

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



Making Dispute Resolution More Effective - MAP Peer Review Report, Spain (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

Spain has an extensive tax treaty network with over 90 tax treaties and has signed and ratified the EU Arbitration Convention. Spain has an established MAP programme and has long-standing experience with resolving MAP cases. It has a large MAP inventory, with a substantial number of new cases submitted each year and over 300 cases pending on 31 December 2018. Of these cases, 63% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Spain meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Spain worked to address them, which has been monitored in stage 2 of the process. In this respect, Spain has not yet solved any of the identified deficiencies.

All of Spain's tax treaties include 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 25% 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), or contains the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Approximately 10% of its tax treaties does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the final report on Action 14, since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Spain signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, Spain opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force and entry into effect of this Multilateral Instrument for the treaties concerned, Spain reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this respect, for some of these treaties negotiations have resulted in newly signed treaties and negotiations are pending with respect to some other treaties. For the remaining treaties, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. It, however, has not provided any further details as to the prioritisation or the timing of envisaged negotiations with the treaty partners

concerned. Taking this into account, for these treaties negotiations need to be initiated without further delay for a considerable number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

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

Spain also 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. It further has in place a documented notification/consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Spain also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. This guidance, however, does not include the contact details of Spain's competent authority. Furthermore, this guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to evade taxes. This possibility bears the risk that in cases where anti-abuse provisions are being applied access to MAP will not be granted, which is considered not in line with the Action 14 Minimum Standard. In addition, Spain does not address in its MAP guidance the relationship between audit settlements and MAP.

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

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months)*
Attribution/allocation cases	217	248	208	257	36.11
Other cases	87	163	98	151	23.19
Total	303	411	306	408	31.97

* 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 closing pre-2016 MAP cases, Spain generally used as a start date the date its competent authority received a complete MAP request. It generally used as the end date the date when the taxpayer accepted the MAP agreement, or differently, the date of closure of the case in case no agreement was reached, or the date when the taxpayer withdrew its MAP request.

The number of cases Spain closed in 2016-18 is approximately 75% of as the number of all cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 31.97 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is significantly longer (36.11 months), whereas other MAP cases are also closed within the 24-month average (23.19 months). Furthermore, Spain's MAP inventory as per 31 December 2018 increased with 35% as compared to 1 January 2016, which primarily regards other cases (76%), although attribution/allocation cases also increased (18%). While the overall average to close MAP cases decreased and although Spain has established a dedicated transfer pricing team for handling attribution/allocation cases, scheduled more face-to-face meetings and took several organisational and operational steps to improve the MAP process, additional resources are necessary to accelerate the resolution of MAP cases, particularly concerning attribution allocation cases, and to ensure the a timely,

efficient and effective resolution of all cases as well as to cope with the increase in the number of MAP cases. Such addition of resources should also enable Spain to timely submit position papers and to timely notify treaty partners of submitted MAP requests.

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

Lastly, Spain also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation. Even though Spain has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, no problems regarding implementation have surfaced throughout the peer review process.

Introduction

Available mechanisms in Spain to resolve tax treaty-related disputes

Spain has entered into 91 tax treaties on income (and/or capital), of which 85 are in force.¹ These 91 treaties apply to 95 jurisdictions.² All of these 91 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, three of the 91 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Spain is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.⁴ Furthermore, Spain 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 2019.⁵ Spain reported that the directive is implemented via Royal Decree Law 03/2020, which entered into force on 6 February 2020.

Under the tax treaties Spain entered into, the competent authority function is assigned to the Minister of Finance. After an internal reorganisation taking effect per 1 January 2016, the competent authority function is performed by two departments. This concerns:

- Attribution/allocation MAP cases are handled by a specific team within the International Tax Office within the State Tax Administration. This office consists of 34 persons, of which eight are placed in the team that handles MAP cases
- Other MAP cases are handled by the Deputy General Directorate for International Tax Matters within the General Directorate for Taxation of the Ministry of Finance. This deputy directorate consists of 12 persons that devote part of their time to handle MAP cases, next to other work such as treaty negotiations.⁶

Spain issued guidance on the governance and administration of the mutual agreement procedure in Royal Decree 1794/2008 of 3 November 2008, which is available at (in Spanish/English):

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>
(Spanish)

https://www.agenciatributaria.es/AEAT.internet/Inicio/Ayuda/Modelos_Procedimientos_y_Servicios/Ayuda_P_IZ49_Procedimiento_amistoso_competencia_de_la_AEAT/Normativa_guias_y_manuales/Normativa/Royal_Decree_1794_2008_non_official_English_version.shtml
(English)

Developments in Spain since 1 August 2017

Developments in relation to the tax treaty network

In the stage 1 peer review report of Spain it is reflected that it had signed new treaties with Azerbaijan (2014), Belarus (2017), Cabo Verde (2017) and Finland (2015). Since the adoption of this report, the treaty with Finland has entered into force, thereby replacing the treaty of 1967. The other three treaties are pending ratification.

Furthermore, on 7 June 2017, Spain signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Spain also submitted its list of notifications and reservations to that instrument.⁷ In relation to the Action 14 Minimum Standard, Spain reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁸ This reservation is in line with the requirements of the Action 14 Minimum Standard. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. Spain reported that it expects that it will deposit its instrument of ratification of the Multilateral Instrument in 2020t

In addition, Spain reported that since 1 August 2017 it has signed new treaties with China (People’s Republic of) – (2018), Japan (2018) and Romania (2017). These newly signed treaties will, upon entry into force, replace the existing treaties of 1990, 1974 and 1979 respectively. None of these treaties have yet been ratified by Spain or the treaty partners. All three treaties include Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

For those tax treaties that were in the stage 1 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, Spain reported that it strives updating them through future bilateral negotiations. In that regard, Spain reported the following developments:

- New treaties were signed with China (People’s Republic of), Japan and Romania to replace the existing treaties in force. All three treaties meet the requirements under the Action 14 Minimum Standard
- Treaty negotiations with the Netherlands are completed following which the treaty will be in line with the requirements under the Action 14 Minimum Standard
- Contacts have been established with Poland, Sweden and Switzerland to enter into negotiations to meet the requirements under the Action 14 Minimum Standard.

Further to the above, for the remaining treaties that need a modification to meet the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned.

Other developments

Spain reported it is in the process of amending its domestic legislation in relation to the mutual agreement procedure, which regards amending the First Additional Provision (Mutual Agreement Procedure) of the Non-Residents Income Tax Law and Regulation on Mutual Agreement Procedures, with a view to implement the requirements under the Action 14 Minimum Standard and Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. Spain reported that the Directive is implemented via Royal Decree Law 03/2020, which entered into force on 6 February 2020

In addition, Spain reported that the International Tax Office – responsible for handling attribution/allocation cases – has put in place a further specialisation. In this respect, in April 2018 a head of unit for the team handling these cases was appointed. Furthermore, some staff members that only on a partial basis handled MAP cases now are fully devoted to handling MAP cases. The transfer pricing team now consists of eight full-time equivalents, all handling MAP cases.

Basis for the peer review process

Outline of the peer review process

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

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Spain'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 Spain 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.⁹ 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 Spain. In this update report, Spain 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 Spain 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, were taken into account, even if it concerns a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic and the treaty with the

former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine. As it concerns two tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Spain's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process for Spain was launched on 7 July 2017, with the sending of questionnaires to Spain and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Spain in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, Spain submitted its update report, which initiated stage 2 of the process.

The period for evaluating Spain'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 16 peers provided input during stage 1: Argentina, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Russia, Slovenia, Sweden, Switzerland, Turkey and the United States. These peers represent approximately 45% of post-2015 MAP cases in Spain's inventory on 31 December 2016. Input was also received from taxpayers. During stage 2, the same peers provided input, apart from France and Russia. In addition, also Austria, Chile, Egypt, Finland, Japan, the Slovak Republic and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 62% of post-2015 MAP cases in Spain's inventory that started in 2016, 2017 or 2018.¹⁰ Generally all peers indicated having good working relationships with Spain's competent authority, appreciating the easiness of contacts and their intention to resolve MAP cases. Peers, however, also raised some difficulties in timely resolving MAP cases, some of them referring to the interrelation with domestic remedies that may slow down or act obstructive in resolving such cases. Specifically with respect to stage 2, almost half of the peers that provided input reported that the update report of Spain fully reflects the experiences these peers have had with Spain since 1 August 2017 and/or that there was no addition to previous input given. Twelve peers, however, reflected additional input or new experiences, some of them reported experiencing delays in obtaining position papers from Spain for non-attribution/allocation cases. The input from these peers is reflected throughout this document under the elements where they have relevance.

Input by Spain and co-operation throughout the process

During stage 1, Spain provided informative answers in its questionnaire and provided additional information, which was submitted on time. Spain was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Spain provided the following information:

- MAP profile¹¹
- MAP statistics according to the MAP Statistics Reporting Framework (see below).¹²

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

Finally, Spain is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Spain provided peer input, sometimes with suggestions on how to improve the process with the concerned assessed jurisdictions.

Overview of MAP caseload in Spain

The analysis of Spain’s MAP caseload for stage 1 relates to the period that started on 1 January 2016 and ended on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Spain. The analysis of Spain’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (the “**Statistics Reporting Period**”). According to the statistics provided by Spain, 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	217	248	208	257
Other cases	86	163	98	151
Total	303	411	306	408

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹³ Apart from analysing Spain’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Spain, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Spain 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 Spain relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Spain 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 Spain has entered into are available at: www.minhfp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx. The treaties that are signed but have not yet entered into force are with Azerbaijan (2014), Belarus (2017), Cabo Verde (2017), China (People’s Republic of) – (2018), Japan (2018), and Romania (2017). The newly signed treaties with China (People’s Republic of), Japan and Romania will replace the existing treaties of 1990, 1974 and 1979 respectively, once they enter into force. These newly signed treaties are already taken into account in the treaty analysis. Reference is made to Annex A for the overview of Spain’s tax treaties regarding the mutual agreement procedure.
2. Spain continues to apply the 1980 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic; and the 1985 treaty with the former USSR to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
3. This concerns treaties with Switzerland, the United Kingdom and the United States. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Spain’s tax treaties that include an arbitration provision.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
6. Spain reported that this number represents an increase of three people devoted exclusively to handling MAP cases, who joined the Deputy General Directorate for International Tax Matters within the General Directorate for Taxation of the Ministry of Finance in June 2019.
7. Available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.
8. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Kingdom of Spain reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.

9. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-spain-stage-1-9789264290761-en.htm.
10. 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.
11. Available at: www.oecd.org/tax/dispute/Spain-Dispute-Resolution-Profile.pdf.
12. The MAP statistics of Spain are included in Annex B and C of this report.
13. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Part A

Preventing disputes

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

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

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

Current situation of Spain's tax treaties

2. Out of Spain's 91 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 two treaties the term "interpretation" is not included, by which both treaties are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Spain reported that under its domestic law there are no obstructions for entering into interpretative mutual agreements when a tax treaty does not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. More specifically, Spain reported that it interprets the MAP article according to Article 25 of the OECD Model Tax Convention, regardless of the fact whether the wording does not exactly conform to the text thereof. Specifically regarding the two treaties identified above, Spain reported that the absence of the term "interpretation" does not act impediment to enter into an interpretative mutual agreement under these treaties.

4. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element A.1. For the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Recent developments

Bilateral modifications

5. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. All these three treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which is also the case for the treaties currently in force. None of these newly signed treaties have already entered into force.

Multilateral Instrument

6. Spain signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which it expects to be completed in 2020.

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 two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Spain listed both as a covered tax agreement under the Multilateral Instrument, but only for one treaty did Spain make, 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 tax treaty with Spain as a covered tax agreement under that 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 one of the two treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

Anticipated modifications

9. For those treaties that do not meet one or more of the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned. In regard of the remaining treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include this equivalent, no plans were shared whether it will be renegotiated to meet the requirements under element A.1.

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	<p>Two out of 91 tax treaties do not contain a provision that is equivalent to Article 25(3), 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(3), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty no actions have been taken nor are planned to be taken. 	<p>Spain 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 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 treaty concerned.</p> <p>For the remaining treaty, Spain should without further delay request the inclusion of the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention via bilateral negotiations.</p>

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

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

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.² 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.

Spain’s APA programme

12. By law 43/1995 of 27 December 1995 Spain established an APA programme. Specific regulations relating to APAs are laid down in chapter VII of the Corporate Income Tax Regulations, as established by Royal Decree 63/2015. The authority competent to handle APA requests is the International Tax Office of Spain’s State Tax Administration.

13. Article 18(9) of the Corporate Income Tax Act includes the legal basis for entering into APAs, which stipulates that a bilateral APA entered into has effect for the transactions made after the date the agreement is entered into and is valid for all fiscal years expressly covered by the agreement with a maximum of four years. The same rule is laid down in Article 25(8) of the Corporate Income Tax Regulations. Articles 21-30 of the Corporate Income Tax Act include further rules on unilateral APAs and Articles 31-36 on bilateral APAs.

Roll-back of bilateral APAs

14. Spain reported it allows roll-back of bilateral APAs, for which the relevant rules are included Article 18(9) of the Corporate Income Tax Act and Article 25(8) of the Corporate

Income Tax Regulations. In more detail, both provisions stipulate that when entering into an APA, it is possible for the competent authority to agree on a retroactive effect of the bilateral APA. Conditions for such roll-back are that: (i) the right to determine the taxpayer's tax liability is not barred by a domestic statute of limitation and (ii) there is no final tax assessment for the fiscal years to be covered by the roll-back.

Recent developments

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

Practical application of roll-back of bilateral APAs

16. Spain publishes statistics on APAs on the website of the EU JTPF.³

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

17. Spain reported having received 72 requests for bilateral APAs in the period 1 January 2016-31 July 2017 (52 in 2016 and 20 in 2017). Concerning roll-backs of bilateral APAs, Spain reported that in this period it received 27 requests (20 in 2016 and seven in 2017), of which one has been granted and the others are under consideration.

18. All peers that provided input generally reported that they do negotiate and agree bilateral APAs with Spain, although not all have received requests for bilateral APAs recently. One peer mentioned that it only enters into APA negotiations with jurisdictions if there is a bilateral tax treaty in force that contains the equivalent to Article 25(3) of the OECD Model Tax Convention. As this peer has no longer a treaty in force with Spain, its competent authority was not able to negotiate a bilateral APA with Spain and for this reason the peer rejected one request for a bilateral APA.

19. Concerning roll-back of bilateral APAs, most of the peers that provided input reported not having experience with roll-back of bilateral APAs with Spain in general or in the period 1 January 2016-31 July 2017. One peer specified that in 2017 it received a request for a roll-back of a bilateral APA. Although negotiations on the bilateral APA are still pending, the peer noted that there is a preliminary agreement that includes providing for a roll-back. Furthermore, another peer reported that a request for a bilateral APA with Spain was received in 2016, which concerned also a request for a roll-back to the year 2015, whereby discussions on this request still have to be initiated. Their experience point out that Spain is open to provide for roll-back of existing bilateral APAs in appropriate cases.

20. Further to the above, one peer also noted not having experiences with Spain in discussing granting roll-back of bilateral APAs, but that it received one request for a bilateral APA in 2016. In that regard, this peer reported a specific issue concerning the commencement of a tax audit by Spain with regard to a bilateral APA that relates to the same period as the audit. In that situation, Spain informed the peer that it will ask for a legal opinion on the implementation of the APA in relation to the pending tax audit, for which the peer is concerned that this could negatively affect the possibility of reaching an agreement and connected therewith undermining the aim to prevent disputes via bilateral APAs. This input, however, has no particular relation with element A.2 on providing roll-backs for bilateral APAs.

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

21. Spain reported that since 1 August 2017 its competent authority received 14 APA requests (both bilateral and multilateral), nine of which also concern a request for a roll-back. Spain specified that all requests are still in the process of being reviewed.

22. Further to the above, Spain reported that of the 27 roll-back request that it received in the period 1 January 2016-31 July 2017, six have been granted and the remaining 21 are still pending.

23. Most of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one mentioned that since 1 August 2017 it received a roll-back request with Spain, which is in the process of being reviewed. Spain confirmed this request and specified that in 2019 a preliminary discussion was held.

24. A second peer mentioned it has experienced occasions where at the time the competent authorities reached an agreement in principle on a bilateral APA, some fiscal years that were included in the APA request have already lapsed. The peer reported that in this situation, Spain is only willing to apply the APA for those fiscal years that have not lapsed and is not willing to provide certainty for those years in respect of the lapsed years. In that regard, the peer noted that Spain asks taxpayers to submit a new roll-back request for these lapsed years or, alternatively, deal with these years in MAP. In the peer's view, such additional requirement may act as a hindrance to effective dispute resolution.

