

OECD/G20 Base Erosion and Profit Shifting
Project



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



OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Ireland (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 28 October 2020 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
PMDS	Performance Management Development System

Executive summary

Ireland has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Ireland has an established MAP programme and has significant experience with resolving MAP cases. It has a modest MAP inventory, with a small number of new cases submitted each year and 58 cases pending on 31 December 2018. Of these cases, 64% concern allocation/attribution cases. Ireland meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Ireland worked to address them, which has been monitored in stage 2 of the process. In this respect, Ireland solved almost all of the identified deficiencies.

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

- Almost 40% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Almost 30% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Ireland signed and ratified, without any reservations on the MAP article, the Multilateral Instrument. Furthermore, Ireland opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Ireland 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. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

Ireland meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such requests have been accepted in practice.

Ireland also meets 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 bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not being justified. Ireland 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. Ireland has an administrative/statutory dispute settlement or resolution process, which is independent from the audit and examination function and which can only be accessed through a request by the taxpayer. Applying this process will not limit taxpayers' access to MAP. The effect of this process on MAP is included in the guidance on this process.

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

2016-18	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018	Average time to close cases (in months)*
Attribution/allocation cases	23	33	19	37	38.29
Other cases	13	20	12	21	24.27
Total	36	53	31	58	32.86

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Ireland used as (i) start date: the date when the MAP request is considered complete and accepted by a competent authority; and (ii) end date: in general, the date when the taxpayer has officially accepted the resolution.

The number of cases Ireland closed in 2016-18 is 58% of 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 resolving MAP cases received on or after 1 January 2016), as the average time necessary was 32.86 months. This particularly concerns the resolution of attribution/allocation cases, as the average time to close these cases is longer (38.29 months) than the average time to close other cases (24.27 months). Furthermore, Ireland's MAP inventory as on 31 December 2018 increased with 61% as compared to 1 January 2016, which both regards attribution/allocation cases (61%) as well as other cases (62%). Therefore, while Ireland has taken several steps to resolve cases in a timely manner such as addition of resources and training/knowledge sharing within the competent authority, further actions or additional resources are necessary to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Furthermore, Ireland meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Ireland's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic and principled approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Ireland also meets the requirements under the Action 14 Minimum Standard as regards implementation of MAP agreements. In addition, Ireland monitors the implementation of MAP agreements and no issues have surfaced regarding the implementation throughout the peer review process

Introduction

Available mechanisms in Ireland to resolve tax treaty-related disputes

Ireland has entered into 77 tax treaties on income (and/or capital), 76 of which are in force.¹ These 77 treaties apply to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, six of the 77 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Furthermore, Ireland is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³ In addition, Ireland adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been transposed in its domestic legislation on 28 June 2019.⁴

In Ireland, the competent authority function is delegated to the Tax Administration (“Revenue Commissioners”). Within Ireland’s Tax Administration two branches of the International Tax Division are responsible for handling mutual agreement procedure (“MAP”) cases. The Transfer Pricing Branch is responsible for handling attribution/allocation cases as well as bilateral APA requests. It currently consists of 15 employees. Secondly, the Tax Treaties Branch handles other MAP cases and currently consists of four employees.

Ireland issued guidance on the governance and administration of MAP, which was last updated in December 2018 and is available at (in English):

<https://www.revenue.ie/en/tax-professionals/tadm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf>

Developments in Ireland since 1 January 2018

Developments in relation to the tax treaty network

In the stage 1 peer review report of Ireland, it is reflected that all of Ireland’s treaties are in force and that there were no recent signed treaties that were pending ratification. Since 1 January 2018, Ireland signed new treaties with Ghana (2018) and the Netherlands (2019) and an amending protocol to the treaty with Switzerland (2019). The treaty with the Netherlands has entered into force and thereby replaced the existing treaty of 1969. The treaty with Ghana and the amending protocol with Switzerland are pending ratification. Furthermore, the treaty with Ghana contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, whereas the new treaty with the Netherlands contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention as amended by the Action 14 final report. In

addition, the amending protocol with Switzerland amends the MAP provision in that treaty allowing taxpayers to file a MAP request to the competent authorities of either contracting state. It also contains the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making transfer pricing adjustments.

Furthermore, on 7 June 2017 Ireland 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 being compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 29 January 2019, Ireland deposited its instrument of ratification, following which the Multilateral Instrument has for Ireland entered into force on 1 May 2019. With the depositing of the instrument of ratification, Ireland also submitted its list of notifications and reservations to that instrument. In relation to the Action 14 Minimum Standard, Ireland has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).⁵ It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process.

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, Ireland reported that it would strive to update them through future bilateral negotiations. In the stage 1 peer review report, it is stated that Ireland undertook relevant actions, which are:

- i. Ireland approached eleven treaty partners that are signatories to the Multilateral Instrument, but with which Ireland did not have a bilateral discussion, with a proposal to bring the treaty in line with the Action 14 Minimum Standard either via the Multilateral Instrument or through a bilateral protocol to the treaty.
- ii. Ireland approached a further nine treaty partners that are not signatories to the Multilateral Instrument to propose to amend the relevant treaty provisions by protocol, in order to be in line with the requirements under the Action 14 Minimum Standard.
- iii. Ireland will include in current renegotiations of existing tax treaties or negotiations of amending protocols with five treaty partners wording to be in line with the requirements under the Action 14 Minimum Standard.

In the update report for stage 2 of the peer review process, Ireland provided a detailed description of the developments for each of these three groups of treaties. However, not all of these hold relevance for the purposes of this report, as only (i) those developments that led to the signing of a new treaty or an amending protocol, or (ii) any actions to bring those treaties for which it was in the stage 1 report identified that they do not meet the requirements under the Action 14 Minimum Standard, are taken into account. In view of these developments, there are in total six treaties that do not meet the requirements under the Action 14 Minimum Standard and that have not been, or will not be modified by the Multilateral Instrument. In this respect, Ireland reported that:

- One treaty partner has informed Ireland that it will withdraw its reservation under the Multilateral Instrument, following which the treaty will be in line with the requirements under the Action 14 Minimum Standard.
- An Amending Protocol to Ireland’s existing limited scope treaty with one treaty partner is completed and is expected to be signed in due course and an Amending Protocol to a limited scope treaty with a second treaty partner is being finalised,

following which both treaties will be in line with the requirements under the Action 14 Minimum Standard.

- Ireland has also approached the remaining three treaty partners, who are not signatories to the Multilateral Instrument, with a view to ascertain how best to bring the existing treaty with Ireland in line with the Action 14 Minimum Standard. In the case of two such treaty partners, that treaty partners have indicated to the OECD its intention to sign the Multilateral Instrument.

Other developments

Ireland reported that by Finance Act 2018, Section 959AA of the Taxes Consolidation Act 1997 (“TCA”) was amended to ensure that all MAP agreements can be implemented irrespective of time limits in its domestic law. This amendment took effect from 19 December 2018.

Ireland further reported that the public guidance on the tax appeals process in Ireland (Tax Appeals Commission (“TAC”)) has been updated to include information on the relationship between proceedings under the TAC and the availability of MAP when cases have been settled through that appeals process.

In addition, Ireland reported that the OECD’s Global Awareness Training Module has been rolled out to Ireland’s Transfer Pricing audit team.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Ireland’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, 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, Ireland’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 14 August 2018. This report identifies the strengths and shortcomings of Ireland in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁶ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Ireland. In this update report, Ireland 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 Ireland 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. Reference is made to Annex A for the overview of Ireland’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process was for Ireland launched on 29 December 2017, with the sending of questionnaires to Ireland and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Ireland in June 2018, with the subsequent approval by the BEPS Inclusive Framework on 14 August 2018. On 14 August 2019, Ireland submitted its update report, which initiated stage 2 of the process.

The period for evaluating Ireland’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2018 and depicts all developments as from that date until 31 August 2019.

In total 14 peers provided input during stage 1: Belgium, Canada, Denmark, Germany, Italy, Japan, Korea, Portugal, Russia, Spain, Sweden, Switzerland, Turkey and the United States. Out of these 14 peers, eight had MAP cases with Ireland that started on or after 1 January 2016. These eight peers represent 68% of post-2015 MAP cases in Ireland’s inventory that started in 2016 or 2017. During stage 2, the same peers provided input, apart from Russia. In addition, also Australia and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 75% of post-2015 MAP cases in Ireland’s inventory that started in 2016, 2017 or 2018. Generally, all peers indicated having a good relationship with Ireland’s competent authority with regard to MAP, and almost all of them emphasised the ease of contact and good cooperation in resolving disputes. Specifically with respect to stage 2, almost all the peers that provided input reported that the update report of Ireland fully reflects the experiences these peers have had with Ireland since 1 January 2018 and/or that there was no addition to previous input given. Three peers provided additional positive input or new experiences. The input from these peers is reflected throughout this document under the elements where they have relevance.

Input by Ireland and cooperation throughout the process

During stage 1, Ireland provided extensive answers in its questionnaire, which was submitted on time. Ireland was responsive in the course of the drafting of the peer review report by providing timely and comprehensive replies to requests for additional information, and provided further clarity where necessary. In addition, Ireland provided the following information:

- MAP profile⁷
- MAP statistics⁸ according to the MAP Statistics Reporting Framework (see below).

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

Finally, Ireland is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Ireland provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Ireland also provided peer input on the best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in Ireland

The analysis of Ireland’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2017. For stage 2 the period ranges from 1 January 2018 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Ireland. The analysis of Ireland’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Ireland, its MAP caseload during this period was as follows:

2016-18	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2018
Attribution/allocation cases	23	33	19	37
Other cases	13	20	12	21
Total	36	53	31	58

General outline of the peer review report

This report includes an evaluation of Ireland’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**”).⁹ Apart from analysing Ireland’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Ireland to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides recommendations on 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 Ireland relating to the implementation of the Action 14 Minimum Standard. Where it

concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Ireland 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 Ireland has entered into are available at: <https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/index.aspx>. The treaty that is signed but has not yet entered into force is with Ghana. Reference is made to Annex A for the overview of Ireland's tax treaties regarding the mutual agreement procedure.
2. This concerns treaties with Canada, Israel, Mexico, the Netherlands, Switzerland and the United States.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-ireland-instrument-deposit.pdf.
6. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-ireland-stage-1-9789264304192-en.htm.
7. Available at: www.oecd.org/tax/dispute/Ireland-Dispute-Resolution-Profile.pdf.
8. Ireland's MAP statistics are included in Annex B and C of this report.
9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Ireland's tax treaties

2. Out of Ireland's 77 tax treaties, 74 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. The remaining three tax treaties are considered not to contain such equivalent, as either the term "interpretation" (two treaties) or the terms "doubts" as well as "interpretation" are not contained (one treaty).

3. Ireland reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, there are under its domestic legislation and/or administrative practices no obstructions to resolve any difficulties or doubts regarding the interpretation or application of its tax treaties. In this respect, Ireland noted that it has signed a general competent authority agreement with Malta in 2018 on the application/interpretation of the tax treaty, which has now been published.¹

Peer input

4. Of the peers that provided input, six indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of these six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaty with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element A.1, indicating that their tax treaties are in line with this element.

5. For the three tax treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, one relevant peer provided input. This peer stated in a general manner that its tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that the tax treaty will be modified via the Multilateral Instrument. With respect to element A.1, the relevant tax treaty will indeed be modified.

Recent developments

Bilateral modifications

6. Ireland signed new treaties with two treaty partners, one of which concerns a newly negotiated treaty with a treaty partner with which there was no treaty yet in place, while the other concerns the replacement of the existing treaty in force. Both newly signed treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which was also the case for the existing treaty that has been replaced. One of these newly signed treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner. The other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

7. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for **Ireland** entered into force on 1 May 2019.

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

9. With respect to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Ireland listed all of them as a covered tax agreement under the Multilateral Instrument and made for these treaties, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). All relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Ireland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i).

10. As these three treaty partners have all deposited their instrument of ratification of the Multilateral Instrument, it has entered into force for the treaty between Ireland and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

11. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Ireland, but this input holds no relevance for element A.1.

Anticipated modifications

12. As all three treaties that are considered not to contain the equivalent of the first sentence of Article 25(3) of the OECD Model Tax Convention have been modified via the Multilateral Instrument, there is no need for bilateral modification of these treaties. In that regard, Ireland 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]	-	-

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

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

13. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.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.

