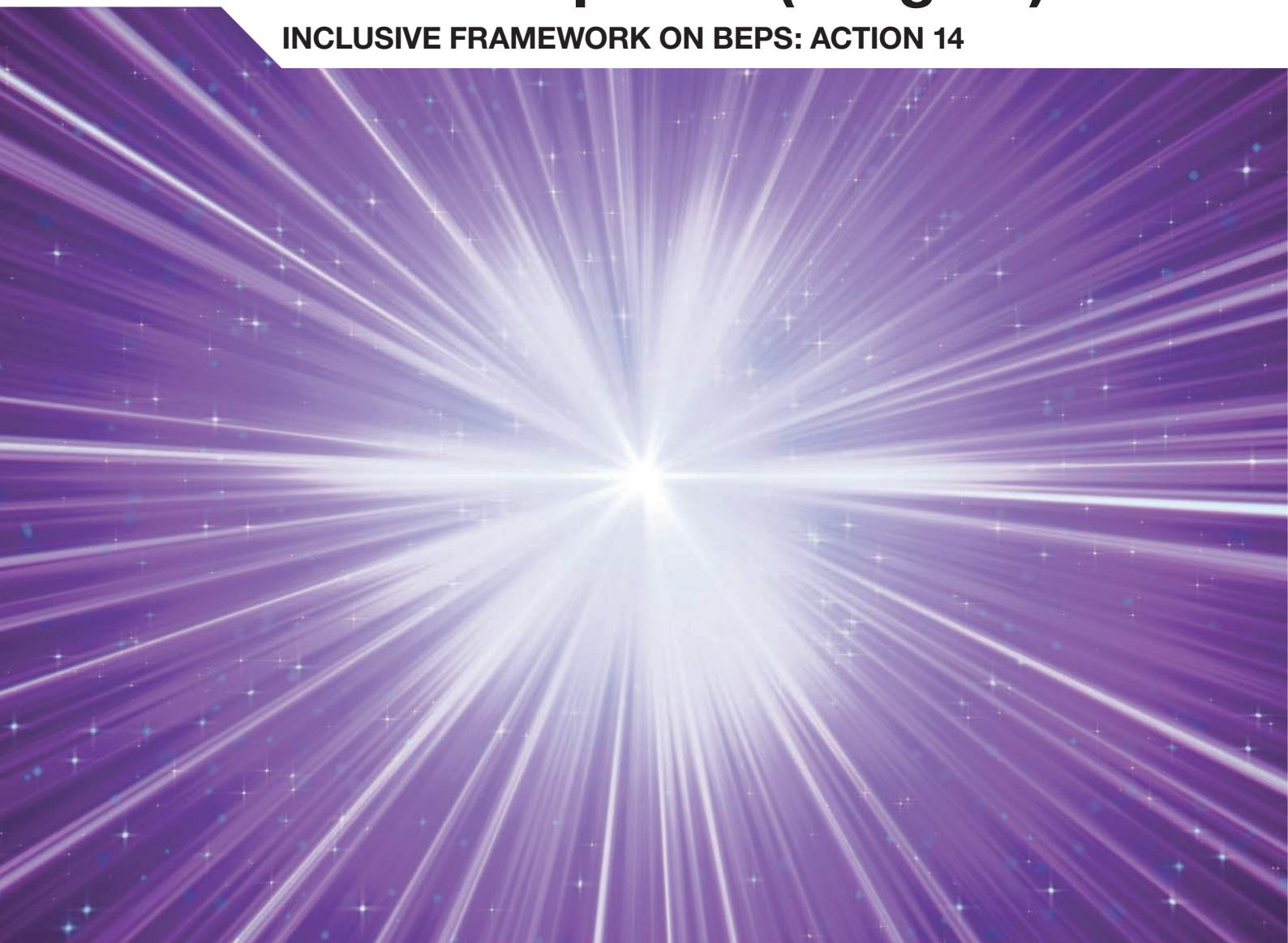


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective - MAP Peer Review Report, Czech Republic (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 90 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 135 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 12 May 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

The Czech Republic has an extensive tax treaty network with 90 tax treaties and has signed and ratified the EU Arbitration Convention. The Czech Republic has some experience with resolving MAP cases. It has a small MAP inventory, with a modest number of new cases submitted each year and 53 cases pending on 31 December 2018. Of these cases, almost 50% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall the Czech Republic met slightly more than half of the elements of the Action 14 Minimum Standard. In stage 2 of the process it has been monitored whether the Czech Republic worked to address the deficiencies identified. The Czech Republic took no further actions in this respect neither is in the process of taking such actions.

All of the Czech Republic's tax treaties contain a provision relating to MAP. Those treaties mostly 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:

- Approximately one-fourth of its tax treaties does not contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- One-ninth of its tax treaties does not contain a provision requiring competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty (which is required under Article 25(3), second sentence).

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Czech Republic signed, without any reservations on the MAP article, the Multilateral Instrument. Through this instrument a substantial number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. For the remaining tax treaties that will not be modified, upon entry into force of this Multilateral Instrument, the Czech Republic has not put a plan in place for the bilateral renegotiation of those treaties. While for one treaty negotiations on the replacement thereof have been finalised and for another treaty such negotiations are pending, no further specific actions were taken to bring, where necessary, the relevant treaties in line with the requirements of this standard. Taking this into account, negotiations need to be initiated without further delay for some treaties to ensure compliance with this part of the Action 14 Minimum Standard.

The Czech Republic does not meet the Action 14 Minimum Standard concerning the prevention of disputes. Although it has in place a bilateral APA programme, it does not allow rollbacks of bilateral APAs.

Furthermore, the Czech Republic 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 the Czech Republic'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. The Czech Republic also has not introduced a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not being justified. In addition, the Czech Republic has not issued MAP guidance, which needs to be introduced and published in a clear and comprehensive manner without delay. Also since there is no MAP guidance and no rules on what information taxpayers need to include in their MAP request, nor are there rules and specific timelines in place for requesting additional information by the competent authority and for the taxpayer to provide such information, there is a risk that access to MAP is limited even when taxpayers have complied with the information and documentation requirements in the Czech Republic, or that such access is only granted with substantial delays.

Concerning the average time needed to close MAP cases, the MAP statistics for the Czech Republic for the years 2016-18 are as follows:

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/allocation cases	21	22	17	26	33.95
Other cases	14	23	10	27	27.54
Total	35	45	27	53	31.58

* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, the Czech Republic used as a start date the taxpayer's request or the letter from the other competent authority (including minimum required information) and as the end date the agreement with the other competent authority on closing the case or the receipt of request for withdrawal by the taxpayer.

The number of cases the Czech Republic closed in the period 2016-18 is approximately 60% of the number of cases started in that period. During this period, MAP cases were on average not closed 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 needed was 31.58 months. This regards both attribution/allocation cases and other MAP cases, albeit that for attribution/allocation cases the average time to close these cases is somewhat longer (33.95 months). Furthermore, the Czech Republic's MAP inventory as per 31 December 2018 increased by 50% as compared to its inventory as per 1 January 2016. While the Czech Republic added new staff members to its competent authority, more resources are necessary to cope with this increase and to ensure that MAP cases are resolved in a timely, effective and efficient manner. This could either be achieved by having the current available staff working full-time on handling MAP cases or to assign additional staff to the competent authority.

Furthermore, the Czech Republic meets all of the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. The Czech Republic'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, the Czech Republic almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although the Czech Republic does not monitor the implementation of such agreements and while it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not include Article 25(2), second sentence, of the OECD Model Tax Convention, no problems have surfaced regarding the implementation throughout the peer review process.

Introduction

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

The Czech Republic has entered into 90 tax treaties on income (and/or capital), 88 of which are in force.¹ These 90 tax treaties apply to 91 jurisdictions.² All of these tax treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these 90 treaties contain an arbitration clause as a final stage to the mutual agreement procedure.

The Czech Republic 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.³ Furthermore, the Czech Republic adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which had to be implemented in its domestic legislation as per 1 July 2019.⁴ The Czech Republic is currently in the process of implementing this directive.

In the Czech Republic, the competent authority function to conduct MAP is performed by the Ministry of Finance for other MAP cases and delegated to the General Financial Directorate within the Czech Republic's tax administration for attribution/allocation cases. The competent authority of the Czech Republic currently employs 12 persons, thereof five working within the Ministry of Finance and seven within the General Financial Directorate. All of them also deal with other tasks apart from handling MAP cases.

The Czech Republic has not yet issued guidance on the governance and administration of the mutual agreement procedure, but is in the process of preparing such guidance.

Developments in the Czech Republic since 1 August 2017

In the stage 1 peer review report of the Czech Republic it is reflected that it signed new treaties with Ghana (2017), Kosovo (2013) and Turkmenistan (2016), but that ratification procedures for these treaties were not yet finalised. Since then the treaty with Turkmenistan has entered into force. The Czech Republic has completed the ratification process as to the treaty with Ghana and is awaiting ratification by the treaty partner. In the stage 1 peer review report it was also reflected that the Czech Republic negotiated a new treaty with the Republic of Korea, which concerns the replacement of an existing tax treaty. This treaty was signed in 2018 and entered into force on 20 December 2019.

Furthermore, on 7 June 2017 the Czech Republic signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, the Czech Republic also submitted its list of notifications and reservations to that instrument.⁵ In relation to

the Action 14 Minimum Standard, the Czech Republic has not made any reservation to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). The Czech Republic reported that the instrument was approved by the Senate in December 2018 and by the Chamber of Deputies of the Czech Parliament in November 2019, following which the ratification process could be finished shortly thereafter.

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, the Czech Republic reported that it finalised negotiations with Sri Lanka on the replacement of the existing treaty in force, which will then be in line with this standard and further that negotiations with Brazil on such amendment are ongoing. The Czech Republic also indicated that it does not anticipate taking any further action at this stage through bilateral negotiations. In this respect, the Czech Republic noted that it is continuously making an effort to negotiate new treaties or renegotiate treaties in force, for which it will put all the effort in order to agree with a counterpart on provisions that will be in line with the requirements under the Action 14 Minimum Standard. While it further noted that negotiations are envisaged with Germany as well as that updates are foreseen to the reservations and notifications under the Multilateral Instrument, no specific plan was put in place and also no further actions were implemented to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.

Other developments

The Czech Republic reported that there are no further developments, other than that it has started to review all pending MAP cases with those jurisdictions where the applicable tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention. For these cases, the Czech Republic envisages to inform the treaty partners about the domestic statute of limitation that apply and that may prevent a MAP agreement from being implemented.

Basis for the peer review process

Outline of the peer review process

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, the Czech Republic'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 22 February 2018. This report identifies the strengths and shortcomings of the Czech Republic 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.⁶ 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 the Czech Republic. In this update report, the Czech Republic 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 below, in assessing whether the Czech Republic is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty currently in force. Furthermore, the treaty analysis also takes into account the tax treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom. The same applies for the treaty with former Serbia and Montenegro, which the Czech Republic continues to apply to both Serbia and Montenegro. As this latter treaty concerns a tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one tax treaty for this purpose. Reference is made to Annex A for the overview of the Czech Republic'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 was for the Czech Republic launched on 7 July 2017, with the sending of questionnaires to the Czech Republic and its peers. The FTA MAP Forum has approved the stage 1 peer review report of the Czech Republic in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, the Czech Republic submitted its update report, which initiated stage 2 of the process.

