

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a Multilateral Instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 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.

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Abbreviations and acronyms

| | |
|-------------|--|
| APA | Advance Pricing Arrangement |
| MAP | Mutual Agreement Procedure |
| OECD | Organisation for Economic Co-operation and Development |

Executive summary

Croatia has a relatively large tax treaty network with over 60 tax treaties and has signed and ratified the EU Arbitration Convention. Croatia has an established MAP programme, but has limited experience with resolving MAP cases. Furthermore, it has a small MAP inventory, with a small number of new cases submitted each year and 12 cases pending on 31 December 2017. Of these cases, 17% concern allocation/attribution cases. Overall Croatia meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Croatia is working to address most of them.

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

- 15% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- 10% of its tax treaties do not contain a provision equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015).

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

Croatia does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-back of bilateral APAs.

Croatia meets almost all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP request concerning transfer pricing cases, cases concerning the application of anti-abuse provisions or cases where the tax administration and taxpayers have entered into audit settlements. In addition, Croatia has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. However,

Croatia’s position on including MAP arbitration, as set forth in its MAP profile, is not clear and deviates from its practice, which is to include an arbitration provision in its tax treaties. Lastly, Croatia has not yet in place a documented bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified.

Concerning the average time needed to close MAP cases, the MAP statistics for Croatia 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 close cases (in months)* |
|------------------------------|----------------------------|---------------|--------------|--------------------------|--|
| Attribution/allocation cases | 0 | 2 | 0 | 2 | N/A |
| Other cases | 10 | 1 | 1 | 10 | 48.00 |
| Total | 10 | 3 | 1 | 12 | 48.00 |

*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, Croatia used as the start date the date when the MAP request was received from another competent authority, and as the end date the date when Croatian competent authority sent its final opinion to the other competent authority.

The number of cases Croatia closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased as compared to its inventory as per 1 January 2016. During these years, MAP cases were not closed within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the time necessary was 48 months. All other pending cases have remained in Croatia’s inventory for almost two to three years. These statistics indicate that additional resources are necessary to accelerate the resolution of MAP cases.

Furthermore, Croatia meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Croatia’s competent authority operates fully independently from the audit function of the tax authorities, and the performance indicators used are appropriate to perform the MAP function.

Lastly, as there was no MAP agreement reached that required implementation in 2016 or 2017, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

References

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

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

Introduction

Available mechanisms in Croatia to resolve tax treaty-related disputes

Croatia has entered into 64 tax treaties on income (and/or capital), 62 of which are in force.¹ These 64 treaties apply to 65 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, two of the 64 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Furthermore, Croatia 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.⁴ In addition, Croatia also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Croatia’s domestic legislation as per 1 July 2019.⁵

In Croatia, the competent authority function to handle MAP cases is assigned to the Minister of Finance, which has delegated this authority to the Head of Croatia’s Tax Administration. In practice, this function is performed by the Legislation, Education and the International Cooperation Sector, Department for Avoidance of Double Taxation, which is a department within Croatia’s tax administration. Within that department two employees are in charge of handling MAP cases among other tasks. This concerns both attribution/allocation cases as well as other MAP cases.

Croatia has issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) in 2018, which is available at (in Croatian and in English):

<https://www.porezna-uprava.hr/en/Pages/MutualAgreementProcedure.aspx>

Recent developments in Croatia

Croatia signed a newly negotiated tax treaty with Kazakhstan and the United Arab Emirates in 2017 and with Viet Nam in 2018. The treaty with the United Arab Emirates has been ratified by both states and it will therefore enter into force on 1 January 2019. The treaty with Kazakhstan has only been ratified by Croatia, and the treaty with Viet Nam remains to be ratified by both states.

Furthermore, Croatia on 7 June 2017 signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Croatia reported that it strives updating them through future bilateral negotiations, but it has

neither yet a specific plan in place nor has it taken any actions to conduct such negotiations. With the signing of the Multilateral Instrument, Croatia also submitted its list of notifications and reservations to that instrument.⁶ In relation to the Action 14 Minimum Standard, Croatia reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁷ This reservation is in line with the requirements of the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Croatia’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Croatia and its peers. The questionnaires for the peer review process were sent to Croatia and the peers on 31 August 2018.

The period for evaluating Croatia’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 August 2018 (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Croatia’s implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Croatia is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro. As it concerns the same tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one treaty for this purpose. Furthermore, Croatia continues to apply the treaties of former Yugoslavia with Finland, Norway and Sweden with respect to these treaty partners. As they concern three separate treaties, they are counted separately. Reference is made to Annex A for the overview of Croatia’s tax treaties regarding the mutual agreement procedure.

In total six peers provided input: Germany, Italy, Norway, Slovenia, Switzerland and Turkey. Two of these peers have MAP cases with Croatia that started on or after 1 January 2016 and represent all of post-2015 MAP cases in Croatia’s inventory that started in 2016 or 2017. Generally, some peers indicated easiness of contact and their co-operative relationship with Croatia’s competent authority.

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

- MAP profile⁸
- MAP statistics⁹ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Croatia

The analysis of Croatia’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 (“**Statistics Reporting Period**”). According to the statistics provided by Croatia, 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 | 0 | 2 | 0 | 2 |
| Other cases | 10 | 1 | 1 | 10 |
| Total | 10 | 3 | 1 | 12 |

General outline of the peer review report

This report includes an evaluation of Croatia’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 (“**Terms of Reference**”).¹⁰ Apart from analysing Croatia’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Croatia to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

1. The tax treaties Croatia has entered into are available at: www.porezna-uprava.hr/en/EN_porezni_sustav/Pages/double_taxation.aspx. The treaties that are signed but have not yet entered into force are with Kazakhstan (2017) and Viet Nam (2018). These treaties are taken into account in the treaty analysis. Reference is made to Annex A for the overview of Croatia's tax treaties regarding the mutual agreement procedure.
2. Croatia continues to apply the treaty with former Federal Republic of Yugoslavia to both Serbia and Montenegro.
3. This concerns the treaties with Italy and Netherlands. Reference is made to Annex A for the overview of Croatia's tax treaties.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 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-croatia.pdf.
7. *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Croatia reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified”.
8. Available at www.oecd.org/tax/dispute/Croatia-Dispute-Resolution-Profile.pdf.
9. The MAP statistics of Croatia are included in Annexes B and C of this report.
10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: 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 Croatia's tax treaties

2. All of Croatia's 64 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

Anticipated modifications

3. As all of Croatia's 64 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention there is no need for modifications. Regardless, Croatia reported it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

4. Three of the peers that provided input reported that their treaty with Croatia meets the requirements under element A.1, which is in line with the above analysis.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|--|
| [A.1] | - | Croatia should maintain its stated intention to include the required provision in all future tax treaties. |

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

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

5. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Croatia’s APA programme

6. Croatia reported it has implemented an APA programme. The legal basis of this APA programme is found Article 14a of the Profit Tax Act. Section 4 of this article defines that the method of conclusion, content, applicable timelines and costs of APAs will be included in an ordinance. This ordinance, titled “Ordinance on the Procedure of Concluding Advance Pricing Agreement” (the “**Ordinance**”), has been published in Official Gazette No. 42/17 on 29 April 2017.² Pursuant to Article 1 of this Ordinance, Croatia is allowed to enter into unilateral, bilateral and multilateral APAs.

7. Where taxpayers request for a unilateral APA, but whereby the transactions with related parties would affect other EU members or states with which Croatia has entered into a tax treaty, paragraph 3-5 of Article 3 of the Ordinance indicates that Croatia will propose them to opt for a bilateral or multilateral APA. Where, taxpayers, however, do not agree to such APA, Croatia reported it will proceed with an unilateral APA.

8. The Ordinance further contains guidance on Croatia’s APA programme and how it operates that programme in practice. In this respect, the following information is contained: (i) scope of Application of the APA programme, (ii) the process for requesting and entering into APAs (including the information to be included in such a request), (iii) the period of application, renewal and termination and (iv) costs for obtaining an APA.

9. As to the timing of the submission of APAs, Article 5(3) of the Ordinance stipulates that the applicant has to submit an APA request six months before its covered transactions take place. Furthermore, Article 12(1) defines that an APA agreement shall be concluded for a period of up to five years, such depending on the characteristics and types of transactions that are the subject of the APA. Taxpayers may, pursuant to Article 12(3), six months prior to the expiry of the time limit for which the APA is concluded, submit a request for the extension of the APA.

10. Concerning the costs for obtaining an APA, Article 15 of the Ordinance determines that these shall be borne by the applicant, which also has been defined in Article 14(a) of the Profit Tax Act. These costs range from HRK 15 000 to HRK 50 000 for unilateral APAs, which are dependent on the annual revenue of the taxpayer. Where it concerns bilateral or multilateral APAs, the costs are HRK 50 000 and HRK 100 000 respectively.