Ireland’s APA programme

14. Ireland reported that it has implemented an APA programme, effective as from 1 July 2016 under which it is authorised to enter into bilateral and multilateral APAs. The legal basis of the bilateral APA programme is to be found in the MAP article of the underlying tax treaty. Prior to the introduction of the formal APA programme, Ireland accepted requests for bilateral APAs on an ad hoc basis in situations where a treaty partner had agreed to enter into a bilateral APA negotiation.

15. Ireland published extensive guidance on its APA programme. This guidance sets out in detail the purpose and scope of an APA, the APA process and the administering of an APA. This APA guidance can be found at:

<https://www.revenue.ie/en/companies-and-charities/international-tax/transfer-pricing/advance-pricing-agreement-apa.aspx>

16. This guidance specifies that the formal APA application should be submitted before the beginning of the first accounting period to be covered by the APA. Ireland reported that bilateral APAs run typically for a period of three to five years. Ireland’s APA guidance further explains that Ireland is willing to engage in multilateral APAs by a series of bilateral APAs.

Roll-back of bilateral APAs

17. Ireland reported that it is possible to obtain a roll-back of bilateral APAs in appropriate cases. This is also confirmed in the APA guidance, in section 3.3, “APA term & roll-back”. Ireland clarified that a roll-back is subject to applicable domestic time limits in both jurisdictions and the relevant facts and circumstances in the roll-back years remaining to be the same. Ireland further reported that other factors influencing the granting of a roll-back are potential tax audits or appeals related to the roll-back years.

Recent developments

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

Practical application of roll-back of bilateral APAs

19. Ireland publishes statistics on APAs on the website of the EU JTPF.³

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

20. Ireland reported having received nine requests for bilateral APAs in the period 1 January 2016-31 December 2017, six of which concerned a request for a roll-back. All six requests are still being processed. One APA roll-back request has been granted for an APA request submitted before 1 January 2016.

21. Most of the peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Ireland in the period 1 January 2016-1 December 2017. Two peers indicated that each of them received one or more request(s) for a bilateral APA with Ireland in that period whereby all of these APA requests included requests for a roll-back. These two peers further noted that the requests for a roll-back did not raise any issues. Another peer noted that, while it had not received such requests in the period, roll-backs with Ireland are possible in appropriate cases. An additional peer indicated that, while it had not received a request for a roll-back of a bilateral APA with Ireland in the period, roll-backs of APAs with Ireland have been executed prior to the period.

Period 1 January 2018-31 August 2019 (stage 2)

22. Ireland reported that since 1 January 2018 its competent authority received 12 requests for bilateral APAs, four of which included a request for roll-back. Ireland further reported that in one of these cases the APA has been granted, including a roll-back, while the remaining 3 cases for which a roll-back was requested are in progress.

23. Further to the above, Ireland also reported that of the six roll-back requests that it received in the period 1 January 2016-31 December 2017, two have been granted, one has been withdrawn by the taxpayer and the remaining three are still pending.

24. Almost all peers that provided input in stage 1, stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer provided input as to element A.2 and mentioned that since 1 January 2018 it has received two requests asking for a roll-back of a bilateral APA, following which the total number of roll-back requests is three. The peer that only provided input during stage 2 provided no input for element A.2.

Anticipated modifications

25. Ireland did not indicate that it anticipates any modifications in relation to element A.2. However, Ireland reported that it regularly reviews its APA guidance and the internal processes and procedures set out for officers dealing with bilateral APA requests from taxpayers, with a view to updating as required.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. Available at: <https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-01-10.pdf>.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-3.pdf. The most recent statistics published 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.

26. 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 Ireland's tax treaties

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

27. Out of Ireland's 77 tax treaties, three contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, 56 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

28. The remaining 18 tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	17
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 taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and only when there is double taxation contrary to the principles of the agreement.	1

29. The 17 tax treaties mentioned 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, there is justification for these treaties not to contain the phrase of Article 25(1), first sentence for 16 of those 17 tax treaties:

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

30. For the remaining treaty, the non-discrimination article 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 is therefore not clarified by a limited scope of application of the non-discrimination article, following which the tax treaty is considered not to be in line with this part of element B.1.

31. The MAP provision contained in the tax treaty mentioned in the second row of the table only is open in cases of “double taxation prohibited by this Convention” instead of “taxation not in accordance with the provisions of the convention”. As this constitutes a narrower scope of application as compared 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, the provision contained in this tax treaty is therefore considered not being equivalent to the first sentence.

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

32. Out of Ireland’s 77 tax treaties, 62 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

33. The remaining 15 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	11
Filing period less than 3 years for a MAP request (2 years)	4

Peer input

34. Of the peers that provided input during stage 1, six indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of these six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, one peer reported that its tax treaty with Ireland is fully in line with the Action 14 Minimum Standard. Another peer reported that its tax treaty with Ireland does not contain the second sentence of Article 25(1) of the OECD Model Tax Convention. However, this peer interprets this omission as having no time limit for filing a MAP request, so that the peer considered the tax treaty to be in line with this part of element B.1. Lastly, two peers provided specific input with regard to element B.1, indicating that their tax treaties are in line with this element.

35. For the five tax treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, two of the relevant peers provided input. Both peers stated in a general manner that their tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaties will be modified via the Multilateral Instrument. With respect to element B.1, as will be discussed below, the relevant tax treaties will indeed be modified.

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

36. As follows from the above analysis, all of Ireland’s tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. In this respect, Ireland reported that access to MAP will be granted when domestic judicial or administrative proceedings are pending for the same case. However, as Ireland does not envisage a parallel running of the MAP process and these domestic remedies, its competent authority will generally request the taxpayer to agree to a suspension of these proceedings until the MAP process has been completed. Where a taxpayer does not agree to such suspension, Ireland clarified that it will suspend the MAP process until the domestic remedies have been concluded. Ireland further reported that access to MAP will also be granted when domestic remedies have already been completed. However, as in such situation Ireland’s competent authority is not in a position to derogate from domestic court decisions, it will in MAP only seek correlative relief at the level of the treaty partner.

37. Ireland’s MAP guidance, in section 2.6, confirms the above described policy on the interrelation between MAP and domestic remedies.

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

38. Ireland reported that for those tax treaties that do not contain a filing period for MAP request, its domestic legislation does not contain any rule limiting the filing period of a MAP request.

Recent developments*Bilateral modifications*

39. Ireland signed new treaties with two treaty partners and one amending protocol to an existing treaty. Of these two newly signed treaties, one is with a treaty partner with which there was no treaty yet in place. The other treaty concerns the replacement of the existing

treaty in force. One of these two treaties and the amending protocol contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing taxpayers to file a MAP request to either competent authority. The other treaty contains 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.

40. Of the two newly signed treaties, one has already entered into force and has replaced the existing treaty with the relevant treaty partner. The other treaty and the amending protocol are pending ratification. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

Multilateral Instrument

41. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019.

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

42. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

43. With the signing of the Multilateral Instrument, Ireland opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Ireland's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Ireland opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Ireland listed 71 of its 77 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 70 of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report. None of these 70 treaties concern the treaties mentioned in paragraph 27 above that already allow the submission of a MAP request to either competent authority.

44. In total, 11 of the 70 relevant treaty partners are not a signatory to the Multilateral Instrument. All remaining 59 treaty partners listed their treaty with Ireland as a covered

tax agreement under that instrument, but 23 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Of the remaining 36 treaty partners, 34 listed their treaty with Ireland as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report.

45. Of these 34 treaty partners, 23 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Ireland and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining 11 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

46. Furthermore, for the two remaining treaty partners that did not list their treaty with Ireland on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede these treaties to the extent that the provisions contained therein are incompatible with the first sentence of Article 16(1). Since the provisions of these covered tax agreements do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, they are considered to be incompatible with the first sentence of Article 16(1). Therefore, at this stage the Multilateral Instrument will, upon entry into force, supersede these two treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

47. In view of the above and in relation to the two treaties identified in paragraphs 30 and 31 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, one is included in the 23 treaties mentioned above that have been modified via that instrument to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read after the adoption of the Action 14 final report. The remaining treaty will be modified via the Multilateral Instrument upon its entry into force for the treaty concerned.

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 treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

49. In regard of the four tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Ireland listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all the notification that they do not contain a provision described in Article 16(4)(a)(ii). All relevant treaty partners are signatories to the Multilateral Instrument, listed their treaty with Ireland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(b)(i). Three of these four treaty partners all have

already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Ireland and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these three treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. The remaining treaty will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

Peer input

50. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Ireland. This peer stated that its treaty has been updated by the Multilateral Instrument, which for the first sentence of Article 25(1) conforms with the above analysis.

Anticipated modifications

51. As all five treaties that are considered not to contain the equivalent of either the first and/or second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) have been or will be modified via the Multilateral Instrument, there is no need for bilateral modifications of these treaties. In that regard, Ireland reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as amended by the Action 14 final report, in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	-	-

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

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

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

- 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

53. As discussed under element B.1, out of Ireland’s 77 treaties, three 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, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, 34 of the remaining 74 treaties have been or will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. Ireland reported that it has introduced a bilateral notification process which allows the other competent authority concerned to provide its views on the case when Ireland’s competent authority considers the objection raised in the MAP request not to be justified. Ireland’s internal staff guidelines, being the (i) Transfer Pricing MAP Standard Operating Procedure and (ii) Tax Treaties Branch MAP Procedures Manual, instruct case officers to write to the other treaty partner within 30 days to inform them that Ireland’s competent authority considers the objection raised in a MAP request not to be justified. Ireland’s internal staff guidelines include a template letter for this notification. Section 2.4 of Ireland’s MAP guidance further clarifies that also taxpayers will be notified, where possible, within 30 days of receipt of the MAP request whether the request has been accepted or rejected alongside with a reasoning when the request has been rejected.

Recent developments

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

Practical application

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

56. Ireland reported that in the period 1 January 2016-31 December 2017 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 and 2017 MAP statistics submitted by Ireland show that none of its MAP cases was closed with the outcome “objection not justified”.

57. Almost all peers that provided input indicated not being aware of any cases for which Ireland’s competent authority denied access to MAP in the period 1 January 2016-31 December 2017. They also reported not having being consulted/notified of a case where the competent authority of Ireland considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Ireland during this period.

Period 1 January 2018-31 August 2019 (stage 2)

58. Ireland reported that also since 1 January 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by the taxpayer in its request was not justified. The 2018 MAP statistics submitted by Ireland confirm that none of its MAP cases were closed with the outcome “objection not justified”.

59. All but one peer that provided input in stage 2 stated that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer indicated that it is not aware of receiving

any notification of a MAP case where Ireland has considered the objection raised as not justified, which can be clarified by the fact that there were no such cases.

Anticipated modifications

60. Ireland 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.

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

Legal and administrative framework

62. Out of Ireland's 77 tax treaties, 61 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.¹ Furthermore, 10 tax treaties do not contain a provision that is based or equivalent to Article 9(2) of the OECD Model Tax Convention. The remaining six treaties do contain a provision that is based on Article 9(2), but deviate from this provision for the following reasons:

- Three tax treaties do not contain the last part of the last sentence stating that “the competent authorities shall if necessary consult with each other”.
- Two tax treaties provide that a corresponding adjustment can only be granted after involving the competent authorities through a consultation process or an agreement.
- In one tax treaty the granting of a corresponding adjustment is only optional as the word “shall” is replaced by “may”.

63. Ireland 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.

64. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Ireland'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, Ireland reported that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. This is also clearly stated in section 2.7 of Ireland's MAP

guidance, which explains that, if a tax treaty does not contain Article 9(2) of the OECD Model Tax Convention, cases of economic double taxation are considered to be implicitly within the scope of relevant tax treaty provisions by virtue of the inclusion of Article 9(1), which is in line with paragraph 11 of the commentary to Article 25 of the Model Tax Convention.

