

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Belgium (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





OECD/G20 Base Erosion and Profit Shifting Project

# **Making Dispute Resolution More Effective – MAP Peer Review Report, Belgium (Stage 2)**

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

**Please cite this publication as:**

OECD (2019), *Making Dispute Resolution More Effective – MAP Peer Review Report, Belgium (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://doi.org/10.1787/734c25f4-en>.

ISBN 978-92-64-89589-8 (print)

ISBN 978-92-64-87698-9 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

**Photo credits:** © ninog-Fotolia.com.

Corrigenda to OECD publications may be found on line at: [www.oecd.org/about/publishing/corrigenda.htm](http://www.oecd.org/about/publishing/corrigenda.htm).

© OECD 2019

---

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgement of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to [rights@oecd.org](mailto:rights@oecd.org). Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at [info@copyright.com](mailto:info@copyright.com) or the Centre français d'exploitation du droit de copie (CFC) at [contact@cfcopies.com](mailto:contact@cfcopies.com).

---

## *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 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

has more than 125 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 8 May 2019 and prepared for publication by the OECD Secretariat.

## *Table of contents*

<b>Abbreviations and acronyms</b> .....	7
<b>Executive summary</b> .....	9
Reference .....	11
<b>Introduction</b> .....	13
References .....	19
<b>Part A. Preventing disputes</b> .....	21
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties .....	21
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	24
References .....	26
<b>Part B. Availability and access to MAP</b> .....	27
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties .....	27
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process .....	34
[B.3] Provide access to MAP in transfer pricing cases .....	36
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions .....	40
[B.5] Provide access to MAP in cases of audit settlements .....	42
[B.6] Provide access to MAP if required information is submitted .....	43
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties ..	44
[B.8] Publish clear and comprehensive MAP guidance .....	47
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	50
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	51
References .....	54
<b>Part C. Resolution of MAP cases</b> .....	55
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties .....	55
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	57
[C.3] Provide adequate resources to the MAP function .....	64
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	68
[C.5] Use appropriate performance indicators for the MAP function .....	69
[C.6] Provide transparency with respect to the position on MAP arbitration .....	70
References .....	72

<b>Part D. Implementation of MAP agreements</b> .....	73
[D.1] Implement all MAP agreements .....	73
[D.2] Implement all MAP agreements on a timely basis .....	74
[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) .....	76
References .....	79
<b>Summary</b> .....	81
<b>Annex A. Tax treaty network of Belgium</b> .....	85
<b>Annex B. MAP Statistics pre-2016 cases</b> .....	92
<b>Annex C. MAP Statistics post-2015 cases</b> .....	94
<b>Glossary</b> .....	95
<b>Figures</b>	
Figure C.1 Evolution of Belgium’s MAP caseload .....	59
Figure C.2 End inventory on 31 December 2017 (738 cases) .....	59
Figure C.3 Evolution of Belgium’s MAP inventory Pre-2016 cases .....	60
Figure C.4 Evolution of Belgium’s MAP inventory Post-2015 cases .....	60
Figure C.5 Cases closed during the Statistics Reporting Period (37 cases) .....	61
Figure C.6 Average time (in months) .....	65



## *Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>EU</b>	European Union
<b>FTA</b>	Forum on Tax Administration
<b>MAP</b>	Mutual Agreement Procedure
<b>MLI</b>	Multilateral Instrument
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SPF</b>	Service Public Fédéral (Federal Public Service of Finance of Belgium)



## Executive summary

Belgium has an extensive tax treaty network with over 95 tax treaties and has signed and ratified the EU Arbitration Convention. Belgium has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a very large MAP inventory with a very large number of new cases submitted each year and more than 700 cases pending on 31 December 2017. Of these cases, almost 90% concern other cases than attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Belgium met almost all of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, Belgium worked to address most of them, which has been monitored in stage 2 of the process. In this respect, Belgium has solved almost all identified deficiencies.

All of Belgium's tax treaties contain a provision relating to MAP. These treaties generally follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2017* (OECD, 2017). Its treaty network is partly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- All but one tax treaty lack Article 25(3), second sentence, under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.
- More than 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.
- Almost 20% of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015), whereby nearly all of these treaties do not contain the equivalent of Article 25(1), second sentence, as the time limit for the submission of MAP requests is shorter than three years.

In order to be fully compliant with the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Belgium signed, without any reservation on the MAP article, 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. Furthermore, Belgium opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Belgium reported that it already initiated bilateral negotiations with more than 15 jurisdictions and that it intends to update all of its remaining tax treaties via bilateral negotiations to be compliant with the requirements of the Action 14 Minimum Standard. In this respect, it will prioritise treaty partners with which important economic relations exist (primarily EU Member States), or treaty partners where Belgium has an interest in improving the mutual agreement procedure.

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

Belgium meets most of the requirements regarding the availability and access to MAP under the Action 14. Belgium provides access to MAP in all eligible cases. Furthermore, Belgium has in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. In its stage 1 peer review it was identified that Belgium's comprehensive MAP guidance was not available. In March 2018, Belgium has published clear and comprehensive MAP guidance on the availability of MAP and how it applies this procedure in practice. However, its guidance is not easily accessible.

Concerning the average time needed to close MAP cases, the MAP statistics for the period 2016-17 are as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to resolve cases (in months)*
Attribution/allocation cases	85	60	62	83	32.78
Other cases	700	868	913	655	14.77
<b>Total</b>	<b>785</b>	<b>928</b>	<b>975</b>	<b>738</b>	<b>15.92</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, Belgium used as the start date the date of filing of the MAP request and as the end date, the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when Belgium's competent authority formally closed the case.

The number of cases Belgium closed in 2016 or 2017 is higher than the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of less than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 15.91 months. Although the time taken to close attribution/allocation cases slightly decreased over time, it is still significantly longer (33 months) than the average time to close other cases (15 months). In this respect, Belgium reported that it has hired more resources and has scheduled more face to face meetings with its treaty partners in order to discuss the pending attribution/allocation cases and also that it uses more frequently electronic channels of communication.

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

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

## *Reference*

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



## *Introduction*

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

Belgium has entered into 97 tax treaties on income (and/or capital), 87 of which are in force.<sup>1</sup> These 97 treaties apply to 101 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 11 of the 97 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

Belgium is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.<sup>4</sup> Furthermore, Belgium adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which needs to be implemented in its domestic legislation as per 1 July 2019.<sup>5</sup>

In Belgium, the competent authority function to handle MAP cases is performed by the International Relation Service, which is part of the Support and Operating Expertise division within the General Tax Administration of the Federal Public Service of Finance (“SPF”) of the Ministry of Finance. Belgium’s competent authority consists of 11 persons, two of them dealing with allocation/attribution cases.

Belgium issued guidance in March 2018 on the governance and administration of the mutual agreement procedure in Circular 2018/C/27 (“**MAP guidance**”), which is available at:

[https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet\\_public/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/78e7a318-5f00-4a08-ade2-cd4a9fbbe92e)

Furthermore, Frequently Asked Questions (“FAQs”) about the MAP and APAs also contain information on the MAP process in Belgium. These FAQs are available at:

<http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>

### **Developments in Belgium since 1 January 2017**

#### ***Developments relating to the tax treaty network***

In the stage 1 peer review report of Belgium it is stated that 13 of its 96 tax treaties have not yet entered into force. Since then the newly signed treaties with the Republic of Northern Macedonia, Norway, the Seychelles and Uruguay have entered into force. The treaties with the Republic of Northern Macedonia, the Seychelles and Uruguay concern newly signed treaties, while the treaty with Norway concerns the replacement

of the 1988 treaty. With respect to the other nine treaties, Belgium reported that it initiated ratification procedures for the treaties with Japan, Moldova, Russia and Uganda. Concerning the treaties with Oman and Tajikistan, Belgium reported that the approval of these treaties is subject to the conclusion of an amending protocol to include a provision on the exchange of information. In 2014 Belgium also signed an amending protocol to the treaty with Poland, which has entered into force in 2018. Further to the above, Belgium signed a new treaty with Botswana in 2017, which has not yet entered into force and for which currently no treaty is in existence. Taking these developments into consideration, the number of tax treaties of Belgium is 97 treaties instead of 96 treaties that was taken as the basis in the stage 1 peer review report.

Furthermore, on 7 June 2017 Belgium signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. In relation to the Action 14 Minimum Standard, Belgium reported it has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).<sup>6</sup> Belgium further reported that the ratification process for this instrument has been initiated, for which completion is foreseen during the first half of 2019.

In addition, Belgium reported that for those treaties that were in its stage 1 peer review report identified as not being in line with one or more elements of the Action 14 Minimum Standard, it has put a plan in place to bring these treaties in line with the requirements under that standard. In this respect, since 1 January 2017 Belgium reported having contacted 12 treaty partners that are not a signatory to the Multilateral Instrument, which concern Albania, Algeria, Botswana, Bosnia and Herzegovina, Bahrain, Congo, Kazakhstan, Oman, Sri Lanka, Thailand, the United Arab Emirates and Viet Nam. To this end, Belgium sent to these treaty partners a draft amending protocol that contains Article 25(1)-(3) of the OECD Model Tax Convention (OECD, 2017). Belgium reported that it was contacted by Brazil for the renegotiation of the treaty currently in force, whereby Brazil sent an amending protocol that *inter alia* relates to the mutual agreement procedure. In addition, Belgium also reported that it is currently conducting treaty negotiations with Norway and Switzerland on an amending protocol to the existing treaties, and with the Netherlands on the replacement of the existing treaty. It recently finalised negotiations with Germany on a new treaty that replaces the treaty currently in force. For the remaining treaty partners, which are not a signatory to the Multilateral Instrument, Belgium reported that it, in accordance with its plan, will contact them with a view to make these treaties compliant with that standard. It will thereby in first instance focus on those treaty partners with which important economic relations exist (primarily EU Member States), or treaty partners where Belgium has an interest in improving the mutual agreement procedure. It will also initiate treaty negotiations with Kosovo and Montenegro, for which currently the treaty with former Yugoslavia is continued to be applied, and with Chinese Taipei.

### ***Other developments***

On 7 March 2018 Belgium issued MAP guidance in Circular 2018/C/27 regarding the rules on dispute resolution in respect of the application of international tax treaties. This document clarifies 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. This document further reflects that MAP is available in cases of: (i) transfer



pricing disputes, (ii) the application of anti-abuse provisions, (iii) audit settlements, and (iv) multilateral disputes. The conditions for suspension of tax collection during the course of a MAP, the consideration of interest and penalties in the MAP and the steps of the process for the implementation of MAP agreements, including the actions to be taken by taxpayers are also addressed in this document.

Further to the above, Belgium reported that in 2017 it circulated an internal procedure for staff in charge of MAP that contains guidance on the administrative steps to be followed in cases where its competent authority considers an objection as not justified.

## **Basis for the peer review process**

### ***Outline of the peer review process***

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Belgium's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 5 September 2017. This report identifies the strengths and shortcomings of Belgium in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.<sup>7</sup> Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Belgium. In this update report, Belgium reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. This update report forms the basis for the completion of the peer review process in respect of Belgium.

### ***Outline of the treaty analysis***

For the purpose of this report and the statistics provided below, in assessing whether Belgium is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if they concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former USSR and with the former Yugoslavia because for those jurisdictions this treaty is continued to be applied by Belgium (see above). As it concerns tax treaties that are applicable to multiple jurisdictions, both of them are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Belgium's tax treaties regarding the mutual agreement procedure.

### ***Timing of the process and input received by peers and taxpayers***

Stage 1 of the peer review process for Belgium was launched on 5 December 2016, with the sending of the questionnaires to Belgium and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Belgium in May 2017, with the subsequent approval by the BEPS Inclusive Framework on 5 September 2017. On 5 September 2018, Belgium submitted its update report, which initiated stage 2 of the process.

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Belgium opted to provide information on the period starting as from 1 January 2014 and also requested peer input relating to that period. The period for evaluating Belgium's implementation of this standard ranges from 1 January 2016 up to 31 December 2016 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2017 and depicts all developments as from that date until 31 August 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, Belgium also asked for peer input on best practices.<sup>8</sup>

In total 19 peers provided input during stage 1: Australia, Austria, Bulgaria, Canada, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland and the United States.

In stage 1 these peers represent 95% of the post-2015 MAP cases that started in 2016 with Belgium. During stage 2, apart from Greece and Luxembourg, the same peers provided input on the update report of Belgium. Furthermore, also Slovenia and the United Kingdom provided input during stage 2. For stage 2, these peers represent approximately 51% of the post-2015 MAP cases that started with Belgium in 2016 or 2017.<sup>9</sup>

Input was also received from taxpayers during stage 1. Broadly all peers indicated having good working relationships with Belgium in regard of MAP, some of them emphasising the ease of contact with Belgium's competent authority. Specifically with respect to stage 2 the peers confirmed having had the same experience and noted the efforts made by Belgium's competent authority in order to accelerate the resolution of MAP cases.

### ***Input by Belgium and cooperation throughout the process***

During stage 1, Belgium provided extensive answers in its questionnaire which was submitted on time. Belgium also responded timely and comprehensively to requests for additional information and provided further clarity where necessary. In addition, Belgium provided the following information:

- MAP profile;<sup>10</sup>
- MAP statistics<sup>11</sup> according to the MAP Statistics Reporting Framework<sup>12</sup> (see below).

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

Finally, Belgium is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Belgium provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Belgium also provided peer input on best practices<sup>13</sup> for a number of jurisdictions that asked for it.

## Overview of MAP caseload in Belgium

The analysis of Belgium’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Belgium. The analysis of Belgium’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 (the “**Statistics Reporting Period**”).

According to the statistics provided by Belgium, its MAP caseload during this period was as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	85	60	62	83
Other cases	700	868	913	655
<b>Total</b>	<b>785</b>	<b>928</b>	<b>975</b>	<b>738</b>

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective<sup>14</sup> (“**Terms of Reference**”), both during stage 1 and stage 2. Apart from analysing Belgium’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Belgium. Furthermore, the report depicts the changes adopted and plans shared by Belgium to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Belgium relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, which include a general description of the changes in the recent development sections.