Roll-back of bilateral APAs

11. Croatia reported that its APA programme does not provide for the roll-back of APAs. In this respect, paragraph 2 of Article 3 of the Ordinance explicitly stipulates that an APA can only be applied in respect of future transactions between related parties.

Practical application of roll-back of bilateral APAs

12. Croatia reported that since 1 January 2016 it received two requests for bilateral APAs, one of which has been concluded. None of these requests concerned roll-back.

13. All peers that provided input reported that they did not have any experience with roll-backs of a bilateral APA concerning Croatia.

Anticipated modifications

14. Croatia indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [A.2] | Roll-back of bilateral APAs is not available. | Croatia should without further delay introduce of the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases. |

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
2. Available at: https://www.porezna-uprava.hr/hr_propisi/_layouts/in2.vuk.sp.propisi.intranet/propisi.aspx#id=pro1721.

References

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

Part B

Availability and access to MAP

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

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

15. 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 Croatia's tax treaties

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

16. Out of Croatia's 64 tax treaties, 59 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 Final Report (OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ None of Croatia's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b), as changed by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either state.

17. The remaining five treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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, the non-discrimination provision of four of these treaties only covers nationals that are resident of one of the contracting states. Therefore, it is logical for these four treaties that the last part of Article 25(1), first sentence is omitted and to only allow for the submission of MAP requests to the state of which the taxpayer is a resident. For this reason, these four treaties are considered to be in line with this part of element B.1.

18. For the remaining treaty, the non-discrimination provision 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 not clarified by the absence of or a limited scope of the non-discrimination provision, following which this treaty is not in line with this part of element B.1.

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

19. Out of Croatia's 64 tax treaties, 57 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention 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.²

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

| Provision | Number of tax treaties |
|--|------------------------|
| No filing period for a MAP request | 1 |
| Filing period less than 3 years for a MAP request (two years) | 5 |
| Filing period more than 3 years for a MAP request (five years) | 1 |

Practical application

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

21. As follows from the above analysis, all of Croatia's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Croatia reported taxpayers are allowed to request MAP assistance where a case is also pending for domestic courts. However, where domestic courts already have rendered a decision for the case under review, Croatia's competent authority is not allowed to derogate from that decision in MAP. In such situation, it will only seek for correlative relief by the treaty partner.

22. Section 2.6 of Croatia's MAP guidance clarifies the relationship between MAP and domestic remedies, which is similar to the above analysis.

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

23. As referred to in paragraph 20, one of Croatia's tax treaties does not contain a filing period for MAP requests. In this respect, section 2.1.1 of Croatia's MAP guidance states that if the time limit is not explicitly stated in the tax treaty, its domestic statute of limitations applies. However, since there is no such particular limitation prescribed in Croatia's domestic legislation, Croatia noted that for this treaty it would take into account a MAP request when it has been filed within a period of three years from the notification of the tax measure in question.

Anticipated modifications

Multilateral Instrument

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

24. Croatia signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention 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 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 OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Where only one of the treaty partners made such a notification, article 16(4)(a)(i) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty is incompatible with Article 16(1) (containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report). Furthermore, Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

25. With the signing of the Multilateral Instrument, Croatia reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.³ In this reservation, Croatia declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

26. In view of the above, following the reservation made by Croatia, the one treaty identified in paragraph 18 above that is considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

27. 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.

28. In regard of the five tax treaties identified in paragraph 20 above that contain a filing period for MAP requests of less than three years, Croatia listed all as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the five relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining four treaty partners listed their treaty with Croatia as a covered tax agreement under that instrument, and also made such a notification. Therefore, at this stage, four of the five tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties, to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

29. Based on the above performed analysis, all of Croatia's 64 treaties are considered to be in line with element B.1 as regards Article 25(1), first sentence, of the OECD Model Tax Convention. Concerning one tax treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Croatia reported it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this respect, Croatia specified that after it ratified the Multilateral Instrument, it plans to contact its treaty partners, whereby priority will be given to the treaties with which Croatia has MAP cases. Croatia, however, has not yet deposited the instrument of ratification and has neither put a specific plan in place nor has it taken any actions in order to bring the relevant treaties in line with the requirements under element B.1.

30. Regardless, Croatia reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the final report on Action 14, in all of its future tax treaties. Section 1.1 of Croatia's MAP guidance clarifies its position on the Multilateral Instrument in relation to Article 25(1), first sentence, of the OECD Model Tax Convention and states that Croatia prefers to have in its treaties the version of that article as it read prior to the adoption of the Action 14 final report.

Other

31. Croatia further reported that it plans to introduce in its domestic legislation a filing period of three years for MAP requests, when it will implement the Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852). Croatia specified that this legislation will be drafted in such a way that it will apply to both EU members and non-EU members.

Peer input

32. Of the peers that provided input, three indicated that their treaty with Croatia meets the requirements under element B.1, which conforms with the analysis of this section.

33. For the five treaties identified that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, one of the relevant peers reported that its treaty with Croatia will be compliant with the Action 14 Minimum Standard once the Multilateral Instrument enters into force for this treaty, which also conforms with the above analysis.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [B.1] | One out of 64 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty is expected not to be modified by the Multilateral Instrument. | <p>As the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument to include such equivalent upon its entry into force for the treaty concerned, Croatia should request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either</p> <ul style="list-style-type: none"> a. as amended in the final report of Action 14; or b. as it read prior to the adoption of final report on Action 14, thereby including the full sentence of such provision. <p>Since this treaty concerns the treaty with the former Socialist Federal Republic of Yugoslavia, Croatia should, once it enters into negotiations with the jurisdiction to which it applies this treaty, request the inclusion of the required provision.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating this treaty to include the required provision.</p> |
| | Five out of 64 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 shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Four of these five treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. | <p>Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and 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 such equivalent, Croatia should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating the treaty to include the required provision.</p> <p>In addition, Croatia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 in all future tax treaties.</p> |

[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).

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

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

Domestic bilateral consultation or notification process in place

35. As discussed under element B.1, out of Croatia’s 64 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 Final Report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

36. Croatia reported that it has not introduced a bilateral consultation or notification process, which allows the other competent authority concerned to provide its views on the case when Croatia’s competent authority considers the objection raised in the MAP request not to be justified.

Practical application

37. Croatia reported that since 1 January 2016 its competent authority has not received any MAP request whose objection raised by the taxpayer in the MAP request was not justified. The 2016 and 2017 MAP statistics of Croatia also show that none of its MAP cases was closed with the outcome of “objection not justified”. However, one case was closed with the outcome “access denied”. This case was submitted under the EU Arbitration Convention, for which Croatia reported that the taxpayer could not provide that certain transactions were actually entered into and for that reason it was not a case falling in the convention’s scope of application. For this case, Croatia also invoked Article 8 of that convention (the “serious penalty” clause). Based on both circumstances, Croatia’s competent authority denied access to MAP. Taking these facts into consideration, the reported outcome should, however, have been “objection not justified”. Regardless hereof, Croatia’s competent authority has not notified this outcome to its treaty partner, given that such notification process is not in place.

38. All peers that provided input indicated not being aware of any cases for which Croatia’s competent authority denied access to MAP. They also reported not having been consulted/notified of a case where Croatia’s competent authority considered the objection raised in a MAP request as not justified. This can be explained by the fact that Croatia since this date did not consider that an objection raised in a MAP request was not justified.

Anticipated modifications

39. Croatia reported that it will introduce a bilateral consultation/notification process when it transposes the Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852) in its domestic legislation, for which the due date is 30 June 2019. The provisions of the directive contain a notification process, which, however, only applies to EU members. In this respect, Croatia reported that its domestic legislation will clarify that this process will also be applied for cases where its competent authority considers that the objection raised by the taxpayer in its MAP request is not justified under a tax treaty with a non-EU member.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|--|
| [B.2] | All 64 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified. | Croatia should without further delay introduce a documented bilateral notification process and provide in that documented process rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Croatia should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report. |

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

41. Out of Croatia's 64 tax treaties, 52 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 imposed by the treaty partner.⁴ Furthermore, six treaties do not contain a provision that is based on or equivalent to Article 9(2). The remaining six treaties contain a provision that is based on Article 9(2), but deviate from this provision for the following reasons:

- in four treaties the term "may" is used instead of "shall" when it concerns the granting of a corresponding adjustment, and
- in two treaties, it requires the agreement by the competent authorities to grant a corresponding adjustment.

