

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Lithuania (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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
EDS	Electronic Declaration System
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
STI	State Tax Inspectorate

Executive summary

Lithuania has a relatively large tax treaty network with over 50 tax treaties, and has signed and ratified the EU Arbitration Convention. Lithuania has an established MAP programme, but has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and with seven cases pending on 31 December 2017. Of these seven cases, four concern allocation/attribution cases. Overall Lithuania meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Lithuania is working to address some of them.

All of Lithuania's tax treaties contain a provision relating to MAP. Those treaties 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 almost fully consistent with the requirements of the Action 14 Minimum Standard, except for the fact that almost 10% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Lithuania needs to amend and update a certain number of its tax treaties. In this respect, Lithuania signed and ratified the Multilateral Instrument, through which a number of its tax treaties will potentially have been and will 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, Lithuania reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard. It, however, has not yet put in place a plan in relation hereto.

Lithuania does not meet the Action 14 Minimum Standard concerning the prevention of disputes. While it has in place a bilateral APA programme, this programme does not allow roll-back of bilateral APAs, although Lithuania intends to allow such roll-back in the future.

Lithuania meets almost all of 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 cases where anti-abuse provisions are applied. Furthermore, Lithuania has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Lithuania also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. However, this guidance does not contain the contact details of Lithuania's competent authority. In addition, Lithuania has in place an administrative dispute settlement/resolution process that is independent from the audit and examination functions and which can only be accessed through a request from the taxpayer. The outcome of this process will prevent taxpayers' access to MAP, if the MAP request is submitted after the process has been finalised. While the effects of this process

are clarified in Lithuania’s MAP guidance, they are not addressed in the public guidance on this process.

Concerning the average time needed to close MAP cases, the MAP statistics for Lithuania 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	5	2	3	4	38.42
Other cases	2	2	1	3	30.61
Total	7	4	4	7	36.47

*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, Lithuania used as a start date the rules as defined under the MAP Statistics Reporting Framework: one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer’s MAP request, whichever is the earlier date. However, where Lithuania’s competent authority receives a MAP request that does not include all required information, then the Start date will be set at the date when such missing information is submitted. For the end date, Lithuania used the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request.

While Lithuania has timely submitted its MAP statistics on the basis of the MAP Statistics Reporting Framework, not all cases that started or pending were reported under this framework. The number of cases Lithuania closed in 2016 or 2017 is equal to the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 remained the same as compared to its inventory as per 1 January 2016. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 36.13 months. Both the resolution of other cases and attribution/allocation cases took longer than the sought-after 24 month time period. Lithuania did thereby not resolve any cases that were started on or after 1 January 2016. While Lithuania is considered to have sufficient recourses for the MAP function, it will be monitored whether organisational changes will contribute to the resolution of MAP cases in a more timely, effective and efficient manner.

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

Lastly, Lithuania also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although Lithuania does not monitor the implementation of MAP agreements, no issues have surfaced regarding the implementation throughout the peer review process.

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>.

Introduction

Available mechanisms in Lithuania to resolve tax treaty-related disputes

Lithuania has entered into 56 tax treaties on income (and/or capital), 55 of which are in force.¹ These 56 treaties apply to an equal number of jurisdictions. 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 56 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Furthermore, Lithuania 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.³ In addition, Lithuania 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 Lithuania's domestic legislation as per 1 July 2019.⁴

In Lithuania, the competent authority function to conduct MAP is assigned to the Ministry of Finance, which has delegated it to the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (“STI”). In practice, it is the Permanent working group for handling Mutual Agreement Procedures (“**Working group**”) within this inspectorate, which is responsible for handling and resolving MAP cases. The Working Group consists of seven employees, which includes the head of the Group as well as two deputy heads, one of whom is responsible for attribution/allocation cases and one for other cases. The remaining four members work on both types of MAP cases. In addition to handling MAP cases, these seven employees also work on other daily tasks, performing ordinary functions of the Divisions within which they are employed and also some of the members take part in other processes, such as issuing APAs or working on tax rulings.

Lithuania issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in July 2018, which is available at:

www.vmi.lt/cms/documents/10162/9177010/MAP+rules.pdf/3df45fd0-43ce-4639-9e35-625bd2c4d9eb

Recent developments in Lithuania

Lithuania signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) on 7 June 2017, 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. On 11 September 2018, it deposited the instrument of its ratification, following which the Multilateral Instrument has for Lithuania entered into

force on 1 January 2019. With the depositing of its instrument of ratification, Lithuania also submitted its list of notifications and reservations to the Multilateral Instrument.⁵ In relation to the Action 14 Minimum Standard, Lithuania has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Where treaties will not be modified by the Multilateral Instrument, Lithuania reported that it strives to update them through future bilateral negotiations, although it does not have a plan for doing so.

Basis for the peer review process

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

The period for evaluating Lithuania’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 August 2018 (“**Review Period**”). While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Lithuania opted to provide information and requested peer input on a period starting as from 1 January 2015. Even though this period is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on its compliance with the Action 14 Minimum Standard, Lithuania also asked for peer input on best practices. 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 Lithuania’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.

In total seven peers provided input: Denmark, Germany, Latvia, Norway, Slovenia, Sweden and Turkey. Out of these seven peers, four had MAP cases with Lithuania that started on or after 1 January 2016, but only two of them have such cases that were started in 2016 or 2017. These two peers represent 75% of post-2015 MAP cases in Lithuania’s inventory that started in 2016 or 2017. Generally, all peers indicated a positive relationship with Lithuania’s competent authority.

Lithuania provided extensive answers in its questionnaire, which was submitted on time, and also provided detailed information on how it has implemented best practices. Lithuania was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Lithuania provided the following information:

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

Finally, Lithuania is a member of the FTA MAP Forum and has shown good co-operation during the peer review process. Lithuania provided peer input and made constructive suggestions on how to improve the process with one of the concerned assessed jurisdictions as well as in previous reviews.

Overview of MAP caseload in Lithuania

The analysis of Lithuania’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 Lithuania, 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	5	2	3	4
Other cases	2	2	1	3
Total	7	4	4	7

General outline of the peer review report

This report includes an evaluation of Lithuania’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**”).⁸ Apart from analysing Lithuania’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Lithuania 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 Lithuania 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 Lithuania has entered into are available at: <https://www.vmi.lt/cms/en/tarptautines-dvigubo-apmokestinimo-isvengimo-sutartys>. The signed treaty that has not yet entered into force is with Morocco.
2. This concerns the treaties with Japan and the Netherlands. Reference is made to Annex A for the overview of Lithuania’s tax treaties.

3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-lithuania-instrument-deposit.pdf.
6. Available at www.oecd.org/tax/dispute/Lithuania-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of Lithuania are included in Annex B and C of this report.
8. 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 Lithuania's tax treaties

2. All of Lithuania's 56 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring its 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 Lithuania's 56 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, Lithuania reported that it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

Peer input

4. All peers that provided input confirmed that their treaty with Lithuania meets the Action 14 Minimum Standard for this element, which conforms with the above analysis.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	Lithuania 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.

Lithuania’s APA programme

6. Lithuania reported that it has established an APA programme since January 2012, under which it is authorised to enter into unilateral, bilateral and multilateral APAs. The legal basis of its APA programme is provided for in Article 37¹ of the Law on Tax Administration, which grants taxpayers the right to request approval for the application of the provisions of the tax legislation to future transactions.² Within Lithuania, the Permanent working group for handling APAs within the STI of the Ministry of Finance is responsible for handling requests for APAs. APAs can be entered into for a maximum period of five years following the year in which the APA first applies.

7. Lithuania outlined the process on how it operates its APA programme in a document titled “The Rules for the Submission of the Taxpayer’s Request to Approve the Principles of Pricing of a Future Controlled Transaction, Examination of the Request, the Adoption and Amendment of the Tax Administrator Binding Decision” – (“**APA guidance**”).³ This APA guidance contains extensive information on Lithuania’s APA programme, which is organised into six different chapters: (i) general provisions (ii) how a taxpayer can submit an APA request and what should be included in such a request (iii) the examination of the request (iv) taking a decision on the acceptance of the request (v) the validity and running period of APAs and (vi) final provisions.

