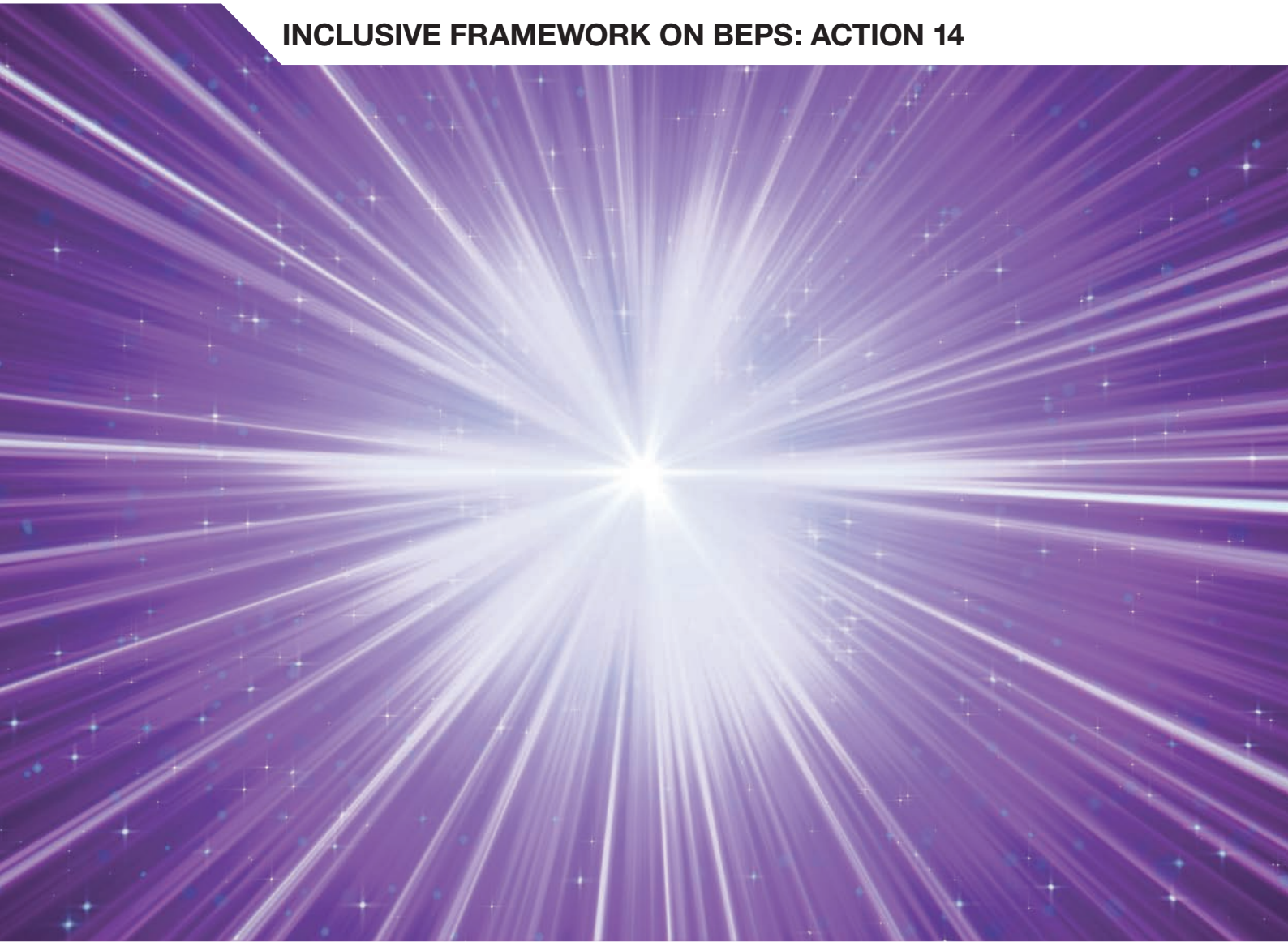


**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Portugal (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 |
| FTA | Forum on Tax Administration |
| EU | European Union |
| MAP | Mutual Agreement Procedure |
| OECD | Organisation for Economic Co-operation and Development |

Executive summary

Portugal has an extensive tax treaty network with over 80 tax treaties and has signed and ratified the EU Arbitration Convention. Portugal has an established MAP programme and has significant experience with resolving MAP cases. It has a modest MAP inventory, with a large number of new cases submitted each year and around 70 cases pending on 31 December 2018. Of these cases, about 60% concern allocation/attribution cases. Overall Portugal meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Portugal worked to address them, which has been monitored in stage 2 of the process. In this respect, Portugal solved some of the identified deficiencies.

All of Portugal'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:

- Over half of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Over one third 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.
- Almost a quarter of its tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, and set a time limit for the submission of MAP request that is less than three years.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Portugal signed and ratified the Multilateral Instrument. Furthermore, Portugal opted in for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument, a substantial number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Portugal reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this regard, Portugal reported that it has decided the initiation of bilateral negotiations on all those tax treaties. It further reported that the initial bilateral negotiations proposals for all the countries concerned have already been sent to the Ministry of Foreign Affairs and invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

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

Portugal 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 notification process, which has been used in practice, for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Portugal also has clear, comprehensive and easily understandable guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. This guidance also contains the contact details of Portugal's competent authority, and specifies the manner in which the taxpayer should submit its MAP request and the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Portugal 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 | 39 | 38 | 36 | 41 | 60.46 |
| Other cases | 13 | 46 | 29 | 30 | 11.37 |
| Total | 52 | 84 | 65 | 71 | 38.56 |

* 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, Portugal used as a start date the date of reception of the MAP request and for MAP cases submitted in the other state, the date that the other state communicated as such and as the end date the date of the notification to the taxpayer on the outcome of the MAP case.

