did not list its treaty with the Slovak Republic as a covered tax agreement. All remaining six treaty partners also made such notification. Therefore, at this stage, six of the 11 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

#### *Bilateral modifications*

78. The Slovak Republic further reported that for the five tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. In this regard, the Slovak Republic reported that three of these tax treaties are included in its general schedule of future tax treaty negotiations, but that it does not have in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. In addition, the Slovak Republic reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) in all of its future tax treaties.

*Peer input*

79. One of the peers that provided input indicated that its tax treaty with the Slovak Republic is already in line with the Action 14 Minimum Standard, which has been confirmed by the performed analysis. Five other peers indicated in a general manner that their tax treaty with the Slovak Republic will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.7 the relevant tax treaties, however, are already in line with this standard with only one exception, which is discussed below.

80. For the 11 tax treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>), two relevant peers provided input. These peers indicated in a general manner that their tax treaties with the Slovak Republic will be modified via the Multilateral Instrument, which is actually the case with regard to element B.7.

*Conclusion*

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.7]	11 out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[11]</sup> ).	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these five tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>

**[B.8] Publish clear and comprehensive MAP guidance**

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

81. 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.



### *The Slovak Republic's MAP guidance*

82. In February 2018 the Slovak Republic has issued guidelines for the mutual agreement procedure (“**MAP Guidance**”) in accordance with Article 160(2) of the Tax Procedure Code, which is legally binding for the Slovak Republic’s competent authority. This guidance is in Slovak language available at:

<http://www.finance.gov.sk/Default.aspx?CatID=11638>

83. This guidance applies to tax treaties it entered into as well as the EU Arbitration Convention and contains a general outline of the legal basis of MAP under both instruments, their scope of application as well as an outline of the MAP process. In more detail, the guidance contains information on:

- a) Contact information of the competent authority or the office in charge of MAP cases
- b) The manner and form in which the taxpayer should submit its MAP request and the timelines for such submission
- c) The specific information and documentation that should be included in a MAP request (see also below)
- d) How the MAP is operated by the Slovak Republic’s competent authority and how the process functions in terms of timing and the role of the competent authorities
- e) Access to MAP in transfer pricing cases and instances of application of anti-abuse provisions
- f) The process for implementation of MAP agreements
- g) Rights and role of taxpayers in the process
- h) Costs connected with the MAP process
- i) Exchange of information in the MAP process and confidentiality of information.

84. The above-described MAP guidance of the Slovak Republic includes information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>8</sup>

85. Although the information included in the Slovak Republic’s MAP guidance is detailed and comprehensive, various subjects are not specifically discussed in the Slovak Republic’s MAP Guidance. This concerns information on:

- Relationship with domestic available remedies
- Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- The possibility of suspension of tax collection during the course of a MAP
- The consideration of interest and penalties in the MAP

- The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

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

86. 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>9</sup> This agreed guidance is shown below. The Slovak Republic's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

87. Further to the above, the Slovak Republic's MAP Guidance divides the minimum information requirements for a MAP request into general information to be provided and additional information to be provided for transfer pricing cases. With regard to the general information, the Slovak Republic requires that the minimum information shown above as agreed by the FTA MAP Forum to be submitted and in addition also requires the following minimum information:

- report from tax audit in the Contracting State or decision assessing tax or a similar document proving incorrect application of the tax treaty
- the tax period that the case relates to
- details of all out-of-court decisions, legal actions and all judicial judgements that may have an impact on the specific case of the taxpayer in the Slovak Republic or abroad

88. With regard to transfer pricing cases the Slovak Republic's MAP Guidance requires the following information to be provided in addition to the required general minimum information requirements listed above:

- relationship, situation, structure of transactions of the involved related parties

- transfer pricing documentation to the extent as set forth in the national laws of the Slovak Republic which may be supplemented with other information recommended by the OECD or the EU Joint Transfer Pricing Forum
- decision approving the application of the pricing method.

### *Anticipated modifications*

89. The Slovak Republic indicated that it anticipates updating its MAP Guidance in 2019.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP Guidance the Slovak Republic could consider including information on:</p> <ul style="list-style-type: none"> <li>• The relationship of MAP with domestic available remedies</li> <li>• Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• The possibility of suspension of tax collection during the course of a MAP</li> <li>• The consideration of interest and penalties in the MAP, and</li> <li>• The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</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.*

90. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.<sup>10</sup>

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

91. The MAP Guidance of the Slovak Republic is published and can be found (in Slovak language) at:

<http://www.finance.gov.sk/Default.aspx?CatID=11638>

92. This guidance was issued in February 2018. As regards its accessibility, the Slovak Republic's MAP Guidance can easily be found on the website in Slovak language of the Slovak Ministry of Finance under the section financial regulations (*financny spravodajca*).<sup>11</sup> In addition, the Slovak Republic MAP Guidance is one of the first results of an internet search for mutual agreement procedure in Slovak language (*procedúry vzájomnej dohody*).

### **MAP profile**

93. The MAP profile of the Slovak Republic is published on the website of the OECD, which is complete and with detailed information. This profile also includes external links which provide extra information and guidance where appropriate. However, as reported under element B.4, the Slovak Republic reported it will give access to MAP in cases concerning the application of anti-abuse provisions. The response to the relevant question in the MAP profile, however, states that for cases concerning the application of treaty anti-abuse provisions generally are not excluded from MAP. As this may act confusing, the MAP profile is on this point not fully clear.

### **Anticipated modifications**

94. As discussed under element B.8, the Slovak Republic indicated that it anticipates updating its MAP Guidance in 2019.

### **Conclusion**

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[B.9]	The MAP profile requires clarification.	<p>The Slovak Republic should update its MAP profile to clarify that taxpayers have access to MAP in all cases concerning the application of treaty-anti abuse provisions.</p> <p>As it has published its MAP profile and made its MAP guidance available and easily accessible as from February 2018, the Slovak Republic should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>

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

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

95. 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***

96. As previously mentioned in B.5, the Slovak Republic reported that audit settlements are not available as it is under its domestic law not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need to address in the Slovak Republic's MAP guidance that audit settlements do not preclude access to MAP.

Peers indicated no issues with respect to the availability of audit settlements and the inclusion of information hereon in the Slovak Republic's MAP guidance, which can be clarified by the fact that such settlements are not possible in the Slovak Republic.

