

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



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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), 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 136 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 11 December 2019 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	13
References	21
Part A. Preventing disputes	23
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	23
[A.2] Provide roll-back of bilateral APAs in appropriate cases	25
References	28
Part B. Availability and access to MAP	29
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	29
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	39
[B.3] Provide access to MAP in transfer pricing cases	41
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	44
[B.5] Provide access to MAP in cases of audit settlements	46
[B.6] Provide access to MAP if required information is submitted	49
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	51
[B.8] Publish clear and comprehensive MAP guidance	53
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	56
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	57
References	61
Part C. Resolution of MAP cases	63
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	63
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	65
[C.3] Provide adequate resources to the MAP function	73
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	82
[C.5] Use appropriate performance indicators for the MAP function	84
[C.6] Provide transparency with respect to the position on MAP arbitration	85
References	88
Part D. Implementation of MAP agreements	89
[D.1] Implement all MAP agreements	89

[D.2] Implement all MAP agreements on a timely basis	92
[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)	94
Reference	98
Summary	99
Annex A. Tax treaty network of Italy	105
Annex B. MAP statistics pre-2016 cases	112
Annex C. MAP statistics post-2015 cases	113
Glossary	114
Figures	
Figure C.1 Evolution of Italy’s MAP caseload	67
Figure C.2 End inventory on 31 December 2017 (583 cases)	67
Figure C.3 Evolution of Italy’s MAP inventory	68
Figure C.4 Evolution of Italy’s MAP inventory	68
Figure C.5 Cases closed during 2016 and 2017 (91 cases)	69
Figure C.6 Average time (in months) to close cases in 2016 or 2017	75

Abbreviations and acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Italy has an extensive tax treaty network with more than 100 treaties and has signed and ratified the EU Arbitration Convention. Italy has an established MAP programme and long-time experience with resolving MAP cases. It has a large MAP inventory, with a substantial number of new cases submitted each year and almost 600 cases pending on 31 December 2017. Of these cases, 67% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Italy met the majority of the elements of the Action 14 Minimum Standard, but that for some of them improvements are necessary. Where it has deficiencies, Italy worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Italy is working to address the identified deficiencies and has taken steps to solve some of them.

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

- More than three quarters of its tax treaties do not include the full equivalent of Article 25(1) of the OECD Model Tax Convention, mainly due to a protocol provision requiring taxpayers to initiate domestic proceedings when submitting a MAP request.
- More than two-third of its tax treaties do not include a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), or include the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- More than half of its tax treaties do not include a provision equivalent to the second sentence of Article 25(3) of the OECD Model Tax Convention, allowing competent authorities to consult together for the elimination of double taxation in cases not provided in the convention.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Italy signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, Italy opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, which for a relevant number of treaties only regards the protocol provision requiring taxpayers to initiate domestic proceedings when submitting a MAP request, Italy reported that it has put a plan in place for the bilateral renegotiations of these treaties, also specifying that the above-mentioned protocol provision will no longer have a practical effect under the new Italian domestic legal framework once in force. It has recently finalised negotiations

with one treaty partner and is in negotiations with five treaty partners. The plan makes a distinction between the treaties that require an amendment for the protocol provision only and those that require further or different amendments. With respect to the first group, Italy proposed all the treaty partners concerned to enter into a memorandum of understanding and envisages to enter into bilateral negotiations to amend the treaty also in formal terms once all other negotiations have been completed. For the second group, Italy made a distinction between the treaty partners that signed the Multilateral Instrument and/or are part of the BEPS Inclusive Framework and other treaty partners. Based on which treaty partner falls into what category, they will be approached for the renegotiation of the tax treaty concerned.

Italy does not meet the Action 14 Minimum Standard concerning the prevention of disputes. Although it has an established bilateral APA programme, Italy does not yet enable taxpayers to request roll-backs of bilateral APAs and such roll-backs are also not granted in practice, but legislation to enable roll-backs is under preparation.

Furthermore, Italy meets most 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 for those tax treaties that do not contain a filing period for MAP requests, there is a risk that due to Italy's domestic time limits access to MAP is not available even if the taxpayer filed its MAP request within three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty. Access to MAP is also not granted for requests only made under the EU Arbitration Convention when the tax authority and the taxpayer have entered into an audit settlement. However, for both aspects, Italy is currently in the process of amending its domestic legislation in line with the Action 14 Minimum Standard to also ensure that access to MAP is available in this situation. In addition, Italy has in place a notification and consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Italy has also clear and comprehensive guidance on *inter alia* the availability of MAP and on how the MAP function is construed and applied in practice, both under tax treaties and the EU Arbitration Convention. This MAP guidance, however, should be updated accordingly *inter alia* to reflect the contact details of Italy's competent authority and that access to MAP is available under the EU Arbitration Convention when the tax authority and the taxpayer have entered into an audit settlement.

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

2016-17	Opening inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months)*
Attribution/allocation cases**	161	288	57	392	31.35
Other cases	147	78	34	191	27.29
Total	308	366	91	583	29.83

*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, Italy used as a start date the date of filing of the MAP request to the Italian competent authority or the date of receipt of the notification letter from the competent authority that received the MAP request from the taxpayer and as the end date, one of the following ones: the date when the taxpayer is informed of the outcome of the MAP process or the date of the closing letter received from the other competent authority or the date of the judgment that resolved the dispute at stake.

**As far as pre-2016 MAP cases are concerned, Italy did not include in the MAP statistics the cases that were submitted only under the EU Arbitration Convention.

The number of cases Italy closed is 25% of the number of all new cases started in 2016 and 2017. Its MAP inventory as per 31 December 2017 almost doubled as compared to its inventory as per 1 January 2016. Moreover, Italy's competent authority did for the years 2016 and 2017 not resolve MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 29.83 months. This both regards attribution/allocation and other cases, albeit that the average for attribution/allocation is slightly higher. Furthermore, as compared to 2016, the average in 2017 increased, from 27.53 months to 30.91 months, which in particular regards attribution/allocation cases, as the average for other cases decreased in 2017 to less than 24 months.

These statistics point out that Italy's competent authority is not adequately resourced in relation to the resolution of MAP cases. Italy reorganised its competent authority function as from 1 January 2017, assigning it to the Agenzia delle Entrate, with the aim of increasing the resolution of MAP cases. This has resulted in intensified relationships with its MAP partners and in a higher number of MAP cases being resolved, although the effort to solve a number of old attribution/allocation cases has not allowed a significant decrease in the average time taken to close MAP cases. More staff should therefore be allocated to the competent authority function to cope with the increase in the number of MAP cases and to reduce the average completion time, as well as to improve working procedures and avoid delays in communication with other competent authorities, in particular the issuing of and responses to position papers in advance of face-to-face meetings.

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

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

Introduction

Available mechanisms in Italy to resolve tax treaty-related disputes

Italy has entered into 104 tax treaties on income (and/or capital), 94 of which are in force.¹ These 104 treaties apply to 108 jurisdictions.² All of these provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 22 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Italy is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.⁴ Furthermore, Italy adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as per 1 July 2019.⁵

Under the tax treaties Italy entered into, the competent authority function to handle MAP cases is assigned to the Minister of Economy and Finance. This function is further delegated to the department of Finance within this ministry and the *Agenzia delle Entrate* (“**Italy’s Revenue Agency**”). Since 1 January 2017 Italy’s Revenue Agency is competent to handle all MAP cases, apart from general issues arising from interpretation or application of tax treaties with a view to avoid double taxation, for which the ministry remains competent. Within Italy’s Revenue Agency (“*Ufficio Risoluzione e prevenzione controversie internazionali*” – Office for the resolution and prevention of international disputes) a dedicated MAP team has been established, which consists, in addition to a director and a deputy, of 17 persons, which handle both MAP cases and requests for bilateral APAs. Within the Department of Finance of the Ministry of Economy and Finance (“*Direzione Relazioni Internazionali*”) a team of three persons is involved in handling MAP cases of a general nature.

The competent authority function is described in Italy’s MAP Guidance, for which an English version is published by Italy’s competent authority on the website of the *Agenzia delle Entrate*. This guidance can be found at:

<https://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Business/Double+taxation+relief/Mutual+Agreement+Procedure/?page=business>

Developments in Italy since 1 April 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Italy it is reflected that it recently signed new treaties with Barbados, Panama and Romania, the latter concerning a replacement of the existing treaty in force. Since then these treaties all have entered into force, following which the 1977 treaty with Romania has been replaced.

Furthermore, on 7 June 2017 Italy signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. With the signing of the Multilateral Instrument, Italy also submitted its list of notifications and reservations to that instrument.⁶ In relation to the Action 14 Minimum Standard, Italy reported it did not make any reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure), except for Article 16(5)(a) regarding the modification of existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁷ This reservation is in line with the requirements under the Action 14 Minimum Standard. As regards the ratification of the Multilateral Instrument, Italy reported that a draft law has been prepared. In this respect, Italy clarified that next to the necessary legal requirements for the implementation of the Multilateral Instrument, the law also includes provisions concerning domestic legislation on the mutual agreement procedure to ensure that its domestic legal framework is in compliance with the Action 14 Minimum Standard. Under the new domestic legal framework, the taxpayer will no longer be required to initiate domestic proceedings when submitting a MAP request, thus resolving in substance the deviation related to the protocol provision, considering that such protocol provision was included in a relevant number of Italy’s tax treaties to safeguard a specific Italian law requirement. Italy further reported that the draft law is to be approved by the Council of Ministers before being submitted to the Parliament for adoption, for which ratification is foreseen in the second half of 2019.

In addition, Italy reported that since 1 April 2017 it signed new treaties with China (2019), Colombia (2018), Jamaica (2018) and Uruguay (2019). Apart from the treaty with China, all treaties concern newly negotiated treaties with treaty partners for which there is currently no treaty in force. The new treaty with China will replace the existing treaty upon entry into force. All four treaties include Article 25(1-3) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Furthermore, Italy reported that it is currently in negotiations with Brazil, Kenya, Mozambique, Singapore and Uzbekistan on an amendment or the replacement of the existing treaty currently in force.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, and insofar not mentioned above, Italy reported that it is currently engaged in a comprehensive process in order to align its domestic provisions with that standard. Once this process is completed, which also comprises the ratification of the Multilateral Instrument, Italy reported that it will initiate bilateral contacts with some treaty partners to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard, whilst other treaty partners are planned to be contacted regardless of the entry into force of the Multilateral Instrument. In that regard, Italy prepared a detailed plan for this purpose, which was only shared in July 2019 and not at the outset of stage 2 of the peer review process. The details of this plan are as follows:

- *Treaties where in a protocol it is stipulated that taxpayers are required to initiate domestic judicial remedies when submitting a MAP request*

In total 65 of Italy’s tax treaties contain such a protocol provision. For these treaties, Italy contacted 53 treaty partners, having regard to those treaties listed by Italy as covered tax agreements under the Multilateral Instrument, with the proposal to enter into a memorandum of understanding. In this memorandum it should be clarified

that the protocol provision will no longer have a practical effect when Italy has amended its domestic legislation (which will be done in the same law that ratifies the Multilateral Instrument) to eliminate the requirement that taxpayers have to initiate domestic judicial remedies when submitting a MAP request. Italy further clarified that once the Multilateral Instrument has entered into force for Italy, it will proceed with concluding the proposed memorandum of understanding with those treaty partners agreeing therewith. With the completion of the ratification process of the Multilateral Instrument, the protocol provisions in those treaties will no longer have an effect in relation to the Action 14 Minimum Standard. The memorandum of understanding will then serve the purpose to make clear the lack of the practical effect of the provision for the taxpayer. In the long term, when all the other treaties have been modified to be in line with the Action 14 Minimum Standard, Italy will contact those treaty partners to the treaties for which the only remaining item is the mentioned protocol provision – regardless of whether a memorandum of understanding was entered into – to modify the treaty by withdrawing the specific protocol provision

- *Other treaties*

For the treaties that are for further or different items not in line with the requirements under the Action 14 Minimum Standard, Italy made a deviation in its plan as to the category of treaty partners that will be contacted in terms of prioritisation. The specific categories identified are in order of priority:

- *Treaty partners signatory to the Multilateral Instrument*: this group consists of 11 treaty partners, whereby the prioritisation takes into account the economic ties, the number of required modifications and the MAP relationship
- *Treaty partners that are not a signatory to the Multilateral Instrument, but a member of the BEPS Inclusive Framework*: this group consists of ten treaty partners, whereby the prioritisation takes into account the economic ties, the number of required modifications and the MAP relationship
- *Treaty partners that are not a member of the BEPS Inclusive Framework*: this group consists of 18 treaty partners, which will be approached at a later stage, once negotiations with the above treaty partners have been finalised and for which no specific deviation is made among these partners.

In view of the above, and with respect to the proposed memorandum of understanding, the entering into such memorandum would not be sufficient stand-alone to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard, as for such purpose an amendment of the treaty is necessary by withdrawing the particular protocol provision from a formal perspective. However, in substance, following the Italian ratification law of the Multilateral Instrument, the protocol provision will no longer take effect for all Italian treaties in compliance with the Action 14 Minimum Standard. For the treaties that will be amended with the Multilateral Instrument the memorandum of understanding will serve the purpose to make clear that such provision will no longer have a practical effect under the new Italian domestic legal framework once in force, for the benefit of the taxpayers. Some of the relevant treaty partners to which such a proposal was made, responded to Italy that they shared the Italian proposal to sign the memorandum of understanding, while other treaty partners deemed such memorandum not to be sufficient. In addition to the proposed changes to the domestic law, the proposal to enter into a memorandum of understanding and the bilateral negotiations already finalised or ongoing, also according to Italy's plan, some of the other actions foreseen in line with this plan will be initiated after the ratification of the Multilateral Instrument, while other actions will be taken regardless of whether this instrument has for Italy entered into force.

Other developments

As was reflected in its stage 1 peer review report, in 2016 Italy has taken steps to improve and accelerate the resolution of MAP cases. These steps ranged from increases in staff in charge of MAP cases, clearer administrative procedures for handling MAP cases and prevention of MAP disputes by striving to enter into bilateral agreements on how to resolve recurring issues. By Decree-Law no. 50 of 24 April 2017, as converted into Law no. 96 of 21 June 2017 and in force since 24 June 2017, Italy also amended its domestic law (e.g. Presidential Decree No. 600 of 29 September 1973), upon which taxpayers can request for downward adjustments in Italy for transfer pricing cases, without having recourse to MAP, which was previously required. Such downward adjustments can be granted provided that there is a tax treaty in force, which allows for an adequate exchange of information, but regardless of whether Article 9(2) of the OECD Model Tax Convention is contained in this tax treaty.

Further to the above, Italy reported that since 1 April 2017 it has taken several steps or is in the process of finalising such steps in relation to the resolution of tax treaty disputes. This concerns:

- A process to align its domestic legal provisions and administrative procedures that relate to the Action 14 Minimum Standard and to ensure that they are in line with this standard. This process is conducted simultaneously with the ratification of the Multilateral Instrument (see above), for which a draft law is to be approved by before the Council of Ministers being submitted to the Parliament for adoption
- Active participation of staff in charge of MAP cases to trainings relating to tax treaty dispute resolution organised by the OECD/IOTA with a view of strengthening the ability of this staff to handle MAP cases, as well as providing lectures to auditors on the Global Awareness Training Module in order to improve their knowledge about the MAP process.

Lastly, Italy reported that the internal reorganisation of the competent authority function starting from 1 January 2017 has turned to be effective in terms of resolution of MAP cases.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Italy'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 Italy, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Italy's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 13 October 2017. This report identifies the strengths and shortcomings of Italy in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁸ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update

report by Italy. In this update report, Italy reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics provided below, in assessing whether Italy is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if they concerned a modification or a replacement of an existing treaty. This also concerns the amending protocol to the treaty with India, which was signed in 2006, but has not yet entered into force. Furthermore, the treaty analysis also takes into account the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia. As it concerns three tax treaties that are applicable to multiple jurisdictions, they are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Italy's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process for Italy was launched on 7 March 2017, with the sending of questionnaires to Italy and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Italy in September 2017, with the subsequent approval by the BEPS Inclusive Framework on 13 October 2017. Italy was expected to submit its update report on 13 October 2018, but only did so on 16 October, following which stage 2 of the process was initiated.

The commitment to the Action 14 Minimum Standard starts from 1 January 2016. The period for evaluating Italy's implementation of this standard ranges from 1 January 2016 to 31 March 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2017 and depicts all developments as from that date until 30 September 2018.

In total 19 peers provided input: Australia, Belgium, Canada, Denmark, France, Germany, Ireland, Japan, Latvia, the Netherlands, Portugal, Russia, Slovakia, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States. In stage 1, these peers represent more than 90% of post-2015 MAP cases in Italy's inventory on 31 December 2016. Input was also received from taxpayers. During stage 2, apart from Latvia, the same peers provided input on the update report of Italy. Furthermore, also Austria, Korea, Norway, Singapore and Turkey and provided input during stage 2. For this stage, these peers represent approximately 68% of post-2015 MAP cases in Italy's inventory that started in 2016 or 2017.⁹ In stage 1, a number of peers indicated that for the previous years they experienced significant difficulties in resolving MAP cases to a considerable degree due to the absence of face-to-face meetings with Italy's competent authority. However, these peers noted a recent improvement in their working relationships with Italy in regard of MAP, some of them emphasising their high expectations in order to handle their current inventory

of cases with Italy. Specifically with respect to stage 2, a number of peers that provided input reported that the update report of Italy fully reflects the experiences these peers have had with Italy since 1 April 2017 and/or that there was no addition to previous input given. 13 peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Italy and cooperation throughout the process

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

- MAP profile¹⁰
- MAP statistics¹¹ according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, Italy submitted its update report slightly beyond the deadline and the information included therein was extensive. Italy was co-operative during stage 2 and the finalisation of the peer review process, albeit that responses were sometimes late. It has provided, where relevant, peer input in stage 2 of the process.

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

Overview of MAP caseload in Italy

The analysis of Italy's MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016. For Stage 2, the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Italy. According to the statistics provided by Italy, its MAP caseload was as follows:

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	161	288	57	392
Other cases	147	78	34	191
Total	308	366	91	583

General outline of the peer review report

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

- Preventing disputes
- Availability and access to MAP
- Resolution of MAP cases
- 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 effective¹² (“**Terms of Reference**”). Apart from analysing Italy’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Italy. Furthermore, the report depicts the changes adopted and plans shared by Italy to implement elements of the Action 14 Minimum Standard where relevant, both during stage 1 and stage 2. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

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

Notes

1. The tax treaties Italy has entered into are available at: www.finanze.gov.it/opencms/it/fiscal-ita-comunitaria-e-internazionale/convenzioni-e-accordi/convenzioni-per-evitare-le-doppie-imposizioni/.

The treaties that are signed but have not yet entered into force are with China (People’s Republic of (2019), Colombia (2018), Cuba (2000), Gabon (1999), Iran (2005), Jamaica (2018), Kenya (1979), Libya (2009), Mongolia (2003) and Uruguay (2019). These treaties, apart from that with China all concern newly negotiated treaties with treaty partners for which currently no treaty is in force. Concerning China, the newly signed treaty concerns the replacement of the existing treaty that is currently in force. Italy has also signed an amending protocol with India in 2006, by which a provision based on Article 9(2) of the OECD Model Tax Convention will be included in their tax treaty. This protocol, however, has not yet entered into force. Annex A includes an overview of Italy’s tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex A, the newly negotiated treaties are taken into account.