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

## Notes

1. The tax treaties Belgium has entered into are available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=3232bda5-33df-4fdd-b3b2-c7ada30b7da1&disableHighlighting=true&documentLanguage=en#findHighlighted>. The tax treaties that are signed but not have yet entered into force are with Botswana (2017), the Isle of Man (2009), Japan (2016), Macau (China) – (2006), Moldova (2008), Oman (2008), Qatar (2007), Russia (2015), Tajikistan (2009) and Uganda (2007). The treaties with Botswana, Isle of Man, Macau (China), Oman, Qatar and Uganda concern newly signed treaties, whereas the signed treaties with Japan and Russia will replace the existing treaties once they enter into force. Furthermore, with respect to Moldova and Tajikistan, Belgium currently continues to apply the treaty with the former USSR to these jurisdictions, which will no longer have relevance once the new signed treaties with both states have entered into force. Annex A includes an overview of Belgium's tax treaties with respect to the mutual agreement procedure. For the purpose of this annex, the newly negotiated treaties that replace an existing treaties, as well as the amending protocols to existing treaties, are taken into account.
2. Belgium continues to apply the 1987 treaty with the former USSR to Kyrgyzstan and Turkmenistan, and the 1980 treaty with former Yugoslavia to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
3. This concerns treaties with Botswana, the Isle of Man, Japan, Malaysia, Moldova, Poland, Switzerland, Tajikistan, the United Kingdom, the United States and Uruguay.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
6. Available at: [www.oecd.org/tax/treaties/beps-mli-position-belgium.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-belgium.pdf).
7. Available at: [www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-belgium-stage-1-9789264282599-en.htm](http://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-belgium-stage-1-9789264282599-en.htm).
8. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.
9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
10. Available at: <https://search.oecd.org/tax/dispute/Belgium-Dispute-Resolution-Profile.pdf>.
11. The 2016 and 2017 MAP statistics of Belgium are included in Annex B and C of this report.
12. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD, 2016): [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
13. This report is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

14. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective in *Peer Review Documents* (OECD, 2016): [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed on 22 August 2017).

## *References*

- OECD (2017), *Model Tax Convention on Income and Capital 2017 (Full version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.



## *Part A*

### Preventing disputes

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

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

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

2. Out of Belgium’s 97 tax treaties, 80 contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.<sup>1</sup> The remaining 17 treaties are considered not to contain such a provision, as the term “interpretation” is missing in these treaties.<sup>2</sup>

3. Belgium indicated that even though the “interpretation” word is missing in the treaty provision, this does not obstruct its competent authority from entering into interpretative MAP agreements. In other words, where a tax treaty does not contain the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are no obstructions in Belgium’s domestic legislation and/or administrative practice to enter into agreements on the interpretation and application of tax treaties.

4. Several peers reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

## ***Recent developments***

### *Bilateral modifications*

5. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, and which has been reflected in the analysis above.

### *Multilateral Instrument*

6. Belgium signed the Multilateral Instrument and it reported it has initiated the ratification process, for which completion is foreseen during the first half of 2019.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – 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. 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.

8. In regard of the 17 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Belgium listed 13 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(i). All relevant 13 treaty partners are signatories to the Multilateral Instrument, listed their treaty with Belgium as a covered tax agreement, and also made a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 13 of the 17 treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.<sup>3</sup>

### *Other developments*

9. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Belgium has put in place a plan for bringing these treaties in line with that standard. Concerning the four treaties that are not in line with element A.1 and will not be modified by the Multilateral Instrument, the following actions were taken:

- One treaty partner has approached Belgium with a proposal for an amending protocol to *inter alia* bring the treaty in line with the requirement under element A.1. This proposal is currently under consideration
- Belgium approached one treaty partner with the request to negotiate an amending protocol to *inter alia* bring the treaty in line with the requirement under element A.1. The treaty partner has not yet responded to this request



- Belgium and one treaty partner recently negotiated a new treaty, which will replace the existing treaty currently in force, following which the MAP provision will be in line with element A.1.

### *Peer input*

10. Almost all peers with which the treaty with Belgium is not in line with the requirements under element A.1 and will not be modified by the Multilateral Instrument did not provide input. One of the relevant peers, however, confirmed that its treaty with Belgium will be replaced by a new treaty following which the MAP provision will be in line with the Action 14 Minimum Standard.

### *Anticipated modifications*

11. For the remaining treaty that is not in line with element A.1 and will not be modified by the Multilateral Instrument, and for which no bilateral negotiations are envisaged, scheduled or pending, Belgium indicated that it will approach the relevant treaty partner to bring the treaty in line with the requirement under this element. This treaty partner, however, is not prioritised in the plan for renegotiations prepared by Belgium. Furthermore, Belgium reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[A.1]	<p>17 out of 97 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). Of these 17 treaties:</p> <ul style="list-style-type: none"> <li>• 13 are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• Four will not be modified by that instrument to contain the required provision. With respect to these four treaties: <ul style="list-style-type: none"> <li>- Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending to include the required provision</li> <li>- One has recently been renegotiated and the new tax treaty will contain the required provision</li> <li>- For the remaining treaty no actions have been taken, but it is included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those 13 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 four 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), Belgium should:</p> <p>As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</p> <p>Continue discussions or negotiations with two treaty partners to include the required provision, taking into account it is awaiting a response from one treaty partner in relation hereto</p> <p>Also request the inclusion of the required provision in the remaining treaty in accordance with its plan for renegotiations.</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.

12. 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>4</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.

### *Belgium’s APA programme*

13. Belgium is authorised to enter into unilateral, bilateral and multilateral APA’s. Apart from a summary of Chapters I to V of the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations 2017 that can be found in Belgium’s transfer pricing circular,<sup>5</sup> there is no published guidance on the bilateral APA programme. However the APA programme is addressed in the FAQs published by Belgium’s competent authority.<sup>6</sup> In these FAQs, the process to enter into an APA is explained. In particular, the information to be included in the request is mentioned as well as the department to which the APA request should be sent (such department being Belgium’s competent authority).

14. Belgium applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement, provided the request is submitted before the end of the first taxation year that is to be covered by the APA.

### *Roll-back of bilateral APAs*

15. Roll-backs of bilateral APAs have been available to taxpayers in Belgium since June 2016, which was not the case previously, even when it implied an upward adjustment of the taxpayer’s tax. As explained in the published FAQs, three conditions have to be met for the roll-back of bilateral APAs to be granted: (i) the facts and circumstances for the previous years to be covered by the roll-back are the same, (ii) the years to be modified by the roll-back are not barred by statute at the time when the APA is concluded by the relevant competent authorities and (iii) the other competent authority involved agrees to grant such a roll-back. Therefore, the roll-back cannot be granted if the tax assessment term for the concerned years expires before the competent authorities reach an agreement.

### *Recent developments*

16. Belgium reported that it introduced a tracking system to keep a record of the number of bilateral APAs where a roll-back is or is not granted.

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

#### *Period 1 January 2014-31 December 2016 (stage 1)*

17. Belgium reported that between June 2016 and December 2016, only one roll-back request was submitted to its competent authority. Belgium further reported that this request was accepted in principle, subject to the fact that the conditions summarised previously are met in practice. In particular, at the closing of the APA, it will be examined whether the years to be covered by the roll-back are not yet barred.

18. Two peers asserted that Belgium does not allow roll-back of APAs but one mentioned that Belgium's competent authority would be ready to solve previous years under MAP. This impression may be explained by the relatively recent change in Belgium's practice. Moreover, one peer indicated that it received a bilateral APA request including a roll-back, that was dealt with by Belgium's competent authority and that no difficulty has been encountered in this framework.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

19. Belgium reported that it notified all its treaty partners of the availability of the roll-back of bilateral APAs via a letter sent on 12 September 2017.

20. Belgium reported that between 1 January 2017 and 31 August 2018, it received three requests for roll-back of APAs and that two of them related to bilateral APAs while the third related to a multilateral APA. Belgium further reported that these requests are still under examination.

21. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1.

22. One peer reported having been notified by Belgium of the availability of roll-back of bilateral APAs. This peer expressed concerns about the time limits clarified by Belgium whereby a roll-back can only be granted for the years that are not yet statute barred when an agreement is reached. Belgium clarified that its statute of limitation only applies to the APA cases and does not affect the implementation of MAP agreements, as it will be further discussed under element D.1.

23. One peer to the multilateral APA confirmed that the request included a roll-back request for 2017 that was accepted and that the relevant APA is currently being discussed.

24. One peer reported that it did not receive any applications for a bilateral APA with Belgium since 1 January 2017. The remaining peers did not provide any comments on the recent developments in Belgium with respect to the roll-back of bilateral APAs. One of them specified that it does not have an APA programme in place in its jurisdiction. Another one specified that its APA programme does not allow for roll-back of bilateral APAs.

### ***Anticipated modifications***

25. Belgium reported that it intends to publish a new circular on APAs, which would address the possibility of requesting for roll-back of such APAs. Belgium reported that its competent authority is involved in the preparation of such circular.

### Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

### Notes

1. These 80 treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
2. These 17 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
3. These 13 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, but only as regards Serbia, because Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.
4. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines, OECD (2017).
5. Available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=0db834a2-c5a5-4172-bbab-a2e5a74f4d60&disableHighlighting=true&documentLanguage=fr#findHighlighted> (accessed on 22 August 2017).
6. Available at: <http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf> (accessed on 22 August 2017).

### References

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

## *Part B*

### **Availability and access to MAP**

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

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

26. 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 Belgium's tax treaties***

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

27. Out of Belgium's 97 tax treaties, three contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017a) as changed by the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report (OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of either contracting state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 75 treaties contain a provision equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention (OECD, 2015b) as it read prior to the adoption of that report.

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

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	10*
A variation of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident and which requires double taxation, or double taxation not in accordance with the provisions of the treaty, instead of taxation not in accordance with the provisions of the treaty	8
A variation to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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

\* These ten treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.

29. The ten treaties mentioned in the first row of the table are considered not to contain the full equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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 nine of these ten treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (three treaties).<sup>1</sup>
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (six treaties).<sup>2</sup>

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

31. Concerning the eight treaties mentioned in the second row of the table, since the mutual agreement procedure is under these treaties only available in case of “double taxation” or “double taxation not in accordance with the provisions of the convention”, instead of “taxation not in accordance with the provisions of the convention”, they are considered not being in line with this part of element B.1.

32. Furthermore, the treaty mentioned in the third row of the table allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty incorporates a provision in the protocol to this tax treaty, which stipulates that part of the sentence reading “notwithstanding the remedies provided in the framework of the domestic legal procedures of the States or requests for refunds submitted on the basis of Article 28”, shall be interpreted so that the taxpayer may request the mutual agreement procedure only after instituting the domestic legal procedures or submitting a request for

refund on the basis of such Article 28. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore also 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*

33. Out of Belgium's 97 tax treaties, 79 contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>3</sup>

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

Provision	Number of tax treaties
A filing period for MAP requests that is shorter than three years (6 months)	1
A filing period for MAP requests that is shorter than three years (2 years)	16
Different filing periods for a MAP request, whereby one of them can be shorter than 3 years (see below)	1

35. Concerning the treaty in the third row of the table, this treaty includes the equivalent to Article 25(1) second sentence of the OECD Model Tax Convention. However, the protocol to this treaty provides that:

it is understood that, in the case of ..., the case must be presented to the competent authority within one year from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement. However, if such period has expired, the taxpayer may, in any case, present the case to the competent authority in ... within a period of five years beginning on the first day of January of the calendar year next following the related taxable year. The related taxable year is the year in which the income subject to the action resulting in taxation not in accordance with the provisions of the Agreement is derived.

36. Therefore, another time period as well as another starting point can apply to compute the period within which a MAP request can be submitted under this tax treaty, possibly leading to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. For this reason, the relevant treaty is considered not being in line with this part of element B.1.

*Peer input (stage 1)*

37. Several peers reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

## ***Practical application***

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

38. As noted in paragraph 28 above, in all but one of Belgium's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Belgium reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending. In fact, in Belgium domestic remedies and MAP are procedures that exist independently from each other and can be launched simultaneously. In cases where domestic remedies have led to a final decision, Belgium's competent authority can in principle not override this decision, unless it follows from the MAP process that there is taxation not in accordance with the provisions of a tax treaty. In this respect, paragraph 1.3.3 of Belgium's MAP guidance stipulates that the decision on a domestic appeal filed by the taxpayer cannot request the taxpayer to waive its rights to request the initiation of a mutual agreement procedure.

39. Furthermore, in practice, Belgium's competent authority may have denied access to MAP on the basis that the MAP request was submitted by a non-resident of Belgium, while this was not possible under the applicable tax treaty. This had happened once in 2016 (one case out of 267 MAP requests submitted to Belgium's competent authority in 2016). In such a case, Belgium's competent authority informed the taxpayer to address their request to the state of residence and provided the details of such competent authority to the taxpayer. This particular measure facilitates recourse to MAP in the end.

## ***Recent developments***

### *Bilateral modifications*

40. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the 2015 OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report and which has been reflected in the analysis above.

### *Multilateral Instrument*

41. Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is foreseen during the first half of 2019.

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

42. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report 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 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. 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 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will not take effect for a tax treaty if one of the treaty partners has, pursuant to Article 16(5)(a),



reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

43. With the signing of the Multilateral Instrument, Belgium opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Belgium's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, Belgium opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Belgium listed 92 of its 97 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 91 of them a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Two of these 91 treaties, however, concern the treaties mentioned in paragraph 28 above that already allows the submission of a MAP request to either competent authority and for that reason are not taken into account in the below analysis. In other words, only 89 treaties are taken into account.

44. In total, 27<sup>4</sup> of the 89 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas 24 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties.<sup>5</sup> All remaining 38 treaty partners listed their treaty with Belgium as having a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, the Multilateral Instrument, will, upon entry into force for these treaties, modify 38 of Belgium's 97 tax treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

45. In view of the above, for those ten treaties identified in paragraphs 30 to 32 above that are considered not containing the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, six are included in the list of 38 treaties that will 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

46. 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 – 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.

47. In regard of the 18 tax treaties identified in paragraph 34 above that contain a filing period for MAP requests of less than three years, Belgium listed 17 treaties as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification for all of them that they do not contain a provision

described in Article 16(4)(a)(ii). Of the 17 treaty partners, three are not a signatory to the Multilateral Instrument. The remaining 14 treaty partners listed their treaty with Belgium under that instrument, but only 13 made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for this treaty, modify 13 of the 18 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention

48. Furthermore, with respect to the remaining treaty where the treaty partner did not make such a notification, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since this treaty provision may in certain circumstances lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, this treaty will be superseded by the Multilateral Instrument upon its entry into force for this treaty, to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

#### *Other developments*

49. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Belgium has put in place a plan for bringing these treaties in line with that standard.