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

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

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

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

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

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

100. The Slovak Republic indicated that it does not anticipate any modifications in relation to element B.10.

## Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

## Notes

<sup>1</sup> These 12 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

<sup>2</sup> These 50 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro.

<sup>3</sup> These 14 tax treaties include the treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

<sup>4</sup> This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Slovak Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.

An overview of the Slovak Republic’s positions on the Multilateral Instrument is available at: <http://www.oecd.org/tax/treaties/beps-mli-position-slovak-republic.pdf>.

<sup>5</sup> These 20 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

<sup>6</sup> These 13 treaties include the tax treaty with the former Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro. Of both treaty partners, only Serbia is a signatory to the Multilateral Instrument. Therefore, the tax treaty will only be modified with respect to Serbia.

<sup>7</sup> These 59 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

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

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

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

<sup>11</sup>. Available at: <http://www.finance.gov.sk/Default.aspx>.

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

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

## References

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

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





## Part C: Resolution of map cases

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

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

101. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), 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 the Slovak Republic's tax treaties*

102. Out of the Slovak Republic's 70 tax treaties, 68 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.<sup>1</sup> For the remaining two tax treaties the following analysis is made:

- One tax treaty does not contain any treaty provision that is based on or is the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>)
- One tax treaty does not contain the phrase “the competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution” and is therefore considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

## *Anticipated modifications*

### *Multilateral Instrument*

103. The Slovak Republic signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary—that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

104. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the Slovak Republic listed one of them as a covered tax agreement under the Multilateral Instrument but did not make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, none of the two treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

### *Bilateral modifications*

105. The Slovak Republic further reported that for the two tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this regard, the Slovak Republic reported that one of these tax treaties is included in its general schedule of future tax treaty negotiations, but that it does not have in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. In addition, the Slovak Republic reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) in all of its future tax treaties.

### *Peer input*

106. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with the Slovak Republic will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element C.1 the relevant tax treaties are already in line with the Minimum Standard. A further peer indicated that its tax treaty with the Slovak Republic is already in line with the Action 14 Minimum Standard, which has been confirmed by the performed analysis.

107. For the two treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), the relevant peers did not provide input.

## Conclusion

	Areas for Improvement	Recommendations
[C.1]	Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ).	<p>As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) will not be modified via the Multilateral Instrument, the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these two tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>

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

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

108. 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

109. Statistics regarding all tax treaty related disputes concerning the Slovak Republic are published on the website of the OECD as of 2006.<sup>2</sup> The Slovak Republic publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

110. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. The Slovak Republic provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Slovak Republic and of which its competent authority was aware.<sup>4</sup> 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>5</sup> and should be considered jointly for an understanding of the MAP caseload of the Slovak Republic. With respect to post-2015 cases, the Slovak Republic reported having reached out to some of its MAP partners with a view to have their MAP statistics matching. In that regard, based on the information provided by the Slovak Republic’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

### *Monitoring of MAP statistics*

111. The Slovak Republic reported it monitors 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. This monitoring is performed via summary tables that contain details of the pending cases, the summaries of which are also the basis for any statistical reporting.

### *Analysis of the Slovak Republic's MAP caseload*

#### *Global overview*

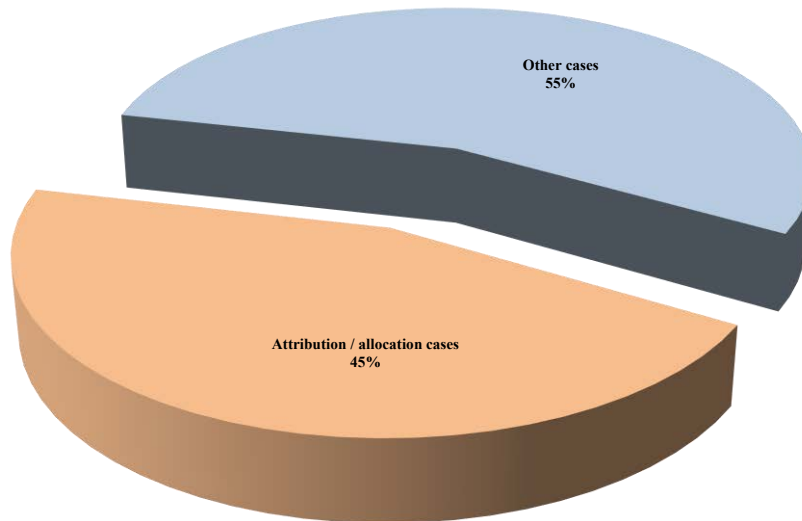
112. The following graph shows the evolution of the Slovak Republic's MAP caseload over the Statistics Reporting Period.

**Figure C.1. Evolution of the Slovak Republic's MAP caseload**



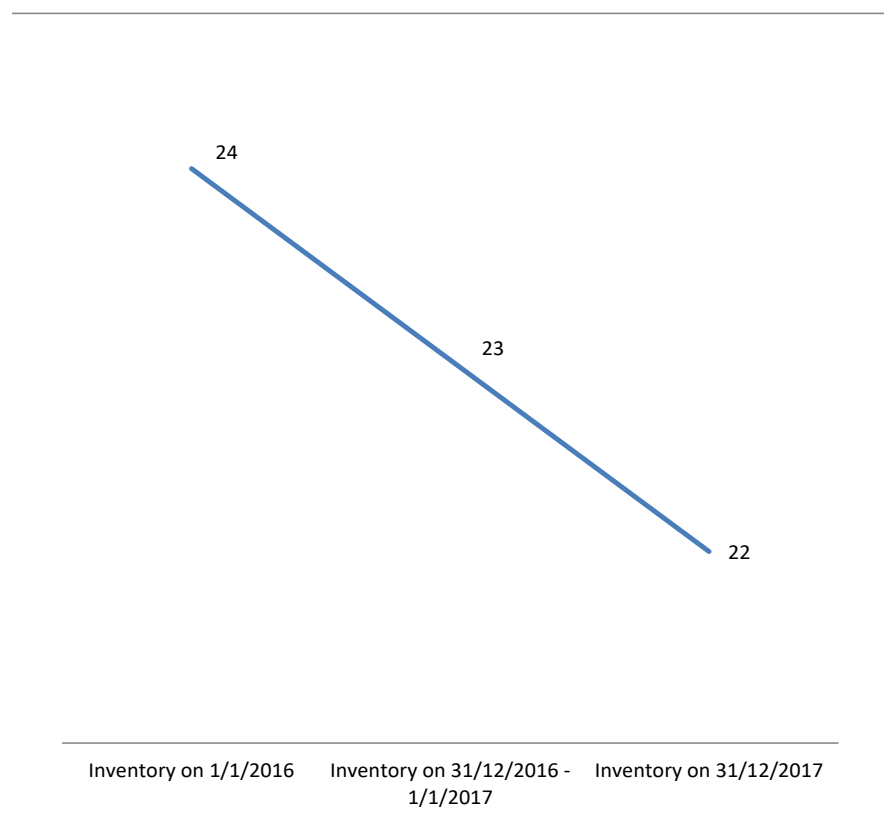
113. At the beginning of the Statistics Reporting Period the Slovak Republic had 24 pending MAP cases, of which nine were attribution/allocation cases and 15 other MAP cases.<sup>6</sup> At the end of the Statistics Reporting Period, the Slovak Republic had 31 MAP cases in its inventory, of which 14 are attribution/allocation cases and 17 are other MAP cases. The Slovak Republic's MAP caseload has increased by 29% during the Statistics Reporting Period. This increase can be broken down into a significant increase by 56% for attribution/allocation cases and an increase by 13% for other cases.