Further to the above, Italy reported with respect to the treaties that are not in force and were signed some time ago, Italy reported that the fact that some of them have not been presented to or not discussed by Parliament yet may possibly imply more general considerations, which do not fall within the scope of the Ministry of Economy and Finance. Italy further clarified that from a technical viewpoint, since the treaties were signed some time ago, some of the provisions contained therein have become outdated and require a revision, for which Italy is considering how to proceed. Specifically with respect to the treaty with Kenya, Italy reported

- that both have ratified the 1979 convention and the amending protocol of 1997, but so far the instruments have not yet entered into force. Concerning the treaty with Mongolia, Italy specified that it has ratified this treaty, but due to the period that has elapsed between the signing of the treaty, Mongolia reported to Italy that it did not deem it appropriate to proceed with the exchange of ratifications of the treaty and therefore it has not yet entered into force.
2. Italy continues to apply the 1981 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic, the 1985 treaty with the former USSR to Kyrgyzstan and Tajikistan, and the 1982 treaty with former Yugoslavia to Bosnia and Herzegovina, Montenegro and Serbia.
 3. This concerns the tax treaties entered into with Armenia, Canada, Chile, Colombia, Congo, Croatia, Georgia, Ghana, Hong Kong (China), Iceland, Jamaica, Jordan, Kazakhstan, Lebanon, Moldova, Mongolia, San Marino, Slovenia, Uganda, Uruguay, the United States and Uzbekistan.
 4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
 5. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
 6. Available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.
 7. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of Italy’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.
 8. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-italy-stage-1-9789264285835-en.htm>.
 9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
 10. Available at www.oecd.org/tax/dispute/Italy-Dispute-Resolution-Profile.pdf.
 11. The 2016 and 2017 MAP statistics of Italy are included in Annex B and C of this report.
 12. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

Part A

Preventing disputes

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

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

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

2. Out of Italy's 104 tax treaties, 100 contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ For the remaining four treaties, the following analysis is made:

- In three treaties a provision based on Article 25(3), first sentence is contained, but this provision only relates to difficulties or doubts arising as to the *application* of the treaty and not as to the *interpretation* of the treaty.² These three treaties are therefore considered not having the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.
- In one treaty a provision that has similarities with Article 25(3), first sentence, of the OECD Model Tax Convention is contained, but also this provision only relates to difficulties or doubts arising as to the *application* of the treaty, by which it is also considered not being a full equivalent of that provision.

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

4. Several peers reported that the provision contained in their tax treaty with Italy meets the requirements under element A.1. One peer, however, mentioned that its treaty

with Italy is not in line with this element, as it only obliges competent authority to endeavour to resolve by mutual agreement any difficulties or doubts as to the *application* of the convention. This peer mentioned that its treaty with Italy will be updated via the Multilateral Instrument so as to be in line with element A.1.

Recent developments

Bilateral modifications

5. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. All new treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which was also the case for the one treaty that is currently in force and will be replaced by the new treaty. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

6. Italy signed the Multilateral Instrument and is currently in the process of ratification of this instrument, which is foreseen in 2019.

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

8. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Italy listed all four as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(i).³ All relevant four treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Italy under that instrument, but only three of them also made a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage, the Multilateral Instrument will modify three of the four treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.⁴

Other developments

9. There are no other developments for element A.1.

Peer input

10. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Italy. Two of these peers concern a treaty partner to the treaties identified above that do not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument. One of these peers

mentioned that there have not been contacts or actions in relation to its tax treaty with Italy with a view to bring it in line with the requirements under the Action 14 Minimum Standard. This, however, may be clarified by the fact that the treaty will be modified by the Multilateral Instrument in order to meet these requirements. The second peer confirmed that its treaty with Italy is not in line with most of the requirements under this standard, but that as regards element A.1 it will become so.

Anticipated modifications

11. As mentioned in the Introduction, for those treaties that are not in line with the requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Italy has put a plan in place for the bilateral renegotiations of these treaties. Specifically with respect to the remaining treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the presented plan mentioned that it falls in the group of treaties for which the relevant treaty partner will be contacted to bilaterally amend the treaty once all other renegotiations have been completed.

12. Regardless, Italy reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Four out of 104 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Three of the four treaties are expected to be modified by the Multilateral Instrument to contain the required provision. With respect to the remaining treaty, no actions have been taken, but Italy has included it in its plan for renegotiations.	Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in three of the four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining treaty that will not be modified by the Multilateral Instrument to include the required provision, Italy should without further delay request the inclusion of that provision via bilateral negotiations in line with its plan for renegotiations.

[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.

13. 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.⁵ 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.

Italy's APA programme

14. Italy reported that it has an APA programme, under which it is authorised to enter into bilateral APAs. Italy's APA programme is outlined in a webpage published by its competent authority.⁶ On this website, the process to enter into an APA is explained, which in particular concerns the information to be included in the request for a bilateral APA as well as the department to which such request should be submitted (such department being Italy's competent authority).

15. Further to the above, Article 31-ter (*Advance Agreements for Companies Operating Internationally*) of Presidential Decree No 600 of 29 September 1973 stipulates that Italy applies APAs as from the first year covered by the request and the following four years, provided the request is submitted before the end of the first fiscal year that is to be covered by the APA.

Roll-back of bilateral APAs

16. Italy reported that its APA programme does not allow for roll-backs of bilateral APAs. While Italy allows including in the APA fiscal years that are not included in the original APA request, this only concerns the fiscal year in which the APA request was submitted. In other words, a roll-back of a bilateral APA is not granted for those fiscal years preceding the fiscal year in which the APA request was submitted, even though such years are still open (under the Italian domestic statute of limitation) at the moment an APA is entered into.

17. Further to the above, Italy mentioned that such open years could fall in the scope of MAP. In addition, Italy indicated that its competent authority would be ready to apply the same methods and criteria as agreed with the other competent authority in a bilateral APA with regard to the resolution of a MAP case, provided that the facts and circumstances are similar.

Recent developments

18. There are no recent developments with respect to element A.2.

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 March 2017 (stage 1)

19. Italy publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum (in English).⁷

20. As Italy does not allow for the roll-back of bilateral APAs, there are no cases in which such roll-back was granted in the period 1 January 2016-31 March 2017.

21. All peers that provided input indicated that they have little to none experience with Italy regarding bilateral APAs in general and roll-back of such APAs in particular. In that regard, peers reported they have generally not received any requests for roll-back of bilateral APAs with Italy in the period 1 January 2016-31 March 2017. One peer mentioned that according to its understanding, roll-back of bilateral APAs is not provided for by Italy. One peer, however, reported that it received one request for a roll-back of a bilateral APA to which Italy is a party and which is still under discussion. This peer remarked that it has not found any difficulty in the implementation of roll-backs of bilateral APAs entered

into with Italy. Lastly, one peer shared recent experience with Italy and mentioned that it received in 2016 two request for a roll-back of a bilateral APA to which Italy is a party and whereby the case under discussion includes a period that is also under a tax audit. As these cases are still pending, the peer has no relevant experience to share as regards whether Italy is willing to grant roll-back for bilateral APAs. Italy responded to this input and reiterated that, although it does not provide for roll-back of bilateral APAs, such APAs may cover the years starting from year of submission of a request for a bilateral APA.

Period 1 April 2017-30 September 2018 (stage 2)

22. Italy reported that since 1 April 2017 its competent authority has not received a request for the roll-back of a bilateral APA. Italy further reported that it has received a request for a bilateral APA with one peer, in which the taxpayer asked to apply to a specific transaction the same criteria and methods that relate to another transaction, which was subject to a previous request for a bilateral APA. This recent received request has been accepted and the APA will apply as from the year of submission of the request.

23. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given. Three peers, however, reported that since that date they received requests for the roll-back of a bilateral APA. One of these peers mentioned that the request was accepted in the process and is currently being discussed with Italy's competent authority. The second peer mentioned that it had to limit the period covered by the APA, since Italy does not allow for roll-backs of bilateral APAs. This peer therefore stated that it would appreciate if Italy could follow its stated intention (see below) to amend its domestic law in order to allow for roll-back of bilateral APAs without any limitation.

Anticipated modifications

24. As was discussed in the Introduction, Italy reported that it is currently in a process to align its domestic legal provisions and administrative procedures that relate to the Action 14 Minimum Standard and to ensure that they are in line with this standard. This would include a rule to allow for roll-back of bilateral APAs in accordance with the requirements under the Action 14 Minimum Standard. The provision to amend the domestic law in order to allow for roll-back of bilateral APAs is currently being drafted and Italy envisages to adopt it by the end of 2019.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Bilateral APAs can only be applied up to the year of the submission of the APA request (if not already in the scope of such request), but roll-back of bilateral APAs are not provided for in appropriate cases.	Italy should without further delay follow its stated intention to amend its domestic legislation in order to allow and in practice provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. These 100 treaties include the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. These three treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic.
3. These four treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic.
4. Ibid.
5. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines.
6. Available at: https://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Invest+in+Italy/Advance+tax+agreements/?page=invest_italy.
7. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to 2017.

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://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.

24. 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 Italy's tax treaties

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

25. All of Italy's 104 tax treaties contain a provision that is based on Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty. Furthermore, none of these treaties contain 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

26. Further to the above, 72 of these 104 tax treaties do not incorporate all elements of Article 25(1), first sentence as it read prior to the Action 14 final report, or include additional requirements that are not in line with the requirements under element B.1. These 72 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 only submit a MAP request to the competent authority of the contracting state in which it is a resident.	9
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 (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) only for cases concerning taxation that results or will result in double taxation prohibited by the convention.	1
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.*	53
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 (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) 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.**	9

*These 53 treaties include the treaty with the former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, and the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan.

**These nine treaties include the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

27. The nine treaties mentioned in the first row of the table above are considered not to contain 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, eight of these nine treaties are for the following reasons considered to be in line with this part of element B.1:

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

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

29. Regarding the one treaty mentioned in the second row of the table above, as the treaty requires *double taxation* instead of *taxation not in accordance with the provisions of the convention*, the treaty is considered not having the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention and therefore not in line with this part of element B.1.

30. Furthermore, with respect to the 53 and the nine treaties mentioned in the third and fourth row of the table above, the provision generally incorporated in the protocol to these treaties 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 initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.

31. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision included in the MAP article 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. These 62 treaties are therefore considered not in line with this part of element B.1.

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

32. Out of Italy’s 104 tax treaties, 29 contain a provision allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

33. The remaining 75 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	6
Period to file a MAP request being less than 3 years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty (2 years)*	68
Period to file a MAP request being less than 3 years and whereby the starting period for filing of a MAP request is different (2 years respectively 6 months)	1

*These 68 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.

Peer input

34. Several peers reported that the provisions of their tax treaty with Italy do not meet all of the requirements under element B.1. One peer noted that under its treaty with Italy the occurrence of *double taxation* is a prerequisite for submission of a MAP request, and that this is not in line with element B.1. Another peer noted that its treaty with Italy lacks the possibility for non-residing nationals to submit a MAP request if the cases concerns the application of the non-discrimination article. With respect to the second sentence, nine peers mentioned that under their treaty with Italy, the filing period for a MAP request is two instead of three years, which is not in line with element B.1. Another peer noted that the filing period is only six months.

35. All the peers that provided input indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in line with element B.1. One peer in particular noted that it envisages making a reservation to Article 16(1) of the Multilateral Instrument, as it envisages introducing 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 and not allowing the submission of a MAP request to either contracting state.

Practical application

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

36. As noted in paragraph 31-32 above, in all of Italy's treaties taxpayers can file a MAP request irrespective of domestic remedies, but in the majority of them due to a protocol provision it is actually required that taxpayers also initiate such remedies before submitting a MAP request.

37. The background for inclusion of such provision is clarified in paragraph 4.2.5 and 7.1 of Italy's MAP Guidance, which stipulates that this system was chosen to avoid that during the period a MAP is pending, the tax assessment that includes the taxation that is subject of MAP discussions becomes final, by which a potential MAP agreement cannot be implemented in Italy. In this respect, Italy clarified that under its domestic legislation, taxpayers have a relatively short deadline (60 days) to lodge a domestic appeal if it considers the (content of the) tax assessment to be unjustified. However, Italy's competent authority is under domestic law not allowed to deviate in a MAP agreement from court decisions. In order to avoid that due to a court ruling a potential MAP agreement cannot be implemented, the taxpayer is allowed to ask the court to suspend an appeals procedure for the time a MAP relating to the case under review is pending. The taxpayer is subsequently entitled to reactivate the appeal procedure should the case under review not be resolved through MAP.

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

38. Paragraph 4.2.3 of Italy's MAP Guidance outlines the application of a filing period under the tax treaties it entered into. It thereby distinguishes two situations, namely the situation (i) in which the taxation not in accordance with the treaty arises from the application of a domestic tax or a withholding tax or (ii) the situation where such taxation arises from adjustments carried out by the tax administration. With respect to situation (i), paragraph 4.2.3 of Italy's MAP Guidance specifies that the period for filing a MAP request starts either from the date of notification by the tax administration of the denial for a request for a refund of withholding taxes or from the 90th day following the submission of such refund request without a decision by Italy's tax administration. As regards situation (ii), the period commences on the date of the notification of the formal assessment that includes the (possible) taxation not in accordance with the treaty.

39. Further to the above, Italy reported that where the applicable tax treaty does not include a time limit for submission of a MAP request, it takes into account such request when it has been filed in compliance with the domestic statute of limitation (Article 43 of the Presidential Decree No. 600 of 29 September 1973). This statute of limitation provides for a six-year time limit as from the end of the fiscal year concerned, which bears the risk that such six year period is less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. In that regard, Italy also reported that it in practice had never experienced difficulties with this period.

40. Italy further reported that in the period 1 January 2016-31 March 2017 it had denied access to MAP in three cases (two in 2016 and one in 2017) because the taxpayer did not submit the MAP request within the deadline included in the tax treaty. This concerned one of the tax treaties mentioned in the third row in the table above, whereby the filing period for a MAP request is six months as from the date of notification of (possible) taxation not in accordance with the tax treaty or the date of collection at source of taxes. However, Italy pointed out that for the three cases at issue, it has granted access to the mutual agreement procedure under the EU Arbitration Convention, which includes a three-year filing period.

41. For the period starting on 1 April 2017, Italy reported that it has received a few MAP request under its tax treaties that do not contain a filing period for such requests. For these cases domestic time limits have not obstructed taxpayers' access to MAP, because they have appealed to the relevant tax assessments following which these have not become final.

Recent developments

Bilateral modifications

42. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. All new treaties contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. The one treaty that is currently in force and will be replaced by the new treaty did not contain such equivalent. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

43. Italy signed the Multilateral Instrument and is currently in the process of ratification of this instrument, which is foreseen in 2019.

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

44. 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 not take effect for a tax treaty if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

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

46. In view of the above, following the reservation made by Italy, those 64 tax treaties identified in paragraphs 28-32 above that are 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 Action 14 final report, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

47. 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.

48. In regard of the 69 tax treaties identified in paragraph 34 above that contain a filing period for MAP requests of less than three years, Italy listed 53 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(a)(ii).² Of the relevant treaty partners, 12 are not a signatory to the Multilateral Instrument, whereas two did not list their tax treaty with Italy under that instrument. All remaining treaty partners made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for this treaty, modify 39 of the 69 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

49. In view of the envisaged withdrawal of the requirement under its domestic law to initiate domestic remedies when submitting a MAP request, Italy reported it has proposed to those treaty partners for which Italy listed the treaties as a covered tax agreement under the Multilateral Instrument to enter into a memorandum of understanding to clarify for the benefit of taxpayers the protocol provision will no longer have a practical effect under the new Italian domestic legal framework once in force. Italy further reported that a number of treaty partners shared the Italian position to sign the memorandum of understanding, while other treaty partners replied that such memorandum would not suffice, as a protocol would be needed for that purpose. In Italy's view entering into treaty negotiations for more than 60 treaties only to make a protocol provision ineffective, whereas this provision will no longer have effect in Italy once changes to its domestic legislation take effect would be very resource intensive and would also take a long time to complete given internal ratification procedures.

50. Further to the above, as mentioned in the Introduction, for those treaties that are not in line with the requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Italy has put a plan in place for the bilateral renegotiations of these treaties. With respect to the 76 treaties that do not contain the equivalent of Article 25(1), first and/or second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Italy reported that it is currently in negotiations with four of the 76 treaty partners *inter alia* to include this second sentence. Of the remaining 72 treaties, 42 have been approached with a proposal to

enter into a memorandum of understanding. In this memorandum it should be clarified that the protocol provision will no longer have a practical relevance when Italy has amended its domestic legislation (which will be done in the same law that ratifies the Multilateral Instrument) to eliminate the requirement that taxpayers have to initiate domestic judicial remedies when submitting a MAP request, following which the protocol provision would no longer take effect. Several of the treaty partners have responded to this proposal, some of which would be willing to enter into such memorandum, while others questioned whether the legal effect of the memorandum will be sufficient to make the protocol provision ineffective or are still have the proposal in consideration.

51. In view of the above, and with respect to the proposed memorandum of understanding, the entering into such memorandum would not be sufficient stand-alone to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard, as for such purpose an amendment of the treaty is necessary by withdrawing the particular protocol provision. Nonetheless, the forthcoming legislation, once in force, will solve, from a substantial perspective, the issue related to the protocol provision requiring taxpayers to initiate domestic proceedings when submitting a MAP request, which will be made by all means have no longer a practical effect in Italy.

Peer input

52. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Italy. All but one of these peers concern a treaty partner to the treaties identified above that do not contain 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 and which will be modified by the Multilateral Instrument. These relevant peers all confirmed that their treaty with Italy does not contain this equivalent and that it will not be modified via the Multilateral Instrument. One of these peers mentioned that it therefore proposed to Italy to amend their tax treaty via an amending protocol to include such equivalent and that this is currently under discussion. A second peer mentioned that it is pleased to read that Italy is in the process of aligning its domestic provisions to the requirements under the Action 14 Minimum Standard, in particular relating to access to MAP irrespective of domestic remedies. It, however, did not report whether any actions were taken or foreseen to bilaterally amend the treaty. Another peer mentioned that it intends to meet the requirements under the Action 14 Minimum Standard as regards its treaty with Italy, but that no contacts have been made so far. Lastly, one peer noted that it is looking forward to Italy's notification that it has implemented domestic legislative changes relating to access to MAP irrespective of domestic remedies.

53. With respect to the second sentence of Article 25(1) of the OECD Model Tax Convention, six of these eight peers concern a treaty partner to the treaties identified above that do not contain the equivalent of this second sentence. Two of these peers, however, only identified that their treaty with Italy will be modified by the Multilateral Instrument to include this sentence. The other peers did not provide input.

Anticipated modifications

54. Italy reported that it is currently in the process to align its domestic legal provisions and administrative procedures that relate to the Action 14 Minimum Standard and to ensure that they are in line with this standard. This would also entail legislative changes to ensure that taxpayers have a three-year filing period for MAP requests under those tax treaties that do not contain a filing period for MAP requests and a change to Italy's

domestic legislation to withdraw the requirement of initiating domestic remedies. The draft law is included in the proposed law on the adoption of the Multilateral Instrument, which is to be approved by the Council of Ministers, before being submitted to the Parliament.

55. Further to the above, as was mentioned in the Introduction, for those treaties that are not in line with element B.1 and will not be modified by the Multilateral Instrument and for which no bilateral negotiates are pending, Italy has put a detailed plan in place for the bilateral renegotiations of these treaties. The details of this plan can be summarised as follows:

Category	Number of tax treaties	Impact of the Multilateral Instrument	Remaining number of tax treaties
Treaties that do not contain the equivalent of Article 25(1), first sentence	16	-	16
Treaties that do not contain the equivalent of Article 25(1), second sentence	21	9	12
Treaties that do not contain the equivalent of Article 25(1), first and second sentence	48	29	19

56. With respect to these remaining number of treaties, the following overview can be presented as to Italy's plan for renegotiations:

- 16 treaties that do not contain the equivalent of Article 25(1), first sentence:
 - One treaty is currently being renegotiated
 - Two treaties are included in the list of treaty partners that are a signatory to the Multilateral Instrument and will be approached once that instrument has for Italy entered into force on the basis of a certain prioritisation
 - 13 treaties are included in the list of treaty partners that will be approached in the long term, when all the other treaties have been modified to be in line with the Action 14 Minimum Standard – regardless of whether a memorandum of understanding was entered into – with a view to modify the treaty by withdrawing the specific protocol provision
- 12 treaties that do not contain the equivalent of Article 25(1), second sentence:
 - Four treaties are included in the list of treaty partners that are not a signatory to the Multilateral Instrument, but are member of the BEPS Inclusive Framework and will be approached regardless of whether the instrument has for Italy entered into force.
 - Eight treaties are included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached at a later stage.
- 48 treaties that do not contain the equivalent of Article 25(1), first and second sentence:
 - 19 treaties remain to have an issue with the first and second sentence
 - Five treaties are included in the list of treaty partners that are a signatory to the Multilateral Instrument and will be approached once that instrument has for Italy entered into force on the basis of a certain prioritisation.

- Three treaties are included in the list of treaty partners that are not a signatory to the Multilateral Instrument, but are member of the BEPS Inclusive Framework and will be approached regardless of whether the instrument has for Italy entered into force.
- Ten treaties are included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached at a later stage.
- One treaty is included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached once all other negotiations have been finalised.
- 29 treaties remain to have an issue only with the first sentence:
 - For three negotiations are pending.
 - Two treaties are included in the list of treaty partners that are a signatory to the Multilateral Instrument and will be approached once that instrument has for Italy entered into force on the basis of a certain prioritisation.
 - 24 treaties are included in the list of treaty partners that will be approached in the long term, when all the other treaties have been modified to be in line with the Action 14 Minimum Standard – regardless of whether a memorandum of understanding was entered into – with a view to modify the treaty by withdrawing the specific protocol provision.