The number of cases Portugal closed in the period 2016-18 is 38% of the number of 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 38.56 months. This only regards attribution/allocation cases, as the average time to close these cases is above the 24-month targeted timeframe (60.46 months), while for other cases this average is below this target (11.37 months). Furthermore, Portugal's MAP inventory as on 31 December 2018 increased with 37% as compared to the inventory as on 1 January 2016, which primarily regards other cases as for these type of cases, the MAP caseload more than doubled with an increase of 131%. As Portugal has added new staff to its competent authority in 2018 and established a dedicated team to handle attribution/allocation MAP cases, causing a decrease in the average completion time from 49.94 months in 2016-17 to 12.97 months in 2018, it should therefore closely monitor whether such addition of resources will be sufficient to ensure that MAP cases are resolved in a timely, effective and efficient manner. If this would not be the case, in particular for attribution/allocation cases, additional resources or further actions are necessary to ensure a timely resolution of these MAP cases and also to cope with the increase in the number of MAP cases.

Furthermore, Portugal meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Portugal's competent authority operates fully independently from the audit function of the tax authorities and resolves MAP cases

in a co-operative atmosphere and in an effective manner. The performance indicators used are appropriate to perform the MAP function.

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

Introduction

Available mechanisms in Portugal to resolve tax treaty-related disputes

Portugal has entered into 81 tax treaties on income (and/or capital), 78 of which are in force.¹ These 81 treaties apply to an equal number of jurisdictions. All 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, one of these treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Furthermore, Portugal 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, Portugal adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as per 19 September 2019 (Law n.º 120/2019).⁴

Under the tax treaties Portugal entered into, the competent authority function is assigned to the Minister of Finance and the Director General of the Tax and Customs Authority. This function has been delegated to the International Affairs Department within that authority and is in practice performed by the MAP team of the international cooperation division. This team currently employs six employees, all of which are involved in handling MAP cases on a full-time basis. Of these six persons, five are member of a newly created transfer pricing team that is fully dedicated to handling attribution/allocation MAP cases, and one is handling “other” cases.

Portugal has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in December 2017, which is available at:

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf
(English)

https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf
(Portuguese)

Developments in Portugal since 1 January 2018

Developments in relation to the tax treaty network

In the stage 1 peer review report of Portugal, it is reflected that Portugal signed new treaties with Barbados (2010), Finland (2016), Montenegro (2016) and Timor-Leste (2017), which all have not yet entered into force. The new treaty with Finland concerns the replacement of the existing treaty of 1970. Since the adoption of Portugal’s stage 1 peer

review report the treaties with Barbados and Montenegro have entered into force. The new treaty with Finland is only ratified by Finland, while Portugal only ratified the treaty with Timor-Leste and therefore both treaties have not yet entered into force. However, since the 1970 treaty with Finland terminated as per 1 January 2019, there is currently no treaty in force between Finland and Portugal.

Furthermore, Portugal signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 28 February 2020, Portugal deposited its instrument of ratification, following which the Multilateral Instrument has for Portugal entered into force on 1 June 2020. With the depositing of the instrument of ratification, Portugal also submitted its list of notifications and reservations to that instrument.⁵ In relation to the Action 14 Minimum Standard, Portugal reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁶ This reservation is in line with the requirements of the Action 14 Minimum Standard. 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.

In addition, since 1 January 2018, Portugal signed new treaties with Angola (2018) and Kenya (2018), which concern treaty partners with whom Portugal had no treaties in place. The treaty with Angola (2018) has entered into force, while the treaty with Kenya (2018) is pending ratification. Both treaties contain Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Portugal reported that it strives updating them through future bilateral negotiations. In the stage 1 peer review report, it is stated that for this purpose Portugal will approach its treaty partners in 2018 to renegotiate treaties where necessary to bring them in line with the requirements under the Action 14 Minimum Standard. In line therewith, Portugal was therefore recommended to follow up its stated intention. In its update report, Portugal specified that such follow-up was not made in 2018, but that it undertook already some actions to renegotiate its treaties. In this respect, negotiations are pending with Germany and Brazil, whereas Algeria was contacted with a view for a revision of the existing treaty. For the remaining 17 of Portugal’s tax treaties that need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard, Portugal reported that it has decided the initiation of bilateral negotiations on all those tax treaties. The initial bilateral negotiations proposals for all the countries concerned have already been sent to the Ministry of Foreign Affairs and invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

Other developments

Portugal reported that in 2018 a dedicated team has been established within its competent authority to handle attribution/allocation MAP cases, which employs five persons that exclusively devote their time in handling such cases.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Portugal'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, Portugal'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 Portugal 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.⁷ 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 Portugal. In this update report, Portugal 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 Portugal 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 Portugal's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

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

The period for evaluating Portugal'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 15 peers provided input during stage 1: Belgium, Canada, Denmark, France, Germany, Ireland, Italy, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, Turkey and the United States. Out of these 15 peers, 11 had MAP cases with Portugal that started on or after 1 January 2016. These 11 peers represent approximately 85% of post-2015 MAP cases in Portugal's inventory that started in 2016 or 2017. During stage 2, the same

peers provided input, apart from France and Russia. In addition, also the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 75% of post-2015 MAP cases in Portugal’s inventory that started in 2016, 2017 or 2018. Broadly, all peers indicated having a co-operative relationship with Portugal’s competent authority, some of them emphasising its easiness of contact. Most peers also appreciated the good working relationship, although some noted that it may take time before receiving a position paper from Portugal’s competent authority, which may delay the timely resolution of MAP cases. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of Portugal fully reflects the experiences these peers have had with Portugal since 1 January 2018 and/or that there was no addition to previous input given. Some peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Portugal and cooperation throughout the process

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

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

Concerning stage 2 of the process, Portugal submitted its update report on time and the information included therein was extensive. Portugal was cooperative during stage 2 and the finalisation of the peer review process.

Finally, Portugal is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Portugal also provided peer input on other assessed jurisdictions.