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

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

### *Pre-2016 cases*

115. The following graph shows the evolution of the Slovak Republic's pre-2016 MAP cases over the Statistics Reporting Period.

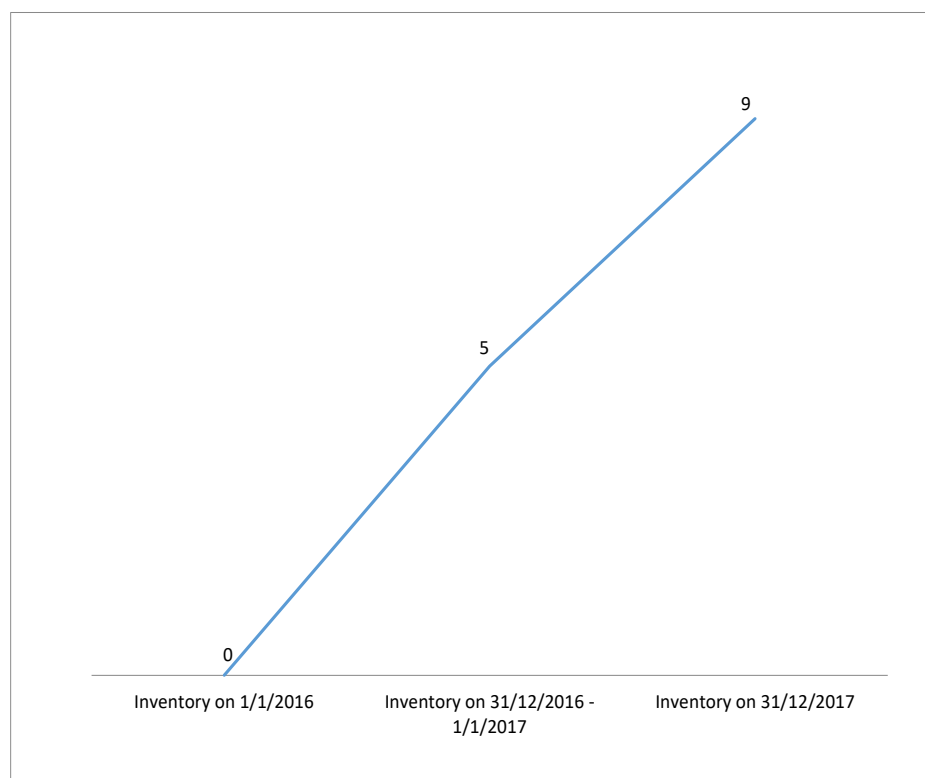
**Figure C.3. Evolution of the Slovak Republic's MAP inventory in 2016/2017 Pre-2016 cases**

116. At the beginning of the Statistics Reporting Period, the Slovak Republic's MAP inventory of pre-2016 MAP cases consisted of 24 cases, of which nine were attribution/allocation cases and 15 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 22 cases, consisting of eight attribution/allocation cases and 14 other cases. The decrease in the number of pre-2016 MAP cases is shown in the below table:

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution / allocation cases	0% (no cases closed)	-11%	-11%
Other cases	-7%	0%	-7%

#### *Post-2015 cases*

117. The following graph shows the evolution of the Slovak Republic's post-2015 MAP cases over the Statistics Reporting Period.

**Figure C.4. Evolution of the Slovak Republic's MAP inventory in 2016/2017 Post-2015 cases**

118. In total, 11 MAP cases started during the Statistics Reporting Period, eight of which concerned attribution/allocation cases and three other cases. At the end of this period the total number of post-2015 cases in the inventory was nine cases, consisting of six attribution/allocation cases and three other cases. Conclusively, the Slovak Republic closed two post-2015 cases during the Statistics Reporting Period, both of them being attribution/allocation cases. The total number of closed cases represent 18% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

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

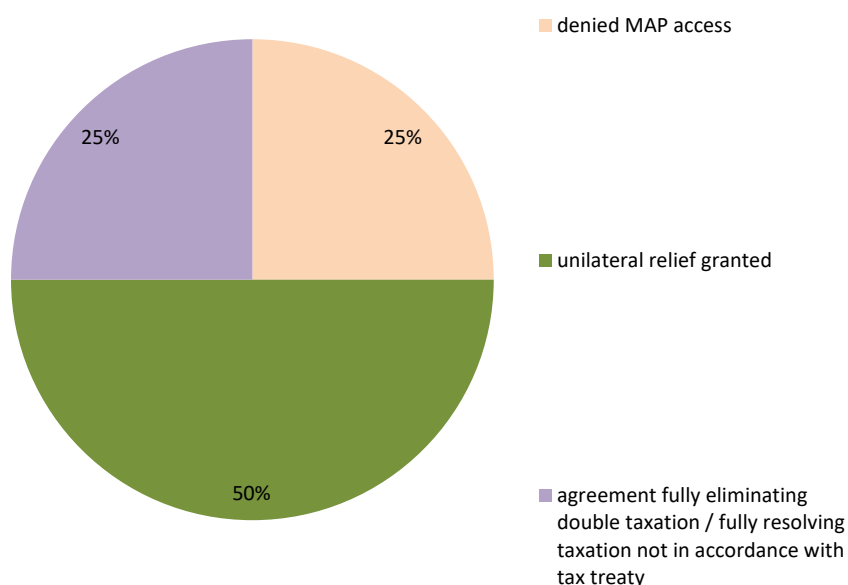
120. It further follows from the statistics that the Slovak Republic did not close any post-2015 other case during the Review Period.