Roll-back of bilateral APAs

8. Lithuania reported that it currently does not allow taxpayers to request for a roll-back of bilateral APAs. Article 37¹(1) of the Law on Tax Administration explicitly defines that APAs can only be requested for future transactions. These are defined as “transactions, a purchase or any group thereof of the taxpayer that will begin after the day of submitting the request specified in this paragraph to the tax administrator”. The fact that APAs are only open for future years is also specified in section 5 of its APA guidance, where it is stated that taxpayers may only submit an APA request for future controlled transactions, and not for transactions that have already taken place. If long term transactions were entered into before the moment an APA request was submitted, section 3.1 of the APA guidance specifies that only the transactions that were carried out after the date of submission of the APA request will qualify as future transactions.

Practical application of roll-back of bilateral APAs

9. Lithuania reported that since 1 January 2015 it received two bilateral APA requests that are currently being considered. As Lithuania does not allow for roll-back of bilateral APAs, requests thereto have not been received since that date.

10. All peers that provided input reported not having any experience with Lithuania concerning the roll-back of bilateral APAs, which to some extent can be clarified by the fact that Lithuania does not allow such roll-backs. Three peers further clarified that they also did not receive any request for a bilateral APA involving Lithuania.

Anticipated modifications

11. Lithuania reported that it intends to introduce the possibility of roll-back of bilateral APAs by amending its Law on Tax Administration. Lithuania reported that there is no clear timeframe for when exactly the roll-back legislation will take effect.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not possible.	Lithuania should follow its stated intention to introduce 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: www.vmi.lt/cms/documents/10162/7977078/LAW+ON+TAX+ADMINISTRATION_EN.pdf/f03d7a66-1439-4f44-926c-b74733328574.
3. Available at: www.vmi.lt/cms/documents/10162/9177010/APA+rules.pdf/5d7e8386-fb12-4661-bbcc-5a6c0477e629.

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.

12. 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 Lithuania's tax treaties

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

13. Out of Lithuania's 56 tax treaties, two contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 Final Report (OECD, 2015a), allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 52 of Lithuania's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b) as it read prior to the adoption of that report.

14. The remaining two treaties can be categorised as follows:

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

15. The treaty mentioned in the first row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. The provision incorporated in the protocol to this treaty reads:

... the expression “irrespective of the remedies provided by the domestic law” means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initialled, when the claim is related with an assessment of the taxes not in accordance with this Convention.

16. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request in practice can therefore not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore considered not to be in line with this part of element B.1.

17. The treaty mentioned in the second row above is 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, this treaty’s non-discrimination clause applies only to nationals that are resident of one of the contracting states. Therefore, it is logical that the last part of Article 25(1), first sentence is omitted and that it only allows for the submission of MAP requests to the state of which the taxpayer is a resident. For this reason, this treaty is considered to be in line with this part of element B.1.

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

18. Out of Lithuania’s 56 tax treaties, 54 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.

19. The remaining two tax treaties that do not contain such a 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 (2-years)	1

Practical application

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

20. As noted in paragraph 13 to 16 above, in all but one of Lithuania’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Lithuania reported that taxpayers are allowed to request MAP assistance while also seeking to resolve the same dispute via domestically available judicial and administrative remedies, whereby the initiation of the latter is not a prerequisite for submitting a MAP request. Such requests could be made regardless of whether the issue under dispute has already been decided via these judicial and administrative remedies. In both situations, access to MAP would be granted. Furthermore, even if a taxpayer has initiated administrative proceedings, which are considered as pre-trial proceedings, and also submitted a MAP request regarding the same matter, then in Lithuania any pre-trial proceedings would be suspended until the finalisation of the MAP process. This rule is laid down in Article 156 (2) of the Law on Tax Administration, which both applies to MAP cases under Lithuania’s tax treaties as under the EU Arbitration Convention. Lithuania further reported that it is not allowed to derogate from decisions issued by a judicial body and that its competent authority might only proceed with a MAP within the limits prescribed by the relevant judicial decision.

21. Lithuania’s MAP guidance contains in paragraph 8, 41-43, and 50-51 an explanation addressing the relationship between MAP and domestic law administrative and judicial remedies, which follows the description set forth above.

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

22. Lithuania reported that for the one treaty that does not contain a filing period for MAP requests, it will apply a period of three years as from the first notification of the action that resulted in taxation not in accordance with the tax treaty. Prior to its commitment to follow the Action 14 Minimum Standard, Lithuania would apply its domestic rules as set forth in Article 68 of the Law on Tax Administration, which is five years as from the fiscal year concerned. This policy has according to Lithuania become irrelevant since that commitment. Furthermore, in Lithuania’s view it is also a mere theoretical discussion if the impact of the Multilateral Instrument is taken into account (see below).

23. As is mentioned in the Introduction, Lithuania signed the Multilateral Instrument without any reservations to Article 16 concerning the mutual agreement procedure. The same applies with respect to the treaty partner for which the treaty with Lithuania does not contain a filing period for MAP requests. While the treaty itself is in line with element B.1, where both treaty partners listed their treaty with each other as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(5)(b) a reservation nor, pursuant to Article 16(6)(b), a notification that their mutual treaty contains a filing period for MAP requests of less than three years or of at least three years, the effect of the instrument is that the treaty provision will be superseded to the extent of incompatibility. For the one treaty that does not contain a filing period for MAP request, Lithuania and the relevant treaty partner have already deposited their instrument of ratification, for which Lithuania reported it considered that the relevant treaty provision has been superseded and therefore that it will apply a three-year filing period for MAP requests for this treaty as well.

Anticipated modifications

Multilateral Instrument

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

24. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

25. 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. 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.

26. With the signing of the Multilateral Instrument, Lithuania opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Lithuania's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Lithuania opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Lithuania listed 55 of its 56 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. One of these 55 treaties, however, concerns one of the two treaties mentioned in paragraph 13 above that already allows for the submission of a MAP request to either competent authority and for that reason is not taken into account in the analysis below. In other words, only 54 treaties are taken into account.

27. In total, nine of the 54 relevant treaty partners are not a signatory to the Multilateral Instrument, and 20 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 25 treaty partners listed their treaty with Lithuania as having a provision that is 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.

28. Of these 25 treaty partners, four already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Lithuania and these treaty partners, and has therefore

already modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining 21 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

29. In view of the above, for the one treaty identified in paragraphs 15-16 above that is considered not containing 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, it is not included in the list of 25 treaties that will be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

30. 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.

31. In regard of the one tax treaty identified in paragraph 19 above that contains a filing period for MAP requests of less than three years, Lithuania listed it as a covered tax agreement under the Multilateral Instrument and for it made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Lithuania under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the one treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

32. From the above analysis it follows that all of Lithuania's tax treaties are or will become in line with the Action 14 Minimum Standard with respect to the filing period for MAP requests. Concerning the inclusion of the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, Lithuania reported that the one tax treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, and will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element B.1 and that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the Action 14 final report. Lithuania, however, reported not having in place a specific plan for such negotiations nor has it taken any action to that effect.

Peer input

33. All peers that provided input confirmed that their treaty with Lithuania meets the requirements under this element of the Action 14 Minimum Standard. One peer mentioned that its treaty will be modified by the Multilateral Instrument to allow the submission of MAP requests to either competent authority, which is in conformity with the analysis above.

34. For the two treaties treaty identified that do not contain the equivalent of Article 25(1), first or second sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 56 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	<p>As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, Lithuania should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either</p> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision. <p>To this end, Lithuania should put a plan in place on how it envisages updating this treaty to include the required provision.</p>
		In addition, Lithuania should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

[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).

35. 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

36. As discussed under element B.1, out of Lithuania’s 56 tax treaties, two 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. Furthermore, as was also discussed under element B.1, two of the remaining 54 treaties have been modified and 23 will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

37. Lithuania reported that for those treaties that do not allow the filing of a MAP request to either competent authority, it has introduced a bilateral consultation process that allows the other competent authority concerned to provide its views on the case where Lithuania’s competent authority considers the objection raised in the MAP request not to be justified. The process for considering MAP requests and the process to be followed can be found in paragraphs 10 and 18-28 of Lithuania’s MAP Guidance.

38. In regard of the consultation process, Lithuania reported that upon receipt of a MAP request, its competent authority will forward the request to the other competent authority within one month from the date of receipt irrespective of whether or not it considers the case as justified. Afterwards, it will notify the taxpayer hereof. In cases where Lithuania’s competent authority considers that the objection raised in a MAP request is not justified, it will reach out to the other competent authority, stating the reasons that led to this decision and invites the other competent authority to express its views on the case. Upon receipt of a response, Lithuania’s competent authority then evaluates and takes into account the other competent authority’s position. Two outcomes are possible in this respect:

- If the argument received from the other competent authority is sufficient to change Lithuania’s initial position, then it would decide that a MAP could proceed and access will be given.
- If the arguments presented are unconvincing and if Lithuania’s initial reasons for denying access to MAP are still valid, then its competent authority would send a letter restating its position to the other competent authority. Lithuania noted that it would be open to further consultations at this point if the other competent authority requests such action. Otherwise, it would close the case with the outcome “Objection not justified”.