Recent developments

Bilateral modifications

65. Ireland signed new treaties with two treaty partners. Of these two newly signed treaties, one is with a treaty partner with which there was no treaty yet in place. The other treaty concerns the replacement of the existing treaty in force. Both treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced by the new treaty. One of these newly signed treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner, while the other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

66. Ireland reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019.

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

68. Ireland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. With respect to the 16 treaties identified in paragraph 62 above that are considered not to contain such an

equivalent provision, Ireland listed 13 as a covered tax agreement under the Multilateral Instrument and included none of them in the list of treaties for which Ireland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For four out of these 13 treaties Ireland made a notification on the basis of Article 17(4).

69. With respect to those four treaties, all treaty partners are signatories to the Multilateral Instrument and have listed their treaty with Ireland as a covered tax agreement under that instrument, but one treaty partner has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that their treaty with Ireland already contains the equivalent of Article 9(2). Of the remaining three treaty partners, two also made a notification on the basis of Article 17(4). Both treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Ireland and these treaty partners, and therefore has modified these two treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention. For the remaining treaty, the Multilateral Instrument will supersede this treaty to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).

70. With respect to the nine other treaties for which Ireland did not make a notification on the basis of Article 17(4), one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2). None of the remaining eight treaty partners has made a notification on basis of Article 17(4). Of these eight treaty partners, five have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Ireland and these treaty partners, and therefore has superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The provisions in the other three treaties will, upon entry into force, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

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

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

72. All peers that provided input have indicated not being aware of a denial of access to MAP by Ireland in the period 1 January 2016-31 July 2017 on the basis that the case concerned was a transfer pricing case.

Period 1 January 2018-31 August 2019 (stage 2)

73. Ireland reported that since 1 January 2018 it received 22 transfer pricing MAP request and that access to MAP was granted in all these cases.

74. All peers that provided input in stage 2 stated that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. Two peers provided additional input. One of them mentioned that while it only has limited experience with Ireland, in its cases with Ireland, its competent authority has granted access to MAP in transfer pricing cases. The second peer only provided

input during stage 2 and mentioned that in one transfer pricing case, the peer’s and Ireland’s competent authority were actively engaged to discuss whether the MAP request was made within the time limits under the applicable tax treaty and whether the case was admissible. The peer further noted that this consultation on an unusual set of circumstances was productive and that both competent authorities agreed the case was admissible. This peer also indicated that it had not experienced any difficulties with Ireland in relation to access to MAP.

Anticipated modifications

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

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.

76. 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

77. None of Ireland’s 77 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of Ireland 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.

78. Ireland 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. Section 2.7 of Ireland’s MAP guidance specifically addresses that Ireland will engage with the other competent authority in cases where issues arise relating to the application of treaty or domestic anti-abuse provisions.

Recent developments

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

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

80. Ireland reported that it has in the period 1 January 2016-31 December 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.

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

Period 1 January 2018-31 August 2019 (stage 2)

82. Ireland reported that since 1 January 2018 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

83. All peers that provided input in stage 2 stated that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer that only provided input during stage 2 reported that it had not experienced any difficulties with Ireland in relation to access to MAP.

Anticipated modifications

84. Ireland did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

85. 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 MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

86. Ireland reported that under its domestic law it is possible that taxpayers and the tax administration enter into a settlement agreement during the course or after an audit has ended. In this respect, Ireland clarified that where the Irish Tax Administration and taxpayers have entered into an audit settlement, such settlement does not preclude taxpayers' access to MAP. This is also clarified in section 2.7 of Ireland's MAP guidance in Chapter 2.7 and is further discussed under element B.10.

Administrative or statutory dispute settlement/resolution process

87. Ireland reported it has an 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. This process is placed with the Tax Appeals Commission, which is an independent statutory body that hears and determines appeals against assessments and decisions of the Irish Tax Administration. Furthermore, the process is legislated for in Part 40A of the Taxes Consolidation Act 1997. Taxpayers may appeal to the Tax Appeals Commission against assessments issued by the Irish Tax Administration, which will review the case and issue a determination. The Tax Appeals Commission determinations are final and conclusive in the sense of Section 949AP(1) of the Taxes Consolidation Act 1997, but may be appealed by either party to the High Court on a point of law.

88. Ireland indicated that it will grant access to MAP in cases where a decision has been rendered by the Tax Appeals Commission. However, as Ireland's competent authority cannot derogate from such a decision in MAP, it will in MAP only seek correlative relief at the level of the treaty partner. In other words, in these cases double taxation would only be fully eliminated, if the competent authority of the treaty partner adopts Ireland's position.

Recent developments

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

Practical application

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

90. Ireland reported that it has in the period 1 January 2016-31 December 2017 not denied access to MAP where the taxpayer and the tax administration have entered into an audit settlement. However, no such cases in relation hereto were received in that period.

91. All peers that provided input indicated not being aware of a denial of access to MAP by Ireland in the period 1 January 2016-31 December 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 January 2018-31 August 2019 (stage 2)

92. Ireland reported that since 1 January 2018 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 the tax administration. However, no such cases in relation hereto were received since that date.

93. All peers that provided input in stage 2 stated that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer that only provided input during stage 2 reported that it had not experienced any difficulties with Ireland in relation to access to MAP.

Anticipated modifications

94. Ireland 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.

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

Legal framework on access to MAP and information to be submitted

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

97. Ireland reported that both of its internal staff guidelines (Transfer Pricing MAP Standard Operating Procedure and Tax Treaties Branch MAP Procedures Manual), instruct case officers to request outstanding information within two months from the receipt of the taxpayer's MAP request, where such information is not included in the request. The taxpayer is given a timeframe of two months to provide this information. If the taxpayer does not provide the requested information within this period, a reminder will be sent allowing the taxpayer a further 30 days to submit the information and informing them that failure to meet this extended deadline will result in their MAP case not being progressed until the requested information has been received by the competent authority. In cases where the taxpayer has not provided the outstanding information after being reminded, the case officer will inform by letter the taxpayer as well as the other competent authority that the MAP request has been put on hold.

98. Section 2.2 of Ireland’s MAP guidance also notes that the competent authority will not commence the MAP process until a complete MAP request is received.

99. Ireland further reported that its internal staff guidelines have for all aforementioned scenarios the following template letters:

- notifying the taxpayer that their MAP request is incomplete
- reminding the taxpayer to submit outstanding information
- notifying the taxpayer that their MAP request is on hold pending receipt of outstanding information
- notifying the other competent authority that a MAP is on hold pending receipt of outstanding information.

Recent developments

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

Practical application

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

101. Ireland reported that it provides access to MAP in all cases where taxpayers have complied with the information and documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-31 December 2017 there has not been any case where the taxpayer not providing the required information or documentation has resulted in the competent authority denying access to MAP.

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

Period 1 January 2018-31 August 2019 (stage 2)

103. Ireland reported that since 1 January 2018 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

104. All peers that provided input in stage 2 stated that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer that only provided input during stage 2 reported that it had not experienced any difficulties with Ireland in relation to access to MAP.

Anticipated modifications

105. Ireland 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.

106. 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 contain 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 Ireland's tax treaties

107. Out of Ireland's 77 tax treaties, 46 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.

108. The remaining 31 tax treaties do not contain any provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.² Three of these 31 treaties have a limited scope of application.³ This concerns tax treaties that only apply to a certain category of income or a certain category of taxpayers, whereby the structure and articles of the OECD Model Tax Convention are not followed. As these treaties were intentionally negotiated with a limited scope, the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention would contradict the object and purpose of those treaties and such inclusion would also be inappropriate, as it would allow competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of a tax treaty. For this reason, therefore, there is a justification not to contain Article 25(3), second sentence, of the OECD Model Tax Convention for those three treaties with a limited scope of application.

Peer input

109. Of the peers that provided input during stage 1, six indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of these six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element B.7, indicating that their tax treaties are not in line with this element.

110. For the 31 tax treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, six of the relevant peers provided input. Two of the peers specifically indicated that their tax treaties are not in line with element B.7, but both tax treaties will be modified via the Multilateral Instrument. The remaining four peers stated in a general manner that their tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaties will be modified via the Multilateral Instrument. With respect to element B.7, as will be shown below, the relevant tax treaties will indeed be modified.

Recent developments

Bilateral modifications

111. Ireland signed new treaties with two treaty partners, one of which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place, while the other concerns the replacement of the existing treaty in force. Both newly signed treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which was also the case for the existing treaty that has been replaced. One of these newly signed treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner. The other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

112. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019.

113. 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 contain such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

114. With respect to the 28 comprehensive tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Ireland listed all of them as a covered tax agreement under the Multilateral Instrument and for all did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 28 treaty partners, two are not a signatory to the Multilateral Instrument. All remaining 26 treaty partners listed their treaty with Ireland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii).

115. Of these 26 treaty partners, 16 have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Ireland and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified 16 treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining 10 treaties, the instrument will, upon entry into force, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

116. Ireland reported that for the remaining two comprehensive tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, due to the treaty

partners not being a signatory to the Multilateral Instrument, it has approached the relevant treaty partners and sent a draft protocol. Ireland further reported that both treaty partners are considering the proposal, and in one case, the treaty partner notified Ireland of their intention to sign and make the necessary notifications under the Multilateral Instrument, which would lead to a modification of the tax treaty in line with element B.7.

Peer input

117. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Ireland, but this input holds no relevance for element B.7.

Anticipated modifications

118. Ireland reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future comprehensive tax treaties. For the three limited scope treaties Ireland also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Ireland's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to cover certain type of situations. Accordingly, in Ireland's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>31 out of 77 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 31 treaties, three are the treaties with limited scope. Of the remaining 28 treaties:</p> <ul style="list-style-type: none"> • 16 have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Ten 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 treaties 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 treaties Ireland has approached and sent a draft protocol to the relevant treaty partners to initiate discussions with a view to include the required provision. Of these two treaties: <ul style="list-style-type: none"> - for one the treaty partner responded that it intends to sign and make the necessary notifications under the Multilateral Instrument, following which it will include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention - for the other the treaty partner has not yet responded. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Ireland should, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating the treaty to include this 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.

119. 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.

Ireland’s MAP guidance

120. Ireland has issued rules, guidelines and procedures on the MAP process and how it conducts that process in practice in part 35-02-08 of the Tax and Duty Manual. This guidance can be found (in English) at:

<https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf>

121. This MAP guidance consists of four chapters and sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under tax treaties entered into by Ireland and the EU Arbitration Convention. More specifically, it contains information on:

1. Introduction	<ul style="list-style-type: none"> • Legal basis for a MAP request under tax treaties/EU Arbitration Convention
2. Making a MAP request	<ul style="list-style-type: none"> • Requirements for a valid request under tax treaties or the EU Arbitration Convention • Time limit for submission of a MAP request • Minimum information to be included in a MAP request • Start/initiation date of the MAP process • Rights/role of taxpayers throughout the process • Confidentiality of information • Factors to be considered in determining whether to accept a MAP request • Outline of the MAP process • Interaction with domestic remedies • Access to MAP in transfer pricing cases, application of anti-abuse provisions, audit settlements and in cases of bona fide taxpayer-initiated foreign adjustments • Availability of multilateral MAPs • The possibility of multi-year resolution of MAP cases • Suspension of tax collection, interest and penalties in relation to the MAP process
3. Resolution of a MAP case	<ul style="list-style-type: none"> • Possible outcomes of the MAP process • Process for implementation of a MAP agreement • Availability of arbitration • Withdrawal of the MAP request by the taxpayer
4. Corresponding adjustments in transfer pricing cases	-

Annex	<ul style="list-style-type: none"> • Contact details of Ireland's competent authority • Information and documentation to be included in a MAP request • Information and documentation to be included in a request for a corresponding adjustment
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122. In addition to its MAP guidance, Ireland published a document named “The Role of the Competent Authority”, which provides an overview of the role of the competent authority in Ireland in resolving international tax disputes. This document is available at:

<https://www.revenue.ie/en/companies-and-charities/international-tax/transfer-pricing/the-role-of-the-competent-authority.aspx>

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

Information and documentation to be included in a MAP request

124. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁴ This agreed guidance is shown below. Ireland's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

125. In addition to the above shown minimum information to be provided agreed by the FTA MAP Forum, Ireland requires the following information:

- details of the relationship between the taxpayer and the other parties to the relevant transaction(s).

Recent developments

126. Ireland reported that it has updated its MAP guidance to reflect the changes in relation to the Multilateral Instrument’s entry into force in Ireland during 2019.