### *Overview of cases closed during the Statistics Reporting Period*

#### *Reported outcomes*

121. During the Statistics Reporting Period the Slovak Republic in total closed four MAP cases for which the following outcomes were reported:

**Figure C.5. Cases closed during the Statistics Reporting Period (4 cases)**



122. This graph shows that during the Statistics Reporting Period, only one out of four cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

#### *Reported outcomes for attribution / allocation cases*

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

- Access denied (33%)
- Unilateral relief granted (33%)
- Agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty (33%)



*Reported outcomes for other cases*

124. In total, one other case was closed during the Statistics Reporting Period with the outcome “unilateral relief granted”.

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

125. The average time needed to close MAP cases during the Statistics Reporting Period was 16.96 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	3	11.69
Other cases	1	32.75
All cases	4	16.96

*Pre-2016 cases*

126. For pre-2016 cases the Slovak Republic reported that on average it needed 32.47 months to close attribution/allocation cases and 32.75 months to close other cases. This resulted in an average time needed of 32.61 months to close two pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, the Slovak Republic reported that it uses the following dates:

- Start date: Receipt of the MAP case
- End date: Date of the closing letter

*Post-2015 cases*

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

128. For post-2015 cases the Slovak Republic reported that the average time needed was 1.30 months to close two post-2015 attribution/allocation cases.

*Peer input*

129. Of the peers that provided input, all peers that had experience in dealing with the Slovak Republic’s competent authority reported that contacts with this competent authority are easy, fluent, professional and efficient. One peer indicated specifically that it did not observe any impediments that led to a delay in finding a MAP resolution. A further peer emphasised the positive working experience regarding recent efforts between the two competent authorities to resolve old cases, which have been in their inventory for a long time.

*Anticipated modifications*

130. The Slovak Republic indicated that it does not anticipate any modifications in relation to element C.2.

## Conclusion

	Areas for Improvement	Recommendations
[C.2]	The Slovak Republic submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by the Slovak Republic's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. The Slovak Republic's MAP statistics show that during the Statistics Reporting Period it closed 18% (two out of 11 cases) of its post-2015 cases in 1.30 months on average. In that regard, the Slovak Republic is recommended to seek to resolve the remaining 82% of the post-2015 cases pending on 31 December 2017 (nine 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.*

131. 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 the Slovak Republic's competent authority*

132. Under the Slovak Republic's tax treaties the competent authority is defined as the Minister of Finance or the Ministry of Finance of the Slovak Republic. Within the Ministry of Finance the competent authority is delegated to the Department of Direct Taxes within the Tax and Customs Sections, which handles both attribution/allocation as well as other MAP cases under the tax treaty and the EU Arbitration Convention. In this respect, the Slovak Republic reported that the Department of Direct Taxes consists of seven people, who deal less than 50% of their time with handling MAP cases besides tasks relating to other international tax matters. Two of these seven employees are thereby dedicated to handling attribution/allocation cases and five employees deal with other MAP cases. The Slovak Republic further specified that due to the size of pending MAP cases, there is no need for a specialisation of employees to only handle MAP cases.

133. The Slovak Republic further reported that staff in charge of MAP in general has several years of experience in the area of international taxation and that the case handlers for attribution/allocation cases are transfer pricing experts. Several members of the MAP team regularly participate in meetings of international fora like OECD's working parties 1 and 6 or the EU Joint Transfer Pricing Forum. In addition, the Slovak Republic reported that the members of the MAP team receive regularly specialised training on tax treaty application and transfer pricing and that sufficient funds are available for traveling, in particular for competent authority meetings.

#### *Monitoring mechanism*

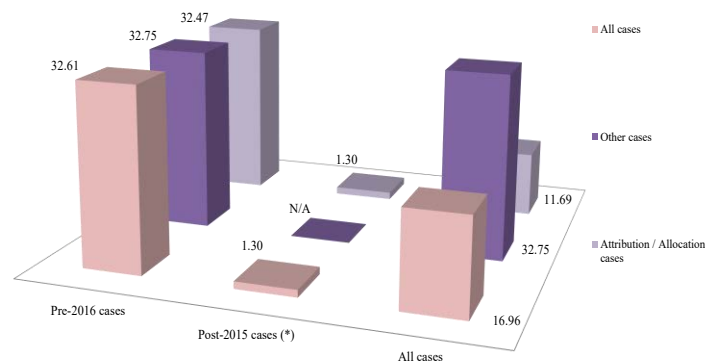
134. The Slovak Republic reported that it does not have a dedicated monitoring process to measure whether the available resources for the MAP function are sufficient to resolve MAP cases, as employees are not exclusively dedicated to MAP. It is generally monitored whether the resources of the Ministry of Finance are sufficient to fulfil all tasks in the international tax area, including resolving MAP cases. In that regard it noted that it considers that the current available resources, given the current level of pending MAP cases, are sufficient for the MAP function, but also that the level of resources may be changed on the basis of an (expected) increase in the number of MAP cases.

## Practical application

### MAP statistics

135. As discussed under element C.2 the Slovak Republic closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. However, the average time taken to close other cases is significantly higher than the average time needed for attribution/allocation cases. This can be illustrated by the following graph:

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



136. Based on these figures, it follows that on average it took the Slovak Republic 16.96 months to close MAP cases during the Statistics Reporting Period, by which the Slovak Republic is considered to be adequately resourced. However, as during this period it took the Slovak Republic 32.75 months to resolve other cases this may indicate that additional resources specifically dedicated to other cases may be necessary to accelerate the resolution of these cases.

### Peer input

137. In total six of the nine peers that provided input, reported having pending MAP cases with the Slovak Republic or had recent experience in resolving MAP cases with its competent authority since 1 January 2016. The number of pending cases for each of these peers was relatively low, which is only one or two pending cases per peer. Only two of these six peers reported having several MAP cases with the Slovak Republic since 1 January 2016. Of the three remaining peers, two stated that they did not have any case with the Slovak Republic's competent authority. The third peer reported that they currently have one MAP case pending, for which a request was only recently received. This peer therefore considered its experience to be too recent to be relevant.