42. Croatia 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.

43. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Croatia's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Croatia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, even if Article 9(2) is not contained in its tax treaties. In this regard, section 2.7 of Croatia's MAP guidance clearly states that where a double tax agreement does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention, Croatia's tax administration regards economic double taxation as being implicitly within the scope of the double tax agreement by virtue of the inclusion of Article 9(1) and accordingly that it is willing to consider a case into MAP and to provide for corresponding adjustments.

Application of legal and administrative framework in practice

44. Croatia reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned is a transfer pricing case. However, since that date no requests in relation hereto were received by its competent authority.

45. All peers that provided input indicated not being aware of a denial of access to MAP by Croatia since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

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

47. Croatia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 12 treaties identified in paragraph 41 above that are considered not to contain such equivalent, Croatia listed all of them as a covered tax agreement under the Multilateral Instrument and included six of them in the list of treaties for which Croatia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining six treaties Croatia did not make a notification under Article 17(4).

48. Of the relevant six treaty partners, all are a signatory to the Multilateral Instrument, but three have not listed its treaty with Croatia under that instrument. Of the remaining three treaty partners, one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) to all its covered tax agreements. Therefore, at this stage, two of the 12 tax treaties identified above will be superseded 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, 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).

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|-----------------|
| [B.3] | Croatia reported that it will provide access to MAP in transfer pricing cases. It, however, did not receive any MAP request for such cases during the Review Period. Croatia is therefore recommended to follow its policy and grant access to MAP in such cases. | |

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

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

49. 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

50. None of Croatia's 64 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of the Croatia do not include a provision allowing its competent

authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision are in conflict with the provisions of a tax treaty.

51. Croatia reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this regard, section 2.7 of Croatia’s MAP guidance contains a clear statement that where issues arise relating to the application of treaty anti-abuse provisions or the application of domestic anti-abuse provisions, Croatia will, at the request of the taxpayer, engage in consultation with the other competent authority concerned.

Practical application

52. Croatia reported that since 1 January 2016 it did not deny access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, since that date no requests in relation hereto were received by its competent authority.

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

Anticipated modifications

54. Croatia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

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

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

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

Legal and administrative framework

Audit settlements

56. Croatia reported that, pursuant to Article 104(1) of the General Tax Act it is possible that taxpayers and the tax administration enter into an audit settlement. Such settlement is possible until the tax audit is finalised. According to Article 104(2) can such settlement be entered into for (i) the establishment of a tax liability, (ii) the deadline for payment of newly established taxes and (iii) reduction of liabilities based on interest to be paid. If the tax administration and taxpayers agree on a settlement, the latter is, pursuant to Article 104(3), obliged to accept the agreed tax liability and waive its rights to domestic remedies. The terms of the settlement, as noted in Article 104(8) should thereby be in line with Croatia's regulations and should not be contrary to public interest or rights of third parties. Furthermore, according to paragraph 9 of Article 104, audit settlements in Croatia are not possible if it is during the audit established that there is a reasonable doubt of a crime having been committed.

57. Further to the above, Article 105 of the General Tax Act defines what items are to be included in a settlement agreement. These are:

- Purpose and subject of the audit settlement
- Acceptance of the newly established liability in the audit by the taxpayer
- Deadline for the taxpayer within which the tax liability must be met
- Consequences of failure to meet liabilities established by the audit settlement (e.g. failure to abide by the provisions of tax settlement)
- Rights, liabilities and responsibilities of the parties
- Explicit waiver by the taxpayer of the rights to legal remedy.

58. Regardless of the above, Croatia reported it will give access to MAP in such cases. In this respect, section 2.7 of Croatia's MAP guidance clearly explains that audit settlements between tax authorities and taxpayers do not preclude access to MAP.

Administrative or statutory dispute settlement/resolution process

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

Practical application

60. Croatia reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

61. All peers indicated not being aware of a denial of access to MAP in Croatia since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that no such process is in place in Croatia.

Anticipated modifications

62. Croatia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|-----------------|
| [B.5] | Croatia reported that it will give access to MAP in cases where the tax administration and the taxpayer entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Croatia is therefore recommended to follow its policy and grant access to MAP in such cases. | |

[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.

63. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction's guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publically available.

Legal framework on access to MAP and information to be submitted

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

65. Croatia reported that when a taxpayer does not include in its MAP request the required information and documentation, its competent authority will inform the taxpayer hereof and indicate what information or documentation is missing and accordingly request him to provide this information. Croatia further reported that there is no standard timeframe for the submission of such information, but that in practice its competent authority requests the submission within four weeks to three months, which is dependent on the type of missing information and the expected time for taxpayers to collect it. Where the taxpayer cannot collect such information or documentation within the specified period, it may apply for an extension of the deadline, which is generally granted by Croatia's competent authority.

66. Further to the above, Croatia reported that where taxpayers ultimately do not provide the requested information, this by itself would not constitute a ground to deny access to MAP, as it is in the taxpayer's interest to provide all information. While Croatia mentioned that it is aware that non-denial of access in such circumstances would prolong the time needed to resolve MAP cases, this does by itself not alter the conclusion that access would not be denied, but as is noted in section 2.2.2 of its MAP guidance, it may cause that competent authorities are unable to resolve the case.

Practical application

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

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

Conclusion

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

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

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

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

Current situation of Croatia's tax treaties

70. Out of Croatia's 64 tax treaties, 58 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.⁵ The remaining six treaties do not contain such a provision at all.

Anticipated modifications

Multilateral Instrument

71. Croatia signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – 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.

72. In regard of the six tax treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Croatia listed all as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant six treaty partners, one is not a signatory to the Multilateral Instrument. All remaining five treaty partners listed their treaty with Croatia as a covered tax agreement under that instrument and also made a notification on the basis of article 16(6)(d)(ii). Therefore, at this stage, five of the six tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

73. Croatia further reported that for the remaining tax treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element B.7. In this respect, Croatia specified that after it ratified the Multilateral Instrument, it plans to contact its treaty partners, whereby priority will be given to the treaties with which Croatia has MAP cases. Croatia, however, has not yet deposited the instrument of ratification and has neither put a specific plan in place nor has it taken any actions to bring the relevant treaties in line with the requirements under element B.7. Regardless, Croatia reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

74. Three peers indicated that their treaty with Croatia meets the requirements under element B.7, which conforms with the above analysis.

75. For the six treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [B.7] | Six out of 64 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Five of these six treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. | <p>Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 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 treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Croatia should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating this treaty to include the required provision.</p> <p>In addition, Croatia should maintain its stated intention to include the required provision in all future tax treaties.</p> |

[B.8] Publish clear and comprehensive MAP guidance

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

76. 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.

Croatia's MAP guidance

77. Croatia recently published rules, guidelines and procedures relating to the mutual agreement procedure, which are available at (in Croatian and in English):

<https://www.porezna-uprava.hr/en/Pages/MutualAgreementProcedure.aspx>

78. The MAP guidance consist of three sections, namely: (i) the legal basis for a MAP request, (ii) submission of MAP requests and the MAP process and (iii) resolution of MAP cases. It contains comprehensive information on how Croatia conducts the mutual agreement procedure under tax treaties, the EU Arbitration Convention and Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The information relates to:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request, and the specific information and documentation that should be included in a MAP request (see also below)
- c. time limits for the submission of MAP requests
- d. how the MAP process functions in terms of timing and the role of the competent authorities
- e. information on availability of arbitration under the EU Arbitration Convention and the Directive, in particular when time limits for invoking the arbitration procedure commence
- f. relationship with domestic available remedies
- g. access to MAP in transfer pricing cases, audit settlements, anti-abuse provisions, the possibility of the multi-year resolution of cases through MAP and the availability of multilateral MAP cases
- h. exchange of information during the MAP process and confidentiality rules
- i. implementation of MAP agreements
- j. rights and role of taxpayers in the process
- k. non-availability of the suspension of tax collection
- l. interest and penalties.

79. The above-described MAP guidance of Croatia includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁶ The guidance, however, does not further clarify whether MAP is available for bona fide foreign-initiated adjustments.

Information and documentation to be included in a MAP request

80. Croatia's MAP guidance in section 2.1.2 and Appendix 2 specifies what information taxpayers should include in their MAP request, which relate to tax treaties, the EU Arbitration Convention and Council Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852).

81. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.⁷ This agreed guidance is shown below. Croatia's guidance enumerating which items must be included as a minimum in a request for MAP assistance under a tax treaty are checked in the following list:

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

82. Since the above items are listed as a minimum requirement, section 2.1.2 of the MAP guidance supplements that the taxpayer must also undertake to respond as completely and quickly as possible to requests by the competent authority for further information.

Anticipated modifications

83. Croatia indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|--|
| [B.8] | - | Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Croatia could consider including information on whether MAP is available for bona fide foreign-initiated adjustments. |

[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.

84. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁸

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

85. The MAP guidance of Croatia is published and can be found at:

<https://www.porezna-uprava.hr/en/Pages/MutualAgreementProcedure.aspx>

86. This guidance was issued in 2018 and is available in both the English and Croatian language. As regards its accessibility, Croatia’s MAP guidance can easily be found on the website of the Ministry of Finance, Tax Administration under the page titled “international taxation”.

MAP profile

87. The MAP profile of Croatia is published on the website of the OECD, which was last updated in October 2018. This MAP profile is almost complete and occasionally contains detailed information.⁹ This profile further includes external links to guidance where appropriate. However, the response to the questions do not further specify where information on the relevant item can be found in, for example, Croatia’s MAP guidance. Furthermore, the response to the policy on MAP arbitration is not in conformity with Croatia’s practice not to include MAP arbitration in its tax treaties.

Anticipated modifications

88. Croatia indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [B.9] | The MAP profile is not complete and the reflected policy on arbitration is not in line with the practice not to include MAP arbitration in tax treaties. | Croatia should provide further details in its MAP profile, in particular on where certain information on its MAP programme can be found in its MAP guidance. Furthermore, the response to the question on its policy on including MAP arbitration in its tax treaties should be brought in line with its actual practice. |

[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.

89. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

90. As previously discussed under B.5, under Croatia's domestic law it is possible that taxpayers and the tax administration enter into audit settlements. In this respect, the relationship between access to MAP and audit settlements is described in section 2.7 of Croatia's MAP guidance, which clarifies that such settlements do not preclude access to MAP.

91. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Croatia's MAP guidance, which can be clarified by the fact that no such process is in place.

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

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

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

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

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

Anticipated modifications

95. Croatia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

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

Notes

1. These 59 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.
2. These 58 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Croatia reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”. An overview of Croatia’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-croatia.pdf.
4. These 52 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.

5. These 58 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
8. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
9. Available at: www.oecd.org/tax/dispute/Croatia-Dispute-Resolution-Profile.pdf.

References

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- OECD (2015b), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Part 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.

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

97. All but one of Croatia’s 64 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining treaty contains an additional phrase prescribing that the mutual agreement procedure shall expire by the end of the third year following that in which the case was presented by the taxpayer. As this phrase may limit a case to be resolved through MAP, the provision is therefore considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

98. Croatia signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention – 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.

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

Bilateral modifications

100. Croatia reported that for the remaining tax 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, it intends to update it via bilateral negotiations with a view to be compliant with element C.1. In this respect, Croatia specified that after it ratified the Multilateral Instrument, it plans to contact its treaty partners, whereby priority will be given to the treaties with which Croatia has MAP cases. Croatia, however, has not yet deposited the instrument of ratification and for that reason has neither put a specific plan in place nor has it taken any actions in order to bring the relevant treaties in line with the requirements under element C.1. Regardless, Croatia reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

101. Three of the peers that provided input indicated that their treaty with Croatia meets the requirements under element C.1, which is in line with the above analysis.

102. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [C.1] | One out of 64 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument. | As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument upon its entry into force for this treaty concerned, Croatia should request the inclusion of the required provision via bilateral negotiations. To this end, Croatia should put a plan in place on how it envisages updating this treaty to include the required provision. In addition, Croatia should maintain its stated intention to include the required provision in all future tax treaties. |

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

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

103. 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

104. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Croatia provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Croatia and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Croatia.² With respect to post-2015 cases, Croatia reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Croatia reported that it could match its statistics with all of its MAP partners.

Monitoring of MAP statistics

105. Croatia reported that it does not have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload.

Analysis of Croatia’s MAP caseload

Global overview

106. Figure C.1 shows the evolution of Croatia’s MAP caseload over the Statistics Reporting Period.

107. At the beginning of the Statistics Reporting Period Croatia had ten MAP cases, all of which concerned other cases.³ At the end of the Statistics Reporting Period, Croatia had 12 MAP cases in its inventory, of which two are attribution/allocation cases and ten are other MAP cases. Consequently, Croatia’s MAP caseload has increased by 20% during the Statistics Reporting Period.

108. The breakdown of the end inventory can be shown as in Figure C.2.

Pre-2016 cases

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

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

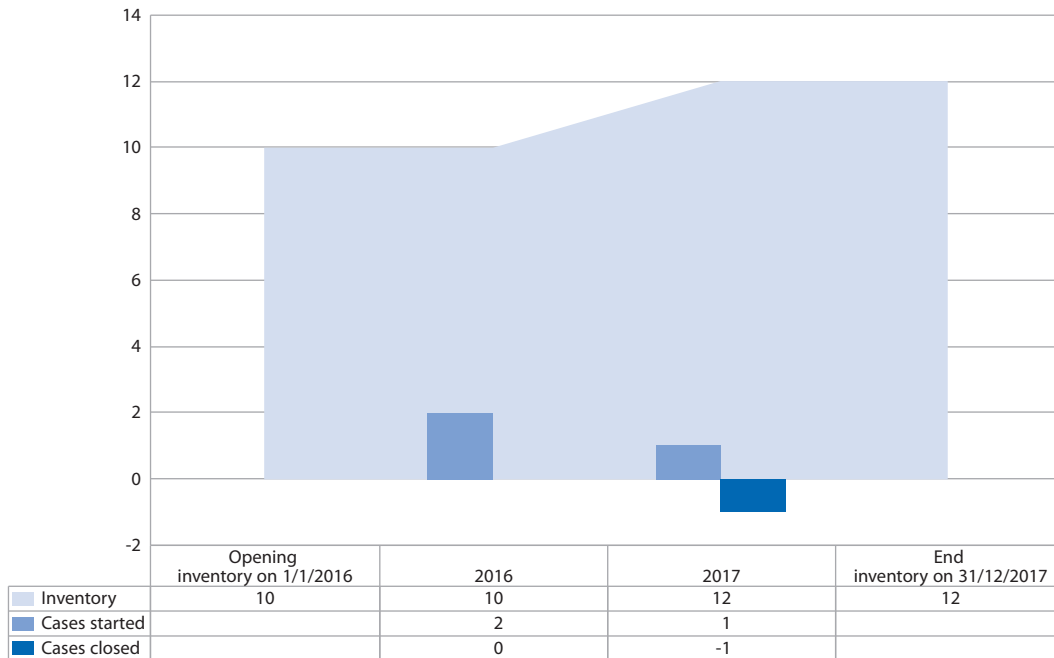


Figure C.2. End inventory on 31 December 2017 (12 cases)

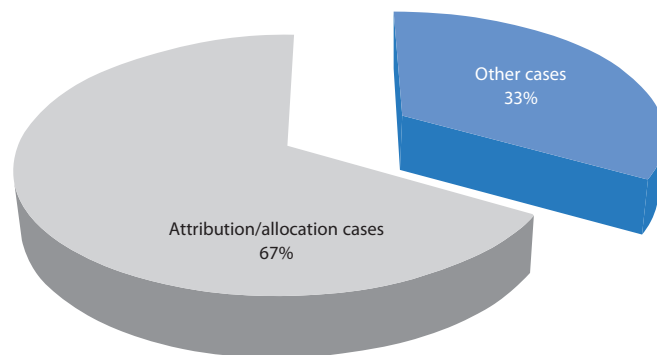
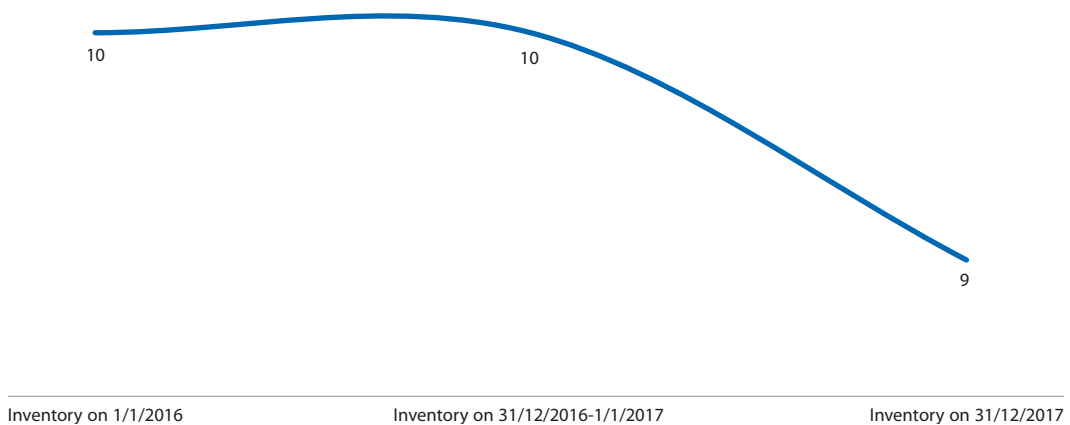