50. Concerning the four treaties that are considered not to contain the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, and will not be modified by the Multilateral Instrument, Belgium reported it recently negotiated a new treaty with one treaty partner that will replace the existing treaty, once it enters into force. This new treaty contains a MAP provision that contains the equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

51. Concerning the four treaties that are considered not to contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and will not be modified or superseded by the Multilateral Instrument, Belgium reported that it was approached by one treaty partner with a proposal for an amending protocol to *inter alia* bring the treaty in line with the requirements under element B.1. This proposal is currently under consideration by Belgium. Furthermore, with one other treaty partner it recently negotiated a new treaty, which is the same treaty partner referred to above and which new treaty also contains the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

#### *Peer input (stage 2)*

52. Five of the eight peers with which the treaty with Belgium is not in line with the requirements under element B.1 and will not be modified by the Multilateral Instrument did not provide input. One of the remaining peers confirmed that its treaty with Belgium will be replaced by a new treaty following which the MAP provision will be in line with

the Action 14 Minimum Standard. The remaining peers did not comment on any contacts with Belgium or any actions taken to bring its treaty with Belgium in line with this element.

### *Anticipated modifications*

53. For the six treaties that are not in line with all requirements under element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, Belgium indicated it will approach the relevant treaty partners to bring these treaties in line with element B.1. Two of the relevant treaty partners are EU Member States for which Belgium will prioritise the renegotiation of the tax treaty.

54. Furthermore, Belgium reported it will seek to include Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future treaties.

### *Conclusion*

	Areas for improvement	Recommendations
	One out of 97 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent.	Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for this treaty.
[B.1]	<p>Nine out of 97 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Six are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• Three will not be modified by that instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> <li>- One is included in the list of treaties for which negotiations are envisaged, scheduled or pending to include the required provision</li> <li>- For the remaining two no actions have been taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention 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 three treaties, Belgium should:</p> <ul style="list-style-type: none"> <li>• Continue discussions or negotiations with one treaty partner on the inclusion of the required provision</li> <li>• Also request the inclusion of the required provision via bilateral negotiations in the remaining two treaties in accordance with its plan for renegotiations.</li> </ul>

	Areas for improvement	Recommendations
[B.1]	<p>Nine out of 97 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report and provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and to include a three year filing period for MAP requests</li> <li>• Four will not be modified by that instrument to include the required provision. With respect to these four treaties: <ul style="list-style-type: none"> <li>- One has been renegotiated and the new tax treaty will contain provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the Action 14 final report and also will contain a three year filing period for MAP requests</li> <li>- For the remaining three no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in those five 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 four treaties, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possibly ratify the one treaty for which negotiations have been concluded to include the required provisions</li> <li>• Also request the inclusion of the required provisions in the remaining three treaties in accordance with its plan for renegotiations. This concerns: <ul style="list-style-type: none"> <li>- a provision that is equivalent to Article 25(1), first sentence of the 2015 OECD Model Tax Convention as it read prior to or as amended in the final report on Action 14; and/or</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> </li> </ul>

## [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).

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

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

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

56. Out of Belgium's 97 tax treaties, three currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, 38 of these 96 treaties will, upon entry into force for these treaties, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

57. For the remaining 56 tax treaties that currently do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, Belgium reported it has implemented a notification process since December 2016, which consists in informing the other competent authority concerned that Belgium's competent authority received a MAP request where it does not consider the taxpayer's objection to be justified through a letter that does not provide detailed information on the case at stake.

### ***Recent developments***

58. Belgium reported that on 12 October 2017 the whole team of its competent authority was given more information about the notification process to be followed when it would consider an objection raised by the taxpayer as not justified. Belgium further explained that following this meeting, a summary of the procedure was provided to all participants. Furthermore, Belgium reported that a summary of this meeting is published in the competent authority's internal information database, which makes it available for the whole team of the competent authority, including any members who would have joined the competent authority in the meantime or who would join in the future.

59. Concerning the application of the process, internal documents have been prepared by Belgium's competent authority. This concerns an internal process document that describes (i) each step of the MAP process, the timing of the steps and the actions to be taken during these steps, (ii) specific guidelines regarding the relation between MAP and domestic law and protective MAP cases and (iii) special features in the MAP provisions of certain treaties as well as specific working procedures to be applied. In the internal process document it is described in what situations an objection raised by the taxpayer can be considered as not justified and that the decision on whether the objection raised by the taxpayer is justified or not should be made within two months upon receipt of the MAP request. It is also provided that where the decision is that the objection is not justified, Belgium's competent authority will notify the other competent authority concerned of the decision and also inform the taxpayer hereof.

### ***Practical application***

#### ***Period 1 January 2014-31 December 2016 (stage 1)***

60. No peer indicated that it was aware of or that it had been consulted/notified of a case where Belgium's competent authority considered the objection raised in a MAP request as not justified since 1 January 2014.

61. In practice, the notification process has not yet been implemented during the Reporting Period, because Belgium's competent authority has not considered any objection raised by a

taxpayer in a MAP request to be not justified after the notification process was introduced. When it occurs, the other competent authority will be notified at the same time as the taxpayer.

62. Apart from cases where Belgium’s competent authority does not consider the objection to be justified, it can happen that Belgium’s competent authority denies access to MAP on the basis that the MAP request was submitted by a non-resident of Belgium. This happened once in 2016. In such a case, Belgium’s competent authority informed the taxpayer to address their request to the state of residence and provided the details of the competent authority of that state to the taxpayer.

*Period 1 January 2017-31 August 2018 (stage 2)*

63. Belgium reported that between 1 January 2017 and 31 August 2018 it considered the objection not justified in 58 cases involving 11 treaty partners. Belgium reported having notified its treaty partners either during the year or during the matching process for aligning MAP statistics.

64. Two peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1. Four other peers confirmed having been notified by Belgium’s competent authority in cases each where Belgium considered the objection raised by the taxpayer as not justified.

***Anticipated modifications***

65. For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the final report on Action 14, Belgium indicated that it intends modifying its existing tax treaties by signing the Multilateral Instrument and by doing so allowing for the submission of MAP requests to the competent authority of either contracting state. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium also intends to amend its treaties via bilateral negotiations with its treaty partners.

66. In the meantime, Belgium will continue to apply its notification process described previously.

***Conclusion***

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

### ***Legal and administrative framework***

68. Out of Belgium’s 97 tax treaties, 54 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention, requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner.<sup>6</sup> Furthermore, in 38 tax treaties such a provision is not contained.<sup>7</sup> The remaining five treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but uses different or includes additional wording and therefore are not considered the equivalent thereof. This concerns:

- One treaty does not specify that the corresponding adjustment relates to the amount of the tax charged therein on those profits.
- One treaty does not contain the part of the sentence stating that the competent authorities of the contracting states shall if necessary consult each other to determine the amount of the adjustment.
- One treaty does not refer to the granting of a corresponding adjustment, but instead to the avoidance of double taxation.
- One treaty provides, instead of the sentence reading “then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits”, that the competent authorities of the contracting states may consult together with a view to reaching an agreement on the adjustment of profits or losses in both contracting states.
- One treaty provides that the granting of corresponding adjustments is only optional, as the word “shall” is replaced with “may”.

69. Furthermore, Belgium 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.

70. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Belgium’s tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Belgium indicated it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. Transfer pricing cases are also included in the typical requests examples provided by the FAQs.

### ***Recent developments***

#### ***Bilateral modifications***

71. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, and which has been reflected in the analysis above.

#### ***Multilateral Instrument***

72. Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is foreseen during the first half of 2019.

73. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention 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 notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. 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).

74. Belgium has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 43 tax treaties identified in paragraph 69 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Belgium listed 42 as a covered tax agreement under the Multilateral Instrument and for five of these 42 treaties did it make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

75. With regard to those five treaties, one treaty partner is not a signatory to the Multilateral Instrument, whereas another has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Belgium already contains the equivalent of Article 9(2). The remaining three treaty partners also made a notification on the basis of Article 17(4). Therefore, at this stage, three tax treaties will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

76. With regard to the remaining 37 treaties for which Belgium did not make a notification on the basis of Article 17(4), seven treaty partners<sup>8</sup> are not a signatory to the Multilateral Instrument, whereas five treaty partners have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Belgium already contains the equivalent of Article 9(2). Therefore, at this stage, 25 tax treaties will, upon its entry into force for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).<sup>9</sup>



*Other developments*

77. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Belgium has put in place a plan for bringing these treaties in line with that standard. While having Article 9(2) is only a best practice, Belgium reported that for one of the tax treaties that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention it has recently renegotiated this tax treaty which now contains such equivalent.

***Practical application****Period 1 January 2014-31 December 2016 (stage 1)*

78. Belgium reported that it provides access to MAP in all transfer pricing cases. Between 1 January 2014 and 31 December 2016, Belgium received 70 MAP cases under the EU arbitration convention and 15 MAP transfer pricing cases and its competent authority did not deny access to MAP on the basis that the case concerned a transfer pricing case.

79. No peer indicated that it was aware of or that it had been notified of a case that would have been denied access to the MAP in Belgium on the grounds that it was a transfer pricing case since 1 January 2014.

*Period 1 January 2017-31 August 2018 (stage 2)*

80. Belgium reported that it has received 54 transfer pricing cases since 1 January 2017 and that it has not denied access to MAP in any of these cases.

81. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Belgium denying access to MAP. The other peers that provided input did not comment on this element. One of them specified that it has not had any MAP cases with Belgium since 1 January 2017.

***Anticipated modifications***

82. Belgium reported that it will seek to include Article 9(2) of the OECD Model Tax Convention in all of its future treaties and that the inclusion of this provision is systematically brought to the table during treaty negotiations.

***Conclusion***

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

83. 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*

84. None of Belgium's 97 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

85. Belgium indicated that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of the MAP. In addition, the domestic law and administrative processes of Belgium do not include a provision that allows their competent authority to limit access to the 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 comes into conflict with the provisions of a tax treaty. In any case, Belgium indicated that treaty provisions would override domestic law and access to MAP is granted were a domestic anti-abuse rule is in conflict with a provision of the treaty. However, this is not addressed in Belgium's FAQs.

### *Recent developments*

86. There are no recent developments relating to element B.4.

### *Practical application*

#### *Period 1 January 2014-31 December 2016 (stage 1)*

87. Belgium reported that since 1 January 2014 it has not denied access to MAP in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

88. One taxpayer and one peer provided input on the same case where they indicated that access to MAP was denied in 2016. Two reasons were identified:

- i. The Belgian company was in a loss making position and hence no double taxation arose. According to the peer, Belgium’s competent authority considers that the starting point for the filing period had not been reached yet even though an assessment notice was sent to the Belgian company.
  - ii. It was a case of fraud although the assessment did not mention fraud and the details of the case did not reveal fraud.
89. The peer considers that:
- i. The company should be able to request the opening of the MAP, in accordance with the Commentary on Article 25 of the OECD Model Tax Convention, upon reception of all notices from which a double taxation will result, although the company is in a loss-making position.
  - ii. The initiation of the MAP may be suspended under the EU arbitration convention, in case of serious penalties, provided that proceedings are pending.
90. According to Belgium, this case was not denied access to MAP. On the contrary, MAP access was granted by Belgium’s competent authority. Belgium indicated also that (i) no assessment notice was sent to the taxpayer but only a notice of modification, which is not final, and (ii) Belgium’s competent authority informed the taxpayer that their case could not be analysed before a final decision on the fraudulent character of the case was made. On the first point, this also means that the assessment notice can be different from the notice of modification and will not necessarily result in double taxation (while double taxation is required to submit a MAP request as provided in the treaty between Belgium and the peer providing input). In practice, the (final) assessment notice would be sent to the taxpayer if and when losses are recovered. In any case, according to Belgium, the fact that no (final) assessment notice has been sent to the taxpayer yet does not lead Belgium’s competent authority to deny access to the MAP in Belgium. On the second point, in the case at stake, the (final) assessment notice is nevertheless needed to lodge a domestic appeal and obtain a final decision on the fraudulent character of the case. Therefore, as Belgium’s competent authority postpones the discussion on the case until a final decision is made with respect to the fraudulent character of the case, the discussions are in practice deferred until the taxpayer has recovered losses and lodged an appeal against the (final) assessment notice.

*Period 1 January 2017-31 August 2018 (stage 2)*

91. Belgium reported that it has not received any cases since 1 January 2017 relating to the application of domestic or treaty anti-abuse provisions.
92. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Belgium denying access to MAP. The other peers that provided input did not comment on this element. One of them specified that it has not had any MAP cases with Belgium since 1 January 2017.

***Anticipated modifications***

93. Belgium did not indicate that it anticipates any modifications in relation to element B.4.

### *Conclusion*

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

#### *Legal and administrative framework*

95. Audit settlements are available in Belgium but Belgium will always provide access to the MAP in case of an audit settlement. As discussed below, this is not addressed in the FAQs publicly available (see element B.10).

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

#### *Recent developments*

97. There are no recent developments relating to element B.5.

#### *Practical application*

##### *Period 1 January 2014-31 December 2016 (stage 1)*

98. Belgium reported that since 1 January 2014, Belgium's competent authority has not denied access to MAP requests where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities, even though Belgium also reported that it does not track the number of such cases. Taxpayer input also confirmed that MAP access is not denied in cases of audit settlements.

99. Peers indicated not being aware of denial of access to MAP by Belgium where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

*Period 1 January 2017-31 August 2018 (stage 2)*

100. Belgium reported that it does not keep records about MAP cases where there is an audit settlement as for its competent authority this is not a fact taken into account in the eligibility of the MAP request or in analysing the MAP case. Belgium reported that it grants access in any case, regardless of whether there was an audit settlement.

101. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Belgium denying access to MAP. The other peers that provided input did not comment on this element. One of them specified that it has not had any MAP cases with Belgium since 1 January 2017.

*Anticipated modifications*

102. Belgium did not indicate that it anticipates any modifications in relation to element B.5.

*Conclusion*

	Areas for improvement	Recommendations
[B.5]	-	-

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

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

103. 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 publicly available.

*Legal framework on access to MAP and information to be submitted*

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

*Recent developments*

105. There are no recent developments in Belgium with respect to element B.6, other than changes to the MAP guidance and the requirements of what information should be included in a MAP request, which is discussed under element B.8.