138. All of the seven peers that provided input on their relationship with the Slovak Republic's competent authority reported having good contacts and working experiences.

Two peers reported that contacts are generally easy and fluent via letters and e-mails. A further peer, who resolved an attribution/allocation case in 2017 with the Slovak Republic, reported that the case was resolved via telephone and e-mail correspondence. A third peer noted that during the Review Period the relationship with the Slovak Republic's competent authority has been professional and efficient, causing that cases progressed and also that responses to letters were quickly. One of the peers also pointed out that it had face-to-face meetings in both 2016 and 2017 with the Slovak Republic's competent authority. An additional peer, who has several MAP cases with the Slovak Republic, stressed that it did not encounter any impediments to contact the Slovak Republic's competent authority. This peer also reported having had a fruitful face-to-face meeting in August 2017 at which the pending cases could be progressed. A last peer pointed out having a cordial relationship with the Slovak Republic's competent authority and that it experience is that MAP cases are resolved quickly.

139. Generally, peers reported no impediments in resolving MAP cases with the Slovak Republic's competent authority and also not made any suggestions for improvement in this regard. .

### *Anticipated modifications*

140. The Slovak Republic indicated that it does not anticipate any modifications in relation to element C.3.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.3]	-	<p>The Slovak Republic should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.</p> <p>In addition, for other MAP cases, the Slovak Republic could consider devoting additional resources to accelerate the resolution of these cases.</p>

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

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

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

### *Functioning of staff in charge of MAP*

142. The Slovak Republic reported that when a MAP request is received by its competent authority, the managing officer will decide which person will be the responsible case handler. This person analyses the MAP request, particularly whether: (i)

an entitled taxpayer has filed the MAP request, (ii) the application was timely filed and (iii) the required minimum information, as defined in paragraph 3.2 of the Slovak Republic's MAP Guidance, has been submitted. If necessary, the case handler asks the taxpayer to submit additional information. If the MAP case concerns a tax adjustment made by the Slovak Republic, the case handler will liaise with the Financial Directorate (which in turn liaises with the local tax office) to receive the full background on the reasoning for the adjustment and all relevant underlying documents. The Slovak Republic clarified that the Financial Directorate acts independently from the Ministry of Finance and which supervises the local tax offices and is the appeal body for domestic litigation purposes. It acts as a service provider to the competent authority in verifying or clarifying specific facts for the case under review, and in that role is an intermediary between the competent authority and the local tax offices. This process and the role of the competent authority and the Financial Directorate are further described in paragraphs 3.1.8 – 3.1.10 of the Slovak Republic's MAP Guidance.

143. Further to the above, paragraph 3.1.7 of this MAP Guidance clarifies that the competent authority will inform the taxpayer and the Financial Directorate in writing on whether the MAP request has been accepted or rejected.

144. Concerning the resolution of MAP cases, the Slovak Republic further reported that all the position papers are prepared by the responsible case handler within its competent authority, which subsequently will be approved following the internal hierarchy, ultimately by the Director General of the Taxes and Customs section within the Ministry of Finance. The same applies when it concerns the decision to enter into a MAP agreement. In relation hereto, the Slovak Republic noted that members of the Financial Directorate might be invited to attend competent authority meetings to provide factual clarifications for the case under review, but only if the treaty partner agrees to this.<sup>7</sup> It highlighted that during such meetings the discussions on the case are solely conducted by the staff in charge of MAP and that the Financial Directorate's presence is only for providing clarity on the facts of the case under review. It further clarified that the Financial Directorate is not directly involved in the tax audit process in the Slovak Republic, as tax audits are performed and approved by the local tax offices. In other words, the member(s) of the Financial Directorate, who potentially attend a competent authority meeting, are not tax administration personnel proposing the tax adjustment under review

145. In regard of the above, the Slovak Republic reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

### ***Practical application***

146. Peers generally reported no impediments in the Slovak Republic to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that audit personnel participated in competent authority meetings. This peer, however, had no concerns with this practice and is not being aware that staff in charge of MAP in the Slovak Republic is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review

### *Anticipated modifications*

147. The Slovak Republic indicated that it does not anticipate any modifications in relation to element C.4.

### *Conclusion*

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

148. 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 the Slovak Republic*

149. The Slovak Republic reported that all staff in charge of MAP is subject to an annual assessment of their performance, which will *inter alia* take into account the work on handling MAP cases. Given the fact that the employees within the Slovak Republic's competent authority only partly work on MAP cases, there are no specific MAP related targets set for them, although performance indicators are used (see below). The annual performance review will, among the other tasks of the employee, consider the consistency and the number of MAP cases handled by him as well as the time taken to resolve these cases. Furthermore, as noted in section 1.2 of its MAP Guidance, staff in charge of MAP in the Slovak Republic has to apply the tax treaty in good faith and also has to adhere to the equality and transparency principles when resolving a MAP case.

150. The final report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented for the Slovak Republic in the form of a checklist:

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

control of a competent authority may have a significant impact on the time needed to resolve a case).

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

### *Practical application*

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

### *Anticipated modifications*

153. The Slovak Republic indicated that it does not anticipate any modifications in relation to element C.5.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, the Slovak Republic 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.*

154. 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*

155. The Slovak Republic reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. While the Slovak Republic is a signatory to the EU Arbitration Convention, its tax treaty policy according to its published MAP profile is generally not to include a mandatory and binding arbitration provision in its bilateral tax treaties. The Slovak Republic's MAP Guidance makes reference to arbitration as final stage of MAP according to the EU Arbitration Convention or tax treaties containing an arbitration clause in paragraphs 2.3.2 and 3.1.15.

### *Practical application*

156. Up to date, the Slovak Republic has incorporated an arbitration clause in one of its 70 tax treaties as a final stage to the MAP. This clause is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), save for the fact that instead of a two-year period for MAP a three-year period applies and that competent authorities have

the opportunity to take a deviating decision after the arbitration panel rendered its decision.

### *Anticipated modifications*

157. The Slovak Republic indicated that it does not anticipate any modifications in relation to element C.6.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.6]	-	-

## Notes

<sup>1</sup> These 68 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

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

<sup>3</sup> Available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_ac\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_ac_statistics_en.pdf). These statistics are up to and include fiscal year 2016.