Figure C.3. Evolution of Croatia’s MAP inventory Pre-2016 cases

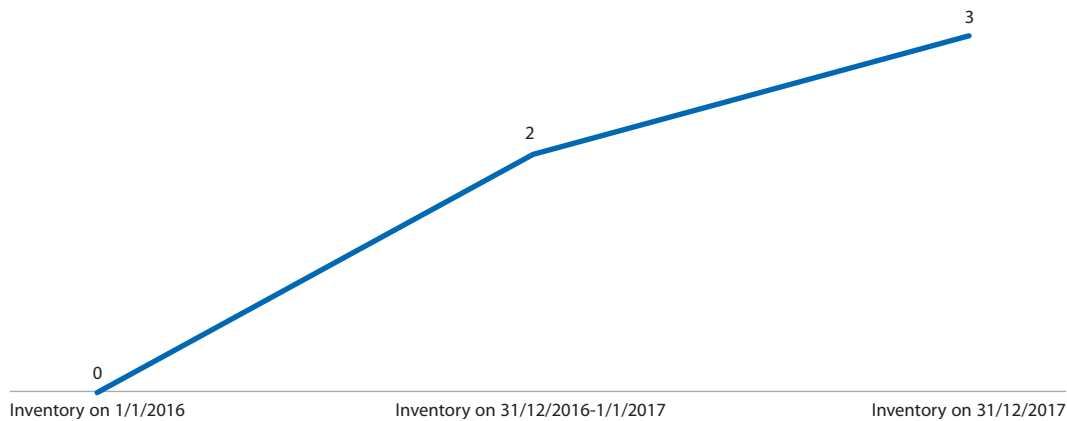


110. At the beginning of the Statistics Reporting Period, Croatia’s MAP inventory of pre-2016 MAP cases consisted of ten cases, which all were other cases. At the end of the Statistics Reporting Period the inventory had decreased to nine cases.

Post-2015 cases

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

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



112. In total, three MAP cases started during the Statistics Reporting Period, two of which concerned attribution/allocation cases and one other case. At the end of this period the total number of post-2015 cases in the inventory remained the same, since Croatia closed none of post-2015 cases during the Statistics Reporting Period.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

113. During the Statistics Reporting Period Croatia closed one MAP case with the outcome “denied MAP access”.

Average timeframe needed to resolve MAP cases

114. The time needed to close the one MAP case during the Statistics Reporting Period was 48 months. This is shown as follows:

| | Number of cases | Start date to End date (in months) |
|------------------------------|-----------------|------------------------------------|
| Attribution/Allocation cases | 0 | N/A |
| Other cases | 1 | 48.00 |
| All cases | 1 | 48.00 |

115. The one case resolved concerned a pre-2016 case. For the purpose of computing the time needed to resolve pre-2016 cases, Croatia reported that it uses the following dates:

- *Start date*: the date when the MAP request was received from another competent authority
- *End date*: the date when Croatian competent authority sent its final opinion to the other competent authority.

116. As discussed above, Croatia did not close any post-2015 cases during the Statistics Reporting Period.

Peer input

117. Most peers that provided input noted that there were no impediments which led to unnecessary delays in finding the resolution of MAP cases with Croatia, which can also be clarified by the fact that only one case was closed during the Review Period. One peer observed issues of timely resolution of MAP cases as well as the provision of information on a MAP request received by Croatia's competent authority. These issues are further described in element C.3.

Anticipated modifications

118. Croatia reported that it is currently in the process of implementing the Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852), for which it envisages that the average time to close MAP cases will become less than 24 months, unless the case will be subject to arbitration.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|-----------------|
| [C.2] | Croatia submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Croatia's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Croatia's MAP statistics show that during the Statistics Reporting Period it did not close any post-2015 MAP cases, but only closed one pre-2016 case. In that regard, Croatia is recommended to seek to resolve all post-2015 cases pending on 31 December 2017 (three cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. | |

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

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

119. 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 Croatia’s competent authority

Organisation of the competent authority

120. The competent authority function in Croatia is under its tax treaties assigned to the Minister of Finance, which has delegated this authority to the Head of Croatia’s Tax Administration. Under the direct supervision by the head of the Tax Administration, the competent authority function is in practice performed by the Legislation, Education and International Co-operation Sector, Department for Avoidance of Double Taxation of Croatia’s Tax Administration.

121. Within this department, two staff members are responsible for handling and resolving MAP cases, which concerns both attribution/allocation cases as well as other MAP cases. Besides handling MAP cases, Croatia reported that these persons also are responsible for other tasks, such as providing day-to-day assistance to taxpayers, treaty negotiations, drafting of tax regulations, educating personnel within the tax administration and exchange of information.

122. Croatia reported that the staff in charge of MAP cases take part in international trainings on tax treaties, transfer pricing or MAP. They also regularly participate international meetings, including Working Parties of the OECD.

Handling and resolving MAP cases

123. Concerning the handling and resolving of MAP cases, Croatia reported that once its competent authority receives a MAP request, it will analyse whether all relevant information is included in this request and whether all requirements have been met in order to accept the case into the MAP process. In this respect, as is put forward in section 2.4 of its MAP guidance, Croatia will inform the taxpayer within 30 days as from receipt of the MAP request whether it has been accepted or rejected, in the latter case including a reasoning that led to such a decision.

124. Where a MAP request is accepted, Croatia reported that it strives at issuing a position paper to the other competent authority within a period that ranges between four to six months. If after negotiations, the competent authorities could reach an agreement to come to taxation that is in accordance with the provisions of the tax treaty, the taxpayer will be notified within 30 days. Where such an agreement could not be reached, the taxpayer will, pursuant to section 3.1.1 of its MAP guidance, also be informed within 30 days, along with a reasoning why an agreement could not be reached.

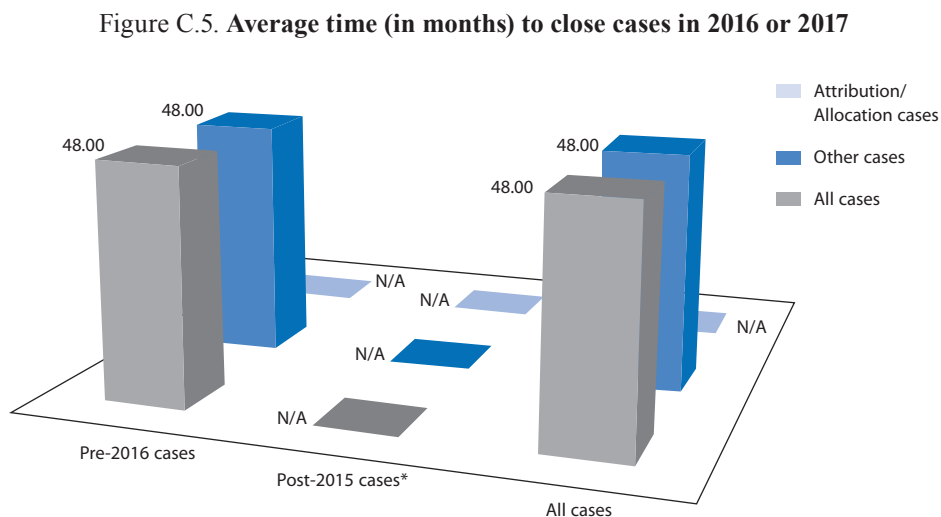
Monitoring mechanism

125. Croatia reported that its competent authority regularly monitors whether appropriate resources are allocated to resolve MAP cases. If additional resources are required due to a permanent increase in the number of MAP cases, Croatia’s competent authority would request additional staff. For now Croatia considers that adequate resources are available for the MAP function.

Practical application

MAP statistics

126. As discussed under element C.2, during the Statistics Reporting Period Croatia only closed one case, which was not closed within the pursued 24-month average. This can be illustrated by the following graph:



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

127. Based on these figures, it follows that it took Croatia 48 months to close a MAP case during the Statistics Reporting Period. As discussed, this case was not resolved through the MAP process, but it was closed because access to MAP was denied. Croatia's MAP inventory, however, increased with 20% and more than 75% of its current MAP cases are pending for more than 24 months. More specifically, these cases are almost pending for more than three years, whereby two-third of the remaining cases are almost pending for 24 months. Consequently, there is a significant risk that Croatia will not be able to close MAP cases within the pursued average of 24 months.

Peer input

128. Of the six peers that provided input, most of them noted that they have very limited experiences in handling MAP cases with Croatia. One of these peers mentioned that over the last few years it only had occasionally such cases with Croatia, while another peer pointed out that it had so far three MAP cases with Croatia. The third peer mentioned it has currently one attribution/allocation case pending with Croatia.