39. Concerning the timing of the steps in the process, Lithuania reported that there are no specific time limits set, but that the consultation process will be initiated within two months after the submission of the initial MAP request or after all required information is submitted by the taxpayer, and no later than four months as of that date. Furthermore, Lithuania mentioned that it would expect the other competent authority to respond within a period of two months, which could be later taking into account the peculiarities of each case as well as earlier communications with that competent authority. Where no response would be received within this two-month period, or within a reasonable timeframe, Lithuania reported it would consider the case to be closed.

Practical application

40. Lithuania reported that since 1 January 2015 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 and 2017 MAP statistics submitted by Lithuania also show that none of its MAP cases was closed with the outcome “objection not justified”.

41. All peers that provided input indicated not being aware of any cases for which Lithuania’s competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be explained because no such cases occurred since this date.

Anticipated modifications

42. Lithuania indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	Lithuania has a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation or notification process is applied in practice because during the Review period no such cases have occurred.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

43. 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

44. Out of Lithuania’s 56 tax treaties, 45 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring it to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention.

45. The remaining eight treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision for the following reasons:

- In six of the eight treaties, the granting of a corresponding adjustment is only optional as the word “shall” is replaced by “may”
- In two treaties the requirement to grant a corresponding adjustment is not included nor is the last sentence of Article 9(2) of the OECD Model Tax Convention

included. This sentence is replaced by wording that stipulates that the competent authorities may consult together with a view to reach an agreement on the adjustment of profits.

46. Lithuania had formerly made a position to the 2014 version of the OECD Model Tax Convention on Article 9 and its commentary. In this position, Lithuania reserved the right to replace “shall” by “may” in the first sentence of paragraph 2 in their tax conventions. However, Lithuania has since withdrawn this position.

47. Lithuania 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.

48. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Lithuania’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, Lithuania indicated that it will always provide access to MAP for transfer pricing cases. In this respect, paragraphs 5 and 7.1-7.2 of Lithuania’s MAP guidance explicitly clarify that taxpayers have access to MAP in transfer pricing cases.

Application of legal and administrative framework in practice

49. Lithuania reported that since 1 January 2015, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

50. All peers that provided input indicated not being aware of a denial of access to MAP by Lithuania since 1 January 2015 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

51. Lithuania 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.

52. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

53. 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).

54. Lithuania has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 11 tax treaties identified in paragraphs 45 and 46 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Lithuania listed all as a covered tax agreement under the Multilateral Instrument and for nine of them did it make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

55. With regard to those nine treaties, two treaty partners are not a signatory to the Multilateral Instrument, whereas two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Lithuania already contains the equivalent of Article 9(2), and two also made a notification on the basis of Article 17(4). The remaining three treaty partner(s) did not make such a notification. Therefore, at this stage, two of the 11 treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention and three will be superseded to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). With respect to these treaties, one treaty partner has already deposited its instrument of ratification and therefore this treaty will be superseded in the case of incompatibility.

56. With regard to the remaining two treaties for which Lithuania did not make a notification on the basis of Article 17(4), both treaty partners are a signatory to the Multilateral Instrument and listed their tax treaty with Lithuania as a covered tax agreement under that instrument. One of these two treaty partners reserved, on the basis of Article 17(3), the right not to apply Article 17(2) as they considered that its treaty with Lithuania already contains the equivalent of Article 9(2). The other treaty partner did not make such a reservation, nor did they make a notification on the basis of Article 17(4). Therefore, at this stage, one of the remaining two treaties will be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in this treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).

Conclusion

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

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

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

57. 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

58. None of Lithuania's 56 tax treaties allows 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 Lithuania does not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

59. Lithuania reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, paragraph 7.5 of Lithuania's MAP guidance clarifies that MAP is available in cases concerning the application of anti-abuse provisions.

Practical application

60. Lithuania reported that since 1 January 2015 it has not denied access to MAP in any 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 request in relation hereto were received by its competent authority.

61. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Lithuania since 1 January 2015 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

62. Lithuania indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

63. 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

64. Lithuania reported that under its domestic law no process is available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

65. Lithuania reported that it has an administrative 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. The process is, however, only available in cases where neither the taxpayer nor the tax administrator has sufficient evidence to substantiate their calculation. The relevant rules of this process are laid down in Article 71 of Lithuania's Law on Tax Administration.

66. Taxpayers can request the initiation of this process during: (i) the last stage of a tax audit in Lithuania in which there is a draft report on the basis of which it can reasonably be established that there are additional taxes to be paid, (ii) pre-trial proceedings or (iii) trial proceedings. Lithuania reported that this administrative dispute settlement/resolution process is handled by a separate working group that is independent from the audit function of the tax administration. It is also independent from the appeals division within the legal department of the STI, which conducts the general administrative dispute resolution process. This working group consists of employees from different departments of the STI, for which Lithuania further reported that they do not act as representatives from their respective departments but instead follow the specific regulations of the working group that are set for the administrative dispute settlement/resolution process. The working group has a specific mandate to negotiate settlements with taxpayers.

67. Lithuania further reported that if an agreement is reached during the administrative dispute settlement/resolution process, then the taxpayer loses the right to dispute the tax in question. In relation to the mutual agreement procedure, Lithuania specified that access to MAP would only be denied if a MAP request is submitted after an agreement is reached following the application of the administrative dispute settlement/resolution process. Where, however, a MAP case is submitted prior to or simultaneously with a request for the initiation of the administrative dispute settlement/resolution process, Lithuania will accept the MAP request and proceed with the case in a mutual agreement procedure under suspension (or in some cases under termination) of the settlement/resolution process.

Practical application

68. Lithuania reported that it has since 1 January 2015 not denied access for cases where the issue presented by the taxpayer in a MAP request had already been resolved through its administrative dispute settlement/resolution process. While there was one case where a taxpayer submitted both a MAP request and a request for the initiation of the settlement/resolution process, the case was not accepted under the latter and was therefore dealt with solely in MAP.

69. All peers indicated not being aware of a denial of access to MAP in Lithuania since 1 January 2015 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that such settlements are not possible in Lithuania.

Anticipated modifications

70. Lithuania indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

Jurisdictions should 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.

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

Legal framework on access to MAP and information to be submitted

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

73. Lithuania reported that a MAP request generally has to be assessed by its competent authority within two months on whether it can be accepted into the process. In cases where the taxpayer does not initially provide all the required information, Lithuania reported that it would request such additional information from the taxpayer within two months. There are no time limits set for taxpayers to provide this information, although a general term of 30 calendar days (20 working days), which is provided for in the Law on Public Administration, will be used in principle. In specific situations, however, this term should not necessarily be used by the competent authority. In fact, Lithuania specified that the length of time given to the taxpayer is often determined by the complexity of the particular case.

74. In cases where the taxpayer fails to respond to Lithuania's request for additional information, Lithuania may ultimately choose not to consider the request. Lithuania noted that in practice, however, MAP requests are usually processed even if the taxpayer is not able to provide the information requested within the set terms, so long as he explains the reasons for the delay or his inability to provide the information on time. In such a situation, the relevant information may also be requested from the other competent authority concerned. Lithuania further reported that it may initiate the MAP process even if the taxpayer has not submitted all the required information, provided that the case can be processed without this missing information. However, Lithuania reported that this does not relieve the taxpayer from submitting all required information during the course of the MAP process.

75. Sections 18-19 of Lithuania's MAP guidance contains information on how a submitted MAP request is being followed up, which aligns with the rules set out above.

Practical application

76. Lithuania reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation required requirements set out in its MAP guidance. It further reported that since 1 January 2015 its competent authority has not denied access to MAP for cases where the taxpayer did not provide the required information or documentation.

77. All peers that provided input indicated not being aware of a limitation of access to MAP by Lithuania since 1 January 2015 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

78. Lithuania indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Lithuania has thus far not limited access to MAP in eligible cases when taxpayers have complied with Lithuania'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.

79. 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 Lithuania's tax treaties

80. Out of Lithuania's 56 tax treaties, 51 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. The remaining five treaties do not contain any provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.

Anticipated modifications

Multilateral Instrument

81. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

82. 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.

83. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Lithuania 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). All five relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Lithuania as a covered tax agreement under that instrument and also made a notification on the basis of 16(6)(d)(ii).