25. Spain responded to the input and referred to Article 18(9) of the Corporate Income Tax Act (in place since 2015), whereby it is stated that an APA has an effect for the transactions made after the date the agreement is entered into and is valid for all fiscal years expressly covered by the agreement with a maximum of four year, and which may be applied retroactively to previous years. If the APA request regards earlier years than the fiscal years included in the APA, these years will automatically be considered as roll-back years, so that these can be included in the period to which the APA applies, without the taxpayer specifically having to ask for it. Where the taxpayer wants the APA also to apply to years prior to the year in which the APA request was submitted, he should explicitly request it. In that regard, Spain concluded that as long as there is a mechanism to extend APA effects to previous fiscal years, rights are granted to taxpayers and that the rules in place under its domestic law do not infringe on the Action 14 Minimum Standard. For the case specifically referred to by the peer, Spain clarified that the APA request was made prior to 2015 and as such a roll-back was not possible. As the APA was entered into after 2015, Spain requested the taxpayer to formally apply for a roll-back (such by issuing a simple statement), in order to include all fiscal years for which the APA was requested into the terms of the APA.

Anticipated modifications

26. Spain did not indicate that it anticipates any modifications in relation to element A.2. It, however, reported its competent authority is developing a co-operative relationship programme with the Large Business Forum in order to reach high levels of co-operation between taxpayers and Spain's Tax Administration.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 89 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf. These statistics are up to 2018.

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.

27. 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 Spain's tax treaties

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

28. Out of Spain's 91 tax treaties, 77 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ None of Spain's tax treaties contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

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

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

* These 12 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.

30. The 12 treaties included in the first row of the table 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, 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 eight of these 12 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 (two treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (six treaties).²

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

32. Furthermore, with respect to the one treaty included in the second row of the table above, the provision incorporated in the protocol to this treaty reads:

... the expression “irrespective of the remedies provided by the domestic law” means that the start of the mutual agreement procedure is not an alternative with respect to the national contentious procedure, which is the one having priority when the conflict refers to an application of the taxes not in accordance with this Convention.

33. 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 Action 14 final report. This treaty is therefore considered not being in line with this part of element B.1.

34. With respect to the treaty included in the third row of the table above, since taxpayers are not allowed to submit a MAP request irrespective of the remedies provided by the domestic law, it is also considered not being in line with this part of element B.1.

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

35. Out of Spain’s 91 tax treaties, 80 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 three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.³

36. The remaining 11 treaties can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request*	6
Filing period longer than three years for a MAP request (five years)	1
Filing period less than three years for a MAP request (two years)	3
Filing period less than three years and with a different commencement date for filing of MAP requests	1

* These six treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.

Peer input

37. Almost all peers that provided input reported that their tax treaty with Spain meets the requirements under element B.1, including peers for which the treaty with Spain actually 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. One peer specifically mentioned that its treaty with Spain does not meet the requirements under element B.1, as the time limit to file a MAP request is under this treaty only two years as from the first notification of the action resulting in taxation not in accordance with the treaty. This peer also mentioned that there are no ongoing negotiations with Spain to amend the treaty with a view to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as it envisages that it will be modified via the Multilateral Instrument. As will be discussed below, the treaty between Spain and this peer will indeed be modified via the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence.

Practical application

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

38. As noted in paragraphs 32-34 above, in all but two of Spain’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Spain 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. As from 12 October 2015, a specific rule is in place, which stipulates that where these remedies are activated simultaneously with a MAP, legal and/or administrative proceedings will be suspended until the MAP process has been finalised.⁴ This to avoid that cases cannot be further dealt with in MAP, as Spain’s competent authority is bound by decisions of its domestic courts.

39. Further to the above, where domestic court procedures have been completed, Spain reported that its competent authority would provide an explanation to the other competent authority concerned, with a view to allow it to grant a corresponding adjustment. In addition, Spain clarified that its competent authority is not bound by decisions of an administrative tribunal, by which it is possible to derogate from such a decision in MAP. Spain's MAP guidance, however, does not contain specific information on the interaction between MAP and domestic remedies.

40. One peer provided input and mentioned that it was in 2018 asked by Spain's competent authority to close one case due to the fact that the objection raised by the taxpayer was considered not to be justified as there was no action that resulted, or would result, in taxation not in accordance with the provisions of the treaty. The peer further mentioned that Spain's competent authority clarified that in the particular case, criminal proceedings were initiated against the taxpayer, but that no income tax assessment was issued (as Spain's tax administration is bound by facts that are declared proved by court judgments in criminal proceedings) and as a result of that, there was no taxation that would come into conflict with the term of the treaty. In the peer's view, access to MAP, however, cannot be denied on such grounds, because a taxation not in accordance with the terms of the treaty can intervene in the absence of a formal income tax assessment. The peer further concluded that such an argument should not be used to deny access to MAP.

41. Spain responded to this input and stated that an action should be taken by one or both of the contracting states that results, or will result, in taxation not in accordance with the terms of the treaty, in order for the taxpayer being allowed to submit a valid MAP request. As in the specific case being referred to, there was no such action, as only criminal proceedings were initiated and not a tax assessment. The outcome of the case was that only a monetary payment was due for a criminal offense being committed. For that reason the case was considered not being eligible for MAP. Spain clarified that if the outcome of such proceedings is that the court considers that a crime has not been established, the case will be sent back to the auditor, who then can issue a tax assessment. If such assessment would lead to taxation not in accordance with the terms of the treaty, the taxpayer holds a right to submit a MAP request, for which – if the conditions under the MAP provision of the treaty are met – Spain will then give access to the MAP process.

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

42. Article 5 of Spain's MAP guidance stipulates that a MAP request has to be submitted before the time limit included in a tax treaty expires. This timeline begins to run as from the day following the date of notification of the tax assessment or equivalent action notice that results, or may result, in taxation not in accordance with the provisions of the tax treaty. Where a tax treaty does not contain a time period for filing of MAP requests, Spain reported that its administrative practice is to apply the three-year limit as provided for in Article 25(1), second sentence, of the OECD Model Tax Convention, but always in a flexible manner and on a case-by-case basis.

Recent developments

Bilateral modifications

43. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. All these three treaties contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model

Tax Convention as it read prior to the adoption of the Action 14 final report, which is also the case for the treaties currently in force. None of these newly signed treaties have already entered into force.

Multilateral Instrument

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

44. Spain signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which it expects to be completed in 2020.

45. 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.

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

47. In view of the above, following the reservation made by Spain, those six treaties identified in paragraphs 31-34 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

48. 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.

49. In regard of the four tax treaties identified in paragraph 36 above that contain a filing period for MAP requests of less than three years, Spain listed all of them as a covered tax agreement under the Multilateral Instrument, and for all did it make, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Spain as a covered tax agreement under that instrument. The remaining two treaty partners also made a notification on the basis of Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify two of the four treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

50. With respect to the six tax treaties identified above that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the update of the Action 14 final report, Spain reported that it has finalised negotiations with one treaty partner *inter alia* to meet the requirements under the Action 14 Minimum Standard. Furthermore, contacts with another treaty partner have been established on the amendment or replacement of the existing treaty in force, to also include such equivalent.

Peer input

51. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Spain. Three of these peers concern a treaty partner to three of the six treaties identified above that do not contain Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report and which will not be modified by the Multilateral Instrument. One of these peers mentioned it has finalised negotiations with Spain on the amendment/replacement of the existing treaty in force, whereas another peer mentioned that such negotiations are ongoing. The third peer reported it has contacted Spain 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. Spain responded to this latter input and confirmed that it was contacted by this peer regarding this specific issue, but did not share any further details regarding the status of negotiations.

Anticipated modifications

52. For those treaties that do not meet one or more of the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned.

53. In regard of the four remaining treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report and that will not be modified by the Multilateral

Instrument and for which no negotiations are pending with a view to include this equivalent, no plans were shared whether they will be renegotiated to meet the requirements under element B.1. The same applies in regard of the remaining two treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include this equivalent.

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

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Five out of 91 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 final report on Action 14 or as amended by that report (OECD, 2015b). None of those five tax treaties have been or are expected to be modified by the Multilateral Instrument to include such equivalent. With respect to these five treaties:</p> <ul style="list-style-type: none"> • For one negotiations have been completed <i>inter alia</i> to include the required provision. • For one contacts have been established to enter into negotiations with a view to include the required provision. • For the remaining three no actions have been taken nor are any actions planned to be taken. 	<p>For the ifive treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report Spain should:</p> <ul style="list-style-type: none"> • For one treaty continue negotiations to include the required provision. • For one treaty continue the process to initiate negotiations to include the required provision. • Without further delay request the inclusion of the required provision via bilateral negotiations in the remaining three treaties. <p>In both instances this concerns: a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the final report of action 14 (OECD, 2015b); or b. as it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Three out of 92 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, or, due to a protocol provision can be shorter than three years. Of these three 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 (OECD, 2017). • Two will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For these treaties no actions have been taken nor are any actions planned to be taken. 	<p>Spain 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 the one 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.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Spain should without further delay request the inclusion of the required provision.</p>

	Areas for improvement	Recommendations
[B.1]	One out of 91 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 nor planned to be taken.	Spain 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 this 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. As for the first sentence, Spain should without further delay request the inclusion of a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either: 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.
	Two of the 91 tax treaties that contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report are not yet in force, while there is treaty in force with the same jurisdiction that does either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	Spain should as quickly as possible complete the ratification process for those two tax treaties that include a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report and replace the existing treaties that do either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

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

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

Domestic bilateral consultation or notification process in place

56. As discussed under element B.1, out of Spain's 92 tax treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention

as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these 92 tax treaties will, following Spain's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

57. Spain reported having introduced an internal handbook on MAP, in which the procedures with respect to handling MAP cases and the steps to be taken throughout this procedure by staff in charge of MAP within Spain's competent authority is described. This handbook also sets forth what steps to follow when receiving a MAP request, the judgment on whether the MAP request is admissible and subsequently on whether the objection raised by the taxpayer in this request is justified. In the situation the conclusion is that the objection is not justified, staff in charge of MAP is instructed to inform the other competent authority concerned hereof along with a reasoning why this decision was arrived at, such in line with the timelines set out in paragraph 9 of the MAP Statistics Reporting Framework.

58. In view of the above, Spain further reported that its competent authority will generally use the notification process. It, however, considers a flexible approach to use either a consultation or a notification process very useful. Where appropriate, Spain could thus also use the consultation process on a case-by-case basis and where some feedback from the other competent authority could be advisable. Spain's competent authority will then strive at reaching a coordinated solution with this other competent authority.

Recent developments

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

Practical application

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

60. From Spain's 2016 MAP statistics it follows that in four cases the outcome reported was an objection not justified (three pre-2016 cases and one post-2015 case). In this respect, Spain reported that for the year 2016 its competent authority considered in three of these four cases the objection raised by taxpayers in their MAP requests as being not justified, whereas in the remaining case this decision was taken by the other competent authority concerned.

61. Spain further mentioned that in one of these three cases its competent authority notified the other competent authority concerned that the MAP request did not involve taxation not in accordance with the provisions of the relevant tax treaty and in another case it consulted the other competent authority during a face-to-face meeting. During this meeting information was provided that proved the existence of taxation not in accordance with the provisions of the relevant tax treaty, following which the MAP request was accepted. In the third case, the other competent authority was not consulted or notified.

62. All but two peers that provided input indicated not being aware of any cases for which Spain's competent authority denied access to MAP. Apart from the two peers, they also reported not having been consulted/notified of a case where Spain's competent authority considered the objection raised in a MAP request as not justified.

63. One of the two remaining peers noted it had a case for which Spain denied access to MAP, as the taxpayer did not timely submit its MAP request. Furthermore, the second peer

mentioned that for one case, which concerns the case mentioned in paragraph 62 above, it received in July 2017 a letter from Spain’s competent authority that the latter considered an objection raised by the taxpayer in its MAP request as not being justified. This letter included a summary of the case along with the statement that the case was closed with the outcome “Objection not justified” and the date of such closure.

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

64. Spain reported that in the period 1 August 2017-28 February 2019 its competent authority has in six of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. In one of these cases, this decision was made due to the fact that the taxpayer did not provide the required information in its MAP request, whereas in three other cases none of the contracting states took any action that would lead to taxation not in accordance with the tax treaty. In the remaining two cases, the decision was taken due to the absence of taxation not in accordance with the provisions of the tax treaty. Spain reported that in four of the six cases the other competent authority concerned was notified, while in two cases the final decision on whether the objection was not justified was agreed with the other competent authority concerned.

65. The 2017 and 2018 MAP statistics submitted by Spain show that 13 of its MAP cases were closed with the outcome “objection not justified”. This concerns eight cases in 2017 and five cases in 2018. For the eight cases in 2017, Spain reported that in six of these cases it decided that the objection raised by the taxpayer in its MAP request was not justified, which aligns with the six cases above and for which it applied its notification/consultation process. For the five cases in 2018, Spain reported that the decision thereto was in one of these five cases made by its competent authority, which notified the other competent authority of this case.

66. Most of 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 Spain’s competent authority considered the objection raised in a MAP request as not justified. In regard of the six cases (2017) and one case (2018) referred to in the paragraphs above, four of the relevant peers provided input and confirmed being notified/consulted or having agreed with Spain on the conclusion that the objection raised was not justified.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

68. Where two or more tax administrations take different positions on what constitutes arm’s length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner’s transfer pricing adjustment, with a view to eliminating the economic double taxation that

may arise from such adjustment, will likely frustrate the main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

69. Out of Spain's 91 tax treaties, 69 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner.⁶ Furthermore, 15 treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention.⁷ The remaining seven treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision for the following reasons:⁸

- Granting of corresponding adjustments is not obligatory, as it is under Article 9(2) in appropriate circumstances, but competent authorities *may* grant such adjustment (six treaties).
- Granting of corresponding adjustments is only allowed through the mutual agreement procedure (one treaty).

70. Spain 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.

71. 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 Spain'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, Spain reported that it will always provide access to MAP for transfer pricing cases, provided that the general requirements under the MAP article of the applicable tax treaty are met. Although Spain's MAP guidance does not specifically address whether transfer pricing cases are eligible for MAP, this, however, can be derived from Article 1 of that guidance, which defines the scope of MAP under Spain's tax treaties and the EU Arbitration Convention. Furthermore, Article 6(2) of Spain's MAP guidance includes a list of information taxpayers have to submit with their MAP request, which specifically relates to transfer pricing cases.

Recent developments

Bilateral modifications

72. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. All these three treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, which was not the case for the treaties currently in force. None of these newly signed treaties have already entered into force. The effect of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

73. Spain signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which it expects to be completed in 2020.

74. 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 treaty as a covered tax agreement under the Multilateral Instrument. Furthermore, Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty reserved the right, pursuant to Article 17(3), not to apply Article 17(2) for those tax treaties that already include 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 not all treaty partners 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).

75. Spain has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 22 treaties identified in paragraph 69 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Spain listed 19 of them as a covered tax agreement under the Multilateral Instrument and included two of them in the list of treaties for which Spain has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument.⁹ Furthermore, Spain did not make a notification on the basis of Article 17(4) for the remaining 17 treaties.

76. Of the relevant 17 treaty partners, five are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Spain under that instrument and two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Spain already contains the equivalent of Article 9(2). Therefore, at this stage, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede the remaining nine treaties only to the extent that the provisions included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

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

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

78. All peers that provided input have indicated not being aware of a denial of access to MAP by Spain for transfer pricing cases in the period 1 January 2016-31 July 2017. Also taxpayers reported not being aware of such denial.

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

79. Spain reported that also since 1 August 2017 for none of the MAP requests it received it has denied access to MAP on the basis that the case concerned was a transfer pricing case.

80. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it is not aware of any cases where Spain denied access to MAP. Another peer also mentioned it received since 1 August 2017 eight MAP request with Spain regarding transfer pricing cases, seven of them for which access was granted and the eight one in the process of being reviewed for admissibility. In this respect, the peer noted that there were not any issues to respect to access to MAP.

81. Spain responded to the input by the latter peer and mentioned that for the latter case, the MAP request has recently been accepted and is now in the process of being resolved.

Anticipated modifications

82. Spain reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

83. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

84. None of Spain's 91 tax treaties allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Spain do not include a provision allowing

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

85. Spain 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. Article 8(2)(d) of Spain’s MAP guidance, however, stipulates that access to MAP may be denied for situations where there is proof that the taxpayer intended to avoid taxation in any of the states concerned. Spain reported that using this provision is not automatic, but subject to a reasoned consideration by the competent authority.