Overview of MAP caseload in Portugal

The analysis of Portugal’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Portugal, 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 | 39 | 38 | 36 | 41 |
| Other cases | 13 | 46 | 29 | 30 |
| Total | 52 | 84 | 65 | 71 |

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹⁰ Apart from analysing Portugal’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Portugal to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Portugal 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 Portugal should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Portugal has entered into are available at: http://info.portaldasfinancas.gov.pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doelib/pages/english-version.aspx. The treaties that are signed but have not yet entered into force are with Finland (2016), Kenya (2018) and Timor-Leste (2017). Portugal has ratified the treaty with Timor-Leste, but has not yet ratified the treaties with Finland and Kenya. Reference is made to Annex A for the overview of the Portugal’s tax treaties regarding the mutual agreement procedure.
2. This concerns the treaty with Japan.

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-portugal-instrument-deposit.pdf.
6. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, the Portuguese Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.
7. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-portugal-stage-1-9789264304222-en.htm.
8. Available at: www.oecd.org/tax/dispute/Portugal-Dispute-Resolution-Profile.pdf.
9. The MAP statistics of Portugal are included in Annex B and C of this report.
10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. 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 Portugal's tax treaties

2. Out of Portugal's 81 tax treaties, 79 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. Of the remaining two treaties, one contains a provision that is based on the first sentence of Article 25(3) the OECD Model Tax Convention, but omits the word "interpretation". The other treaty also contains such a provision, but does not contain the words "interpretation" and "doubts". For this reason, both treaties are considered as not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Portugal reported that the absence of Article 25(3), first sentence, the OECD Model Tax Convention in its tax treaties does not obstruct its competent authority from entering into MAP agreements of a general nature. This, however, only applies if the relevant tax treaty contains in the MAP article a provision stipulating that the competent authorities shall endeavour to resolve by mutual agreement at least any difficulties concerning the application of the treaty.

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

Recent developments

Bilateral modifications

5. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. One of these newly signed treaties has already entered into force. 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

6. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

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

8. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Portugal listed both as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Both treaty partners are signatories to the Multilateral Instrument, listed their tax treaty with Portugal as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(i). These two treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Portugal and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these two tax treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

9. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Portugal. None of these peers concerns a treaty partner to one of the two treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which has been modified by the Multilateral Instrument. One of these peers mentioned that its treaty with Portugal already is in line with the requirements under element A.1, which conforms with the above analysis.

Anticipated modifications

10. As the two 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, Portugal 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.

11. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Portugal’s APA programme

12. Portugal reported that it has implemented an APA programme, which was established by Budget Law for 2008 and which added Article 128-A to the Corporate Income Tax Code (CIRC). By Degree-Law 159/2009, the article was renumbered to Article 138 of the CIRC.² Under this law Portugal is allowed to enter into unilateral, bilateral and multilateral APAs. For bilateral and multilateral APAs it is required that there is a tax treaty in force, whereby for multilateral APAs also the equivalent to Article 25(3) of the OECD Model Tax Convention should be included.

13. Article 138(9) of the CIRC stipulates that the Minister of Finance shall regulate by ministerial order the requirements and conditions for filing of an APA-request, the information and documentation to be included in such request and the process for obtaining a bilateral APA. The relevant rules hereto are included in the Ministerial Order 620-A/2008 of 19 July 2008.³ This Ministerial Order contains information on Portugal’s APA programme, the scope of APAs, the process for obtaining APAs, filing procedures and information to be included in an APA request, the possibility to renew or revise an existing APA, fees to be paid for obtaining an APA and monitoring of implementation of the APA, once granted.

14. Portugal reported that an APA request should be sent to its tax administration’s Large Taxpayer Unit at least 180 days before the beginning of the fiscal year to be covered by the agreement, which is also reflected in Article 5(2) of the Ministerial Order. Where it concerns a request for a bilateral or multilateral APA, the request should also be submitted

with the International Affairs Department within the tax administration, which is the department responsible for handling MAP cases. Furthermore, Article 138(6) of the CIRC and Article 15(1) of the Ministerial Order note that an APA cannot exceed a three-year period, albeit that it is possible to renew the APA afterwards.

15. Article 16(5) of the Ministerial Order notes that the conclusion of an APA is subject to the payment of fees by taxpayers, which are set in Ministerial Order 923/99 of 20 October 1999.⁴ The order includes a fee schedule ranging up to the maximum of EUR 7 000 per APA request, depending on the size of transactional values and turnover of the taxpayer concerned. The amount of the fee is subject to a 50% reduction when it concerns a renewal of an existing APA.

Roll-back of bilateral APAs

16. Portugal reported that its APA programme does not provide roll-back of APAs. According to Article 138 of the CIRC and Ministerial Order 620-A/2008, APAs can only be applied to taxable years that commence after the date on which the taxpayer submitted a request for an APA.

Recent developments

17. Portugal reported that it has not yet followed-up on the recommendation to introduce the possibility of roll-back of bilateral APAs, as such introduction raises some doubts as to its compatibility with the principle of non-retroactivity enshrined in Article 103 of Portugal's constitution and Article 12 of the General Tax Law. Furthermore, it clarified that it has not yet received any request to introduce a roll-back of bilateral APAs.

Practical application of roll-back of bilateral APAs

18. Portugal publishes statistics on APAs on the website of the EU JTPF.⁵

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

19. Portugal reported that it received three requests for bilateral APAs in the period 1 January 2016-31 December 2017. It further reported that two of them have been granted and five are under review (including APA requests from prior to 1 January 2016). Since Portugal's APA programme does not provide roll-back, Portugal reported that it has not received any requests for roll-backs in the period 1 January 2016-31 December 2017.

20. None of the peers that provided input reported having received any request for a roll-back of bilateral APAs with Portugal.

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

21. Portugal reported that since 1 January 2018 it has not received requests for a bilateral APA with the roll-back of such APA, but that it has received four requests for bilateral APAs since that date.

22. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 A.2.

Anticipated modifications

23. Portugal did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

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

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
2. The text of Article 138 of the CIRC is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/CIRC_2R/Pages/irc138.aspx.
3. The text of Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_620-A-2008.pdf.
4. The text of Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_923-99_de_20_de_outubro.pdf.
5. 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.