The period for evaluating the Czech Republic's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 August 2017 and depicts all developments as from that date until 28 February 2019.

In total 12 peers provided input during stage 1: Belgium, Denmark, Germany, Italy, Japan, Liechtenstein, Russia, Spain, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent approximately 67% of post-2015 MAP cases in the Czech Republic's inventory on 31 December 2016. During stage 2, apart from Russia, these peers also provided input. In addition, also Austria, Egypt, Korea, Portugal, the Slovak Republic and Slovenia provided input. For this stage, the peers that provided input represent approximately 78% of post-2015 MAP cases in the Czech Republic's inventory that started in 2016, 2017 or 2018.⁷ Broadly, all peers indicated having a good relationship with the Czech Republic's competent authority with regard to MAP, most of them emphasising their limited numbers of MAP cases with the Czech Republic. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of the Czech Republic fully reflects the experiences these peers have had with the Czech Republic since 1 August 2017 and/or that there was no addition to previous input given. Seven peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by the Czech Republic and co-operation throughout the process

During stage 1, the Czech Republic provided informative answers in its questionnaire, which was submitted on time. The Czech Republic was responsive in the course of the

drafting of the peer review report and provided further clarity where necessary. In addition, the Czech Republic provided the following information:

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

Concerning stage 2 of the process, the Czech Republic submitted its update report on time and the information included therein was informative. The Czech Republic was co-operative during stage 2 and the finalisation of the peer review process.

Finally, the Czech Republic is a member of the FTA MAP Forum and has shown good co-operation during the peer review process. The Czech Republic, however, did not provide any peer input on the other assessed jurisdictions so far.

Overview of MAP caseload in the Czech Republic

The analysis of the Czech Republic’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of the Czech Republic. The analysis of the Czech Republic’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”).

According to the statistics provided by the Czech Republic, its MAP caseload was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	21	22	17	26
Other cases	14	23	10	27
Total	35	45	27	53

General outline of the peer review report

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

- Preventing disputes
- Availability and access to MAP
- Resolution of MAP cases
- 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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹⁰ Apart from analysing the Czech Republic’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by the Czech Republic, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by the Czech Republic to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each

element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The 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 the Czech Republic 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 the 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 the Czech Republic 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 the Czech Republic has entered into are available at: www.mfcr.cz/cs/legislativa/dvoji-zdaneni/prehled-platnych-smluv. The treaties that are signed but have not yet entered into force are with Ghana (2017) and Kosovo (2013), albeit that for the treaty with Ghana both treaty partners have ratified the treaty. Reference is made to Annex A for the overview of the Czech Republic's tax treaties with respect to the mutual agreement procedure.
2. The Czech Republic continues to apply the treaty with former Serbia and Montenegro to both Serbia and Montenegro. The Czech Republic also continues to apply the treaty with former Czechoslovakia to Brazil, Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-czech-republic.pdf.
6. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-czech-republic-stage-1-9789264290334-en.htm.
7. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
8. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
9. The MAP statistics of the Czech Republic are included in Annex B and C of this report.
10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REVI).

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of the Czech Republic’s tax treaties

2. Out of the Czech Republic’s 90 tax treaties, 89 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ In the remaining treaty the term “interpretation” is not included, following which it is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.²

3. The Czech Republic 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 tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

4. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element A.1, including one peer for which the treaty with the Czech Republic actually does not include such equivalent. This peer, however, reported that its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument.

Recent developments

Bilateral modifications

5. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains 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 currently in force. The treaty entered into force in December 2019 and its effect has been reflected in the analysis above where it has relevance.

Multilateral Instrument

6. The Czech Republic signed the Multilateral Instrument and is currently in the process of ratification of this instrument.

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 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 of the fact that this tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

8. In regard of the one tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the Czech Republic listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with the Czech Republic as a covered tax agreement under this instrument and also made a notification on the basis of Article 16(6)(d)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaty concerned, modify this tax treaty to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

9. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Czech Republic. One of these peers concerns the treaty partner to the treaty identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument. This peer confirmed the expected modification.

Anticipated modifications

10. Since after the entry into force of the Multilateral Instrument for the treaty concerned, all of the Czech Republic's tax treaties will contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, there are no further actions necessary. Regardless, the Czech Republic reported it intends to include Article 25(3), first sentence, of the OECD Model Tax Convention in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent.	The Czech Republic 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 the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

[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.

11. 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.³ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

The Czech Republic’s APA programme

12. The Czech Republic reported that it has implemented an APA programme, under which it is authorised to enter into bilateral APAs. The basis of the APA programme is to be found in the MAP provision of the applicable tax treaty, as is clarified in Guidance D-32 (*Notification of General Financial Directorate in respect of Binding Ruling on transfer pricing in related parties’ transactions and the method of determining the non-resident tax base from activities performed through a permanent establishment*), which replaced and extended Guidance D-333 (*Communication by the Ministry of Finance in respect of Binding Ruling on transfer price in related parties’ transactions*).⁴ Guidance D-333 explicitly makes reference to the recommendations with regard to bilateral APAs, as described in the OECD Transfer Pricing Guidelines as well as in the recommendations of the EU Joint Transfer Pricing Forum.

Roll-back of bilateral APAs

13. The Czech Republic reported that taxpayers can apply for a bilateral APA applicable for related party transactions effective as of the current or future taxable periods. In more detail, the Czech Republic clarified that it applies bilateral APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement.

14. Further to the above, while the Czech Republic reported that it does not provide for roll-back of bilateral APAs in a formal sense, in practice, if the taxpayer applied the same transfer pricing method in previous fiscal years, a taxpayer may suppose that the principles of a concluded APA, despite the lack of valid binding roll-back for these previous years, will be applied during a tax audit. If the terms are equal, the tax audit will come to the same conclusions as set forth in the APA.

15. In addition, the Czech Republic indicated that taxpayers are able to file amended tax returns based on the results of an APA for previous fiscal years respecting domestic time limits. This possibility, however, is not binding for the Czech tax administration, as they are not bound by the APA with respect to previous fiscal years, even if the relevant facts and circumstances are the same. In this respect, the Czech Republic clarified that due to the law principle of legitimate expectations, the tax administration is, for example, not allowed to take a different position in an audit if the facts and circumstances are the same as set forth in the APA. This system, however, is not considered as allowing for a roll-back of a bilateral APA.

Recent developments

16. The Czech Republic reported that it issued new guidance on APAs (Guidance D-32) in November 2018, which concerns an extension of the existing Guidance D-333 on APAs particularly relating to the allocation of profits to permanent establishments. There are no further developments as to the allowance of roll-back of bilateral APAs.

Practical application of roll-back of bilateral APAs

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

17. The Czech Republic reported that in the period 1 January 2016-31 July 2017, three bilateral APA requests have been received by its competent authority. None of these requests include any request for roll-back and they are still under examination.

18. All peers that provided input generally indicated not having received any request for a roll-back of a bilateral APA involving the Czech Republic.

Period 1 August 2017-28 February 2019 (stage 2)

19. The Czech Republic reported that since 1 August 2017 it has not received requests for a bilateral APA or the roll-back of such APA.

20. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. This concerns a confirmation that they had also during stage 2 no experiences with the Czech Republic as to the roll-back of bilateral APAs. However, one peer mentioned it received in 2017 one request for a bilateral APA regarding the Czech Republic, include a request for a roll-back. For this case, the peer specified that it has been accepted, but that negotiations have so far not yet started. The Czech Republic responded that the request for a bilateral APA was received in the subsequent year without a request for a roll-back. The Czech Republic clarified that the difference caused is that the request was received by its competent authority within the time limits for meeting the conditions for obtaining an APA, while the request was received by the peer at a later stage. The peer therefore considered the request to include a request for a roll-back. Presently, the bilateral APA is about to be signed, but not with a roll-back.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	The Czech Republic should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. These 89 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
2. This treaty concerns a treaty of former Czechoslovakia that the Czech Republic continues to apply to Italy.
3. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
4. Ref. no.: 39/86 838/2009-393, available at: www.financnisprava.cz/assets/en/attachments/t-taxes/Guidance-D-333.pdf.

References

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

Part B

Availability and access to MAP

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

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

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

Current situation of the Czech Republic's tax treaties

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

23. Out of the Czech Republic's 90 tax treaties, one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 75 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) 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.¹

24. The remaining 14 tax treaties can be categorised as follows:²

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident	12
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 authorities of the contracting state of which they are resident and whereby the taxpayer cannot submit such request irrespective of the remedies provided by the domestic laws of the contracting states	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	1

25. The 12 tax treaties mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons nine of those 12 tax treaties are considered to be in line with this part of element B.1:

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

26. For the remaining three of the 12 tax treaties, the non-discrimination is almost identical to Article 24(1) of the OECD Model Tax Convention and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by a limited scope of the non-discrimination article, following which these three tax treaties are considered not to be in line with this part of element B.1.

27. The tax treaty mentioned in the second row of the table does not allow a submission of a MAP request in the state of which the taxpayer is a national, where the case comes under the non-discrimination article, and does not provide that the taxpayer can submit a MAP request irrespective of the remedies provided by the domestic laws of the contracting states. Therefore, this tax treaty is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

28. With respect to the tax treaty mentioned in the last row of the table, the provision incorporated in the protocol to this tax treaty reads:

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

29. 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 contained 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 final report on Action 14 (OECD). This tax treaty is 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

30. Out of the Czech Republic’s 90 tax treaties, 74 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.³

31. The remaining 16 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	11
Filing period more than three years for a MAP request (four years)	2
Filing period less than three years for a MAP request (two years) *	2
Different starting point and potential filing period less than three years for a MAP request (see below)	1

* These two treaties include the treaty of former Czechoslovakia that the Czech Republic continues to apply to Italy.

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

Peer input

33. Almost all peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element B.1. One peer reported that its treaty with the Czech Republic does 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, while it is in line with element B.1 according to the above analysis. Three other peers reported that their tax treaty with the Czech Republic does not include the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, and that it will be modified via the Multilateral Instrument. For the other two treaties identified that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, the relevant peers did not provide input.

Practical application

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

34. As noted in paragraphs 27-29 above, in all but two of the Czech Republic's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, the Czech reported that access to MAP is available regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. Such access is also available in cases where domestic remedies already have been completed, but as the competent authority is bound to the decision of a domestic court, it is in that situation not possible to deviate from that decision in MAP. Since the Czech Republic has not yet published any MAP guidance, there, however, is no further specification that access to MAP is available in such a situation.

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

35. For those tax treaties that do not provide a filing period for a MAP request, the Czech Republic indicated that domestic time limits will apply. This period is three years from the due date for filing the tax return or, in withholding cases, the due date for filing the annual form regarding the obligations of the payer that is related to income that is being subject to withholding taxes. This policy bears the risk that taxpayers under these treaties cannot file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

36. The Czech Republic reported that in the period 1 January 2016-28 February 2019 it received one MAP request under a tax treaty that does not contain a filing period for the submission of MAP requests and that such request was filed after expiration of the domestic time limits. Access to MAP was therefore denied.