Anticipated modifications

127. Ireland indicated that it regularly reviews its MAP guidance and intends to update its MAP guidance during 2020 to reflect the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[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.

128. 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.⁵

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

129. The MAP guidance of Ireland is published and can be found at:

<https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf>

130. Ireland reported that this guidance was substantially updated in July 2017, with further minor updates in November 2017 and December 2019. As regards its accessibility, the information on MAP is logically grouped within the section for “Companies and Charities”, subsection “International Tax” on the website of Ireland’s Tax Administration (<https://www.revenue.ie/en/Home.aspx>) and as such is easily accessible. Recently, Ireland added a reference to its MAP guidance within the section for individual taxpayers. As regards its accessibility, Ireland’s MAP guidance can easily be found within a few clicks from the homepage of the website of Ireland’s Tax Administration or by searching for “mutual agreement procedure” in the search engine of the website.

131. Ireland reported that taxpayers are notified about any updates to the MAP guidance by a notification system of Ireland’s Tax Administration known as eBrief. These eBriefs are sent to tax practitioners and other interested parties in Ireland informing them that new/amended guidance has been made available. Furthermore, Ireland reported that eBriefs appear in the news section on the homepage of the website of Ireland’s Tax Administration and they are typically reported in the weekly newsletters of taxation and accountancy bodies in Ireland.

MAP profile

132. The MAP profile of Ireland is published on the website of the OECD, which was last updated in September 2018. This MAP profile is complete and includes detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

134. Ireland 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.

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

MAP and audit settlements in the MAP guidance

136. As previously discussed under element B.5, it is possible in Ireland that taxpayers and the tax administration enter into an audit settlement during the course of or after ending of an audit. Section 2.7 of Ireland's MAP guidance clarifies in chapter 2.7 that taxpayers have access to MAP in case of audit settlements.

137. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information thereon in Ireland's MAP guidance.

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

138. As previously mentioned under element B.5, Ireland has an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. Section 2.6 of Ireland’s MAP guidance explains the relationship between access to MAP and the Tax Appeals Commission process as well as other domestic remedies. In this section it is clarified that access to MAP will be granted in cases where the issue was resolved through its administrative or statutory dispute settlement/resolution process. However, as Ireland’s competent authority cannot derogate in a MAP agreement from the decision of the Tax Appeals Commission, section 2.6 emphasises that, in these cases, double taxation will only be fully eliminated if the competent authority of the treaty partner adopts Ireland’s position.

139. Ireland’s guidance on its administrative or statutory dispute settlement/resolution process includes in section 1.2 an outline of how that process relates to the MAP process. This guidance is available at:

www.taxappeals.ie/en/rules-procedures

140. In paragraphs 68 and 69 of that guidance it is stated that Ireland’s policy is not to undertake a MAP parallel to this settlement/resolution process. In cases where such settlement/resolution process is pending, the taxpayer may submit a MAP request. If the taxpayer wants to pursue MAP first, they should write to the Tax Appeals Commission to seek a stay of the appeals process. The guidance also states that where the Tax Appeals Commission has made a determination, access to MAP will be granted, but that Ireland’s competent authority cannot derogate from that determination in a MAP agreement.

141. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Ireland that may limit access to MAP.

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

142. Ireland reported that all treaty partners were notified of the existence of its statutory/administrative dispute settlement/resolution process and its consequences for MAP, because this process is identified and described in Ireland’s MAP guidance and MAP profile, both of which are publicly available. All peers that provided input on Ireland’s compliance with the Action 14 Minimum Standard, however, reported that they were not aware of the existence of such a process in Ireland. While Ireland did not separately notify their treaty partners of the existence of its statutory/administrative dispute settlement/resolution process by means of a formal letter, Ireland includes detailed information on this process in its MAP profile, with a reference to its domestic MAP guidance in which the process is outlined in detail. This is considered to be in line with the requirement of element B.10.

Recent developments

143. Ireland reported that Tax Appeals Commission rules and procedures for the processing of appeals have been updated to include information on the relationship between proceedings under Tax Appeals Commission and the availability of MAP when cases have been settled through Ireland’s domestic appeals process. This updated guidance was discussed above.

Anticipated modifications

144. Ireland did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. In the stage 1 peer review report, reference was made to 60 treaties. Following the peer review process of another assessed jurisdiction, one treaty was identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017). As two new treaties were signed that include such equivalent, the number of 60 treaties containing such equivalent has been changed to 61.
2. In the stage 1 peer review report, reference was made to 29 treaties. Following the peer review process of other assessed jurisdictions, three treaties were identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). As one new treaty was signed that includes such equivalent, the number of 29 treaties not containing such equivalent has been changed to 31.
3. These three treaties concern treaties with Guernsey, Isle of Man and Jersey.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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

145. 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 (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Ireland’s tax treaties

146. Out of Ireland’s 77 tax treaties, 74 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.

147. The remaining three tax treaties the following analysis can be made:

- One tax treaty contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention. As, however, the objective of the MAP process is to reach a mutual agreement to “the avoidance of double taxation” instead of “the avoidance of taxation which is not in accordance with the Convention”, the provision contained in this tax treaty is considered not being equivalent to the first sentence.
- Two tax treaties also contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention. As these treaties omit the language “with a view to the avoidance of taxation which is not in accordance with the Convention”, the provisions contained in these treaties are considered not being equivalent to the first sentence.

Peer input

148. Of the peers that provided input during stage 1, six indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of these six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaty with Ireland is fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element C.1, indicating that their tax treaties are in line with this element.

149. For the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, one relevant peer provided input. This peer stated in a general manner that its tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaty will be modified via the Multilateral Instrument. With respect to element C.1 the relevant tax treaty will, as will be shown below, indeed be modified.

Recent developments

Bilateral modifications

150. Ireland signed new treaties with two treaty partners, one of which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place, while the other concerns the replacement of the existing treaty in force. Both newly signed treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which was also the case for the existing treaty that has been replaced. One of these newly signed treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner. The other treaty is pending ratification. The effects of the newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

151. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019.

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

153. With respect to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Ireland listed one as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with Ireland as a covered tax agreement under that instrument and also

made a notification on the basis of Article 16(6)(c)(i). This treaty partner also has already deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Ireland and the treaty partner. Therefore, at this stage the Multilateral Instrument has modified one of the three tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

154. Ireland reported that for the two tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, it has reached out to the relevant treaty partners with a proposal to enter into an amending protocol to *inter alia* include the first sentence of Article 25(2). With one of these treaty partners the amending protocol has been agreed, while such protocol is being finalised with the other treaty partner.

Peer input

155. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Ireland, but this input holds no relevance for element C.1.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For these two treaties negotiations on an amending protocol to include such equivalent have been concluded or are in the process of being concluded. 	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention following its entry into force, Ireland should:</p> <ul style="list-style-type: none"> • sign and ratify the concluded amending protocol with one treaty partner to include the required provision • finalise negotiations with one treaty partner with a view to include the required provision.

[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).

157. 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

158. Statistics regarding all tax treaty related disputes concerning Ireland are published on the website of the OECD as of 2007.¹ Ireland also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.² In addition, MAP statistics are also published annually in Ireland’s annual report of the Tax Administration (Revenue’s Annual Report),³ which is a comprehensive report on Ireland’s Tax Administration’s activities throughout the preceding year.

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

160. With respect to post-2015 cases, Ireland 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, Ireland reported that it could match its statistics with all of its MAP partners except for one case that started in 2018. Ireland reported that it counted this case in line with the OECD MAP Statistics Reporting Framework, but became aware during the peer review of the treaty partner that this treaty partner has not reported this case in their 2018 MAP statistics. Ireland clarified that since then it has corresponded with the treaty partner’s competent authority, following which it agreed with the start date proposed by Ireland and as a result the case is now considered as opened in 2018 by both competent authorities.

161. One peer provided input on the matching of MAP statistics with Ireland. The peer mentioned that its competent authority reached out to Ireland to match the statistics, to which Ireland replied the same day and confirmed that the statistics matched.

Monitoring of MAP statistics

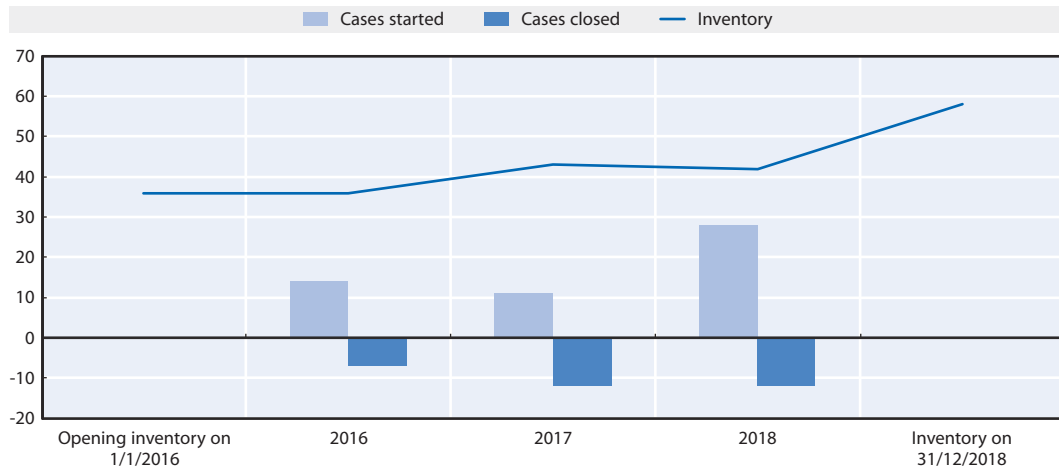
162. Ireland reported that it closely monitors progress made on each MAP case and that the case managers are responsible to report the progress of their assigned cases during the weekly staff meeting. These case managers are all responsible for ensuring that all necessary contacts and actions have been made. Ireland further reported that it uses a MAP cases tracker, which is continuously updated by the case managers, such to monitor the duration of each MAP case, contacts made and required further actions. Ireland mentioned that MAP cases approaching a duration of 24 months are highlighted by the tracker and will be specifically discussed during the weekly meetings.

Analysis of Ireland’s MAP caseload

163. The analysis of Ireland’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.⁴

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

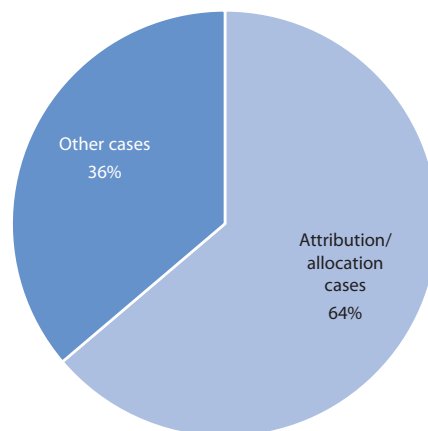
Figure C.1. Evolution of Ireland’s MAP caseload



165. At the beginning of the Statistics Reporting Period, Ireland had 36 pending MAP cases, of which 23 were attribution/allocation cases and 13 other MAP cases.⁵ At the end of the Statistics Reporting Period, Ireland had 58 MAP cases in its inventory, of which 37 are attribution/allocation cases and 21 are other MAP cases. Accordingly, Ireland’s pending MAP cases have increased by 61% during the Statistics Reporting Period. This increase can be broken down into an increase of 61% for attribution/allocation cases and an increase of 62% for other cases.