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

Current situation of Portugal's tax treaties

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

25. Out of Portugal's 81 tax treaties, 71 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 (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of its tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

26. The remaining ten 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 | 8 |
| A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report, whereby (i) taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident, and (ii) MAP is only available in case of "double taxation not in accordance with the provision of the convention" | 1 |
| A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report, whereby taxpayers can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayers are also required to initiate these remedies when submitting a MAP request | 1 |

27. The eight treaties mentioned in the first row of the table above are considered not to contain (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons, seven of these eight treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (one treaty).
- 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 (six treaties).

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

29. The treaty mentioned in the second row of the table above only provides for MAP in cases where it concerns "double taxation not in accordance with the provision of the Convention". As Article 25(1), first sentence, of the OECD Model Tax Convention only requires "taxation not in accordance with the provision of the Convention", this treaty is also considered not to be in line with element B.1

30. Lastly, with respect to the treaty included in the third row of the table above, the provision incorporated in the protocol to this treaty reads:

"... the expression "irrespective of the remedies provided by the domestic law" shall mean that the start of the mutual agreement procedure is not an alternative with respect to the domestic legal procedure, which is the one having in any case priority, whenever the conflict to an application of the (contracting state's) taxes not in accordance with the Convention".

31. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the

OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. This treaty is therefore considered not in line with this part of element B.1.

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

32. Out of Portugal’s 81 tax treaties, 60 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 21 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 | 1 |
| Filing period more than three years for a MAP request (5 years) | 1 |
| Filing period less than three years for a MAP request (2 years) | 19 |

Peer input

34. Some peers that provided input reported that their treaty with Portugal meets the requirements under element B.1. Four peers took note of the filing period for MAP requests of less than three years in their treaty with Portugal. Two of these peers noted that they expect their treaty to be modified via the Multilateral Instrument concerning this filing period, which conforms with the analysis below. Additionally, another peer reported a revision of its existing treaty in line with the Action 14 Minimum Standard is being undertaken, but the current treaty is in line with element B.1.

Practical application

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

35. As noted in paragraphs 25-26 above, in all but one of Portugal’s tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Portugal reported that a MAP request is not impaired by the initiation of any judicial proceedings or administrative appeals and the taxpayer whose case has been settled by an administrative decision can request a MAP assistance to change such decision. Portugal, however, also reported that its competent authority is bound by judicial decisions. Therefore, in such situation, it shall inform the other competent authority about such decision and request to consider taking the necessary measures, as far as it finds possible, in order to avoid the double taxation not in accordance with the international legal instruments applicable to the case. Portugal’s MAP guidance, in section 7, confirms the above policy as to the interrelation between MAP and domestic remedies.

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

36. Portugal reported that for the one treaty that does not contain a filing period for MAP requests, there is no timeframe applicable under its domestic law, following which there is also no time limit set for filing a MAP request. This, however, is not reflected in Portugal’s MAP guidance.

Recent developments

Bilateral modifications

37. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 Final Report. One of these newly signed treaties has already entered into force. 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

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

38. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

39. 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.

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

41. In view of the above, following the reservation made by Portugal, those three tax treaties identified in paragraphs 28-31 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

42. 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.

43. In regard of the 19 tax treaties identified in paragraph 33 above that contain a filing period for MAP requests of less than three years, Portugal listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the 19 relevant treaty partners, three are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Portugal as a covered tax agreement under that instrument. All remaining 15 treaty partners also made a notification under Article 16(6)(b)(i). Nine of these 15 treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Portugal and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. For the remaining six treaties, the instrument will, upon its entry into force for these treaties, modify them to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

44. For three tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Portugal reported that invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

45. In addition, with respect to four tax treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument, Portugal reported that for two negotiations with the relevant treaty partners are pending to update the relevant treaties with a view to incorporate the second sentence. For the other two tax treaties Portugal reported that invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

Peer input

46. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Portugal. Three of these peers concerns a treaty partner to one of the eight treaties identified above that does not contain Article 25(1), first and/or second sentence, of the OECD Model Tax Convention, as it read prior to or as amended by the adoption of the Action 14 final report. One of them mentioned that its treaty with Portugal will be modified by the Multilateral Instrument, to meet the requirements under *inter alia* element B.1, which conforms with the above analysis. The second peer, whose treaty with Portugal will not be modified by the Multilateral Instrument mentioned that it contacted Portugal with a proposal to enter into a memorandum of understanding to amend the treaty in order to make ineffective the additional requirement in the protocol to the treaty to

initiate domestic remedies when filing a MAP request. The third peer, whose treaty with Portugal will be modified by the Multilateral Instrument, mentioned that it is in contact with Portugal to bring the treaty in line with the requirements under *inter alia* element B.1.

Anticipated modifications

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| | One out of 81 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report or as amended by that report. This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty actions have been taken to initiate negotiations on the amendment. | For the treaty that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Portugal should continue with the process to request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. |
| [B.1] | 17 out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 17 treaties: <ul style="list-style-type: none"> • Eight have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • Five are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • Four will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. With respect to these four treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - For two actions have been taken to initiate negotiations on their amendment. | For the four treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, Portugal should: <ul style="list-style-type: none"> • continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations • for two treaty partners continue with the process to request the inclusion of the required provision via bilateral negotiations |

| | Areas for improvement | Recommendations |
|-------|---|---|
| [B.1] | <p>Two out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, actions have been taken to initiate negotiations on the amendment. • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, actions have been taken to initiate negotiations on the amendment. | <p>With respect to the first sentence, Portugal should for the two treaties concerned continue with the process to request via bilateral negotiations the inclusion of a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision. |

[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).