Recent developments

Bilateral modifications

37. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read after the adoption of the Action 14 final report (OECD, 2017). The newly signed treaty that replaces the treaty currently in force contained the equivalent of 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. It has entered into force in December 2019.

38. The effect of this newly signed treaty has been reflected in the analysis above where it has relevance. This concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from zero to one.

Multilateral Instrument

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

39. The Czech Republic recently signed the Multilateral Instrument and is currently preparing the ratification of this instrument.

40. 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 both notified the depositary, pursuant to Article 16(6)(a), that this tax 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 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 its covered tax agreements.

41. With the signing of the Multilateral Instrument, the Czech Republic opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties, a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under the Czech Republic's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which they are a resident, the Czech Republic opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, the Czech Republic listed 86 of its 91 treaties under the Multilateral Instrument and made, pursuant to Article 16(6)(a) of the Multilateral Instrument, for all of them a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.⁴ None of these 86 treaties concern the two treaties mentioned in paragraph 23 above that already allows the submission of a MAP request to either competent authority.

42. In total, 24 of the relevant 86 treaty partners are not a signatory to the Multilateral Instrument, whereas 23 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1).⁵ The remaining 39 treaty partners listed their treaty with the Czech Republic as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for these treaties, modify these 39 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as it read after the adoption of the Action 14 final report.⁶

43. In view of the above and in relation to the five treaties identified in paragraphs –26-29 that are considered not to 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, three are part of the 39 treaties that will be modified via the Multilateral Instrument.⁷

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

44. 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

45. In regard of the two tax treaties identified in paragraph 31 above that contain a filing period for MAP requests of less than three years, the Czech Republic listed both tax treaties 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).⁸ The relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with the Czech Republic as a covered tax agreement under that instrument and also made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify these two treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.⁹

46. With regard to the tax treaty identified in paragraph 31 that includes a provision that is considered not to contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as it refers to domestic laws of the contracting states for the filing period of for MAP requests, the Czech Republic listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii) nor did it make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner listed its treaty with the Czech Republic as a covered tax agreement under the Multilateral Instrument, but also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty refers to the domestic law of the contracting states to determine the filing period of a MAP request and given the fact that in the case of the Czech Republic such filing period could be less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

47. The Czech Republic reported that it finalised negotiations with one treaty partner on the replacement of the current treaty in force. Currently, this treaty is considered not to contain 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. Upon the entry into force of the newly negotiated treaty, the treaty will include such equivalent or the equivalent of Article 25(1) as amended by the Action 14 final report.

Peer input

48. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Czech Republic. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain 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 reports. This peer confirmed that the treaty with the Czech Republic will be modified by the Multilateral Instrument to include the second sentence of Article 25(1). As to the first sentence of Article 25(1), this peer reported it has contacted the Czech Republic to address the specific issue of a protocol provision requiring taxpayers to initiate domestic remedies when submitting a MAP request, such by entering into a memorandum of understanding.

49. The Czech Republic responded to this input and mentioned that in its view an amendment of the treaty is necessary for such purpose, as from a legal viewpoint a memorandum of understanding would not suffice. The Czech Republic further reported that in a response it has proposed to the peer two options: either entering into a new protocol or to renegotiate the treaty as a whole. So far, the peer has not responded to this proposal.

Anticipated modifications

50. As mentioned in the Introduction, for those tax treaties that do not meet one or more elements of the Action 14 Minimum Standard and that will not be modified via the Multilateral Instrument and for which no negotiations are envisaged, scheduled, pending or completed, the Czech Republic – apart from foreseen updates to the reservations and notifications under the Multilateral Instrument – did not put a specific plan in place and no further actions were taken to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.

51. Regardless, the Czech Republic reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention as amended by the Action 14 final report in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report. Of these four treaties:</p> <ul style="list-style-type: none"> • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • One will not be modified by the Multilateral Instrument to include such equivalent. For this treaty negotiations have been finalised on the replacement thereof. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, in three of the four treaties that currently do not contain such equivalent and that will be modified the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Sri Lanka. For this treaty negotiations on the replacement thereof have been completed. In that regard, the Czech Republic should sign the newly negotiated treaty as soon as possible to ensure the inclusion of 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 by the Action 14 final report b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Two out of 90 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 either 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 two treaties: <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). 	The Czech Republic 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 two treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaty concerned.
	One out of 90 tax treaties does 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken or planned to be taken.	This treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Italy. In that regard, the Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty upon entry into force for the treaty concerned. As for the first sentence, the Czech Republic should, once negotiations are entered into with Italy, request the inclusion of 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 by the Action 14 final report b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	Where tax treaties do not contain 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. In practice such risk has materialised and access to MAP has been denied in this circumstance.	The Czech Republic should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, access to MAP is no longer denied 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).

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

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

- 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

53. As discussed under element B.1, out of the Czech Republic's 90 tax treaties, currently one contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 39 of the remaining 89 treaties will, upon entry into force for the treaties concerned, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. For the remaining 51 treaties that currently do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, the Czech Republic reported that it has not introduced a formal bilateral consultation or notification process, which allows the other competent authority concerned to provide its views on the case when the Czech Republic's competent authority considers the objection raised in the MAP request not to be justified. Despite such a process not being in place, the Czech Republic reported that in practice it would notify its treaty partner in case its competent authority considers the objection raised in the MAP request not to be justified.

Recent developments

55. There are no recent developments with respect to element B.2. The Czech Republic has not followed up the recommendation to introduce a documented notification process to be applied when its competent authority considers the objection raised by the taxpayer in its MAP request as not being justified. In this respect, the Czech Republic reported it continues the same approach as described above, for which it considered no practical problems arose.

Practical application

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

56. From the 2016 MAP statistics provided by the Czech Republic it follows that there were no cases with the outcome "objection not justified". In this respect, the Czech Republic reported that in the period 1 January 2016-31 July 2017 its competent authority has not denied access to MAP cases in any cases and for none of the MAP cases the objection raised by the taxpayer was considered not to be justified.

57. All peers that provided input indicated that they were not aware of or that they had not been consulted/notified of a case where the competent authority of the Czech Republic considered the objection raised in a MAP request as not justified in the period 1 January 2016-31 July 2017, which can be explained by the fact that no such cases occurred in the Czech Republic in that period.

Period 1 August 2017-28 February 2019 (stage 2)

58. The Czech Republic reported that in the period 1 August 2017-28 February 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2017 and 2018 MAP statistics submitted by the Czech Republic show that two of its MAP cases were closed with the outcome “objection not justified”. The decision hereto, however, was made by the competent authority of the relevant treaty partners. For one of these cases, the Czech Republic reported it has been notified of the decision that the objection was not justified and the reasons underlying this decision.

59. All the peers that provided input during stage 1 also indicated that since 1 August 2017 they are not being aware of any cases for which the Czech’s competent authority considered the objection raised in a MAP request as not justified.

Anticipated modifications

60. The Czech Republic did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	89 of 91 tax treaties do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer’s objection raised in the MAP request is considered not to be justified.	The Czech Republic should without further delay introduce a documented bilateral consultation or notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, the Czech Republic should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

61. 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

62. Out of the Czech Republic’s 90 tax treaties, 44 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner.¹⁰ Furthermore, 40 treaties do not contain a provision equivalent to or based

on Article 9(2) of the OECD Model Tax Convention.¹¹ The remaining six treaties contain a provision based on Article 9(2) of the OECD Model Tax Convention. However, the granting of a corresponding adjustment is under these treaties only optional, as the word “shall” is replaced by “may”.¹²

63. With regard to its tax treaty policy, the Czech Republic made a reservation in the Commentary to Article 9 of the OECD Model Tax Convention, which reads as follows:

The Czech Republic reserves the right not to insert paragraph 2 in its conventions but is prepared in the course of negotiations to accept this paragraph and at the same time to add a third paragraph limiting the potential corresponding adjustment to bona fide cases.

64. Further to the above, the Czech Republic is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

65. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in the Czech Republic’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, the Czech Republic indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties. Since the Czech Republic has not yet published any MAP guidance, there, however, is no further specification that access to MAP is available in such a situation.

Recent developments

Bilateral modifications

66. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, 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 currently in force. The treaty entered into force in December 2019 and its effect has been reflected in the analysis above where it has relevance.

Multilateral Instrument

67. The Czech Republic signed the Multilateral Instrument and is currently preparing the ratification of this instrument.

68. 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 treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty reserved, pursuant to Article 17(3), 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, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of 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).

69. The Czech Republic has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) to all of its covered tax agreements on the basis that in the absence of a provision referred to in Article 17(2) in its covered tax agreement: i) it shall make the appropriate adjustment referred to in Article 17(1); or ii) its competent authority shall endeavour to resolve the case under the provisions of a covered tax agreement relating to mutual agreement procedure. Therefore, at this stage the Multilateral Instrument will, upon entry into force, not modify any of the Czech Republic's tax treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Application of legal and administrative framework in practice

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

70. The Czech Republic reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

71. All peers that provided input indicated not being aware of a denial of access to MAP in the Czech Republic in the period 1 January 2016-31 July 2017 on the grounds that the case concerned was a transfer pricing case.

Period 1 August 2017-28 February 2019 (stage 2)

72. The Czech reported that since 1 August 2017 it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

73. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by the Czech Republic.

Anticipated modifications

74. The Czech Republic reported that it is not in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties. In this respect, the Czech Republic, as discussed above, reserved the right in the Commentary to Article 9 of the OECD Model Tax Convention not to include Article 9(2) in its tax treaties. Apart from this, the Czech Republic did not indicate that it anticipates any modifications in relation to element B.3.

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.

75. 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

76. None of the Czech Republic's 90 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of the Czech Republic do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

77. The Czech Republic reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. Since the Czech Republic has not yet published any MAP guidance, there, however, is no further specification that access to MAP is available in such a situation.

Recent developments

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

Practical application

79. The Czech Republic reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the application of a treaty anti-abuse provision has 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.

80. All peers that provided input indicated not being aware of a denial of cases to MAP by the Czech Republic in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 July 2017.

Period 1 August 2017-28 February 2019 (stage 2)

81. The Czech Republic reported that since 1 August 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 in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

82. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by the Czech Republic.

Anticipated modifications

83. The Czech Republic did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

85. The Czech Republic reported that under its domestic legislation it is not possible that taxpayers and the tax administration enter into a settlement agreement during the course or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

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

Recent developments

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

*Practical application**Period 1 January 2016-31 July 2017 (stage 1)*

88. Due to fact that audit settlements are not available in the Czech Republic, it reported that in the period 1 January 2016-31 July 2017 its competent authority had not received any cases nor denied access 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.

89. All peers that provided input have indicated not being aware of denial of access to MAP by the Czech Republic where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities in the period 1 January 2016-31 July 2017.

Period 1 August 2017-28 February 2019 (stage 2)

90. The Czech Republic reported that since 1 August 2017 it has also not received any cases nor denied access for cases to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration.

91. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by the Czech Republic.