129. With regard to their working relationship with Croatia's competent authority, two peers commented that contacts had been generally easy and had taken place via letters and email, whereby face-to-face meetings were not considered as necessary so far. One of these peers also noted that no particular problems were encountered in getting in contact with Croatia's competent authority. The third peer appreciated its co-operative relationship with the competent authority of Croatia, but observes the need for further improvement in communications. This peer commented that it may take long for Croatia's competent authority to respond to position papers and that in fact it is waiting for such a response

for more than a year in two cases, one of which only requires a confirmation of the MAP agreement reached. It also noticed that in those cases, Croatia's competent authority did not provide information on the MAP requests submitted by the taxpayer. For these reasons, the peer suggests that quicker responses and face-to-face meetings could improve the timeliness of the resolution of MAP cases. The peer further suggested that the competent authorities could also speed up communications by using safe electronic means.

Anticipated modifications

130. Croatia indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [C.3] | One MAP case was closed in 48 months. All other MAP cases are pending for almost two to three years. This bears the risk that post-2015 cases will not be closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). | Croatia should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. To avoid that cases are not closed within the pursued average of 24 months, Croatia should take every action necessary to ensure that the pending MAP cases are resolved as quickly as possible and where necessary dedicate specific resources to accelerate their resolution. |

[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.

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

Functioning of staff in charge of MAP

132. Croatia reported that in preparing a position on a case, staff in charge of MAP cases does not have to consult or involve any tax administration personnel outside the MAP office to handle MAP cases. When a particular case is complex or when additional information is necessary for the preparation of a position, Croatia clarified that they can collect the necessary information from other sections of the tax administration. Croatia, however, stressed that auditors who made the adjustment at issue are not involved in the MAP process and cannot attend competent authority meetings.

133. Further to the above, Croatia reported that when staff in charge of MAP reaches an agreement with another competent authority, the agreement has to be approved by the head of the Tax Administration. In more detail, this head directly supervises staff in charge of

MAP. Although the head is ultimately responsible for the audit department within the tax administration, Croatia mentioned that he is not involved in decisions on tax adjustments in individual cases. In fact, Croatia holds the position that staff in charge of MAP and the head of the Tax Administration operate independently from the auditors and have to resolve MAP cases without being dependent on the approval or direction of the tax administration personnel directly involved in the adjustment at issue. This is also stated in Croatia's MAP guidance, which notes that the role of the competent authority is carried out independently from the audit function within the tax administration.

134. As is described under element C.3, staff in charge of MAP also conducts treaty negotiations. In this respect, Croatia clarified that since handling MAP cases is only part of the tasks of this staff, it would not be justified to have a fully separated competent authority function. However, Croatia reported that the process for negotiating MAP agreement is not influenced by policy considerations and that staff in charge of MAP has to follow the text of the treaty when resolving MAP cases.

Practical application

135. All peers that provided input reported no impediments in Croatia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Croatia is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

136. Croatia indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

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

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

137. 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 Croatia

138. Croatia reported that it does not use any targets that are based on performance indicators to evaluate staff in charge of MAP processes. Such staff is evaluated on their general performance on an annual basis, whereby in relation to MAP certain criteria are taken into account (see below).

139. The Action 14 Final Report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and for Croatia 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).

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

Practical application

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

Anticipated modifications

142. Croatia indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

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

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

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

143. 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

144. Croatia reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Croatia’s tax treaty policy is, however, not to include a mandatory and binding arbitration provision in its bilateral tax treaties. This position is not fully clarified in Croatia’s MAP guidance or its MAP profile.

145. However, as being an EU member, Croatia is a signatory to the EU Arbitration Convention and has adopted the Council Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852), which it has to transpose into its domestic law by 30 June 2019. In this respect, section 3.2 of Croatia’s MAP guidance refers to arbitrations that may be available under the EU Arbitration Convention as well as the relevant double tax agreements or the Council Directive.

Practical application

146. Croatia has incorporated an arbitration clause in two of 64 treaties as a final stage to the MAP. These clauses concern voluntary and binding arbitration.

Anticipated modifications

147. Croatia indicated that it is currently examining the possibility to incorporate mandatory and binding arbitration clauses in its tax treaty network by adopting an arbitration clause in treaties with non-EU member countries that are not covered by the EU Arbitration Convention (90/463/EEC) and the Council Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852).

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [C.6] | Position on using arbitration as a supplement to the mutual agreement procedure is not transparent. | Croatia should provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile or in its MAP guidance. |

Notes

1. These 63 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.
2. For post-2015 cases, if the number of MAP cases in Croatia’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Croatia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

3. For pre-2016 and post-2015 cases, Croatia 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”.

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

148. 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

149. Croatia reported that where tax treaties do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), its domestic statute of limitation would apply for the implementation of MAP agreements. Article 108(1) of the General Tax Act defines that the right and obligation of the tax administration to determine the tax position of the taxpayer expires after six years as from the date when the statute of limitation commences. Article 108(2) further defines that this is the year in which the tax position should have been established.

150. Croatia further reported that it operates a self-assessment system. Where a MAP agreement leads to a refund in Croatia, the taxpayer is required to submit an amended tax return in order to the agreement implemented. In relation to the domestic statute of limitation, Croatia specified that the six-year term would in such situation only start to run as of the date on which the MAP agreement was entered into, as this agreement would establish the taxpayer's liability. This is also reflected in Article 108(5), which states that the statute of limitation commences after the year in which the taxpayer acquired a right of refund, which thus also include a MAP agreement entailing such refund. Consequently, for downward adjustments to be made by Croatia the domestic statute of limitation would not obstruct the implementation of MAP agreements, unless the taxpayer does not ask for a refund within six years.

151. Concerning the process for implementing MAP agreements, Croatia reported that once such an agreement is entered into, its competent authority will inform the taxpayer, generally within one month after the date of the agreement. When the taxpayer accepts the agreement, it is, as described above, up to him to submit an amended return to achieve the implementation thereof. In case the taxpayer cannot accept the agreement, he can withdraw from the MAP process and pursue with domestic remedies, if still available. Section 3.1 of Croatia's MAP guidance includes information on the implementation process of MAP agreements, which description is similar as the analysis above.

152. Further to the above, Croatia reported that it monitors the implementation of MAP agreements, such by requesting feedback from the tax administration.

Practical application

153. Croatia reported that it did not reach any MAP agreements during the Review Period. Its competent authority closed one MAP case during that period, but it did not concern a MAP agreement that required an implementation by Croatia.

154. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by the Croatia, which can be clarified by the fact that no such agreements were entered into during this period.

Anticipated modifications

155. Croatia indicated that with the implementation of the Council Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852) it is considering to prescribe in its domestic legislation that all MAP agreements shall be implemented notwithstanding domestic time limits.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|-----------------|
| [D.1] | As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Croatia would have implemented all MAP agreements thus far. | |

[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.

156. 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

157. As discussed under element D.1, the taxpayer is required to submit an amended tax return to have the MAP agreement implemented. Apart from the domestic statute of limitation, there are in Croatia no timelines to be applied for the implementation of MAP agreements. In this respect, Croatia noted that section 3.1 of its MAP guidance stipulates that once a mutual agreement has been reached, the Tax Administration will notify the taxpayer in writing of the agreed outcome, where possible within 30 days of the competent authority meeting. The Tax Administration will subsequently request that the taxpayer confirms in writing whether it accepts the mutual agreement within 30 days of receipt of the letter from the tax administration. Section 3.1.1 of the guidance further describes that if the taxpayer confirms in writing its acceptance of the mutual agreement, the Tax Administration will give effect to the mutual agreement and seek to ensure its

implementation without delay. In cases where a refund is due to the taxpayer, the taxpayer should contact its local tax district to begin the process of obtaining the refund. The taxpayer will accordingly be required to submit revised tax computations for the affected accounting periods to the Tax Administration.

Practical application

158. As discussed under element D.1, Croatia did not reach any MAP agreements during the Review Period.

159. All peers that provided input indicated not having experienced any problems with Croatia regarding the implementation of MAP agreements, which can be clarified by the fact that no such agreements were entered into during this period.

Anticipated modifications

160. Croatia indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|-----------------|
| [D.2] | As there was no MAP agreement reached that required implementation by Croatia during the Review Period, it was not yet possible to assess whether Croatia would have implemented all MAP agreements on a timely basis. | |

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

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

161. 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 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 Croatia's tax treaties

162. As discussed under element D.1, Croatia's domestic legislation includes a statute of limitations of six years for implementing MAP agreements, unless overridden by tax treaties or, if applicable, a MAP agreement is reached under the EU Arbitration Convention.