Recent developments

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

Practical application

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

87. Spain reported that it has in the period 1 January 2016-31 July 2017 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 in that period.

88. All peers that provided input have indicated not being aware of a denial of access to MAP by Spain in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2016-31 July 2017. Also taxpayers reported not being aware of such denial.

89. With respect to Spain’s input to question ten of the MAP profile, one peer, however, expressed its concern that findings of tax avoidance by the Spanish tax administration would trigger the application of domestic/treaty anti-abuse provisions and subsequently may lead to a denial of access to MAP for those cases where there is a disagreement between the taxpayer and the tax authority as to whether the conditions for the application of such anti-abuse provision have been met, or whether such a provision is in conflict with the provisions of the applicable tax treaty.

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

90. Spain 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. Spain further reported that since that date it received one MAP request in relation to the application of an anti-abuse provision, for which access to MAP was granted.

91. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it is not aware of any cases where Spain denied access to MAP, while another peer noted that it has not experienced any difficulties with respect to access to MAP concerning Spain.

Anticipated modifications

92. Spain reported that in light of the requirements under the Action 14 Minimum Standard, it considers modifying or deleting Article 8(2)(d) of its MAP guidance with the envisaged update of this guidance. Since the adoption of its stage 1 peer review report, such modification, however, has not yet taken place. The review of the MAP guidance is still ongoing.

Conclusion

	Areas for improvement	Recommendations
[B.4]	MAP guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to avoid taxes, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	Spain should without further delay amend Article 8(2)(d) of its MAP guidance to avoid the situation in which access to MAP will be denied in cases concerning the application of anti-abuse provisions, or should specify in this provision that access to MAP will not be denied for such cases.

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

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

93. 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 independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

94. Spain reported that under its domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. This concerns so-called “*actas con acuerdo*”, which allows the Tax Administration to perform a tax adjustment in certain situations established by law. The relevant rules relating hereto are laid down in Article 155 of the General Tax Law. Article 155(1) defines the circumstances in which taxpayers and the tax administration can enter into an agreement to establish certain facts or determine the pricing of transactions that are under review in an audit with a view to assess the amount of tax due. The agreement has, pursuant to Article 155(4), to be signed by the taxpayer (or its representative) and the Tax Audit Office. Article 155(3) further defines the conditions upon which the parties may enter into an audit settlement, which are that:

- a. The authority competent to enter into the settlement agreement authorises the draft agreement.
- b. A deposit, guarantee, or a surety bond is made available in an amount that is sufficient to guarantee the recovery of the amounts that may result from the agreed settlement.

95. In regard of the above, entering into audit settlements is in Spain, however, not discretionary and it is mandatory to adhere to the OECD Transfer Pricing Guidelines in the resulting valuation of the transactions under review. Spain furthermore reported that entering into such settlement agreement does not affect or restrict the taxpayer's right in relation to MAP.

Administrative or statutory dispute settlement/resolution process

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

Recent developments

97. Spain reported that in 2018 an internal circular was sent to audit teams in the tax administration to highlight that audit settlements do not preclude access to MAP. Other than this, there are no recent developments with respect to element B.5.

Practical application

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

98. Spain reported that in the period 1 January 2016-31 July 2017 it has not denied access to MAP for cases where the taxpayer and the tax administration have entered into an audit settlement. During this period three of such cases were received and for all of them access to MAP was granted.

99. All peers that provided input indicated that they were not aware of a denial of access to MAP by Spain in the period 1 January 2016-31 July 2017 in cases where the issue presented has already been dealt with in an audit settlement between the taxpayer and the tax administration.

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

100. Spain reported that since 1 August 2017 it has also not denied access 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. During this period 21 of such cases were received, two in 2017 (after 1 August) and 19 in 2018. In all cases access to MAP was granted.

101. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it is not aware of any cases where Spain denied access to MAP, while another peer noted that it has not experienced any difficulties with respect to access to MAP concerning Spain.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

105. Article 3 of Spain's MAP guidance stipulates that taxpayers, when submitting a MAP request, should provide the competent authority with any data, reports, records and underlying documentation that may be useful for the resolution for the case under review. Furthermore, such information must be faithful and complete, as also be submitted within the required time.

106. Spain's MAP guidance also details the further process when a MAP request is received by the competent authority. In this respect, Article 7 in conjunction with Article 8(1) of Spain's MAP guidance stipulates that within two months as from the date of receipt of a MAP request, the competent authority shall review the request and decide on whether it should be accepted. Taxpayers can thereby be requested to restore any error or to submit any missing documentation as specified in Article 6 of the MAP guidance (the list of information and documentation to be included in a MAP request). Taxpayers can also be requested to provide clarity or further information to resolve any doubt that may arise in the analysis of the documentation provided. Taxpayers are thereby granted a one-month period to submit the requested additional information or restore an error.

107. Where a taxpayer does not comply with this obligation in the said period, Article 7 of the MAP guidance stipulates that further proceedings will be cancelled and the MAP request will be considered as having not been filed. The latter is also mentioned in Article 8(2)(f) of Spain's MAP guidance, being one of the grounds to deny access to MAP.

Recent developments

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

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

109. Spain reported it provides access to MAP in all cases where taxpayers have complied with the information or documentation required requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 July 2017 its competent authority has not denied access to MAP for cases where taxpayers have complied with the information or documentation requirements.

110. All peers that provided input indicated not being aware of a limitation of access to MAP by Spain in the period 1 January 2016-31 July 2017 in situations where taxpayers complied with information and documentation requirements as set out in its MAP guidance. Also taxpayers reported not being aware of such a limitation of access.

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

111. Spain 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.

112. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer mentioned that it is not aware of any cases where Spain denied access to MAP, while another peer noted that it has not experienced any difficulties with respect to access to MAP concerning Spain.

Anticipated modifications

113. Spain did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

114. 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 contains 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 Spain's tax treaties

115. Out of Spain's 91 tax treaties, 85 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.¹⁰ Of the remaining six treaties, one does contain a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention, but under this treaty consultation between competent authorities is made subject to the procedures provided for in the domestic laws of the contracting states.¹¹ This provision therefore is considered not being equivalent to Article 25(3), second sentence. The other five treaties do not contain such provision at all.

116. In regard of the one treaty identified above, Spain reported that it interprets the MAP article according to Article 25(3), second sentence, of the OECD Model Tax Convention, regardless of the fact whether the wording does not exactly conform to the text thereof.

117. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element B.7. Some peers reported being in the process of renegotiating the treaty with Spain with a view to *inter alia* bring it in line with the requirements under the Action 14 Minimum Standard, which does not necessarily regard element B.7, as for these treaty partners the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention is already contained in their tax treaty with Spain.

118. For the six treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, only one peer provided input and specified that it had not contacted Spain nor was it in discussion with Spain to amend their treaty with a view to incorporate the required provision.

Recent developments

Bilateral modifications

119. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. All these three treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which is also the case for the treaties currently in force. None of these newly signed treaties have already entered into force.

Multilateral Instrument

120. Spain signed the Multilateral Instrument and is currently is in the process of ratifying this instrument, which it expects to be completed in 2020.

121. 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.

122. In regard of the six tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Spain listed all of them as a covered tax agreement under the Multilateral Instrument, but only for five treaties did Spain make, pursuant to Article 16(6)(d)(ii), a notification they do not contain a provision described in Article 16(4)(c)(ii).¹² Of the relevant five treaty partners, one is not a signatory to the Multilateral Instrument. All remaining four treaty partners listed their treaty with Spain as a covered tax agreement under that instrument also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for the treaties concerned, modify four of the six tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Peer input

123. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Spain. None of these peers concerns a treaty partner to one of the treaties identified above that do not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

Anticipated modifications

124. For those treaties that do not meet one or more of the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned.

125. In regard of the remaining two treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include this equivalent, no plans were shared whether they will be renegotiated to meet the requirements under element B.7. One of these treaties, however, concerns the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, for which no negotiations are necessary.

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Six out of 91 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these six treaties:</p> <ul style="list-style-type: none"> • Four 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. • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these two treaties no actions have been taken nor are planned to be taken. 	<p>Spain should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For one of the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force for the treaties concerned, Spain should without further delay request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, Spain should, once it enters into negotiations with the jurisdictions for which it continues to apply that treaty, request the inclusion of the required provision.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

127. 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.

Spain's MAP guidance

128. Spain has issued rules, guidelines and procedures on the MAP process and how it conducts that process in practice in Royal Decree 1974/2008 of 3 November 2008. This guidance can be found at (in English and Spanish):

<https://www.agenciatributaria.es/AEAT.internet/IZ49/normativa.shtml>
(tax administration) – (Spanish)

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>
(Ministry of Finance) – (Spanish)

129. A non-official English translation of Spain's MAP guidance is published on the websites of the Spanish Ministry of Finance and Spanish Tax Agency. These can be found at:

https://www.agenciatributaria.es/AEAT.internet/Inicio/Ayuda/Modelos_Procedimientos_y_Servicios/Ayuda_P_IZ49_Procedimiento_amistoso_competencia_de_la_AEAT/Normativa_guias_y_manuales/Normativa/Royal_Decree_1794_2008_non_official_English_version.shtml
(English)

130. This decree sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under both tax treaties Spain entered into and the EU Arbitration Convention, thereby making a distinction between the situation in which the MAP request is submitted with the Spanish competent authority or with the competent authority of the treaty partner. It further specifies the legal nature of the MAP along with the rights and role of the taxpayer. More specific, Spain's MAP guidance contains information on:

Title I: common provisions for MAP under tax treaties and the EU Arbitration Convention
Scope of MAP and persons eligible to request MAP
Definition of the competent authority
Taxpayer's rights and duties during MAP

Title II: MAP under tax treaties
<p><i>Chapter I: MAP request submitted to the Spanish competent authority in relation to an action by the Spanish Tax Administration</i></p> <ul style="list-style-type: none"> Legal basis for MAP Time limits for filing a MAP request Information and documentation to be included in a MAP request Consideration and acceptance of the request Conduct of MAP proceedings Termination of the MAP process (e.g. reaching a MAP agreement or upon the taxpayer's request) Implementation of MAP agreements <p><i>Chapter II: MAP request submitted to the competent authority of the treaty partner in relation to an action by the Spanish Tax Administration</i></p> <p><i>Chapter III: MAP request submitted to the competent authority of the treaty partner in relation to an action by the treaty partner's tax administration</i></p> <ul style="list-style-type: none"> Rules applicable to the initiation, conduct of proceedings and implementation Conduct of proceedings and implementation <p><i>Chapter IV: MAP request submitted to the Spanish competent authority in relation to an action by the treaty partner's tax administration</i></p>
Title III: proceedings relating to the application of the EU Arbitration Convention
<p><i>General rules</i></p> <ul style="list-style-type: none"> Scope of application Exclusion of cases Relationship with domestic available remedies <p><i>Chapter I: MAP request submitted to the Spanish competent authority in relation to an action by the Spanish Tax Administration</i></p> <ul style="list-style-type: none"> Persons eligible to request MAP under the EU Arbitration Convention Time limit for filing a MAP request Information and documentation to be included in a MAP request Acceptance and denial of MAP requests Commencement date of the two-year deadline for MAP Proceedings during MAP Proceedings during the arbitration procedure (establishment and opinion of the advisory commission, final decision by the competent authorities) <p><i>Chapter II: MAP request submitted to the competent authority of another EU Member State in relation to an action by the Spanish Tax Administration</i></p> <p><i>Chapter III: MAP request submitted to the competent authority of another EU Member State in relation to an action by that Member State's tax administration</i></p> <p><i>Chapter IV: MAP request submitted to the Spanish competent authority in relation to an action by the treaty partner's tax administration</i></p>
Title IV: rules for the suspension of tax collection
<ul style="list-style-type: none"> Possibility of suspension of tax collection Persons eligible to request for and competent bodies to grant a suspension Content of a request for suspension Guarantee for granting suspension Effects of granting or rejection of suspension

131. The FTA MAP Forum agreed on what information 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.¹³ Although Spain's MAP guidance provides information on the availability and the use of MAP and how its competent authority conducts the procedure in practice, it only includes item (ii) and not the contact information of the competent authority or the office in charge of MAP cases. In this respect, Spain noted that such contact details are available on the website of its Tax Agency (both in Spanish and English), which can be found at:

https://www.agenciatributaria.es/AEAT.internet/en_gb/Inicio/Ayuda/Modelos_Procedimientos_y_Servicios/Ayuda_P_IZ49_Procedimiento_amistoso_competencia_de_la_AEAT/Informacion_general/Nota_sobre_las_autoridades_competentes_en_Espana_a_los_efectos_de_los_procedimientos_amistosos.shtml

132. Apart from this missing information, the information included in Spain's MAP guidance is detailed and comprehensive, particularly concerning the information taxpayers should include in their MAP request and the unilateral review process after submission of such request. However, some subjects are not specifically discussed in this MAP guidance. This concerns whether MAP is available in cases of: (i) audit settlements, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; (iv) whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and (v) the consideration of interest and penalties in MAP.

Information and documentation to be included in a MAP request

133. Article 6(1) of Spain's MAP guidance sets out in detail what information taxpayers should include in their MAP request, which concerns the following items:

- a. full name, address and tax-identification-number of the taxpayer submitting the MAP request and of any other person involved in the transactions under review
- b. identification of the foreign competent authority
- c. tax treaty provision that in the taxpayer's view is incorrectly applied and its views thereof
- d. identification of the taxable years or assessment periods concerned
- e. detailed description of the facts and circumstances of the case (e.g. the amounts involved and any relation, situation or structure concerning transactions between the persons involved)
- f. identification of any lodged administrative or judicial appeal by the taxpayer submitting the MAP request, or by any other party involved, as well as any decision or judgment given on the same issue
- g. a statement by the taxpayer of any previous MAP requests submitted with the competent authorities involved concerning the same or a similar issue
- h. a statement declaring whether the MAP request involves any issue that could be considered integrated in an Advance Price Agreement (APA) or similar procedure.
- i. a commitment by the person requesting the initiation of the MAP to reply as fully and promptly as possible to any request of the Spanish State Tax Administration and to make available any document related to the case
- j. date and signature of the taxpayer that submitted the MAP request or its representative.

134. Further to the above, in relation to transfer pricing cases, Article 6(2) list the additional information taxpayers should submit in their MAP request. This concerns:

- documents and information required under the Regulation of the Corporation Tax approved by Royal Decree 1777/2004, of 30 July
- a copy of the assessment notice, its notification and of any report issued by the tax auditing office or equivalent unit, in connection with the case (if any)
- a copy of any decision taken or agreement reached by the Administration of the other state in relation to the case
- in case of representation, a documentary proof of representation.

135. 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.¹⁴ In light of this list, the requirements in Spain on what information and documentation should be included in a MAP request are checked below:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention).
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP.
- 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 MAP request was also submitted to the competent authority of the other treaty partner.
- 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.

136. Peers did not provide input in relation to element B.8. One taxpayer, however, provided input and mentioned that Spain's MAP guidance provides clarity on how to access and use the MAP process, including the documentation and information that should be included in a MAP request.

Recent developments

137. Spain reported that a non-official English translation of the MAP guidance has been made available on the website of the Ministry of Finance and the Tax Agency. The link to this translated MAP guidance is reflected in paragraph 129 above. Other than this, there are no recent developments with respect to element B.8.

Anticipated modifications

138. Spain indicated that it is in the process of updating its MAP guidance, which alongside the reflections of the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union would also address several other issues such as the contact details of the competent authority and – as discussed under element B.4 – the deletion of Article 8(2)(d) on the possibility to deny access to MAP in cases concerning the application of anti-abuse provisions.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of Spain's competent authority are not included in the MAP guidance.	Spain should without further delay update its MAP guidance to include the contact information of its competent authority.

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

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

139. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.¹⁵

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

140. Spain's MAP guidance is published in both a Spanish and English version and can be found at:

<https://www.agenciatributaria.es/AEAT.internet/IZ49/normativa.shtml>
(tax administration)

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>
(Ministry of Finance)

141. As regards its accessibility, Spain's MAP guidance can easily be found on the website of the Spanish Ministry of Finance or the tax administration, for example, by searching for the Spanish equivalent of the words *mutual agreement procedure*.

MAP profile

142. Spain's MAP profile is published on the website of the OECD, which was last updated in February 2019.¹⁶ This MAP profile is complete and very often with detailed information. This profile includes external links which provide extra information, guidance and references to domestic legislation.