Anticipated modifications

92. The Czech Republic did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

93. 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

94. As will be discussed under element B.8, the Czech Republic has not yet issued any MAP guidance.

95. The Czech Republic reported that in the absence of MAP guidance, it has no publicly available guidance outlining specific information requirements for a MAP request, but that it assesses the necessary information based on common sense. It stated that in the vast majority of cases taxpayers present all necessary documents and information with their MAP request. The Czech Republic further reported that if its competent authority concludes that necessary information is missing based on the applicable tax treaty, it will ask the taxpayer once for additional information. There, however, are no time limits set for requesting and providing information. In case the taxpayer does not provide the requested information within a reasonable timeframe, the Czech competent authority will deny access and will close the case. However, the taxpayer would be allowed to file a new MAP request regarding the same issue within the applicable time limits.

96. The absence of any rules in this respect bears the risk that access to MAP will not be granted, or only with substantial delays, as also that a MAP case cannot be further dealt with or completed in due time.

Recent developments

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

Practical application***Period 1 January 2016-31 July 2017 (stage 1)***

98. The Czech Republic reported that in the period 1 January 2016-31 July 2017 it has not limited access to MAP in any case on the grounds that insufficient information was provided. It further reported that access to MAP will not be denied if taxpayers did not initially include all the required information and documentation in the MAP request. The Czech Republic pointed out that it is in the taxpayer's own interest to provide as much information as possible.

99. All peers that provided input indicated not being aware of a limitation of access to MAP by the Czech Republic in the period 1 January 2016-31 July 2017 in situations where taxpayers complied with information and documentation requirements.

Period 1 August 2017-28 February 2019 (stage 2)

100. The Czech Republic reported that since 1 August 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.

101. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer specified that it is not aware of any cases for which access to MAP was not granted by the Czech Republic.

Anticipated modifications

102. The Czech Republic indicated that the required information and documents for a MAP request will be clearly outlined in the future published MAP guidance (see further element B.8).

Conclusion

	Areas for improvement	Recommendations
[B.6]	No rules are in place regarding what information taxpayers need to include in a MAP request nor are any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information. This bears the risk that access to MAP may not be granted or that access is only granted with substantial delays.	The Czech Republic should put in place clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request and also provide for timelines within which taxpayers should comply with requests for additional information to ensure that eligible cases are dealt with in MAP and that no unnecessary delays occur. Such information could be included in the forthcoming published MAP guidance (see element B.8).

[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.

103. 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 Czech Republic's tax treaties

104. Out of the Czech Republic's 90 tax treaties, 80 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.¹³ All of the ten remaining tax treaties do not contain a provision that is based on or is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.¹⁴

105. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element B.7, including one peer for which the treaty with the Czech Republic actually does not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention. This peer however reported that its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument. For the other nine treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, the relevant peers did not provide any input, except for one peer that specified that it has not contacted the Czech Republic nor is it in discussion with the Czech Republic to amend their treaty with a view to incorporate the required provision.

Recent developments

Bilateral modifications

106. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which was also the case for the one treaty currently in force. The treaty entered into force in December 2019 and its effect has been reflected in the analysis above where it has relevance.

Multilateral Instrument

107. The Czech Republic recently signed the Multilateral Instrument and is currently preparing the ratification of this instrument.

108. 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 both notified, pursuant to Article 16(6)(d)(ii), the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

109. In regard of the ten tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, the Czech Republic listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant ten treaty partners, one is not a signatory to the Multilateral Instrument.¹⁵ All remaining nine treaty partners listed their tax treaty with the Czech Republic under the instrument and also made a notification pursuant to Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify nine of the ten treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.¹⁶

Other developments

110. For the remaining tax treaty that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the Czech Republic reported that it initiated negotiations with one treaty partner on the replacement/amendment of the current treaty in force.

Peer input

111. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Czech Republic. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument. This peer confirmed this expected modification.

Anticipated modifications

112. The Czech Republic reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these ten treaties:</p> <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the required provision. For this treaty negotiations on the amendment/replacement of the treaty has been initiated. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in nine of the ten 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>The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Brazil. Specifically with respect to this treaty, the Czech Republic should continue negotiations with the jurisdiction for which it applies that treaty, it includes 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.

113. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

The Czech Republic’s MAP guidance

114. The Czech Republic has not published rules, guidelines and procedures on access to and use of MAP, including the specific information and documentation that should be submitted in a MAP request.

115. Since the Czech Republic has not yet published MAP guidance, 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, is not publically available. Furthermore, due to the absence of any MAP guidance, information on various subjects is not specifically addressed. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

116. The Czech Republic reported that it determines the necessary information based on common sense, as discussed under element B.6. Given that the Czech Republic has currently no published MAP guidance, the required information and documentation to submit a MAP request is not publicly available, either.

117. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance. This agreed guidance, even though not formally applied by the Czech Republic, is shown below for information purposes:

- 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.

Recent developments

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

Anticipated modifications

119. The Czech Republic indicated that MAP guidance is currently being drafted and will be published once the draft MAP guidance has been aligned to the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union into Czech law. The Czech Republic further indicated that it anticipates that the future MAP guidance will address all items agreed within the FTA MAP Forum.

Conclusion

	Areas for improvement	Recommendations
	There is no published MAP guidance.	<p>The Czech Republic should without further delay introduce and publish guidance on access to and use of the MAP, and in particular include the contact information of its competent authority.</p> <p>Although not required by the Action 14 Minimum Standard, the Czech Republic could consider publishing information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).
[B.8]	No MAP guidance is available on what information taxpayers should include in their MAP request.	<p>The Czech Republic should include in its to be published MAP guidance information on the manner and form in which taxpayers should submit their MAP request. In particular, the following items could be included:</p> <ul style="list-style-type: none"> • 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.

[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.

120. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme¹⁷.

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

121. As discussed under element B.8, the Czech Republic currently does not have published MAP guidance.

MAP profile

122. The MAP profile of the Czech Republic is published on the website of the OECD.¹⁸ This MAP profile is complete and includes additional information where necessary, albeit that the responses are limited due to the absence of MAP guidance.

Anticipated modifications

123. The Czech Republic indicated that MAP guidance is currently being drafted and will be published once the draft MAP guidance has been aligned to the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union into Czech law.

Conclusion

	Areas for improvement	Recommendations
[B.9]	MAP guidance is not publically available.	After preparing its MAP guidance the Czech Republic should make it publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

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

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

124. 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 an audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

125. As previously discussed under element B.5, in the Czech Republic it is under domestic law not possible that the tax authorities and taxpayers enter into audit settlements during the course of or after an audit has been completed. In that regard, there is no need to address in its forthcoming MAP guidance that such settlements do not preclude access to MAP.

126. All peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in the Czech Republic's MAP guidance.

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

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

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

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

129. As the Czech Republic does not have an administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners.

Recent developments

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

Anticipated modifications

131. The Czech Republic did not indicate that it anticipates any modifications relating to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 75 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Nigeria, Spain, Sweden, Tunisia and the United Kingdom.
2. These 14 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Italy, Japan, the Netherlands and Sri Lanka.
3. These 74 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
4. These 86 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
5. These 24 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil and Sri Lanka. While Serbia is a signatory to the Multilateral Instrument, Montenegro is not. However, as Serbia reserved, pursuant to Article 16(5)(b), the right not to modify its treaty with the Czech Republic regarding Article 25(1), first sentence, it is for purposes of simplification counted as one of the 24 treaties.

The 23 jurisdictions making the reservation include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Germany, Italy and Spain.
6. These 38 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Greece, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
7. Ibid for the treaties with Japan and the Netherlands.
8. These two treaties include the treaty of former Czechoslovakia that the Czech Republic continues to apply to Italy.
9. Ibid.
10. These 44 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Germany, Nigeria, Spain and Tunisia.
11. These 40 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Greece, Italy, Japan, the Netherlands, Sri Lanka, Sweden and the United Kingdom.
12. In the stage 1 peer review report, reference was made to four treaties. Following the peer review process of other assessed jurisdiction, two other treaties were identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). While a new treaty was signed that includes such equivalent, the number of 45 treaties containing such equivalent remains the same due to this correction.
13. These 80 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Germany, Greece, Japan, the Netherlands, Nigeria, Spain, Sri Lanka and Sweden.

14. These ten treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Italy, Tunisia and the United Kingdom.
15. These ten treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Italy, Tunisia and the United Kingdom.
16. Ibid for the treaties with Italy, Tunisia and the United Kingdom.
17. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm
18. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm

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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.

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

Current situation of the Czech Republic’s tax treaties

133. Out of the Czech Republic’s 90 tax treaties, 88 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹

134. For the remaining two tax treaties the following analysis is made:

- One tax treaty contains a provision that is based on Article 25(2), first sentence, but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “... provided that the competent authority of the other Contracting State is notified of the case within four and a half year from the due date or the date of filing of the return in that other State, whichever is later”. As this additional wording may limit the situations where a MAP case is actually discussed, the provision is therefore considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.
- One tax treaty contains a provision that is based on Article 25(2), first sentence, but this provision only applies if the claim can be upheld. Additionally, the competent

authorities are not obliged to “endeavour” to resolve the case if the objection appears to it to be justified and if they cannot resolve the case unilaterally, but the provision reads that the competent authorities “may come to an agreement with the competent authority of the other Contracting State”. As this language potentially limits the application of Article 25(2), first sentence, the provision is considered to be not equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.²

135. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element C.1. For the two treaties identified above that are considered not to contain the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Recent developments

Bilateral modifications

136. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains 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 currently in force. The treaty entered into force in December 2019 and its effect has been reflected in the analysis above where it has relevance.

Multilateral Instrument

137. The Czech Republic recently signed the Multilateral Instrument and is currently preparing the ratification of this instrument.

138. 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 tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

139. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the Czech Republic listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), for all a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining treaty partner listed its tax treaty with the Czech Republic as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaty concerned, modify one tax treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

140. For the remaining tax treaty that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, the Czech Republic reported that it finalised negotiations with one treaty partner on the replacement of the current treaty in force. Upon the entry into force of the newly negotiated treaty, the treaty will include such equivalent.

Peer input

141. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Czech Republic. None on this input relates to element C.1.

Anticipated modifications

142. The Czech Republic 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]	<p>Two out of 90 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include such equivalent. For this treaty no negotiations have been finalised on the replacement thereof. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in one of the two 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>The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Sri Lanka. For this treaty negotiations are envisaged. For this treaty negotiations on the replacement thereof have been completed. In that regard, the Czech Republic should sign the newly negotiated treaty as soon as possible to ensure the inclusion of a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.</p>

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

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

143. 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

144. Statistics regarding all tax treaty related disputes concerning the Czech Republic are published on the website of the OECD as of 2007.³ The Czech Republic also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.⁴

145. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. The Czech Republic provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Czech Republic 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 respectively⁵ and should be considered jointly for an understanding of the MAP caseload of the Czech Republic.

146. With respect to post-2015 cases, the Czech Republic reported that for the years 2016-18 it matched its statistics with all of its MAP partners.