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

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

49. As discussed under element B.1, none of Portugal's 81 treaties 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, none of these treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

50. Section 5 of Portugal’s MAP guidance prescribes that Portugal’s competent authority shall, within four weeks after receipt of a MAP request, inform the other competent authority concerned of the case regardless of whether the case will be accepted by Portugal’s competent authority. Such notification contains: (i) identification of the person who submitted the MAP request, (ii) date of receipt of the request and the start date for statistical purposes and (iii) summary of the request. A copy of the taxpayer’s request and its attachments are also sent to the other competent authority.

51. In view of this process, Portugal reported that where its competent authority considers that the objection raised in the MAP request is not justified, it will inform the taxpayer and the other competent authority concerned hereof within 30 days as from the receipt of the request, including a justification for such consideration.

52. Portugal further reported that the process described above has been documented in the routines of the team responsible for handling MAP cases, including the steps to be followed by the team members when they consider that the objection raised in a MAP request is not justified.

Recent developments

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

Practical application

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

54. Portugal reported that as that in the period 1 January 2016-31 December 2017 in two cases its competent authority considered that the objections raised by taxpayers in their MAP requests were not justified, as taxpayers did not provide the required documentation. In this respect, Portugal clarified that its competent authority sent notifications to the taxpayers concerned specifying the documents and/or information to be submitted, but received no response within the deadline. Portugal’s competent authority subsequently informed the taxpayers of its decision to close the case. Portugal noted that the MAP case could be reopened when the taxpayers concerned provide the required documentation within the time limit for MAP requests.

55. From Portugal 2016 and 2017 MAP statistics, it follows that in six cases the outcome was reported as “objection not justified”. In this respect, Portugal reported that for four of these six cases it was the other competent authority that decided the objection raised by the taxpayer in its MAP request was not justified.

56. Two peers provided input and reported having been notified of a decision by Portugal’s competent authority that the objection raised in a MAP request was not justified. The first peer mentioned that it received in 2018 a notification with regard to fiscal year 2017 stating that Portugal did not accept a MAP request due to the taxpayer’s failure to submit required information and to respond to the request for providing such information. This peer further mentioned it was informed that Portugal had considered the objection raised in the MAP request as not justified and on that basis closed the case. The second peer reported that in November 2017, it received from Portugal’s competent authority a letter that it closed a case on the ground that the objection raised by the taxpayer in a MAP request was not justified.

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

57. From Portugal’s 2018 statistics, it follows that in two cases the outcome was reported as “objection not justified”. In this respect, Portugal reported that for both cases it was the other competent authority that made the decision that the objection raised by the taxpayer in its MAP request was not justified. Furthermore, Portugal reported that in 2019 it had also two cases closed with the outcome “objection not justified”, which also followed from decisions made by the competent authority of the relevant treaty partners.

58. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal since 1 January 2018 and/or there are no additions to the previous input given.

Anticipated modifications

59. Portugal 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.

60. 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

61. Out of Portugal’s 81 tax treaties, 69 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. Furthermore, eight treaties do not contain a provision that is based on or equivalent to Article 9(2). The remaining four treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but deviate from this provision as corresponding adjustments can only be granted on the basis of a mutual agreement between the competent authorities.

62. In addition to the above, Portugal 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.

63. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Portugal’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, Portugal reported that it will always provide access to MAP for transfer pricing cases and is able to make corresponding adjustments whenever appropriate.

64. Article 17-20 of the Ministerial Order No. 1446-C/2001 of 21 December 2001, concerning transfer pricing regulations, specifically prescribe the terms and conditions for providing corresponding adjustments.² Article 17(2) of that Ministerial Order notes that Portugal's tax administration can provide for corresponding adjustments when they arise from tax treaties entered into by Portugal.

65. Section 2 of Portugal's MAP guidance gives examples of cases for which MAP can be requested, which covers transfer pricing adjustments regarding the application of the arm's length principle between associated enterprises and the attribution of profits to permanent establishments either under tax treaties or under the EU Arbitration Convention.

Recent developments

Bilateral modifications

66. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention. One of these newly signed treaties has already entered into force. 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

67. Portugal 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, but with the deviating language as is described in paragraph 6 of the Commentary to Article 9 of the OECD Model Tax Convention, namely that a corresponding adjustment only will be granted when the contracting state agrees that the primary adjustment is justified both in principle and as regards its amount.

68. In that regard, Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

69. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right to not 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).

70. With the depositing of the instrument of ratification, Portugal has not, 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. In regard of the 12 tax treaties identified in paragraph 61 above that are considered not to contain this equivalent, Portugal listed all of them as a covered tax agreement under the Multilateral Instrument, but only for five of them made, a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2).

71. All of the relevant treaty partners to those five treaties are signatories to the Multilateral Instrument, but one 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. All remaining four treaty partners also made a notification on the basis of Article 17(4). As all these four treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, the Multilateral Instrument has entered into force for the treaties between Portugal and these treaty partners and has replaced the provisions in these four treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

72. Furthermore, for the remaining seven of the 12 tax treaties that Portugal listed as a covered tax agreement under the Multilateral Instrument and for which it did not make notification on the basis of Article 17(4), one treaty partner is not a signatory to the Multilateral Instrument and one has not listed its treaty with Portugal under that instrument. None of the remaining five treaty partners has, on the basis of Article 17(3), reserved the right not to apply Article 17(2). Three of these five 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 Portugal and these treaty partners. Therefore, at this stage, the Multilateral Instrument has superseded these treaties, but only to the extent that the provisions contained in those five treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). For the remaining two treaties, the Multilateral Instrument will, upon entry into force, supersede these two only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1) of the Multilateral Instrument.

Application of legal and administrative framework in practice

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

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

74. All peers that provided input indicated not being aware of a denial of access to MAP by Portugal on the basis that the case concerned was a transfer pricing case.

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

75. Portugal reported that since 1 January 2018 it received 13 transfer pricing MAP request and that access to MAP was granted in all these cases.

76. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal since 1 January 2018 and/or there are no additions to the previous input given. Three peers provided additional input. One of them mentioned that while it only has limited experience with Portugal, it has not experienced any issues with respect to access to MAP in its cases with Portugal. The second peer mentioned that since 1 January 2018 it has seven transfer pricing cases with Portugal and that Portugal granted access to MAP for all of them. The third peer noted that it had not noticed any impediments regarding the granting of access to MAP by Portugal. In addition, one peer that only provided input during stage 2 mentioned that Portugal's update report is consistent with its experience with Portugal.

Anticipated modifications

77. Portugal 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, but, as discussed in paragraph 67, with the deviating language as is described in paragraph 6 of the Commentary to Article 9 of the OECD Model Tax Convention.

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.

78. 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

79. None of Portugal's 81 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, Portugal's

domestic law and/or administrative processes do not contain a provision allowing its competent authority to limit access to MAP for cases where a domestic anti-abuse rule was applied.

80. Portugal 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 of Portugal’s MAP guidance gives examples of cases for which taxpayers can submit a MAP request, which includes cases concerning the application of treaty anti-abuse provisions or cases concerning whether the application of an anti-abuse rule provided for in the domestic law conflicts with the provisions of a tax treaty.

Recent developments

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

Practical application

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

82. Portugal reported that in the period 1 January 2016-31 December 2017 it did not deny access to MAP in cases where 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.

83. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Portugal in the period 1 January 2016-31 December 2017 in relation to the application of treaty and/or domestic anti-abuse provisions.

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

84. Portugal 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.

85. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 Portugal, it has not experienced any issues with respect to access to MAP in its cases with Portugal. The second peer noted that it had not noticed any impediments regarding the granting of access to MAP by Portugal. In addition, one peer that only provided input during stage 2 mentioned that Portugal’s update report is consistent with its experience with Portugal.

Anticipated modifications

86. Portugal indicated that it does not anticipate 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.

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

Legal and administrative framework

Audit settlements

88. Portugal reported that under its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement during the course of or after an audit has ended. Nevertheless, Portugal noted it will grant access to MAP for cases where taxpayers and a tax authority have already entered into an audit settlement. Section 2 and 7 of Portugal's MAP guidance clarifies that MAP may be requested even if the taxpayer and the tax authorities entered into an audit settlement.

Administrative or statutory dispute settlement/resolution process

89. Portugal reported it has not in place administrative or statutory dispute settlement/resolution process, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

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

Practical application

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

91. Portugal reported that in the period 1 January 2016-31 December 2017 it has not denied access to MAP for cases where the issue presented by the taxpayer has already been resolved through an audit settlement between the taxpayer and the tax administration. However, no such cases in relation hereto were received in that period.

92. All peers that provided input indicated not being aware of a denial of access to MAP in Portugal in the period 1 January 2016-31 December 2017 in cases where there was an audit settlement between the taxpayer and the tax administration.

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

93. Portugal 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 tax administration. However, no such cases in relation hereto were received since that date.

94. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 Portugal, it has not experienced any issues with respect to access to MAP in its cases with Portugal. The second peer noted that it had not noticed any impediments regarding the granting of access to MAP by Portugal. In addition, one peer that only provided input during stage 2 mentioned that Portugal's update report is consistent with its experience with Portugal.

Anticipated modifications

95. Portugal 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.

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

Legal framework on access to MAP and information to be submitted

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

98. Portugal reported that in cases where a taxpayer does not include all the necessary information and documentation in its MAP request, its competent authority will notify this taxpayer and request it to provide such information or documentation within 30 days. Such notification is sent by a registered letter with an acknowledgement of receipt on the basis of Article 38(1) of the Law regarding notifications concerning acts likely to change a taxpayer's situation.

99. If the taxpayer does not submit the requested information and/or documentation within the given deadline, Portugal specified that its competent authority will inform the taxpayer of the decision to close the case. In this respect, Portugal specified that closed cases can be reopened if the taxpayer provides the requested information and/or documentation within the time limit for submission of a MAP request as specified in the applicable tax treaty.

100. Section 5 of Portugal’s MAP guidance includes information on how Portugal’s competent authority will follow up a MAP request. In this respect, it is noted that it will acknowledge receipt of a MAP request within ten days after submission and accordingly will inform the taxpayer of the process. Furthermore, it is stipulated that within a period of 30 days from the date of the receipt of a MAP request, Portugal’s competent authority will conduct an analysis to verify whether the MAP request was timely submitted, whether the objection raised is justified and whether the information and documentation submitted by the taxpayer is complete and complies with the document requirements. The result of this analysis will be notified to the taxpayer. Furthermore, where the MAP request does not contain all required information and documentation, section 5 also stipulates that Portugal’s competent authority will request such additional information.

Recent developments

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

Practical application

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

102. As discussed under element B.2, Portugal reported that its competent authority limited access to MAP in two cases in the period 1 January 2016-31 December 2017 on the grounds that the taxpayers concerned did not include all the necessary information and documentation in their MAP request. In that regard, Portugal noted that its competent authority notified the taxpayer to provide the missing information and documentation, but that it received no response within the given deadline. Accordingly, the taxpayer was informed of the decision to close the case.

103. Peers generally indicated that in the period 1 January 2016-31 December 2017 they are not aware of a limitation of access to MAP by Portugal’s competent authority in situations where taxpayers have complied with the information and documentation requirements to be included in a MAP request. One peer indicated that it received a notification of denial of access to MAP in 2018, with regard to a case concerning fiscal year 2017. Another peer reported that in November 2017, it received from Portugal’s competent authority a letter that it closed a case on the ground that the objection raised by the taxpayer in a MAP request is not justified.

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

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

105. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 Portugal, it has not experienced any issues with respect to access to MAP in its cases with Portugal.

The second peer noted that it had not noticed any impediments regarding the granting of access to MAP by Portugal. In addition, one peer that only provided input during stage 2 mentioned that Portugal’s update report is consistent with its experience with Portugal.

Anticipated modifications

106. Portugal indicated that it does not anticipate 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.

107. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Portugal’s tax treaties

108. Out of Portugal’s 81 tax treaties, 39 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 42 treaties do not contain such provision at all.