163. Out of Croatia's 64 tax treaties, 54 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention stipulating that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ For the remaining ten treaties the following analysis is made:

- In one tax treaty Article 25(2), second sentence, of the OECD Model Tax Convention is contained, but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. “except such limitations as apply for the purposes of giving effect to such an agreement”). This treaty therefore is considered not having the full equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.
- Nine treaties neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making adjustments.

Anticipated modifications

Multilateral Instrument

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

165. In regard of the ten 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 the alternative provisions for Articles 9(1) and 7(2), Croatia listed all as covered tax agreements under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant ten treaty partners, one is not a signatory to the Multilateral Instrument and two did not list their treaty with Croatia as a covered tax agreement. Of the remaining seven treaty partners, six also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, six of the ten tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

166. Croatia reported that for those four tax treaties that do not 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) and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3.

In this respect, Croatia specified that after it ratified the Multilateral Instrument, it plans to contact its treaty partners, whereby priority will be given to the treaties with which Croatia has MAP cases. Croatia, however, has not yet deposited the instrument of ratification and has neither put a specific plan in place nor has it taken any actions in order to bring the relevant treaties in line with the requirements under element D.3 (although as will be discussed under the peer input, it received an invitation from a treaty partner for negotiations). Regardless, Croatia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

167. Three of the peers that provided input indicated that their treaty with Croatia meets the requirements under element D.3, which is in line with the above statement.

168. For the ten treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or the alternative provisions for Article 9(1) and 7(2), two peers provided input. One of these peers reported that its treaty with Croatia does not formally meet the requirements under element D.3, but it is willing to accept the alternative provisions and for that reason it has submitted to Croatia a draft of an amending protocol to adapt the treaty to the Action 14 Minimum Standard. The other peer also reported that its treaty with Croatia does not meet the requirement and indicated that it made all necessary notifications under Article 16 of the Multilateral Instrument in order to meet the Action 14 Minimum Standard. As reported by this latter peer, this treaty will be modified by the Multilateral Instrument, which is consistent with the above analysis.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [D.3] | Ten out of 64 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions provided for in Article 9(1) and Article 7(2). Six of these treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. | <p>Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 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 three of the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Croatia should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with regard to the remaining treaty with the former Socialist Federal Republic of Yugoslavia, Croatia should, once it enters into negotiations with the jurisdiction to which it applies this treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating these three treaties to include the required provision or its alternative.</p> |

| | Areas for improvement | Recommendations |
|-------|-----------------------|---|
| [D.3] | | <p>For the remaining treaty, Croatia should enter into discussions with the relevant treaty partner following its invitation to open negotiations with a view to include the alternative provisions in the tax treaty.</p> <p>In addition, Croatia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p> |

Note

1. These 54 treaties include the treaty with former Federal Republic of Yugoslavia that Croatia continues to apply to both Serbia and Montenegro.

Reference

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

Summary

| | Areas for improvement | Recommendations |
|---|--|---|
| Part A: Preventing disputes | | |
| [A.1] | - | Croatia should maintain its stated intention to include the required provision in all future tax treaties. |
| [A.2] | Roll-back of bilateral APAs is not available. | Croatia should without further delay introduce of the possibility of, and in practice provide for, roll-back of bilateral APAs in appropriate cases. |
| Part B: Availability and access to MAP | | |
| [B.1] | <p>One out of 64 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty is expected not to be modified by the Multilateral Instrument.</p> | <p>As the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention will not be modified by the Multilateral Instrument to include such equivalent upon its entry into force for the treaty concerned, Croatia should request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either</p> <ul style="list-style-type: none"> a. as amended in the final report of Action 14; or b. as it read prior to the adoption of final report on Action 14, thereby including the full sentence of such provision. <p>Since this treaty concerns the treaty with the former Socialist Federal Republic of Yugoslavia, Croatia should, once it enters into negotiations with the jurisdiction to which it applies this treaty, request the inclusion of the required provision.</p> |
| | <p>Five out of 64 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 shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Four of these five treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.</p> | <p>Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and 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 such equivalent, Croatia should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating the treaty to include the required provision.</p> <p>In addition, Croatia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 in all future tax treaties.</p> |

| | Areas for improvement | Recommendations |
|--------|--|---|
| [B.2] | All 64 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified. | Croatia should without further delay introduce a documented bilateral notification process and provide in that documented process rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Croatia should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report. |
| [B.3] | Croatia reported that it will provide access to MAP in transfer pricing cases. It, however, did not receive any MAP request for such cases during the Review Period. Croatia is therefore recommended to follow its policy and grant access to MAP in such cases. | |
| [B.4] | Croatia reported that it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Croatia is therefore recommended to follow its policy and grant access to MAP in such cases. | |
| [B.5] | Croatia reported that it will give access to MAP in cases where the tax administration and the taxpayer entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Croatia is therefore recommended to follow its policy and grant access to MAP in such cases. | |
| [B.6] | - | As Croatia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Croatia's information and documentation requirements for MAP requests, it should continue this practice. |
| [B.7] | Six out of 64 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Five of these six treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned. | Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 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. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Croatia should request the inclusion of the required provision via bilateral negotiations. To this end, Croatia should put a plan in place on how it envisages updating this treaty to include the required provision. In addition, Croatia should maintain its stated intention to include the required provision in all future tax treaties. |
| [B.8] | - | Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Croatia could consider including information on whether MAP is available for bona fide foreign-initiated adjustments. |
| [B.9] | The MAP profile is not complete and the reflected policy on arbitration is not in line with the practice not to include MAP arbitration in tax treaties. | Croatia should provide further details in its MAP profile, in particular on where certain information on its MAP programme can be found in its MAP guidance. Furthermore, the response to the question on its policy on including MAP arbitration in its tax treaties should be brought in line with its actual practice. |
| [B.10] | - | - |

| | Areas for improvement | Recommendations |
|---|---|--|
| Part C: Resolution of MAP cases | | |
| [C.1] | One out of 64 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument. | As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument upon its entry into force for this treaty concerned, Croatia should request the inclusion of the required provision via bilateral negotiations. To this end, Croatia should put a plan in place on how it envisages updating this treaty to include the required provision. In addition, Croatia should maintain its stated intention to include the required provision in all future tax treaties. |
| [C.2] | Croatia submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Croatia's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Croatia's MAP statistics show that during the Statistics Reporting Period it did not close any post-2015 MAP cases, but only closed one pre-2016 case. In that regard, Croatia is recommended to seek to resolve all post-2015 cases pending on 31 December 2017 (three cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. | |
| [C.3] | One MAP case was closed in 48 months. All other MAP cases are pending for almost two to three years. This bears the risk that post-2015 cases will not be closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016). | Croatia should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. To avoid that cases are not closed within the pursued average of 24 months, Croatia should take every action necessary to ensure that the pending MAP cases are resolved as quickly as possible and where necessary dedicate specific resources to accelerate their resolution. |
| [C.4] | - | As it has done thus far, Croatia should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Croatia would like to see reflected in future amendments to the treaty. |
| [C.5] | - | As it has done thus far, Croatia should continue to use appropriate performance indicators. |
| [C.6] | Position on using arbitration as a supplement to the mutual agreement procedure is not transparent. | Croatia should provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile or in its MAP guidance. |
| Part D: Implementation of MAP agreements | | |
| [D.1] | As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Croatia would have implemented all MAP agreements thus far. | |
| [D.2] | As there was no MAP agreement reached that required implementation by Croatia during the Review Period, it was not yet possible to assess whether Croatia would have implemented all MAP agreements on a timely basis. | |

| | Areas for improvement | Recommendations |
|-------|--|---|
| [D.3] | <p>Ten out of 64 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions provided for in Article 9(1) and Article 7(2). Six of these treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.</p> | <p>Croatia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 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 three of the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Croatia should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with regard to the remaining treaty with the former Socialist Federal Republic of Yugoslavia, Croatia should, once it enters into negotiations with the jurisdiction to which it applies this treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Croatia should put a plan in place on how it envisages updating these three treaties to include the required provision or its alternative. To this end, Croatia should put a plan in place on how it envisages updating these two treaties to include the required provision.</p> <p>For the remaining treaty, Croatia should enter into discussions with the relevant treaty partner following its invitation to open negotiations with a view to include the alternative provisions in the tax treaty.</p> <p>In addition, Croatia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.</p> |