57. In regard of this plan and for the treaties concerned, no specific actions have been taken other than the sending of a proposal for a memorandum of understanding and the proposed modifications of the domestic law.

58. In addition to that, Italy reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>16 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. None of these 16 treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. With respect to these 16 treaties:</p> <ul style="list-style-type: none"> • For one negotiations are pending. • For 15 no actions have been taken apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect and they are included in the plan for renegotiations. 	<p>For those treaties that will not be modified by the Multilateral Instrument to include Article 25(1), first sentence of the OECD Model Tax Convention, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with one treaty partner on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in the remaining 15 treaties in accordance with its plan for renegotiations. <p>This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	<p>21 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 21 treaties:</p> <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • 12 treaties will not be modified to include Article 25(1), second sentence, of the OECD Model Tax Convention. With respect to these 12 treaties no actions have been taken, but they are included in the plan for renegotiations. 	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those nine treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include such equivalent, Italy should without further delay request the inclusion of the required provision in accordance with its plan for renegotiations.</p>
[B.1]	<p>48 out of 104 tax treaties do not 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 or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 48 treaties:</p> <ul style="list-style-type: none"> • 29 are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not as regards the first sentence of that article. • 19 will not be modified to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention. <p>With respect to the first 29 treaties:</p> <ul style="list-style-type: none"> • For three negotiations are pending. • For 26 no actions have been taken, apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect, but they are included in the plan for renegotiations <p>With respect to the other 19 treaties, no actions have been taken, apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect, but they are included in the plan for renegotiations.</p>	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those 29 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>Furthermore, for those 29 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with three treaty partners on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in 25 of the remaining 26 treaties in accordance with its plan for renegotiations <p>This concerns for all these 29 treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. <p>With respect to the other 19 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Italy should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations. This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Italy should follow up its stated intention to introduce domestic legislative changes with a view to ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

[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).

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

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

Domestic bilateral consultation or notification process in place

60. As discussed under element B.1, none of Italy's 104 tax treaties currently contains 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. In addition, as was also discussed under element B.1, none of these tax treaties will, following Italy's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

61. Italy reported that it has implemented a documented notification process when its competent authority considers that the objection raised in a MAP is not justified. This process applies both to MAP requests being submitted under a bilateral tax treaty and the EU Arbitration Convention. Under this process, when Italy's competent authority receives a MAP request, it will notify the other competent authority(ies) concerned of this request without delay. If from a preliminary assessment of the request it follows that for the case for which a MAP request is submitted some critical aspects are found and that a more

in-depth analysis is required, then Italy’s competent authority usually will inform the other competent authority(ies) concerned about the admissibility of the request the moment this in-depth analysis is finalised. Should this analysis lead to the conclusion that the objection raised in the MAP request is not justified, then Italy’s competent authority will notify the other competent authority(ies) concerned thereof.

Recent developments

62. There are no recent developments with respect to element B.2

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

63. Italy reported that in the period 1 January 2016-31 March 2017 its competent authority considered in one case the objection raised by the taxpayer in its MAP request under a tax treaty as not justified. For this case, Italy mentioned that the decision hereto was made, because the adjustment did not result from an action by one of the contracting states, but followed from a taxpayer-initiated adjustment. Italy reported that its competent authority notified the other competent authority concerned of this decision. The 2016 MAP statistics submitted by Italy show that two of its MAP cases were closed with the outcome “objection not justified”. In this respect, Italy clarified that the decision in the other case was made by the competent authority of its treaty partner, which the latter confirmed.

64. All peers that provided input indicated that they were not aware of nor that they had been consulted/notified of a case where Italy’s competent authority considered the objection raised in a MAP request as not justified in the period 1 January 2016-31 March 2017. This can be clarified by the fact that the peer party to the case for which Italy made the decision that the objection was not justified, did not provide peer input. In a response, Italy reconfirmed that it notified the competent authority of the other jurisdictions concerned, thereby specifying the date when such notification was made.

Period 1 April 2017-30 September 2018 (stage 2)

65. Italy reported that since 1 April 2017 its competent authority had no cases where it considered that the objection raised by the taxpayer in its MAP request was not justified. The 2017 MAP statistics submitted by Italy show that three of its MAP cases were closed with the outcome “objection not justified”, for which Italy declared that the decision hereto was made by the competent authority of the relevant treaty partners.

66. Almost all of the peers that provided input during stage 1 also indicated that since 1 April 2017 they are not being aware of any cases for which Italy’s competent authority considered the objection raised in a MAP request as not justified, which conforms with the above analysis. One of these peers mentioned it had two cases with Italy where the peer’s competent authority considered the objection raised by the taxpayer in its MAP request as not being justified. For one of these cases the decision was made in 2017 and for the other in 2018.

Anticipated modifications

67. Italy did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

69. Out of Italy's 104 tax treaties, three treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is made by the other treaty partner. Furthermore, 45 tax treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention.³ For the remaining 56 treaties the following analysis is made:

- In 44 treaties a provision that is based on Article 9(2) of the OECD Model Tax Convention is contained, but lacks the second sentence of that provision and is replaced by a sentence that stipulates that a corresponding adjustment can only be made through MAP.
- In 11 treaties a provision that has similarities with Article 9(2) of the OECD Model Tax Convention is contained, but from a material perspective deviates at multiple points from Article 9(2) and also does not include the last sentence of that article.
- One treaty does not contain a provision that is based on or has similarities with Article 9(2) of the OECD Model Tax Convention, but only mentions that the competent authorities shall endeavour to resolve by mutual agreement the problem of economic double taxation relating to Article 9 in accordance with the mutual agreement procedure.

70. Italy reported that the replacing of the last sentence of Article 9(2) of the OECD Model Tax Convention in those tax treaties listed in the first two bullets follows from a reservation by Italy to Article 9 of the OECD Model Tax Convention. This reservation is included in paragraph 17.1 of the Commentary to Article 9 and reads as follows:

Italy reserves the right to insert in its treaties a provision according to which it will make adjustments under paragraph 2 of Article 9 only in accordance with the procedure provided for by the mutual agreement article of the relevant treaty.

71. In view of this reservation, Italy clarified that it originated from Article 110(7) of the Consolidated Law on Income Tax implemented by Presidential Decree No. 917 of 22 December 1987, which determines that corresponding adjustments can only be made through the mutual agreement procedure. In this respect, Italy also reported that it recently

implemented Article 59 of the Decree-Law No. 50 of 24 April 2017, as converted into Law No. 96 of 21 June 2017, which is in force since 24 June 2017.⁴ This law amended Article 110(7) and pursuant to which Article 31-quarter is inserted in the Presidential Decree No. 600 of 29 September 1973.⁵ As a result, the Italian tax authorities or the Italian competent authority is now allowed to make corresponding adjustments without having recourse to the mutual agreement procedure, provided that a tax treaty is in place and which allows an adequate exchange of information.

72. Further to the above, Italy 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.

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

74. The introduction and paragraph 4.2.2 of Italy's MAP Guidance mentions disputes on the correct application of the arm's length principle between associated enterprises and the proper attribution of profits to permanent establishments as an example of cases for which a MAP can be requested. Paragraph 4.2.8 of Italy's MAP Guidance further specifies that when double taxation results from an assessment notice issued by the Italy's Revenue Agency or by a foreign tax administration, Italy's Revenue Agency would consider whether a unilateral relief is possible.

Recent developments

Bilateral modifications

75. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. Of these treaties, two contain the equivalent of Article 9(2) of the OECD Model Tax Convention. The other two treaties do contain a provision that is based on Article 9(2), but are not considered to be equivalent thereto, since recourse to the mutual agreement procedure is required for granting corresponding adjustments. One of these treaties concerns the treaty for which currently a treaty is in force and that will be replaced by the new treaty. The treaty currently in force also does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

76. Italy signed the Multilateral Instrument and is currently in the process of ratification of this instrument, which is foreseen in 2019.

77. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument.

Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

78. In regard of the 101 tax treaties identified in paragraph 71 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Italy listed 78 as a covered tax agreement under the Multilateral Instrument.⁶ Italy has for none of these 78 treaties 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. Furthermore, for 31 of these treaties Italy made a notification on the basis of Article 17(4).

79. Of these 31 treaty treaties, eight treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Italy as a covered tax agreement under that instrument and 12 have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Italy already contains the equivalent of Article 9(2). For the remaining ten treaty partners, eight also made for the treaty with Italy a notification on the basis of Article 17(4). Therefore, these eight treaties will, upon its entry into force of the Multilateral Instrument for this treaty, be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention. The remaining two treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

80. With regard to the remaining 47 treaties for which Italy did not make a notification on the basis of Article 17(4), ten treaty partners are not a signatory to the Multilateral Instrument, whereas two did not list their tax treaty with Italy under that instrument and seven, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Italy already contains the equivalent of Article 9(2).⁷ Therefore, at this stage, the remaining 28 treaties will, upon its entry into force for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Other developments

81. There are no other recent developments with respect to element B.3.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

82. Italy reported that in the period 1 January 2016-31 March 2017, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

83. All peers that provided input indicated not being aware of a denial of access to MAP by Italy in the period 1 January 2016-31 March 2017 on the basis that the case concerned was a transfer pricing case. One taxpayer provided input and mentioned that the requirement of having recourse to MAP to be granted a corresponding adjustment in Italy can be burdensome. As discussed above, Italy reported that it recently amended its domestic law to allow corresponding adjustments to be made without having recourse to MAP.

Period 1 April 2017-30 September 2018 (stage 2)

84. Italy reported that since 1 April 2017 it has also not denied access to MAP on the basis that the case concerned was a transfer pricing case.

85. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

86. Italy 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 Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

87. 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

88. None of Italy's 104 tax treaties allows competent authorities to restrict access to MAP for cases 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 administrative process of Italy do not include a provision that allows their competent authority to limit access to MAP for cases in which a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the conditions of the domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

89. Italy reported that both the application of a treaty anti-abuse provision and of a domestic anti-abuse provision are within the scope of MAP and further mentioned that it considered that under the MAP article there is a legal obligation to initiate the procedure whenever a violation of the treaty has occurred or is likely to occur due to application of treaty anti-abuse provisions.

Recent developments

90. There are no recent developments with respect to element B.4.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

91. Italy reported that in the period 1 January 2016-31 March 2017 it has not denied access to MAP in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

92. All peers that provided input indicated not being aware of a denial of access to MAP by Italy in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

93. Italy reported that since 1 April 2017 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received in that period.

94. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

95. Italy did not indicate it anticipates any modification relating to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

97. Italy reported that under its domestic law it is possible that taxpayers and the tax authorities enter into a settlement during the course of or after an audit has been completed. Such audit settlements (“*accertamento con adesione*”) are available pursuant to Legislative Decree No. 218 of 19 June 1997. Furthermore, two other processes are available in Italy, which are mediation (“*mediazione tributaria*”) and judiciary conciliation (“*conciliazione giudiziale*”), which are provided for by Article 17-bis respectively 48 of the Legislative Decree No. 546 of 1992.⁸ The outcome of these two latter processes can be a final settlement reached before or in the course of judicial proceedings and they have the same consequences on access and resolution of MAP cases as audit settlements, as will be outlined below.

98. Italy reported that it will give access to MAP requests submitted under a tax treaty in cases where taxpayers have entered into an audit settlement with Italy’s Revenue Agency. However, entering into an audit settlement causes that the tax covered and agreed becomes final in Italy. In this respect, paragraph 7.1 of Italy’s MAP Guidance specifies that if the taxpayer settles its case with Italy’s Revenue Agency, its competent authority will only present such a case to the other competent authority to seek correlative relief. The reason hereof is that Article 2(3) of Legislative Decree No. 218 of 19 June 1997 stipulates that any settlement entered into cannot be appealed, modified or amended by Italy’s Revenue Agency, unless this results in a higher taxable amount. In other words, the case can be dealt with in MAP, but proceedings cannot be aimed at revising the tax settled through these processes. Paragraph 7.1 of Italy’s MAP Guidance further notes that the underlying rationale of both processes is twofold, namely (i) reducing the number of cases for which domestic litigation is initiated and (ii) the possibility to reduce any applicable penalties. Furthermore, paragraph 7.1 stresses that the restriction must be considered against the background of the legal instruments and resources deployed by the tax administration in achieving a settlement with taxpayers.

99. Specifically with respect to cases submitted under the EU Arbitration Convention, paragraph 7.2. of Italy’s MAP Guidance states that access to MAP will not be granted for those cases where a settlement agreement was already entered into between the taxpayer and Italy’s Revenue Agency. Italy clarified that this approach aims at preventing a potential conflict between the audit settlement and the arbitration procedure under that convention. In that regard, paragraph 7.2 of Italy’s MAP Guidance reiterates, like is the case for tax treaties, that this restriction must be considered against the background of the legal instruments and resources deployed by the tax administration in achieving a settlement with taxpayers. Therefore, unless the taxpayer has also submitted a MAP request under the applicable tax treaty, no correlative relief from the other competent authority will be sought. When such cases arise, Italy reported that its competent authority encourages the taxpayers to submit MAP requests under the applicable tax treaty.

Administrative or statutory dispute settlement/resolution process

100. Italy reported that it does not have an administrative or statutory dispute settlement/resolution process in place that allows its competent authority to deny access to MAP for issues resolved through that process.

Recent developments

101. There are no recent developments with respect to element B.5.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

102. Italy reported that in the period 1 January 2016-31 March 2017, it has not denied access to MAP requests submitted under its tax treaties where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. However, no such cases in relation hereto were received in that period.

103. Further to the above, Italy reported that in the period 1 January 2016-31 March 2017 it has denied access in one case for which a request was submitted under the EU Arbitration Convention and where the issue presented by the taxpayer had already been dealt with in an audit settlement between the taxpayer and the tax authorities.

104. The majority of peers that provided input indicated not being aware of a denial of access to the MAP by Italy in the period 1 January 2016-31 March 2017 in case where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. Other peers specified being aware of the fact that, while Italy grants access to MAP in cases of audit settlements, it cannot deviate from the settlement entered into by Italy’s Revenue Agency and that only the treaty partner can provide for relief of double taxation. One peer learnt Italy’s practice of audit settlements from Italy’s MAP guidance for which a link is available in Italy’s MAP profile. This peer questioned whether such an approach was, if not denying access to MAP, at least limiting access to MAP, because it could act as a deterrent for taxpayers to request MAP assistance. In this respect, Italy responded that, in case of audit settlements, there is no experience that this approach has acted deterrent for taxpayers to seek MAP assistance.

105. Further to the above, one peer noted that it is its impression that Italy’s tax administration requires taxpayers to accept a given transfer pricing adjustment under the

condition that they abstain from submitting a MAP request in order to avoid penalties. Two other peers specifically referred to their practical experience with Italy. They mentioned cases for which Italy denied access to MAP where the tax authority and taxpayers entered into an audit settlement. Both peers mentioned that they contacted Italy's competent authority in this respect, as their position is that this is not compliant with the requirements under the applicable tax treaty and not in line with element B.5 either. In addition, one of these peers expressed concerns about the fact that Italy decided to close the cases three respectively one year after the MAP requests were submitted, while these audit settlements were reached at an earlier stage.

106. In response to the peer input discussed in the paragraph above, as for the fact that one peer indicated that it has learnt from taxpayers that access to MAP may be denied in audit settlement cases, Italy indicated that this input seems to refer to a period prior to the publication of its MAP Guidance in 2012. In respect to the cases specifically mentioned by the two other peers, Italy reported that it should be noted that in two of the three cases at stake, the MAP requests have been submitted to the other competent authority, by which it was not Italy's competent authority that had to decide on whether access to MAP should be granted. Furthermore, it should be noted that for the one request submitted under both the EU Arbitration Convention and the bilateral tax treaty, Italy's competent authority has properly informed its treaty partner that the case was considered closed, unless the other competent authority was able to grant a corresponding adjustment within the framework of the MAP requested under the bilateral tax treaty. Concerning the third case, Italy specified that the MAP request was submitted to both competent authorities and only under the EU Arbitration Convention.

107. Specifically with respect to mediation ("*mediazione tributaria*") and judiciary conciliation ("*conciliazione giudiziale*"), one peer mentioned being aware of the existence of such processes and their limitation on the resolution of MAP cases. Further to the above, a peer indicated that it has learnt from taxpayers that access to the MAP may be denied in such cases.

Period 1 April 2017-30 September 2018 (stage 2)

108. Italy reported that since 1 April 2017 its competent authority has received two MAP requests under a bilateral tax treaty for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. In one of these cases access to MAP was granted, whereas the other case is under examination, for which Italy expressed that access to MAP will be granted too. Furthermore, Italy reported that since 1 April 2017 no requests were received under the EU Arbitration Convention for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

109. Most of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given. However, as regards element B.5 a number of peers provided additional input. One of these peers mentioned that it was informed by Italy's competent authority that it would not enter into MAP discussions for one case where the taxpayer and Italy's tax administration already entered into an audit settlement. Another peer provided similar input and stated that it experienced in one case that the MAP process had to be closed without any agreement reached, mainly due to the fact that Italy was not able to grant a corresponding adjustment because an audit settlement was already entered into. This peer further stated that it hopes that in the future Italy will

be able to discuss, reach an agreement and implement it in cases where an audit settlement was entered into, rather than simply allowing access to MAP.

110. Further to the above, one peer mentioned that it is pleased to read that Italy is currently introducing new domestic law provisions to allow its competent authority to grant access to MAP in cases where an audit settlement has been entered into by the taxpayer and the tax administration.

111. Lastly, two peers did not report any experiences since 1 April 2017, but confirmed Italy's practice as set out above.

Anticipated modifications

112. Italy reported that with respect to access to MAP under the EU Arbitration Convention in case of audit settlements, it is in the process of amending its domestic legislation that would allow taxpayers access to the procedures under this convention in case of an audit settlement entered into by the taxpayer and the tax administration. The relevant draft law, which is included in the same proposal as for the ratification of the Multilateral Instrument, is to be approved by the Council of Ministers, before being submitted to Parliament. Italy further reported that the adoption of the law is foreseen for the second half of 2019.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Access to MAP is not granted for MAP requests submitted only under the EU Arbitration Convention, for cases where the tax authority and the taxpayer entered into an audit settlement for the case under review.	Italy should continue to grant access to MAP in all eligible cases under bilateral tax treaties, even if there was an audit settlement between the tax authority and the taxpayer. In addition, Italy should without further delay follow its stated intention and amend its domestic law to be able to grant access to MAP also for cases submitted under the EU Arbitration Convention, even if the tax authority and the taxpayer entered into an audit settlement in the case under review.

[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.

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

Legal framework on access to MAP and information to be submitted

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

115. Italy reported that its competent authority will, within two months upon receipt of the request, examine the MAP request and check whether all required information is available. It will revert back to the taxpayer to require additional information if necessary. While no specific timeframe is set for providing additional information by taxpayers, Italy clarified that its competent authority expects that taxpayers respond in a timely manner. In practice, taxpayers are requested to submit the additional information requested within a period that may range from 30 to 60 days. Where the taxpayer has not provided the requested information, Italy further reported that its competent authority sends a reminder to the taxpayer, requiring also to confirm his interest to the MAP process. As already reported, when the MAP case has been submitted under the EU Arbitration Convention and the expiry of the two-year period is approaching, Italy added that its competent authority will send a warning to the taxpayer that the case will be closed because of failure to submit the additional information requested. When the absence of this additional information could hinder the capacity of Italy's competent authority to resolve the case, Italy mentioned that a consultation with the other competent authority will be started and this may lead to the conclusion that the MAP can be closed with the outcome "objection not justified".

116. Further to the above, Italy also reported that up to now, no MAP requests filed in the review period have been closed by Italy's competent authority because of taxpayer's failure to provide additional information

Recent developments

117. There are no recent developments with respect to element B.6.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

118. According to Italy it provides access to MAP in all cases where taxpayers have complied with the information and documentation requirements by its competent authority as set out in its MAP guidance. In this respect, Italy reported that it has in the period 1 January 2016-31 March 2017 not limited access to MAP on the grounds that the information in the MAP request was not the information or documentation required by its competent authority.

119. All peers that provided input have indicated not being aware of a limitation of access to MAP by Italy in the period 1 January 2016-31 March 2017 in situations where taxpayers complied with information and documentation requirements set out in Italy's MAP Guidance.