84. Of the five treaty partners mentioned above, one has deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Lithuania and this treaty partner, and has modified this treaty to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the

remaining four treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Bilateral modifications

85. As all five treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention will be modified by the Multilateral Instrument, no bilateral modifications are necessary. Regardless, Lithuania reported that it will continue to seek to include Article 25(3), second sentence in all of its future tax treaties.

Peer input

86. For the five 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]	-	Lithuania should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

87. 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.

Lithuania's MAP guidance

88. Lithuania's rules, guidelines and procedures are included in the document titled "The Rules for the Initiation and Execution of the Mutual Agreement Procedure" ("**MAP guidance**"), which has been issued on 12 July 2018. This guidance is available at:

www.vmi.lt/cms/documents/10162/9177010/MAP+rules.pdf/3df45fd0-43ce-4639-9e35-625bd2c4d9eb

89. The MAP guidance regards both the mutual agreement procedure under Lithuania's tax treaties and the EU Arbitration Convention and contains extensive information on:

- a. organisation of the competent authority function
- b. outline of the MAP process in general

- c. access to MAP in transfer pricing cases, audit settlements, anti-abuse provisions, multilateral disputes and *bona fide* taxpayer-initiated adjustments
- d. time limits for submission of MAP requests
- e. the manner and form in which the taxpayer should submit its MAP request
- f. the specific information and documentation that should be included in a MAP request (see also below)
- g. how the MAP functions in terms of timing and the role of the competent authorities
- h. information on availability of arbitration, both under tax treaties and the EU Arbitration Convention
- i. relationship with domestic available remedies
- j. implementation of MAP agreements and publication of such agreements
- k. rights and role of taxpayers in the process
- l. suspension of tax collection
- m. interest charges and refunds, and penalties.

90. The above-described MAP guidance of Lithuania contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance contains some of the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which includes the manner and form in which the taxpayer should submit its MAP request¹, but does not contain the contact details of the competent authority or of the office in charge of MAP cases. It should be noted, however, that Lithuania provides the contact details of its MAP office separately on STI's webpage dedicated to MAP but that the MAP Guidance itself does not contain such contact information.²

91. Although the information included in Lithuania's MAP guidance is detailed and comprehensive, it does not contain information on whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

Information and documentation to be included in a MAP request

92. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.³ This agreed guidance is shown below. Lithuania's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner

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

93. Further to the above, Lithuania’s MAP guidance, also requires that a MAP request must include: (i) information on the other competent authority concerned, (ii) the relevant tax years, (iii) the reference to the applicable domestic rules and tax treaties, (iv) for the EU Arbitration Convention, a reasoning why the arm’s length principle has not been observed and the data necessary to determine the commencement date of the two-year period for triggering arbitration, and (v) whether domestic procedures have been initiated. Where the case concerns multiple taxpayers or multiple jurisdictions, concerned, section 13 of Lithuania’s MAP guidance stipulates that separate MAP requests should be filed.

94. Lithuania’s MAP guidance in paragraph 16 also states that where a taxpayer submits a MAP request in a non-official language, then a translation of such documents into the Lithuanian language should, at the request of its competent authority, be provided within a specified deadline.

Anticipated modifications

95. Lithuania indicated that it plans to publish complementary information on the STI’s website that would give a simplified view of the MAP process in Lithuania, in order to make it easier for a taxpayer to familiarise himself with the process and his rights and responsibilities during such process. Lithuania further indicated that this information would be regularly reviewed and kept up to date. In that regard, it specifically mentioned that once the Council Directive on dispute resolution has been transposed into its domestic legislation, Lithuania will review its MAP guidance on whether it needs to be updated.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of Lithuania’s competent authority are not included in the MAP guidance.	Lithuania should update its MAP guidance to include the contact information of its competent authority as soon as possible. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Lithuania could consider, when updating this guidance, including information on whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

[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.

96. 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.⁴

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

97. The MAP guidance of Lithuania is published and can be found at:

www.vmi.lt/cms/documents/10162/9177010/MAP+rules.pdf/3df45fd0-43ce-4639-9e35-625bd2c4d9eb

98. This guidance was last updated in July 2018 and is available in Lithuanian as well as in English. As regards its accessibility, Lithuania’s MAP guidance can easily be found on the website of the State Tax Inspectorate by searching for “MAP” on its homepage.

MAP profile

99. The MAP profile of Lithuania is published on the website of the OECD, which was last updated in August 2018. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

100. Lithuania indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Lithuania should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

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

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

101. 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

102. As previously discussed under B.5, audit settlements are not possible in Lithuania.

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

103. As also previously mentioned under element B.5, Lithuania has 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 this respect, paragraph 22.2 of Lithuania's MAP guidance clarifies that where an agreement has been reached between the taxpayer and the tax administration through this settlement/resolution process, then the mutual agreement procedure shall not be initiated.

104. Lithuania reported that it has not issued separate guidance on its administrative or statutory dispute settlement/resolution process and its relationship with MAP. However, it noted that separate rules are published in Lithuanian that regulate this process, which can be found in its "Rules on the Conclusion of Agreement on Taxes and Related Amounts Between the Tax Administrator and a Taxpayer" as well as in the commentary on Article 71 of its Law on Tax Administration. These rules, however, do not include an explanation of the effects of its administrative or statutory dispute settlement/resolution process on MAP.

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

105. Lithuania reported that all treaty partners were notified of the existence of its statutory/administrative dispute settlement/resolution process and its consequences for MAP, because this process is identified and described in Lithuania's MAP guidance and MAP profile, both of which are publicly available. Five of the seven peers that provided input on Lithuania's compliance with the Action 14 Minimum Standard, however, reported that they were not notified of the existence of such process in Lithuania, while another peer reported that it learned about the existence of such process through Lithuania's MAP profile. The last peer stated that it is aware of this process and also noted that information regarding this process is available on Lithuania's MAP profile.

106. While Lithuania did not separately notify their treaty partners of the existence of its statutory/administrative dispute settlement/resolution process by means of a formal letter, Lithuania includes detailed information on this process in its MAP profile, with a reference to its domestic MAP guidance in which the process is outlined in detail. This is considered to be in line with the requirement on element B.10.

Anticipated modifications

107. Lithuania indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	Guidance on the administrative or statutory dispute settlement/resolution process does not explain the effects of that process on MAP (while this effect is explained in the MAP guidance).	Lithuania's guidance on its administrative or statutory dispute settlement/resolution process should address the consequences of settling a dispute through that process regarding the effects on the MAP process.

Notes

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

References

- OECD (2015a), *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 (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.

108. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Lithuania’s tax treaties

109. All of Lithuania’s 56 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention 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.

Anticipated modifications

110. As all of Lithuania’s 56 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention there is no need for modifications. Regardless, Lithuania reported that it will continue to seek to include Article 25(2), first sentence in all of its future tax treaties.

Peer input

111. All peers that provided input confirmed that their treaty with Lithuania meets the Action 14 Minimum Standard for this element.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	Lithuania 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).

112. 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

113. Statistics regarding all tax treaty related disputes concerning Lithuania are published on the website of the OECD as of 2015.¹

114. 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. Lithuania provided its post-2015 MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Lithuania and of which its competent authority was aware. However, not all its pre-2016 cases were reported, as five of such cases were only reported during the course of the peer review report.²

115. 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 Lithuania. With respect to post-2015 cases, Lithuania reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, based on the information provided by Lithuania’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