***Practical application******Period 1 January 2014-31 December 2016 (stage 1)***

106. Belgium has limited access to MAP for three cases in 2016 on the grounds that insufficient information was provided. The other competent authority involved has not been informed of such cases. Belgium reported that the taxpayers were given several opportunities to provide the required information and access to MAP was denied only after the taxpayer was unwilling to provide such information. Indeed, the taxpayer is invited to provide missing information or documents via letter or email. Upon first request to provide such missing information, a two-month delay is granted to the taxpayer. If the taxpayer does not provide missing information, an extra one-month delay is granted. Upon such second deadline, Belgium's competent authority contacts the taxpayer by phone or by email to know what he/she intends to do. If the competent authority still does not receive any information, it denies access to MAP for the case.

107. Peers indicated not being aware of denial of access to MAP by Belgium in situations where taxpayers complied with information and documentation requirements set out in the FAQs.

***Period 1 January 2017-31 August 2018 (stage 2)***

108. Belgium reported that it has not denied or limited access to MAP to any cases since 1 January 2017 on the grounds that insufficient information was provided.

109. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Belgium denying access to MAP. The other peers that provided input did not comment on this element. One of them specified that it has not had any MAP cases with Belgium since 1 January 2017.

***Anticipated modifications***

110. Belgium did not indicate that it anticipates any modifications in relation to element B.6.

***Conclusion***

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

111. 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 OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

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

112. Out of Belgium’s 97 tax treaties, one contains a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 96 treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.<sup>10</sup> One of these 96 treaties include a provision stipulating that the competent authorities may consult together “as to which measures shall be taken to prevent abuse of the convention”, but this provision is not equivalent to the second sentence of Article 25(3) of the OECD Model Tax Convention. Moreover, Belgium’s Model Tax Convention does not include such equivalent.

113. Several peers reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

### ***Recent developments***

#### *Bilateral modifications*

114. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty, however, does not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention and which has been reflected in the analysis above.

#### *Multilateral Instrument*

115. Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is foreseen during the first half of 2019.

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

117. In regard of the 96 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Belgium listed 90 as a covered tax agreement under the Multilateral Instrument and for all of them, pursuant to Article 16(6)(d)(ii), did it make a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 90 treaty partners, 28 are not a signatory to the Multilateral Instrument.<sup>11</sup> All remaining 62 treaty partners listed their treaty with Belgium as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii).<sup>12</sup> Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 62 of the 96 treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

### *Other developments*

118. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Belgium has put in place a plan for bringing these treaties in line with that standard. Concerning the 34 treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument, the following actions were taken:

- One treaty partner has approached Belgium with a proposal for an amending protocol to *inter alia* bring the treaty in line with the requirement under element B.7. This proposal is currently under consideration.
- Belgium approached eight treaty partners with the request to negotiate an amending protocol to *inter alia* bring the treaty in line with the requirement under element B.7.
- Belgium and one treaty partner recently negotiated a new treaty, which will replace the existing treaty currently in force, following which the treaty will be in line with element B.7.
- Belgium has pending negotiations, has initiated, or is about to initiate negotiations with four other treaty partners on the replacement or the amendment of the existing treaty currently in force *inter alia* bring these treaties in line with the requirement under element B.7.

### *Peer input*

119. The majority of peers with which the treaty with Belgium is not in line with the requirements under element B.7 and will not be modified by the Multilateral Instrument did not provide input. One of the remaining peers confirmed that its treaty with Belgium will be replaced by a new treaty following which the MAP provision will be in line with the Action 14 Minimum Standard. Another peer reported that bilateral discussions are currently held with Belgium regarding an amending protocol with a view to bring the treaty in line with the Action 14 Minimum Standard. Two other peers provided input but did not comment on any contacts with Belgium or any actions taken to bring its treaty with Belgium in line with this element.

### *Anticipated modifications*

120. For the remaining 20 treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, Belgium indicated it will approach the relevant treaty partners to bring these treaties in line with the requirement under this element. One of these concerns a treaty partner with which Belgium has a substantial number of MAP cases pending and for that reason will be prioritised by Belgium.

121. Furthermore, Belgium reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future treaties.



## Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>96 out of 97 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 96 treaties:</p> <ul style="list-style-type: none"> <li>• 62 are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 34 will not be modified by that instrument to contain the required provision. With respect to these 34 treaties: <ul style="list-style-type: none"> <li>- 14 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- One concerns a treaty that recently has been negotiated and for which currently no treaty is in existence</li> <li>- One has been renegotiated and the new tax treaty will contain the required provision</li> <li>- For the remaining 18 treaties no actions have been taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 62 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 33 of the remaining 34 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</li> <li>• Re-initiate negotiations with one treaty partner with which it recently signed a new treaty to include the required provision</li> <li>• Continue discussions or negotiations with 14 treaty partners to include the required provision</li> <li>• Also request the inclusion of the required provision in the remaining 17 treaties in accordance with its plan for renegotiations.</li> </ul> <p>Specifically with respect to the treaty with the former USSR that Belgium continues to apply to Moldova and Tajikistan, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</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.

122. 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.

#### *Belgium's MAP guidance*

123. Belgium's rules, guidelines and procedures are included in the FAQs and are available at:

<http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>

124. This contains information on:

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

- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. information on availability of arbitration (including the EU Arbitration Convention)
- e. relationship with domestic available remedies
- f. implementation of MAP agreements
- g. suspension of tax collection
- h. interest and penalties.

125. Guidance on arbitration available under the EU Arbitration Convention is found in circular AAF/Intern.ISR/98-0170 dated 7 July 2000. This guidance is also comprehensive and provides the specific details of access to MAP and arbitration under the convention.

126. In addition, Belgium’s MAP guidance includes comprehensive and detailed information on the MAP process in Belgium under its tax treaties and under the EU Arbitration Convention.<sup>13</sup> This concerns *inter alia*:

- cases for which a MAP request can be submitted and examples of such cases (e.g. transfer pricing cases)
- availability of MAP in relation to anti-abuse provisions, audit settlements and domestic available remedies
- information on and contact details of the competent authority for MAP cases under tax treaties and the EU Arbitration Convention (including examples to which competent authority MAP requests should be submitted)
- timeframes for filing of a MAP requests under tax treaties and the EU Arbitration Convention (including a specification per tax treaty of the applicable timeframes and the applicable rules when no filing period is contained in the tax treaty)
- manner and form in which taxpayers have to file their MAP request, including the information that should be included in such a request
- details of the MAP process (outline of the process and phases in the process) and the arbitration procedure
- the implementation process of MAP agreements
- rights of taxpayers under tax treaties
- the possibility of suspension of tax collection during the period a MAP case is pending
- the consideration of interest and penalties in MAP
- interpretative MAP agreements under tax treaties.

127. The above-described MAP guidance of Belgium includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>14</sup>

128. As regards the contact information of the competent authority, a recent change was noted in stage 1. Until then, taxpayers could submit their MAP request to one of the following contacts: (i) the competent authority (being the International Relations Service), or (ii) the director of the local tax office (as he/she is also the one who should receive internal administrative claims), or (iii) the Minister of Finance. The published FAQs now make it clear that the MAP request should only be sent to the International Relations Service. It is noted that the circular on the EU Arbitration Convention (paragraph VI-B.3.)<sup>15</sup> still refers to various points of contacts. In this respect, Belgium indicated that if the taxpayer submits its MAP request to the director of the local tax office, the latter provides the taxpayer with the contact details of the International Relation Service and forwards such potential requests to them.

129. One taxpayer had expressed concerns about the fact that it was not clear in the past in which language the MAP request should be drafted, while this is now addressed in the FAQs, which mention that the MAP request can be submitted in French, Dutch or in German and that supporting documents could also be provided in English. The same taxpayer mentioned that there was no clarity on the contact details of the competent authority. Another taxpayer indicated that the contact details of the competent authority mentioned in the circular applicable to the EU Arbitration Convention were not up-to-date. In response, Belgium indicated that comprehensive MAP Guidance will be published.

130. One of these taxpayers had encountered difficulties to find relevant information on the MAP because information relating to international procedures are not gathered under the same website and as “fisconet” may not be known by all relevant stakeholders. Still, there is already a dedicated web-page for international matters<sup>16</sup> with in particular links to (i) tax treaties, (ii) the OECD Transfer Pricing Guidelines and (iii) FAQs on MAPs and APAs.

131. Belgium’s MAP guidance now clarifies in paragraph 32. that a MAP request shall be submitted to the competent authority, the contact details of which are provided.

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

132. 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>17</sup> This agreed guidance is shown below. Belgium’s MAP guidance enumerates the items that must be included in a request for MAP assistance (if available), which are checked below:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously

- ☑ 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.

133. With respect to the availability of arbitration under the tax treaty entered into with the United States, Belgium published a list of information that are required to become eligible for arbitration<sup>18</sup> and that include, in particular, whether the taxpayer also sought for domestically available judicial or administrative remedies for the issue at stake and the decision that was rendered by the court as the case may be.

### ***Recent developments***

134. On 7 March 2018 Belgium has, in addition to the FAQs, published comprehensive MAP guidance in Circular 2018/C/27. The content of this MAP guidance has been reflected above. The circular is published both in Dutch and French. An English translation was also published in August 2018. One peer mentioned that the translation into English is useful.

### ***Anticipated modifications***

135. Belgium did not indicate that it anticipates any modifications in relation to element B.8.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.8]	-	-

## **[B.9] Make MAP guidance available and easily accessible and publish MAP profile**

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

136. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform<sup>19</sup> further promotes the transparency and dissemination of the MAP programme.

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

137. Belgium’s MAP guidance is available in English at:

[https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet\\_private/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/78e7a318-5f00-4a08-ade2-cd4a9fbb92e](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_private/fiscal-discipline/income-taxes/administrative-directives-and-comments/circular-letters/circular-letters-procedure/78e7a318-5f00-4a08-ade2-cd4a9fbb92e)

138. Belgium’s MAP guidance is hosted on a specific website (Fisconet plus.be), and is accessible after searching for “procedure amiable” in the search engine of the website. However, to access this website the user is expected to register with its e-mail address to

access the website. This additional step has sometimes resulted in failing to access the MAP guidance.

139. The FAQs about Belgium MAP and APAs are published and can be found at:

<http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>

140. The FAQs document is accessible by clicking on the link provided in the MAP profile (see below), and can be found easily from search engine websites as well as on the SPF website under the “international” sections.

### ***MAP Profile***

141. The MAP profile of Belgium is published on the website of the OECD. This MAP profile is complete, often with detailed information. This profile includes external links to websites of the Belgian government, which provides additional information and guidance.

### ***Recent developments***

142. Belgium released comprehensive MAP guidance that was published in March 2018 and an English version was also released in August 2018.

143. Belgium updated its MAP profile in May 2018, among others to provide the reference to the website address where its MAP guidance was published.

### ***Anticipated modifications***

144. Belgium did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.9]	The comprehensive MAP guidance is published but not easily accessible.	Belgium should ensure its MAP guidance is easily accessible.

## **[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.

145. 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 previous mentioned processes.

### ***MAP and audit settlements in the MAP guidance***

146. As previously mentioned in B.5, Belgium's FAQs do not provide information the relationship between access to the MAP and audit settlements.

147. In stage 1, one taxpayer mentioned that the MAP guidance did not address access to MAP in cases of audit settlements, while they knew from their own experience that MAP access is granted in case of audit settlements.

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

148. There is no other administrative or statutory dispute settlement/resolution process in Belgium that impacts the access to the MAP.

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

149. There is no need for notification of treaty partners as Belgium does not have an internal administrative or statutory dispute settlement or resolution process available.

### ***Recent developments***

150. Paragraph 1.3.2. Belgium's published MAP guidance clarifies that access to MAP is granted in cases where the taxpayer has entered into an audit settlement with the auditor. It is further stated in Belgium's MAP guidance that an audit settlement cannot include a provision requiring the taxpayer to waive its rights to submit a MAP request and that if such a provision was included, it would be disregarded when assessing the eligibility of the MAP request by Belgium's competent authority. One peer also noted the update in Belgium's MAP guidance in this respect.

### ***Anticipated modifications***

151. Belgium did not indicate that it anticipates any modifications relating to element B.10.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

## Notes

1. These three treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia.
2. These six treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
3. These 78 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
4. These 27 treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
5. With respect to the treaty with former Yugoslavia, which Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, Serbia is one of the treaty partners that made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument. The treaty is therefore included in the list of 24 treaties. Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.
6. In the stage 1 peer review report, reference was also made to 54 treaties. Following the peer review process of other assessed jurisdictions, another treaty was identified that does not contain the equivalent of Article 9(2), first sentence, of the OECD Model Tax Convention. As the newly signed treaty by Belgium contains such equivalent, the number of treaties remains 54. The number of treaties not containing such equivalent has been increased from 42 to 43.
7. These 39 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
8. These seven treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
9. These 25 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, but only as regards Serbia, because Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.
10. These 96 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
11. These 28 treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
12. These 62 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, but only as regards Serbia, because Bosnia and Herzegovina, Kosovo and Montenegro are not signatories to the Multilateral Instrument.
13. Available at: [https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet\\_public/fiscal-discipline/income-taxes/legislation-and-regulations/conventions-for-the-avoidance-of-double-taxation/in-operation/conventions-and-circular-letters/27c5818d-7978-4749-a1ee-4f4816d3306d](https://gcloudbelgium.sharepoint.com/sites/minfin-fisconet_public/fiscal-discipline/income-taxes/legislation-and-regulations/conventions-for-the-avoidance-of-double-taxation/in-operation/conventions-and-circular-letters/27c5818d-7978-4749-a1ee-4f4816d3306d).
14. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
15. Available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=998ea3ed-2924-47a9-a96c-90e1366683bd&disableHighlighting=true&documentLanguage=fr#findHighlighted> (accessed on 22 August 2017).

16. Available at: [http://finances.belgium.be/fr/entreprises/international/accords\\_internationaux](http://finances.belgium.be/fr/entreprises/international/accords_internationaux) (accessed on 22 August 2017).
17. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
18. Available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=5f0da04a-229f-4fe6-a22b-7de4f6d68e3c%20&disableHighlightning=true#findHighlighted> (accessed on 22 August 2017).
19. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

## *References*

- OECD (2017a), *Model Tax Convention on Income and Capital 2017 (Full version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2015a), *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>.
- OECD (2015b), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.