109. Most of the peers that provided input reported that their treaty with Portugal meets the requirement under element B.7.

110. In regard of the 42 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, seven peers provided input. One of these seven peers noted that its treaty with Portugal is not in line with element B.7. Furthermore, five peers also mentioned that the treaty with Portugal is not fully in line with the requirements under the Action 14 Minimum Standard, but that it is expected that it will be modified via the Multilateral Instrument, which conforms with the analysis below.

Recent developments

Bilateral modifications

111. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. One of these newly signed treaties has

already entered into force. 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. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

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

114. In regard of the 42 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Portugal listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 42 treaty partners, 11 are not a signatory to the Multilateral Instrument and one did not list their treaty with Portugal as a covered tax agreement. All of the remaining 30 treaty partners also made a notification on the basis of Article 16(6)(d)(ii). 18 of these 29 treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Portugal and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified 18 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining 12 treaties, the instrument will, upon its entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Other developments

115. Portugal reported that for 12 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, for two negotiations are pending with a view to incorporate the second sentence. For the other ten tax treaties, Portugal reported that invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

Peer input

116. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Portugal. Three of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention and which has been or will be modified by the Multilateral Instrument. Of these three, only two provided input in relation to element B.7 and confirmed this modification via the Multilateral Instrument.

Anticipated modification

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [B.7] | <p>42 out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 42 tax treaties:</p> <ul style="list-style-type: none"> • 18 tax treaties have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • 12 tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • 12 tax treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these 12 tax treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - For ten actions have been taken to initiate negotiations on their amendment. | <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partner with a view to include the required provision • for ten continue with the process to request the inclusion of the required provision via bilateral negotiations. |

[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.

118. 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.

Portugal's MAP guidance

119. Portugal has issued rules, guidelines and procedures on the MAP process in specific MAP guidelines ("**MAP guidance**"), which are available at:

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf
(English)

https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf
(Portuguese)

120. This MAP guidance was issued in December 2017 and relates to mutual agreement procedures under both tax treaties Portugal entered into and the EU Arbitration Convention. The guidance consists of the following seven sections:

| |
|--|
| 1. Introduction |
| 2. Scope of the MAP |
| 3. Who can request the initiation of a MAP |
| 4. How to initiate a MAP |
| 5. Processing MAPs |
| 6. Implementation of the agreement reached in the scope of a MAP |
| 7. The MAP and the Portuguese legislation |

121. These seven sections contain information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. examples of cases for which taxpayers can submit a MAP request, which inter alia include transfer pricing cases, anti-abuse provisions, audit settlements and bona fide taxpayer-initiated foreign adjustments
- c. the manner and form in which the taxpayer should submit its MAP request and on what legal basis (e.g. a tax treaty or the EU Arbitration Convention)
- d. the specific information and documentation that should be included in a MAP request (see also below)
- e. confidentiality of information that is used in the MAP process
- f. how the MAP functions in terms of timing and the role of the competent authorities and taxpayers
- g. information on availability of arbitration (including the EU Arbitration Convention)
- h. relationship with domestic available remedies
- i. the process of implementing MAP agreements, including steps to be taken and timing of such steps
- j. suspension of tax collection
- k. the (non) consideration of interest and penalties in MAP.

122. The above-described MAP guidance of Portugal contains detailed 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.³ Although the information included in Portugal's MAP guidance is detailed and comprehensive, two subjects are not specifically clarified therein. These concern (i) whether MAP is available in cases of multilateral disputes, and (ii) whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

Information and documentation to be included in a MAP request

123. As noted above, Portugal’s MAP guidance defines the manner and form in which taxpayers should submit their MAP request. In this respect, section 4 of that guidance specifies that taxpayers should submit a MAP request in paper format and in the Portuguese language. Furthermore it is emphasised that there are no essential further formalities when submitting a MAP request in Portugal, other than that a taxpayer has to explicitly specify whether its MAP request concerns a protective MAP claim.

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. Portugal’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in this 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. Further to this list, Portugal’s MAP guidance also stipulates that a MAP request should specify: (i) the other jurisdictions concerned in the case, (ii) the tax periods concerned, (iii) whether the request concerns issues for which legal or administrative procedures were initiated by the taxpayer or related parties, or whether such procedures have been finalised. In addition, the MAP guidance also notes that taxpayers should, where applicable, include all relevant documents issued by the other state concerned (e.g. tax assessments), a copy of the MAP request if it is submitted with the competent authority of the other state concerned, other agreements relevant for the MAP case (e.g. a bilateral APA) and judicial/administrative decisions on those issues for which a MAP request is submitted.

Recent developments

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

Anticipated modifications

127. Portugal reported it envisages revising its MAP guidance to incorporate expected changes relating to arbitration under the Multilateral Instrument and 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. Portugal’s MAP guidance is published and can be found at:

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf
(English)

https://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/Documents/Procedimento_Amigavel_Guia_Pratico.pdf
(Portuguese)

130. This guidance was introduced in December 2017. As regards its accessibility, both the Portuguese and English versions of Portugal’s MAP guidance can easily be found on the website of Portugal’s Ministry of Finance, such by searching for MAP or mutual agreement procedure (or the Portuguese equivalent).

MAP profile

131. The MAP profile of Portugal is also published on the website of the OECD, which was last updated in April 2018.⁶ This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

133. As mentioned under element B.8, Portugal envisages revising its MAP guidance to incorporate expected changes relating to arbitration under the Multilateral Instrument and Council Directive (EU) 2017/1852 of 10 October on tax dispute resolution mechanisms in the European Union. Portugal did not further indicate that it will update its MAP profile after the publication of the updated MAP guidance.

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.

134. 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

135. As previously discussed under element B.5, it is under Portugal's domestic law not possible that taxpayers and the tax administration enter into audit settlements. As such Portugal's MAP guidance does not describe the relationship between MAP and audit settlements. Nevertheless, sections 2 and 7 of this guidance contains a statement that MAP may be requested even if the taxpayer and the tax authorities entered into an audit settlement.