<sup>4</sup> The Slovak Republic's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published. MAP statistics for 2016. See further explanations in Annex B and Annex C.

<sup>5</sup> For post-2015 cases, if the number of MAP cases in the Slovak Republic's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, the Slovak Republic reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).

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

<sup>7</sup> The possibility of attendance of the Financial Directorate during competent authority meetings is also described in paragraph 3.1.12 of the Slovak Republic's MAP Guidance.

## References

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



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



## Part D: Implementation of MAP agreements

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

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

158. 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*

159. The Slovak Republic reported that where the underlying tax treaty does contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), it will implement all MAP agreements notwithstanding its domestic time limits. Where such equivalent, however, is not contained, the implementation of MAP agreements, resulting in an upward adjustment to be made in the Slovak Republic is limited by its domestic statute of limitation. In this respect, according to Article 69(5) of the Slovak Republic's Tax Procedure Code, the domestic statute of limitation is ten years as of the end of the year in which the tax return is due, which is the year following the fiscal year concerned. For MAP agreements resulting in a downward adjustment, the Slovak Republic reported that this domestic statute of limitation is waived as the Slovak Republic applies Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) for downward adjustments even when such equivalent is not contained in the underlying tax treaty.

160. Concerning the process of implementing MAP agreements, the Slovak Republic reported that when competent authorities reach a MAP agreement, the taxpayer as well as the Financial Directorate will be notified thereof without any undue delay. The taxpayer will not be asked for its consent to implement the MAP agreement, as he – like the competent authority and the Financial Directorate – is bound by the agreement. The Slovak Republic further reported that it operates a self-assessment system.

161. Where a MAP agreement leads to an upward adjustment, the taxpayer is obliged to file an amended tax return. The due date is, according to the Slovak Republic's Tax Procedure Code, the end of the month following the notification of the MAP agreement. If such a return is not filed, the tax administration would follow-up with requests to the taxpayer to file such an amended return in accordance with the general rules for such filing. For MAP agreements leading to downward adjustments, the taxpayer, however, has the right to file an amended tax return. In this situation there is no timeline for such an amended tax return, but in the absence of an amended tax return a MAP agreement will not be implemented.

162. The Slovak Republic further reported that its Financial Directorate, once the amended tax returns have been filed, will take measures (typically issue amended tax assessment notices or, if applicable, refund taxes) to implement the MAP agreement

without any undue delay. It, however, has not in place a mechanism to monitor the actual implementation of MAP agreements.

163. The Slovak Republic's MAP Guidance describes in paragraph 3.1.14 the process for implementing MAP agreements and the relationship between its domestic statute of limitation and MAP agreements resulting in downward adjustments. However, this MAP Guidance does not further address the implementation process of MAP agreements resulting in upward adjustments.

### *Practical application*

164. The Slovak Republic reported that since 1 January 2016 it has reached one MAP agreement. This agreement, however, did not require an implementation by the Slovak Republic.

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

### *Anticipated modifications*

166. The Slovak Republic indicated that it does not anticipate any modifications in relation to element D.1.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.1]	As there was no MAP agreement reached that required implementation by the Slovak Republic during the Review Period, it was not yet possible to assess whether the Slovak Republic would have implemented all MAP agreements. To ensure that all MAP agreements will be implemented, if the conditions for such implementation are fulfilled, the Slovak Republic could introduce a tracking system.	

## **[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.*

167. 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*

168. As discussed under element D.1., the Slovak Republic's competent authority will notify the taxpayer as well as the Financial Directorate without any undue delay when competent authorities reach a MAP agreement. As the Slovak Republic operates a self-assessment system, there are no specific timelines given for the implementation of MAP agreements via an amended tax return by taxpayers. In that regard, the Slovak Republic's MAP Guidance does not specifically address the timing of the steps for the implementation of MAP agreements, including the requirement for taxpayers to file an

amended tax return for MAP's resulting in an upward adjustment by the end of the following month after the MAP agreement has been reached.

### ***Practical application***

169. The Slovak Republic reported that there were no MAP agreements reached with another competent authority on or after 1 January 2016 that required implementation in the Slovak Republic.

170. All peers that provided input reported not being aware of any impediments to the implementation of MAP agreements in the Slovak Republic on a timely basis.

### ***Anticipated modifications***

171. The Slovak Republic indicated that it does not anticipate any modifications in relation to element D.2.

### ***Conclusion***

	<b>Areas for Improvement</b>	<b>Recommendations</b>
[D.2]	As there was no MAP agreement reached that required implementation by the Slovak Republic during the Review Period, it was not yet possible to assess whether the Slovak Republic would have implemented 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.*

172. 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<sup>[1]</sup>) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

### ***Legal framework and current situation of the Slovak Republic's tax treaties***

173. As discussed under element D.1, the Slovak Republic's domestic legislation includes a statute of limitations of ten years for implementing MAP agreements resulting in upward adjustments, unless overridden by tax treaties or if applicable a MAP agreement is reached under the EU Arbitration Convention.

174. Out of the Slovak Republic's 70 tax treaties, 34 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) that any agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. One tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), but contains a provision in the MAP article setting a time limit for making primary adjustments, which is

considered having both alternative provisions in Article 9(1) and Article 7(2). Furthermore, 25 tax treaties do not contain such equivalent or the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making primary adjustments.<sup>1</sup>

175. For the remaining 11 tax treaties the following analysis can be made:

- One tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), and only contains the alternative provision in Article 9(1) setting a time limit for making primary adjustments, but not the alternative provision in Article 7(2).
- One tax treaty contains a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), but this provision also includes wording that a MAP agreement must be implemented “within a period of ten years from the end of the fiscal year concerned”. As this treaty provision puts a time limit on implementing MAP agreements, this tax treaty therefore is being considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).
- In nine tax treaties a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) is contained, but the implementation of MAP agreements is made subject to time limits as included in the domestic laws of the contracting states. As these treaty provisions put a time limit on the implementation of MAP agreements, these treaties are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>).