## *Part C*

### Resolution of MAP cases

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

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

152. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the first sentence of Article 25(2) of the *OECD Model Tax Convention* (OECD, 2017a), 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 Belgium’s tax treaties***

153. Out of Belgium’s 97 tax treaties, 89 contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.<sup>1</sup>

154. The remaining eight treaties contain a provision requiring or advising their competent authorities to consult each other with a view to the avoidance of “double taxation” instead of “taxation which is not in accordance with the tax treaty”, which can be explained by the fact that these treaties enable taxpayers to submit a MAP request only in case of double taxation and not in case of taxation that is not in accordance with the tax treaty. In addition, in one of these eight tax treaties the reference to the potential unilateral solution that the competent authority may be able to arrive at is also missing. For these reasons, all eight treaties are considered not to contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.

155. Several peers reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

## *Recent developments*

### *Bilateral modifications*

156. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, and which has been reflected in the analysis above.

### *Multilateral Instrument*

157. Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is foreseen during the first half of 2019.

158. 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 – 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. 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.

159. In regard of the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Belgium listed seven as a covered tax agreement under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). All relevant seven treaty partners are a signatory to the Multilateral Instrument, have listed their treaty with Belgium as a covered tax agreement and also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify seven of the eight treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Other developments*

160. For the remaining treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Belgium reported it has recently negotiated a new treaty with the relevant treaty partner and which contains the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

### *Peer input*

161. The peer with which the treaty with Belgium is not in line with the requirements under element C.1 and will not be modified by the Multilateral Instrument provided input. This peer confirmed that its treaty with Belgium will be replaced by a new treaty following which the MAP provision will be in line with the Action 14 Minimum Standard.

### *Anticipated modifications*

162. There are no anticipated modifications, other than that Belgium reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[C.1]	<p>Eight out of 97 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these eight treaties:</p> <ul style="list-style-type: none"> <li>• Seven are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• One has been renegotiated and the new tax treaty will contain the required provision.</li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and for which negotiations have been concluded, Belgium should as quickly as possible ratify this treaty to have the required provision in place.</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).

163. 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*

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

165. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”) the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Belgium provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Belgium 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 Annex C respectively,<sup>5</sup> and should be considered jointly for understanding of the MAP caseload of Belgium. With respect to post-2015 cases, Belgium reported having reached out to all its MAP partners with a view to have their MAP statistics matching. For the year 2016, Belgium indicated that it could match its statistics with almost all of its MAP partners

except for one with which there are ongoing discussions regarding the year in which some MAP cases are to be reported. For the year 2017, Belgium also mentioned that it reached out to all its MAP partners. It further reported that it was able to match its statistics with all its MAP partners that are members of the Inclusive Framework.

166. Five peers reported that 2016 and 2017 were matched with Belgium. One of them reported that the relevant exchanges were fruitful and satisfactory. Another one reported that the process was easy and that Belgium initiated it. One peer mentioned that it did not encounter any difficulty in matching its MAP statistics with Belgium.

167. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1.

168. Based on the information provided by Belgium’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

### ***Monitoring of MAP statistics***

169. Belgium reported that it uses the model timeframe based on the *Manual on Effective Mutual Agreement Procedures* (MEMAP, OECD, 2007)<sup>6</sup> and has an internal management tracking system (the “MAP sheet”) showing a target to close a MAP case in 24 months through the following stages:

- confirm receipt of the MAP request and ask for additional information within one month
- draft an opening letter to the other competent authority within one or two months upon receipt of a MAP request
- send the position paper within four to six months after sending the opening letter
- liaise with the other competent authority and the taxpayer
  - If an agreement is reached, inform the taxpayer and inform the other competent authority of the taxpayer’s acceptance or rejection of the agreement within one month, inform the local tax service if needed.
  - If no agreement is reached yet, respond or agree to the position paper received, and inform the taxpayer once an agreement is reached by requiring the taxpayer to inform the competent authority within one month subsequently inform the other competent authority and inform the local tax service.
- When there is no answer from the other competent authority, Belgium’s competent authority sends a reminder mentioning the target of 24 months.

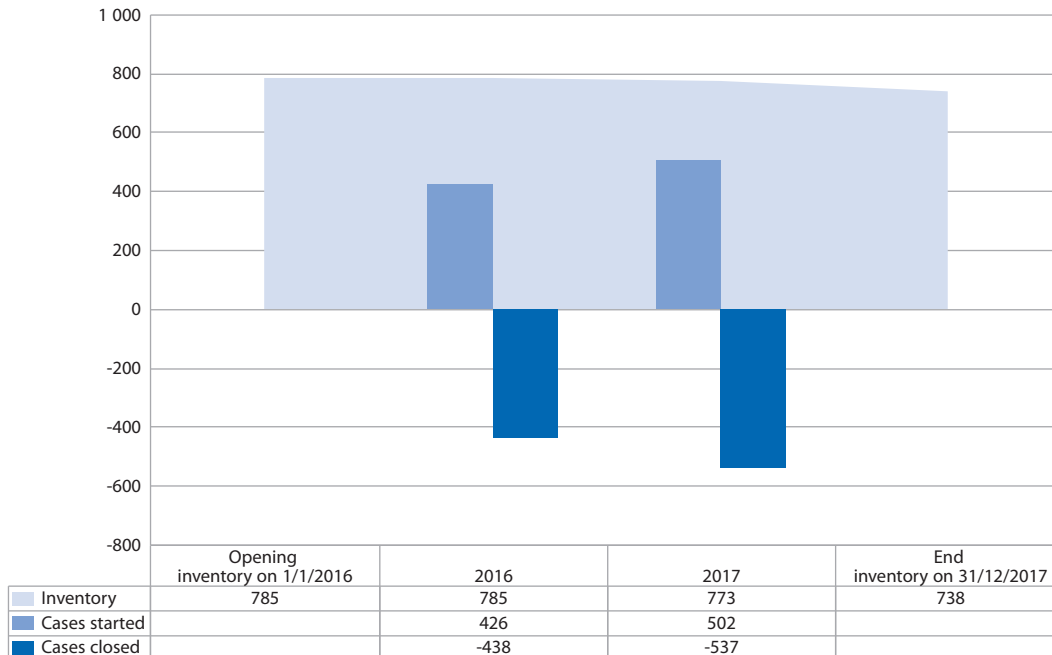
170. Belgium reported that it monitors the average timeframe for each case as well as the underlying reason when an individual case exceeds 24 months (i.e. late reaction of Belgium’s competent authority, late reaction of the other competent authority, drafting of several position papers, case suspended because pending before a court/decision made by a court, or withdrawal of the request). This monitoring is broken down on a jurisdiction-by-jurisdiction basis and by type of case (i.e. attribution/allocation or other case).

## Analysis of Belgium's MAP caseload

### Global overview

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

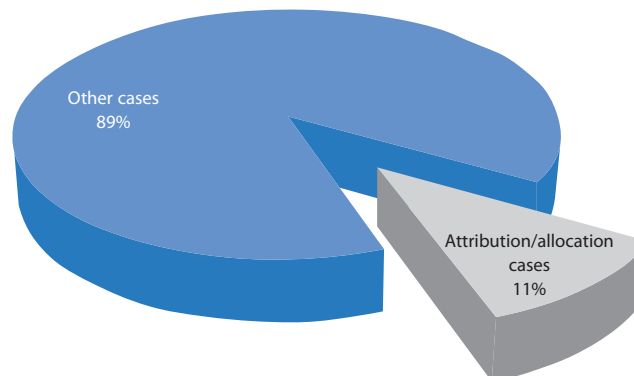
Figure C.1. Evolution of Belgium's MAP caseload



172. At the beginning of the Statistics Reporting Period Belgium had 785 pending MAP cases, of which 85 were attribution/allocation cases and 700 other MAP cases.<sup>7 8</sup> At the end of the Statistics Reporting Period, Belgium had 738 MAP cases in its inventory, of which 83 are attribution/allocation cases and 655 are other MAP cases. Belgium's MAP caseload was reduced with 6% during the Statistics Reporting Period, while the caseload of attribution/allocation case decreased by 2% over this period.

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

Figure C.2. End inventory on 31 December 2017 (738 cases)



*Pre-2016 cases*

174. The following graph shows the evolution of Belgium’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Belgium’s MAP inventory Pre-2016 cases



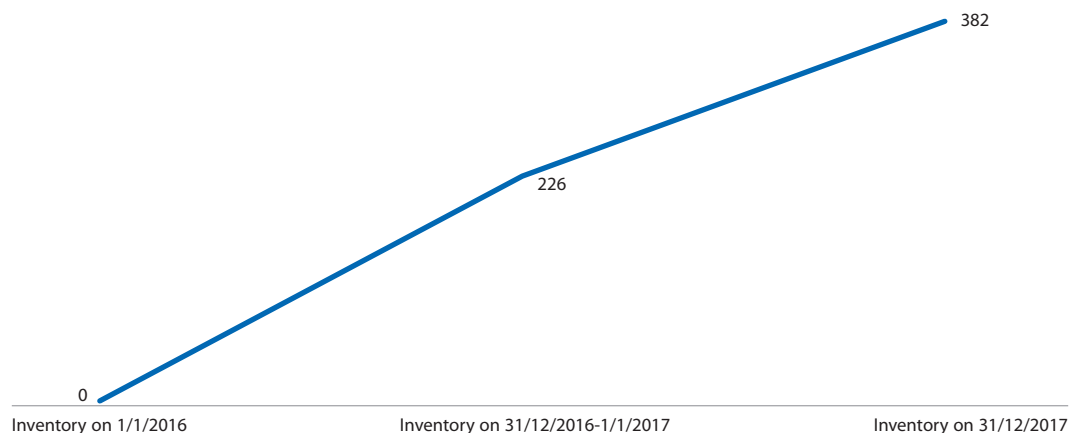
175. At the beginning of the Statistics Reporting Period, Belgium’s MAP inventory of pre-2016 MAP cases consisted of 785 cases, of which were 85 attribution/allocation cases and 700 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 356 cases, consisting of 37 attribution/allocation cases and 319 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

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	-25%	-42%	-56%
Other cases	-31%	-34%	-54%

*Post-2015 cases*

176. The following graph shows the evolution of Belgium’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Belgium’s MAP inventory Post-2015 cases



177. In total, 928 MAP cases started during the Statistics Reporting Period, 60 of which concerned attribution/allocation cases and 868 other cases. At the end of this period the total number of post-2015 cases in the inventory was 382 cases, consisting of 46 attribution/allocation cases and 336 other cases. Conclusively, Belgium closed 546 post-2015 cases during the Statistics Reporting Period, 14 of them being attribution/allocation cases and 532 of them being other cases. The total number of closed cases represents 59% of the total number of post-2015 cases that started during the Statistics Reporting Period. In this respect, the number of attribution/allocation cases closed during this period represents 23% of the number of attribution/allocation post-2015 cases started while the number of other post-2015 cases closed amounts to 61% of the number of cases started.

178. 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 table below.

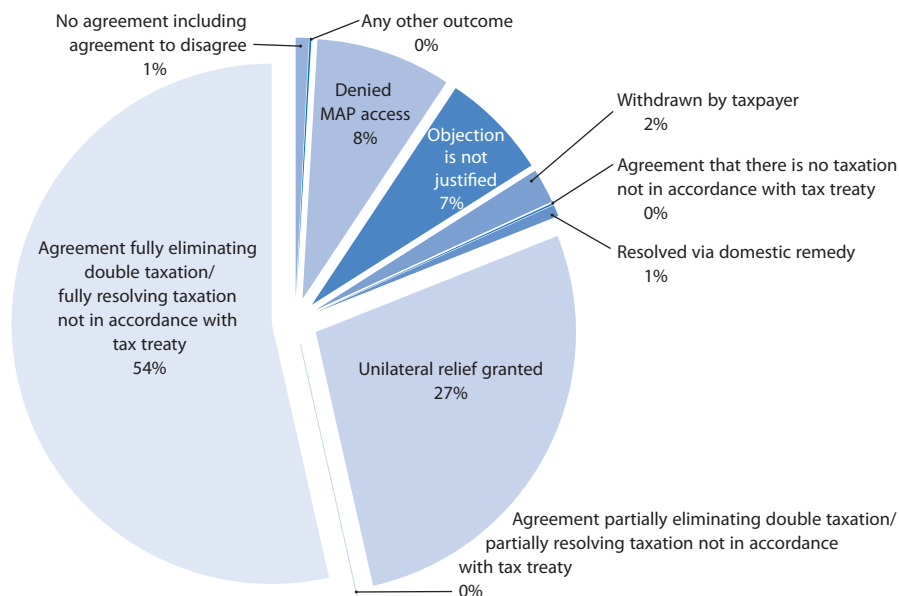
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	4%	35%	23%
Other cases	49%	72%	61%

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

#### *Reported outcomes*

179. During the Statistics Reporting Period Belgium in total closed 975 MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during the Statistics Reporting Period (37 cases)



180. This chart shows that during the Statistics Reporting Period, 522 out of 975 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty and 268 cases were granted a unilateral relief.

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

181. In total, 62 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty [61%]
- withdrawn by taxpayer [13%]
- objection not justified [11%].

#### *Reported outcomes for other cases*

182. In total, 913 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty [53%]
- unilateral relief granted [29%].

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

##### *All cases closed during the Statistics Reporting Period*

183. The average time needed to close MAP cases during the Statistics Reporting Period was 15.92 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	62	32.78
Other cases	913	14.77
All cases	975	15.92

#### *Pre-2016 cases*

184. For pre-2016 cases Belgium reported that on average it needed 39.60 months to close 48 attribution/allocation cases and 30.74 months to close 381 other cases. This resulted in an average time needed of 31.73 months to close 429 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Belgium reported that it uses the following dates:

- as the start date the date of filing of the MAP request
- as the end date, the earliest of the following dates: (i) the date when the taxpayer is informed of the outcome of the MAP, (ii) the date of the closing letter which is drafted upon taxpayer's approval of the agreement reached, or (iii) the date when Belgium's competent authority formally closed the case.



*Post-2015 cases*

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

186. For post-2015 cases Belgium reported that on average it needed 9.37 months to close 14 attribution/allocation cases and 3.34 months to close 532 other cases. This resulted in an average time needed of 3.50 months to close 546 post-2015 cases.

*Peer input*

## Period 1 January 2014-31 December 2016 (stage 1)

187. Several peers mentioned that Belgium’s competent authority responded quickly to their requests. However, one peer indicated that Belgium’s competent authority, like their own competent authority, could sometimes be responsible for delays in the procedure but progress is being made in reasonable time and another peer expressed concerns about the fact that some cases initiated in 2014 are still pending.