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

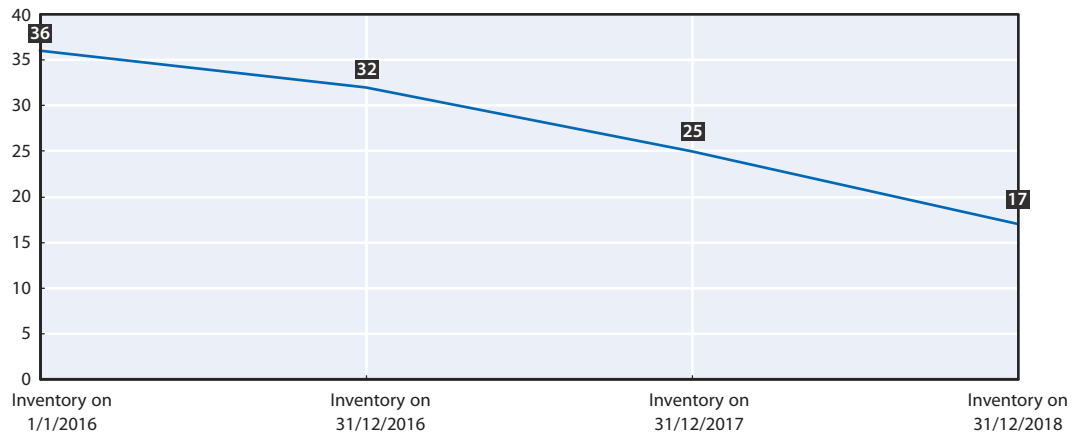
Figure C.2. End inventory on 31 December 2018 (58 cases)



Pre-2016 cases

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

Figure C.3. Evolution of Ireland's MAP inventory pre-2016 cases



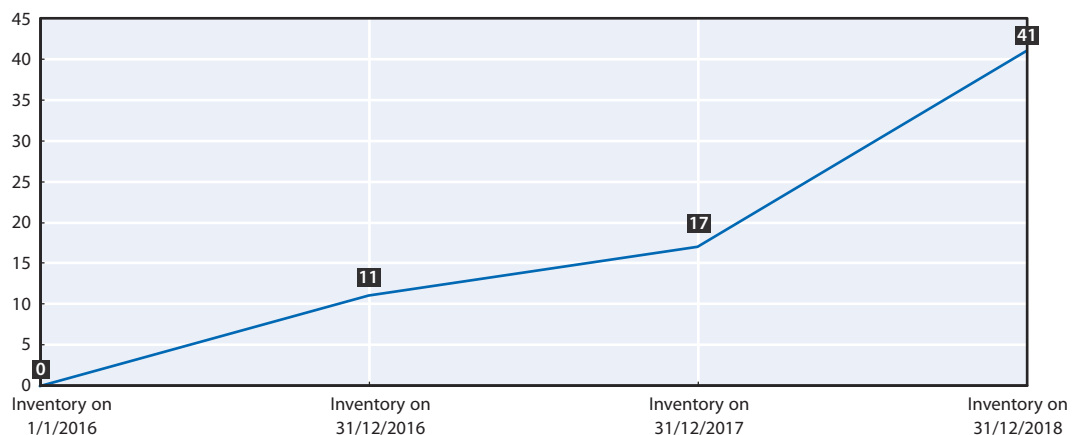
168. At the beginning of the Statistics Reporting Period, Ireland's MAP inventory of pre-2016 MAP cases consisted of 36 cases, of which 23 were attribution/allocation cases and 13 were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 17 cases, consisting of ten attribution/allocation cases and seven 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	(no case closed)	-30%	-38%	-57%
Other cases	-31%	(no case closed)	-22%	-46%

Post-2015 cases

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

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



170. In total, 53 MAP cases started during the Statistics Reporting Period, 33 of which concerned attribution/allocation cases and 20 other cases. At the end of this period, the total number of post-2015 cases in the inventory was 41 cases, consisting of 27 attribution/allocation cases and 14 other cases. Conclusively, Ireland closed 12 post-2015 cases during the Statistics Reporting Period, six of them being attribution/allocation cases and six of them being other cases. The total number of closed cases represents 23% of the total number of post-2015 cases that started during the Statistics Reporting Period.

171. 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.

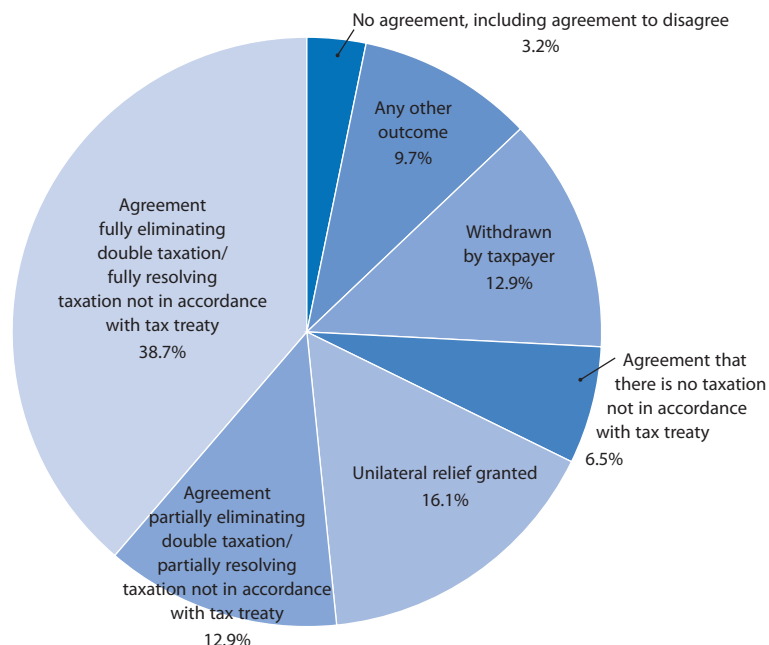
	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	Cumulative percentage of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	0%	57%	11%	18%
Other cases	50%	25%	20%	30%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

172. During the Statistics Reporting Period Ireland closed 31 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (31 cases)



173. This chart shows that during the Statistics Reporting Period, 12 out of 31 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

174. In total, 19 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases is:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (53%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty (21%)
- unilateral relief granted (16%).

Reported outcomes for other cases

175. In total, 12 other cases were closed during the Statistics Reporting Period. The reported outcomes for these cases is:

- any other outcome (25%)
- withdrawn by taxpayer (17%)
- unilateral relief granted (17%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (17%)
- agreement that there is no taxation not in accordance with tax treaty (17%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

176. The average time needed to close MAP cases during the Statistics Reporting Period was 32.86 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	19	38.29
Other cases	12	24.27
All cases	31	32.86

Pre-2016 cases

177. For pre-2016 cases Ireland reported that on average it needed 51.17 months to close 13 attribution/allocation cases and 37.50 months to close six other cases. This resulted in an average time needed of 46.85 months to close 19 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Ireland reported that it uses the following dates:

- *Start date*: the date when the MAP request is considered complete and accepted by a competent authority
- *End date*: in general, the date when the taxpayer has officially accepted the resolution.

Post-2015 cases

178. For post-2015 cases Ireland reported that on average it needed 10.40 months to close six attribution/allocation cases and 11.04 months to close six other cases. This resulted in an average time needed of 10.72 months to close 12 post-2015 cases.

Peer input

179. Of the peers that provided input, almost all reported that contacts with Ireland's competent authority are easy and professional with timely responses. These peers also appreciate Ireland's flexible and solution-oriented approach to resolve MAP cases in a principled manner. Several peers indicated specifically that they did not observe any impediments that led to a delay in finding a MAP resolution. Two peers emphasised that MAP cases with Ireland can be resolved in a timely and effective manner: one peer mentioned that nine attribution/allocation cases have been resolved with Ireland since 1 January 2016, while another peer also indicated that one attribution/allocation case and one other case have been resolved since 1 January 2016.

Recent developments

180. Ireland was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 68% of its post-2015 MAP cases that were pending on 31 December 2017 (17 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

181. With respect to this recommendation, Ireland reported that it remains committed to achieving the resolution of MAP cases within the pursued average timeframe of 24 months. In this respect, it has taken a number of proactive steps in its approach to resolving cases in a timely manner since 1 January 2018. This concerns:

- An additional director role has been created within the Transfer Pricing Branch of the competent authority.
- Additional resources have been added to the Transfer Pricing Branch within the competent authority function, by which the level of staff increased from 10 employees to 15, and for the entire competent authority from 14 to 19.
- Ongoing training and knowledge sharing within the competent authority function, both internally and externally. As to the latter, three staff members participated in OECD MAP trainings.
- Building and maintaining strong working relationships with other competent authorities. In that regard, nine face-to-face meetings with seven treaty partners were held and status calls with other competent authorities continue to be held, such to discuss what actions each competent authority needs to take to progress cases.

182. From the statistics discussed above, it follows that Ireland 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 61% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

183. Nearly all of the peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 January 2018. One provided additional

input and mentioned that concerning four attribution/allocation MAP cases initiated after 1 January 2018, both competent authorities haven't reached an agreement for the moment, although they have exchanged their positions. This peer added that both competent authorities continue negotiations to reach an agreement within the time standard.

Anticipated modifications

184. Ireland did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

185. 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 Ireland's competent authority

186. Under Ireland's tax treaties, the competent authority function is assigned to the Tax Administration (the Revenue Commissioners). Within the tax administration, the competent authority function is further delegated to the International Tax Division. Within this division, two teams are responsible for handling MAP cases, which are:

- transfer Pricing Branch: attribution/allocation cases and APA cases
- Tax Treaties Branch: other MAP cases.

187. Ireland reported that the Transfer Pricing Branch is headed by two Directors and the Tax Treaties Branch is headed by one Director. The Directors are officially delegated the competent authority function and have overall responsibility for all cases within their teams. As to the composition of each team, Ireland clarified that:

- In the Transfer Pricing Branch there are, in addition to the two Directors, eight Assistant Principals (who also act as competent authority), who are the case managers responsible for the day-to-day work on handling MAP cases. The Assistant Principals are supported in their work by five Administrative Officers/Higher Executive Officers. In summary, the Transfer Pricing Branch consists thus of 15 employees. To ensure the successful functioning of the MAP process within the team, Ireland reported that all staff have to adhere to the internal process and procedures set out in Ireland's internal Transfer Pricing MAP Standard Operating Procedure, which is reviewed on an ongoing basis and updated as required.
- In the Tax Treaties Branch there are, in addition to the Director, two Assistant Principals (who also act as competent authority) and one Higher Executive Officer. In summary, the Tax Treaties Branch consists thus of four employees. Ireland specified that the Tax Treaties Branch ensures consistency and high standards in

all the MAP processes under its responsibility by following its internal Tax Treaties Branch MAP Procedures Manual, which is developed and updated on an ongoing basis.

188. Further to the above, Ireland also reported that both teams have significant experience in the areas of transfer pricing, international tax, economics, law and accountancy. Internal training is provided to new joiners and also to existing team members on an ongoing basis. Learnings from working on particular MAP cases are shared at weekly team meetings. Ireland further reported that staff members have the possibility to attend external trainings related to specific topics when the need arises. Ireland also indicated having sufficient budget available to conduct bilateral meetings.

Monitoring mechanism

189. Ireland reported that it is assessing on a continuous basis whether the resources (staff, funding or training) allocated to the competent authority function are adequate. This assessment is made with regard to: (i) the number of MAP and APA cases in inventory, (ii) the number of new MAP and APA cases, (iii) the current time needed to resolve MAP and APA cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks. These factors are considered at regular meetings with the Head of the International Tax Division, who then requests such resources when considered to be necessary. Ireland reported that in recent years additional resources have been added (a net increase of nine team members since 1 January 2016) when specific needs were identified.

Recent development

190. As discussed under element C.2, Ireland has taken the following steps since 1 January 2018:

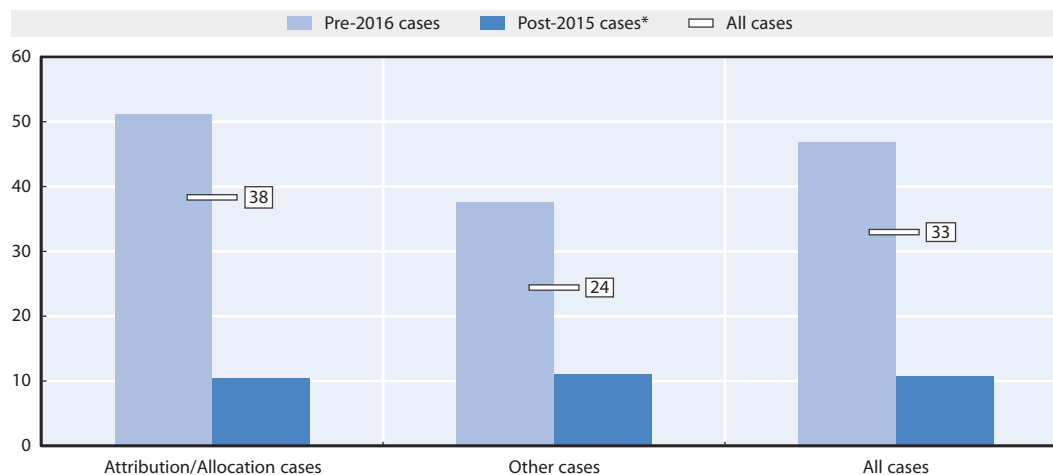
- An additional director role has been created within the Transfer Pricing Branch of the competent authority.
- Additional resources have been added to the Transfer Pricing Branch within the competent authority function, by which the level of staff increased from 10 employees to 15, and for the entire competent authority from 14 to 19.
- Ongoing training and knowledge sharing within the competent authority function, both internally and externally. As to the latter, three staff members participated in OECD MAP trainings.
- Building and maintaining strong working relationships with other competent authorities. In that regard, nine face-to-face meetings with seven treaty partners were held and status calls with other competent authorities are continued to be held, such to discuss what actions each competent authority needs to take to progress cases.