Period 1 April 2017-30 September 2018 (stage 2)

120. Italy reported that since 1 April 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

121. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

122. Italy did not indicate that it anticipates any modifications relating to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

123. 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 Italy's tax treaties

124. Out of Italy's 104 tax treaties, 48 treaties 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 56 treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention.⁹

125. Several peers reported that the provisions of their tax treaty with Italy meet the requirement under element B.7. Six peers, however, noted that under their treaty with Italy the required provision is absent. All these peers indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in line with the requirement under element B.7.

Recent developments

Bilateral modifications

126. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. All new treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which was not the case for the one treaty that is currently in force and will be replaced by the new treaty. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

127. Italy signed the Multilateral Instrument and is currently in the process of ratification of this instrument, which is foreseen in 2019.

128. 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.

129. In regard of the 56 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Italy listed 43 as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(ii).¹⁰ Of the relevant treaty partners, six are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Italy as a covered tax agreement and one did not make a notification pursuant to Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 34 of the 56 tax treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

130. As mentioned in the Introduction, for those treaties that are not in line with the requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Italy has put a plan in place for the bilateral renegotiations of these treaties. With respect to 22 remaining treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Italy reported that it is currently in negotiations with three of the 22 treaty partners *inter alia* to include this second sentence. Furthermore, Italy reported that it will amend its notifications under the Multilateral Instrument for one treaty partner, following which the treaty will be modified by that instrument to include the second sentence.

Peer input

131. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Italy. Five of these eight peers concern a treaty partner to the treaties identified above that do not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which all will be modified by the Multilateral Instrument. One of these peers mentioned that there have not been contacts or actions in relation to its tax treaty with Italy with a view to bring it in line with the requirements under the Action 14 Minimum Standard. Two other peers confirmed that their treaty with Italy is not in line with most of the requirements under this standard, but that as regards element B.7 they will become so. The remaining peers did not provide input as regards this element.

Anticipated modifications

132. For the remaining 18 treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are pending, they are reflected in the plan for renegotiations as follows:

- Three treaties are included in the list of treaty partners that are a signatory to the Multilateral Instrument and will be approached once that instrument has for Italy entered into force on the basis of a certain prioritisation.

- Five treaties are included in the list of treaty partners that are not a signatory to the Multilateral Instrument, but are member of the BEPS Inclusive Framework and will be approached regardless of whether the instrument has for Italy entered into force.
- Nine treaties are included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached at a later stage.
- One treaty is included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached once all other negotiations have been finalised

133. In regard of this plan and for the treaties concerned, no specific actions have been taken.

134. Regardless, Italy reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>56 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 56 treaties:</p> <ul style="list-style-type: none"> • 34 are expected to be modified by that instrument to include the required provision. • One is expected to be modified by that instrument to include the required provision once Italy has updated its notifications under the instrument. • 21 will not be modified by that instrument. With respect to these 21 treaties: <ul style="list-style-type: none"> - For three negotiations are pending. - For 18 no actions have been taken, but they are included in the plan for renegotiations. 	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument, including the update of its notifications, to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 35 of the 56 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>Furthermore, for 19 of the remaining 21 treaties, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with three treaty partners on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in 16 treaties in accordance with its plan for renegotiations <p>Specifically with respect to the treaties with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina and Montenegro, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

135. 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.

Italy's MAP guidance

136. Italy's rules, guidelines and procedures in relation to MAP are included in the Circular letter No. 21/E of 5 June 2012, which is issued by Italy's Revenue Agency ("MAP Guidance"). Italy's MAP Guidance is available (in English) at:

<https://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Business/Double+taxation+relief/Mutual+Agreement+Procedure/?page=business>

137. This document sets out in detail how MAP functions in Italy and the various stages of that procedure, whereby a distinction is made between MAP cases under tax treaties and under the EU Arbitration Convention. This MAP guidance contains information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. the rights and role of taxpayers during the MAP (including the EU Arbitration Convention)
- e. information on availability of arbitration (including the EU Arbitration Convention)
- f. relationship with domestic available remedies
- g. suspension of tax collection
- h. implementation of MAP agreements
- i. interest and penalties
- j. multi-year resolution of recurring issues through MAP.

138. Furthermore, Italy's MAP Guidance contains information on the specificities of the MAP initiated under the EU Arbitration Convention. In particular, paragraph 5.3 of Italy's MAP guidance relates to serious penalties that would prevent taxpayers from having access to the MAP under the EU Arbitration Convention.

139. The above-described guidance includes detailed information on the availability and the use of the MAP and how its competent authority conducts the process in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.¹¹

140. As regards the contact information of the competent authority, a recent change has to be noted. Until 31 December 2016 taxpayers had to submit their MAP request to the Directorate for International Relations – Department of Finance of the Italian Ministry of Economy and Finance. As from 1 January 2017, taxpayers have to submit their MAP requests to the *Agenzia delle Entrate* (Italy's Revenue Agency). While Italy has notified by letter its treaty partners of the change in the organisation and also made this public, the MAP guidance (dated June 2012) still refers to the previous contact details of Italy's competent authority, although these new contact details have been published on the website

of both the Department of Finance and the *Agenzia delle Entrate* and have also been reflected in Italy's MAP profile.

141. Peers and taxpayers provided input in relation to Italy's MAP Guidance. One taxpayer mentioned that the new guidance published by Italy is clear and noted the efforts Italy's competent authority to be more transparent towards taxpayers as it informs them of progress made on their MAP case. Another taxpayer commented that Italy's MAP guidance does not clearly address: (i) the consequences of initiating a MAP on collection of tax and (ii) the relationship between MAP and domestic remedies. The latter comment was also specifically mentioned by a peer, which suggested that a further clarification on this point would be practical.

142. In relation to comment (i), paragraphs 4.2.7 and 5.7 of Italy's MAP guidance already address the possibility of a suspension of tax collection during the time a MAP case is pending under the tax treaty and under the EU Arbitration Convention respectively. Specifically with respect to the EU Arbitration Convention, paragraph 5.7 of Italy's MAP guidance mentions that Article 3(2) of Law No. 99 of 1993 – concerning the ratification of that convention – allows Italy's Revenue Agency to grant such suspension of tax collection on the basis of a specific request thereto by the taxpayer.

143. In relation to comment (ii), with respect to the relationship between MAP and domestic remedies, paragraphs 4.2.5 and 5.6 of Italy's MAP Guidance already address in detail the relationship between domestic available remedies and MAP cases under the tax treaty and the EU Arbitration Convention.

144. In regard of the above, although Italy's MAP guidance is comprehensive, some items are not specifically discussed. This concerns (a) whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments, and (b) the timing of the steps of the process for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

145. Paragraph 4.2.4 of Italy's MAP Guidance stipulates that taxpayers can submit a MAP request under tax treaties in free form and sent via a letter or hand-delivered to Italy's competent authority. Specific additional documentation can be submitted electronically. Paragraph 5.5 include equal wording in relation to the EU Arbitration Convention. As regards the information and documentation to be included in a MAP request, paragraph 4.2.4 and paragraph 5.5 lists this information in regard of tax treaties respectively the EU Arbitration Convention (see below).

146. 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. This agreed guidance is shown below and checked with respect to Italy's MAP guidance:

- 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.

147. In addition to these documents and information, Italy also requires taxpayers to provide:

- a description of any administrative or legal proceeding undertaken in Italy, such as a request for a settlement or the submission of a legal appeal
- a description of the remedies, if any, activated in the other contracting state to eliminate the double taxation.

Recent developments

148. There are no recent developments with respect to element B.8.

Anticipated modifications

149. Italy indicated that it anticipates updating its MAP guidance, for which is expected to include the Italian competent authority's new organisational structure, contact details and the latest developments in the area of MAP. This update will be made as soon as the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union has been implemented in its domestic legislation and the Multilateral Instrument has been ratified.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of Italy's competent authority in the MAP guidance are not up-to-date.	Italy should without further delay follow up its intention to update its guidance and prioritise the inclusion of the new contact information of Italy's competent authority.

[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.

150. 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 platform¹² further promotes the transparency and dissemination of the MAP programme.

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

151. Italy’s MAP guidance is published and can be found at:

<https://www.agenziaentrate.gov.it/wps/content/Nsilib/NSE/Business/Double+taxation+relief/Mutual+Agreement+Procedure/?page=business>

152. This document is accessible and can easily be found on the website of either Italy’s Revenue Agency¹³, such by searching for “double taxation” or “mutual agreement procedure” or on the Ministry of Finance’s website under the “*Fiscalità comunitaria e internazionale*” section.¹⁴

MAP profile

153. The MAP profile of Italy is published on the website of the OECD, which was last updated in July 2017. This MAP profile is complete, often with detailed information. This profile includes external links to websites of the Italian government which provide additional information and guidance. In particular, the MAP profile contains updated information regarding Italy’s competent authority and the contact details thereof.

Recent developments

154. There are no recent developments with respect to element B.9.

Anticipated modifications

155. Italy did not indicate that it anticipates any modifications relating to B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

[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.

156. 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 processes mentioned previously.

MAP and audit settlements in the MAP guidance

157. As previously mentioned in B.5, paragraph 7 of Italy’s MAP Guidance explains the relationship between MAP and audit settlements (“*accertamento con adesione*”) and mediation (“*mediazione tributaria*”) and judiciary conciliation (“*conciliazione giudiziale*”). Paragraph 7.1 of this guidance specifies that if the taxpayer settles its case with Italy’s Revenue Agency, its competent authority will only present such a case to the other competent authority to seek correlative relief. Specifically with respect to cases submitted under the EU Arbitration Convention, paragraph 7.2. of Italy’s MAP Guidance states that access to MAP will not be granted for those cases where a settlement agreement was already entered into between the taxpayer and Italy’s Revenue Agency.

158. One peer specifically mentioned that it is aware of a dispute settlement/resolution processes outside of the MAP process, but that it would like to have more information about the resolution process available in Italy and its effects on access to MAP and resolution of MAP cases. Specifically with respect to mediation, this peer noted that it understands that mediation is available for certain non-allocation cases, but that it would like to develop a better understanding of the extent to which MAP might be affected by this process. In this respect, Italy has pointed out that its MAP guidance clearly addresses the interrelation between audit settlements and MAP.

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

159. As previously mentioned under element B.5, Italy does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, following which there is no need to include information hereon in Italy’s MAP guidance.

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

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

161. As Italy does not have an administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process. In this respect, one peer reported that based on Italy’s MAP profile, it is not aware of an administrative or statutory dispute settlement/resolution process that limit access to MAP.

Recent developments

162. There are no recent developments with respect to element B.10.

Anticipated modifications

163. Italy noticed that the MAP guidance is mere an administrative document that reflects Italy’s legislative framework. In that regard and with respect to access to MAP under the EU Arbitration Convention in case of audit settlements, Italy reported it is in the process of amending its domestic legislation that would allow taxpayers access to the procedures under this convention in case of an audit settlement entered into by the taxpayer and the tax administration. The relevant law proposal has been submitted to the Council of Ministers, which is included in the same proposal as for the ratification of the Multilateral Instrument. Italy further reported that the adoption of the law is foreseen for the second half of 2019 and that it subsequently will amend its MAP guidance to reflect the changes in relation to audit settlements and access to MAP.

Conclusion

	Areas for improvement	Recommendations
[B.10]	MAP guidance includes information stating that in cases submitted only under the EU Arbitration Convention access to MAP will not be granted if the tax authority and the taxpayer entered into an audit settlement in the case under review.	In line with the recommendation under element B.5 to grant access to MAP in cases submitted only under the EU Arbitration Convention where the tax authority and the taxpayer entered into an audit settlement in case under review, Italy should without further delay update its MAP guidance to no longer state that access to the MAP is restricted in such situations.

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of Italy’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.
2. These 53 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic. Italy also listed the treaty with former Yugoslavia as a covered tax agreement, but only as regards Bosnia and Herzegovina and Serbia. As Bosnia and Herzegovina is not a signatory to the Multilateral Instrument, it is not further taken into

account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include a three-year filing period. This is reflected in Annex A to this report, but not further taken into account in the counting.

3. These 46 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
4. This provision reads:
 1. In Article 110 of the Consolidated Law on Income Tax approved by Presidential Decree of No. 917 of 22 December 1986, paragraph 7 is replaced by the following:

“7. Income components arising from transactions with non-resident companies which directly or indirectly control the enterprise, are controlled by it or are controlled by the same company controlling the enterprise, are determined by making reference to the conditions and to the prices which would have been agreed between independent parties operating under conditions of free competition and in comparable circumstances, if it results in an increase in income. The same provision applies even if it results in a decrease in income, in accordance with the terms and conditions referred to in Article 31-querter of the Presidential Decree No. 600 of 29 September 1973. A Decree of the Minister of Economy and Finance, on the basis of best international practices, may draw up the guidelines for the application of this paragraph.”
5. This provision reads:
 - “ 1. The downward adjustment of income referred to in Article 110(7)(2) of the Consolidated Law on Income Tax approved by Presidential Decree No. 917 of 22 December 1986 can be granted:
 - (a) in implementation of the agreements concluded with the competent authorities of the foreign States following the mutual agreement procedures laid down in the international conventions for the avoidance of double taxation on income or in Convention 90/436/EC of 23 July 1990;
 - (b) at the conclusion of the controls carried out within the framework of international co-operation activities whose results are shared by the participating States;
 - (c) following a request by the taxpayer to be submitted in accordance with the terms and conditions laid down in an order by the Director of *Agenzia delle entrate* (Italian Revenue Agency), with respect to a definitive upward adjustment and in accordance with the arm’s length principle made by a State with which a Convention for the avoidance of double taxation on income is in force, which allows an adequate exchange of information. This is without prejudice, in any case, to the right of the taxpayer to request the initiation of the mutual agreement procedures referred to in letter (a), where the conditions are satisfied.”
6. These 78 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic. Italy also listed the treaty with former Yugoslavia as a covered tax agreement, but only as regards Bosnia and Herzegovina and Serbia. As Bosnia and Herzegovina is not a signatory to the Multilateral Instrument, it is not further taken into account in the counting. For Serbia, the Multilateral Instrument will supersede the treaty with former Yugoslavia to include Article 9(2) of the OECD Model Tax Convention, but 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). This is reflected in Annex A to this report, but not further taken into account in the counting.
7. With respect to the treaty with former Czechoslovakia, which Italy continues to apply to the Czech Republic and the Slovak Republic, the Czech Republic is one of the seven treaty partners that made a reservation on the basis of Article 17(3) of the Multilateral Instrument. The treaty is therefore included in these seven treaties. The treaty with former Czechoslovakia will therefore not be modified concerning the Czech Republic, but only as regards the Slovak Republic and only to the extent that the provision included in this treaty is incompatible with Article 17(1).

8. Italy specified that mediation is a tool of tax litigation which aims at settling disputes without going to court. In Italy, mediation is enforceable and mandatory for claims with a value not exceeding EUR 20 000 (this amount will be increased to EUR 50 000 for tax assessment notices issued as from 1 January 2018 and as provided in Article 10(1) of Decree-Law No. 50 of 24 April 2017). Italy further specified that judiciary conciliation allows the closure of a case while a dispute is pending before the national court. The process consists of a proposal of agreement between the taxpayer and the tax administration, subject to the approval of the court, which, if it considers the agreement proposed by the parties as appropriate, declares the closing of the dispute through a judgement binding on the parties involved.
9. These 56 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
10. These 43 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic. Italy also listed the treaty with former Yugoslavia as a covered tax agreement, but only as regards Bosnia and Herzegovina and Serbia. As Bosnia and Herzegovina is not a signatory to the Multilateral Instrument, it is not further taken into account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include the second sentence of Article 25(3) of the OECD Model Tax Convention. This is reflected in Annex A to this report, but not further taken into account in the counting.
11. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
12. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
13. Available at: www.agenziaentrate.gov.it/wps/portal/entrate/home.
14. Available at: www.finanze.it/opencms/it/fiscalita-comunitaria-e-internazionale/procedure-amichevoli-internazionali/.

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

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.

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

Current situation of Italy's tax treaties

144. Out of Italy's 104 tax treaties, 103 contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining treaty includes a provision that is based on Article 25(2), first sentence, but does not include the part of the sentence relating to the possibility to provide for a *unilateral satisfactory solution* and further the objective of the mutual agreement procedure is to *avoid double taxation* and not *taxation not in accordance with the convention*. This treaty is therefore considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

145. Italy reported that the examination whether the objection raised in a MAP request is justified necessarily implies for its competent authority to question its capacity to resolve the case unilaterally, such in accordance with Article 25(2) of the OECD Model Tax Convention. In Italy's view, even if the treaty does not contain an indication that the competent authority must explore the possibility of a unilateral solution to a dispute, its competent authority does explore this possibility in practice

146. Several peers reported that the provisions of their tax treaty with Italy meet the requirement of element C.1.

Recent developments

Bilateral modifications

147. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. All new treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which was also the case for the one treaty that is currently in force and will be replaced by the new treaty. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

148. Italy signed the Multilateral Instrument and is currently is in the process of ratification of this instrument, which is foreseen in 2019.

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

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

Other developments

151. There are no other developments with respect to element C.1.

Peer input

152. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Italy. One of these eight peers concerns a treaty partner to the treaty identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer confirmed this analysis, but did not further indicate whether on a bilateral level actions were taken or foreseen to bring the treaty in line with element C.1.

Anticipated modifications

153. As mentioned in the Introduction, for those treaties that are not in line with the requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Italy has put a plan in place for the bilateral renegotiations of these

treaties. Specifically with respect to the remaining treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the presented plan mentioned that it falls in the group of treaties for which the relevant treaty partners are a signatory to that instrument and will be contacted to bilaterally amend the treaty.

154. In addition to that, Italy reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 104 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument. For this treaty no actions have been taken, but it is included in the plan for renegotiations.	Italy should request via bilateral negotiations the inclusion of the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in the one tax treaty that does not contain such provision, such in accordance with its plan for renegotiations.

[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).

155. 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

156. Statistics regarding all tax treaty related disputes are published on the website of the OECD² as of 2007 and as regards transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.³

157. The FTA MAP Forum has agreed on rules for the reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”) the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Italy provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Italy and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively, and should be considered jointly for an understanding of the MAP caseload of Italy.⁴

158. In view of the reported statistics, Italy specified that (i) as regards pre-2016 cases, it did not report those cases for which a request only was submitted under the EU Arbitration Convention and that (ii) as regards post-2015 attribution/allocation cases, Italy opted for breaking down the MAP cases submitted either under a tax treaty or the EU Arbitration Convention.⁵ The total overview of pending pre-2016 MAP cases in Italy for the years 2016 and 2017 may therefore not be the total number of actual pending cases.

159. With respect to post-2015 cases, Italy reported that for the year 2016 it has reached out to all its MAP partners with a view to have their MAP statistics matching. For this year, Italy indicated that it could match its statistics with a considerable portion of its MAP partners except for the ones that did not reply to Italy's requests. Italy indicated that the MAP statistics that potentially would not match for the year 2016 relate to a very limited number of MAP cases, as it would concern approximately five MAP cases, representing 1% of Italy's MAP inventory at 31 December 2016.

160. With respect to the year 2017, Italy reported it has reached out to all of its MAP partners, for which it was able to match the statistics via exchange of emails. It further mentioned that with one treaty partner it has no fully certainty whether it was able to match the statistics, since Italy did not receive a response on the last request of aligning the data.

161. Twelve peers provided input on the matching of MAP statistics with Italy, all of them confirmed that they were able to match their statistics with Italy after contacts between their competent authorities. One of these peers mentioned both their competent authorities contacted each other and were able to match the data very easily and without any problems. This input was echoed by other peers. One of them mentioned that they were able to successfully and efficiently match their MAP statistics, whereby any questions from the peer were being answered quickly and any mismatches being successfully resolved. Another peer noted that there has been a good contact and co-operation between the competent authorities to match their MAP statistics. A third peer also noted that discussions on the matching of statistics were fruitful.

162. Based on the information provided by Italy's MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter.

Timelines for the mutual agreement procedure

163. Italy's MAP guidance refers in paragraphs 4.2.8 and 5.8 to the revised Code of conduct for the effective implementation of the Arbitration Convention. These paragraphs mention, as is confirmed by Italy, that its competent authority aims at following (as much as is possible) the timing and procedural recommendations made in that code for all MAP cases, even if submitted under a bilateral tax treaty. To this end, and specifically with respect to the EU Arbitration Convention, paragraph 5.8 of Italy's MAP guidance provides an indicative timeline to be applied during the two-year timeframe for handling MAP cases under that convention. In order to achieve the targets set in this timeframe, Italy reported that it is now making efforts in order to plan and schedule a relevant number of face-to-face meetings with its main MAP partners, in particular to resolve long-pending MAP cases with priority. Since late 2016, several of such meetings have taken place with several MAP partners. Moreover, Italy reported that a number of meetings are scheduled for the second half of 2017 with these and other MAP partners.