### *Anticipated modifications*

#### *Multilateral Instrument*

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

177. In regard of the 36 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention

(OECD, 2015<sup>[1]</sup>) or both alternative provisions for Articles 9(1) and 7(2), the Slovak Republic listed 32 treaties as covered tax agreements under the Multilateral Instrument, but only for 28 treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 28 treaty partners, five are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with the Slovak Republic as a covered tax agreement. All remaining 21 treaty partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, 21 of the 36 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).<sup>2</sup>

### *Bilateral modifications*

178. The Slovak Republic reported that for the 15 tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), or both alternative provisions in Articles 9(1) and 7(2), and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this regard, the Slovak Republic reported that five of these tax treaties are included in its general schedule of future tax treaty negotiations, but that it does not have in place a specific plan for such negotiations specifically with regard to the Action 14 Minimum Standard. In addition, the Slovak Republic reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in all of its future tax treaties.

### *Peer input*

179. One of the nine peers that provided input indicated that its tax treaty with the Slovak Republic is already in line with the Action 14 Minimum Standard, which has been confirmed by the performed analysis. For the 36 tax treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), or both alternatives in Articles 9(1) and 7(2), the peer input of all remaining eight peers that provided input relates to one of the identified 36 treaties. Of these eight peers, six indicated in a general manner that their tax treaty with the Slovak Republic will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. This is accurate only for five of these six tax treaties. The remaining tax treaty (with regard to the six treaties) contains both alternatives in Articles 9(1) and 7(2) and will not be modified via the Multilateral Instrument. The two remaining peers provided specifically input for element D.3. One of them stated that its tax treaty is not in line with element D.3 and that its treaty will be modified via the Multilateral Instrument, which is actually the case with regard to element D.3. The last peer also noted that its tax treaty with the Slovak Republic is not in line element D.3, but that it is working with the Slovak Republic on a draft amending protocol to bring the tax treaty in line with element D.3.

## Conclusion

	Areas for Improvement	Recommendations
[D.3]	<p>36 out of 70 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 36 treaties:</p> <p>35 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) nor any of the alternative provisions.</p> <p>One tax treaty does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) and only the alternative provision provided in Article 9(1).</p>	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in those 21 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining 15 tax treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these 15 tax treaties to include the required provision.</p> <p>Specifically with respect to the treaty with the former Federal Republic of Yugoslavia, the Slovak Republic should, once it enters into negotiations with the jurisdictions to which it applies that treaty, request the inclusion of the required provision or its alternatives.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p>

## Notes

<sup>1</sup> These 24 tax treaties include the treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to (i) Serbia and (ii) Montenegro as well as the tax treaty with former Yugoslavia that the Slovak Republic continues to apply to Bosnia and Herzegovina.

<sup>2</sup> These 21 treaties include the tax treaty with the former Federal Republic of Yugoslavia concerning Serbia and Montenegro that the Slovak Republic continues to apply to both (i) Serbia and (ii) Montenegro. Of both treaty partners, only Serbia is a signatory to the Multilateral Instrument. Therefore, the tax treaty will only be modified with respect to Serbia.

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

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



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



## Summary

Areas for Improvement	Recommendations
<b>Part A: Preventing disputes</b>	
<p>[A.1] Four out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>).</p>	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these three tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>
<p>[A.2] The Slovak Republic is in theory able to provide for roll-back of bilateral APAs.</p> <p>However, it was not possible at this stage to evaluate the effective implementation of this element in practice since the Slovak Republic did not receive any request for roll-back of bilateral APAs during the Review Period.</p>	
<b>Part B: Availability and access to MAP</b>	
<p>[B.1] Nine out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>). Of those nine tax treaties:</p> <ul style="list-style-type: none"> <li>• One tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty;</li> <li>• Four tax treaties do not contain the equivalent to Article 25(1), first sentence;</li> <li>• Four tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul>	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining seven treaties that do not contain the equivalent of either the first sentence, the second sentence or both sentences, the Slovak Republic 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, 2015<sub>[11]</sub>) either:             <ol style="list-style-type: none"> <li>a) As amended in the final report on Action 14 (OECD, 2015<sub>[22]</sub>); or</li> <li>b) As it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; and</li> </ol> </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>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these six tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[22]</sub>) in all future tax treaties.</p>

[B.2]	All of the 70 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sup>[11]</sup> ) as changed by the Action 14 final report (OECD, 2015 <sup>[22]</sup> ), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	The Slovak Republic should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not being justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sup>[11]</sup> ) as amended by the final report on Action 14 (OECD, 2015 <sup>[22]</sup> ).
[B.3]	The Slovak Republic reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. The Slovak Republic is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	The Slovak Republic reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. The Slovak Republic is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.5]	-	-
[B.6]	-	As the Slovak Republic has thus far not limited access to MAP in eligible cases when taxpayers have complied with the Slovak Republic's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	11 out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[11]</sup> ).	<p>The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these five tax treaties to include the required provision.</p> <p>In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP Guidance the Slovak Republic could consider including information on:</p> <ul style="list-style-type: none"> <li>• The relationship of MAP with domestic available remedies</li> <li>• Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP</li> <li>• The possibility of suspension of tax collection during the course of a MAP</li> <li>• The consideration of interest and penalties in the MAP, and</li> <li>• The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul>
[B.9]	The MAP profile requires clarification.	<p>The Slovak Republic should update its MAP profile to clarify that taxpayers have access to MAP in all cases concerning the application of treaty-anti abuse provisions.</p> <p>As it has published its MAP profile and made its MAP guidance available and easily accessible as from February 2018, the Slovak Republic should ensure that its future updates to the MAP guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>
[B.10]	-	-

**Part C: Resolution of MAP cases**

[C.1]	Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ).	As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ) will not be modified via the Multilateral Instrument, the Slovak Republic should request the inclusion of the required provision via bilateral negotiations.
		To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these two tax treaties to include the required provision.
		In addition, the Slovak Republic should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	The Slovak Republic submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by the Slovak Republic's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. The Slovak Republic's MAP statistics show that during the Statistics Reporting Period it closed 18% (two out of 11 cases) of its post-2015 cases in 1.30 months on average. In that regard, the Slovak Republic is recommended to seek to resolve the remaining 82% of the post-2015 cases pending on 31 December 2017 (nine cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	The Slovak Republic should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, for other MAP cases, the Slovak Republic could consider devoting additional resources to accelerate the resolution of these cases.
[C.4]	-	As it has done thus far, the Slovak Republic should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that the Slovak Republic would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, the Slovak Republic should continue to use appropriate performance indicators.
[C.6]	-	-