Practical application

MAP statistics

191. As discussed under element C.2 Ireland has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This primarily concerns attribution/allocation cases. This can be illustrated by Figure C.6.

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



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

192. Based on these figures, it follows that on average it took Ireland 32.86 months to close MAP cases, which is above the pursued average of 24 months. It took Ireland 38.29 months to resolve attribution/allocation cases, and 24.27 months for other cases.

193. The stage 1 peer review report of Ireland analysed the 2016 and 2017 statistics and showed an average of 22.83 months, by which Ireland was considered to be adequately resourced. However, as it took Ireland 26.92 months to resolve attribution/allocation cases, it was concluded that this may indicate that additional resources specifically dedicated to attribution/allocation cases may be necessary to accelerate the resolution of these cases. On that basis Ireland was recommended that for attribution/allocation cases, it should closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, effective and efficient manner. Specifically for attribution/allocation cases, Ireland was recommended that it could monitor, if the procedures in place to follow up on the information/documentation requested from the taxpayers are appropriate with a view to accelerate the resolution of these cases.

194. For stage 2, the 2018 MAP statistics are also taken into account. The average time to close MAP cases for this year are:

	2018
Attribution/Allocation cases	53.94
Other cases	38.37
All cases	48.75

195. The 2018 statistics of Ireland show that the average completion time of MAP cases increased from 26.92 months to 48.75 months, whereby the average for both types of cases increased significantly. For attribution/allocation cases this concerns an increase from 22.83 months to 53.94 months, and for other cases from 17.22 months to 38.37 months.

196. Furthermore – as analysed in element C.2 – the MAP inventory of Ireland significantly increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2018	Increase in %
Attribution/allocation cases	23	33	19	37	61%
Other cases	13	20	12	21	62%
Total	36	53	31	58	61%

Clarifications by Ireland

197. During stage 1 Ireland provided the following clarification for why MAP cases were not closed within the 24-month average time period during the Statistics Reporting Period:

- Attribution/allocation cases:
 - awaiting further information or documentation from the taxpayer
 - awaiting a position paper from the other competent authority
 - meetings between the competent authorities have taken place and no resolution has yet been reached, but the taxpayer has asked both competent authorities to keep the case open
 - judicial proceedings ongoing in the other jurisdiction, therefore halting the progression of the MAP
 - the other competent authority engaging in discussions with the taxpayer
 - the complex nature of certain cases.
- Other cases:
 - one case which remained open at the request of the taxpayer while being appealed through another jurisdiction's legal system, which was ultimately adjudicated upon in the Supreme Court. Not taking into account this case would result in a reduction of the average time for all other cases closed in 2016 or 2017 from 17.22 to 11.21 months.

198. In addition, Ireland reported taking further steps in order to resolve MAP cases in a timely and principled manner are:

- holding frequent discussions with other competent authorities (Ireland reported that the Transfer Pricing Branch of its competent authority had face-to-face meetings with six competent authorities in 2017 and seven in 2018)
- regularly reviewing and ensuring that the competent authority function remains appropriately resourced
- providing regular training to case managers
- sharing learnings from cases with other case managers by discussing cases at weekly meetings or bespoke meetings for more complex or unusual cases.

199. Further to the above, during stage 2, Ireland reported that the closure of eight pre-2016 cases in 2018, which represents 67% of the cases closed in 2018, has contributed to an increase of the average completion time to close MAP cases. In addition, Ireland clarified that the other factors that contributed to the increase in average completion time are: awaiting further information or documentation from the taxpayer; delayed notification of MAP request by the other competent authority; MAP case being placed on hold pending the outcome of judicial proceedings ongoing in the other jurisdiction; and the complex nature of some cases.

Peer input: Period 1 January 2016-31 December 2017 (stage 1)

General

200. In total 13 of the 14 peers that provided input, provided details as to their contacts with Ireland’s competent authority and their experiences in resolving MAP cases since 1 January 2016.

Contacts and correspondence with Ireland’s competent authority

201. All peers reported having good contacts with Ireland’s competent authority. One of these peers stated that it has a well-established relationship with Ireland’s competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. Ten peers also reported having a productive relationship with Ireland and consider its competent authority professional, competent and very easy to get in contact with. The ease of liaising has been echoed by almost all other peers, thereby pointing out that there were no difficulties encountered.

Organisation of face-to-face meetings

202. Three peers pointed out that they could easily set up face-to-face meetings with Ireland’s competent authority in order to resolve MAP cases.

Handling and resolving MAP cases

203. Generally, peers considered Ireland’s competent authority to be solution-oriented and most of them reported no impediments in resolving MAP cases. These peers also generally emphasised their experience of a timely and efficient resolution of MAP cases, which is also discussed in element C.2. One peer in particular appreciated Ireland’s informal, flexible and solution oriented approach to always find a solution in a principled manner. Another peer mentioned that in its opinion Ireland’s competent authority staff are competent and efficient in resolving MAP cases. Lastly, one of Ireland’s major treaty partners reported that it has an active and productive relationship with Ireland’s competent authority and highlighted that cases are resolved in a principled manner. In particular, this peer appreciated that Ireland’s competent authority could take into consideration a provision of its MAP guidance that affected the implementation of the MAP agreement in entering into such an agreement.

204. One peer, acknowledging a good co-operation with Ireland’s competent authority, however, pointed out having experienced delays because of taxpayers on both sides not providing fast and complete answers to competent authorities’ requests. Ireland responded

by stating that it has internal procedures in place for tracking information requests made to taxpayers and for following up with taxpayers where information requests are not responded to in a timely manner. By implementing these internal procedures, Ireland actively monitors and follows up on information requests made to taxpayers.

Suggestions for improvement

205. One peer commented that both treaty partners should continue to follow up on outstanding items by phone on a regular basis. A further peer suggested continuing and fostering consistent and direct communication.

Peer input: Period 1 January 2018-31 August 2019 (stage 2)

206. All peers that provided input in stage 1 stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer that only provided input during stage 2, mentioned that it is aware that Ireland has hired additional staff to work MAP cases and this has been reflected in faster response times to correspondence and better progress in resolving cases. The peer further noted that its competent authority and that of Ireland have re-established frequent lines of communication and are having regular face-to-face meetings.

Anticipated modifications

207. Ireland 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 32.86 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This primarily concerns attribution/allocation cases, as the average time needed to close these cases was 38.29 months, whereas for other cases the average time was only marginally above 24 months (24.27 months). The average completion time has also increased substantially in 2018 as compared to the period 2016-17. There is therefore a risk that post-2015 are not resolved within the average of 24 months, which may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has increased with 61% 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 Ireland has taken several steps to resolve cases in a timely manner, such as addition of resources and training/knowledge sharing within the competent authority, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>In that regard, Ireland should devote additional resources to its competent authority to handle MAP cases and also to be able to cope with the increase in the number of MAP cases both for attribution/allocation and other MAP cases, such as to be able to resolve MAP cases in a timely, efficient and effective manner.</p>

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

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

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

Functioning of staff in charge of MAP

209. Ireland reported that the responsibility for the resolution of MAP cases in accordance with the provisions of the relevant tax treaty or the EU Arbitration Convention lies with the Director of the Transfer Pricing Branch or the Director of the Tax Treaties Branch depending on whether the case concerns an allocation/attribution case or respectively an other MAP case. The Director of each branch is directly involved in the negotiation of all cases with the competent authority of the other jurisdiction. Each Director has the authority to agree to a resolution with the other competent authority. Ireland clarified that within each branch MAP cases are assigned to a case manager at Assistant Principal level, who then also acts as the competent authority. The case manager is responsible for handling the case, which includes performing a detailed analysis of the case, drafting the position paper for the Director's review, liaising with the taxpayer (e.g. to request outstanding information) and liaising with their counterpart in the other competent authority, as necessary.

210. Ireland further reported that the case manager keeps the Director updated on the progress of the case and meets regularly with the Director to discuss specific aspects of the case. Letters, position papers and resolutions relating to MAP disputes are subject to approval by the Director of either the Transfer Pricing Branch or the Tax Treaties Branch, as appropriate.

211. As to the relationship with the audit function, Ireland explained that the MAP office operates independently of the audit function within Ireland's Tax Administration. More specifically, the MAP process is carried out entirely separately from the personnel in the Tax Administration that impose adjustments following an audit. Ireland further indicated that the staff from the MAP office may liaise with the Irish tax office to confirm factual matters relating to the cases. In situations where an adjustment has been raised by the Tax Administration of the other jurisdiction, staff within the MAP office notify the relevant Irish tax office, which deals with the taxpayer's matters and provides updates on the case, as necessary.

212. When a resolution is reached with the competent authority of the other jurisdiction, Ireland reported that its competent authority writes to the taxpayer within 30 days of reaching the said agreement, informing them of the terms of the settlement and requesting to confirm within 30 days whether they accept the MAP agreement. In addition, a copy of the resolution reached with the other competent authority is provided by the MAP office to the Irish tax office dealing with the taxpayer's matters. The Director of each branch notifies the Head of the International Tax Division of the outcome of each MAP case.

213. Furthermore, Ireland reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations. Ireland also indicated that staff in charge of MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Ireland would like to see reflected in future amendments to the treaty.

214. In conclusion of the above, Ireland reported that staff in charge of MAP in practice operate independently and have the authority to resolve MAP cases without being dependent on the approval/direction of the Tax Administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

Recent developments

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

Practical application

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

216. All peers that provided input reported no impediments in Ireland to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by policy considerations. Three peers specifically mentioned that they are not aware that staff in charge of the MAP in Ireland are dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review or influenced by policy considerations that the jurisdictions would like to see reflected in future amendments to the treaty.

Period 1 January 2018-31 August 2019 (stage 2)

217. All peers that provided input in stage 1 stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. One peer that only provided input in stage 2 mentioned that it agrees that Ireland’s competent authority has full independence from the audit branch, and full authority to settle cases, as well as that it has taken a co-operative and pragmatic approach.

Anticipated modifications

218. Ireland 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.

219. 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 Ireland

220. Ireland reported that the primary objective of the MAP office is to seek to resolve MAP cases within the 24 month period. Ireland further indicated that it has the following system in place to evaluate the performance of staff in charge of MAP processes:

- In both branches (the Transfer Pricing Branch as well as the Tax Treaties Branch), the key performance indicators used refer to the resolution of the MAP cases in an efficient, consistent and principled manner, adhering to Ireland’s internal staff guidelines and the published MAP guidelines. Other performance indicators used are also the number of MAP cases closed in a year and the time taken to resolve such cases.
- At the start of each year, the MAP office reviews its MAP inventory and sets a target for the number of cases to be resolved in that year. This target forms part of the annual business plan for each branch, which is in turn incorporated into the annual business plan for the International Tax Division. The target number of cases is based on several factors, primarily the number of months for which a case has already been pending, but also the complexity of the case, status of the case (e.g. whether a case is near completion or not or whether a position paper is pending from another competent authority), and whether the taxpayer is providing relevant information in a timely manner.

221. Ireland reported that the targets mentioned above are incorporated into the formal Performance Management Development System (“PMDS”) for the staff of the MAP office. Ireland further reported that the PMDS is the process used in Ireland’s Tax Administration to manage and evaluate the performance of staff and that it involves members of staff setting goals for the year ahead (including cases to be resolved) and outlining how these goals will be achieved. It also addresses the learning and development needs of staff. Ireland indicated that the PMDS forms are reviewed mid-year and also at the end of the year.

222. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and are for Ireland presented in the form of a checklist:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

223. Further to the above, Ireland 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 are not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

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

225. All peers that provided input indicated not being aware of the use of performance indicators by Ireland that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Period 1 January 2018-31 August 2019 (stage 2)

226. All peers that provided input in stage 1 stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2.

Anticipated modifications

227. Ireland 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.

228. 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

229. Ireland reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. Ireland's MAP Guidance outlines in chapter 3.2.1 Ireland's position on arbitration and explains available arbitration provisions in Ireland's current tax treaties.

230. In addition, Ireland is a signatory to the EU Arbitration Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises and has adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive was transposed in Ireland's domestic legislation on 28 June 2019.

Recent developments

231. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019. With the signing of that instrument, Ireland opted in for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

232. Further to the above, Ireland signed new treaties with two treaty partners and one amending protocol to an existing treaty. Of these two newly signed treaties, one is with a treaty partner with which there was no treaty yet in place. The other treaty concerns the replacement of the existing treaty in force. This latter treaty and the amending protocol contain an arbitration provision. The arbitration provisions in the treaty and the amending protocol are based on part VI of the Multilateral Instrument.⁶ The treaty has already entered into force, thereby replacing the existing treaty with the relevant treaty partner. The other treaty and the amending protocol are pending ratification. The effects of the newly signed treaty and the amending protocol have been reflected in the analysis below where they have relevance.

Practical application

233. Ireland has incorporated an arbitration clause in six of its 77 tax treaties as a final stage to the MAP process. Two of these six treaties contain an arbitration clause that is based on the mandatory and binding arbitration procedure of part VI of the Multilateral Instrument, albeit that in one of these treaties the period for the MAP process is three instead of two years. The other four treaties contain an arbitration clause that provides for a voluntary and binding arbitration procedure, of which the entry into force is subject to the exchange of notes between the competent authorities.

234. In addition, with respect to the effect of part VI of the Multilateral Instrument on Ireland's tax treaties, there are next to Ireland in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Ireland listed 19 as a covered tax agreement under the Multilateral Instrument and all of these 19 treaty partners also listed their treaty with Ireland under that instrument. In one of these treaties, Ireland has already included an arbitration provision. Ireland listed this treaty under Article 26(1) with a view to replace the arbitration provision contained in that treaty by part VI. With respect to this treaty, the relevant treaty partner also made a notification under Article 26(1). As both Ireland and this treaty partner have already deposited their instrument of ratification of the Multilateral Instrument, part VI has replaced the arbitration provision contained in this treaty.⁷

235. For the remaining 18 treaties that do not contain an arbitration provision, 15 treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these 15 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.⁸ For the other three treaties for which the treaty partners have not yet ratified the Multilateral Instrument, Ireland reported it expects that part VI will introduce a mandatory and binding arbitration procedure in those treaties.

Anticipated modifications

236. Ireland did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-1.pdf. These statistics are up to and include fiscal year 2018.
3. Available at: <https://www.revenue.ie/en/corporate/press-office/annual-report/index.aspx?year=2018>.
4. Ireland’s 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B and C.
5. For pre-2016 and post-2015 Ireland follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
6. Previously, the treaty for which an amending protocol with an arbitration provision was signed, contained a most favoured nation clause with regard to arbitration. This clause stipulated that both states shall, without delay, enter into negotiations with a view to include a provision on arbitration taking account of paragraph 5 of Article 25 of the OECD Model Tax Convention (OECD, 2017), if at any time after the date of signature of such protocol, Ireland agrees to include a provision on arbitration in any of its double taxation conventions. Since this condition has been fulfilled, Ireland and the treaty partner negotiated on the inclusion of an arbitration clause.
7. Annex A reflects the effect of part VI of the Multilateral Instrument for this treaty.
8. Annex A reflects the effect of part VI of the Multilateral Instrument for these 15 treaties.

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.

237. 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

238. Ireland reported that under its domestic legislation there is a general time limit of four years for claims for overpayment and underpayment of tax. However, Ireland's domestic legislation contains an overriding provision which allows for MAP agreements to be implemented beyond this four year domestic time limit. This provision is contained within Section 959AA of the Taxes Consolidation Act 1997 and states that assessments can be amended “to take account of any fact or matter arising by reason of an event occurring after the return is delivered”. The event in the treaty partner country would be a tax assessment or an audit, for example. However, Ireland reported that this overriding provision (Section 959AA of the Taxes Consolidation Act) is subject to filing a tax return in Ireland. Therefore, cases might arise, which cannot be implemented as the domestic four year time limit has lapsed and the tax treaty does not contain Article 25(2), second sentence of the OECD Model Tax Convention.

239. Ireland stated that one case occurred in the past where the overriding provision of Section 959AA of the Taxes Consolidation Act could not be applied as described above. Ireland further reported that for another MAP case, which was initiated in the treaty partner's jurisdiction, it did not enter into discussions with the other competent authority because of the expiration of Ireland's domestic statute of limitation for implementation. However, upon review, Ireland established that the original claim for refund by the taxpayer in question was, in fact, made within the relevant domestic time limit for the repayment of the tax. Ireland reported that it reopened this specific MAP case with a view to providing the relief due, which was provided accordingly in 2018. Ireland further reported that during 2018, in the period prior to the entry into effect of the amendment to the domestic law as described below, domestic time limits obstructed the implementing of a MAP agreement in one case only. Ireland specified that in that case the obstruction was limited to two of the five years for which the MAP was requested and that this was communicated to the other competent authority concerned. The other competent authority accepted the position and a MAP agreement was reached for the remaining three years. Ireland clarified that this MAP agreement has been implemented.

240. Concerning the process for implementing MAP agreements, Ireland reported that when competent authorities reach a MAP agreement, the case manager informs the taxpayer hereof within 30 days from the date the agreement was reached. The taxpayer has to give its consent to the agreement in written form, such within 30 days of the receipt of the notification. At the same time the case manager informs the Irish tax office which deals with the taxpayer's matters of the outcome of the MAP process to initiate the process of implementation. For a downward adjustment (tax refund), the taxpayer is required to submit a revised tax computation to the relevant Irish tax office, reflecting the result of the MAP agreement. The letter from Ireland's competent authority informing the taxpayer about the outcome of the MAP process and asking for the taxpayer's approval will include this requirement, if necessary. Where a MAP agreement entails an upward adjustment, Ireland reported that its competent authority will request the taxpayer's acceptance of the agreement. Where the taxpayer does so, the agreement will be implemented without delay by the relevant Irish tax office. If the taxpayer does not accept the MAP agreement, the taxpayer may instead pursue any available domestic remedies. Ireland's MAP guidance includes a detailed description of the process for implementing MAP agreements in section 3.1.

241. Ireland further indicated that it monitors the implementation of MAP agreements by requesting that the relevant Irish tax office informs the competent authority when the MAP agreement has been implemented, or of any delays that may arise.

Recent developments

242. Ireland reported that by Finance Act 2018, Section 959AA of the Taxes Consolidation Act 1997 ("TCA") was amended to ensure that all MAP agreements can be implemented irrespective of time limits in its domestic law. This amendment took effect from 19 December 2018. MAP agreements reached from 19 December 2018 onwards will therefore not be obstructed by domestic time limits.

243. Taken the above developments into consideration, Ireland has followed-up on the recommendation that was made under element D.1 in its stage 1 peer review report.

Practical application

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

244. Ireland reported that in the period 1 January 2016-31 December 2017 it has reached nine MAP agreements (two in 2016 and seven in 2017). Seven out of these nine MAP agreements required an implementation by Ireland. In this respect, Ireland reported that one of them, once accepted by the taxpayer has been implemented. For the remaining six MAP agreements, Ireland reported that implementation is pending as its competent authority is waiting for amended tax computations from the taxpayers.

245. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2017 that was not implemented by Ireland.

Period 1 January 2017-31 August 2019 (stage 2)

246. Ireland reported that for the six MAP agreements that were pending implementation on 31 December 2017, four have been implemented. With respect to the remaining two cases, Ireland clarified that in one case, the taxpayer rejected the MAP agreement and in the second case the taxpayer made a request to the other competent authority to put the implementation on hold pending the outcome of court proceedings in the other jurisdiction,

which are still ongoing. For this case, Ireland clarified that the other competent authority notified Ireland’s competent authority in November 2019 that it had received the taxpayer’s acceptance of the MAP agreement and implementation could now proceed. In this respect, Ireland reported that it has contacted the taxpayer in relation to this and the relevant Irish tax office is currently awaiting amended tax computations from the taxpayer in order to implement the MAP agreement.

247. In addition, Ireland reported that since 1 January 2018, 13 MAP agreements have been reached by its competent authority, 11 of which required implementation in Ireland. Ireland clarified that five of these 11 agreements have been implemented and that the remaining six MAP agreements are pending implementation, as the relevant Irish tax office is awaiting revised tax computations from the taxpayer.

248. All but one peer that provided input during stage 1, stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. The remaining peer mentioned that the implementation of one of the MAP agreements it entered into with Ireland in 2017 is still pending since the taxpayer is not willing to withdraw its domestic appeal to the peer’s court until an agreement is finally achieved with all affected competent authorities. The status of this case was discussed in paragraph 246 above.

Anticipated modifications

249. Ireland did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

250. 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

251. Ireland reported that implementation of upwards adjustments resulting from a MAP agreement will be performed, after the taxpayer has accepted the MAP agreement, without delay by the Irish tax office which deals with the taxpayer’s matters. In cases where the MAP agreement entails a downward adjustment (tax refund) the taxpayer is required to file revised tax computations for the affected accounting periods to the relevant Irish tax office before the refund can be processed. In cases where a refund is due to the taxpayer, Ireland specified that if the Tax Administration does not process a refund of tax arising from the mutual agreement within 93 days of the receipt from a taxpayer of a valid claim for repayment of tax, interest will become due and payable.

252. Section 3.1 of Ireland’s MAP guidance includes information on the process for implementing MAP agreements as well as the timing of the steps for such implementation.

Recent developments

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

Practical application

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

254. As discussed under element D.1, in the period 1 January 2016-31 December 2017, Ireland entered into seven MAP agreements that required implementation by Ireland. In this respect, Ireland reported that one MAP agreement has already been implemented and that no cases of noticeable delays have occurred. For the remaining six MAP agreements, Ireland reported that implementation is pending as its competent authority is waiting for amended tax computations from the taxpayers.

255. All peers that provided input have indicated not experiencing any problems with Ireland regarding the implementation of MAP agreements reached on a timely basis.

Period 1 January 2018-31 August 2019 (stage 2)

256. As discussed under element D.1, four of the six MAP agreements that were pending implementation on 31 December 2017 have been implemented and no cases of noticeable delays have occurred. For the remaining two cases, Ireland reported that in one case the taxpayer rejected the MAP agreement and in the second case the taxpayer made a request to the other competent authority to put the implementation on hold pending the outcome of court proceedings in the other jurisdiction, which are still ongoing. For the second case, Ireland reported that the other competent authority notified Ireland’s competent authority in November 2019 that it had received the taxpayer’s acceptance of the MAP agreement and implementation could now proceed. Ireland further reported that it has contacted Ireland’s taxpayer in relation to this and the Irish tax office is currently awaiting amended tax computations from the taxpayer in order to implement the MAP agreement.

257. In addition, as also discussed under element D.1, since 1 January 2018, Ireland has entered into 13 MAP agreements, 11 of which required implementation in Ireland. Ireland reported that five of the 11 MAP agreements have been implemented and it has not experienced any delays in the implementation process, at either the level of its own competent authority or the level of the treaty partner.

258. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Ireland fully reflects their experience with Ireland since 1 January 2018 and/or there are no additions to the previous input given. The peer that only provided input during stage 2, provided no input for element D.2.

Anticipated modifications

259. Ireland did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

260. 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 Ireland's tax treaties

261. As discussed under element D.1, Ireland's domestic legislation does not include a statute of limitations for implementing MAP agreements.