Monitoring mechanism

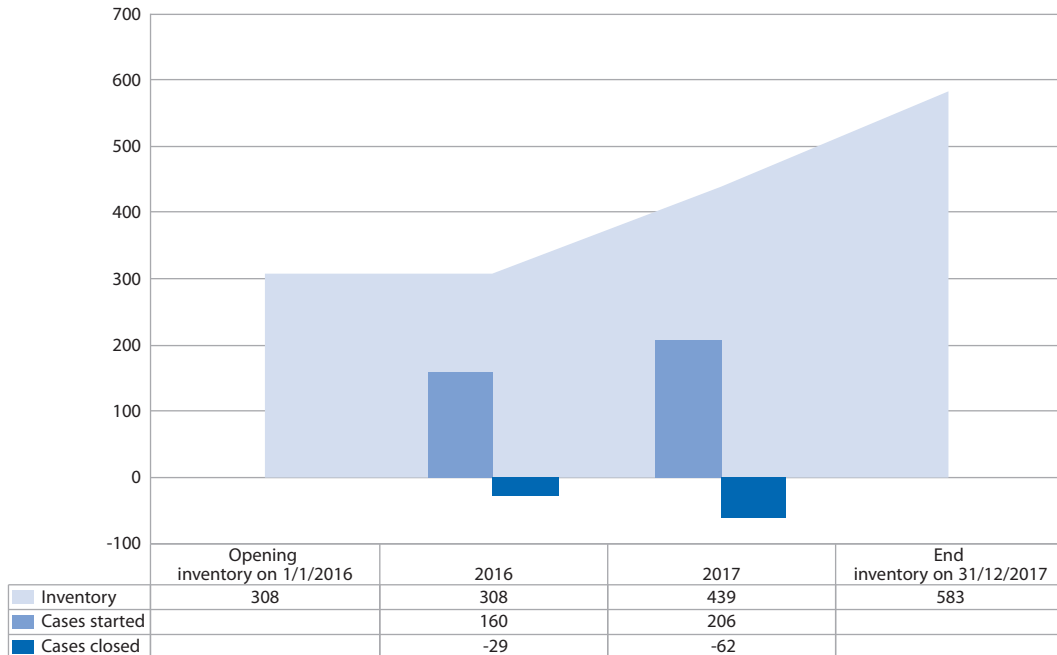
164. Italy did not report it has in place a system to monitor its MAP caseload.

Analysis of Italy's MAP caseload

165. The analysis of Italy's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

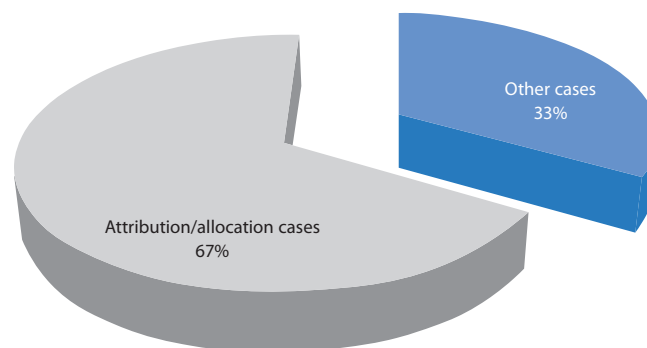
166. The following graph shows the evolution of Italy’s MAP caseload over the Statistics Reporting Period.

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



167. At the beginning of the Statistics Reporting Period, Italy had 308 pending MAP cases, of which 161 are attribution/allocation cases and 147 other MAP cases.⁶ At the end of the Statistics Reporting Period, Italy had 583 cases in its inventory, of which 392 are attribution/allocation cases and 191 other MAP cases. Consequently, Italy’s pending MAP cases have increased by 89% during the Statistics Reporting Period. This increase can be broken down into an increase by 140% for attribution/allocation cases and an increase by 30% for other cases. The breakdown of the end inventory can be shown as follows:

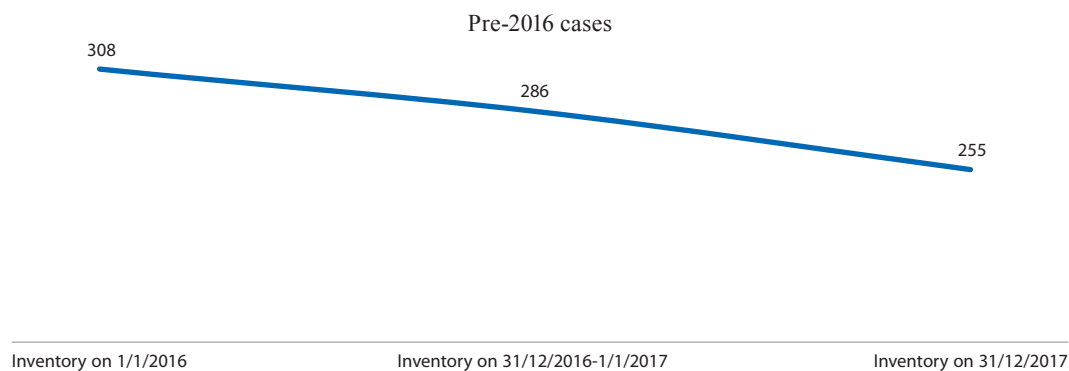
Figure C.2. End inventory on 31 December 2017 (583 cases)



Pre-2016 cases

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

Figure C.3. Evolution of Italy's MAP inventory



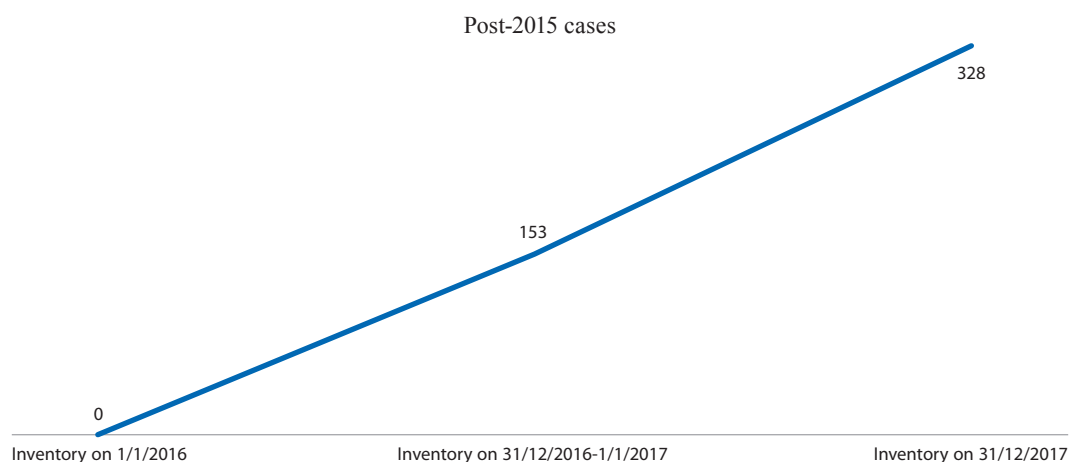
169. At the beginning of the Statistics Reporting Period, Italy's MAP inventory of pre-2016 MAP cases consisted of 308 cases, 161 of which were attribution/allocation cases and 147 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 255 cases, consisting of 131 attribution/allocation cases and 124 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	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	-2%	-17%	-19%
Other cases	-12%	-4%	-16%

Post-2015 cases

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

Figure C.4. Evolution of Italy's MAP inventory



171. In total, 366 MAP cases started during the Statistics Reporting Period, 288 of which concerned attribution/allocation cases and 78 other cases. At the end of this period the total number of post-2015 cases in the inventory was 328 cases, consisting of 261 attribution/allocation cases and 67 other cases. Conclusively, Italy closed 38 post-2015 cases during the Statistics Reporting Period, 27 of them being attribution/allocation cases and 11 other cases. The total number of closed cases represent 10% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

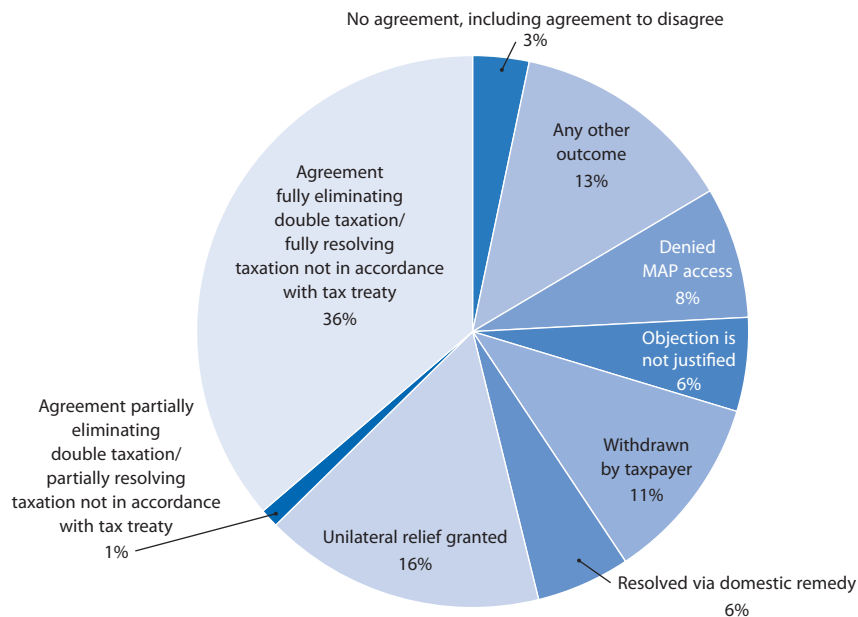
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	4%	15%	9%
Other cases	10%	16%	14%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

173. During the Statistics Reporting Period Italy in total closed 91 MAP cases for which the following outcomes were reported:

Figure C.5. Cases closed during 2016 and 2017 (91 cases)



174. This chart shows that during the Statistics Reporting Period, 33 out of the 91 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

175. In total, 57 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (51%)
- withdrawn by taxpayers (12%)
- access denied (12%)
- unilateral relief granted (12%)
- any other outcome (7%).

Reported outcomes for other cases

176. In total, 34 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- any other outcome (24%)
- unilateral relief granted (24%)
- objection not justified (15%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (12%)
- unilateral relief granted (9%)
- resolved via domestic remedy (9%)
- no agreement, including an agreement to disagree (9%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

177. The average time needed to close MAP cases during the Statistics Reporting Period was 29.83 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	57	31.35
Other cases	34	27.29
All cases	91	29.83

Pre-2016 cases

178. For pre-2016 cases Italy reported that on average it needed 50.75 months to close 30 attribution/allocation cases and 37.39 months to close 23 other cases. This resulted in an average time needed of 44.95 months to close 53 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Italy used:

- *Start date*: the date of filing of the MAP request to the Italian competent authority or the date of receipt of the notification letter from the competent authority that received the MAP request from the taxpayer
- *End date*: the date when the taxpayer is informed of the outcome of the MAP process or the date of the closing letter received from the other competent authority or the date of the judgment that resolved the dispute at stake.

Post-2015 cases

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

180. For post-2015 cases, Italy reported that on average it needed 9.80 months to close 27 attribution/allocation cases and 6.18 months to close 11 other cases. This resulted in an average time needed of 8.75 months to close 38 post-2015 cases.

Peer input

181. One peer mentioned that a significant number of MAP requests are pending because of a domestic appeal that is ongoing in Italy and for which Italy's competent authority does not seek to resolve the case before the court decision is rendered. This peer expressed concerns about the fact that once the court decision is rendered, Italy's competent authority will not be able to derogate from the court decision as provided under its domestic law. Italy responded to this input by stating that a distinction should be made between those MAP requests submitted to Italy's competent authority for which also a judicial procedure is pending and those MAP requests for which a judgment was already rendered. In the first situation, in order to prevent that a court decision is rendered during the time a MAP case is pending, Italy reported that its domestic law provides taxpayers the possibility to hold the litigation proceeding in abeyance of the outcome of the discussions between the competent authorities. Should the competent authorities not be able to reach an agreement, taxpayers are entitled to reactivate the litigation. In the second situation, Italy stated that since it is among those jurisdictions that cannot derogate from a judicial decision, double taxation cannot be eliminated unless the foreign counterpart agrees with the position expressed by the Italian tax court. Finally, Italy specified that in the case the other contracting state imposed an adjustment, an initiated domestic procedure in that state does not preclude Italy from opening the MAP insofar as the foreign tax administration shares the same view.

182. Other peer input relating to the resolution of MAP cases is further discussed under element C.3.

Recent developments

183. In the stage 1 peer review report Italy was under element C.2 recommended to seek to resolve the remaining 96% of its post-2015 MAP cases that were pending on 31 December 2016 (153 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

184. With respect to the recommendation, Italy reported that in the period 1 January 2017-30 September 2018, its competent authority has strived to increase the number of resolved MAP cases, such by holding 23 face-to-face meetings with several MAP partners. Specifically relating to EU Member States, with whom Italy has the majority of its MAP cases, a focus has been put on resolving the pending pre-2016 cases under the EU Arbitration Convention in order to prevent the establishment of an advisory commission where the two-year period for the mutual agreement procedure has elapsed.

185. As follows from the MAP statistics discussed above, Italy has during 2016 and 2017 not closed its MAP cases within the pursued average of 24 months, which both regards attribution/allocation cases and other cases. In 2016 it closed 4% of the post-2015 cases started in that year. By the end of 2017, Italy closed in total 15% of the post-2015 cases that started in 2016 and 2017. Furthermore, its MAP inventory has increased by 89% since 1 January 2016.

186. With respect to the gap between the number of new cases as compared to the number of closed cases in 2017, Italy reported that this is mostly due to an inevitable running-in period since Italy's Revenue Agency has started to manage the MAP function as of 1 January 2017. It further mentioned that the additional personnel that was recently assigned to Italy's competent authority, along with an improvement of know-how at the level of the other personnel, should in its view enhance the capacity to resolve a greater number of MAP cases and by this way to reduce the gap between initiated and closed MAP cases.

187. Element C.3 will further consider the average timeframe to close MAP cases and the changes in Italy's MAP inventory in light of the adequacy of resources.

188. All peers that provided input during stage 1 confirmed that this input hold equally relevance for the period starting on 1 January 2017. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

189. Furthermore, as it will be discussed in element C.6, Italy's tax treaty policy is to include mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

190. 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 Italy's competent authority

Organisation of the competent authority function

191. The legal basis for handling MAP cases by Italy's competent authority is the tax treaties entered into by Italy and the EU Arbitration Convention (see also paragraph 2 of Italy's MAP Guidance). Under Italy's tax treaties, the competent authority function is assigned to the Ministry of Economy and Finance. In that regard, as noted in paragraph 3 of Italy's MAP guidance, the statutory bodies involved in handling MAP cases are the Ministry of Economy and Finance – department of Finance – and Italy's Revenue Agency.

192. Further to the above, in Italy, the competent authority function to handle all MAP cases (i.e. attribution/allocation cases and other cases) has on 1 January 2017 been assigned to the Revenue Agency. This assignment has been confirmed in the official guidelines regarding the 2018-20 fiscal policies of the Minister of Economy and Finance, in which Italy's Revenue Agency is formally assigned competence to handle MAP cases and arbitration procedures.⁷ In relation hereto, the Department of Finance within the Ministry of Economy and Finance remains the competent authority for MAP on general issues arising from interpretation or application of tax treaties with a view to avoid double taxation. In this respect, Italy reported it has given special attention to this reorganisation internally and also have recently informed by letter their treaty partners hereof and of the subsequent change in the contact details of their competent authority.

193. In addition, the new contact information is included in the update MAP profile of Italy that is published on the website of the OECD⁸ and that of the European Commission (via the transfer pricing profile). In this regard, Italy mentioned that also taxpayers are informed of the reorganisation when submitting a MAP request. If such request is still made to the Ministry of Economy and Finance, Italy reported that it will forward the request to the new competent authority. The same applies when a MAP request is submitted with the competent authority of the treaty partner. One peer, however, expressed concerns about the uncertainty regarding Italy's competent authority contact details. Italy responded that the contact details of their competent authority have been shared with all treaty partners and that the relevant websites were updated in relation thereto.

194. The department within Italy's Revenue Agency that is responsible for handling MAP cases, as also for handling requests for bilateral APAs is the Office for resolution and prevention of international disputes ("*Ufficio Risoluzione e prevenzione controversie internazionali*") of the Central Directorate for Tax Assessment ("*Direzione Centrale Accertamento*"). This department consists of 17 persons, in addition to a director and a deputy (also in charge of unilateral APA programme and the patent box regime). The team handles MAP requests concerning attribution/allocation cases, other cases as well as bilateral APAs. Four of them have joined the competent authority in March 2017 and have had a previous working experience as tax auditors, along with transfer pricing and language skills. Furthermore, Italy reported that it expects to assign two or three additional persons to the competent authority team to handle MAP cases relating to individuals.

195. The department within the Ministry of Economy and Finance that is responsible for handling MAP cases of a general nature as well as issues regarding the interpretation of a tax treaty raised in other MAP cases consists of three persons.

Handling and resolving MAP cases

196. As mentioned above, Italy's competent authority is part of the Central Directorate for Tax Assessment division of Italy's Revenue Agency. The role and the responsibilities of this department has been included in the Ministerial Decree of 17 July 2014, which also refers to handling MAP cases and arbitration procedures.⁹

197. In view of the above, paragraphs 4.2.8 and 5.8 of Italy's MAP guidance states that when Italy's competent authority receives a MAP request, it involves the Revenue Agency for its advice on controversial issues where necessary. This role is further specified in paragraph 3 of Italy's MAP guidance, where it is stated that the Italian Revenue Agency provides Italy's competent authority technical support throughout the entire MAP process. This concerns the preparation of position papers and providing the factual and juridical elements underlying an individual case. Paragraph 3 emphasises that the role of the Revenue Agency is also relevant to guarantee consistency between the positions taken in MAP and those arising in other contexts, such as audits and dispute prevention.

198. In addition, paragraph 6 of Italy's MAP guidance describes the role of the Revenue Agency during the MAP process in more detail. This concerns both the initial stage when Italy's competent authority is preparing its position paper on the case and during the stage when the case is being resolved. As noted above, the Revenue Agency thereby provides legal and technical support to the competent authority to prepare a position on the case. This in particular when the MAP request follows from an assessment notice issued by Italy's Revenue Agency. In that case, the latter has all relevant information and documentation on the case at its disposal. For that reason, it will draw up a report to (i) specify the rationale of the adjustment underlying the tax assessment and (ii) the legitimacy of the arguments put forward by the taxpayer in the MAP request.¹⁰ When resolving MAP cases the Revenue Agency assist the competent authority by submitting a proposal to reach a potential bilateral agreement.

199. Further to the above, Italy reported that in practice, upon receipt of a MAP request, its competent authority analyses the request, by taking into account: (a) the treaty provisions, the OECD Model Tax Convention, (b) the OECD Transfer Pricing Guidelines, (c) the facts and circumstances of the case under review and (d) as well as domestic legislation and the economic analyses. If not all information is available, Italy's competent authority will contact the taxpayer and request additional information, whereby in more complex cases a pre-filing meeting with the taxpayer may take place. If needed, Italy's competent authority might consult the audit departments to check facts or obtain more information about the case under review.

Monitoring mechanism

200. Italy reported it has not yet put in place a framework for monitoring/assessing whether the available resources for the MAP function are adequate, particularly due to the recent reorganisation of the competent authority function.