Annex A

Tax treaty network of Croatia

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | | |
|----------------|--|---------------|--|--|---|--|---|---|--|--|--|--|--------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---|
| | Y = yes N = signed pending ratification | DTC in force? | Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons | Inclusion Art. 9(2) of the OECD MTC (Note 2) If no, will your CA provide access to MAP in TP cases? | Anti-abuse B.4 | Article 25(2) of the OECD MTC (Note 3) | Inclusion Art. 25(2) first sentence? (Note 4) | Inclusion Art. 25(2) second sentence? (Note 4) | Article 25(2) of the OECD MTC (Note 5) | Article 25(3) of the OECD MTC (Note 6) | Article 25(3) of the OECD MTC (Note 6) | Arbitration C.6 | | | | | | | | |
| Albania | Y | N/A | 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 | Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases | Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP | Y = yes 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 i = no, but have Art. 7 equivalent | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | Y = yes i = no | |
| Armenia | Y | N/A | O | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Austria | Y | N/A | O | Y | i** | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |

| Column 1 | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|---------------------------------------|----------|---------------|--|--|---|--|---|--|---|--|----------------------------------|-----|----------|-----|----------|-------------|-----------|--|-----------|--|
| | | DTC in force? | B.1 | B.1 | B.3 | B.4 | B.3 | B.3 | B.4 | C.1 | D.3 | A.1 | A.1 | B.7 | C.6 | Arbitration | | | | |
| | | | Article 25(1) of the OECD Model Tax Convention ("MTC") | | Article 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | | Article 25(3) of the OECD MTC | | Arbitration | | | | | | | | | |
| | | | B.1 | B.1 | B.3 | B.4 | B.3 | B.3 | B.4 | C.1 | D.3 | A.1 | A.1 | B.7 | C.6 | Arbitration | | | | |
| Treaty partner | | | Inclusion Art. 25(1) first sentence? | Inclusion Art. 25(1) second sentence? (Note 1) | Article 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | | Article 25(3) of the OECD MTC | | Arbitration | | | | | | | | | |
| | | | If yes, submission to either competent authority? (new Art. 25(1), first sentence) | If no, please state reasons | Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion arbitration provision? | | | | | | | | | |
| Azerbaijan | Y | N/A | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Belarus | Y | N/A | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Belgium | Y | N/A | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | N* | N | | | | | |
| Bosnia and Herzegovina | Y | N/A | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Bulgaria | Y | N/A | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Canada | Y | N/A | O | ii* | 2 years | i | Y | Y | Y | N | N | Y | Y | Y | N | | | | | |
| Chile | Y | N/A | O | Y | N/A | i | Y | Y | Y | N* | N* | Y | Y | N* | N | | | | | |
| China (People's Republic of) | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Czech Republic | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Denmark | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Estonia | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Finland | Y | N/A | O | Y | N/A | i | i** | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| Former Yugoslav Republic of Macedonia | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |
| France | Y | N/A | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | N | | | | | |

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------|---------------|--|---|-------------------------------------|-------------------|--------------------------------------|---|--|---|--|--------------------------------------|--------------------------------------|--------------------|--|----------|--|-----------|--|-----------|--|
| | DTC in force? | Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons | Article 9(2) of the OECD MTC B.3 | Anti-abuse B.4 | Article 25(2) of the OECD MTC C.1 | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(2) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Article 25(3) of the OECD MTC A.1 | Article 25(3) of the OECD MTC B.7 | Arbitration C.6 | | | | | | | |
| Georgia | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Germany | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Greece | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Hungary | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Iceland | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| India | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Indonesia | Y | N/A | Y | N/A | i | Y | Y | N* | Y | Y | Y | Y | N | | | | | | | |
| Iran | Y | N/A | Y | N/A | i | Y | Y | N | Y | Y | Y | Y | N | | | | | | | |
| Ireland | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N* | Y | N | | | | | | | |
| Israel | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Italy | Y | N/A | ii* | 2 years | i | Y | Y | Y | Y | Y | Y | Y | Y | | | | | | | |
| Jordan | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Kazakhstan | N | 9/29/2017 | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Korea | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Kosovo | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Kuwait | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Latvia | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------|---------------|--|--|------------------------------|------------------------------|-------------------------------|-------------------------------|-----|-------------------------------|-------------------------------|----------|-------------|-------------|-----|----------|--|-----------|--|-----------|--|
| | DTC in force? | Article 25(1) of the OECD Model Tax Convention ("MTC") | B.1 | B.1 | Article 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | C.1 | D.3 | Article 25(3) of the OECD MTC | A.1 | B.7 | Arbitration | C.6 | | | | | | |
| | | Inclusion Art. 25(1) first sentence? | Inclusion Art. 25(1) second sentence? (Note 1) | Article 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | C.1 | D.3 | Article 25(3) of the OECD MTC | A.1 | B.7 | Arbitration | C.6 | | | | | | | |
| Lithuania | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Luxembourg | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Malaysia | Y | O | Y | N/A | i | Y | Y | N* | Y | Y | Y | Y | N | | | | | | | |
| Malta | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Mauritius | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Moldova | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Montenegro | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Morocco | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Netherlands | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | | | | | | | |
| Norway | Y | O | ii | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Oman | Y | O | ii | 2 years | i | Y | Y | Y | Y | Y | N | Y | N | | | | | | | |
| Poland | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Portugal | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | N* | Y | N | | | | | | | |
| Qatar | Y | O | ii | 2 years | i | Y | Y | N | Y | Y | Y | Y | N | | | | | | | |
| Romania | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| Russia | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | N | | | | | | | |
| San Marino | Y | O | ii* | 2 years | i | Y | N | Y | Y | Y | Y | Y | N | | | | | | | |

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------------|---------------|--|---|--|--|---|--|--------------------------------------|-------------------------------|-------------------------------|-------------|--|----------|--|----------|--|-----------|--|-----------|--|
| | DTC in force? | Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons | Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TTP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Arbitration | | | | | | | | | |
| | B.1 | B.1 | B.1 | B.3 | B.4 | C.1 | D.3 | A.1 | A.1 | B.7 | C.6 | | | | | | | | | |
| Serbia | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Slovak Republic | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Slovenia | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| South Africa | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Spain | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Sweden | Y | N/A | i | N/A | i | Y | N | Y | Y | Y | N | | | | | | | | | |
| Switzerland | Y | N/A | Y | N/A | i | Y | N | Y | Y | Y | N | | | | | | | | | |
| Syrian Arab Republic | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Turkey | Y | N/A | Y | N/A | i | Y | N* | Y | Y | Y | N | | | | | | | | | |
| Turkmenistan | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| Ukraine | Y | N/A | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| United Arab Emirates | N | 7/13/2017 | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |
| United Kingdom | Y | N/A | Y | N/A | i | Y | N* | Y | Y | N* | N | | | | | | | | | |
| Viet Nam | N | 7/27/2018 | Y | N/A | i | Y | Y | Y | Y | Y | N | | | | | | | | | |

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 | | | | | | | | | | No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016 | Average time taken (in months) for closing pre-2016 cases during the reporting period |
|-------------------------|--|--|-----------------------|---------------------------|------------------------------|---|--|---|---|-------------------|-----------|---|---|
| | | Column 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 | | | |
| Attribution/ Allocation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | N/A |
| Others | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | N/A |
| Total | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 10 | N/A |

| Category of cases | No. of pre-2016 cases in MAP inventory on 1 January 2017 | Number of pre-2016 cases closed during the reporting period by outcome | | | | | | | | | | No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017 | Average time taken (in months) for closing pre-2016 cases during the reporting period |
|-------------------------|--|--|-----------------------|---------------------------|------------------------------|---|--|---|---|-------------------|-----------|---|---|
| | | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | | |
| | 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 | | | |
| Attribution/ Allocation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | N/A |
| Others | 10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 48.0 |
| Total | 10 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 9 | 48.0 |

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 |
|------------------------|---|--|---|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|--|--|
| | | | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | | |
| | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 |
| Attribution/Allocation | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | N/A |
| Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | N/A |
| Total | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | N/A |

| 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 |
|------------------------|---|--|---|----------|----------|----------|----------|----------|-----------|-----------|-----------|-----------|--|--|
| | | | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | | |
| | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 |
| Attribution/Allocation | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | N/A |
| Others | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | N/A |
| Total | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | N/A |

Glossary

| | |
|---|---|
| Action 14 Minimum Standard | The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective |
| MAP Guidance | Guidelines for Requesting Mutual Agreement Procedure |
| MAP Statistics Reporting Framework | Rules for reporting of MAP statistics as agreed by the FTA MAP Forum |
| Multilateral Instrument | Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting |
| OECD Model Tax Convention | OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017 |
| OECD Transfer Pricing Guidelines | OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations |
| Pre-2016 cases | MAP cases in a competent authority’s inventory pending resolution on 31 December 2015 |
| Post-2015 cases | MAP cases received by a competent authority from the taxpayer on or after 1 January 2016 |
| Review Period | Period for the peer review process that started on 1 January 2016 and ended on 31 August 2018 |
| Statistics Reporting Period | Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017 |
| Terms of Reference | Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective |

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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.

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

Consult this publication on line at <https://doi.org/10.1787/9dc5933f-en>.

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