188. One peer mentioned that nearly all the cases it had with Belgium (50 cases since 2014) were closed within 24 months, another one indicated that cases (that would not concern attribution/allocation cases) were closed on average in less than 12 months.

189. One peer also mentioned that the relationship between both competent authorities has been improved by the inclusion of an arbitration protocol under the tax treaty of their countries, which incites them to reach principled, constructive resolution of MAP cases within 24 months.

## Period 1 January 2017-31 August 2018 (stage 2)

190. As it will be discussed under element C.3, several peers confirmed that Belgium took actions to accelerate the resolution of MAP cases, among which the scheduling of more face-to-face meetings and the use of electronic channels of communication.

*Recent developments*

191. Belgium reported that there was no changes in its system to monitor the MAP statistics or in its practice to match the MAP caseload since 1 January 2017.

*Anticipated modifications*

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

*Conclusion*

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

193. 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 Belgium’s competent authority*

194. Under Belgium’s tax treaties, the competent authority function is assigned to the Minister of Finance. Belgium reported that the competent authority function to handle MAP cases is performed by the International Relation Service, which is part of the Support and Operating Expertise division within the General Tax Administration of the Federal Public Service of Finance (“SPF”) of the Ministry of Finance. Belgium’s competent authority team consists of 11 people, two of them dealing exclusively with transfer pricing cases. The head of the MAP team is also responsible for the International Relation Service, which includes also VAT and the interpretation and application of tax treaties. One person is responsible for both MAP cases and the application and interpretation of double tax treaties. The remaining seven staff members deal partly with MAP cases along with other tasks such as interpretation and application of double tax treaties, parliamentary questions, drafting of circulars and FAQs, issues of principle, providing advice, etc. MAP staff is trained on the job on a continual basis and is given specific transfer pricing trainings. There are some budget limits for travelling as a maximum of two people may travel abroad to attend the same event. However, if the budget allows it, more than two people may attend MAP negotiations abroad when necessary.

195. Belgium indicated that they inform their treaty partners each time there is a change in the contact details of their competent authority. In addition, contact information is published on the OECD (via the MAP profile<sup>9</sup>) and EU website (via the transfer pricing profile<sup>10</sup>). Finally, Belgium indicated that they provide contact details of the competent official in all correspondence. One peer confirmed that Belgium’s competent authority contact details were easy to find.

#### *Monitoring mechanism*

196. The framework for the monitoring/assessment of whether such resources are adequate consists of monitoring the time spent by the team on the files they are responsible for. Indeed, staff was required to fill in timesheet explaining on which files they spent time (per half an hour). This not only enables to monitor the time needed to perform the assigned tasks more precisely but also allows checking whether more resources are needed.

197. Moreover, the MAP sheet filled in with all the actions undertaken for a given MAP case (see previously, confirming receipt, opening letter, etc.) enables a good follow up of the completed tasks and a general view is immediately available to anyone who would take over an open case.

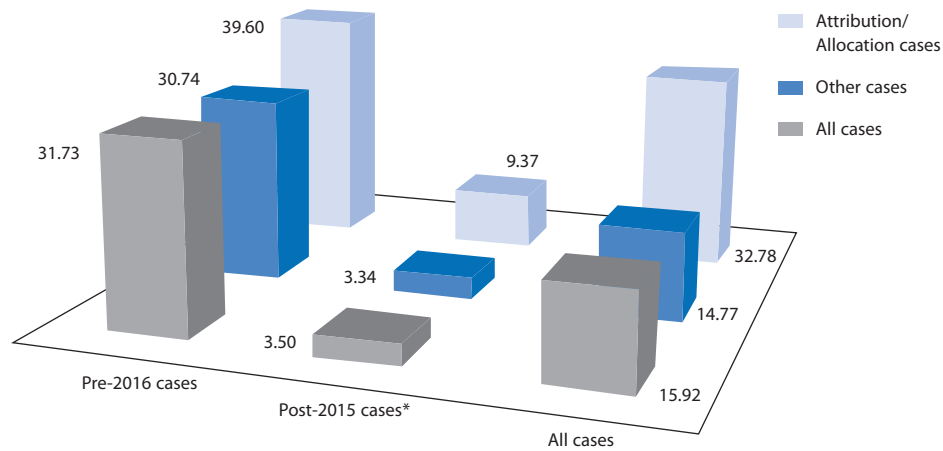
#### *Recent developments*

198. Belgium reported that there are no recent developments in the monitoring mechanism to assess whether the resources of its competent authority are adequate.

### Practical application

199. As discussed under element C.2 Belgium resolved its MAP cases within the pursued 24-month average. However, a discrepancy exists between the average time taken to solve attribution/allocation cases and other cases. This can be illustrated by the following graph:

Figure C.6. Average time (in months)



\*Note that post-2015 cases only concern cases started and closed during 2016 or 2017.

200. Based on these figures, it follows that on average it took Belgium 15.92 months to resolve MAP cases. However, it took Belgium 32.78 months to resolve attribution/allocation cases, which might indicate that additional resources specifically dedicated to allocation/attribution cases may be necessary to accelerate the resolution of these cases.

201. Belgium had provided the following clarification for this excess as regards the 2016 Reporting Period:

Cases resolved in more than 24 months during the Reporting Period	Attribution/Allocation cases	Other cases	All cases
<b>Late reaction from Belgium</b>			
More than 1 year	0	4	4
More than 2 years	1	18	19
More than 3 years	0	10	10
<b>Late reaction from the other competent authority</b>			
More than 1 year	0	8	8
More than 2 years	3	4	7
More than 3 years	5	5	10
<b>Negotiations have taken a long time due to the drafting of several positions papers</b>	6	13	19
<b>Suspension of the case (pending before a court) or decision made by a court</b>	1	1	2
<b>Withdrawal of the taxpayer</b>	1	1	2
<b>TOTAL</b>	<b>17</b>	<b>64</b>	<b>81</b>

202. Belgium had also reported that in 2015 it resolved 102 cases in excess of 24 months, while during the Reporting Period this figure decreased to 81 cases (out of 438 resolved cases).

203. The average time to close MAP cases can be split as follows for 2016 and 2017:

	2016	2017
Attribution/Allocation cases	39.67	28.98
Other cases	11.62	17.42
All cases	13.03	18.28

204. The 2017 MAP statistics show that Belgium decreased the average completion time of attribution/allocation cases from 39.67 months to 28.98 months, resulting in an average for both 2016 and 2017 of 32.78 months. While the average time needed to close other cases increased from 11.62 months in 2016 to 17.42 months in 2017, the average time needed to close other cases in both 2016 and 2017 was 14.77 months. The resulting average time needed to close all cases also remained below the pursued average of 24 months even though it increased from 13.03 months in 2016 to 18.28 months in 2017 as it was 15.92 months for cases closed in 2016 or 2017.

205. Belgium's MAP inventory decreased for both types of cases since 1 January 2016, which can be shown as follows:

	Opening Inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016/ Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	85	23	22	86	37	40	83	-2%
Other cases	700	403	416	687	465	497	655	-6%
<b>Total</b>	<b>785</b>	<b>426</b>	<b>438</b>	<b>773</b>	<b>502</b>	<b>537</b>	<b>738</b>	<b>-6%</b>

206. Belgium further reported that it has scheduled more face to face meetings with its treaty partners in order to discuss the pending attribution/allocation cases with the aim of being more efficient in resolving these cases. In addition, Belgium reported that it uses more frequently electronic channels of communication such as conference calls or exchange of position paper via encrypted emails.

### *Peer and taxpayer input*

#### Period 1 January 2014-31 December 2016 (stage 1)

207. Several peers mentioned that Belgium's competent authority responded quickly to their requests and that there were several contacts and regular meetings with Belgium's competent authority and that the overall relationship was good and could help reach agreement on complex issues. One peer also mentioned that it received one notification from Belgium's competent authorities on the opening of a MAP with relevant information.

208. Several peers mentioned that discussions are carried out in an efficient manner with Belgium's competent authority, in writing or through conference calls. One peer however mentioned that on average six months elapsed between responses by both competent

authorities and expressed concerns about the fact that written correspondence could sometimes not help reach an agreement. Another peer suggested that they could meet in person Belgium’s competent authority to enhance the resolution of MAP cases. Several peers finally suggested that they could meet more often (e.g. twice a year) and/or develop additional channels of communication such as periodic conference calls. Finally, one peer suggested the use of secure email to exchange documents to enable turnaround times to be improved.

#### Period 1 January 2017-31 August 2018 (stage 2)

209. Several peers that provided input did not comment on element C.3. Five peers stated in stage 2 that the update report provided by Belgium fully reflects their experiences with Belgium since 1 January 2017 and/or there are no additions to the previous input given in stage 1.

210. One peer reported having a good working relationship with Belgium. This peer further explained that discussion with Belgium usually takes place via written or email correspondence and that it experienced no issues with respect to the resolution of MAP cases involving Belgium since 1 January 2017. Another peer referred to the input given in stage 1 and reported that the discussions with Belgium’s competent authority are frequent and concrete. This peer further stated that its working relationship with Belgium provides a peaceful framework for solving many complex issues.

211. One peer confirmed that Belgium has used face to face meetings and electronic communications in order to accelerate the resolution of attribution/allocation MAP cases. Another peer confirmed that a face-to-face meeting was scheduled with Belgium’s competent authority and that in addition to that meeting there have been many exchanges via email or telephone with Belgium. Another peer confirmed that the use of encrypted e-mails and teleconferences has helped strengthen the relationship and maintain timely resolution of cases with Belgium. This peer reported experiencing a good working relationship with Belgium.

212. One peer confirmed that it experiences a swift resolution of MAP cases involving Belgium and that Belgium uses electronic channels of communication with a view to resolving MAP cases efficiently. This peer further noted that Belgium’s competent authority responsible for attribution/allocation cases has extensive knowledge both on a theoretical and practical level, which also helps resolve the MAP cases quickly. This peer concluded that the only improvement that Belgium could consider would be to allocate additional resources responsible for attribution/allocation cases, with a view to further accelerate the resolution of these cases in the future.

#### *Anticipated modifications*

213. Belgium indicated that its competent authority function would consist of 13 persons as from 1 January 2019.

#### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	-	

#### **[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.

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

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

215. Belgium's competent authority is a part of the International Relation Service, which is a division of the Support and Operating Expertise division within the head office of the General Tax Administration (AGFisc) in the SPF. Belgium's audit teams belong to the same General Administration in the SPF but are independent from Belgium's competent authority as they report to heads of Administration departments being independent from the Support and Operating Expertise Division.

216. Upon receipt of a MAP case, Belgium's competent authority asks the relevant tax service for facts and supplementary information. If not all information is available, Belgium's competent authority also contacts the taxpayer. Then, Belgium's competent authority independently decides on its position on the MAP case. The capacity to act independently in transfer pricing matters has been enhanced by the recruitment in 2014 of two transfer pricing experts who are no longer affiliated to audit teams. As a consequence, Belgium's competent authority acts independently and only depends on other parts of the tax administration for information and verification of facts. Furthermore, the resolution of MAP cases by Belgium's competent authority is not influenced by policy considerations.

##### ***Recent developments***

217. There are no recent developments relating to element C.4.

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

###### *Period 1 January 2014-31 December 2016 (stage 1)*

218. No peer expressed any concerns about Belgium's competent authority's independence. Several peers mentioned that Belgium's competent authority has always been very positive towards a final solution that reconciles in the best way the interest of both parties and that they appreciate the pragmatic orientation of Belgium's competent authority.

###### *Period 1 January 2017-31 August 2018 (stage 2)*

219. Almost all peers that provided input did not provide comments on element C.4. One peer specifically mentioned that its experience with Belgium shows that Belgium's competent authority acts wholly independently and is not influenced by policy considerations or by the personnel who made the adjustment at issue. One peer mentioned that it did not identify any particular obstacle in the context of the resolution of MAP cases with Belgium.

*Anticipated modifications*

220. Belgium did not indicate that it anticipates any modifications in relation to element C.4.

*Conclusion*

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

221. 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 Belgium*

222. Belgium uses performance indicators based on the meeting of deadlines for each stage of MAP cases. One of the objective goals is following up and complying with all internally fixed deadlines. These deadlines are filled in by staff in the course of the performance of their activity (see previously, the MAP sheet) and can be consulted by the management using internal software. Moreover, all positions taken by staff are verified by another person and/or the head of service, and thus ensuring the positions comply with the Commentary to the OECD Model Tax Convention (OECD, 2017a; OECD, 2015 and the OECD Transfer Pricing Guidelines, OECD, 2017b). Staff is expected to follow such guidelines.

223. The Final Report on Action 14 (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

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

224. In particular, there is no performance indicators based on amounts or assignments that need to be achieved by Belgium's competent authority when resolving MAP cases, nor does Belgium's competent authority target specified sustained audit adjustments or tax revenue amounts.

*Recent developments*

225. There are no recent developments relating to element C.5.

***Practical application****Period 1 January 2014-31 December 2016 (stage 1)*

226. Several peers mentioned that Belgium’s competent authority official with which they were dealing were very efficient and wanted to close the case in a timely manner, which was notably done through quick answers to questions raised through various means of communication.

*Period 1 January 2017-31 August 2018 (stage 2)*

227. All peers that provided input did not provide specific comments on element C.5. One peer mentioned that it did not identify any particular obstacle in the context of the resolution of MAP cases with Belgium.

***Anticipated modifications***

228. Belgium did not indicate that it anticipates any modifications in relation to element C.5.

***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

229. 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***

230. Belgium reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. The inclusion of MAP arbitration is part of its tax treaty policy. In particular, Belgium’s publicly available model tax treaty contains an arbitration provision following the OECD Model Tax Convention.<sup>11</sup>

231. In addition, Belgium is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Belgium’s domestic legislation as per 1 July 2019.

***Recent developments***

232. Since 1 January 2017 Belgium signed a treaty with a treaty partner for which currently no treaty is in existence. This treaty contains an arbitration provision that is modelled after Article 25(5) of the OECD Model Tax Convention and is included in the specification below.



233. Furthermore, Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is expected for the first half of 2019. With the signing of that instrument, Belgium also opted for part VI, which includes a mandatory and binding arbitration provision. The effect of this opting in is also further discussed below.

### ***Practical application***

234. Belgium has incorporated an arbitration clause in 11 treaties as a final stage to the MAP. These clauses are as follows:

- Eight treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention. In one of these treaties additional rules were agreed to be applied during the arbitration procedure. In this treaty, as also in another treaty, a specific timeframe is set within which taxpayers have to accept the arbitration decision. Furthermore in one of these eight treaties the time period for the mutual agreement procedure is three instead of two years.
- Two treaties provide for a voluntary and binding arbitration clause.
- One treaty contains a mandatory and binding arbitration procedure.