Recent developments

143. As indicated under element B.8, Spain reported it has finished the English translation of its MAP guidance, which has been published. Other than this, there are no recent developments with respect to element B.9.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

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

MAP and audit settlements in the MAP guidance

146. As previously discussed under element B.5, it is under Spain's domestic law possible that taxpayers and the tax administration enter into an audit settlement during the course of or after ending of an audit. This concerns so-called "*actas con acuerdo*", which allows to perform a tax adjustment in certain situations established by law. Although the relevant rules relating hereto are laid down in Article 155 of the Spanish General Tax Law, Spain's MAP guidance does not include information on whether taxpayers have access to MAP in cases of audit settlements. Although this can be deduced from Article 8(2) of this guidance, since audit settlements are not listed as a situation for which Spain's competent authority can deny access to MAP, there is no explicit confirmation that access to MAP will indeed be granted in cases of audit settlements.

147. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Spain’s MAP guidance.

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

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

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

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

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

Recent developments

151. Spain reported that in 2018 an internal circular was sent to audit teams in the tax administration to highlight that audit settlements do not preclude access to MAP. Other than this, there are no recent developments with respect to element B.10.

Anticipated modifications

152. Spain reported that it is in the process of updating its MAP guidance, which will also explicitly state that taxpayers have access to MAP in cases of audit settlements.

Conclusion

	Areas for improvement	Recommendations
[B.10]	There is no explicit guidance on the relation between audit settlements and MAP.	Spain should without further delay clarify in its MAP guidance that audit settlements do not preclude access to MAP.

Notes

1. These 77 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. Ibid.
3. These 80 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.

4. Reference is made to the 21st additional disposition of Act 58/2003 of 17 December 2003 (General Tax Law) and 9th additional disposition of Action 29/1998 of 13 July 1998, both being modified by Act 34/2015.
5. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, the Kingdom of Spain reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”. An overview of Spain’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.
6. These 69 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
7. These 15 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
8. In the stage 1 peer review report, reference was made to seven treaties. Following the peer review process of another assessed jurisdiction, another treaty was identified that does not contain the equivalent of Article 9(2) OECD Model Tax Convention. Since a new treaty was signed that includes such equivalent, whereas the current treaty in force does not, the number of treaties not containing the full equivalent remains to be seven.
9. Spain also listed the treaty with the former USSR respect to Kyrgyzstan, Tajikistan and Turkmenistan, but not with respect to the Ukraine. As none of these three jurisdictions are a signatory to the Multilateral Instrument, the instrument has no impact for these jurisdictions in their relation with Spain concerning element B.3 and is therefore not further taken into account in the analysis.
10. These 85 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
11. This concerns the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
12. Spain listed with respect to the treaty with the former USSR only Kyrgyzstan, Tajikistan and Turkmenistan as treaty partners for purposes of the Multilateral Instrument. All three states, however, are not a signatory to that instrument and therefore not further taken into account in the analysis.
13. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
14. Ibid.
15. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
16. Available at: www.oecd.org/tax/dispute/Spain-Dispute-Resolution-Profile.pdf.

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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.

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

Current situation of Spain’s tax treaties

154. Out of Spain’s 91 tax treaties, 90 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 The remaining treaty does contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but does not incorporate several of its elements, such as the part of the sentence reading “... and if it is not itself able to arrive at a satisfactory solution ...”. This provision is therefore considered not being the equivalent of Article 25(2), first sentence.

155. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element C.1. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

Practical application

156. Two peers provided specific input concerning the resolution of MAP cases in relation to the requirements under Article 25(2), first sentence, of the OECD Model Tax Convention. These peers referred to specific cases regarding the determination of the residence for tax purposes of individual taxpayers, where there are difficulties resolving, or timely resolving, cases due to certain rules in Spain’s domestic legislation. In these cases, taxpayers changed their residence to Spain during the course of a calendar year. Based on Spain’s domestic legislation, the fiscal year coincides with the calendar year and there is no possibility of concluding the fiscal period by reason of the taxpayer’s change of residence. For that reason, an individual is a resident of Spain for tax purposes if he stays in Spain for more than 183 days in any calendar year. The residence of an individual is determined for the whole year. One peer noted that Spain has an observation to paragraph 10 of the Commentary to Article 4 of the OECD Model Tax Convention, which states that in a situation where the taxpayer transfers its residence to the other contracting state in the course of a calendar year, it will for tax purposes only be a resident of that state as from the date of transfer. The observation made by Spain in the Commentary to Article 4, which reads:

Spain, due to the fact that according to its internal law the fiscal year coincides with the calendar year and there is no possibility of concluding the fiscal period by reason of the taxpayer’s change of residence, will not be able to proceed in accordance with paragraph 10 of the Commentary on Article 4. In this case, a mutual agreement procedure will be needed to ascertain the date from which the taxpayer will be deemed to be a resident of one of the Contracting States.

157. The peers concluded that while this observation may lead to the specific taxation in question, it also states that the MAP process is needed to solve the issue to determine as of what date the taxpayer changed its residence from one contracting state to the other and accordingly as of what date the taxing rights can be executed. However, in the experience of one peer, the observation formulated by Spain makes the resolution of the cases referred to even more difficult. The other peer mentioned that Spain was in MAP not willing to discuss the so-called “split-year approach”. This peer clarified that during discussions Spain’s competent authority stated that it could only establish the residence of an individual taxpayer for the whole year concerned, not for a part of such year. The consequence hereof is that either the peer’s competent authority had to give up taxing rights they were entitled to or to leave double taxation in existence. The peers therefore concluded that Spain is not endeavouring to seek to resolve MAP cases in line with the obligations under Article 25(2), first sentence, of the OECD Model Tax Convention.

158. Spain responded to the peer input and stated that there are different ways to solve MAP cases, for which it mentioned its competent authority has done so overtime. Cases of the double residence of taxpayers are resolved, with Spain’s competent authority being able to come to an agreement. Spain further reported that in some of them, its competent authority has given up their taxing rights and in some others, it is the peer who gave up theirs. In addition, Spain noted that the Article 25(2), first sentence, of the OECD Model Tax Convention establishes that competent authorities shall endeavour to reach an agreement, but does not oblige them to reach an agreement (but to give their best efforts to reach such agreement). Spain also noted that its competent authority have accepted MAP cases concerning dual residence of taxpayers, is willing to discuss them and to come to an agreement. Lastly, Spain reported is in favour of arbitration and in its understanding is that one treaty partner cannot impose a solution on the other treaty partner.

159. In view of the above, while the issue presented could be an item of discussion in light of the requirements under Article 25(2), first sentence, of the OECD Model Tax Convention, the issue arose after ending of the period of the peer review process and therefore is not further taken into consideration in this report.

Recent developments

Bilateral modifications

160. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. All these three treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which is also the case for the treaties currently in force. None of these newly signed treaties have already entered into force.

Multilateral Instrument

161. Spain recently signed the Multilateral Instrument and is currently is in the process of ratifying this instrument, which it expects to be completed in 2020.

162. 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.

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

Peer input

164. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Spain. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

Anticipated modifications

165. For those treaties that do not meet one or more of the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which

economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned.

166. In regard of the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include this equivalent, no plans were shared whether it will be renegotiated to meet the requirements under element C.1.

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 91 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty is not expected to be modified by the Multilateral Instrument to include such equivalent. With respect to this treaty no actions have been taken nor are planned to be taken.	As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will at this time not be modified via the Multilateral Instrument, Spain should without further delay request the inclusion of the required provision via bilateral negotiations.

[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).

168. 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

169. Statistics regarding all tax treaty related disputes concerning Spain are published on the website of the OECD as of 2007.² Spain publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

170. 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. Spain provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Spain and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of Spain’s MAP caseload.⁴

171. With respect to post-2015 cases, Spain reported that for the years 2016-18 it has reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard Spain reported it was able to match statistics with all of them, albeit that for the year 2017 such matching was not possible with one treaty partner. For this treaty partner, Spain reported that it has made several efforts to contact the competent authority, but it did not receive any response.

172. Five peers provided input on the matching of MAP statistics with Spain. Four of these peers confirmed that they were able to match its statistics with Spain for the years 2016-18 or for any individual year. One of these peers specified that the communication with Spain's competent authority for purposes of matching the statistics has always been easy and also that they were very responsive. In the peer's view the statistics could be matched with only a few exchanges. Another peer mentioned that it identified one mismatch in the reporting of MAP statistics with Spain in 2017, but which could be resolved afterwards. The fifth peer specified that for the years 2016 and 2017 it has not matched its statistics with Spain, but did so for 2018.

173. Based on the information provided by Spain'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

174. Spain reported that its competent authority has an internal management system in place that keeps track of completion of the set milestones for each pending MAP case. These milestones are:

- confirmation of receipt of the MAP request and (if applicable) the request of additional information within two months upon receipt of the request
- communication of receipt of the MAP request to the other competent authority concerned
- sending of a position paper within four months as from the date of receipt of the MAP request
- submission of the finalised MAP case to the local tax administration within one month after a MAP agreement is reached and accepted by the taxpayer.

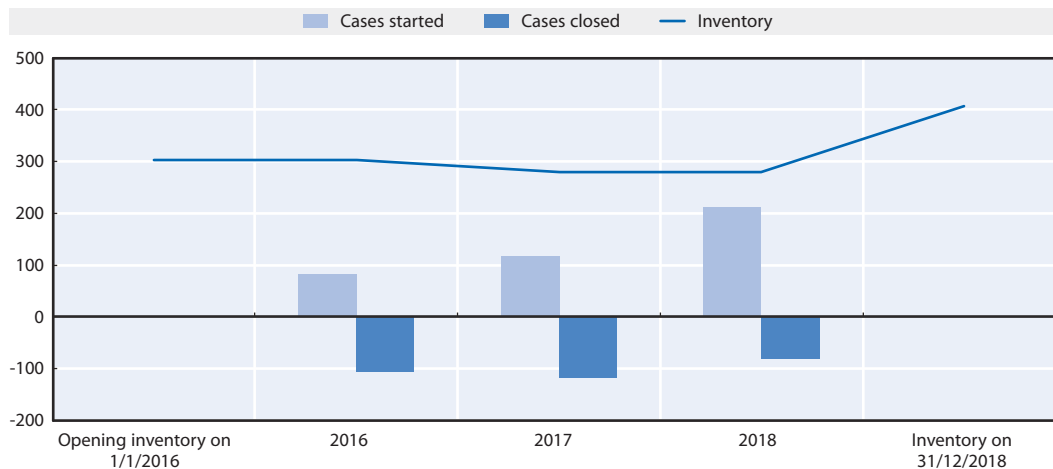
175. In addition, Spain reported that in case of a long delay incurred by the other competent authority concerned, the Spanish competent authority will send a reminder, or will send a list of pending cases with a specification of which competent authority has to take action in each individual case.

Analysis of Spain's MAP caseload

176. The analysis of Spain's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

177. Figure C.1 shows the evolution of Spain's MAP caseload over the Statistics Reporting Period.⁵

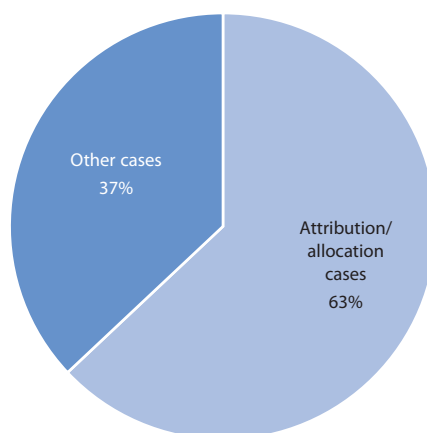
Figure C.1. Evolution of Spain's MAP caseload



178. At the beginning of the Statistics Reporting Period, Spain had 303 pending MAP cases, of which 217 were attribution/allocation cases and 86 other MAP cases.⁶ At the end of the Statistics Reporting Period, Spain had 408 MAP cases in its inventory, of which 257 are attribution/allocation cases and 151 are other MAP cases. Consequently, Spain's pending MAP cases have increased by 35% during the Statistics Reporting Period. This increase can be broken down into an increase of 18% for attribution/allocation cases and an increase of 76% for other cases.

179. The breakdown of the end inventory can be shown by Figure C.2.

Figure C.2. End inventory on 31 December 2018 (408 cases)

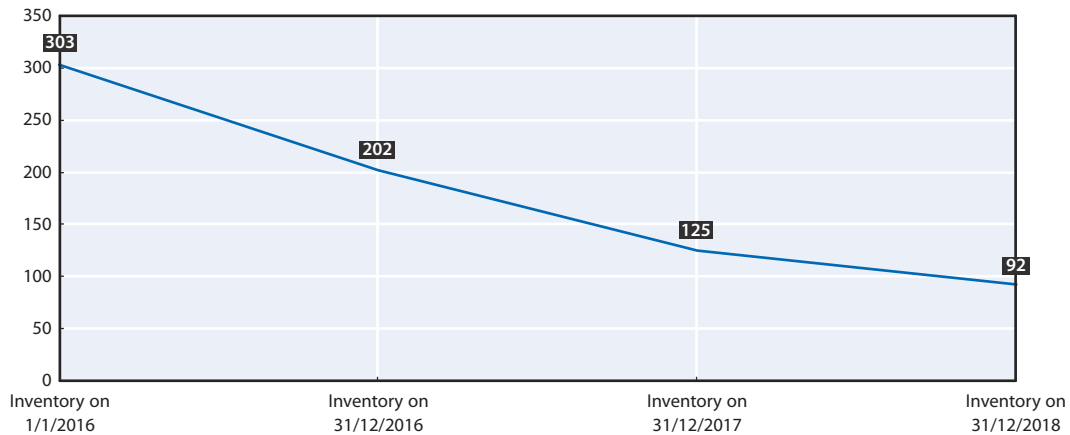


Pre-2016 cases

180. Figure C.3 shows the evolution of Spain's pre-2016 MAP cases over the Statistics Reporting Period.

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

Pre-2016 cases



181. At the beginning of the Statistics Reporting Period, Spain's MAP inventory of pre-2016 consisted of 303 cases, of which 217 were attribution/allocation cases and 86 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 92 cases, consisting of 59 attribution/allocation cases and 33 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

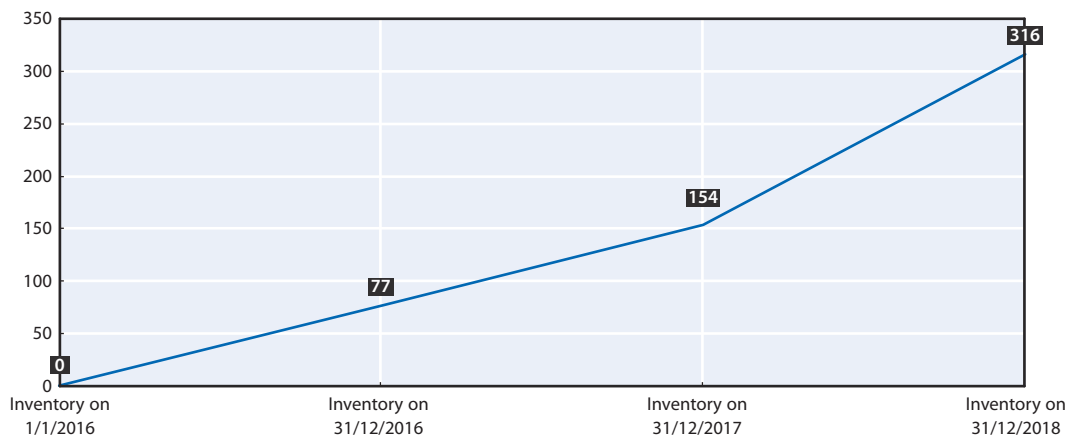
	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	-30%	-57%	-33%	-80%
Other cases	-25%	-50%	(no case closed)	-63%

Post-2015 cases

182. Figure C.4 shows the evolution of Spain's post-2015 MAP cases over the Statistics Reporting Period.

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

Post-2015 cases



183. In total 411 MAP cases started during the Statistics Reporting Period, 248 of which are attribution/allocation cases and 163 other cases. At the end of this period, the total number of post-2015 in the inventory was 316 cases, consisting of 198 attribution/allocation cases and 118 other cases. Conclusively, Spain closed 95 cases during the Statistics Reporting Period, 50 of them being attribution/allocation cases and 45 other cases. The total number of closed cases represent 23% of the total post-2015 cases that started during the Statistics Reporting Period.