262. Out of Ireland's 77 tax treaties, 56 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. In addition, two tax treaties do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention. However, one of these treaties contains the alternative provisions for Article 9(1) and Article 7(2), setting a time limit for making primary adjustments, while the other treaty contains a provision in the MAP article setting a time limit for making primary adjustments, which is considered having both alternative provisions in Article 9(1) and Article 7(2).

263. For the remaining 19 tax treaties the following analysis is made:

- 14 tax treaties neither contain a provision based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any alternative provisions for Article 9(1) or Article 7(2).
- One tax treaty does not contain a provision based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and only contains the alternative provision in Article 9(1).
- Four tax treaties contain a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention, but also contain a time-limit for implementation of MAP agreements, as such implementation is only possible during a specified period (six to ten years) from the date of presentation of the case to the relevant competent authority. As this bears the risk that MAP agreements cannot be implemented irrespective of time limits in domestic law of the treaty partners these treaties are considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention.

Peer input

264. Of the peers that provided input during stage 1, six indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of these six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, six peers provided specific input with regard to element D.3, whereas five peers indicated that their tax treaties are not in line with this element and one peer indicated that its treaty is in line with element D.3.

265. For the 19 tax treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions, two of the relevant peers provided input. The two relevant peers indicated that their tax treaties are not in line with element D.3. Both peers did not indicate any further plans as to whether their treaties with Ireland will not be modified by the Multilateral Instrument.

Recent developments

Bilateral modifications

266. Ireland signed new treaties with two treaty partners and one amending protocol to an existing treaty. Of these two newly signed treaties, one is with a treaty partner with which there was no treaty yet in place. The other treaty concerns the replacement of the existing treaty in force. Both treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for the treaty that has been replaced. Furthermore, the amending protocol contains the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments. One of these newly signed treaties has already entered into force and has replaced the previous treaty with the relevant treaty partner. The other treaty and the amending protocol are pending ratification. The effects of the newly signed treaties and the amending protocol have been reflected in the analysis above where they have relevance.

Multilateral Instrument

267. Ireland signed the Multilateral Instrument and has deposited its instrument of ratification on 29 January 2019. The Multilateral Instrument has for Ireland entered into force on 1 May 2019.

268. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition

that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

269. With respect to the 19 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Ireland listed all of them as covered tax agreements under the Multilateral Instrument, and for all treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 19 treaty partners, one is not a signatory to the Multilateral Instrument and one made a reservation on the basis of Article 16(5)(c). All the remaining 17 treaty partners listed their treaty with Ireland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(ii).

270. Of these 17 treaty partners, 13 have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Ireland and these treaty partners. Therefore, at this stage the Multilateral Instrument has modified these 13 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining four treaties, the instrument will, upon entry into force for the treaties concerned, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

271. Ireland reported that for the remaining two tax treaties 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, it has been informed by one relevant treaty partner 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 that instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention. For the other treaty, Ireland reported that it contacted the treaty partner that is not a signatory to the Multilateral Instrument with a view to ascertaining its position on incorporating the required provision into the treaty. The treaty partner indicated to Ireland its intention to sign the instrument and make the necessary notifications under the instrument, following which it is expected that the treaty will be modified by that instrument to include the required provision.

Peer input

272. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Ireland. This peer stated that its treaty has been updated by the Multilateral Instrument, which for the second sentence of Article 25(2) conforms with the above analysis.

Anticipated modifications

273. Ireland reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternative provisions in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	-	-

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]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	-	-
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>31 out of 77 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 31 treaties, three are the treaties with limited scope. Of the remaining 28 treaties:</p> <ul style="list-style-type: none"> • 16 have been modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. • Ten 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 treaties 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 treaties Ireland has approached and sent a draft protocol to the relevant treaty partners to initiate discussions with a view to include the required provision. Of these two treaties: <ul style="list-style-type: none"> - for one the treaty partner responded that it intends to sign and make the necessary notifications under the Multilateral Instrument, following which it will include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. - for the other the treaty partner has not yet responded. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Ireland should, upon receipt of a response from the treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	<p>Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these three treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For these two treaties negotiations on an amending protocol to include such equivalent have been concluded or are in the process of being concluded. 	<p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention following its entry into force, Ireland should:</p> <ul style="list-style-type: none"> • sign and ratify the concluded amending protocol with one treaty partner to include the required provision • finalise negotiations with one treaty partner with a view to include the required provision.
[C.2]	-	-
[C.3]	<p>MAP cases were resolved in 32.86 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This primarily concerns attribution/allocation cases, as the average time needed to close these cases was 38.29 months, whereas for other cases the average time was only marginally above 24 months (24.27 months). The average completion time has also increased substantially in 2018 as compared to the period 2016-17. There is therefore a risk that post-2015 are not resolved within the average of 24 months, which may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has increased with 61% 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 Ireland has taken several steps to resolve cases in a timely manner, such as addition of resources and training/knowledge sharing within the competent authority, further actions should be taken to ensure a timely resolution of MAP cases, which both regards attribution/allocation cases and other cases.</p> <p>In that regard, Ireland should devote additional resources to its competent authority to handle MAP cases and also to be able to cope with the increase in the number of MAP cases both for attribution/allocation and other MAP cases, such as to be able to resolve MAP cases in a timely, efficient and effective manner.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	-	-

Annex A

Tax treaty network of Ireland

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

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 25(1) of the OECD 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									
	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)								
Treaty partner																	
Belarus	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Belgium	Y	E**	Y*	2 years	i	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y*	Y***	
Bosnia and Herzegovina	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Botswana	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Bulgaria	Y	O*	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N	
Canada	Y	O	Y*	2 years	i	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y*	Y**	
Chile	Y	O	i	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N	
China (People's Republic of)	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	
Croatia	Y	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	N	
Cyprus*	Y	E*	i	N/A	i	Y	Y	Y	Y	Y	Y	Y*	Y	Y	Y	N	
Czech Republic	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y*	N	
Denmark	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***	
Egypt	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N	
Estonia	Y	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	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 25(1) of the OECD MTC	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration										
		B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6									
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	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 Art. 25(3) third sentence? (Note 6)									
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)												
Ethiopia	Y	O	Y	i	Y	Y	Y	Y	Y									
Finland	Y	E*	Y	i	Y	Y	Y	Y*	Y***									
France	Y	E*	N/A	i	i***	Y*	Y*	Y	Y***									
Georgia	Y	E*	N/A	Y	Y	Y	Y	Y	N									
Germany	Y	O	Y	Y	Y	Y	Y	Y	N									
Ghana	N	O	Y	Y	Y	Y	Y	Y	N									
Greece	Y	O*	Y	Y	Y	Y	Y	Y	Y***									
Guernsey	Y	O	Y	Y	Y	Y	Y	Y	N									
Hong Kong (China)	Y	O*	Y	Y	Y	Y	Y	Y	N									
Hungary	Y	O	Y	Y	Y	Y	Y	Y	N									
Iceland	Y	E*	Y	Y	Y	Y	Y	Y*	N									
India	Y	O	Y	Y	Y	Y	Y	Y	N									
Isle of Man	Y	O	Y	Y	N	Y	Y	N	N									
Israel	Y	O	Y	Y	Y	Y	Y	Y	Y									
Italy	Y	O	ii*	i	i**	N*	Y	Y	Y***									
Japan	Y	E*	i	i	Y	Y*	Y	Y	Y***									

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	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) 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 assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Arbitration										
Treaty partner	Y	O	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Jersey	N/A	O	Y	N/A	i	N	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	N/A	E***	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	N/A	E*	Y	N/A	i***	Y	Y	i	Y*	Y	Y	Y	Y	Y*	Y	Y	Y	Y*	Y	N
Kuwait	N/A	O*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y	N
Lithuania	N/A	E*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y	N
Luxembourg	N/A	E*	Y	N/A	i***	Y	Y	i	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Malaysia	N/A	O*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	N/A	E*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
Mexico	N/A	N*	Y	N/A	i	Y	Y	i	N	Y	Y	Y	Y	N*	Y	Y	Y	N*	Y	Y
Moldova	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	N/A	O*	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	N/A	E	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
New Zealand	N/A	E*	Y	N/A	Y	Y	Y	i	Y*	Y	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y***
North Macedonia	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
		DTC in force?	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)	Article 9(2) of the OECD MTC B.3	Anti-abuse B.4	Article 25(2) of the OECD MTC C.1	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)	Article 25(3) of the OECD MTC A.1	Article 25(3) of the OECD MTC B.7	Arbitration C.6							
Treaty partner																				
Norway	Y	N/A	E*	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	N/A	O**	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Panama	Y	N/A	O*	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y*	Y	N
Portugal	Y	N/A	O	Y*	2 years		i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y*	Y*	Y*	Y***
Qatar	Y	N/A	E*	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	N*	N*	N	N
Russia	Y	N/A	E*	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y*	Y	N
Saudi Arabia	Y	N/A	E*	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A		i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y*	Y*	Y*	Y***
Slovak Republic	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y*	Y	Y	Y	Y*	Y*	Y	N
Slovenia	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y***
South Africa	Y	N/A	O	Y	N/A		i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A		i	Y	N*	Y	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y***
Sweden	Y	N/A	E*	Y	N/A		i	Y	Y*	Y	Y	Y	Y*	Y	Y	Y	Y	Y	Y	Y***

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 25(1) of the OECD 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									
	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	A.1	B.7	C.1	D.3	A.1	B.7	C.6	
Treaty partner																	
Switzerland	Y	N/A	Y	N/A	i	Y	iii	Y	Y	Y	Y	Y		Y	Y	Y	Y
Thailand	Y	N/A	Y	N/A	i	Y	N	Y	Y	Y	Y	Y		Y	Y	Y	N
Turkey	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y		Y	N*	Y	N
Ukraine	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y		Y	Y*	Y	N
United Arab Emirates	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	Y	Y		Y	Y	Y	N
United Kingdom	Y	N/A	i	N/A	i	Y*	N/A	Y*	Y	Y	Y	Y*		Y	Y*	Y	Y***
United States	Y	N/A	i	N/A	i	Y	N/A	Y	Y	Y	Y	Y		Y	Y	Y	Y
Uzbekistan	Y	N/A	Y	N/A	i	Y	N/A	Y	Y	Y	Y	Y		Y	Y	Y	N
Viet Nam	Y	N/A	Y	N/A	i	Y	N/A	Y	Y	Y	Y	Y		Y	Y	Y	N
Zambia	Y	N/A	Y	N/A	i	Y	N/A	Y	Y	Y	Y	Y		Y	Y	Y	N

Notes: 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.
O**/E***	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 or has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
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***/ii***	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 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 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	23	0	0	0	0	0	0	0	0	0	0	23	n.a.
Others	13	0	0	0	1	0	0	0	2	1	0	9	29.61
Total	36	0	0	0	1	0	0	0	2	1	0	32	29.61

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 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	23	0	0	1	2	0	4	0	0	0	0	16	35.03
Others	9	0	0	0	0	0	0	0	0	0	0	9	n.a.
Total	32	0	0	1	2	0	4	0	0	0	0	25	35.03

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
		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 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	16	0	0	1	0	0	3	2	0	0	0	10	69.99
Others	9	0	0	0	1	0	1	0	0	0	0	7	53.28
Total	25	0	0	1	1	0	4	2	0	0	0	17	65.81

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				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	0	8	0	0	0	0	0	0	0	0	0	0	0	8	n.a.
Others	0	6	0	0	1	0	0	0	0	0	0	2	3	3	2.62
Total	0	14	0	0	1	0	0	0	0	0	0	2	11	11	2.62

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	8	7	0	0	0	1	0	3	0	0	0	0	0	11	12.72
Others	3	4	0	0	0	0	0	0	0	0	0	1	6	6	11.44
Total	11	11	0	0	0	1	0	3	0	0	0	1	17	17	12.46

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	11	18	0	0	0	0	0	0	2	0	0	0	0	27	16.63
Others	6	10	0	0	1	0	0	1	0	0	0	0	0	14	23.46
Total	17	28	0	0	1	0	0	1	2	0	0	0	0	41	14.61

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
APA guidance	Revenue Operational Manual: Bilateral Advance Pricing Agreement Guidelines, September 2016
MAP guidance	Guidelines for requesting Mutual Agreement Procedure (“MAP”) assistance in Ireland – Part 35-02-08 – Document last updated in November 2017
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
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, Ireland (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 Ireland.



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