147. Four peers provided input on the matching of MAP statistics with the Czech Republic. Two of these peers confirmed that they were able to match their statistics with the Czech Republic for the years 2016-18 or for any individual year, whereby one of them mentioned that such matching was successfully done for the year 2018 in the course of a meeting of the FTA MAP Forum. The other peer mentioned that their competent authorities on an informal basis exchanged views and understandings, for which it was possible to match the statistics in particular due to the low number of pending MAP cases. Of the two other peers, one mentioned that it did not match its statistics with the Czech Republic for the year 2016-17, but did so for the year 2018. The other peer noted that since there is only one MAP case pending with the Czech Republic there was not need to match statistics.

148. Based on the information provided by the Czech Republic’s MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

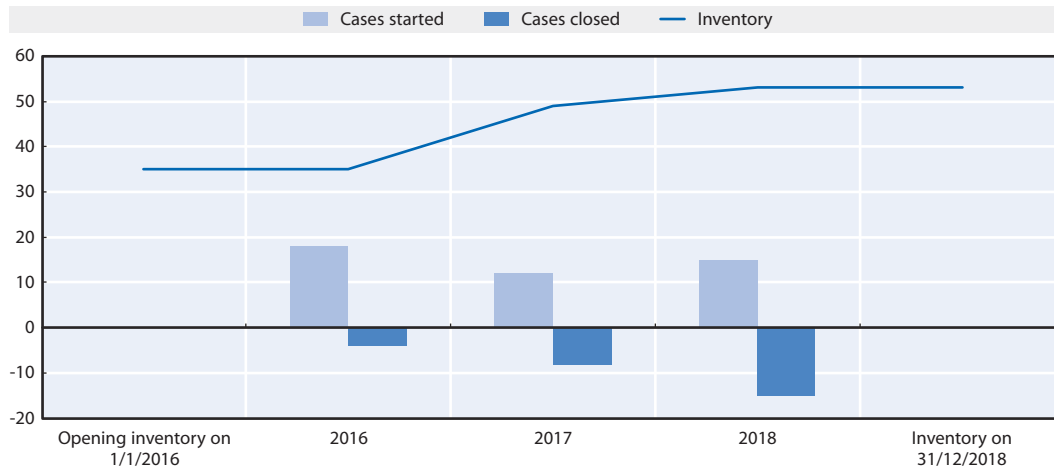
149. The Czech Republic reported that it monitors on a continuous basis (i) the number of cases in its MAP inventory, (ii) the number of new MAP requests and (iii) the time taken to resolve MAP cases.

Analysis of the Czech Republic’s MAP caseload

150. The analysis of the Czech Republic’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

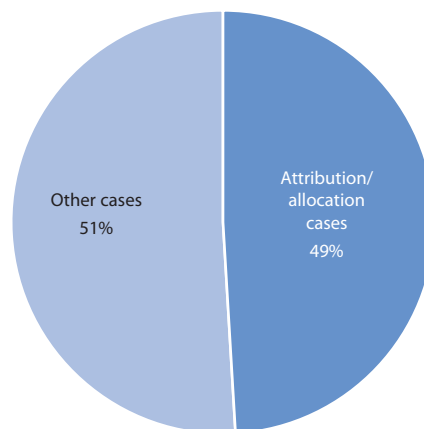
151. Figure C.1 shows the evolution of the Czech Republic’s MAP caseload over the Statistics Reporting Period.⁶

Figure C.1. Evolution of Czech Republic’s MAP caseload



152. At the beginning of the Statistics Reporting Period the Czech Republic had 35 pending MAP cases, of which 21 were attribution/allocation cases and 14 other MAP cases.⁷ At the end of the Statistics Reporting Period, the Czech Republic had 53 MAP cases in inventory, of which 26 were attribution/allocation cases and 27 other MAP cases. Consequently, the Czech Republic’s pending MAP cases have increased by 51% during the Statistics Reporting Period. This increase can be broken down into an increase of 24% for attribution/allocation cases and an increase by 93% for other cases. The breakdown of the end inventory can be shown as in Figure C.2.

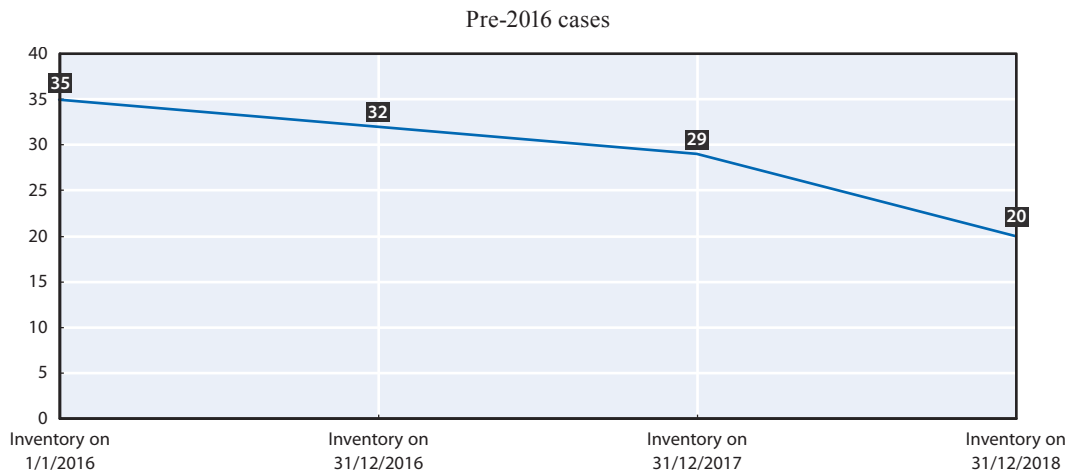
Figure C.2. End inventory on 31 December 2018 (53 cases)



Pre-2016 cases

153. Figure C.3 shows the evolution of the Czech Republic’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Czech Republic's MAP inventory



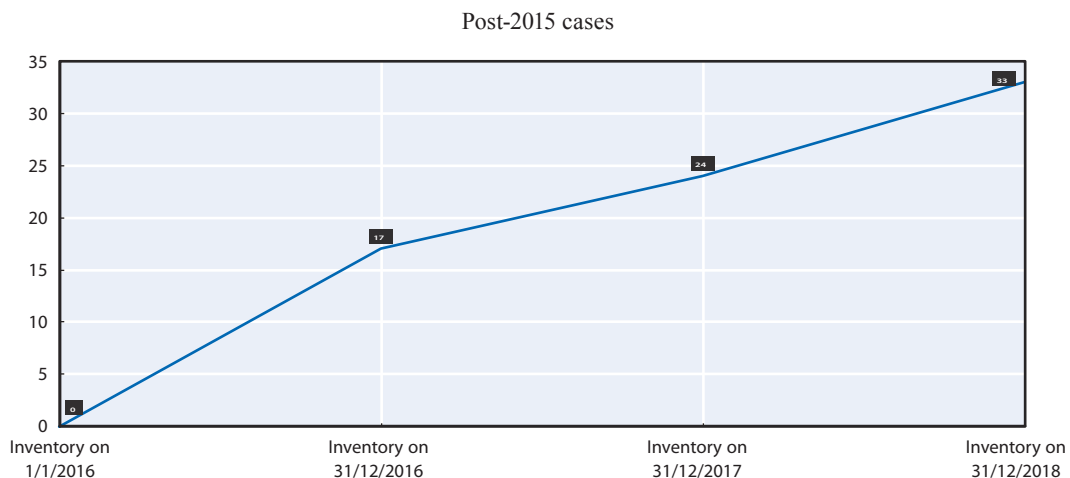
154. At the beginning of the Statistics Reporting Period, the Czech Republic's MAP inventory of pre-2016 MAP cases consisted of 35 cases, of which were 21 attribution/allocation cases and 14 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 20 cases, consisting of ten attribution/allocation cases and ten 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	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-10%	-16%	-38%	-52%
Other cases	-7%	No cases closed	-23%	-29%

Post-2015 cases

155. Figure C.4 shows the evolution of the Czech Republic's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Czech Republic's MAP inventory



156. In total, 45 MAP cases were started during the Statistics Reporting Period, 22 of which concerned attribution/allocation cases and 23 other cases. At the end of this period the total post-2015 cases inventory was 33 cases, consisting of 16 attribution/allocation cases and 17 other cases. Conclusively, the Czech Republic closed 12 post-2015 cases during the Statistics Reporting Period, six of them being attribution/allocation cases and six other cases. The total number of post-2015 cases closed as compared to the total number of post-2015 cases that started during the Statistics Reporting Period is shown in the table below.

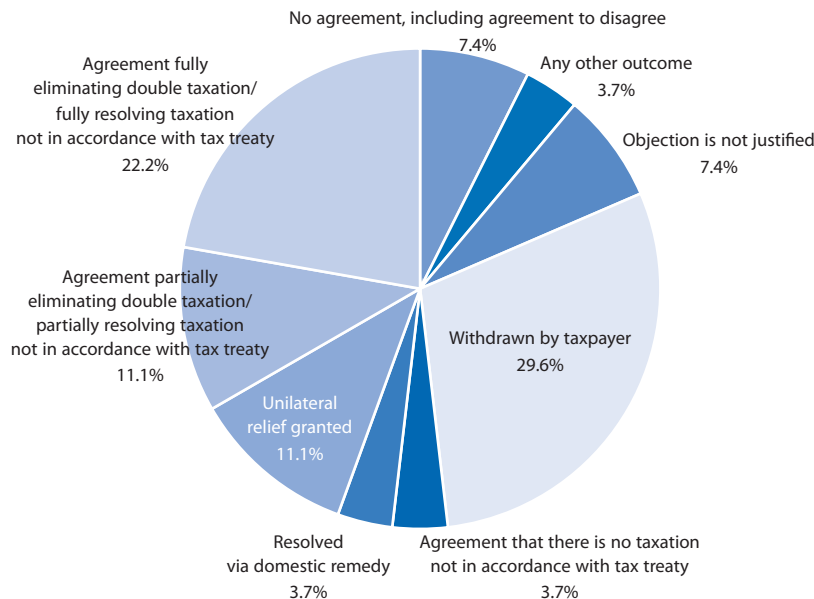
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	No cases closed	43%	43%	27%
Other cases	10%	40%	38%	26%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

157. During the Statistics Reporting Period the Czech Republic closed 27 MAP cases, for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during 2016, 2017 and 2018 (27 cases)



158. Figure C.5 shows that during the Statistics Reporting Period six out of the 27 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

159. In total, 17 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- withdrawn by taxpayers (35%)
- unilateral relief granted (18%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with the tax treaty (18%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (12%).

Reported outcomes for other cases

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

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (40%)
- withdrawn by taxpayers (20%).

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

161. The average time needed to close MAP cases during the Statistics Reporting Period was 31.58 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	17	33.95
Other cases	10	27.54
All cases	27	31.58

Pre-2016 cases

162. For pre-2016 cases, the Czech Republic reported that on average it needed 47.15 months to close 11 attribution/allocation cases and 57.60 months to close four other cases. This resulted in an average time needed of 49.94 months to close 15 pre-2016 cases. For the purpose of computing the average time needed to close pre-2016 cases, the Czech Republic used as:

- *Start date*: the taxpayer's request or the letter from the other competent authority (including the minimum required information)
- *End date*: the agreement with the other competent authority on closing the case or the receipt of request for withdrawal by the taxpayer.