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

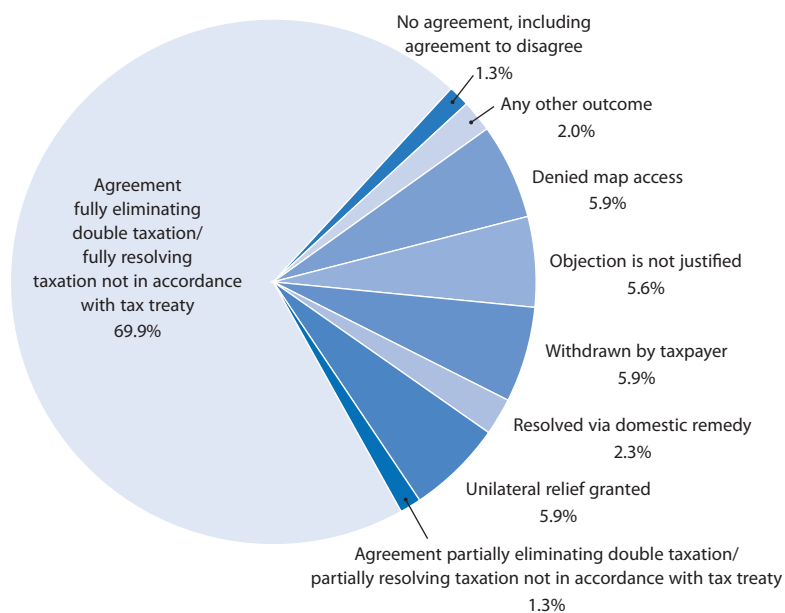
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	7%	27%	23%	20%
Other cases	8%	41%	24%	28%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

185. During the Statistics Reporting Period, Spain closed 306 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during 2016, 2017 or 2018 (306 cases)



186. Figure C.5 shows that during the Statistics Reporting Period, 214 out of 306 cases were closed 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

187. In total, 208 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (80%)
- withdrawn by taxpayers (6%)
- Unilateral relief granted (4%).

Reported outcomes for other cases

188. In total, 98 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 (48%)
- objection is not justified (15%)
- denied MAP access (14%)
- Unilateral relief granted (9%).

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

189. The average time needed to close MAP cases during the Statistics Reporting Period was 31.97 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	208	36.11
Other cases	98	23.19
All cases	306	31.97

Pre-2016 cases

190. For pre-2016 cases, Spain reported that on average it needed 42.93 months to close 158 attribution/allocation cases and 38.57 months to close 53 other cases. This resulted in an average time needed of 41.48 months to close 211 pre-2016 cases. For the purpose of computing the average time needed to close pre-2016 cases, Spain followed the reporting rules as contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes. This generally concerns:

- *Start date*: the date Spain's competent authority received a complete MAP request
- *End date*: the date when the taxpayer accepted the MAP agreement, or, differently, the date of closure of the case in case no agreement was reached, or the date when the taxpayer withdrew its MAP request.

Post-2015 cases

191. For post-2015 cases, Spain reported it needed 14.54 months to close 50 attribution/allocation cases and 5.07 months to close 45 other cases. This resulted in an average time needed of 10.06 months to close 95 post-2015 cases.

Peer input

192. On an overall level, all peers that provided input on Spain's implementation of the Action 14 Minimum Standard reported a good working relationship with Spain's competent authority, which is further discussed under element C.3 below. This concerns both jurisdictions that have an extensive MAP relationship with Spain, as also jurisdictions with a relatively modest MAP caseload. In addition, peers reported that contacts with the competent authority of Spain are easy and that generally on an annual basis face-to-face meetings are organised. Concerning the resolution of MAP cases, peers generally considered Spain's competent authority as being solution-orientated. Criticism, however, was also voiced as regards the long time it takes to resolve cases, the occurrence of delays due to the interrelationship between MAP and domestic court proceedings and the attitude towards resolving MAP cases.

193. Concerning the interrelationship with domestic court proceedings, Spain responded, as was discussed under element B.1, that as from 12 October 2015 a rule is in place, which stipulates that when a case is dealt with in MAP, legal and/or administrative proceedings are suspended until the MAP has been finalized. In this respect, Spain noted that this rule was put in place in order to avoid delays in MAP, but also to avoid that cases cannot be dealt further in MAP due to a court ruling, to which Spain's competent authority is bound.

Recent developments

194. Spain was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 93% of its post-2015 MAP cases that were pending on 31 December 2016 (79 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

195. With respect to this recommendation, Spain reported that it has been one of the few jurisdictions that was able to reduce its MAP inventory in the last years and that in that regard is still working with the same effectiveness in the remaining and new cases submitted. It was for that reason that in April 2018 the International Tax Office – responsible for handling attribution/allocation cases – has put in place a further specialisation. In this respect, a head of unit for the team handling these case was appointed. Furthermore, some staff members that only on a partial basis handled MAP cases now are fully devoted to handling MAP cases. The transfer pricing team now consists of eight full-time equivalents. With this creation, Spain reported it aims at controlling the overall MAP process and encourage a more fluent and direct contact with other competent authorities.

196. From the statistics discussed above, it follows that Spain has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 23%. Furthermore, its MAP inventory has increased by 35% since 1 January 2016. Contrary that what Spain stated, it was not able to reduce its MAP inventory. Element C.3 will further consider these numbers in light of the adequacy of resources.

197. Nearly all peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 August 2017. While other peers voiced positive input on their experience with Spain to resolve MAP cases, some of them reported experiencing delays in obtaining position papers from Spain for non-attribution/allocation cases. This input will be further discussed under element C.3.

Anticipated modifications

198. Spain reported that it is currently encouraging the development of an in-house IT programme to have an accurate database to keep track of its MAP inventory and the information involved in order to improve monitoring of pending MAP cases and to be able to report the correct information internally and to report MAP statistics at an international level.

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.

199. 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 Spain's competent authority

Organisational structure

200. With effect of 1 January 2016, an internal reorganisation was completed, following which in Spain two government institutions are assigned competence to handle MAP cases. This concerns:

- a. *International Taxation Office (ONFI)*: a directorate within the State Tax Administration Authority (AEAT)
- b. *General Directorate for Taxation*: a directorate within the Ministry of Finance.

201. The International Tax Office is responsible for handling attribution/allocation MAP cases. The office consists of 34 persons, with two additional persons that provide support functions. Within the International Tax Office a specific transfer pricing team handles these type of MAP cases, which consist of eight staff members that fully devote their time to handling these cases next to a head of unit. Of these eight staff members, five are former tax auditors and three are part of a technical body. The transfer pricing team is supported by the comparability team (which is responsible for performing benchmark studies) and the valuation team (which is responsible for financial value assessments or complex intangible value assessments), which are both also placed in the International Tax Office.

202. The General Directorate for Taxation has placed the competent authority function within the Deputy General Directorate for International Tax Matters, which is responsible for handling MAP cases relating to other taxation issues. The directorate employs 12 persons that are partially engaged in handling this type of MAP cases.⁷ These persons also are engaged in policy-related work, such as tax treaty negotiating, law-making process and granting of rulings. All staff involved in handling MAP cases fall under the Deputy-Director of this directorate (who is one of the 12 persons). In addition to these 12 persons, two persons perform support functions and where necessary the staff can make use of a translator of the Deputy General Directorate.

203. Articles 9(1) and 19(1) of Spain's MAP guidance stipulates that when MAP cases concern a joint competence of the General Directorate for Taxation and the International Tax Office, the first department will exercise coordination functions, whereby the Spanish position for the case under review shall be jointly determined. This, for example, concerns cases on whether there is a permanent establishment in existence and, if so, what profits need to be attributed to such establishment. The General Directorate for Taxation is responsible for the first question and the International Tax Office for the second question. In this situation, the General Directorate for Taxation will first discuss with the other competent authority concerned the question on the existence of a permanent establishment. If agreement reached that this is the case, the International Tax Office will subsequently discuss the attribution of profits to such establishment with this other competent authority.

204. Spain further reported that it regularly provides each of its treaty partners with the contact details of its competent authority, also when there are modifications within this competent authority. Furthermore, contact details of its competent authority are also made available in Spain's MAP profile and on the website of the EU JTPF.⁸ In addition, the contact details of the person handling an individual case are in all correspondence shared with the other competent authority concerned.

Training of staff

205. Spain reported that with respect to training of staff in charge of MAP, all staff assigned to both directorates that operate as the competent authority is given a high specialised training course on international taxation. This training comprises 124 hours, along with a four month in-person training by leading experts in international taxation.

206. Furthermore, Spain also reported that staff working in the International Taxation Office of the State Tax Administration Authority receive continuous training on current international tax issues.

Handling and resolving MAP cases

207. Concerning targeted timeframes for resolving MAP cases, apart from the average of 24-months, Article 9(3) of Spain's MAP guidance stipulates that when a MAP request is submitted in Spain, its competent authority adheres to a four month period for issuing a position paper.⁹ In turn, when the other competent authority receives the MAP request and issues a position paper, Article 19(2) of Spain's MAP guidance mentions that the Spanish competent authority has to submit a responding position paper within six months.¹⁰

208. Furthermore, in terms of resources available to perform the MAP function, apart from staffing, Spain reported that its competent authority is paid travelling expenses to conduct face-to-face meetings with other competent authorities where necessary. The budget for such meetings comes from the general budget of the Ministry of Finance and

the State Tax Administration. In that regard, Spain addressed there have never been budget constraints that limited conducting face-to-face meetings.

209. As regards face-to-face meetings with other competent authorities, during 2016 four meetings were held, in 2017 and 2018 seven and in 2019 (up to 28 February 2019) one such meeting was held, with another nine being scheduled and held. During these years also several conference calls were held to discuss MAP cases.

Recent developments

210. Spain reported that in April 2018 a further specialisation within the International Tax Office regarding the handling and resolution of MAP cases has been implemented, such by creating a specific transfer pricing team to handle all attribution/allocation cases. Whereas up to April 2018, staff members within the International Tax Office only on a partial basis handled MAP cases, eight persons are now fully devoted to handling MAP cases.¹¹ The team is headed by one person, who directly reports to the head of the International Tax Office. Spain also reported that up to April 2018, other colleagues (former tax auditors) from the International Tax Office provided support to the persons handling MAP cases. This support continued after that date for the cases that were prior to that date handled by them. Since April 2018, however, all new MAP cases are allocated exclusively to staff within the transfer pricing team.

211. In a more general sense, Spain reported that it is making a continuous effort in terms of improving the organisational aspects of its competent authority function as well as training staff in charge of MAP cases. In that regard, staff attended the MAP trainings organised by the OECD and further efforts are made internally, in particular in training auditors with a view to raise awareness among them of the possibility of their assessments creating double taxation. Also local tax officers are made aware of the main aspects of the international resolution of tax disputes.

212. In the stage 1 report, as Spain did not close its MAP cases within the pursued average of 24 months (see below), it was recommended to closely monitor whether the current resources provided to the MAP function, as well as the additional resources envisaged to be provided in the near future, and the scheduled increase of face-to-face meetings will contribute to the resolution of MAP cases in a timely, efficient and effective manner. In this respect, Spain reported that – next to the creation of a dedicated transfer pricing team – specifically for attribution/allocation cases (as the average for these cases is above 24 months), it issues annually a report to the Board of Directors of the State Tax Administration, which includes information on: the number of MAP cases resolved and the number of face-to-face meetings held with other competent authorities, such in comparison with figures from the preceding year. In addition, as from 2018 two specific targets for the transfer pricing team have been established, namely (i) the reduction of the average time needed to resolve MAP cases and (ii) fostering face-to-face meetings with other competent authorities. The compliance with these targets is followed-up on a quarterly basis.

213. In addition to the above, Spain provided a response to the input provided by peers in stage 1 of the peer review process, or indicated how it addressed that input. This response is reflected in the section discussing the peer input below. Furthermore, Spain also reported how it addressed some of the suggestions for improvement made by peers during stage 1 (see paragraphs 235-237 below). This concerns:

- *Improving communications* Spain mentioned its competent authority has made an effort to inform treaty partners of MAP request as soon as they are received,

thereby indicating whether the request will be accepted or that further information is needed. In order to accelerate such notifications, email correspondence is being used.

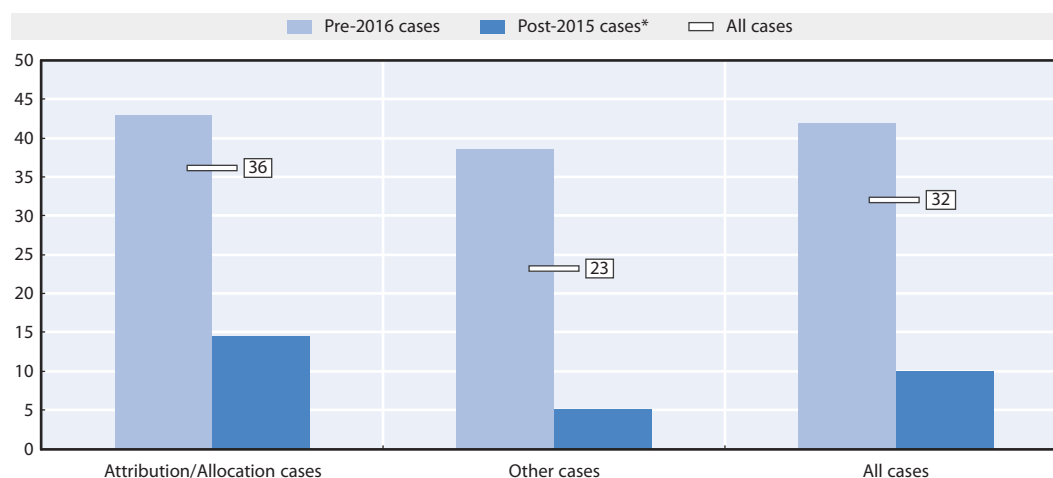
- *Scheduling more face-to-face meetings:* Spain noted that – as is reflected in paragraph 209 above – in 2017 and 2018 seven face-to-face meetings were held each year, with another ten being scheduled and held in 2019. It also held several conference calls with treaty partners during these years.
- *Adding more resources to staff in charge of MAP:* following the internal reorganisation and the creation of the dedicated transfer pricing team, Spain mentioned that there are now eight staff members working full-time on handling attribution/allocation MAP cases, with the support of the comparability and valuation teams. As noted in paragraph 200 above, the transfer pricing team is supported by the comparability team (which is responsible for performing benchmark studies) and the valuation team (which is responsible for financial value assessments or complex intangible value assessments), which are both also placed in the International Tax Office.

Practical application

MAP statistics

214. As discussed under element C.2, Spain has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. The average time taken to close attribution/allocation cases is thereby significantly higher than the average time to resolve other cases. This can be shown by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-18



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

215. Based on these figures, it follows that on average it took Spain 31.97 months to close MAP cases, which is above the pursued average of 24 months. This, however, only regards attribution/allocation cases, for which the average is 36.11 months, while other cases are on average closed within 24 months (23.19 months).

216. The stage 1 peer review report of Spain analysed the 2016 statistics and showed an average of 39.38 months, which concerns an average of 41.09 months for attribution/allocation cases and 34.78 months for other cases. It was on that basis concluded that there is a risk that post-2015 cases are not resolved within the pursued average of 24 months. It was further concluded that this average may indicate that additional resources specifically dedicated to the departments involved in handling both types of MAP cases may be necessary to accelerate their resolution. In that regard, Spain expressed its intention to hire additional staff for handling attribution/allocation MAP cases. On that basis Spain was recommended to closely monitor whether the current resources provided to the MAP function, as well as the additional resources envisaged to be provided in the near future, and the scheduled increase of face-to-face meetings will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

217. 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	34.42	31.04
Other cases	14.46	22.78
All cases	28.11	27.82

218. The 2017 statistics of Spain show that the average completion time of MAP cases decreased from 39.38 months to 28.11 months, whereby the average for other cases decreased significantly to be below the pursued average of 24 months (from 34.78 to 14.11 months). Also the average for attribution/allocation cases decreased, from 41.09 months to 34.42 months, but remains still above the pursued average. For 2018, the overall average further reduced, be it that for other cases the average increased to 22.78 months. Also in 2018 the overall average remains to be above the pursued average of 24 months.

219. Furthermore – as analysed in element C.2 – the MAP inventory of Spain 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	217	248	208	257	18%
Other cases	86	163	98	151	76%
Total	303	411	306	408	35%

Clarifications by Spain

220. Spain reported there being a variety of reasons why on average it took its competent authority on average longer than 24 months to close MAP cases. This mainly concerned a late notification/position paper by either the competent authority of the treaty partner or Spain's competent authority, as also delays due to late providing of additional information/documentation by the taxpayer, or not timely accepting the MAP agreement.