Recent developments

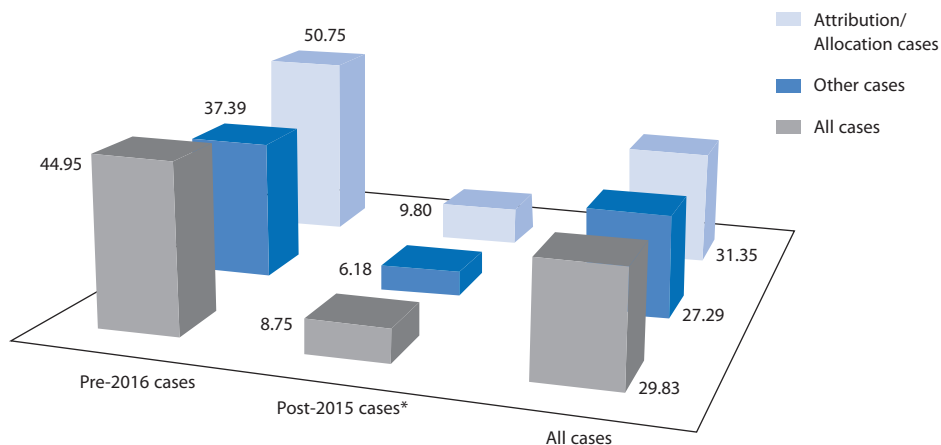
201. As noted in paragraph 214 above, Italy has reorganised its competent authority, which is since 1 January 2017 at the level of Italy’s Revenue Agency.¹¹ Furthermore, as is noted in paragraph 214 above, Italy reported that in 2017 it organised more face-to-face meetings with a view to increase the number of closed MAP cases, in particular with EU Member States. Specifically with respect to staff in charge of MAP cases, Italy reported that it has followed-up on its stated intention and has increased this staff with five persons, such after an internal selection. To this Italy added that its competent authority has also given attention to training for staff in charge of MAP and bilateral APAs, both on a national and international level.

202. Further to the above, Italy also reported that it has also considered the suggestions made for improvement made by peers during stage 1 (see paragraphs 239-241 below). In this respect, Italy explained that it has always shared the contact details of the staff handling the particular MAP case, is using emails to exchange confidential data and positions, as also conference calls, such with a view to speed up and ease the resolution of pending MAP cases.

Practical application

203. As discussed under element C.2 Italy did not close its MAP cases within the pursued 24-month average. This regards both attribution/allocation cases and other cases. This can be illustrated by the following graph:

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



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

204. The average time to close MAP cases for 2016 and 2017 can be broken down as follows:

	2016	2017
Attribution/allocation cases	9.31	35.49
Other cases	35.72	15.24
All cases	27.53	30.91

205. The stage 1 peer review report of Italy analysed the 2016 statistics and showed an average of 27.53 months. It was on that basis concluded that it did not close MAP cases within the pursued average of 24 months, which only regarded other MAP cases, as attribution/allocation cases were closed within the pursued average of 24 months. Based on this average, it was concluded that the available resources for the MAP function may not be adequate and that Italy should ensure that it has adequate resources available for the competent authority function and, in particular, closely monitor whether the recent reorganisation of this function as well as the implementation of a contemplated monitoring system, will contribute to the acceleration of the resolution of MAP cases in a timely, efficient and effective manner.

206. The 2017 statistics show that the average completion time of MAP cases increased to 30.91 months, resulting in an average for both years of 29.83 months. In particular, the average increased for attribution/allocation cases. Furthermore – as analysed in element C.2 – the MAP inventory of Italy significantly increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016 Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	161	140	9	292	148	48	392
Other cases	147	20	20	147	58	14	191
Total	308	160	29	439	206	62	583

207. While Italy reported, as is reflected in paragraph 208, that the reorganisation of its competent authority function caused a gap between the number of initiated MAP cases and closed MAP cases and that there is time needed to see the effects of this reorganisation, this does not take away, which is also reflected by peers (see below), that the number of cases closed is considerably low. Furthermore, the fact that the average time to close MAP cases is for both category of cases above the pursued average of 24 months and has increased, as also the increase in the number of new MAP cases with 89% (275 cases), indicates that more resources may be necessary to cope with this increase and to ensure that for current and future MAP cases Italy will be able to resolve them within the pursued average of 24 months.

Peer input

Period 1 January 2016-31 March 2017 (stage 1)

Resolution of MAP cases – issuing of position papers and face-to-face meetings

208. Some peers reported that no cases were resolved with Italy in 2016 and that in fact the last few years hardly any cases were resolved, particularly due to the fact that no responses and position papers were received nor were any meetings scheduled to resolve MAP cases. Two peers, however, also reported good working relationships with Italy's competent authority and that they had frequent communications and also received position papers in due time from Italy. This viewpoint, however, is not shared by the other peers.

209. Several peers expressed concerns about timeliness of responses by Italy's competent authority. This concerns not receiving responses in general and not to position papers

in particular. One peer specifically asserted rarely receiving any response from Italy’s competent authority and that many cases are for the moment being dormant, particularly due to the prior application of internal refund procedures and due to the fact that additional information has to be requested from the local tax offices. Another peer also reported the long time needed to obtain a response from a position paper regarding an adjustment made by its jurisdiction and also to receive a position paper on an Italian-based adjustment.

210. These peers further mentioned that meeting intermediate target timeframes within 24 months, for instance for position papers, is very difficult with Italy. These peers in particular noted that they were quickly informed of the opening of a MAP case with basic information, being the name of the taxpayer and its associated enterprises as well as the start date of the case, while in many cases the position paper is only received more than one year and a half after this first letter in most cases. One peer thereby suggested that a brief summary of the case is provided with the first letter. These remarks were also echoed by a taxpayer. This taxpayer expressed concerns about MAP requests submitted in Italy and in another country in 2016 and 2017, for which he received an acknowledgement of receipt but no more information about the case since that date. Italy responded to this latter input and clarified that the taxpayer at issue has been informed about the admissibility of MAP requests filed in both tax years 2016 and 2017.

211. Despite the above criticism, several peers also reported that during 2016 and early 2017 they had a face-to-face meeting with Italy to discuss pending MAP cases. In this respect, one peer has underlined that several MAP cases were resolved on that occasion. In particular, another peer has pointed out that, since the end of 2016, there is an effective MAP process in place with Italy regarding transfer pricing cases.

212. In a reaction to the peer input described above, Italy responded that most of the input was referring to years prior to 2016 and that, within the limits of the resources available, it has always sought to provide a feedback to the requests by the other competent authorities. Italy reiterated that it has recently reorganised its competent authority function with the aim to improve the resolution of MAP cases in a timely, effective and efficient manner. Italy also stressed that, within the period November 2016 – June 2017, nine face-to-face meetings were successfully held with its MAP partners, leading to the resolution of 39 attribution/allocation MAP cases with the outcome “double taxation fully eliminated”. Moreover, Italy reported that another six bilateral meetings have already been scheduled for the period July – November 2017 (for discussion of approximately 56 MAP cases). Italy therefore noted a general improvement of its working relationships with the majority of its MAP partners. In this respect, Italy also noted that, in view of the preparation of the face-to-face meetings, 71 cases have been finalised, as well as 56 cases are being analysed.

Adequacy of resources

213. Some peers that provided input considered that the resources of Italy’s competent authority are adequate to perform the MAP function. Taxpayers have also noted the increase in staff in charge of MAP cases and welcomed the progress made by Italy. However, more peers have expressed their disappointment about the fact that Italy’s competent authority has not been ready to meet the other competent authorities for the last six to eight years. One peer mentioned that, they were neither able to meet Italy’s competent authority nor received a position paper from them, following which no cases could be resolved. Italy responded that this input refers to years prior to 2016.

214. Another peer mentioned that a face-to-face meeting was held in November 2016 and that several cases were closed during this meeting. This peer emphasised the fact that

meetings have now resumed with Italy and that it anticipates that several cases will now be resolved, all the more since this peer will endeavour organising two competent authority meetings per year with Italy. Another peer reported it has scheduled a meeting with Italy in October 2017 to discuss both MAP cases and APA cases. Furthermore, one peer has also noted the improvement in the communication after the reorganisation occurred in January 2017.

Language issues

215. Some issues were raised regarding the language used. One peer suggested agreeing on and using a common working language when dealing with MAP cases. Another peer reported that the resolution of MAP cases was on an overall basis correct, but they experienced delays in such a resolution because of the need to translate documentations in Italian. Some other peers also expressed concerns about the fact that the documents that Italy's competent authority provided were not in English but in the Italian language. In this regard, Italy responded that it follows the recommendations set out in the revised Code of Conduct for the effective implementation of the Arbitration Convention that suggests using a common working language with particular reference to the exchange of position papers.

216. Italy responded to this input and indicated that its position papers are always provided also in the English language. Furthermore, Italy specified that if the MAP case arises from an adjustment imposed by its tax authority, the Italian position paper includes, *inter alia*, a comprehensive description of the factual elements related to the case at issue as well as a full justification of the assessment so that the main contents of the supporting documents used for the tax audit are also reported. Lastly, Italy also pointed out that its competent authority, upon request of the counterpart, has in some cases asked the involved taxpayer for a courtesy translation in English of the main parts of the supporting documents (i.e tax assessment or equivalent).

Suggestions for improvements

217. A significant number of peers suggested that competent authority meetings should be organised more frequently, such in combination with follow-up (video) conference calls and emails so as to ensure that progress in MAP cases is made and cases can be resolved. Italy responded that some face-to-face meetings are already scheduled for the coming months (see below). Another peer suggested sharing the contact details of the people that analysts and managers in their competent authority can contact with Italy's competent authority.

218. One peer further suggested more resources being attributed to the competent authority function. A second peer suggested using electronic means for communication to exchange confidential data in order to resolve cases more quickly also through more frequent and easier exchanges of relevant documentation and opinions on the case.

219. In response, in order to support the process of resolving MAP cases in a timely manner, Italy performed an internal reorganisation as already noted in the Introduction, *inter alia* aiming at providing adequate resources to the MAP function. Italy further reported that it is now engaged in the effort of planning and scheduling a relevant number of face-to-face meetings with its major MAP partners in order to solve the oldest pending cases. In this context, Italy specified that apart from the nine meetings already held in the period November 2016 – June 2017, six bilateral face-to-face meeting have been scheduled for the coming months. According to Italy, this represents a clear signal of its strong effort to improve its dispute resolution mechanism.

Period 1 April 2017-30 September 2018 (stage 2)

220. Of the peers that provided input during stage 2, 13 provided additional input as regards their experience with Italy in handling and resolving MAP cases. Three of these peers only provided brief input. One of these peers mentioned having a co-operative working relationship with Italy, as also that Italy shared its position in a timely manner, which, however, was that they could not enter into MAP discussions. The second peer mentioned that in its experience Italy's competent authority is easy to reach and strives at giving feedback on pending cases as soon as possible. The third peer mentioned it has a productive face-to-face meeting with Italy during which several MAP cases were closed and further that a new meeting has been scheduled for 2019.

221. Further to the above, one peer, whose input during stage 1 is reflected in paragraph 236 above, confirmed that since the reorganisation of the competent authority and since the reactivation of face-to-face meetings, discussions with Italy's competent authority is now frequent and efficient. Face-to-face meetings are now held two times a year, which in the peer's view provides for an adequate framework for resolving many complex MAP cases. In that regard, the peer also noted that no particular obstacles were identified in the context of the resolution of MAP cases with Italy. Another peer echoed this input and stated that since 1 April 2017 many things have improved in Italy as regards the resolution of MAP cases. This peer provided the example of the providing of position papers relating to Italian-based adjustments and improvements to communications via email. This peer also referred to the fact that two face-to-face meetings were scheduled in 2018 in which nine MAP cases were resolved. While the peer considered that some disagreement persists concerning a more principled approach on attribution/allocation cases in line with the OECD Transfer Pricing Guidelines, in its view the co-operation works well on an overall basis. A third peer further mentioned it appreciates Italy's efforts to increase staff in charge of MAP cases and the increase of contacts with Italy's competent authority and noted that in 2017 and 2018 face-to-face meetings were held with in-between contacts via email.

222. A fourth peer also voiced positive input. It mentioned that its competent authority and that of Italy have consistently taken a principled and constructive approach to reaching resolution, and have both been practical, as appropriate. The peer further noted that it has recognised the resource constraints faced by Italy's competent authority and the turnover of personnel it has experienced. In that regard, the peer stressed that it is appreciative of the good relationship it has with Italy's competent authority and that it is pleased to know that Italy is open to having more frequent face-to-face-meetings, as well as the level of timeliness and efficiency it provides to attribution/allocation cases. Concerning other cases, the peer, however, noted that communications could continue to improve. It provided the example that after a productive and positive face-to-face meeting early 2017, the peer has yet to receive Italy's correspondence to formally resolve three of the other cases that were under discussion despite the peer's follow up inquiries. The peer concluded by stating that it stands ready to provide any needed assistance to bring these cases to closure.

223. Further to the above, three peers provided mixed input. Their input can be summarised as follows:

- The first peer stressed that it considers its MAP relationship with Italy to be among the more important ones, taking into account the number of MAP cases with Italy. In that regard, this peer mentioned it still has a good and co-operative relationship with Italy's competent authority. As to the communication, the peer pointed to the fact that, where possible, communication is supplemented by an exchange of emails, but also that it would appreciate a further improvement. It thereby

referred to quicker responses by Italy's competent authority, specifically as regards receiving of position papers where delays are experienced.

- The second peer mentioned that in the period 2017-18 it has held three face-to-face meetings with Italy's competent authority to discuss attribution/allocation cases, whereby a number of cases were successfully resolved. It also noted that there has been frequent contact by e-mail, using encrypted documents where appropriate, as well as regular conference calls for updates and preparation for meetings. In that regard, the peer expected that the steps taken by both competent authorities will reduce the average time taken to resolve MAP cases. It nevertheless also concluded that there is still a considerable inventory to work through. As to MAP cases relating to individuals, the peer concluded that the picture is somewhat different and that it is waiting for a response for a number of cases to initiate the MAP process, some of which have been outstanding for over a year.
- The third peer mentioned that since 1 April 2017 on an overall basis communication by Italy's competent authority has been conducted in a timely and efficient manner. The peer also noted that the resolution of MAP cases has seen significant improvements since that date, which in particular concerns the speed of resolution and the willingness to negotiate and which was facilitated by several means of communication and by the compromise-orientated approach. These improvements specifically concerns attribution/allocation cases, whereby also the use of conference calls have led to a swifter resolution of pending cases. The peer therefore concluded that it is very happy with the current MAP relationship as regard attribution/allocation cases, albeit that for pre-2016 cases it is waiting for several years on position papers from Italy's competent authority. It stressed that in all these cases, Italy has since 1 April 2017 been repeatedly asked to answer to the peer's positions

224. Other peers put forward criticism on their relationship with Italy in handling and resolving MAP cases since 1 April 2017. One of these peers mentioned that pending cases are not progressing as swiftly as desired in light of the Action 14 Minimum Standard. While the peer acknowledged that efforts are being made to resolve the problem of the high caseload (e.g. face-to-face meetings held in 2017 and scheduled in 2019), it still sees the need for a more fluent exchange of position papers and initiatives at the level of Italy's competent authority to deal with the high number of pending cases, in particular attribution/allocation cases. Another peer provided similar input. It mentioned that its last face-to-face meeting for MAP cases dates back to March 2017. In that regard, the peer stated that it is under the impression that more resources are needed at the level of Italy's competent authority and that it welcomes the addition of more staff. The peer clarified that it has a considerable number of pending MAP cases with Italy, for which Italy's competent authority has to issue a position paper or provide a reply on the peer's position and which have not been given despite reminders. The peer therefore concluded that more resources would speed up the process.

225. Another peer raised the same concerns. It mentioned that a first face-to-face meeting was held in December 2016 since years, which now takes place twice a year during which numerous cases have been closed. That being said, the peer also concluded that meeting timeframes, for example those under the EU Arbitration Convention, are challenging and are in most cases not met. If at all position papers are provided by Italy's competent authority, this is only the case close to a face-to-face meeting and generally more than two years after the MAP request was submitted. In that sense, the peer noted that more

new cases are being initiated than that pending cases are resolved and concluded that the resources for the competent authority function in Italy are still not sufficient. It therefore assumed that resources will be increased further, for which it expects that such increase will improve the misbalance between new MAP cases and the closing of pending cases. Specifically as regards non-attribution/allocation cases, the peer mentioned that it currently does not receive replies from Italy's competent authority to position papers and questions.

Anticipated modifications

226. Italy indicated that it anticipates implementing a system to monitor the adequacy of its resources recently assigned to the MAP function by the end of 2019. According to Italy, such monitoring would take into account (i) the influx of new MAP cases, (ii) the number of pending MAP cases and (iii) the time necessary to draft position papers. This monitoring may, if necessary, lead to a relocation of staff from the APA/patent box team or from other departments to the MAP/APA team. In this respect, Italy reported that as the focus has been to resolve pending pre-2016 cases, primarily under the EU Arbitration Convention, the introduction of a monitoring system has been postponed and is not a priority for the time being.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>The number of MAP cases closed remains considerably low and also the average completion time of MAP cases has in 2017 increased as compared to 2016 and is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average timeframe has increased to 31.35 months, but also for other cases the average is above 24 months. This therefore indicates that the competent authority is not adequately resourced. For these cases, the main issues identified by peers were delays in communication, specifically the issuing of position papers and responses to position papers in advance of face-to-face meetings.</p> <p>Furthermore, as the MAP caseload has increased significantly since 1 January 2016, in particular attribution/allocation cases, which have more than doubled, this indicates that the competent authority may not be adequately resourced to cope with this increase. Although additional staff has been assigned, this has not yet resulted in a substantial higher amount of MAP cases resolved. The increase in the MAP inventory indicates that even more resources may be needed to cope with this increase.</p>	<p>While in Italy the competent authority function has been reorganized in 2017, resulting in a specific MAP unit within the Revenue Agency with additional staffing, and although this has led to an increase in communications and the number of face-to-face meetings with its MAP partners, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases. In that regard, Italy should assign more staff to its competent authority to handle these cases and to be able to cope with the significant increase in the number of attribution/allocation and other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner.</p> <p>Furthermore, the assigning of additional staff should also enable Italy's competent authority to improve working procedures and avoid delays in communications with other competent authorities, as well as to issue position papers and responses to position papers in a more timely manner and in advance of face-to-face meetings.</p>

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

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

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

Functioning of staff in charge of MAP

228. Italy reported that in practice, upon receipt of a MAP request, the case is assigned to an employee within the Office for prevention and resolution of international disputes, which is dependent on the type of case (an attribution/allocation case or other case), the complexity of the case and the individual workload of the case handler. Italy clarified that the assignment of cases is thereby also dependent on the treaty partners involved in the case, so as to ensure a certain level of continuity in handling MAP cases and to facilitate the contacts with other competent authorities, in particular in relation to conducting face-to-face meetings. The case handler then will analyse the request, by taking into account (a) the treaty provisions, (b) the OECD Model Tax Convention, (c) the OECD Transfer Pricing Guidelines, (d) the facts and circumstances of the case under review and domestic legislation and the economic analyses. If not all information is available or when getting a deeper understanding of the MAP request is needed, Italy reported that the case handler may also contact personnel from the tax administration directly involved in the adjustment at issue. Furthermore, the taxpayer may be contacted and meetings may be scheduled for gathering facts and exchanging views with the aim of a broader perspective of the case.

229. Italy further reported that its competent authority independently takes a decision on its position in each individual MAP case, as also the decision on whether to accept a MAP request and whether unilateral relief is possible (see also paragraph 4.2.8 of Italy's MAP Guidance). In particular, Italy stressed that outcomes of tax audits are not binding on its competent authority and itself prepares position papers. Each case analyst thereby prepares the position paper for the case under review, taking into account the treaty provisions and the applicable domestic laws, along with the relevant facts and the economic analysis of the case under review, such with a view to determining how each case can be resolved in the most effective manner. The position paper is then reviewed by the team manager and ultimately approved by the head of the competent authority. I

230. As to the resolution of MAP cases, Italy explained that the case handler can conduct negotiations with other competent authority, under the supervision of the Head of the office or his deputy. A pragmatic approach is thereby *a priori* not excluded.

231. In regard of the above, Italy reported that its competent authority operates fully independent from local and regional tax offices that are in charge of conducting audits and that it furthermore has the authority to resolve cases through MAP agreements. More specifically, Italy noted that its competent authority may ask other parts of the tax administration for information and verification of facts. Furthermore, Italy reported

that the resolution of MAP cases by its competent authority is not influenced by policy considerations.

Recent developments

232. There are no recent developments with respect to element C.4.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

233. All peers that provided input indicated not being aware of the fact that Italy's competent authority would be formally dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or influenced by policy considerations. One peer, however, noted that this is also caused by the fact that a limited number of cases were discussed during the last competent authority meeting. Furthermore, another peer noted a discrepancy in the time taken by Italy's competent authority to draft a position paper in cases of Italian adjustments, on the one hand, and to react to a position paper from the other competent authority in cases of foreign adjustments on the other hand. This peer indicated that therefore there might be an issue regarding the independence of Italy's competent authority from the audit department of the Revenue Agency. In a response, Italy mentioned that in its view there is under element C.4 no room for such issue. It specified that up to the full year 2016, Italy's competent authority was placed in the Department of Finance of the Ministry of Economy and Finance, which was completely separated and independent from Italy's Revenue Agency, the latter acting at that time as a technical body.