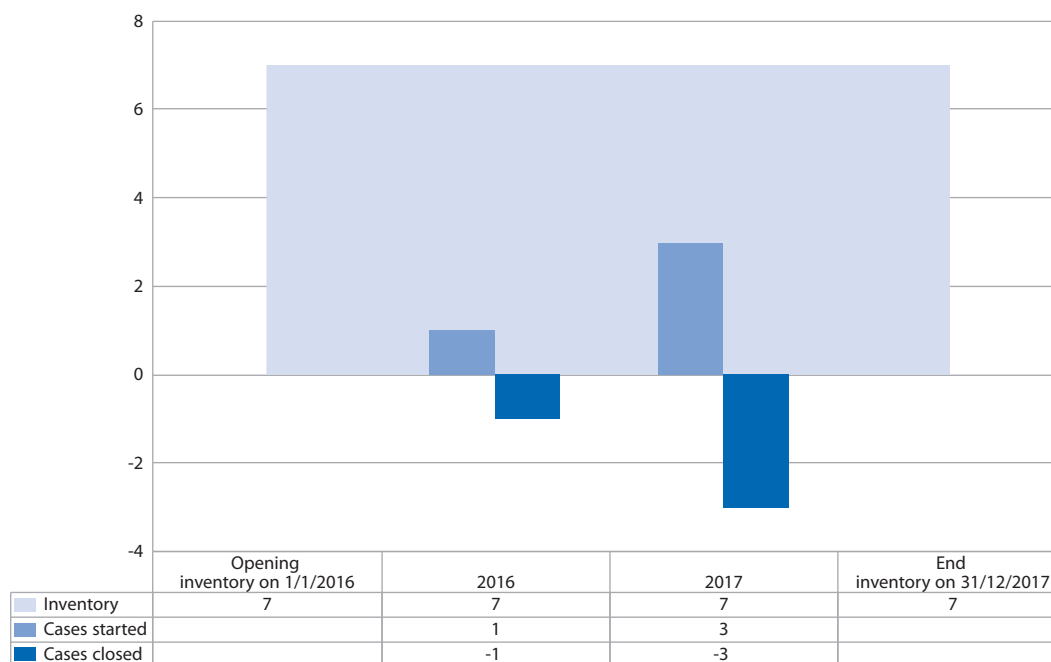
116. Lithuania reported that its work organisation and document management system monitors deadlines within the MAP process and helps track performance of tasks relating to the timely resolution of MAP cases.

Analysis of Lithuania's MAP caseload

Global overview

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

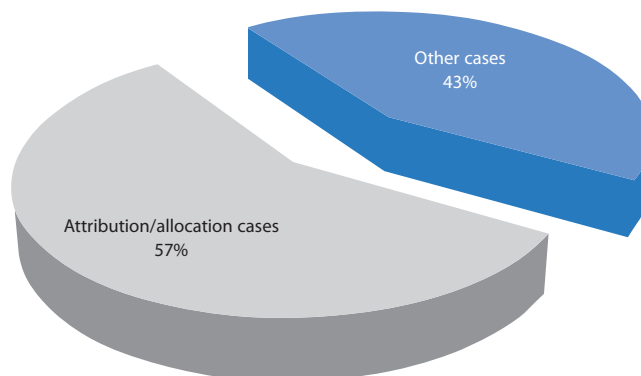
Figure C.1. Evolution of Lithuania's MAP caseload



118. At the beginning of the Statistics Reporting Period, Lithuania had seven pending MAP cases, of which five were attribution/allocation cases and two other MAP cases.³ At the end of the Statistics Reporting Period, Lithuania continued to have seven MAP cases in its inventory, of which four are attribution/allocation cases and three are other MAP cases. Thus, Lithuania's MAP caseload remained the same throughout the Statistics Reporting Period.

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

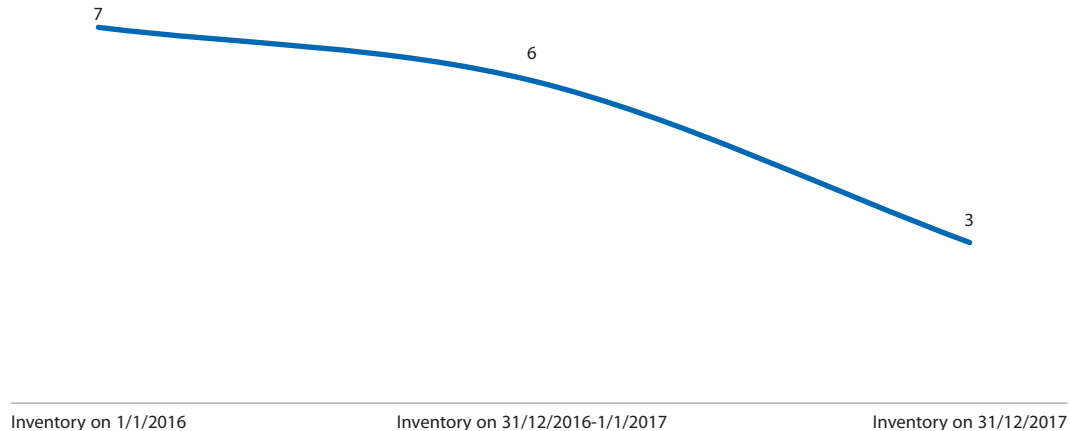
Figure C.2. End inventory on 31 December 2017 (7 cases)



Pre-2016 cases

120. The following graph shows the evolution of Lithuania's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Lithuania's MAP inventory Pre-2016 cases



121. At the beginning of the Statistics Reporting Period, Lithuania's MAP inventory of pre-2016 MAP cases consisted of seven cases, of which were five attribution/allocation cases and two other cases. At the end of the Statistics Reporting Period, the total inventory of pre-2016 cases had decreased to three cases, consisting of two attribution/allocation cases and one other MAP case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016 + 2017)
Attribution/allocation cases	-20%	-50%	-60%
Other cases	-0%	-50%	-50%

Post-2015 cases

122. The following graph shows the evolution of Lithuania's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Lithuania's MAP inventory Post-2015 cases



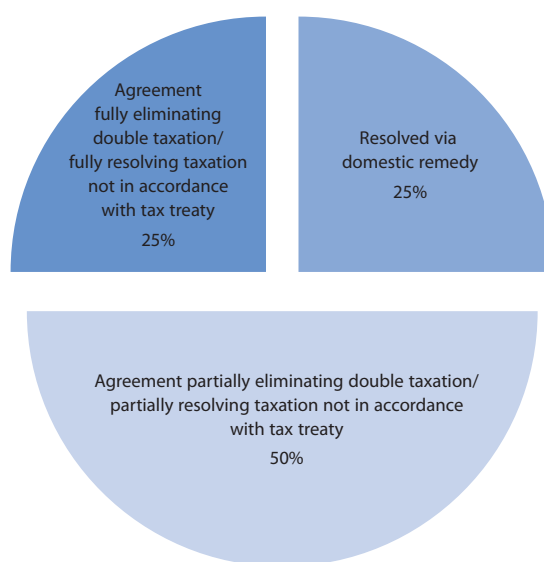
123. In total, four MAP cases started during the Statistics Reporting Period, two of which concerned attribution/allocation cases and two other MAP cases. At the end of this period the total number of post-2015 cases in the inventory remained the same, as Lithuania did not close any post-2015 cases.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

124. During the Statistics Reporting Period Lithuania in total closed four MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during 2016 and 2017 (four cases)



125. This chart shows that during the Statistics Reporting Period, 75% of these four cases were closed through an agreement that fully/partially eliminated double taxation or fully/partially resolved taxation not in accordance with the tax treaty. The remaining case was not closed through MAP, but via domestic remedies.

Reported outcomes for attribution/allocation cases

126. Three attribution/allocation cases were closed during the Statistics Reporting Period. Of those three cases, one was resolved via domestic remedies and the other two were resolved with an agreement fully/partially eliminating double taxation or fully/partially resolving taxation not in accordance with the tax treaty.

Reported outcomes for other cases

127. One other case was closed during the Statistics Reporting Period for which the outcome was an agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

128. The average time needed to close MAP cases during the Statistics Reporting Period was 36.47 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	3	38.42
Other cases	1	30.61
All cases	4	36.47

129. As noted above, Lithuania did not resolve any post-2015 MAP cases. Therefore the average shown in the table only related to pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Lithuania reported that it uses the following dates:

- *Start date*: the rules as defined under the MAP Statistics Reporting Framework: one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date. However, where Lithuania's competent authority receives a MAP request that does not include all required information, then the Start date will be set at the date when such missing information is submitted.
- *End date*: the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request.

Peer input

130. Peer input in relation to the timely resolution of MAP cases is discussed under element C.3.

Anticipated modifications

131. Lithuania indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Although Lithuania submitted MAP statistics on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017, five pre-2016 cases were omitted.	For the current and future years, Lithuania should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	Lithuania's MAP statistics show that during the Statistics Reporting Period it did not close any of its post-2015 cases. In that regard, Lithuania is recommended to seek to resolve the four post-2015 cases pending on 31 December 2017 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.

132. 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 Lithuania’s competent authority

Organisation of the competent authority

133. Under Lithuania’s tax treaties the competent authority function is assigned to the Ministry of Finance, which it has delegated to the State Tax Inspectorate. Within this directorate it is the permanent working group for handling mutual agreement procedures (“**Working Group**”) that in practice handles and resolves MAP cases, the role of which is defined in section 4.1 of Lithuania’s MAP guidance.