221. Further to the above, during stage 2, Spain reported that in the last 1.5 years, the number of MAP requests for other cases has increased, which has not been matched with an increase in the number of staff within Deputy General Directorate for International Tax Matters handling these other cases. In fact, several persons left the department responsible

for handling MAP cases, some of which have been replaced in the meantime. As these persons are not full-time working on handling MAP cases, delays have occurred in sending position papers to treaty partners, which may also have an effect on the timely resolution of these type of cases. Nevertheless, as follows from the statistics above, Spain managed to resolve other MAP cases within the pursued average of 24 months.

Peer input

Period 1 January 2014-31 July 2017 (stage 1)

General

222. In total 14 of the 16 peers that provided input in relation to their contacts with Spain's competent authority and their experiences in resolving MAP cases. This concerns six peers that have an extensive MAP relationship with Spain and eight peers that have a relative moderate MAP caseload with Spain. One of these latter eight peers reported that it does not have a tax treaty with Spain, but that it has MAP cases with Spain under the EU Arbitration Convention. On an overall level, input given by peers is positive regarding the resolution of MAP cases by and contacts with Spain's competent authority, although some points of criticism were also put forward.

Contacts and correspondence with the Spanish competent authority

223. Those peers for whom Spain is an important MAP partner reported having good contacts with Spain's competent authority. In particular they noted that contacts are easy and also frequent, thereby using a mix of correspondence, such as letters, e-mails, conference calls and face-to-face meetings. They further reported that their competent authorities schedule face-to-face meetings at regular occasions, and at least once or twice a year. One peer particularly noted that in June 2017 a face-to-face meeting was organised, during which eight cases were discussed, resulting in two cases being resolved with full elimination of double taxation. Another peer noted that face-to-face meetings were not scheduled, as all cases are handled via written procedure, which can be explained because of this peer's MAP caseload with Spain most consist of non-attribution/non-allocation cases. This peer did not consider the absence of such meetings to act as an impediment in resolving MAP cases. A third peer reported that the last competent authority meeting with Spain was held in October 2016 and that both competent authorities agreed to hold meetings with more frequency in the future.

224. The peers with a more moderate MAP caseload with Spain generally also reported a good and positive working relation with Spain's competent authority, whereby contacts are considered as easy. Similar as for the peers mentioned above, they reported to communicate via the exchange of position papers and e-mail. One peer in particular noted that there are ongoing communications with Spain's competent authority concerning attribution/allocation cases, whereby the latter is considered responsive in their communications. This peer further mentioned that with respect to other MAP cases, the communication with Spain's competent authority is also positive. Concerning the organisation of face-to-face meetings with Spain's competent authority, one peer reported that occasionally face-to-face meetings are held to discuss MAP cases. Another peer mentioned that although during 2016 no such face-to-face meetings were held, it generally meets with Spain's competent authority once a year.

Resolving MAP cases – major MAP partners

225. The peers with an extensive MAP relationship with Spain provided mixed input on their experience with Spain in the resolution of MAP cases, although most input is positive. One peer in particular pointed out that during its most recent competent authority meeting with Spain, the attitude of Spain’s competent authority was very positive towards finding a final solution in the case that conciliates in the best way the interest of both competent authorities. Another peer noted that discussions with Spain’s competent authority are frequent and positive, as they provide a good working atmosphere to resolve complex cases.

226. Of the peers mentioned above, some also voiced criticism. One peer, for example, mentioned that for one MAP request, which was submitted in Spain, it was only notified of the existence of the case more than a year after the date of submission of the request. In the peer’s view, such behaviour obstructed the peer to properly evaluate the case. Another issue brought forward by this peer was that in one case the relevant documentation was only provided in the Spanish language. During stage 2, Spain responded to this input and mentioned that the International Tax Office uses a strict protocol of communication regarding the submission of a MAP request to the relevant treaty partner and that it is not aware of a non-notification of submitted MAP request.

227. Two other peers also criticised the relationship between MAP and domestic remedies in Spain. In Spain a MAP case is suspended if simultaneously domestic appeals procedures are pending for the same case. One peer considers this to constitute a hindrance in the timely resolution of MAP cases within the pursued average of 24 months. This peer, as also another peer, also referred to the fact that Spain’s decisions of its judicial bodies, following which it is not possible to resolve a MAP case other than that the agreement validates the ruling by the Spanish court (e.g. a one-sided adjustment). This peer gave the example of a MAP case that was closed by Spain in 2016 and which was pending for ten years, for which Spain’s competent authority gave as reasons: (i) it could not derogate from the decision of its domestic court and (ii) the resolution of the MAP case was suspended until the outcome of the pending court procedure in Spain. As was discussed under element B.1, Spain in 2015 changed its policy and practice on the interaction between MAP and domestic remedies, following which domestic court proceedings are put on hold for the period a MAP case is pending. Delays encountered by peers in relation hereto will therefore no longer occur.

228. Another peer noted that in its relation with Spain meeting targeted timeframes for resolving MAP cases is often challenging, thereby referring to the indicative timetable as set out in the Code of Conduct to the EU Arbitration Convention. This peer, however, acknowledged that both Spain and itself do not always meet these timeframes. Lastly, one peer noted that MAP cases with Spain tend to take a rather long time, but did not further specify any reasons hereof or of the average time to resolve these cases.

Resolving MAP cases – other MAP partners

229. The peers with a more moderate MAP caseload with Spain generally reported no impediments in their relationship with Spain’s competent authority in resolving MAP cases. One peer in particular noted having good experiences with Spain in discussing MAP cases in the period 1 January 2016-31 July 2017. Another peer noted that Spain’s competent authority is responsive and co-operative to deal with in resolving MAP cases. More specifically, this peer noted that the relationship with Spain’s competent authority is professional and efficient, whereby cases are processed and responses to letters are done quickly. This peer, however, also noted that it awaits a response to a position paper for a non-attribution/allocation case, which was submitted to Spain’s competent authority in May 2017.

230. With respect to the input of this latter peer, Spain provided a response during stage 2. It noted that for this case the peer's position paper was received in June 2017 and the case was resolved in September of that year.

231. One peer provided mixed input on its experience with Spain's competent authority in resolving MAP cases. This peer noted that a number of complex MAP cases are currently stalled, but also mentioned it is being aware of the recent restructuring of the competent authority function in Spain. The peer reported not having a competent authority meeting since then. Furthermore, another peer reported that although it not being aware of any impediments in resolving MAP cases, it experienced in one attribution/allocation case a lack of response by Spain's competent authority until the moment the taxpayer's local representative made inquiries to that authority.

232. During stage 2, Spain responded to the input from the first peer referred to in the preceding paragraph. Spain stated that a face-to-face meeting with this peer was held in April 2018, in which long and constructive discussions were conducted, leading to the successful resolution of all but one of the stalled cases. The remaining stalled case was further discussed during a face-to-face meeting in March 2019.

233. Another peer noted that in 2016 its competent authority contacted Spain's competent authority on behalf of a taxpayer resident in the peer's state with respect to a MAP request. Spain's competent authority replied that such request must be submitted to the competent authority of the state in which the taxpayer is a resident, which in the case under review was the peer's state. The peer reported not being informed by Spain about the wrongly submitted MAP request in Spain, but also mentioned that the taxpayer eventually submitted the MAP request with the correct competent authority. In February 2017 this peer presented the case to Spain's competent authority, which confirmed receipt in April 2017. The case under review concerns three fiscal years. Due to the Spanish statute of limitation, the case could not be discussed for two of these years and for the last year the peer is awaiting a position paper by Spain's competent authority.

234. Furthermore, one peer reported that in the period 1 January 2016-31 July 2017 it only resolved one pre-2016 case, which was resolved quickly with no specificities. With respect to attribution/allocation cases, this peer reported its experience in that Spain's competent authority is not very easy in negotiating an agreement to resolve cases, especially when it concerns older cases. More specifically, this peer noted that all adjustments made by Spain's tax administration are strongly defended, whereby there is less flexibility in resolving cases, especially when high amounts are at stake. This peer further noted that Spain's competent authority tend to be quite formal in their contacts. Apart from this input, this peer also mentioned that in its experience Spain's competent authority closes cases, even though the other competent authority wants to further discuss the case and whereby the latter sent a response to the interpretation and explanation given by Spain's competent authority. Like the peer mentioned in the paragraph above, in this peer's view it appears that Spain's competent authority is not willing, or able, to discuss cases for which its domestic statute of limitation would obstruct implementation of a MAP agreement reached when a treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

235. Also to this input Spain provided a response during stage 2. This response stipulates:

- *Easiness of negotiations*: Spain mentioned that during a face-to-face meeting in 2017, four out of six pending MAP cases were resolved, thereby fully eliminating double taxation. The reason why these cases were strongly defended was in Spain's view that the Spanish adjustments were justified in light of the OECD Transfer

Pricing Guidelines, both in principle as regards the amount. Nevertheless, most of the cases were resolved through a compromise, one of them even by a full withdrawal of the Spanish adjustment.

- *Formality of contacts*: Spain clarified that under its domestic legislation certain requirements have to be fulfilled. This, for example, concerns the interaction between MAP and domestic remedies, but apart from that it does not recognise the formality of contacts with other competent authorities.
- *Unilateral closure of cases*: Spain mentioned it considered this to be one specific case, where there was in fact no double taxation, as the income flowed to a tax haven. Also the peer's tax administration entered into an unilateral APA, where the profit margin would not be adjusted even if in another stated there would be a transfer pricing adjustment for the same transaction. The case, however, was closed in 2018 following a withdrawal of the MAP request by the taxpayer.

Suggestions for improvement

236. Several peers made suggestions for improvement in relation to resolving MAP cases by Spain's competent authority. One peer mentioned looking forward to improve communications and specifically suggested to increase the frequency of communication with a view to encourage consistent dialogue concerning pending MAP cases. Furthermore, three peers suggested organising more frequently face-to-face meetings, possibly once a year. In that regard, another peer considered that as face-to-face meetings imply a significant burden for competent authorities in terms of costs and human resources, it would be desirable for both jurisdictions to strive to resolve as many cases as is possible in future meetings. As indicated above in paragraph 208, Spain reported that it already scheduled more face-to-face meetings for 2017 and for 2018.

237. Another peer reported that during the last competent authority meeting with Spain's competent authority it was agreed to streamline proceedings, such via use of e-mail for sending of communication or any required clarification to speed-up progress in resolving cases. This peer did not make further suggestions.

238. Lastly, one peer suggested that more resources could be added to the staff in charge of MAP.

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

239. Almost half of the peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. 11 peers provided specific input on their experiences with Spain concerning the resolution of MAP cases since that date. One of these peers only provided general input by stating the number of pending cases it had with Spain. Another peer mentioned that Spain has taken the initiative to schedule a face-to-face meeting in 2019 to discuss pending MAP cases in order to resolve them in a timely manner. The other peers provided more detailed input, the majority of which voiced positive input.

240. As regards these latter peers, one of them mentioned that its MAP relationship with Spain continues to be very good, even though the number of pending MAP cases is limited. It further noted that in the stage 2 period, Spain's competent authority was also promptly in their responses to communications, which contributed to an efficient resolution of cases in the beginning of 2019. A second peer voiced similar input and advocated it has a

positive working relationship with Spain's competent authority. It further noted that in the period 1 August 2017-28 February 2019 it had ongoing discussions with Spain on pending cases, both via telephone and written correspondence. It noted that in its experience Spain's competent authority is effective in their communications and the resolution of MAP cases. It concluded by stating that it did not experience any issues in the resolution of MAP cases and that its relationship with Spain's competent authority is professional and efficient.

241. Furthermore, two other peers that provided mixed input during stage 1 or voiced some criticism on their experience with Spain in resolving MAP cases, reported having experienced a positive change at the level of Spain. One of them mentioned it had a fruitful face-to-face meeting in 2017, with another one being planned. The second peer specified that the resolution of attribution/allocation cases has improved, which it appreciated. Also this peer referred to a held face-to-face meeting in which several cases were resolved.

242. Some peers also reported some criticism as regards their experiences with Spain in resolving MAP cases since 1 August 2017. One of these peers mentioned that while in 2017 two attribution/allocation cases were closed in an efficient manner, in one other MAP case a position paper is still to be provided after more than 30 months (as per February 2019). This peer therefore mentioned that in order to improve the time needed to close MAP cases, Spain could provide position papers in a timelier manner, which regards both attribution/allocation cases and other cases. Spain responded to this input and acknowledged that due to some temporary personnel issues, not all cases – including the one with this peer – could be timely resolved (see paragraph 212 above). It further mentioned that the position paper for this particular case was eventually sent in January 2020.

243. Another peer provided similar input and stressed that there were substantial delays by Spain in providing its position in other MAP cases, which were rather uncomplicated to be resolved and which caused delays in their resolution. The peer further noted that it was also difficult to obtain information on the status of the case and as per February 2019 it was awaiting a response to position papers used for three cases (in February, May and November 2018 respectively). Also in June 2018 the peer was informed by Spain's competent authority of a submitted MAP request, but also for this case it is awaiting a response. Spain also responded to this input similar to the response reflected in the previous paragraph. In addition, it mentioned that for two of the three cases a position has been provided in the meantime and a conference call was held for the third case. Lastly, for the fourth case, Spain mentioned that additional information was requested from the tax administration in order to be able to prepare a position paper.

244. A third peer mentioned that for non-attribution/allocation cases it also experienced a delay in receiving position papers, despite assurance being given by Spain's competent authority and voluminous amounts of information being shared. The peer further noted that the frequency of communications fluctuate, for which it concluded that there is scope for improvement. In that regard it is envisaged to schedule a face-to-face meeting to discuss these cases. The peer also provided further input and mentioned that face-to-face meetings are held in very testing time schedules, whereby sometimes errors/mistakes are made at micro analysis level. If for the cases under review a MAP agreement is reached, whereby these errors/mistakes become known thereafter, the peer mentioned that in its view there should be no bar in re-visiting the micro analysis without any fuss or showing inconvenience. Like for the input of the previous peers mentioned above, Spain gave a similar clarification for the occurred delays, but also noted that for one of the cases the position paper was provided in the meantime. For the second point raised by the peer, Spain disagreed with the view put forward. It stated that competent authorities should honour

MAP agreements reached in good faith. Therefore, closed cases should not be re-opened unless a significant/clerical error with a significant impact comes to light.

245. Lastly, one peer mentioned that in September 2018 it was informed by email by Spain's competent authority of two submitted MAP request. In this notification, basic information on the MAP requests was included, but the requests themselves were not shared. This peer noted that in order to make the MAP process more effective and efficient, it had to request more information on several occasions, but so far no additional information was provided. Spain responded to this input and mentioned that the documentation filed by the taxpayers in their MAP request was not shared immediately to the peer, as it was considered that it was not deemed relevant for the solution of the case. Upon request by the peer, the information was eventually shared.

Anticipated modifications

246. Spain 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 31.97 months on average, which regards especially attribution/allocation cases, as the average time needed to close these cases was 36.11 months, whereas for other cases the average time was below 24 months (23.19 months). While the average completion time has decreased in the period 2017-18 as compared to 2016, it is still 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, which specially regards attribution/allocation cases and which may indicate that the competent authority is not adequately resourced. In this respect, some peers have experienced difficulties in resolving both type of MAP cases in a timely efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • timely submission of position papers to treaty partners • timely notifications of submitted MAP requests or providing information on pending MAP cases. <p>Furthermore, the MAP caseload has increased with 35% since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Spain has taken several organisational and operational steps to improve the MAP process, such as the establishment of a dedicated team for handling attribution/allocation MAP cases and scheduling of more face-to-face meetings, further actions should be taken to ensure a timely resolution of MAP cases, which primarily regards attribution/allocation cases. In that regard, Spain should devote additional resources to its competent authority to handle these cases and also to be able to cope with the increase in the number of MAP cases (this both for attribution/allocation and other MAP cases), such to be able to resolve MAP cases in a timely, efficient and effective manner. The addition of resources should also enable Spain to:</p> <ul style="list-style-type: none"> • timely submit position papers to treaty partners • to timely notify treaty partners of submitted MAP request or to provide information on pending MAP cases.

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

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

247. 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 consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

248. As discussed under element C.3, in Spain two departments are as of 1 January 2016 responsible for handling MAP cases: the International Tax Office within the State Tax Administration and the General Directorate for International Tax Matters within the Ministry of Finance and Public Administration. The first department handles attribution/allocation cases and the latter other MAP cases.