Period 1 April 2017-30 September 2018 (stage 2)

234. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it has no experience of Italy's competent authority being dependent on the direction of the tax administration personnel who made the adjustment at issue or being influenced by policy considerations. Another peer reported having a positive experience in resolving MAP cases with Italy and that it is not aware of any impediments regarding Italy's competent authority in resolving MAP cases.

Anticipated modifications

235. Italy did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

236. 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 Italy

237. The Action 14 final report includes examples for performance indicators that are considered appropriate. These indicators are:

- 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).

238. In view of these examples, Italy reported that no performance indicators are set for staff in charge of MAP. In particular, Italy stated that there are no performance indicators that are based on amounts or assignments that need to be achieved by Italy's competent authority when resolving MAP cases, nor does its competent authority target specified sustained audit adjustments or tax revenue amounts.

239. To this Italy added that staff in charge of MAP is not assessed on the basis of quantitative criteria, but on other criteria, such as technical knowledge, capacity of dealing with specific issues, work accuracy, team working skills, motivation and autonomy. More specific, Italy reported that staff in charge of MAP is obliged to endeavour to resolve MAP cases in a fair and lawful manner and in accordance with the constitutional charter and law provisions. As specifically noted in paragraph 3 of Italy's MAP guidance, the competent authority's role is to guarantee the good faith application of a tax treaty, thereby striving at reaching a solution that adheres to the principles of equity and transparency.

Recent developments

240. There are no recent developments with respect to element C.5.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

241. All peers that provided input indicated not being aware of the fact that Italy's competent authority would 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.

Period 1 April 2017-30 September 2018 (stage 2)

242. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

243. In the stage 1 peer review it was reflected that Italy indicated that it envisages putting in place by the end of 2017 a framework for monitoring the time taken to resolve MAP cases, with a focus on the time elapsed between the receipt of a MAP request and sending of a position paper (see also element C.3). In this respect, Italy reported that as the focus has been to resolve pending pre-2016 cases, primarily under the EU Arbitration Convention, the introduction of a monitoring framework has been postponed and is not a priority for the time being.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

244. 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

245. Italy reported that it has no domestic law limitations for including MAP arbitration in its tax treaties, although the inclusion of arbitration provisions in tax treaties is not part of its general tax treaty policy.

246. In addition, Italy 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 has been implemented in Italy's domestic legislation as per 1 July 2019.

Recent developments

247. Italy reported that in 2018 it finalised negotiations on a new treaty with two jurisdictions, with which it currently has no tax treaty in place. Both treaties include a mandatory and binding arbitration procedure, one of which is based on Article 25(5) of the OECD Model Tax Convention, while the other one follows the arbitration provision included in the Multilateral Instrument.

248. Italy also signed the Multilateral Instrument and is currently preparing the ratification of this instrument, which is foreseen in 2019. With the signing of that instrument, Italy also

opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is further described below.

Practical application

249. Italy has incorporated an arbitration clause in 22 treaties as a final stage to MAP. These clauses can be specified as follows:

- Three treaties contain an arbitration clause that is modelled after Article 25(5) of the OECD Model Tax Convention, but at some points deviate from that provision (e.g. the parties that can request the initiation of the arbitration procedure).
- Seven treaties provide for a voluntary and binding arbitration procedure, whereby the case under review is referred to the arbitration procedure if both competent authorities and the taxpayer concerned agree therewith.
- Nine treaties provide for a voluntary and binding arbitration procedure is also provided for, whereby the case under review is referred to the arbitration procedure if both competent authorities agree therewith. Of these nine treaties the effectiveness of the arbitration clause is subject to an exchange of notes between the contracting states, which so far have not yet been exchanged.
- One treaty contains an arbitration clause that is modelled after the arbitration provision of the Multilateral Instrument.
- One treaty provides for a mandatory and binding arbitration procedure.

Anticipated modifications

250. With respect to the effect of part VI of the Multilateral Instrument on Italy's tax treaties, there are next to Italy in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Italy listed 24 as a covered tax agreement under the Multilateral Instrument and all treaty partners also listed their treaty with Italy under this instrument.

251. With respect to these 24 treaties, Italy already included an arbitration provision in two of them. For none of these two treaties, did Italy opt, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. In that regard, for the remaining 22 treaties, Italy reported it expects that part VI of the Multilateral Instrument will introduce a mandatory and binding arbitration procedure in all of them. In that regard, Italy also mentioned it will soon initiate negotiations with these treaty partners to further detail the rules to be applied during the arbitration procedure.

252. Three peers provided input on the effect of part VI of the Multilateral Instrument on their tax treaty with Italy. Two of these peers confirmed that part VI will apply for their treaty with Italy, The other peer stated that it is of the impression that due to Italy's choice for last-best offer arbitration under the Multilateral Instrument, which is different than the peer's choice for independent opinion arbitration, part VI will not apply unless the competent authorities agree on the type of arbitration procedure.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 103 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic, the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina, Montenegro and Serbia.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2017.
4. For post-2015 cases, if the number of MAP cases in Italy’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Italy reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. When MAP requests were submitted under both a tax treaty and the EU Arbitration Convention, Italy reported only one case in its MAP statistics under the EU Arbitration Convention category. Such reporting is in line with the MAP Statistics Reporting Framework.
6. For pre-2016 cases and post-2015 cases, Italy reported that it 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”.
7. This document is available in the Italian language at the following link: https://www.finanze.it/export/sites/finanze/it/content/Documenti/Varie/DF_CONVENZIONE-MEF_ADE_2018.2020_FIRMATA-28_11_2018.pdf. Italy provided an unofficial translation of the section related to the competent authority. The translated section reads:

“The Revenue Agency – in the framework of the mutual agreement procedures requested under the Convention 90/436/EEC and the Conventions for the avoidance of double taxation with respect to taxes on income in force stipulated by Italy, relating to specific taxpayers, already opened/initiated or to be initiated/opened – is responsible for the activities concerning the preliminary phase relating to the admissibility of the applications, as well as for negotiation, definition, stipulation and implementation of agreements with the Competent foreign Authorities, including the management of the arbitration phase”.
8. Available at: www.oecd.org/tax/dispute/Italy-Dispute-Resolution-Profile.pdf.
9. Article 4, sub 5 under VIII of the Ministerial Decree of 17 July 2014. Available at: www.finanze.gov.it/export/sites/finanze/it/content/Documenti/Varie/DECRETO_17_LUGLIO_2014.pdf.
10. When the case under review concerns a refusal of a refund of withholding taxes by the Operational Centre of Pescara, Italy reported that this centre is responsible for drafting the report, which should contain the legal grounds underlying the denial and which should be accompanied by any relevant information and documentation on the case.
11. Italy reported that a further reorganisation of the competent authority was performed in June 2019. The Office for Advance Rulings has thereby been split into two distinct offices, of which the new “Office for resolution and prevention of international disputes” is now in charge for handling MAP cases and bilateral/multilateral APAs. At the present time, a total of 17 people work within this office, plus a Head of Office and a deputy. The remaining part

of the former Office for Advance Rulings now forms a completely different office, in charge for unilateral APAs and patent box regime, with its own Head of Office (and a deputy). This reorganisation was a part of larger reorganisation that involved the whole Revenue Agency. As result, the Office for resolution and prevention of international disputes has become part of the Assessment Sector, which is a sector within the newly created Large Business Directorate. Italy clarified that the separation of this office from those departments within the Revenue Agency that are in charge for conducting tax audits and imposing tax assessments remains unchanged.

References

- OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, <https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

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.

240. 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

241. As discussed under element B.1, Italian taxpayers are required to initiate domestic judicial proceedings when submitting a MAP request, such in order to prevent that a tax assessment becomes final and cannot be modified as a result of the MAP process. In this respect, taxpayers have to lodge an appeal within the general timeframe set in Italy’s domestic legislation, which is 60 days as from the day of notifying the taxpayer of the tax assessment. Italy clarified that once taxpayers submit a MAP request, they may ask for the suspension of these judicial proceedings, to avoid a ruling of a court that would impede Italy’s competent authority to reach a MAP agreement that deviates from such agreement. Where the taxpayer submits a MAP request and at the same time request the suspension of domestic court proceedings, Italy mentioned that there will be no domestic time limits that would prevent the implementation of MAP agreements in those situations where the applicable tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention.

242. As for MAP agreements reached under the EU Arbitration Convention, Italy reported that it is bound to the provision set in Article 6(2), second sentence, which stipulates that “any mutual agreement reached shall be implemented irrespective of any time limits prescribed by the domestic laws of the Contracting States concerned”, following which it will implement all agreements reached under that convention. To this Italy added that most of its pending MAP cases are under the EU Arbitration Convention.

243. Where a MAP agreement entails a downward adjustment in Italy, Italy reported that it is implemented provided that the taxpayer concerned submits a request for a refund within two years from the date on which a MAP agreement has been reached. This rule is laid down in Article 21(2) of the Legislative Decree no. 546 of 31 December 1992, which stipulates that:

Requests for refunds, in the absence of specific provisions, cannot be submitted if a two-year period has elapsed since the payment date, or, whichever is the later, starting from the date on which the required condition for the refund occurred.

244. Italy clarified that the two-year deadline allows its Revenue Agency to grant a downward adjustment even if the applicable tax treaty does not include the equivalent to Article 25(2) second sentence, of the OECD Model Tax Convention. In other words, the existence of a domestic statute of limitation for granting relief in the form of a refund (i.e. 48 months after the overpayment of taxes was made as set forth in Article 38 of the Presidential Decree n. 602 of 29 September 1973), is overridden by the two-year deadline mentioned above.

245. Where a MAP agreement confirms an upward adjustment made by Italy, Italy reported that such agreement will be implemented by Italy on the basis of Article 2 of the Decree of the Ministry of Finance no. 37 of 11 February 1997, which allows for ex officio amendments of the tax assessment. As already mentioned above, in Italy it is required, in order to prevent a tax assessment of becoming final, to initiate domestic judicial proceedings simultaneously with submitting a request for MAP assistance. Where the taxpayer asked for a suspension of these proceedings, the situation may occur that a MAP agreement is reached before the court rendered a decision. In that situation, as explained in paragraph 4.2.5 of Italy's MAP guidance, the taxpayer has to renounce domestic proceedings as a prerequisite for implementation of the MAP agreement.

246. In view of the above, paragraphs 4.2.10 and 5.10 of Italy's MAP Guidance include information on the implementation of MAP agreements reached under a tax treaty and the EU Arbitration Convention respectively. In both paragraphs the following is noted:

- *Paragraph 4.2.10:* if a MAP agreement has been reached under a tax treaty, it will be communicated to the taxpayer. Such communication, however, does not impact the implementation of a MAP agreement, as Italy's Revenue Agency will implement such agreement and, if applicable, refund taxes, interest and penalties without asking the taxpayer for approval. Where, however, a MAP agreement is reached and for the same case a court case is pending, then the taxpayer has the possibility to accept or reject the agreement. In case of rejection, the taxpayer is allowed to pursue the court case. In any case taxpayers are obliged to inform Italy's competent authority and Italy's Revenue Agency of the decision made.
- *Paragraph 5.10:* for MAP agreements reached under the EU Arbitration Convention, paragraph 5.10 of Italy's MAP guidance specifies that the outcome under the convention's procedures is communicated to the taxpayer concerned, whether it concerns an agreement reached during the mutual agreement procedure or the final decision as a follow-up to the opinion rendered by an advisory commission. Upon request by the taxpayer, such in pursuance to Article 3(1) of Law no. 99 of 1993, Italy's Revenue Agency will formally authorise the refund or provide relief.

247. Concerning the process to implement MAP agreements, Italy reported that once a MAP agreement has been reached, its competent authority will request the taxpayer concerned to give its consent to the agreement as a prerequisite for the agreement's implementation. This is done by means of sending a letter to the taxpayer, to which it has to respond within 30 days. Upon receipt of the taxpayer's acceptance of the MAP agreement, Italy specified that its competent authority will send an implementation letter to the local tax office and/or appeal office with the content of the MAP agreement and the instructions for implementation of this agreement. This process, however, deviates from the information contained in Italy's MAP guidance, which stipulates that no consent from taxpayers is required for the implementation of MAP agreements.

Recent developments

248. Italy reported that its competent authority has recently finalised a new template for the communication of a MAP agreement to taxpayers, in which it asks for his consent to the agreement reached upon conclusion of negotiations. In that regard, Italy explained that now more detailed instructions are provided to taxpayers and the local tax offices to facilitate the implementation of a MAP agreement. When giving its formal acceptance to the terms of the tentative MAP agreement, it also has to include a request for relief, which is directly sent to the local tax offices in charge for the implementation.

249. Further to the above, Italy also reported that Article 21(2) of the Legislative Decree no. 546 of 31 December 1992 stipulates that the two-year period for taxpayers to request a refund of taxes commences on the date a MAP agreement was reached. After internal discussions, Italy reported that it has been decided that this period begins to run from the date of notification to the taxpayer of the MAP agreement.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

250. Italy reported that all MAP agreements reached in the period 1 January 2016-31 March 2017, once accepted by taxpayers, have been (or will be) implemented. In that regard it noted that its competent authority keeps track of the implementation of MAP agreements by the local tax authorities through frequent contacts with these offices. This to monitor times, methods and results of such implementation.

251. All peers that provided input generally reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 March 2017 that were not implemented in Italy. Some peers, however, noted that this also followed from the fact that they were not able to resolve any MAP case with Italy over the last few years. Italy responded that the peer input relates to years prior to 2016.

Period 1 April 2017-30 September 2018 (stage 2)

252. Italy reported that all MAP agreements that were reached on or after 1 April 2017, once accepted by taxpayers, have been (or will be) implemented.

253. Most of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given. Two peer, however, mentioned that they cannot comment on whether Italy has implemented all MAP agreements, since no such agreements were reached with Italy since 1 April 2017.

Anticipated modifications

254. Italy indicated that it is currently in the process to align its domestic legal provisions and administrative procedures that relate to the Action 14 Minimum Standard and to ensure that they are in line with this standard. This process is conducted simultaneously with the ratification of the Multilateral Instrument (see above), for which a draft law is currently to be approved by the Council of Ministers, before being sent to Parliament. With respect to the implementation of MAP agreements, the draft law includes a provision that would allow Italy's competent authority to implement a MAP agreement even though the agreement would result in an adjustment of taxes for fiscal years that have already

become final in Italy. As a result thereof, the withdrawal of the obligation for taxpayers to initiate domestic remedies when submitting a MAP request and connected therewith the need to request for the suspension of these remedies would not result in a situation that the domestic statute of limitation would prevent a MAP agreement from being implemented when the applicable tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention. Instead, the amendment of domestic legislation would ensure that all MAP agreements can be implemented irrespective of domestic time limits and irrespective of whether taxpayers have lodged domestic appeals and requested the suspension thereof.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

255. 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

256. In regard of the process, Italy reported that once a MAP agreement has been reached, its competent authority will request the taxpayer concerned to give its consent to the agreement as a prerequisite for the agreement's implementation. This is done by means of sending a letter to the taxpayer, to which it has to respond within 30 days. Upon receipt of the taxpayer's acceptance of the MAP agreement, Italy's competent authority will send an implementation letter to the local tax office and/or appeal office with content of the MAP agreement and the instructions for implementation of this agreement. In this respect, Italy reported that it has under its domestic legislation and/or administrative framework no timeframe for implementation of MAP agreements reached.

257. Further to the above, following the reorganisation of the competent authority function, Italy's Revenue Agency is the competent authority for all MAP cases as per 1 January 2017 and it is thus now also responsible for the implementation of the agreements reached. The aim of this reorganisation was, *inter alia*, to improve the implementation process and also to make it more efficient.

Recent developments

258. As discussed under element D.1, Italy reported that its competent authority has recently finalised a new template for the communication of a MAP agreement to taxpayers, in which it asks for his consent to the agreement reached upon conclusion of negotiations. In that regard, Italy explained that now more detailed instructions are provided to taxpayers

and the local tax offices to facilitate the implementation of a MAP agreement. When giving its formal acceptance to the terms of the tentative MAP agreement, it also has to include a request for relief, which is directly sent to the local tax offices in charge for the implementation. Italy further reported that based on this new method it deems it possible to reduce the average time of the implementation process.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

259. Italy reported that all MAP agreements that were reached in the period 1 January 2016-31 March 2017 have been implemented on a timely basis. At present, Italy reported that the timeframe for the implementation of a MAP agreement ranges from three to twelve months.

260. All peers that provided input generally reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 March 2017 that have not been implemented in Italy in general or not on a timely basis. Two peers provided specific input in this regard. One peer noted that it is aware of a small number of cases for which a MAP agreement has been reached, but which takes time to implement in Italy. The second peer mentioned that it had one case with Italy for which a MAP agreement was reached in 2012, but which so far has not been implemented in Italy. This peer thereby remarked that in its experience it is not Italy's competent authority that is involved in the implementation of the MAP agreement, but that it is up to taxpayers to submit a request for a refund within two years from the date on which a MAP agreement has been reached. In this respect, Italy responded that the case at issue had recently been implemented.

Period 1 April 2017-30 September 2018 (stage 2)

261. Italy reported that generally all MAP agreements reached in the period 1 April 2017-30 September 2018 were implemented on a timely basis.

262. Most of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Italy fully reflects their experience with Italy since 1 April 2017 and/or there are no additions to the previous input given. Two peers, however, mentioned that they cannot comment on whether Italy has implemented all MAP agreements on a timely basis, since no such agreements were reached with Italy since 1 April 2017. Furthermore, three peers mentioned that they are not aware of any delays in the implementation of MAP agreements, one of them thereby noticing that they continue to have fruitful discussions with Italy on a more efficient implementation of MAP agreements.

263. Two peers, however, voiced a different input. One of these peers mentioned that they experienced delays from Italy's side in the communication of the outcome of the MAP process to taxpayers, but also that they are pleased to learn that Italy is improving the process and that they appreciate their efforts. The other peer stated that there seems to be scope to reduce the time between reaching a MAP agreement and the implementation thereof where the case under review concern an adjustment made by Italy. In this respect, the peer expressed the hope that the recent changes will quicken the implementation process.

264. While this input may indicate that not all MAP agreements are timely implemented in Italy, the recent reflected changes and the fact that Italy's competent authority itself has become responsible for implementing MAP agreements should be sufficient to ensure a timely implementation of said agreements.

Anticipated modifications

265. Italy did not indicate that it anticipates any modifications related to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

266. 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 Italy's tax treaties

267. Out of Italy's 104 tax treaties, 33 treaties contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention stating that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. For the remaining 71 treaties, the following analysis can be made:

- Eight treaties contain in the protocol to the treaty, or in an exchange of notes, a provision relating to implementation of MAP agreements. These provisions, however, are not considered to be the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, as the provision contained therein generally reads: "an adjustment of taxes pursuant to that Article may be made only prior to the final determination of such taxes".
- One treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention, but contains the alternative provision for Article 9(1).
- In 62 treaties neither the second sentence of Article 25(2) of the OECD Model Tax Convention is contained nor any of the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.

268. Several peers reported that the provisions of their tax treaty with Italy meet the requirement of element D.3. Twelve peers, however, noted that, under their treaty with Italy the required provision is absent. All these peers indicated that they envisage amending their treaty with Italy via the Multilateral Instrument so as to be in line with element D.3.

Recent developments

Bilateral modifications

269. Italy signed new treaties with four treaty partners, one of which concerns the replacement of an existing treaty currently in force. All new treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for the one treaty that is currently in force and will be replaced by the new treaty. None of these treaties have already entered into force. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

270. Italy signed the Multilateral Instrument and is currently is in the process of ratification of this instrument, which is foreseen in 2019.

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

272. In regard of the 71 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Italy listed 54 treaties as covered tax agreements under the Multilateral Instrument and for all of them did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii).¹ Of the relevant 54 treaty partners, ten are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Italy under that instrument and three made a reservation on the basis of Article 16(5)(a). All remaining treaty partners made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify 40 of the 71 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.²

Other developments

273. With respect to those treaties that do not contain the second sentence of Article 25(2), this follows from Italy's reservation, which was until the update in 2017 included in paragraph 98 of the Commentary to Article 25 of the OECD Model Tax Convention, which stipulates that:

... Italy ... reserve their positions on the second sentence of paragraph 2. These countries consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by their domestic laws.