Post-2015 cases

163. For post-2015 cases, the Czech Republic reported it needed 9.74 months to close six attribution/allocation cases and 7.50 months to close six other cases. This resulted in an average time needed of 8.62 months to close 12 post-2015 cases.

Peer input

164. On an overall level, all peers that provided input to the Czech Republic’s implementation of the Action 14 Minimum Standard reported having a good working relationship with the Czech Republic’s competent authority, which is further discussed under element C.3 below. Concerning the resolution of MAP cases, peers provided mixed input. Generally, the Czech Republic competent authority is considered solution-oriented. However, criticism was raised with regard to the occurrence of delayed responses.

Recent developments

165. In the stage 1 peer review report the Czech Republic was under element C.2 recommended to seek to resolve the remaining 94% of its post-2015 MAP cases that were pending on 31 December 2016 (16 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

166. With respect to this recommendation, the Czech Republic reported its competent authority puts a lot of efforts and resources into the handling of each MAP case, such with a view to come to a satisfactory solution in a timely manner. However, no further specifications were given how the recommendation was followed-up.

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

Anticipated modifications

168. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.2.

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.

169. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of the Czech Republic's competent authority

170. Under the treaties the Czech Republic entered into, the competent authority function is assigned to the Minister of Finance. While for other MAP cases, the ministry remains competent, for attribution/allocation cases (as well as APA cases), the competence was further delegated to the General Financial Directorate within the tax administration.

171. The Czech Republic's competent authority consists of 12 persons, who deal partly with handling MAP cases along with other tasks on the agenda of international taxation. Of these 12 persons, five employees are working at the Ministry of Finance and seven employees for the General Financial Directorate.

172. The Czech Republic reported that when a MAP request is received by its competent authority the executive officer will decide who will be the responsible case handler. This person studies all the relevant materials and asks the taxpayer for additional information, if necessary. If the case concerns a Czech-initiated adjustment, the case handler liaises with the local tax administration to receive the full background on the reasoning for the adjustment and all relevant underlying documents.

173. Further to the above, the Czech Republic further clarified that all the position papers prepared by the responsible case handler have to be approved by the Head of the division (Ministry of Finance – Division of International Taxation or General Financial Directorate – International Taxation Unit – Direct Taxes) and the Director of the department (Ministry of Finance – Income Tax Department or General Financial Directorate – Direct Taxes Department).

Monitoring mechanism

174. The Czech Republic reported that it is assessing on a continuous basis whether the resources allocated to the competent authority are adequate. In addition, the heads of division would inform their director in case of need of additional resources (staff, budget or training) as required. This assessment is made with regard to: (i) the number of MAP cases in inventory, (ii) the number of new MAP cases, (iii) the current time needed to resolve MAP cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks.

175. In view of the above, the Czech Republic reported that, its competent authority recently hired two more employees. However, as the employees within the competent authority are only partly dedicated to handling MAP cases, the reason for hiring them was only partly due to the work related to MAP.

Recent developments

176. As noted in paragraph 168 above, the Czech Republic has not introduced any specifically organisational changes at the level of its competent authority. In the stage 1 peer review report it was noted that with the hiring of two additional persons in 2017, it expected to anticipate a reduction in the MAP caseload of the Czech Republic. Further to this, the Czech Republic also reported it hired in February 2019 one additional person, which is specialised in attribution/allocation cases, although this person is not exclusively working on handling MAP cases. The Czech Republic added that the effect of this addition in terms of inventory reduction should be assessed in a longer period.

177. Further to the above, the stage 1 peer review report of the Czech Republic reflects suggestions for improvement made by its peers (reflected in paragraph 191 below), which

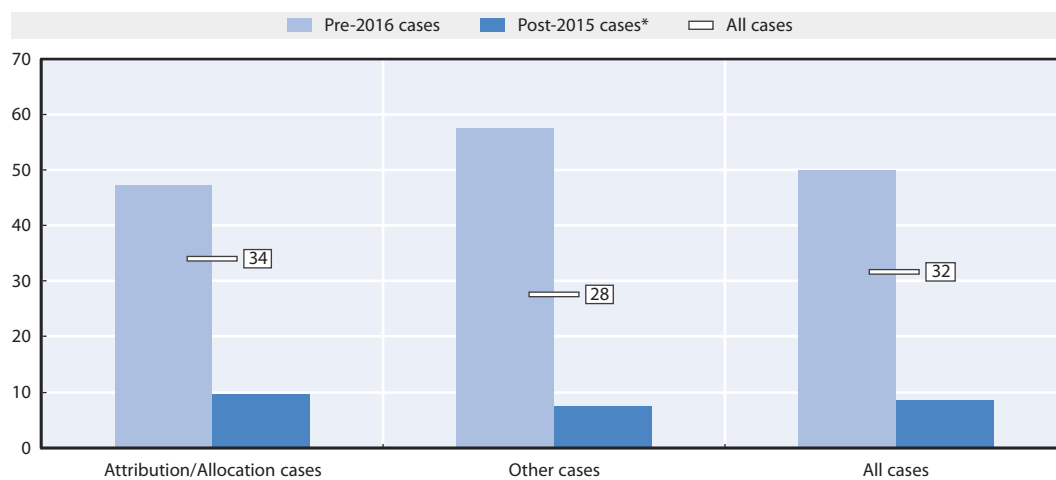
related to (i) holding face-to-face meetings for other MAP cases and (ii) establishing more frequent communications between the competent authorities. In this respect, the Czech Republic responded that it is always prepared to hold face-to-face meetings if being invited so by the treaty partner and where such meeting would have an added value to resolve MAP cases. As an example, the Czech Republic mentioned such a meeting was organised with one treaty partner at the end of 2017 concerning attribution/allocation cases. For other MAP cases no face-to-face meetings were organised nor did treaty partners request such meeting to be held. With respect to the second suggestion, the Czech Republic reported its competent authority is responding and communicating in a timely manner with all of its treaty partners. For these purposes, but also to have more swift communications, the competent authority is also making more frequent use of email correspondence.

Practical application

MAP statistics

178. As discussed under element C.2, the Czech Republic has not resolved its MAP cases during the Statistics Reporting Period within the pursued 24-month average. A discrepancy can, however, be noted between the average time taken to resolve other cases and attribution/allocation cases, albeit that for both type of cases the average is above the pursued 24-month average. This can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-17



* Note that post-2015 cases only concern cases opened and closed during 2016-18.

179. Based on these figures, it follows that on average it took the Czech Republic 31.58 months to close MAP cases. The average time needed to resolve attribution/allocation cases is 33.95 months, while the average time required to resolve other cases is 27.54 months.

180. The stage 1 peer review report of the Czech Republic analysed the 2016 statistics and showed an average of 22.38 months, which concerns an average of 35.00 months for attribution/allocation cases and 9.77 months for other cases. It was on that basis concluded that while the overall average was within the pursued average of 24 months, additional recourses may be needed in order to accelerate the resolution of attribution/allocations to be within the 24-month average.

181. For stage 2, the 2017 and 2018 MAP statistics are also taken into account. The average time to close MAP cases can for these years be split as follows:

	2017	2018
Attribution/Allocation cases	24.24	40.19
Other cases	4.06	41.29
All cases	19.20	40.63

182. The 2017 statistics of the Czech Republic show that the average completion time of MAP cases decreased from 22.38 months to 19.20 months, whereby generally both attribution/allocation cases and other MAP cases were within the pursued average of 24 months. However, the average for 2018 significantly increased for both type of cases, resulting in an average considerably above 24 months.

183. Furthermore – as analysed in element C.2 – the MAP inventory of the Czech Republic 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 01/01/2018	Increase in %
Attribution/allocation cases	21	22	17	26	24%
Other cases	14	23	10	27	93%
Total	35	45	27	53	51%

184. The figures in the above table show that the inventory for both type of MAP cases increased significantly and that the number of closed cases is around 60% of all cases started in the period 2016-18.

185. The Czech Republic indicated that it identified two main reasons why certain cases needed more than 24 months to be resolved, which are (i) lengthy communication with the other competent authority and (ii) the complexity of some cases.

Peer input

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

186. In total six of the 12 peers that provided input, provided details in relation to their contacts with the Czech competent authority and their experiences in handling and resolving MAP cases. The other six peers reported not having any MAP cases with the Czech Republic in the period 1 January 2016-31 July 2017 and for that reason did not provide specific input. The peers that provided input considered their MAP relationship with the Czech Republic of relative low importance given their insignificant MAP caseload with the Czech Republic as compared to their total MAP inventory.

187. Further to the above, of the six peers that provided input, most reported having good contacts with the Czech competent authority. One peer specified that it has a long and well-established relationship with the Czech competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent, via letters, e-mail, conference calls and face-to-face meetings. The ease of liaising has been echoed by other peers, thereby pointing out that there were no difficulties encountered. One of the peers pointed out that they hold at regular intervals face-to-face meetings with the Czech competent authority for attribution/allocation cases, but not for other MAP cases. This peer suggested also establishing face-to-face meetings for other MAP cases.

188. Some peers considered the Czech competent authority as being solution-oriented. Two peers however, reported a significant delay in the response by the Czech competent authority. Another peer experienced that the Czech competent authority lacks willingness to find an agreement when the initial positions of the competent authorities differ. One peer also experienced a delay in resolving an attribution/allocation case and assumes that the Czech Republic does not have adequate resources.

189. Lastly, two out of the 12 peers made suggestions for improvements. One of these peers suggested to also hold face-to-face meeting for other MAP cases. The other peer suggested to allocate more resources to the resolution of MAP cases and to establish more frequent communications between the two competent authorities.

Period 1 August 2017-28 February 2019 (stage 2)

190. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. Three peers provided specific input on their experiences with the Czech Republic concerning the resolution of MAP cases since that date.

191. One of these peers mentioned it had one pre-2016 attribution/allocation case pending with the Czech Republic, which had been resolved in 2018 via written communication. Overall, this peer valued the process, albeit that it took the case 51 months to be resolved. The second peer mentioned since the adoption of the stage 1 report of the Czech Republic, it had one other MAP case with the Czech Republic. For this case the peer noted that it was promptly notified of the case by the Czech competent authority alongside a position paper. In that regard, the peer considered that the co-operation so far has been good.

192. Lastly, the third peer mentioned it has currently five MAP cases pending with the Czech Republic. As to the resolution of these cases, it reported that it is in close contact with the Czech competent authority to endeavour to find a solution. For this it presented an example of the timeliness of responses by both sides, that lead to a resolution of the case within 24 months. In a response, the Czech Republic reported that in February 2019 two of the five pending cases were already closed. As to its experience with this peer, the Czech Republic noted that it agrees with the peer that there is a good and fast communication on these cases.