134. The Working Group handles both attribution/allocation cases as well as other MAP cases. MAP cases were previously handled by several ad-hoc groups, but given that Lithuania receives more MAP requests nowadays, it decided in 2015 to install a permanent working group. How the Working Group handles MAP cases is defined in an internal working regulation in Lithuania, which also specifies the Group’s tasks and working procedures. In this respect, Lithuania reported that the Working Group consists of seven members, which includes the head as well as two deputy heads, one of whom is responsible for attribution/allocation cases and one for other MAP cases. The remaining four members of the Working Group work on both types of MAP cases.

135. Further to the above, Lithuania reported that it has implemented a one-stop-shop concept. Where a MAP agreement is submitted to a governmental entity other than the competent authority, the request will be forwarded to the Working Group within five working days from receipt of the request, which is regulated by Article 14(8) of the Law on Public Administration.

Staff in charge of MAP processes

136. Lithuania reported that the current members of the Working Group are experts in a variety of subjects, including transfer pricing, international taxation, economics, law and accountancy. Handling MAP cases is a function in addition to the other daily tasks of these employees, as well as participation in performance of other specific functions, which inter alia includes working on tax rulings. More specifically, Lithuania reported that of the seven-member team:

- Two are from the law department of the State Tax Inspectorate, one of whom has been a member of the Working Group since 2015 and is responsible for methodological assistance in direct taxation. The other employee handles national tax disputes and has one year of MAP experience.
- Three are from the Large Taxpayers Department of the State Tax Inspectorate, two of whom are from the transfer pricing division and have been with the team since 2015. The other is an auditor and has one year of MAP experience.

- One is from the Control Department Audit Organisation Division of State Tax Inspectorate and has three years of MAP experience. This employee provides methodological guidance to local auditors and also supervises the quality of tax audits.
- One is from the International Co-operation Department and has been a member of the Working Group since 2015. This employee is responsible for the representation of the State Tax Inspectorate with international organisations as well the co-ordination of international programmes.

137. Lithuania further reported that staff in charge of MAP undergo training that is based on practical past case experience. Furthermore, training materials are shared at meetings of the Working Group. These joint discussions of cases in Lithuania's view help to develop a consistent approach to resolving MAP cases. Furthermore, when a new person is hired, it is provided with a comprehensive on boarding package as well as an introductory training. Lithuania further reported that it seeks out all possibilities for staff to attend trainings organised by international organisations such as the OECD and the Intra-European Organisation of Tax Administrations.

Handling and resolving MAP cases

138. Lithuania clarified that MAP cases are usually assigned to one or two members, who are responsible for the preparation of the case. However, the preparation of a position is a joint effort by the Working Group and each case is discussed by the whole team in order to create a common understanding and to acquire knowledge in all relevant fields. In that regard, Lithuania further reported that for each case a joint decision is made by majority vote but only after all members of the Working Group have had the opportunity to express their views on the case. Lithuania also explained that a position paper or a response to a position paper is prepared once a decision is made.

139. During meetings of the Working Group, each member is required to present the current progress of his/her assigned MAP case including what actions have been taken, how much time has elapsed and when the two-year period for MAP is expected to be reached. Lithuania further reported that staff members of the Group are periodically required to fill in a reporting table that keeps track of the progress of each MAP case that has been assigned to this member. In this table, staff has to indicate the start/end date, the type of case, the taxpayer involved, subject matter of the case, any relevant concerns, the positions provided/received, the amount of tax under consideration, whether a MAP was ultimately reached and any other relevant remarks.

140. Paragraph 61 of Lithuania's MAP guidance explains that the Working Group shall examine MAP requests and adopt decisions on resolving MAP cases in accordance with tax laws, international treaties, justice, equivalence between taxpayers, non-discrimination and independence.

141. With respect to face-to-face competent authority meetings, Lithuania reported that there is no separate budget planned in advance to facilitate such meetings, but that funds are made available if needed. Furthermore, such meetings would be attended by the main designated people from the Working Group, including the head and the appointed member. However, Lithuania noted that in practice, face-to-face meetings are quite rare and typically take place with competent authorities from neighbouring countries. Lithuania further noted that with more geographically distant countries it typically communicates via written means or by teleconference.

142. Concerning the timelines to apply when handling MAP cases, paragraphs 29-34 of Lithuania's MAP guidance describe in more detail the steps to be taken during the MAP process and which timelines its competent authority adheres to during each phase. Paragraph 29 notes that Lithuania seeks to resolve MAP cases within two years as from the date the case was initiated. In more detail, paragraph 30 and 31 describe the timelines to be applied for issuing a position paper or to respond to a position paper received from another competent authority, which are four and six months respectively. Taxpayers are also informed about the status of their MAP case every six months.

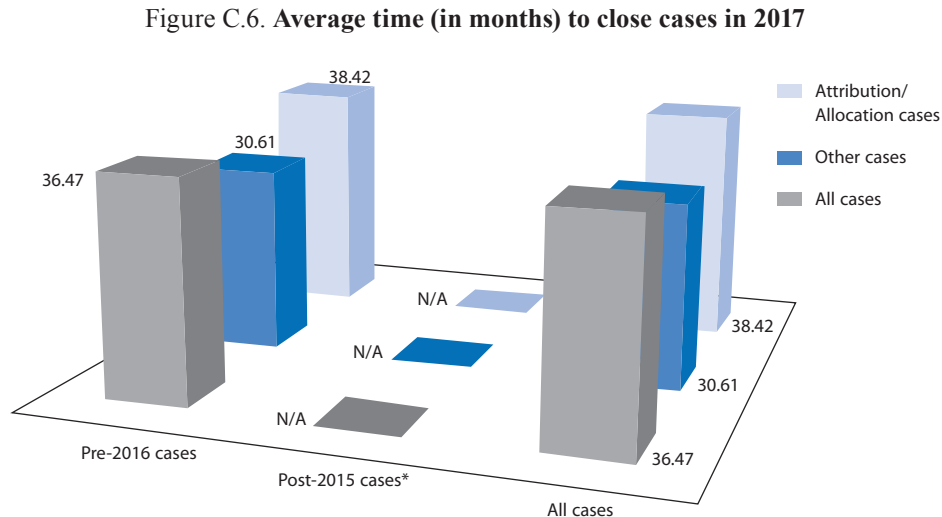
Monitoring mechanism

143. Lithuania reported that its current available resources are adequate to handle its MAP caseload. However, if it concludes that resources are no longer sufficient for the competent authority function, then more resources would be requested.

Practical application

MAP statistics

144. As discussed under element C.2, Lithuania did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. Furthermore, the average time taken to close attribution/allocation cases is higher than the average time needed for other cases. This can be illustrated by the following graph:



145. Based on these figures, it follows that on average it took Lithuania 36.47 months to close MAP cases during the Statistics Reporting Period, which both regards attribution/allocation cases (30.61 months) as well as other MAP cases (38.42 months) and which is above the pursued average of 24 months.

Peer input

146. In general, the peers that provided input reported not having extensive MAP experience with Lithuania’s competent authority, with three of them noting that they did not have any experience at all with Lithuania. However, one peer noted that Lithuania is an important MAP partner and that it maintains regular contact via post or electronic means and holds face-to-face meetings when necessary. Furthermore, one peer indicated that it had occasional MAP cases with Lithuania during the Review Period, for which it considered that contacts with Lithuania’s competent authority has been generally easy and takes place via traditional letters or email, as personal meetings have not been considered necessary so far.

147. One peer mentioned that it currently does not have pending MAP cases with Lithuania, but that it had one pre-2016 allocation/attribution MAP case that was resolved in 2017. In the peer’s experience, co-operation with Lithuania’s competent authority was very positive and communication was good, and that the MAP negotiations were constructive. Another peer noted that it only had one MAP case with Lithuania during the Review Period and that in its experience, Lithuania’s competent authority was efficient and solution oriented.

148. Further to the above, almost all of the peers that provided input did not make any suggestions for improvement. One peer in this regard mentioned that the MAP process works well in Lithuania. However, one peer noted that its current case pending with Lithuania is in the process of being resolved, which is taking more than 24 months. This peer therefore expressed that this case might serve as an example to settle MAP cases in a more efficient and timelier manner with Lithuania’s competent authority.

Anticipated modifications

149. Lithuania indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	Only pre-2016 MAP cases were closed in 36.47 months on average, which indicates there may be a 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).	While the level of resources is sufficient as compared to the number of pending MAP cases, Lithuania should analyse whether working procedures within its competent authority could be made more effective and efficient to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. This regards both attribution/allocation cases as well as other MAP cases.