235. Furthermore, Belgium included in two treaties a most-favoured nation clause concerning the inclusion of an arbitration provision. In one treaty this concerns the automatic inclusion of such provision, whereas in the other one this concerns entering into negotiations for the inclusion of an arbitration provision, should Belgium's treaty partner include an arbitration provision in a tax treaty with a third state. Belgium reported that for these two treaties the relevant conditions have not been fulfilled yet, but that it is currently in negotiations with one treaty partner in the revision of the current treaty in force that would also relate to the inclusion of an arbitration provision.

236. In addition, with respect to the effect of part VI of the Multilateral Instrument on Belgium's tax treaties, there are next to Belgium in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Belgium listed 19 as a covered tax agreement under the Multilateral Instrument and all of these 19 treaty partners also listed their treaty with Belgium under that instrument. For these 19 treaties, Belgium has already included an arbitration provision in one tax treaty. For the remaining 18 tax treaties, Belgium reported it expects that part VI of the Multilateral Instrument will apply and introduce a mandatory and binding arbitration procedure in 16 treaties.

### ***Anticipated modifications***

237. Belgium reported that the inclusion of a mandatory and binding arbitration procedure is also proposed to those 12 treaty partners for which negotiations are envisaged, scheduled or pending to bring the applicable treaties in line with all requirements under the Action 14 Minimum Standard. In that regard, it emphasised that it has expressed a strong will to these treaty partners to include an arbitration clause in the applicable treaties.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 89 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia, and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
2. <https://search.oecd.org/ctp/dispute/MAP%20PROGRAM%20STATISTICS%20FOR%202015%20BELGIUM.pdf> (accessed on 24 August 2017).
3. [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0142016enacstatistics2015.pdf).
4. Belgium's 2016 MAP statistics for pre-2016 cases were corrected in 2017 and deviate from the published MAP statistics for 2016. See further explanations in Annex B.
5. For post-2015 cases, if the number of MAP cases in Belgium's inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five, Belgium reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
6. Manual on Effective Mutual Agreement Procedures (MEMAP), available at [www.oecd.org/ctp/38061910.pdf](http://www.oecd.org/ctp/38061910.pdf).
7. For pre-2016 and post-2015 cases, Belgium follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".
8. With the final submission of the 2016 statistics the number of cases in start inventory was modified compared to the stage 1 report.
9. <https://search.oecd.org/tax/dispute/Belgium-Dispute-Resolution-Profile.pdf>. (accessed on 24 August 2017).
10. [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/profiles/tpprofile-be.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-be.pdf) (accessed on 24 August 2017).
11. Available at: <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=67ff6923-e842-44c1-8365-0c8536237b93&disableHighlighting=true&documentLanguage=en#findHighlighted>.

## References

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

## *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.

238. 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***

239. Once a MAP agreement is reached, Belgium's competent authority requests the taxpayers concerned to give their approval to the agreement reached as a prerequisite for implementation. This applies both for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP. Belgium's competent authority is not itself responsible for implementing MAP agreements. Once a MAP agreement is accepted by the taxpayer, it is sent to the local tax service, the latter being responsible for the implementation. Nevertheless, Belgium's competent authority asks for a copy of the implementation act to monitor that this is done in practice. This information is used in Belgium's competent authority's internal database that is used to monitor and review the implementation of MAP agreements.

240. Subject to limitations described below, Belgium will implement all agreements reached in MAP discussions and once accepted by taxpayers. Belgium, however, has a legal and administrative framework in place regarding the implementation of MAP agreements that can be different for upward and downward adjustments of taxpayers' taxable income. MAP agreements resulting in a downward adjustment of the taxpayer's taxable income will always be implemented by Belgium. On the other hand, MAP agreements resulting in an upward adjustment of the taxpayer's taxable income will be implemented if its domestic statute of limitation enables it to do so, as additional taxes can only be assessed for up to three years as from the end of a given tax year.

241. On 1 January 2017, a new provision has entered into force into Belgium's domestic law. This provision stipulates that the assessment period will be extended by 12 months as from the date when a MAP is closed. Accordingly, taxes that would not be assessed under current circumstances could be levied (and corresponding agreement implemented) under the new legislation. In this respect, Belgium indicated that the MAP guidance to be published would specify at which date a MAP is to be considered closed, as this is not clearly defined in the law.

***Recent developments***

242. There are no recent developments relating to element D.1.

***Practical application******Period 1 January 2014-31 December 2016 (stage 1)***

243. Belgium reported that all MAP agreements reached since 1 January 2014, once accepted by taxpayers, have been (or will be) implemented.

244. Peers have not indicated experiencing any issues with Belgium regarding the implementation of MAP agreements that were reached on or after 1 January 2014. One peer mentioned that it is their impression that MAP agreements have been implemented by Belgium both timely and correctly. Another peer mentioned that double taxation was nearly always eliminated in their MAP agreements with Belgium, and that the exceptions concerned taxpayers who did not accept the MAP agreement that was proposed to them. Another peer echoed this input and specified that, according to them, only when taxpayers did not accept the MAP agreement these agreements were not implemented.

***Period 1 January 2017-31 August 2018 (stage 2)***

245. Belgium reported that all MAP agreements reached by Belgium's competent authority since 1 January 2017 which required an implementation by Belgium were implemented.

246. Almost all peers that provided input did not comment on element D.1. One peer specified that it is not aware of any MAP agreement concerning Belgium and that would not be implemented.

***Anticipated modifications***

247. Belgium did not indicate that it anticipates any modifications in relation to element D.1.

***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	-

**[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.

248. 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***

249. Belgium has in its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached. As mentioned previously, the Belgian Competent Authority is not itself responsible for implementing MAP agreements. Upon written acceptance by taxpayers, MAP agreements are implemented by the local tax service and the Belgian Competent Authority asks for a copy of the implementation act to monitor that this is done in practice. On average, the implementation of mutual agreements takes two months upon receipt of the order to implement a MAP agreement.

### ***Recent developments***

250. There are no recent developments relating to element D.2.

### ***Practical application***

#### *Period 1 January 2014-31 December 2016 (stage 1)*

251. Belgium reported that all MAP agreements that were reached on or after 1 January 2014 and once accepted by taxpayers have been (or will be) implemented on a timely basis.

252. Peers have not indicated experiencing any problems with Belgium regarding the implementation of MAP agreements that were reached on or after 1 January 2014 in general or on a timely basis. One peer mentioned that it believes that MAP agreements have been implemented both timely and correctly.

#### *Period 1 January 2017-31 August 2018 (stage 2)*

253. Belgium reported that all MAP agreements reached by Belgium's competent authority since 1 January 2017 which required an implementation by Belgium were implemented and that it experienced no delays in the implementation process, neither at the level of its own competent authority nor at the level of its treaty partner.

254. All peers that provided input did not comment on element D.2.

### ***Anticipated modifications***

255. Belgium did not indicate that it anticipates any modifications in relation to element D.2.

### ***Conclusion***

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

256. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

#### ***Legal framework and current situation of Belgium's tax treaties***

257. As discussed under element D.1, under Belgium's domestic legislation MAP agreements resulting in upward adjustments cannot be implemented if domestic time limits have passed, unless the relevant tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. On the other hand, Belgium reported that it will always implement MAP agreements resulting in a downward adjustment of the taxpayer's taxable income, regardless of any domestic time limits.

258. Out of Belgium's 97 tax treaties, 45 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, 51 treaties do not contain such equivalent nor any of the alternative provisions found in Article 9(1) or in Article 7(2) setting a time limit in for making primary adjustments.<sup>1</sup> The remaining treaty also does not contain such equivalent and only includes the alternative provision in Article 9(1).

259. Several peers reported that the provisions of their tax treaty with Belgium do not meet the relevant elements of the Action 14 Minimum Standard and that they envisage implementing these elements by signing the Multilateral Instrument.

#### ***Recent developments***

##### *Bilateral modifications*

260. Belgium signed a new tax treaty, which concerns a treaty partner for which no treaty is currently in existence. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, and which has been reflected in the analysis above.

##### *Multilateral Instrument*

261. Belgium signed the Multilateral Instrument and has initiated the ratification process, for which completion is foreseen during the first half of 2019.

262. 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 – 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. 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. Article 16(4)(b)(ii) of the Multilateral Instrument does will for a tax treaty not take effect if one or both of the treaty partners has, pursuant Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

263. In regard of the 52 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Belgium listed 50 as a covered tax agreement under the Multilateral Instrument and for all of them did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 50 treaty partners, 11 are not a signatory to the Multilateral Instrument, whereas three made a reservation on the basis of Article 16(5)(a).<sup>2</sup> The remaining treaty 36 partners all made a notification pursuant to Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 36 of the 52 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.<sup>3</sup>

### *Other developments*

264. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Belgium has put in place a plan for bringing these treaties in line with that standard. Concerning the 16 treaties that are not in line with element D.3 and will not be modified by the Multilateral Instrument, the following actions were taken:

- One treaty partner has approached Belgium with a proposal for an amending protocol to *inter alia* bring the treaty in line with the requirements under element D.3. This proposal is currently under consideration.
- Belgium approached four treaty partners with the request to negotiate an amending protocol to *inter alia* bring the treaty in line with the requirements under element D.3.
- Belgium and one treaty partner recently negotiated a new treaty, which will replace the existing treaty currently in force, following which the treaty will be in line with element D.3.
- Belgium has pending negotiations with two other treaty partners on the replacement or the amendment of the existing treaty currently in force *inter alia* bring these treaties in line with the requirements under element D.3.

*Peer input*

265. The majority of peers with which the treaty with Belgium is not in line with the requirements under element D.3 and will not be modified by the Multilateral Instrument did not provide input. One of the remaining peers confirmed that its treaty with Belgium will be replaced by a new treaty following which the MAP provision will be in line with the Action 14 Minimum Standard. Another peer reported that bilateral discussions are currently held with Belgium regarding an amending protocol with a view to bring the treaty in line with the Action 14 Minimum Standard. The remaining peer did not comment on any contacts with Belgium or any actions taken to bring its treaty with Belgium in line with this element.

*Anticipated modifications*

266. For the remaining eight treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are envisaged, scheduled or pending, Belgium indicated it will approach the relevant treaty partners to bring these treaties in line with the requirement under this element. None of these concerns a EU Member State or a treaty partner with which Belgium has a substantial number of MAP cases pending and for that reason they will be prioritised by Belgium. Furthermore, Belgium reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future treaties.

*Conclusion*

	Areas for improvement	Recommendations
[D.3]	<p>52 out of 97 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in both Article 9(1) and Article 7(2). Of those 52 treaties:</p> <ul style="list-style-type: none"> <li>• 36 are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• 16 will not be modified by that instrument to include the required provision. With respect to these 16 treaties: <ul style="list-style-type: none"> <li>- Seven are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- One has been renegotiated and the new tax treaty will contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.</li> <li>- For the remaining eight no actions have been taken or are planned to be taken, but it is included in the plan for renegotiations</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In those 36 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 15 of the remaining 16 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention., Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</li> <li>• Continue discussions or negotiations with seven treaty partners to include the required provision or be willing to accept the inclusion of both alternatives</li> <li>• Also request the inclusion of the required provision or be willing to accept the inclusion of both alternatives in seven of the remaining eight treaties in accordance with its plan for renegotiation</li> </ul> <p>Specifically with respect to the treaty with the former USSR, Belgium should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternatives.</p>



## Notes

1. These 51 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Kosovo, Montenegro and Serbia and the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
2. These 11 treaties include the treaty with the former USSR that Belgium continues to apply to Kyrgyzstan and Turkmenistan.
3. These 36 treaties include the treaty with former Yugoslavia that Belgium continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.

## References

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



## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	<p>17 out of 97 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Of these 17 treaties:</p> <ul style="list-style-type: none"> <li>• 13 are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• Four will not be modified by that instrument to contain the required provision. With respect to these four treaties: <ul style="list-style-type: none"> <li>- Two are included in the list of treaties for which negotiations are envisaged, scheduled or pending to include the required provision</li> <li>- One has recently been renegotiated and the new tax treaty will contain the required provision</li> <li>- For the remaining treaty no actions have been taken, but it is included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in those 13 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 four 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, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</li> <li>• Continue discussions or negotiations with two treaty partners to include the required provision, taking into account it is awaiting a response from one treaty partner in relation hereto</li> <li>• Also request the inclusion of the required provision in the remaining treaty in accordance with its plan for renegotiations.</li> </ul>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>One out of 97 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent.</p>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for this treaty.</p>

	Areas for improvement	Recommendations
	<p>Nine out of 97 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Six are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• Three will not be modified by that instrument to include the required provision. With respect to these three treaties: <ul style="list-style-type: none"> <li>- One is included in the list of treaties for which negotiations are envisaged, scheduled or pending to include the required provision</li> <li>- For the remaining two no actions have been taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention 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 three treaties, Belgium should:</p> <ul style="list-style-type: none"> <li>• Continue discussions or negotiations with one treaty partner on the inclusion of the required provision</li> <li>• Also request the inclusion of the required provision via bilateral negotiations in the remaining two treaties in accordance with its plan for renegotiations.</li> </ul>
[B.1]	<p>Nine out of 97 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report, and provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and to include a three year filing period for MAP requests</li> <li>• Four will not be modified by that instrument to include the required provision. With respect to these four treaties: <ul style="list-style-type: none"> <li>- One has been renegotiated and the new tax treaty will contain provision that is equivalent to Article 25(1), first sentence, of the 2015 OECD Model Tax Convention as it read prior to the Action 14 final report and also will contain a three year filing period for MAP requests</li> <li>- For the remaining three no actions have been taken or are planned to be taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in those five 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 four treaties, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possibly ratify the one treaty for which negotiations have been concluded to include the required provisions</li> <li>• Also request the inclusion of the required provisions in the remaining three treaties in accordance with its plan for renegotiations. This concerns: <ul style="list-style-type: none"> <li>- a provision that is equivalent to Article 25(1), first sentence of the 2015 OECD Model Tax Convention as it read prior to or as amended in the final report on Action 14; and/or</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> </li> </ul>
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>96 out of 97 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 96 treaties:</p> <ul style="list-style-type: none"> <li>• 62 are expected to be modified by the Multilateral Instrument to contain the required provision</li> <li>• 34 will not be modified by that instrument to contain the required provision. With respect to these 34 treaties: <ul style="list-style-type: none"> <li>- 14 are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- One concerns a treaty that recently has been negotiated and for which currently no treaty is in existence</li> <li>- One has been renegotiated and the new tax treaty will contain the required provision</li> <li>- For the remaining 18 treaties no actions have been taken, but are included in the plan for renegotiations.</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 62 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 33 of the remaining 34 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</li> <li>• Re-initiate negotiations with one treaty partner with which it recently signed a new treaty to include the required provision</li> <li>• Continue discussions or negotiations with 14 treaty partners to include the required provision</li> <li>• Also request the inclusion of the required provision in the remaining 17 treaties in accordance with its plan for renegotiations.</li> </ul> <p>Specifically with respect to the treaty with the former USSR that Belgium continues to apply to Moldova and Tajikistan, Belgium should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p>
[B.8]	-	-
[B.9]	The comprehensive MAP guidance is published but not easily accessible.	Belgium should ensure its MAP guidance is easily accessible.
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>Eight out of 97 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these eight treaties:</p> <ul style="list-style-type: none"> <li>• Seven are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• One has been renegotiated and the new tax treaty will contain the required provision.</li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and for which negotiations have been concluded, Belgium should as quickly as possible ratify this treaty to have the required provision in place.</p>
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-