Anticipated modifications

193. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 31.58 months on average. The average completion time thereby has increased in 2017-18 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 are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average completion time is 33.95 months, but also for other cases the average is above 24 months. While the number of staff available for handling MAP cases may be adequate, the fact that they are not full-time work on handling MAP cases, may indicate that either more resources are needed or that more focus and efforts are put by this staff on handling and resolving MAP cases.</p> <p>Furthermore, the MAP caseload has increased with 50% since 1 January 2016, in particular other MAP cases, which almost have doubled. While on an annual basis more MAP cases are closed, this increase in the number of cases indicates that the competent authority may not be adequately resourced to cope with this increase. Although additional staff have been assigned to the competent authority function, this has not yet resulted in a substantial higher amount of MAP cases resolved, which might be due to these persons not working on a full-time basis handling MAP cases.</p>	<p>While the Czech Republic has recently added more resources to its competent authority function, resulting in more cases being closed, 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, the Czech Republic should devote additional resources 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. The devotion of additional resources could either be to have the current available staff work full-time on handling MAP cases or to assign additional staff to the competent authority function.</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.

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

Functioning of staff in charge of MAP

195. As discussed under element C.3, the Czech Republic reported that all positions are prepared within the competent authority as well as the decisions to enter into a MAP agreement. In that regard, the Czech Republic stated that there is neither a (formal) system in place requiring the competent authority to ask other government institutions (i.e. the audit department of tax administration) for approval of any MAP agreements nor is the process for resolving MAP cases influenced by policy considerations that the Czech Republic would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application***Period 1 January 2015-31 July 2017 (stage 1)***

197. All peers that provided input did not report any impediment by the Czech Republic to perform its MAP function absent from the approval or the direction of the tax administration personnel directly involved in the adjustments at issue or the Czech Republic being influenced by policy considerations that it would like to see reflected in future amendments to the treaty.

Period 1 August 2017-28 February 2019 (stage 2)

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

Anticipated modifications

199. The Czech Republic 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.

200. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by the Czech Republic

201. The Czech Republic reported that it does not use performance indicators to evaluate staff in charge of MAP cases. In particular, the Czech Republic indicated that it does not apply any performance indicators for the competent authority function and for the staff in charge of MAP processes that would be based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue. In addition, the Czech Republic reiterated that the staff in charge of MAP cases is also involved in other tasks

related to international taxation and that the resolution of MAP cases has no specific influence on the evaluation of staff members.

202. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators, even though not applied by the Czech Republic, are shown below for information purposes:

- 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).

Recent developments

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

Practical application

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

204. All peers that provided input indicated not being aware that the Czech Republic uses performance indicators based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Period 1 August 2017-28 February 2019 (stage 2)

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

Anticipated modifications

206. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

207. 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

208. The Czech Republic reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. However, the treaty policy of the Czech Republic is generally not to include a MAP arbitration clause in a tax treaty, which is specified in the Czech Republic’s MAP profile.

209. Nevertheless, the Czech Republic 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 had to be implemented in the Czech Republic’s domestic legislation as per 1 July 2019. The Czech Republic is currently in the process of implementing this directive.

Recent developments

210. There are no recent developments with respect to element C.6.

Practical application

211. Up to date, the Czech Republic’s has not incorporated an arbitration clause in any of its tax treaties. Two treaties, however, contain a most-favoured nation clause on arbitration, which stipulates that once the Czech Republic agrees to include an arbitration provision with a third state, it should enter into negotiations for the inclusion of an arbitration provision under these two treaties.

Anticipated modifications

212. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 88 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sweden, Tunisia and the United Kingdom.
2. This treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Sri Lanka.

3. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to 2018.
4. 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 2018.
5. For post-2015 cases, if the number of MAP cases in the Czech Republic’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five for any treaty partner, the Czech Republic reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
6. The Czech Republic’s 2016 and 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 and 2017 published MAP statistics. See for a further explanation Annex B and Annex C.
7. For pre-2016 and post-2015 the Czech Republic follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

References

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

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.

213. 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

214. The Czech Republic reported it has a domestic statute of limitation, which is generally three years starting from the due date for filing the tax return or in withholding cases the due date for filing the annual form regarding the obligations of the payer that is related to income that is being subject to withholding taxes. This domestic statute of limitation does not apply when the tax treaty contains Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

215. Subject to limitations described above, the Czech Republic reported it will implement all agreements reached in MAP discussions both for upward and downward adjustments. In this respect, the Czech Republic reported that there is no automatic reassessment of the tax after reaching a MAP agreement. The Czech Republic reported that the taxpayer has either to file an amended tax return or apply for a refund of withholding taxes.

216. As the Czech Republic has not published MAP guidance, there is no information available in relation to the process of implementation of MAP agreements, such in terms of steps to be taken and timing of these steps.

Recent developments

217. The Czech Republic reported that it has started to review all pending MAP cases with those jurisdictions where the applicable tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention. For these cases, the Czech Republic envisages to inform the treaty partners about the domestic statute of limitation that apply and that may prevent a MAP agreement from being implemented.

Practical application

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

218. The Czech Republic reported that its competent authority has not reached a MAP agreement with another competent authority in the period 1 January 2016-31 July 2017, following which no implementation of a MAP agreement became necessary.

219. All peers that provided input reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 July 2017 that were not implemented in the Czech Republic, which can be clarified by the fact that no such agreements were entered into in that period.

Period 1 August 2017-28 February 2019 (stage 2)

220. The Czech Republic reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented and that it is not aware of any difficulties regarding the implementation process.

221. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. One peer thereby added that it is not aware of any MAP agreement that has not been implemented by the Czech Republic.

Anticipated modifications

222. The Czech Republic did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of the Czech Republic's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in the Czech Republic's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, the Czech Republic should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, the Czech Republic should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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.

223. 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

224. The Czech Republic reported that in its domestic legislation and/or administrative framework it has not in place a timeframe for implementation of MAP agreements reached. In practice, the Czech competent authority is not itself responsible for the implementation of MAPs, but the local tax administration. In that regard, the Czech Republic does not monitor and verify the implementation of MAP agreements.

Recent developments

225. There are no recent developments with respect to element D.2

Practical application

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

226. The Czech Republic reported that its competent authority has not reached a MAP agreement with another competent authority in the period 1 January 2016-31 July 2017, which needed to be implemented.

227. All peers that provided input reported not being aware of MAP agreements that were reached in the period 1 January 2016-31 July 2017 that were not implemented by the Czech Republic in general or on a timely basis.

Period 1 August 2017-28 February 2019 (stage 2)

228. The Czech Republic reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented on a timely basis and that it is not aware of any difficulties regarding the implementation process.

229. All peers that provided input during stage 1 stated in stage 2 that the update report provided by the Czech Republic fully reflects their experience with the Czech Republic since 1 August 2017 and/or there are no additions to the previous input given. One peer specifically mentioned it is not aware of any delays in relation to the implementation of MAP agreements reached.

Anticipated modifications

230. The Czech Republic did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

231. 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 the Czech Republic's tax treaties

232. As discussed under element D.1, the Czech Republic's domestic legislation includes a statute of limitations for implementing MAP agreements, unless tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

233. Out of the Czech Republic's 90 tax treaties, 66 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ Furthermore, two tax treaties contain a provision within the MAP article setting a time limit for making primary adjustments, which is considered to be equivalent to such a provision in both Article 9(1) and Article 7(2).

234. For the remaining 22 treaties the following analysis can be made:

- 20 treaties do not contain a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions in Article 9(1) or Article 7(2).²
- In one tax treaty a provision based on Article 25(2), second sentence is contained, but the implementation of MAP agreements is made subject to time limits as included in the domestic laws of the contracting states.³ As this treaty actually puts a time limit on the implementation of MAP agreements, the tax treaty is considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.
- In one tax treaty a provision that is based on Article 25(2), second sentence is contained, but this provision also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this requirement bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this tax treaty therefore is also considered as not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

235. Some peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element D.3, including one peer for which the treaty with the Czech Republic actually does not include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. This peer, however, reported that

its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument, which is consistent with the above analysis. For the other 21 treaties identified above that do not include the equivalent of Article 25(2), second sentence or the alternative provisions, five peers reported that their treaty with the Czech Republic will be modified via the Multilateral Instrument. Two peers specified that they have not contacted the Czech Republic nor are they in discussions with the Czech Republic to amend their treaty with a view to incorporate the required provision. The other peer indicated that it is willing to accept the alternative provisions. For the remaining tax treaties identified that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions, the relevant peers did not provide input.

Recent developments

Bilateral modifications

236. The Czech Republic signed a new treaty with a treaty partner to replace the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (2017), which was not the case for the one treaty currently in force. The treaty entered into force in December 2019 and its effect has been reflected in the analysis above where it has relevance.

Multilateral Instrument

237. The Czech Republic recently signed the Multilateral Instrument and is currently preparing the ratification of this instrument.

238. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, 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) of the OECD Model Tax Convention concerning the introduction of a time limit for making transfer pricing profit adjustments.

239. In regard of the 22 tax treaties above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2), the Czech Republic listed all as a covered tax agreement under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument.⁴ Of the relevant 22 treaty partners, four are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with the Czech Republic as a covered tax agreement under that instrument and two

made a reservation on the basis of Article 16(5)(c).⁵ All of the remaining 15 treaty partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify 15 of the 22 tax treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.⁶

Other developments

240. The Czech Republic reported that for one of the remaining seven treaties that will not be modified by the Multilateral Instrument to the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant treaty partner has informed the Czech Republic that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

241. The Czech Republic further reported that it finalised negotiations with one treaty partner on the replacement of the current treaty in force. Currently, this treaty is considered not to contain Article 25(2), second sentence, of the OECD Model Tax Convention. Upon the entry into force of the newly negotiated treaty, the treaty will include such equivalent. In addition, the Czech Republic initiated negotiations with one treaty partner on the replacement/amendment of the current treaty in force. Also this treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention.

Peer input

242. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Czech Republic. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument. This peer confirmed this expected modification. The second peer noted that while its treaty with the Czech Republic does formally not meet the requirements under element D.3, but that it is willing to accept the alternative provisions. This peer further mentioned that so far no measures have been taken yet to amend the relevant treaty provision,

Anticipated modifications

243. As mentioned in the Introduction, for those tax treaties that do not meet one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument and for which no negotiations are envisaged, scheduled, pending or completed, the Czech Republic – apart from foreseen updates to the reservations and notifications under the Multilateral Instrument and a foreseen bilateral negotiation with Sri Lanka – did not put a specific plan in place and no actions were taken to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.