249. With respect to handling and resolving attribution/allocation MAP cases, the Director of the Audit Department is officially assigned the competent authority function and formally entrusted with competence to enter into MAP agreements. Based on a delegation of functions, Spain reported that this function is autonomously performed within the International Tax Office, as also that the personnel handling MAP cases have autonomy to negotiate cases and enter into MAP agreements. In this respect, the decision to enter into a MAP agreement is taken independently from the approval of the personnel that made the adjustments, if only because staff in charge of MAP and staff in charge of audits report to different authorities within the State Tax Administration. From a formal perspective, the Head of the International Tax Office is the person that signs the formal exchange of letters with other competent authorities. After a MAP agreement has been reached, the Head of the International Tax Office seeks approval by the Director of the Audit Department. Spain reported that this, however, is only a pure formality and is required by administrative and hierarchy reasons for the implementation of MAP agreements. Spain additionally reported that audits are conducted at the level of the regional and local tax offices, which operate fully independent from the Director of the Audit Department and the latter is not involved in the approval process of audits nor is he directly involved in the adjustment that is subject to the MAP proceedings.

250. With respect to handling other MAP cases, the Director General for Taxes officially has to sign off on a tentative MAP agreement reached. In practice, however, the competence to handle cases and negotiate MAP agreements is at the level of the Deputy Director General for International Tax Matters, who is assessed by persons working in the Deputy General Directorate for International Tax Matters. In this respect, Spain reported that in exercising their functions, staff in charge MAP does not need any approval of MAP agreements other than the Deputy Director General and also that it is not bound by any criteria other than applicable domestic law provisions and provisions of the applicable tax treaty.

251. In regard of the above, Spain reported that all staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment nor is the process for negotiating MAP agreements influenced by policy considerations that Spain wants to see reflected in future amendments to the treaty.

Recent developments

252. Spain reported that in March/April 2019 its domestic law was amended to appoint the head of the International Tax Office as the competent authority for handling attribution/allocation, instead of the General Director of the Tax Audit Department. In order to make this amendment publically available, it was published on the website of the State Tax Administration.

Practical application

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

253. All peers that provided input did not report any impediments in Spain to perform its MAP function absent from approval or the direction of the tax administration personnel directly involved in the adjustments at issue or Spain being influenced by considerations of the policy that it would like to see reflected in future amendments to the tax treaty. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Spain is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

254. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one of these peers mentioned that it has not experienced any issues regarding the authority of Spain's competent authority to resolve MAP cases.

Anticipated modifications

255. Spain 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.

256. 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 Spain

257. Spain reported that in its internal MAP reporting system, it measures the number of MAP cases resolved, the time taken to resolve these cases and the internally set milestones (e.g. the sending of a position paper within a certain period). These variables are taken into account when evaluating staff in charge of MAP, but the staff's remuneration is not contingent to their performance. Apart from that Spain does not use specific criteria to evaluate staff in charge of MAP.

258. The Action 14 final report includes examples of performance indicators that are considered appropriate. From the above analysis it follows that Spain uses the following indicators:

- 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).

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

Recent developments

260. Spain reported that since 2018 it has introduced two performance indicators to evaluate staff in charge of MAP, in addition to the ones discussed above. This concerns the reduction of the average timeframe for resolving MAP cases and fostering face-to-face meetings with other competent authorities. Also for these indicators, Spain noted that these do not relate to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue.

Practical application

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

261. All peers that provided input indicated not being aware of the use of performance indicators by Spain that are 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)

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

Anticipated modifications

263. Spain 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.

264. 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

265. Spain reported that there are no domestic law limitations for including MAP arbitration in its tax treaties and the inclusion of MAP arbitration is part of Spain's tax treaty policy. For all treaty negotiations conducted over the last years, Spain reported it proposed the inclusion of a mandatory and binding arbitration provision modelled after Article 25(5) of the OECD Model Tax Convention.

266. Spain 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, which had to be implemented in its domestic legislation as per 1 July 2019. Spain reported that the directive is implemented via Royal Decree Law 03/2020, which entered into force on 6 February 2020.

267. Spain's MAP guidance includes in title III information on the availability of the EU Arbitration Convention and how Spain applies that convention in practice.

Recent developments

268. Spain signed the Multilateral Instrument and is currently in the process of ratifying this instrument. With the signing of the instrument, Spain also opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is further described below.

269. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. One of these three treaties contains an arbitration provision that is equivalent to Article 25(5) of the OECD Model Tax

Convention, which is not the case for the treaty currently in force and that will be replaced by this new treaty. None of these newly signed treaties have already entered into force. The effect of this arbitration provision is included in the below overview.

Practical application

270. Spain has incorporated an arbitration clause in four tax treaties as a final stage to the MAP. These clauses can be specified as follows:

- In three treaties the arbitration clause is based on Article 25(5) of the OECD Model Tax Convention, whereby in two treaties deviations from this provision were agreed on (i.e. a three-year period for the MAP instead of a two-year period, the addition that cases are not eligible for arbitration if the taxpayer is still entitled to domestic available remedies for the case under review, or that arbitration is not open for those cases that are also dealt with under the EU Arbitration Convention). The third treaty includes detailed procedural rules for the arbitration procedure, which are based on part VI of the Multilateral Instrument.
- In one treaty the arbitration clause provides for a mandatory and binding arbitration procedure and which also include detailed procedural rules on how to conduct the arbitration procedure. This arbitration clause is included in a protocol, which has not yet entered into force.

271. In addition, with respect to the effect of part VI of the Multilateral Instrument on Spain's tax treaties, there are next to Spain in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Spain listed 21 as a covered tax agreement under the Multilateral Instrument and 20 of these 21 treaty partners also listed their treaty with Spain under that instrument.

272. With respect to these 20 treaties, Spain already included an arbitration provision in one of them. For this treaty, Spain did not opt, pursuant to Article 26(4) of the Multilateral Instrument, not to apply part VI. For all 20 treaties, Spain reported it expects that part VI of the Multilateral Instrument will introduce a mandatory and binding arbitration procedure.

Anticipated modifications

273. Spain indicated that it is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate the arbitration provision of part VI of the Multilateral Instrument upon its entry into force.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 90 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to 2018.
3. Available at http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to 2018.
4. For post-2015 cases, if the number of MAP cases in Spain’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five for any treaty partner, Spain reported its MAP caseload for such a treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Spain’s 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2017 published MAP statistics. See for a further explanation Annex B and Annex C.
6. Spain reported that for pre-2016 cases for determining whether a case is considered an attribution/allocation MAP case it followed the rules contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes (available at: <https://www.oecd.org/ctp/dispute/38055311.pdf>). This in general comes down to the definition of an attribution/allocation case pursuant to Annex D of the MAP Statistics Reporting Framework. Annex D of MAP Statistics Reporting Framework defines such a case as: “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 [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case”.
7. Spain reported that this number represents an increase of three people devoted exclusively to handling MAP cases, who joined the Deputy General Directorate for International Tax Matters within the General Directorate for Taxation of the Ministry of Finance in June 2020.
8. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/spaintpprofile2017.pdf.
9. The same term applies, pursuant to Article 28 of Spain’s MAP guidance, for preparing a position paper under the EU Arbitration Convention.
10. Ibid.
11. Of these eight persons, five were former auditors, but upon joining the competent authority are no longer involved in any audit activities.

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.

274. 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

275. Spain reported that it has a domestic statute of limitation for implementing MAP agreements, which is four years after ending of the taxable year and for which the rules are laid down in Article 66(a) of the General Tax Act. This statute of limitation is overridden where tax treaties include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (see element D.3) or where a MAP agreement is reached under the EU Arbitration Convention. Furthermore, Spain clarified that the submission of a MAP request in Spain will also prevent fiscal years from being time-barred, provided the domestic statute of limitation has not yet expired.

276. Articles 14 and 15 of Spain's MAP guidance include the procedural steps to be followed when its competent authority enters into a MAP agreement with the other competent authority concerned. Article 14(1) stipulates that Spain's competent authority has to substantiate a MAP agreement into an exchange of letters, which is subject to acceptance by taxpayers and waiver of any pending domestic appeals. The taxpayer has, pursuant to Article 14(2) and (3), to notify the Spanish competent authority by letter of its acceptance or rejection of the agreement reached. In accordance with general administrative practice in Spain, the taxpayer is granted a three-month period (with a certain degree of flexibility) for such notification. In case of acceptance, the tentative MAP agreement becomes final.

277. Further to the above, Spain's competent authority is, pursuant to Article 15(1), obliged to inform the local tax administration competent to implement the agreement within one month as from the date when the said agreement becomes final. The local tax administration then has to implement the agreement, although there is no specific time for such agreement. Concerning the implementation process, Article 15(2) of Spain's MAP guidance mentions that a MAP agreement will be implemented via an ex-officio tax assessment or upon application by the taxpayer. For each fiscal year covered by the MAP, a separate tax assessment will, pursuant to Article 15(3), be issued, whereby Article 15(4) allows for an exception where the final taxable amount is that of the addition of said assessments. Where a MAP agreement requires that Spain has to make a corresponding adjustment or refund

taxes, Article 15(5) of Spain's MAP guidance stipulates that the relevant tax assessment can be corrected or annulled.

278. In addition, Spain reported that its competent authority monitors the actual implementation of MAP agreements, such by requesting feedback by the local tax administration. The actual act of implementation is saved in the database of the State Tax Administration.

Recent developments

279. Spain reported that it has implemented the recommendation given by the FTA MAP Forum to notify treaty partners when it receives a MAP request from a taxpayer, or when it has been notified by its treaty partner of such request, to notify them without delay that any fiscal year may potentially be time-barred due to the domestic statute of limitation.

Practical application

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

280. Spain reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017, once accepted by taxpayers, have been (or will be) implemented.

281. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 July 2017 that was not implemented by Spain, whereby one peer noted that it has not reached any agreements in that period that needed to be implemented by Spain's competent authority. Furthermore, another peer noted that it is its impression that Spain implements MAP agreements both timely and correctly. Also taxpayers reported no difficulties in relation to implementation of MAP agreements.

282. Further to the above, and as discussed under element C.3, two peers mentioned that for some of the MAP agreements reached, it faces difficulties in relation to the implementation of MAP agreements due to Spain's domestic statute of limitation. In that regard the peers reported that Spain informed it that this statute of limitation is from itself a reason to end MAP discussions.

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

283. Spain reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented.

284. All but one peer that provided input during stage 1 stated in stage 2 that the update report provided by Spain fully reflects their experience with Spain since 1 August 2017 and/or there are no additions to the previous input given. In addition, one peer provided input, which is similar to the input presented in paragraph 280 above. This peer mentioned that it had two MAP cases with Spain regarding fiscal years 2006 and 2009, which were initiated in 2013 and 2014 respectively. While the peer stressed that Spain has recently become more flexible regarding the application of the domestic statute of limitation, such flexibility was not shown for MAP cases concerning fiscal years prior to 2010. While the peer considered that for these cases, Spain did on the basis of the terms of the treaty not have any taxing rights, expiration of domestic time limits prevented the cases from being discussed and were closed. While the peer endeavoured to discuss the cases, with a last contact in 2015, it eventually informed the taxpayer that the case was closed without any outcome.

285. Spain responded to the input provided and mentioned that for these cases its competent authority, after the exchange of position papers by both competent authorities – which in Spain’s view included a thorough explanation of the legal reasoning for its decision based on its domestic and international treaty law – decided to close the pending cases without achieving the elimination of the occurred double taxation. Spain further mentioned that in follow-up to the peer input given it has reminded the peer of the legal basis behind these decisions, which is that due the fact that the treaty with this peer does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention, Spain’s competent authority is pursuant to domestic law prohibited from implementing the potential MAP agreement that potentially could have been reached and for that reason it closed these cases.

Anticipated modifications

286. Spain 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 Spain’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 four-year time limits in Spain’s 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 Spain’s relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, Spain 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, Spain should for clarity and transparency purposes continue its practice to 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.

287. 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

288. As discussed under element D.1, taxpayers are informed by Spain’s competent authority within one month as from the date the MAP agreement was entered into, whereby they are given a three-month period within which they should declare whether they agree with the content of the MAP agreement. Once the taxpayer has declared its consent to the agreement, local tax administrations should initiate the implementation process. There, however, is no specific timeframe for implementation of said agreements.

Recent developments

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

Practical application

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

290. Spain reported that all MAP agreements that were reached in the period 1 January 2016-31 July 2017, once accepted by taxpayers, have been timely implemented and that no cases of noticeable delays have occurred.

291. Apart from the input discussed under element D.1, all peers that provided input have not indicated experiencing any problems with Spain regarding the implementation of MAP agreements reached on a timely basis. One peer specifically mentioned that it considered that MAP agreements with Spain have been implemented both timely and correctly.

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

292. Spain reported that generally 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 relevant delays in the implementation. Spain, however, also reported being aware of some MAP agreements for which a delay in implementation occurred. This concerns:

- *Attribution/allocation cases:* there were several cases in which implementation was delayed due to the fact that double taxation arose as a result of tax assessments that concerned attribution/allocation issues and other issues. The taxpayer challenged the assessments in front of domestic courts and simultaneously submitted a MAP request for the attribution/allocation case only. Following Spain's standard practice, the court cases were suspended for the period the MAP case was pending. When a MAP agreement was reached, the taxpayer could not waive the pending court case only for the attribution/allocation issue. To solve the issue, Spain reported that its competent authority asked the local tax administration to implement the MAP agreement and subsequently request the court to proceed only with the case for the other issues.
- *Other cases:* some implementation issues arose regarding two MAP cases. In one of the cases it was found impossible to report back to the taxpayer, as the competent authority could not track down the taxpayer in order to notify him of the agreement reached, despite several notifications being made. In the second case there was a misunderstanding at the level of Spain's competent authority and the taxpayer on the implementation of the MAP agreement. Spain clarified that this followed from the fact that the agreement concerned two fiscal years, whereby in one year a refund had to be granted and in the second year tax had to be paid. In March 2019 the taxpayer made the correct claims and as a result the agreement was implemented.

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

294. One of the two remaining peers stated that in an other MAP case a MAP agreement was reached in October 2017, which was not implemented in March 2019 by Spain, following which the taxpayer did not yet received a refund in taxes from Spain. Spain

responded to this input and clarified that it is one of the cases referred to in paragraph 290 above where it was found impossible to track the taxpayer.

295. The second peer mentioned it has resolved an attribution/allocation case in October 2017, which was not yet implemented due to a request from the taxpayer to put implementation on hold as court cases were pending for the same case. Spain also responded to this input, clarifying that for this case multiple issues arose for which multiple MAP cases were initiated with different treaty partners. The taxpayer declared not being willing to withdraw the pending appeals before Spanish courts until in all these cases a MAP agreement was reached. While with this peer and another treaty partner such agreement was reached, with a third treaty partner the MAP process was as per the end of February 2019 still pending, which caused that the MAP agreement was at that time not yet implemented. Spain clarified that this was an extraordinary circumstance due to the fact that separate MAP cases were pending with different treaty partners relating to the same issue and the same taxpayer. In addition, Spain reported that as per January 2020, an agreement was reached with the third treaty partner and as per February 2020, upon a response from the treaty partner, the agreement was sent for implementation to the local tax office. Consequently, all three MAP agreements have been sent to the local tax administration for implementation.

Anticipated modifications

296. Spain 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 (OECD, 2015) 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.

297. 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 Spain's tax treaties

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

299. Out of Spain's 91 tax treaties, 66 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one treaty contains such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, 22 do not contain such equivalent or the alternative provisions.¹

300. For the remaining two treaties the following analysis is made:

- In one treaty a provision that is based on Article 25(2), second sentence is contained, but this provision also contains wording that a MAP agreement must be implemented within seven years after the date of the first notification of taxation not in accordance with the provisions of the convention. As this bears the risk that MAP agreements cannot be implemented due to time constraints in the treaty, it is therefore considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.
- In one treaty a provision equivalent to Article 25(2), second sentence is contained, but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. "except such limitations as apply for the purposes of giving effect to such an agreement"). As Spain uses a statute of limitation for implementing MAP agreements, there is a risk that under these treaties MAP agreements cannot be implemented under this treaty. The treaty provision is therefore also considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

301. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element D.3. Some peers reported being in the process of renegotiating the treaty with Spain with a view to inter alia bring it in line with the requirements under the Action 14 Minimum Standard. For one of these peers the treaty with Spain indeed does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Furthermore, three peers specifically mentioned that their treaty with Spain does not meet the requirements under element D.3. Two of these peers reported that there are no ongoing negotiations with Spain to amend the treaty with a view to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, as it is envisaged it will be modified via the Multilateral Instrument. Both treaties will indeed be modified via this instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. The third peer mentioned that it is willing to accept the alternative provisions in Articles 9(1) and 7(2) and that discussions hereon should be held in the near future.

302. For ten of 24 of the treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument to include such equivalent, the relevant peers did not provide input in general or in relation to element D.3.