**Part D: Implementation of MAP agreements**

[D.1]	As there was no MAP agreement reached that required implementation by the Slovak Republic during the Review Period, it was not yet possible to assess whether the Slovak Republic would have implemented all MAP agreements. To ensure that all MAP agreements will be implemented, if the conditions for such implementation are fulfilled, the Slovak Republic could introduce a tracking system.	
[D.2]	As there was no MAP agreement reached that required implementation by the Slovak Republic during the Review Period, it was not yet possible to assess whether the Slovak Republic would have implemented all MAP agreements on a timely basis.	
[D.3]	36 out of 70 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 36 treaties: <ul style="list-style-type: none"> <li>• 35 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) nor any of the alternative provisions.</li> <li>• One tax treaty does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) and only the alternative provision provided in Article 9(1).</li> </ul>	The Slovak Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ) in those 21 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining 15 tax treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sup>[1]</sup> ), the Slovak Republic should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, the Slovak Republic should put a plan in place specifically with regard to the Action 14 Minimum Standard on how it envisages updating these 15 tax treaties to include the required provision. Specifically with respect to the treaty with the former Federal Republic of Yugoslavia, the Slovak Republic should, once it enters into negotiations with the jurisdictions to which it applies that treaty, request the inclusion of the required provision or its alternatives. In addition, the Slovak Republic should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.



## Annex A: Tax treaty network of the Slovak Republic

		Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?

		Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)						
		E = yes, either CAs	Y = yes	Y = yes	Y = yes		Y = yes	Y = yes	Y = yes	Y = yes if yes:			
	Y = yes	O = yes, only one CA	i = no, no such provision ii = no, different period if ii, specify period	i = no, but access will be given to TP cases	i = no and such cases will be accepted for MAP	Y = yes	i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent	N = no	N = no	N = no	i-Art. 25(5) ii- mandatory other		
	N = signed pending ratification	If N, date of signing	iii = no, starting point for computing the 3 year period is different	ii = no and access will not be given to TP cases	ii = no but such cases will not be accepted for MAP	N = no	iii = no, but have both Art 7 & 9 equivalent				iii - voluntary		
			iv = no, others reasons				N = no and no equivalent of Art 7 and 9						
Armenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Australia	Y	N/A	O	ii	4 years	Y	i	Y	Y	N	N**	N	N/A
Austria	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A



Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
Barbados	N	28-Oct-15	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Belgium	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	N**	N	N/A
Bosnia and Herzegovina	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Brazil	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	ii**	2 years	Y	i	Y	iii	Y	Y	N	N/A
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ethiopia	Y	N/A	O	ii	2 years	Y	i	Y	N	Y	Y	N	N/A
Finland	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Former Yugoslav Republic of Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O	i	N/A	i***	i	Y	N**	N**	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Greece	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Hungary	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
India	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Iran	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	N**	N	N/A
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Italy	Y	N/A	N	ii**	2 years	i***	i	Y	N**	N	N**	N	N/A
Japan	Y	N/A	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Libya	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N	N/A
Mongolia	Y	N/A	N	i	N/A	i	i	N	N	N	N	N	N/A
Montenegro	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Netherlands	Y	N/A	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Nigeria	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Norway	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
People's	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11					
Republic of China													
Poland	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N**	N	N/A
Romania	Y	N/A	O	Y	N/A	i	i	Y	N**	Y	Y	N	N/A
Russia	Y	N/A	O	ii**	2 years	i	i	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Singapore	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Sri Lanka	Y	N/A	N	i	N/A	i	i	N	N	Y	Y	N	N/A
Sweden	Y	N/A	O	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	ii	Y	Y	Y	i
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Chinese Taipei	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tunisia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N	N/A
Turkey	Y	N/A	O	iv	domestic law	Y	i	Y	N**	Y	Y	N	N/A
Turkmenistan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Ukraine	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
United Arab Emirates	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	N/A	O	i	N/A	i	i	Y	N**	Y	N**	N	N/A

			Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6				
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
United States	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N	N/A

\* Footnote by Turkey:

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

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

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

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

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

## Annex B. MAP statistics reporting for the 2016 and 2017 reporting periods (1 January 2016 to 31 December 2017) for pre-2016 Cases

### 2016 MAP Statistics

number of pre-2016 cases closed during the reporting period by outcome:													
category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	9	0	0	0	0	0	0	0	0	0	0	9	0.00
Others	15	0	0	0	1	0	0	0	0	0	0	14	32.75
Total	24	0	0	0	1	0	0	0	0	0	0	23	32.75
<u>Notes:</u>													

The starting inventory of other cases has been increased by one case as this case was previously omitted.

## 2017 MAP Statistics

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

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2017	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	9	0	0	0	0	0	1	0	0	0	0	8	32.47
Others	14	0	0	0	0	0	0	0	0	0	0	14	0.00
Total	23	0	0	0	0	0	1	0	0	0	0	22	32.47
													<u>Notes:</u>

## Annex C: MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

### 2016 MAP Statistics

#### number of post-2015 cases closed during the reporting period by outcome:

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	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of post-2015 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing post-2015 cases during the reporting period
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	4	1	0	0	0	0	0	0	0	0	0	3	0.00
Others	0	2	0	0	0	0	0	0	0	0	0	0	2	0.00
Total	0	6	1	0	0	0	0	0	0	0	0	0	5	0.00

Notes:

## 2017 MAP Statistics

## number of post-2015 cases closed during the reporting period by outcome:

category of cases	no. of post-2015 cases in MAP inventory on 1 January 2017	no. of post-2015 cases started during the reporting period	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of post-2015 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing post-2015 cases during the reporting period
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	3	4	0	0	0	1	0	0	0	0	0	0	6	2.60
Others	2	1	0	0	0	0	0	0	0	0	0	0	3	0.00
Total	5	5	0	0	0	1	0	0	0	0	0	0	9	2.60
														<u>Notes:</u>



## Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14 (OECD, 2015b): Making Dispute Resolution Mechanisms More Effective
APA Guidance	Internal Regulatory Guideline No. 35/2016 – Methodological Instruction on the application of the provisions of Section 17(7) and Section 18(4) and (5) of Act. No. 595/2003 Coll. on income taxes as amended
MAP Guidance	Methodological Instruction No. MF/020525/2017-724 of 23 June 2016 of the Ministry of Finance of the Slovak Republic on the processes within the mutual agreement procedure
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 30 April 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective - MAP Peer Review Report, Slovak Republic (Stage 1)

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

Consult this publication on line at <https://doi.org/10.1787/9789264309890-en>.

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