244. Regardless, the Czech Republic 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
[D.3]	<p>22 out of 90 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 provided for in Article 9(1) and Article 7(2). Of these 22 treaties:</p> <ul style="list-style-type: none"> • 15 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties: <ul style="list-style-type: none"> • For one negotiations have been finalized on the replacement thereof. • For one negotiations on the replacement/amendment of the treaty are initiated. • For the remaining four no actions have been taken, nor are they planned to be taken. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in 16 of the 22 treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2), and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned and once one of the relevant treaty partners updated its notifications under that instrument.</p> <p>For four of the remaining six 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, the Czech Republic should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>The remaining two treaties concern the treaty of former Czechoslovakia that the Czech Republic continues to apply to Brazil and Sri Lanka. With respect to Sri Lanka negotiations on the replacement thereof have been completed and with Brazil such negotiations have been initiated. In that regard, the Czech Republic should sign the newly negotiated treaty with Sri Lanka as soon as possible and continue negotiations with Brazil to ensure the inclusion of a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention or be willing to accept the inclusion of the alternative provisions.</p>

Notes

1. These 66 treaties include the treaty with former Serbia and Montenegro that the Czech Republic continues to apply to both Serbia and Montenegro, as well as the treaties of former Czechoslovakia that the Czech Republic continues to apply to Tunisia.
2. These 20 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Italy, Japan, the Netherlands, Nigeria, Spain, Sweden and the United Kingdom.
3. Ibid for Greece.
4. These 22 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Brazil, Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sri Lanka, Sweden, Tunisia and the United Kingdom.
5. The four treaty partners that are not a signatory to the Multilateral Instrument include Brazil and Sri Lanka.
6. These 15 treaties include the treaties of former Czechoslovakia that the Czech Republic continues to apply to Germany, Greece, Italy, Japan, the Netherlands, Nigeria, Spain, Sweden, Tunisia and the United Kingdom.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty is expected to be modified by the Multilateral Instrument to include such equivalent.	The Czech Republic 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 the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	The Czech Republic should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	<p>Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report or as amended by that report. Of these four treaties:</p> <ul style="list-style-type: none"> • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • One will not be modified by the Multilateral Instrument to include such equivalent. For this treaty negotiations have been finalised on the replacement thereof. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, in three of the four treaties that currently do not contain such equivalent and that will be modified the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Sri Lanka. For this treaty negotiations on the replacement thereof have been completed. In that regard, the Czech Republic should sign the newly negotiated treaty as soon as possible to ensure the inclusion of 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 by the Action 14 final report b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	<p>Two out of 90 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 either 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 two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One is expected to be superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). 	<p>The Czech Republic 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 two treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaty concerned.</p>
[B.1]	<p>One out of 90 tax treaties does 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken or planned to be taken.</p>	<p>This treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Italy. In that regard, the Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention in this treaty upon entry into force for the treaty concerned.</p> <p>As for the first sentence, the Czech Republic should, once negotiations are entered into with Italy, request the inclusion of 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 by the Action 14 final report b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	<p>Where tax treaties do not contain 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. In practice such risk has materialised and access to MAP has been denied in this circumstance.</p>	<p>The Czech Republic should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, access to MAP is no longer denied 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.</p>
[B.2]	<p>89 of 90 tax treaties do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.</p>	<p>The Czech Republic should without further delay introduce a documented bilateral consultation or notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, the Czech Republic should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.</p>
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-

	Areas for improvement	Recommendations
[B.6]	No rules are in place regarding what information taxpayers need to include in a MAP request nor are any rules and timelines in place for requesting additional information by the competent authority and for taxpayers to provide such information. This bears the risk that access to MAP may not be granted or that access is only granted with substantial delays.	The Czech Republic should put in place clear procedures and timelines for requesting additional information from taxpayers when such information is not included in the initial MAP request and also provide for timelines within which taxpayers should comply with requests for additional information to ensure that eligible cases are dealt with in MAP and that no unnecessary delays occur. Such information could be included in the forthcoming published MAP guidance (see element B.8).
[B.7]	Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these ten treaties: <ul style="list-style-type: none"> • Nine are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the required provision. For this treaty negotiations on the amendment/replacement of the treaty has been initiated. 	The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention in nine of the ten 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. The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Brazil. Specifically with respect to this treaty, the Czech Republic should continue negotiations with the jurisdiction for which it applies that treaty, it includes the required provision.
[B.8]	There is no published MAP guidance.	The Czech Republic should introduce guidance 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 and publish such guidance without delay. Although not required by the Action 14 Minimum Standard, the Czech Republic could consider publishing information on: <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the possibility of suspension of tax collection during the course of a MAP • the consideration of interest and penalties in the MAP • the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).
[B.9]	MAP guidance is not publically available.	After preparing its MAP guidance the Czech Republic should make it publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>Two out of 91 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include such equivalent. For this treaty no actions have been taken, but negotiations are envisaged. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in one of the two treaties that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>The remaining treaty concerns the treaty of former Czechoslovakia that the Czech Republic continues to apply to Sri Lanka. For this treaty negotiations are envisaged. For this treaty negotiations on the replacement thereof have been completed. In that regard, the Czech Republic should sign the newly negotiated treaty as soon as possible to ensure the inclusion of a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.</p>
[C.2]	-	-
[C.3]	<p>MAP cases were resolved in 31.58 months on average. The average completion time thereby has increased in 2017-18 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 are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average completion time is 33.95 months, but also for other cases the average is above 24 months. While the number of staff available for handling MAP cases may be adequate, the fact that they are not full-time work on handling MAP cases, may indicate that either more resources are needed or that more focus and efforts are put by this staff on handling and resolving MAP cases.</p> <p>Furthermore, the MAP caseload has increased with 50% since 1 January 2016, in particular other MAP cases, which almost have doubled. While on an annual basis more MAP cases are closed, this increase in the number of cases indicates that the competent authority may not be adequately resourced to cope with this increase. Although additional staff have been assigned to the competent authority function, this has not yet resulted in a substantial higher amount of MAP cases resolved, which might be due to these persons not working on a full-time basis handling MAP cases.</p>	<p>While the Czech Republic has recently added more resources to its competent authority function, resulting in more cases being closed, 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, the Czech Republic should devote additional resources 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. The devotion of additional resources could either be to have the current available staff work full-time on handling MAP cases or to assign additional staff to the competent authority function.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of the Czech Republic's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in the Czech Republic's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, the Czech Republic should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, the Czech Republic should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>22 out of 90 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 provided for in Article 9(1) and Article 7(2). Of these 22 treaties:</p> <ul style="list-style-type: none"> • 15 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Six will not be modified by the Multilateral Instrument to include the required provision. With respect to these six treaties: <ul style="list-style-type: none"> • For one negotiations have been finalized on the replacement thereof. • For one negotiations on the replacement/amendment of the treaty are initiated. • For the remaining four no actions have been taken, nor are they planned to be taken. 	<p>The Czech Republic should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in 16 of the 22 treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2),, and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned and once one of the relevant treaty partners updated its notifications under that instrument.</p> <p>For four of the remaining six 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, the Czech Republic should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>The remaining two treaties concern the treaty of former Czechoslovakia that the Czech Republic continues to apply to Brazil and Sri Lanka. With respect to Sri Lanka negotiations on the replacement thereof have been completed and with Brazil such negotiations have been initiated. In that regard, the Czech Republic should sign the newly negotiated treaty with Sri Lanka as soon as possible and continue negotiations with Brazil to ensure the inclusion of a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention or be willing to accept the inclusion of the alternative provisions</p>

Annex A

Tax treaty network of the Czech Republic

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

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Barbados	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Belarus	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Belgium	Y	O*	Y	N/A	i	i	Y	N*	Y	N*	N
Bosnia and Herzegovina	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Brazil	Y	O	i	N/A	i	i	Y	N	Y	N	N
Bulgaria	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Canada	Y	O	ii*	2 years	Y	i	Y	iii	Y	Y	N
Chile	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	N
China (People’s Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Colombia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Cyprus (1)	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Denmark	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Democratic People’s Republic of Korea	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Egypt	Y	O*	Y	N/A	i	i	Y	iii	Y	Y	N
Estonia	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Ethiopia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Finland	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Georgia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Germany	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N
Ghana	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Greece	Y	O*	Y	N/A	i	i	Y	N*	Y	Y	N
Hong Kong (China)	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Iceland	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
India	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Indonesia	Y	O	i	N/A	i	i	Y	N	Y	Y	N
Iran	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N
Ireland	Y	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	Y	N	ii*	2 years	i	i	Y	N*	N*	N*	N
Japan	Y	N*	i	N/A	i	i	Y	N*	Y	Y	N
Jordan	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Kazakhstan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Korea	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	N
Kosovo	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kuwait	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Latvia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Lebanon	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Liechtenstein	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Lithuania	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Luxembourg	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Malaysia	Y	O	i	N/A	i	i	Y	N*	Y	Y	N
Malta	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	O*	ii	4 years	i	i	N*	N	Y	Y	N
Moldava	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Mongolia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Montenegro	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Morocco	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Netherlands	Y	N*	i	N/A	i	i	Y	N*	Y	Y	N
New Zealand	Y	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Nigeria	Y	O*	i	N/A	Y	i	Y	N*	Y	Y	N
North Macedonia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Norway	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Pakistan	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Panama	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Philippines	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Romania	Y	O	Y	N/A	i	i	Y	N*	Y	Y	N
Russia	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N
Saudi Arabia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Singapore	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Slovak Republic	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
South Africa	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Spain	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N
Sri Lanka	Y	N	i	N/A	i	i	N	N	Y	Y	N
Sweden	Y	O*	i	N/A	i	i	Y	N*	Y	Y	N
Switzerland	Y	O*	Y	N/A	i	i	Y	N	Y	Y	N
Syrian Arab Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Tajikistan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N
Tunisia	Y	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Turkey	Y	O*	iv**	Domestic law	Y	i	Y	N*	Y	Y	N
Turkmenistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ukraine	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N

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

Annex B

MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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
Attribution/Allocation	21	0	0	2	0	0	0	0	0	0	0	19	35.00
Others	14	0	0	0	0	0	0	0	1	0	0	13	17.00
Total	35	0	0	2	0	0	0	0	1	0	0	32	29.00

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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
Attribution/Allocation	19	0	1	0	0	1	0	1	0	0	0	16	41.08
Others	13	0	0	0	0	0	0	0	0	0	0	13	0.00
Total	32	0	1	0	0	1	0	1	0	0	0	29	41.08

Notes: There is a discrepancy between the number of pre-2016 attribution/allocation cases in the Czech Republic's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 17.
- The reported number of MAP cases pending on 1 January 2017 was 15.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 attribution/allocation cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 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
Attribution/Allocation	16	0	0	1	0	0	2	2	0	1	0	10	54.24
Others	13	0	0	1	0	0	1	0	0	0	1	10	71.13
Total	29	0	0	2	0	0	3	2	0	1	1	20	59.87

Notes: There is a discrepancy between the number of pre-2016 attribution/allocation cases in the Czech Republic's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 12.
- The reported number of MAP cases pending on 1 January 2017 was 16.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2016 attribution/allocation cases pending on per 1 January 2016 was corrected.

Annex C

MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for post-2015 cases

2016 MAP Statistics														
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	8	0	0	0	0	0	0	0	0	0	0	8	0.00
Others	0	10	0	0	1	0	0	0	0	0	0	0	9	2.53
Total	0	18	0	0	1	0	0	0	0	0	0	0	17	2.53

2017 MAP Statistics														
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	8	7	0	0	0	3	0	0	0	0	0	0	12	7.41
Others	9	5	0	0	0	0	0	2	0	0	0	0	12	4.06
Total	17	12	0	0	0	3	0	2	0	0	0	0	24	6.07

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	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 2018	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	12	7	0	0	3	0	0	0	0	0	0	0	16	12.08
Others	12	8	0	1	0	0	0	1	0	0	1	0	17	11.46
Total	24	15	0	1	3	0	0	1	0	0	1	0	33	11.77

Notes: There is a discrepancy between the number of post-2015 MAP cases in the Czech Republic's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 24, which consists of 13 attribution/allocation cases and 11 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 24, which consists of 12 attribution/allocation cases and 12 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
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, Czech Republic (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 Czech Republic.



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