Recent developments

Bilateral modifications

303. Spain signed new treaties with three treaty partners, all of which concern the replacement of an existing treaty currently in force. None of these newly signed treaties have already entered into force. All these three treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for two of the three treaties currently in force. The effect of these newly signed treaties has been reflected above where it has relevance.

Multilateral Instrument

304. Spain recently signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which it expects to be completed in 2020.

305. 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 (OECD, 2016). 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.

306. In regard of the 24 tax treaties above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Spain listed 22 as covered tax agreements under the Multilateral Instrument and made for 21 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.² Of the relevant 21 treaty partners, five are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with Spain as a covered tax agreement under that instrument and one made a reservation on the basis of Article 16(5)(c). All remaining 14 treaty partners also made a notification on the basis of Article 16(6)(c)(ii).³ Therefore, at this stage therefore, 14 of the 24 treaties will, upon entry into force for the treaties concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

307. With respect to the ten remaining tax treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Spain reported that it has finalised negotiations with one treaty partner *inter alia* to meet

the requirements under the Action 14 Minimum Standard. Furthermore, contacts with two other treaty partners have been established on the amendment or replacement of the existing treaty in force, to also include such equivalent.

308. Furthermore, Spain reported that for one of the other eight 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 relevant treaty partner has informed Spain 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.

Peer input

309. Of the peers that provided input during stage 2, seven provided input in relation to their tax treaty with Spain. Six of these peers concern a treaty partner to one of the treaties identified above that do not contain Article 25(2), second sentence, of the OECD Model Tax Convention. Three of them confirmed that such equivalent is indeed not contained in their tax treaty with Spain, but that it will be modified by the Multilateral Instrument, which conforms with the above analysis. Furthermore, two other peers also confirmed that such equivalent is not contained and that they are currently in negotiations with Spain on the amendment or the replacement of the existing treaty in force.

310. The last peer also confirmed that such equivalent is not contained and mentioned that in 2018 it sent a proposal for an amending protocol to Spain with a view to meet the requirements under element D.3. This proposal entailed the inclusion of the alternative provision for Article 9(1) and Article 7(2). With that proposal, the peer also requested Spain on possible dates to schedule negotiations. In a response Spain mentioned that it has contacted the peer to set a date for the initiation of negotiations.

Anticipated modifications

311. For those treaties that do not meet one or more of the requirements under the Action 14 Minimum Standard, Spain specified that its priority is to realise this through the Multilateral Instrument. Where treaties will not be modified through this instrument, Spain reported that priority has been or will be given to those treaty partners with which economic relations are closer and the extent to which the relevant treaty needs an update beyond the BEPS Minimum Standards. Spain, however, has not provided any further details as to the prioritisation of the envisaged negotiations with the treaty partners concerned.

312. In regard of the six remaining treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument and for which no negotiations are envisaged or pending with a view to include this equivalent, no plans were shared whether they will be renegotiated to meet the requirements under element D.3.

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>24 out of 91 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 24 treaties:</p> <ul style="list-style-type: none"> • 14 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. • Nine will not be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties: <ul style="list-style-type: none"> - For one negotiations have been completed <i>inter alia</i> to include the required provision. - For two contacts have been established to enter into negotiations with a view to include the required provision. - For the remaining six no actions have been taken, nor are planned to be taken. 	<p>Spain 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 15 of the 24 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 and once one of the relevant treaty partners updated its notifications under that instrument.</p> <p>For eight the remaining nine 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 following its entry into force to include such equivalent, Spain should:</p> <ul style="list-style-type: none"> • continue or actually initiate negotiations with three treaty partners for which negotiations are currently pending or envisaged/scheduled to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in the remaining five treaties. <p>Specifically with respect to the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, Spain should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p>
	<p>Two of the 91 tax treaties that contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) are not yet in force, while there is treaty in force with the same jurisdictions that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).</p>	<p>Spain should as quickly as is possible complete the ratification process for those two tax treaties that include a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and replaces the existing treaties that neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).</p>

Notes

1. These 22 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. These 22 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, and the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic. With respect to the treaty with the former USSR, Spain only listed Kyrgyzstan, Tajikistan and Turkmenistan as treaty partners for purposes of the Multilateral Instrument. All three states, however, are not a signatory to that instrument and therefore not further taken into account in the analysis.

3. These 15 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic. The Multilateral Instrument will modify this treaty with respect to element D.3 for both the Czech Republic and the Slovak Republic.

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]	<p>Two out of 91 tax treaties do not contain a provision that is equivalent to Article 25(3), 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(3), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty no actions have been taken nor are planned to be taken. 	<p>Spain should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD,2017) 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 treaty concerned.</p> <p>For the remaining treaty, Spain should without further delay request the inclusion of the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD,2017) via bilateral negotiations.</p>
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	<p>Five out of 91 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 final report on Action 14 or as amended by that report (OECD, 2015b). None of those five tax treaties have been or are expected to be modified by the Multilateral Instrument to include such equivalent. With respect to these five treaties:</p> <ul style="list-style-type: none"> • For one negotiations have been completed <i>inter alia</i> to include the required provision. • For one contacts have been established to enter into negotiations with a view to include the required provision. • For the remaining three no actions have been taken nor are any actions planned to be taken. 	<p>For the five treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report Spain should:</p> <ul style="list-style-type: none"> • for one treaty continue negotiations to include the required provision • for one treaty continue the process to initiate negotiations to include the required provision • without further delay request the inclusion of the required provision via bilateral negotiations in the remaining three treaties. <p>In both instances this concerns: a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended in the final report of action 14 (OECD, 2015b); or a. as it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	One out of 91 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 nor are planned to be taken.	Spain 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 this 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. As for the first sentence, Spain should without further delay request the inclusion of a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either: <ul 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.
	Two of the 91 tax treaties that contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report are not yet in force, while there is treaty in force with the same jurisdiction that does either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	Spain should as quickly as is possible complete the ratification process for those two tax treaties that include a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report and replaces the existing treaties that does either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report (OECD, 2015).
	Two of the 67 tax treaties that contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report are not yet in force, while there is treaty in force with the same jurisdiction that does either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.	Spain should as quickly as is possible complete the ratification process for those two tax treaties that include a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report and replaces the existing treaties that does either not contain a provision that is equivalent to Article 25(1), first and/or second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report (OECD, 2015).
[B.2]	-	-
[B.3]	-	-
[B.4]	MAP guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to avoid taxes, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	Spain should without further delay amend Article 8(2)(d) of its MAP guidance to avoid the situation in which access to MAP will be denied in cases concerning the application of anti-abuse provisions, or should specify in this provision that access to MAP will not be denied for such cases. Nevertheless, as Spain has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>Six out of 91 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these eight treaties:</p> <ul style="list-style-type: none"> • Four 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. • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these two treaties no actions have been taken nor are any actions planned to be taken. 	<p>Spain should as quickly as possible complete the ratification process for the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For one of the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force for the treaties concerned, Spain should without further delay request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, Spain should, once it enters into negotiations with the jurisdictions for which it continues to apply that treaty, request the inclusion of the required provision.</p>
[B.8]	Contact details of Spain's competent authority are not included in the MAP guidance.	Spain should without further delay update its MAP guidance to include the contact information of its competent authority.
[B.9]	-	-
[B.10]	There is no explicit guidance on the relation between audit settlements and MAP.	Spain should without further delay clarify in its MAP guidance that audit settlements do not preclude access to MAP.
Part C: Resolution of MAP cases		
[C.1]	One out of 91 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty is not expected to be modified by the Multilateral Instrument to include such equivalent. With respect to this treaty no actions have been taken nor are planned to be taken.	As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will at this time not be modified via the Multilateral Instrument, Spain should without further delay request the inclusion of the required provision via bilateral negotiations.
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 31.97 months on average, which regards especially attribution/allocation cases, as the average time needed to close these cases was 36.11 months, whereas for other cases the average time was below 24 months (23.19 months). While the average completion time has decreased in the period 2017-218 as compared to 2016, it is still 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, which specially regards attribution/allocation cases and which may indicate that the competent authority is not adequately resourced. In this respect, some peers have experienced difficulties in resolving both type of MAP cases in a timely efficient and effective manner, which in particular concerns:</p> <ul style="list-style-type: none"> • timely submission of position papers to treaty partners • timely notifications of submitted MAP requests or providing information on pending MAP cases. <p>Furthermore, the MAP caseload has increased with 35% since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Spain has taken several organisational and operational steps to improve the MAP process, such as the establishment of a dedicated team for handling attribution/allocation MAP cases and scheduling of more face-to-face meetings, further actions should be taken to ensure a timely resolution of MAP cases, which primarily regards attribution/allocation cases. In that regard, Spain should devote additional resources to its competent authority to handle these cases and also to be able to cope with the increase in the number of MAP cases (this both for attribution/allocation and other MAP cases), such as to be able to resolve MAP cases in a timely, efficient and effective manner. The addition of resources should also enable Spain to:</p> <ul style="list-style-type: none"> • timely submit position papers to treaty partners • to timely notify treaty partners of submitted MAP request or to provide information on pending MAP cases.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	<p>As will be discussed under element D.3 not all of Spain'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 four-year time limits in Spain's domestic law.</p>	<p>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 Spain's relevant tax treaty, prevent the implementation of a MAP agreement when the adjustment is made at the level of the treaty partner, Spain 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, Spain should for clarity and transparency purposes continue its practice to notify the treaty partner thereof without delay.</p>
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>24 out of 91 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, nor the alternative provisions in Article 9(1) and Article 7(2). Of these 24 treaties:</p> <ul style="list-style-type: none"> • 14 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. • Nine will not be modified by the Multilateral Instrument to include the required provision. With respect to these nine treaties: <ul style="list-style-type: none"> - For one negotiations have been completed <i>inter alia</i> to include the required provision. - For two contacts have been established to enter into negotiations with a view to include the required provision. - For the remaining six no actions have been taken, nor are planned to be taken. 	<p>Spain 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 15 of the 24 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 and once one of the relevant treaty partners updated its notifications under that instrument.</p> <p>For eight the remaining nine 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 following its entry into force to include such equivalent, Spain should:</p> <ul style="list-style-type: none"> • continue or actually initiate negotiations with three treaty partners for which negotiations are currently pending or envisaged/scheduled to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in the remaining five treaties. <p>Specifically with respect to the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, Spain should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p>
	<p>Two of the 91 tax treaties that contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) are not yet in force, while there is treaty in force with the same jurisdictions that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).</p>	<p>Spain should as quickly as is possible complete the ratification process for those two tax treaties that include a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and replaces the existing treaties that neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).</p>

Annex A

Tax treaty network of Spain

Treaty partner	Column 1		Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 25(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 9(2) (Note 2) 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) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration										
	B.1	B.3	B.4	B.3	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 9(2) (Note 2) 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)	D.3	A.1	A.1	C.6										
Albania	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Algeria	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Andorra	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Argentina	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Armenia	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Australia	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Austria	Y			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Azerbaijan	N			Y					Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration					
	Column 1	Column 2			Column 3	Column 4	Column 5	Column 6		Column 7	Column 8	Column 9	Column 10	Column 11
	B.1	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) of the OECD MTC	B.3	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) 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)	A.1	A.7	B.7	C.6
Barbados	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Belarus	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	Y	N*	Y	N
Bolivia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	Y	Y	N
Bosnia and Herzegovina	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Brazil	Y	O	i	N/A	i	i	Y	N	Y	Y	Y	Y	Y	N
Bulgaria	Y	O	Y	N/A	i**	i	Y	N*	Y	Y	Y	Y	Y	N
Cabo Verde	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Canada	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Chile	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	Y	N*	Y	N
China (People's Republic of)	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Colombia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Costa Rica	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Cuba	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Cyprus ^a	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	O	i	N/A	Y	i	Y	N*	Y	N*	Y	Y	Y	N
Dominican Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	N
Ecuador	Y	O	Y	N/A	i	i	Y	N	Y	N	Y	N	Y	N
Egypt	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N
El Salvador	Y	N	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(3) first sentence? (Note 5)	Article 25(3) second sentence? (Note 6)	Arbitration							
Estonia	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Finland	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
France	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Georgia	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Germany	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Greece	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hong Kong (China)	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Hungary	Y	O		Y	N/A		Y	i**	i	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Iceland	Y	O		Y	N/A		Y	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
India	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Indonesia	Y	O		ii	N/A	2-years	i	i	i	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	O		Y	N/A		i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	O		Y	N/A		Y	Y	i	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Israel	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	Y	N		iv*	N/A	2-years	i**	i**	i	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Jamaica	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Japan	N	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Kazakhstan	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	O		Y	N/A		Y	i**	i	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kyrgyzstan	Y	O		Y	N/A		Y	i	i	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	O		Y	N/A		Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration						
	B.1		B.3		B.4		C.1		C.1		C.1		D.3		A.1		B.7		C.6		
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)
Luxembourg	Y	O	Y	N/A	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malaysia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mexico	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Moldova	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	Y	N	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
New Zealand	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Nigeria	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
North Macedonia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Oman	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Panama	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Peru	N	O	ii	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Philippines	Y	O	ii	2-years	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	ii*	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	O	ii*	2-years	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	N	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Saudi Arabia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Senegal	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		Article 25(3) of the OECD MTC		Arbitration					
	B.1	B.3	B.4	C.1	C.3	C.4	C.5	C.6	C.7	C.8	C.9	C.10	C.11	C.12	C.13	C.14	C.15	C.16	C.17	C.18
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?										
Serbia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	O	i	N/A	i	Y	N*	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
South Africa	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	O	Y	N/A	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Tajikistan	Y	O	Y	N/A	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Trinidad and Tobago	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tunisia	Y	N	i	N/A	i	Y	N*	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkmenistan	Y	O	Y	N/A	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	O	Y	N/A	i	Y	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Kingdom	Y	O	Y	N/A	i	Y	N*	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United States	Y	O	ii	5-years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uruguay	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Uzbekistan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Venezuela	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

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

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

Legend

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

Annex B

MAP statistics reporting 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 MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period		
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13	Column 14
Attribution/Allocation	217	0	0	0	3	0	71	0	0	0	0	0	0	143	43.00
Others	86	1	3	0	3	1	17	0	0	1	1	1	59	37.00	
Total	303	1	3	0	6	1	88	0	0	1	1	1	202	41.40	

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 MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period	
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13
Attribution/Allocation	143	0	1	4	0	2	53	4	0	0	0	0	79	39.82
Others	59	0	0	2	0	0	11	0	0	0	0	0	46	31.68
Total	202	0	1	6	0	2	64	4	0	0	0	0	125	38.45

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 208, which consists of 148 attribution/allocation cases and 60 other cases.
 - The reported number of MAP cases pending on 1 January 2017 was 203, which consists of 143 attribution/allocation cases and 60 other cases.
- In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 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 MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including disagreement to disagree	Any other outcome	Column 13	Column 14
Attribution/Allocation	79	0	1	1	0	0	13	0	0	2	3	59	52.66
Others	46	0	2	0	0	0	10	0	0	0	1	33	48.72
Total	125	0	3	1	0	0	23	0	0	2	4	92	51.11

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

- The reported number of MAP cases pending on 31 December 2017 was 125, which consists of 79 attribution/allocation cases and 47 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 125, which consists of 79 attribution/allocation cases and 46 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of pre-2016 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
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	57	0	0	1	1	0	2	0	0	0	0	53	5.71
Others	0	26	0	1	0	1	0	0	0	0	0	0	24	4.83
Total	0	83	0	1	1	2	0	2	0	0	0	0	77	5.42

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
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	53	59	3	0	2	1	0	9	0	0	1	0	96	12.82
Others	24	58	5	7	1	4	3	3	0	0	0	1	58	5.13
Total	77	117	8	7	3	5	3	12	0	0	1	1	154	8.21

Notes: There is a discrepancy between the number of post-2015 MAP cases in Spain's inventory as per 31 December 2016 and 1 January 2017.

- The reported number of MAP cases pending on 31 December 2016 was 79, which consists of 55 attribution/allocation cases and 24 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 77, which consists of 53 attribution/allocation cases and 24 other cases. In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases received in 2016 was corrected.

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	96	132	1	0	5	4	1	19	0	0	0	0	0	198	16.63
Others	58	79	8	2	2	1	0	6	0	0	0	0	0	118	5.03
Total	154	211	9	2	7	5	1	25	0	0	0	0	0	316	12.13

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

- The reported number of MAP cases pending on 31 December 2017 was 149, which consists of 92 attribution/allocation cases and 57 other cases.
 - The reported number of MAP cases pending on 1 January 2018 was 154, which consists of 96 attribution/allocation cases and 58 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 guidance	Royal Decree 1794/2008 of 3 November 2008
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
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 that 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, Spain (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 Spain.



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