	Areas for improvement	Recommendations
[D.2]	-	-
[D.3]	<p>52 out of 97 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in both Article 9(1) and Article 7(2). Of those 52 treaties:</p> <ul style="list-style-type: none"> <li>• 36 are expected to be modified by the Multilateral Instrument to include the required provision</li> <li>• 16 will not be modified by that instrument to include the required provision. With respect to these 16 treaties: <ul style="list-style-type: none"> <li>- Seven are included in the list of treaties for which negotiations are envisaged, scheduled or pending</li> <li>- One has been renegotiated and the new tax treaty will contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention</li> <li>- For the remaining eight no actions have been taken or are planned to be taken, but it is included in the plan for renegotiations</li> </ul> </li> </ul>	<p>Belgium should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 36 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 15 of the remaining 16 treaties that will not be amended by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Belgium should:</p> <ul style="list-style-type: none"> <li>• As quickly as possible ratify the one treaty for which negotiations have been concluded to include the required provision</li> <li>• Continue discussions or negotiations with seven treaty partners to include the required provision or be willing to accept the inclusion of both alternatives</li> <li>• Also request the inclusion of the required provision or be willing to accept the inclusion of both alternatives in seven of the remaining eight treaties in accordance with its plan for renegotiation</li> </ul> <p>Specifically with respect to the treaty with the former USSR, Belgium should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or be willing to accept the inclusion of both alternatives.</p>

## Annex A

### Tax treaty network of Belgium

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

Treaty partner	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
	B.1	B.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
	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?
Austria	Y	O	ii* 2-years	i**	i	Y	N*	N*	N*	N
Azerbaijan	Y	O	Y N/A	Y	i	Y	Y	Y	N	N
Bahrain	Y	O	Y N/A	Y	i	Y	Y	Y	N	N
Bangladesh	Y	O	Y N/A	i	i	Y	Y	Y	N	N
Belarus	Y	O	Y N/A	i	i	Y	N	Y	N	N
Bosnia and Herzegovina	Y	O	Y N/A	i	i	Y	N	N	N	N
Botswana	N	O	Y N/A	Y	i	Y	Y	Y	N	Y
Brazil	Y	O	ii 2-years	i	i	Y	N	N	N	N
Bulgaria	Y	O*	Y N/A	i**	i	Y	N*	Y	N*	N
Canada	Y	O	ii* 2-years	i	i	Y	ii	Y	N*	N
Chile	Y	O	Y N/A	Y	i	Y	N*	Y	N*	N
China (People’s Republic of)	Y	O	Y N/A	Y	i	Y	Y	Y	N*	N
Congo	Y	O	Y N/A	Y	i	Y	Y	Y	N	N
Côte d’Ivoire	Y	O*	Y N/A	i**	i	Y	N*	Y	N*	N
Croatia	Y	O	Y N/A	Y	i	Y	Y	Y	N*	N
Cyprus <sup>a</sup>	Y	O*	Y N/A	i**	i	Y	N*	Y	N*	N
Czech Republic	Y	O*	Y N/A	i	i	Y	N*	Y	N*	N
Denmark	Y	N*	iv* N/A	i**	i	N*	N*	N*	N*	N
Ecuador	Y	O	Y N/A	i	i	Y	N	Y	N	N



Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration							
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Egypt	Y	O*	Y	Y	N/A	i	i	Y	N*	Y	N*	Y	N*	N	N/A					
Estonia	Y	O*	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A					
Finland	Y	O*	Y	Y	N/A	Y	Y	Y	N*	N*	N*	N*	N*	N	N/A					
Former Yugoslav Republic of Macedonia	Y	E	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N	N	N/A					
France	Y	N*	ii*	ii*	6-months	i*	i*	N*	N*	N*	N*	N*	N*	N	N/A					
Gabon	Y	O*	Y	Y	N/A	i**	i**	Y	N*	Y	Y	Y	N*	N	N/A					
Georgia	Y	O*	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A					
Germany	Y	N	ii	ii	2-years	i	i	N	N	N	N	N	N	N	N/A					
Ghana	Y	O	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N	N	N/A					
Greece	Y	O*	ii*	ii*	2-years	i**	i**	Y	N*	Y	Y	Y	N*	N	N/A					
Hong Kong (China)	Y	O*	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A					
Hungary	Y	O	Y	Y	N/A	i**	i**	Y	N*	Y	Y	Y	N*	N	N/A					
Iceland	Y	O*	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N*	N	N/A					
India	Y	O	ii*	ii*	2-years	i**	i**	Y	Y	Y	Y	Y	N*	N	N/A					
Indonesia	Y	O	Y	Y	N/A	i	i	Y	N*	Y	Y	Y	N*	N	N/A					
Ireland	Y	O*	ii*	ii*	2-years	i**	i**	N*	N*	N*	N*	N*	N*	N	N/A					
Isle of Man	N	O*	Y	Y	N/A	Y	Y	Y	Y	Y	Y	Y	N*	Y	i					
Israel	Y	N	ii*	ii*	2-years	i**	i**	N*	N*	N*	N*	N*	N*	N	N/A					

Treaty partner	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
	B.1	B.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
	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?
Italy	Y	N	ii* 2-years	i**	i	Y	N*	Y	N*	N
Japan	N	E	N/A	Y	i	Y	Y	Y	Y	Y
Kazakhstan	Y	O	N/A	i**	i	Y	Y	Y	N*	N
Korea	Y	O*	N/A	i**	i	Y	N*	N*	N*	N
Kosovo	Y	O	N/A	i	i	Y	N	N	N	N
Kuwait	Y	O*	N/A	Y	i	Y	N*	Y	N*	N
Kyrgyzstan	Y	O	N/A	i	i	Y	N	Y	N	N
Latvia	Y	O	N/A	Y	i	Y	Y	Y	N*	N
Lithuania	Y	O*	N/A	Y	i	Y	Y	Y	N*	N
Luxembourg	Y	N*	2-years	i**	i	N*	Y	N*	N*	N
Macau (China)	N	O	N/A	Y	i	Y	Y	Y	N	N
Malaysia	Y	N*	2-years	i	i	N*	N*	N*	N*	Y
Malta	Y	N*	N/A	i**	i	Y	N*	N*	N*	N
Mauritius	Y	O*	N/A	i**	i	Y	N*	Y	N*	N
Mexico	Y	O*	N/A	i**	i	Y	N	Y	N*	N
Moldova	N	O	N/A	Y	i	Y	Y	Y	N	Y
Mongolia	Y	O	N/A	i	i	Y	N	Y	N	N
Montenegro	Y	O	N/A	i	i	Y	N	N	N	N
Morocco	Y	O	N/A	Y	i	Y	Y	Y	N	N
Netherlands	Y	O	N/A	Y	i	Y	Y	Y	N	N

Treaty partner	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
	B.1	B.3	B.4	B.7	A.1	A.1	B.7	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
	DTC in force?	Is Art. 25(1), first sentence included? If yes, submission to either competent authority	Is Art. 25(1), second sentence included? If no, please state reasons	Is Art. 9(2) included?	Existence of a provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Is Art. 25(2) first sentence included?	Is Art. 25(2) second sentence included? If no, alternative provision in Art. 7 & 9 OECD MTC?	Is Art. 25(3) first sentence included?	Is Art. 25(3) second sentence included?	Inclusion arbitration provision?	
New Zealand	Y	O*	Y	N/A	i	Y	Y	Y	N*	N	N/A
Nigeria	Y	O*	Y	N/A	i	Y	N*	Y	N*	N	N/A
Norway	Y	O	Y	N/A	i	Y	Y	Y	N	N	N/A
Oman	N	O	Y	N/A	i	Y	Y	Y	N	N	N/A
Pakistan	Y	O*	Y	N/A	i	Y	N*	Y	N*	N	N/A
Philippines	Y	O	ii	2-years	i	Y	N	N	N	N	N/A
Poland	Y	O	Y	N/A	i	Y	Y	Y	N*	Y	i
Portugal	Y	N	ii*	2-years	i	N*	N*	N*	N*	N	N/A
Qatar	N	O*	Y	N/A	i	Y	Y	Y	N*	N	N/A
Romania	Y	O	Y	N/A	i	Y	N*	Y	N*	N	N/A
Russia	N	O*	Y	N/A	i	Y	Y	Y	N*	N	N/A
Rwanda	Y	O	Y	N/A	i	Y	Y	Y	N	N	N/A
San Marino	Y	O	ii	2-years	i	Y	Y	Y	N*	N	N/A
Senegal	Y	O*	Y	N/A	i	Y	N	Y	N*	N	N/A
Serbia	Y	O	Y	N/A	i	Y	N*	N*	N*	N	N/A
Seychelles	Y	O*	Y	N/A	i	Y	Y	Y	N*	N	N/A
Singapore	Y	O	Y	N/A	i	Y	Y	Y	N*	N	N/A
Slovak Republic	Y	O	Y	N/A	i	Y	N*	Y	N*	N	N/A
Slovenia	Y	O	Y	N/A	i	Y	N*	Y	N*	N	N/A
South Africa	Y	O	Y	N/A	i	Y	N*	Y	N*	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Spain	Y	O	Y	Y	N/A	Y	N/A	Y	N*	Y	N*	N	N/A							
Sri Lanka	Y	O	Y	Y	N/A	Y	N/A	Y	N	Y	N	N	N/A							
Sweden	Y	O*	Y	i**	N/A	Y	N/A	Y	N*	Y	N*	N	N/A							
Switzerland	Y	O	Y	Y	N/A	Y	N/A	Y	N	Y	N	Y	i							
Tajikistan	N	O	Y	Y	N/A	Y	N/A	Y	Y	Y	N	Y	iii							
Chinese Taipei	Y	O	Y	Y	N/A	Y	N/A	Y	Y	Y	N	N	N/A							
Thailand	Y	O	Y	i	N/A	Y	N/A	N	N	N	N	N	N/A							
Tunisia	Y	O*	Y	Y	N/A	Y	N/A	Y	Y	Y	N*	N	N/A							
Turkey	Y	O*	iv**	Y	N/A	Y	N/A	Y	N*	Y	N*	N	N/A							
Turkmenistan	Y	O	Y	i	N/A	Y	N/A	Y	N	Y	N	N	N/A							
Uganda	N	O	Y	Y	N/A	Y	N/A	Y	Y	Y	N	N	N/A							
Ukraine	Y	O*	Y	Y	N/A	Y	N/A	Y	Y	Y	N*	N	N/A							
United Arab Emirates	Y	O*	Y	Y	N/A	Y	N/A	Y	N*	Y	N*	N	N/A							
United Kingdom	Y	O*	Y	i*	N/A	Y	N/A	Y	Y	Y	N*	Y	i							
United States	Y	E	Y	Y	N/A	Y	N/A	Y	Y	Y	N	Y	ii							
Uruguay	Y	O*	Y	Y	N/A	Y	N/A	Y	Y	Y	N*	Y	i							
Uzbekistan	Y	O	Y	Y	N/A	Y	N/A	Y	Y	Y	N	N	N/A							
Venezuela	Y	O	ii	i	2-years	Y	N/A	Y	N	Y	N	N	N/A							
Viet Nam	Y	O	Y	Y	N/A	Y	N/A	Y	N	Y	N	N	N/A							

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

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

#### *Legend*

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

## Annex B

### MAP Statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	
	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	
Attribution/ Allocation	0	0	4	0	1	16	0	0	0	0	64	41.38
Others	13	10	2	20	1	167	0	0	4	0	483	20.99
Total	13	10	6	20	2	183	0	0	4	0	547	22.79

Note: The start inventory of MAP cases (other cases) on 1 January 2016 differs from the same figure in 2016 MAP statistics as published as Belgium has only been informed in 2017 of several MAP cases already introduced in other states before 2016.

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		Column 13
		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	
Attribution/ Allocation	64	1	7	1	1	2	15	0	0	0	0	37	38.22
Others	483	5	8	3	8	0	136	0	0	3	1	319	43.63
Total	547	6	15	4	9	2	151	0	0	3	1	356	42.87

## Annex C

## MAP Statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	0	23	0	0	1	0	0	0	0	0	0	0	0	22	3.78
Others	0	403	23	11	3	125	1	36	0	0	0	0	0	204	1.40
Total	0	426	23	11	4	125	1	36	0	0	0	0	0	226	1.41

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty			No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/ Allocation	22	37	0	0	2	3	0	7	0	0	1	0	0	46	9.80
Others	204	465	40	29	5	111	2	145	0	1	0	0	0	336	4.51
Total	226	502	40	29	7	114	2	152	0	1	1	0	0	382	4.70



## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>FAQs</b>	Frequently Asked Questions about the Mutual Agreement Procedure and the Advance Pricing Arrangements, published by Belgium’s competent authority
<b>MAP guidance</b>	Circular 2018/C/27 regarding the rules on dispute resolution in respect of the application of international tax treaties
<b>MAP statistics reporting framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
<b>Statistics Reporting period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
<b>Terms of reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

## OECD/G20 Base Erosion and Profit Shifting Project

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

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Belgium, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website.

Consult this publication on line at <https://doi.org/10.1787/734c25f4-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit [www.oecd-ilibrary.org](http://www.oecd-ilibrary.org) for more information.