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

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

150. 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

151. As discussed under element C.3, Lithuania reported that MAP cases are usually assigned to one or two members of the Working Group who are responsible for the preparation of the case, but that decisions on the case are made by all members of this group. In this respect, Lithuania explained that letters to other competent authorities are signed by the head of the State Tax Inspectorate to whom the Working Group is accountable. Furthermore, Lithuania reported that in cases where MAP negotiations are conducted in face-to-face meetings the mandate to adopt a decision in the MAP case is delegated to the head of the Working Group.

152. Concerning the resolution of MAP cases, Lithuania reported that staff in charge of MAP in practice operate independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations. In more detail, Lithuania explained that the MAP process is conducted entirely independent from the personnel within the tax administration that is responsible for tax audits. While two members of the Working Group have the capacity to conduct any control or supervisory activities concerning large taxpayers, processes have been put in place to ensure they would not be involved in handling MAP cases when such activities were conducted. More specifically, if any of these people were involved in an audit that leads to a MAP case, they would be suspended from working on such case. Furthermore, if a member of the Working Group was involved in an audit, or where there are other circumstances that raise doubts as to its impartiality for the case under review, he must recuse himself from such examination and decision-takings in accordance with the Law on the Alignment of Public and Private Interests in the Public Service. This rule also has been clarified in paragraph 62 of Lithuania's MAP guidance.

153. In practice, when handling MAP cases, staff in charge of MAP process may liaise with the tax administration (both at a central or at a local level) to obtain information in the case under review or clarification of a legal matter. Nevertheless, Lithuania reported that all decisions relating to the MAP cases are taken by the Working Group without any involvement of other departments. To ensure a fully confidential and independent process, Lithuania also noted that members of the Working Group have exclusive access to specific folders on the State Tax Inspectorate webserver that contains information about the MAP process in Lithuania, letters issued to other divisions, documents retrieved from international fora such as the OECD, as well as training materials.

154. Lithuania further reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations and that the staff in charge of MAP cases may only take into consideration the actual terms of a tax treaty as applicable for the relevant year. In Lithuania, the Ministry of Finance is competent to conduct treaty negotiations, whereas the competent authority function falls solely under the auspices of State Tax Inspectorate. How the Working Group should handle MAP cases is defined in an internal working regulation, which also specifies its tasks and working procedures.

Practical application

155. Peers generally reported no impediments in Lithuania 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.

Anticipated modifications

156. Lithuania 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, Lithuania 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 Lithuania 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.

157. 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 Lithuania

158. Lithuania reported that, in general, performance of its staff in charge of MAP is evaluated by observing each employee's fulfilment of separate tasks related to MAP cases, such as the time taken to prepare position papers and as well as interactions with taxpayers.

159. Lithuania further reported that a number of performance indicators and targets are used that are related to the timely and principled resolution of MAP cases. More specifically, Lithuania noted that staff are evaluated on how well they progress on cases assigned to individual staff members as well as their efforts to resolve such cases within the 24-month period. Such evaluation includes sending requests and/or reminders for information on the merits of the case where no response is received from the other competent authority. Lithuania also reported that staff is evaluated on how actively they participate in internal discussions and how well they prepare for such discussions, which also includes obtaining relevant information from other units of the tax administration. Interactions with taxpayers are also taken into account, including whether or not they provide the taxpayer with information regarding the progress and merits of the case. Lithuania noted that staff

members are periodically assigned a separate score for his/her performance based on such criteria as well as on his/her performance of other ordinary functions.

160. In addition to the above, Lithuania mentioned that the objective of the Working Group is to resolve MAP cases in a manner that complies with international standards and that follows the set time limits and principles of prudence and justice. In that regard, the Working Group is also tasked with implementing the Action 14 Minimum Standard to the extent that this falls under the competence of the State Tax Inspectorate and therefore members of the Working Group are also assessed on how effectively they are carrying out such implementation. Lithuania explained that its internal document management information system acts not only as a repository for relevant MAP materials but also as a system to create and monitor specific tasks that staff are required to complete. Lithuania noted that this system enables management to track the performance of such tasks, give notifications of upcoming deadlines and generate reports for various purposes.

161. The Action 14 Final Report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are for Lithuania 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).

162. Further to the above, Lithuania 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

163. Peers that provided input reported not being aware of the use of performance indicators by Lithuania that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

164. Lithuania 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, Lithuania 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.

165. 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

166. Lithuania reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Following the recent revision of its model tax treaty it allows for the consideration of including mandatory binding arbitration in its tax treaties. Furthermore, Lithuania is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Lithuania's domestic legislation as per 1 July 2019.

167. Paragraphs 38-40 of Lithuania's MAP guidance contains information on how arbitration provisions in Lithuania's tax treaties and under the EU Arbitration Convention would apply in practice. Paragraph 40 specifically addresses that arbitration is only available where a case has not been dealt with previously in domestic courts (or where taxpayers have withdrawn from domestic court procedures before a ruling was given) and there are no other legal obstacles to the executing of the arbitration panel's decision.

Practical application

168. Lithuania has incorporated an arbitration clause in two of its 56 tax treaties as a final stage to the MAP. In one of these treaties the arbitration provision is based on Article 25(5) of the OECD Model Tax Convention. For this treaty Lithuania agreed on additional rules to be applied during the arbitration procedure. The other treaty contains a voluntary arbitration provision.

Anticipated modifications

169. Lithuania reported it may, if necessary, update its MAP guidance once the Council Directive (EU) 2017/1852 is transposed into its domestic legislation.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
2. For this reason, Lithuania’s number of pre-2016 MAP cases were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2017. See for a further explanation Annex B.
3. For pre-2016 and post-2015 Lithuania 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.

170. 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

171. Article 68(1) of its Law on Tax Administration contains a domestic statute of limitations for amending a taxpayer's taxable income of five years preceding the fiscal year in which the adjustment is to be made, that is from 1 January of the fiscal year when the tax was calculated. However, where a taxpayer has validly submitted a MAP request within the time limits specified in the tax treaty (which as noted under element B.1 all provide, or will provide, for a three-year period), then the domestic statute of limitation will not apply concerning the implementation of MAP agreements. In other words, irrespective of whether the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is contained, Lithuania will implement all MAP agreements if the MAP request was validly submitted. This is also clarified in paragraph 54 of Lithuania's MAP guidance.

172. Concerning the process for implementing MAP agreements, Lithuania reported that once a MAP agreement is reached, taxpayers are asked to give their consent within 30 days of receipt of the notification. Upon receiving such consent, Lithuania's competent authority will exchange closing letters with the other competent authority and subsequently close the case. Pursuant to paragraphs 52 of Lithuania's MAP guidance, where a dispute is resolved through arbitration under the EU Arbitration Convention or tax treaties then consent is not required for implementation. The taxpayer shall nevertheless be informed of that outcome within 14 days of receipt of the arbitration decision.

173. For both situations, the following process is followed:

- Downward adjustments: if the MAP was initiated after an adjustment is made by the treaty partner, then the taxpayer is required to submit a revised tax return that reflects the outcome of the MAP agreement either within 60 days from the receipt of notification that the agreement was reached, or within the deadline set by Lithuania's tax administration. In relation hereto, Lithuania reported that this 60-day term is only an indicative timeframe and that, in practice, a taxpayer would not necessarily be precluded from receiving a refund if he submitted the return later than this 60-day period. Upon processing the return, tax overpayment will be offset against the taxes due, which may be refunded upon request by the taxpayer. Where a

MAP has been initiated after an adjustment was made by Lithuania, there is no need for any action by the taxpayer as the tax overpayment will be offset automatically.

- Upward adjustments: once a MAP agreement is finalised, a relevant unit of Lithuania's tax administration will be informed in order to implement the agreement. In this respect, once its national process is resumed, the tax authority would adopt a decision based on which an obligation to pay additional tax is determined. The taxpayer in question has an obligation to pay the amount of additional tax within 20 days from the day of the receipt of the decision, unless another time limit is set in accordance with Article 81(2) of Lithuania's Law on Tax Administration.

174. Paragraphs 45-48 and 54-58 of Lithuania's MAP guidance includes information on the implementation process of MAP agreements, as well as any actions required to be taken by taxpayers to have such agreements implemented, which corresponds to the process described above. Paragraph 47 of the MAP guidance specifies that if a pre-trial process was suspended concerning a dispute for which a MAP case was pending, the relevant institution will be informed of the MAP agreement reached within 20 days after the MAP proceedings have ended. Consequently, these pre-trial process will be terminated, unless the dispute was only partially resolved through MAP, following which for the remaining part the pre-trial process may continue. Where, however, domestic court proceedings were initiated for a case for which also a MAP is pending, and whereby a MAP agreement has been reached before a court ruling was delivered, in that situation, as is stipulated in paragraph 50 of Lithuania's MAP guidance, taxpayers have to withdraw the court case within 60 days as from the date of notification of the MAP agreement to ensure implementation thereof.