274. With the 2017 update of the OECD Model Tax Convention in 2017, Italy has withdrawn its reservation.

275. Further to the above, as mentioned in the Introduction, for those treaties that are not in line with the requirements under the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Italy has put a plan in place for the bilateral renegotiations of these treaties. With respect to 31 remaining treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Italy reported that it is currently in negotiations with four of the 31 treaty partners *inter alia* to include this second sentence. Furthermore, Italy reported that it will amend its notifications under the Multilateral Instrument for two treaty partners, following which these treaties will be modified by that instrument to include the second sentence. In addition, Italy reported that it has been notified by one treaty partner that it will update its notifications under the Multilateral Instrument, following which the treaty will also be in line with the requirements under element D.3.

Peer input

276. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Italy. Seven of these eight peers concern a treaty partner to the treaties identified above that do not contain Article 25(2), second sentence, of the OECD Model Tax Convention and which all will be modified by the Multilateral Instrument. One of these peers mentioned that there have not been contacts or actions in relation to its tax treaty with Italy with a view to bring it in line with the requirements under the Action 14 Minimum Standard. Three other peers confirmed that their treaty with Italy is not in line with most of the requirements under this standard, but that as regards element D.3 they will become so. The remaining peers did not provide input as regards this element.

Anticipated modifications

277. For the remaining 24 treaties that are not in line with element D.3 and will not be modified by the Multilateral Instrument and for which no bilateral negotiations are pending, they are reflected in the plan for renegotiations as follows:

- Two treaties are included in the list of treaty partners that are a signatory to the Multilateral Instrument and will be approached once that instrument has for Italy entered into force on the basis of a certain prioritisation.
- Eight treaties are included in the list of treaty partners that are not a signatory to the Multilateral Instrument, but are member of the BEPS Inclusive Framework and will be approached regardless of whether the instrument has for Italy entered into force.

- 13 treaties are included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached at a later stage.
- One treaty is included in the list of treaty partners that are neither a signatory to the Multilateral Instrument nor a member of the BEPS Inclusive Framework and that will be approached once all other negotiations have been finalised

278. In regard of this plan and for the treaties concerned, no specific actions have been taken.

279. Regardless, Italy reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>71 out of 104 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 71 treaties:</p> <ul style="list-style-type: none"> • 40 are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Two are expected to be modified by that instrument to include the required provision once Italy has updated its notifications under the instrument. • One is expected to be modified by that instrument to include the required provision once the treaty partner has updated its notifications under the instrument. • 28 will not be modified by the Multilateral Instrument to include the required provision. With respect to these 28 treaties: <ul style="list-style-type: none"> - For four negotiations are pending. - For 24 no actions have been taken, but they are included in the plan for renegotiations. 	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument, including the update of its notifications, to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 43 treaties that currently do not contain such equivalent or the alternative provisions and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>Furthermore, for 26 of the remaining 28 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, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with four treaty partners on the inclusion of the required provision or be willing to accept the inclusion of the alternative provisions. • without further delay request the inclusion of the required provision via bilateral negotiations, or be willing to accept the inclusion of the alternative provisions, in 24 treaties in accordance with its plan for renegotiations. <p>Specifically with respect to the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina and Montenegro, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Notes

1. These 54 treaties include the treaty with former Czechoslovakia that Italy continues to apply to the Czech Republic and the Slovak Republic. Italy also listed the treaty with former Yugoslavia as a covered tax agreement, but only as regards Bosnia and Herzegovina and Serbia. As Bosnia and Herzegovina is not a signatory to the Multilateral Instrument, it is not further taken into account in the counting. For Serbia, the Multilateral Instrument will modify the treaty with former Yugoslavia to include the second sentence of Article 25(2). This is reflected in Annex A to this report, but not further taken into account in the counting.
2. Ibid.

Reference

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four out of 104 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. Three of the four treaties are expected to be modified by the Multilateral Instrument to contain the required provision. With respect to the remaining treaty, no actions have been taken, but Italy has included it in its plan for renegotiations.	Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention in three of the four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining treaty that will not be modified by the Multilateral Instrument to include the required provision, Italy should without further delay request the inclusion of that provision via bilateral negotiations in line with its plan for renegotiations.
[A.2]	Bilateral APAs can only be applied up to the year of the submission of the APA request (if not already in the scope of such request), but roll-back of bilateral APAs are not provided for in appropriate cases.	Italy should without further delay follow its stated intention to allow and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1] ↓	16 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. None of these 16 treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. With respect to these 16 treaties: <ul style="list-style-type: none"> • For one negotiations are pending. • For 15 no actions have been taken apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect and they are included in the plan for renegotiations. 	For those treaties that will not be modified by the Multilateral Instrument to include Article 25(1), first sentence of the OECD Model Tax Convention, Italy should: <ul style="list-style-type: none"> • continue discussions or negotiations with one treaty partner on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in the remaining 15 treaties in accordance with its plan for renegotiations This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	<p>21 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 21 treaties:</p> <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • 12 treaties will not be modified to include Article 25(1), second sentence, of the OECD Model Tax Convention. With respect to these 12 treaties no actions have been taken, but they are included in the plan for renegotiations. 	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those nine treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include such equivalent, Italy should without further delay request the inclusion of the required provision in accordance with its plan for renegotiations.</p>
<p>↓</p> <p>[B.1]</p> <p>↓</p>	<p>48 out of 104 tax treaties do not 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 or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 48 treaties:</p> <ul style="list-style-type: none"> • 29 are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, but not as regards the first sentence of that article. • 19 will not be modified to include the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention. <p>With respect to the first 29 treaties:</p> <ul style="list-style-type: none"> - For three negotiations are pending. - For 26 no actions have been taken, apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect, but they are included in the plan for renegotiations. <p>With respect to the other 19 treaties, no actions have been taken, apart from the modification of the domestic law which once in force will cause that the protocol provision will no longer have a practical effect, but they are included in the plan for renegotiations.</p>	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention in those 29 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>Furthermore, for those 29 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with three treaty partners on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in 25 of the remaining 26 treaties in accordance with its plan for renegotiations <p>This concerns for all these 29 treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. <p>With respect to the other 19 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Italy should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations. This concerns a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
↓ [B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Italy should follow up its stated intention to introduce domestic legislative changes with a view to ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	Access to MAP is not granted for MAP requests submitted only under the EU Arbitration Convention, for cases where the tax authority and the taxpayer entered into an audit settlement for the case under review.	Italy should continue to grant access to MAP in all eligible cases under bilateral tax treaties, even if there was an audit settlement between the tax authority and the taxpayer. In addition, Italy should without further delay follow its stated intention and amend its domestic law to be able to grant access to MAP also for cases submitted under the EU Arbitration Convention, even if the tax authority and the taxpayer entered into an audit settlement in the case under review.
[B.6]	-	-
[B.7]	56 out of 104 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 56 treaties: <ul style="list-style-type: none"> • 34 are expected to be modified by that instrument to include the required provision. • One is expected to be modified by that instrument to include the required provision once Italy has updated its notifications under the instrument. • 21 will not be modified by that instrument. With respect to these 21 treaties: <ul style="list-style-type: none"> - For three negotiations are pending. - For 18 no actions have been taken, but they are included in the plan for renegotiations. 	Italy should as quickly as possible complete the ratification process for the Multilateral Instrument, including the update of its notifications, to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in 35 of the 56 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. Furthermore, for 19 of the remaining 21 treaties, Italy should: <ul style="list-style-type: none"> • continue discussions or negotiations with three treaty partners on the inclusion of the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in 16 treaties in accordance with its plan for renegotiations. Specifically with respect to the treaties with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina and Montenegro, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision.
[B.8]	Contact details of Italy's competent authority in the MAP guidance are not up-to-date.	Italy should without further delay follow up its intention to update its guidance and prioritise the inclusion of the new contact information of Italy's competent authority.
[B.9]	-	-

	Areas for improvement	Recommendations
[B.10]	MAP guidance includes information stating that in cases submitted only under the EU Arbitration Convention access to MAP will not be granted if the tax authority and the taxpayer entered into an audit settlement in the case under review.	In line with the recommendation under element B.5 to grant access to MAP in cases submitted only under the EU Arbitration Convention where the tax authority and the taxpayer entered into an audit settlement in case under review, Italy should without further delay update its MAP guidance to no longer state that access to the MAP is restricted in such situations.
Part C: Resolution of MAP cases		
[C.1]	One out of 104 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument. For this treaty no actions have been taken, but it is included in the plan for renegotiations.	Italy should request via bilateral negotiations the inclusion of the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention in the one tax treaty that does not contain such provision, such in accordance with its plan for renegotiations.
[C.2]	-	-
[C.3]	<p>The number of MAP cases closed remains considerably low and also the average completion time of MAP cases has in 2017 increased as compared to 2016 and is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average timeframe has increased to 31.35 months, but also for other cases the average is above 24 months. This therefore indicates that the competent authority is not adequately resourced. For these cases, the main issues identified by peers were delays in communication, specifically the issuing of position papers and responses to position papers in advance of face-to-face meetings.</p> <p>Furthermore, as the MAP caseload has increased significantly since 1 January 2016, in particular attribution/allocation cases, which have more than doubled, this indicates that the competent authority may not be adequately resourced to cope with this increase. Although additional staff has been assigned, this has not yet resulted in a substantial higher amount of MAP cases resolved. The increase in the MAP inventory indicates that even more resources may be needed to cope with this increase.</p>	<p>While in Italy the competent authority function has been reorganized in 2017, resulting in a specific MAP unit within the Revenue Agency with additional staffing, and although this has led to an increase in communications and the number of face-to-face meetings with its MAP partners, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases. In that regard, Italy should assign more staff to its competent authority to handle these cases and to be able to cope with the significant increase in the number of attribution/allocation and other MAP cases, such to be able to resolve MAP cases in a timely, efficient and effective manner.</p> <p>Furthermore, the assigning of additional staff should also enable Italy's competent authority to improve working procedures and avoid delays in communications with other competent authorities, as well as to issue position papers and responses to position papers in a more timely manner and in advance of face-to-face meetings.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>71 out of 104 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 71 treaties:</p> <ul style="list-style-type: none"> • 40 are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Two are expected to be modified by that instrument to include the required provision once Italy has updated its notifications under the instrument. • One is expected to be modified by that instrument to include the required provision once the treaty partner has updated its notifications under the instrument. • 28 will not be modified by the Multilateral Instrument to include the required provision. With respect to these 28 treaties: <ul style="list-style-type: none"> - For four negotiations are pending. - For 24 no actions have been taken, but they are included in the plan for renegotiations. 	<p>Italy should as quickly as possible complete the ratification process for the Multilateral Instrument, including the update of its notifications, to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 43 treaties that currently do not contain such equivalent or the alternative provisions and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>Furthermore, for 26 of the remaining 28 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, Italy should:</p> <ul style="list-style-type: none"> • continue discussions or negotiations with four treaty partners on the inclusion of the required provision or be willing to accept the inclusion of the alternative provisions • without further delay request the inclusion of the required provision via bilateral negotiations, or be willing to accept the inclusion of the alternative provisions, in 24 treaties in accordance with its plan for renegotiations. <p>Specifically with respect to the treaty with the former USSR that Italy continues to apply to Kyrgyzstan and Tajikistan, and the treaty with former Yugoslavia that Italy continues to apply to Bosnia and Herzegovina and Montenegro, Italy should, once it enters into negotiations with the jurisdictions for which it applies that treaty, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Italy

Treaty partner	Column 1	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") B.1	Article 9(2) of the OECD MTC B.3	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	Article 25(2) of the OECD MTC D.3	Article 25(3) of the OECD MTC A.1	Arbitration 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) If no, please state reasons	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases? Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to 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? Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Inclusion Art. 25(2) first sentence? (Note 3) Y = yes N = no	Inclusion Art. 25(3) first sentence? (Note 5) Y = yes N = no	Inclusion Art. 25(3) second sentence? (Note 6) Y = yes N = no	Inclusion Art. 25(3) of the OECD MTC A.1	Arbitration C.6	
Albania	Y	E = yes, either CAs O = yes, only one CA N = No	if ii, specify period 2-years	i ii	i	Y	Y	N	Y	N	N/A
Algeria	Y	N	2-years	i	i	Y	Y	N	Y	N	N/A
Argentina	Y	N	2-years	**	i	Y	Y	N*	N*	N*	N/A
Armenia	Y	O	N/A	*	i	Y	Y	Y	Y	Y	iii
Australia	Y	N	2-years	**	i	Y	Y	N*	N*	N*	N/A

Treaty partner	DTC in force?	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) of the OECD MTC (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)	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.3	B.4	B.7	B.8	B.9	B.10	B.11	B.12	B.13	B.14	B.15	B.16	B.17	B.18	B.19	B.20	B.21	B.22
Austria	Y	N	N/A	i**	i	Y	N/A	i	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Azerbaijan	Y	O	N/A	i	i	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Bangladesh	Y	N	2-years	i	i	ii	2-years	i	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	N/A
Barbados	Y	O	N/A	i*	i*	Y	N/A	i*	Y	Y	N*	Y	Y	Y	Y	Y	Y	N	N	N/A
Belarus	Y	N	2-years	i	i	ii	2-years	i	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	N/A
Belgium	Y	N	2-years	i**	i**	ii*	2-years	i**	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Bosnia and Herzegovina	Y	N	2-years	i	i	ii	2-years	i	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	N/A
Brazil	Y	O	N/A	i	i	i	N/A	i	Y	Y	N	Y	Y	Y	N	Y	Y	N	N	N/A
Bulgaria	Y	N	2-years	i**	i**	ii*	2-years	i**	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Canada	Y	O	2-years	i	i	ii*	2-years	i	Y	Y	ii	Y	Y	Y	Y	Y	Y	Y	Y	iii
Chile	Y	O	N/A	i	i	Y	N/A	i	Y	Y	N	Y	Y	Y	N	Y	Y	Y	Y	i
China (People's Republic of)	N	O	N/A	i	i	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Colombia	N	O	N/A	i	i	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	i
Congo	Y	O	2-years	i	i	ii	2-years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Côte d'Ivoire	Y	N	2-years	i**	i**	ii*	2-years	i**	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Croatia	Y	O	2-years	i	i	ii*	2-years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Cuba	N	O	N/A	i	i	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Cyprus ^a	Y	N	2-years	i**	i**	ii*	2-years	i**	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Czech Republic	Y	N	2-years	i	i	ii*	2-years	i	Y	Y	N*	Y	Y	Y	N*	Y	Y	N	N	N/A
Denmark	Y	N	2-years	i	i	ii*	2-years	i	Y	Y	Y	Y	Y	Y	N*	Y	Y	N	N	N/A
Ecuador	Y	N	2-years	i	i	ii	2-years	i	Y	Y	N	Y	Y	Y	Y	Y	Y	N	N	N/A

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

Treaty partner	DTC in force?	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) of the OECD MTC	Anti-abuse	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	Article 25(3) of the OECD MTC
Kenya	N	N	ii	2-years	i	i	i	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)	Y	Y	Y	Y	Y	Y	N	N/A
Korea	Y	N	ii*	2-years	i**	i**	i		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
Kuwait	Y	N	ii	2-years	i	i	i		Y	N	Y	N	Y	Y	N	N	N	N	N	N/A
Kyrgyzstan	Y	N	ii	2-years	i	i	i		Y	N	Y	N	Y	Y	N	N	N	N	N	N/A
Latvia	Y	N	Y	N/A	i	i	i		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
Lebanon	Y	O	ii	2-years	i	i	i		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Libya	N	O	Y	N/A	i	i	i		Y	N	Y	Y	Y	Y	Y	N	N	N	N	N/A
Lithuania	Y	N	Y	N/A	i*	i*	i*		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
Luxembourg	Y	N	ii*	2-years	i**	i**	i**		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
North Macedonia	Y	N	ii	2-years	i	i	i		Y	N	Y	Y	Y	Y	Y	N	N	N	N	N/A
Malaysia	Y	N	i	N/A	i**	i**	i**		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
Malta	Y	N	Y	N/A	i**	i**	i**		Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N/A
Mauritius	Y	N	ii*	2-years	i*	i*	i*		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
Mexico	Y	N	ii*	2-years	i**	i**	i**		Y	N	Y	N	Y	Y	N*	N	N	N	N	N/A
Moldova	Y	O	ii	2-years	i	i	i		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Mongolia	N	O	ii	2-years	i	i	i		Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
Montenegro	Y	N	ii	2-years	i	i	i		Y	N	Y	N	Y	Y	N	N	N	N	N	N/A
Morocco	Y	O	i	N/A	i	i	i		Y	N*	Y	Y	Y	Y	Y	N	N	N	N	N/A
Mozambique	Y	N	ii	2-years	i	i	i		Y	N	Y	Y	Y	Y	Y	N	N	N	N	N/A
Netherlands	Y	N	ii*	2-years	i**	i**	i**		Y	N*	Y	N*	Y	Y	N*	N	N	N	N	N/A
New Zealand	Y	N	ii*	2-years	i**	i**	i**		Y	Y	Y	Y	Y	Y	Y	N*	N*	N*	N*	N/A
Norway	Y	N	ii	2-years	i	i	i		Y	Y	Y	Y	Y	Y	Y	N	N	N	N	N/A

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		Article 25(3) of the OECD MTC		Arbitration							
	B.1	B.3	B.4	C.1	C.3	C.6	C.7	C.8	C.9	C.10	C.11	C.12	C.13	C.14	C.15	C.16	C.17	C.18	C.19	C.20	C.21	C.22
Oman	Y	N	N	ii	2-years	i	i	i	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N	N	N/A
Pakistan	Y	N	N	Y	N/A	i**	i	i	Y	N*	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
Panama	Y	O	N	Y	N/A	i	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Philippines	Y	N	N	ii	2-years	i	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Poland	Y	N	N	ii*	2-years	i**	i	i	Y	N*	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
Portugal	Y	N	N	ii*	2-years	i**	i	i	Y	N*	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
Qatar	Y	O	O	ii*	2-years	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Romania	Y	O	O	Y	N/A	i	i	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Russia	Y	N	N	ii*	2-years	i	i	i	Y	N*	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
San Marino	Y	O	O	ii*	2-years	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	ii
Saudi Arabia	Y	O	O	ii*	2-years	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Senegal	Y	N	N	ii*	2-years	i	i	i	Y	N	Y	Y	Y	Y	N	Y	Y	Y	Y	N*	N	N/A
Serbia	Y	N	N	ii*	2-years	i**	i	i	Y	N*	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
Singapore	Y	N	N	Y	N/A	i**	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N	N	ii*	2-years	i**	i	i	Y	Y	Y	Y	Y	Y	N*	Y	Y	Y	Y	N*	N	N/A
Slovenia	Y	O	O	ii*	2-years	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	iii
South Africa	Y	N	N	Y	N/A	i*	i	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Spain	Y	N	N	iv*	2-years	i**	i	i	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sri Lanka	Y	N	N	ii	2-years	i	i	i	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N/A
Sweden	Y	N	N	Y	N/A	i**	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Switzerland	Y	N	N	Y	N/A	i**	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Syrian Arab Republic	Y	O	O	ii	2-years	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

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

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

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

Legend

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

Annex B

MAP statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period			
		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	161	2	0	0	0	2	0	0	0	0	0	0	0	0	157	14.75
Others	147	0	1	0	5	3	1	0	0	0	0	0	0	8	129	39.44
Total	308	2	1	0	5	5	1	0	0	0	0	0	0	8	286	34.95

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 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 13	Column 14	
Attribution/Allocation	157	0	0	0	3	0	21	0	0	0	0	0	0	2	131	56.29
Others	129	0	0	1	2	0	1	0	0	0	0	0	1	0	124	30.00
Total	286	0	0	1	5	0	22	0	0	0	0	0	1	2	255	52.05

Annex C

MAP statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period	
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	140	2	0	1	0	0	1	1	0	0	0	0	135	4.96
Others	0	20	0	1	1	0	0	0	0	0	0	0	0	18	2.28
Total	0	160	2	1	2	0	0	1	1	0	0	0	0	153	4.20

Notes: The numbers of attribution/allocation cases in the inventory on 1 January 2016 and 31 December 2016 in the table above are different from the number of such cases in Italy's published 2016 MAP statistics. This results from the recognition of one case notified to Italy's competent authority after 31 December 2016.

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	135	148	3	0	6	4	0	7	0	0	0	2	261	10.90
Others	18	58	0	3	1	1	0	2	0	0	2	0	67	7.05
Total	153	206	3	3	7	5	0	9	0	0	2	2	328	9.78

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Italy's Revenue Agency	Agenzia delle Entrate
MAP Guidance	Circular letter No. 21/E of 5 June 2012; issued by Italy's Revenue Agency
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 were 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
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Italy.

Consult this publication on line at <https://doi.org/10.1787/08a4369e-en>.

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