Practical application

175. Lithuania reported that since the number of MAP agreements that need implementation in Lithuania is relatively limited, it does not monitor implementation. However, for each MAP case, the case handler who is responsible for the implementation notes whether the agreement was implemented or not. In that regard, Lithuania reported that, apart from one case, all MAP agreements that were reached on or after 1 January 2015, once accepted by taxpayers, have been (or will be) implemented. Lithuania clarified that one case has still not been implemented because the taxpayer has not provided a corrected tax return and therefore implementation is still pending.

176. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2015 that was not implemented by Lithuania.

Anticipated modifications

177. Lithuania reported that Article 68 of its Law on Tax Administration will be modified in 2020, after which its domestic statute of limitations will shorten from five to three years. Lithuania further mentioned that a more structural approach to monitor the implementation of MAP agreements could be introduced in the future, if necessary.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, Lithuania should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

[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.

178. 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

179. Lithuania reported that there is no specific domestic legislation that governs the timeframe of implementation of MAP agreements in Lithuania. Lithuania further reported that its tax administration, which is responsible for implementing MAP agreements, endeavours to implement such agreements within three months. Where the MAP agreement entails a downward adjustment to be made in Lithuania, it reported that taxpayers usually provide corrected tax returns within a three-month period after the finalisation of a MAP agreement. Lithuania further reported that after such tax returns are submitted, the tax liabilities are changed automatically by Lithuania and refunds may be made accordingly.

Practical application

180. Lithuania reported that all MAP agreements that were reached on or after 1 January 2015, once accepted by taxpayers, have been (or will be) timely implemented, apart for the one case discussed under element D.1 for which implementation is awaiting action by the taxpayer.

181. All peers that provided input have indicated not being aware of any impediments to the implementation of MAP agreements reached on a timely basis in Lithuania.

Anticipated modifications

182. Lithuania indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Lithuania should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

[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.

183. 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 Lithuania's tax treaties

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

185. Out of Lithuania's 56 tax treaties, 51 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty contains such equivalent as well as the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. The remaining four treaties do not contain such equivalent or the alternative provisions.

Anticipated modifications

Multilateral Instrument

186. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

187. 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.

188. In regard of the four 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), Lithuania 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). All relevant treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Lithuania as a covered tax agreement but two made a reservation on the basis of Article 16(5)(c). The remaining two treaty partners also made a notification on the basis of Article 16(6)(ii).

189. Of the two treaty partners mentioned above, one has deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Lithuania and this treaty partner, and has modified this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.¹ For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention.

Bilateral modifications

190. Lithuania reported that the two 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. Lithuania however, reported not having in place a specific plan for such negotiations nor has it taken any actions in this regard. In addition, Lithuania 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

191. For the four treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives, the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Four out of 56 tax treaties contain neither 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). One of these four treaties has been modified by the Multilateral Instrument to contain the required provision and one is expected to be modified by that instrument upon entry into force for this treaty.	For the remaining two 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, Lithuania should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Lithuania should put a plan in place on how it envisages updating these two treaties to include the required provision or its alternative. In addition, Lithuania 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.

Note

1. This concerns the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.

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]	-	Lithuania should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not possible.	Lithuania should follow its stated intention to introduce 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]	One out of 56 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument.	<p>As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention in the treaty that currently does not contain such equivalent, Lithuania should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either</p> <ul style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision. <p>To this end, Lithuania should put a plan in place on how it envisages updating this treaty to include the required provision.</p> <p>In addition, Lithuania should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.</p>
[B.2]	Lithuania has a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation or notification process is applied in practice because during the Review period no such cases have occurred.	
[B.3]	-	As Lithuania has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Lithuania reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Lithuania is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Lithuania has thus far not limited access to MAP in eligible cases when taxpayers have complied with Lithuania's information and documentation requirements for MAP requests, it should continue this practice.

	Areas for improvement	Recommendations
[B.7]	-	Lithuania should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	Contact details of Lithuania's competent authority are not included in the MAP guidance.	Lithuania should update its MAP guidance to include the contact information of its competent authority as soon as possible. Additionally, although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Lithuania could consider, when updating this guidance, including information on whether taxpayers can request for the multi-year resolution of recurring issues through MAP.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Lithuania should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	Guidance on the administrative or statutory dispute settlement/resolution process does not explain the effects of that process on MAP (while this effect is explained in the MAP guidance).	Lithuania's guidance on its administrative or statutory dispute settlement/resolution process should address the consequences of settling a dispute through that process regarding the effects on the MAP process.
Part C: Resolution of MAP cases		
[C.1]	-	Lithuania should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Although Lithuania submitted MAP statistics on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017, five pre-2016 cases were omitted. Lithuania's MAP statistics show that during the Statistics Reporting Period it did not close any of its post-2015 cases. In that regard, Lithuania is recommended to seek to resolve the four post-2015 cases pending on 31 December 2017 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	For the current and future years, Lithuania should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
[C.3]	Only pre-2016 MAP cases were closed in 36.47 months on average, which indicates there may be a 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).	While the level of resources is sufficient as compared to the number of pending MAP cases, Lithuania should analyse whether working procedures within its competent authority could be made more effective and efficient to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. This regards both attribution/allocation cases as well as other MAP cases.
[C.4]	-	As it has done thus far, Lithuania 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 Lithuania would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Lithuania should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Lithuania should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Lithuania should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	Four out of 56 tax treaties contain neither 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). One of these four treaties has been modified by the Multilateral Instrument to contain the required provision and one is expected to be modified by that instrument upon entry into force for this treaty.	<p>For the remaining two 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, Lithuania should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Lithuania should put a plan in place on how it envisages updating these two treaties to include the required provision or its alternative.</p> <p>In addition, Lithuania 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 Lithuania

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	Article 25(1) of the OECD Model Tax Convention (“MTC”)	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	
	B.1	B.1	B.3	B.4	C.1	C.1	D.3	A.1	B.7	C.6												
	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)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no	Y = yes N = no
Armenia	Y	O	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Bulgaria	Y	O*	Y	i	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	Y	O	Y	i	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
	B.1	B.1			B.3	B.4	C.1	D.3		A.1
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)		
	If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)				Inclusion arbitration provision?
India	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Italy	Y	N	Y	N/A	Y	N*	Y	N*	Y	N
Slovenia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Switzerland	Y	O*	Y	N/A	Y	N	Y	Y	Y	N
United Arab Emirates	Y	O*	Y	N/A	Y	Y	Y	Y	Y	N

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

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

Legend

E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.

E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.

O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.

Y* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.

Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/ii*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty 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 Reporting 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		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	5	0	0	0	0	0	0	1	0	0	0	4	37.5
Others	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	7	0	0	0	0	0	0	1	0	0	0	6	37.5

Note: There is a discrepancy between the number of pre-2016 MAP cases in Lithuania's inventory as reflected in the 2016 and 2017 published MAP statistics, and the number of cases in this Annex and used in the peer review report. The actual number of pre-2016 cases pending on 1 January 2016 was seven cases, which consists of five attribution/allocation cases and two other cases. In the published MAP statistics for 2016 and 2017 this number was two cases, one attribution/allocation case and one other case. For purposes of this annex and the peer review report the corrected statistics are used.

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		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	4	0	0	0	0	1	1	0	0	0	0	2	38.9
Others	2	0	0	0	0	0	0	1	0	0	0	1	30.6
Total	6	0	0	0	0	1	1	1	0	0	0	3	36.1

Annex C

MAP Statistics Reporting 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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	0	1	0	0	0	0	0	0	0	0	0	0	1	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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	1	1	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	1	3	0	0	0	0	0	0	0	0	0	0	4	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
APA Guidance	The Rules for the Submission of the Taxpayer’s Request to Approve the Principles of Pricing of a Future Controlled Transaction, Examination of the Request, the Adoption and Amendment of the Tax Administrator Binding Decision
Working Group	Permanent Working Group for Handling Mutual Agreement Procedures
MAP Guidance	The Rules for the Initiation and Execution of the Mutual Agreement Procedure
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2015 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2017
Terms of reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Lithuania (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 Lithuania.

Consult this publication on line at <https://doi.org/10.1787/b9018c2d-en>.

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