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

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

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

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

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

139. As Portugal does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

Recent developments

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

Anticipated modifications

141. Portugal indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

| | Areas for improvement | Recommendations |
|--------|-----------------------|-----------------|
| [B.10] | - | - |

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, the Portuguese Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and

the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”. An overview of Portugal’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-portugal.pdf.

2. The text of the Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_1446-c-2001_de_21_de_dezembro_i_serie_b.pdf.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
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.
6. Available at: www.oecd.org/tax/dispute/Portugal-Dispute-Resolution-Profile.pdf.

References

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- 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.

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

Current situation of Portugal's tax treaties

143. Out of Portugal's 81 tax treaties, 80 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. With respect to the remaining treaty, although it contains a provision that is based on the first sentence of Article 25(2), its scope is limited to cases of “double taxation”, and not applies to cases concerning “taxation that is not in accordance with the provision of the treaty”. This provision therefore is considered not being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

144. Of the peers that provided input during stage 1, some peers that provided input indicated that their treaty provision meets the requirements under element C.1.

Recent developments

Bilateral modifications

145. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. One of these newly signed treaties has already entered into force. 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

146. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

147. 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.

148. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Portugal listed this treaty 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 of the Multilateral Instrument, listed its treaty with Portugal 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 of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Portugal and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified the tax treaty identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Peer input

149. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Portugal. None of these peers concerns a treaty partner to the treaty identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which has been modified by the Multilateral Instrument.

Anticipated modifications

150. As the treaty that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention has been modified via the Multilateral Instrument, there is no need for a bilateral modification of this treaty. Regardless, Portugal

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.1] | - | - |

[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).

151. 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

152. Statistics regarding all tax treaty related disputes concerning Portugal are published on the website of the OECD as of 2007.¹ Portugal also publishes its MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.²

153. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 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. Portugal provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Portugal 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 Annexes B and C respectively³ and should be considered jointly for an understanding of the MAP caseload of Portugal.

154. With respect to post-2015 cases, Portugal 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, Portugal reported that it could match its statistics with almost all of them.

155. Three peers provided input on the matching of MAP statistics with Portugal. All peers confirmed that they were able to match the statistics for the years 2016-18 or for a specific year in which they had MAP cases pending.

Monitoring of MAP statistics

156. Portugal reported it has a system in place to record and monitor its MAP caseload, which in its view enables the competent authority to monitor the whole MAP process from the initial registration of a MAP request until the completion of a case. Portugal further clarified that this system also allows to register all exchanged correspondence on pending

cases, monitor the time spent during each phase of the MAP process and to produce statistical information.

157. Portugal also reported that on a managerial level, the system enables officials who handle MAP cases, as also the head of the international cooperation team within the International Affairs Department to check the process and the timelines for each individual MAP case.

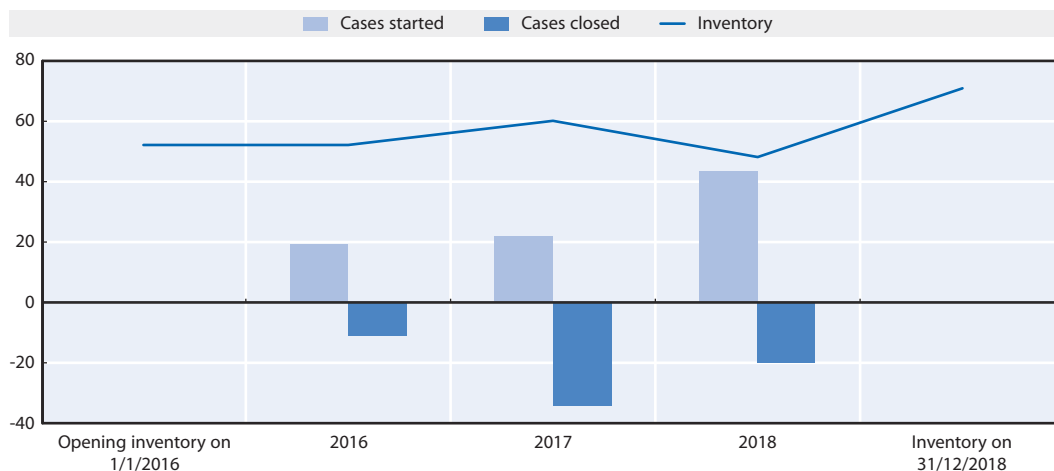
158. Further to the above, section 5 of Portugal’s MAP guidance clearly stipulates that Portugal’s competent authority will make every effort to reach an agreement within two years with the competent authority of the relevant treaty partner in order to avoid a situation of taxation that is not in accordance with the provisions of the applicable treaty.

Analysis of Portugal’s MAP caseload

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

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

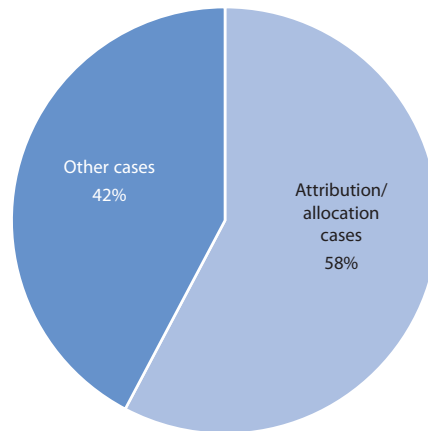
Figure C.1. Evolution of Portugal’s MAP caseload



161. At the beginning of the Statistics Reporting Period Portugal had 52 pending MAP cases, of which 39 were attribution/allocation cases and 13 other MAP cases.⁵ At the end of the Statistics Reporting Period, Portugal had 71 MAP cases in its inventory, of which 41 are attribution/allocation cases and 30 are other MAP cases. Accordingly, Portugal’s MAP caseload has increased by 37% during the Statistics Reporting Period, which concerns an increase of 5% for attribution/allocation cases and an increase of 131% in the number of other MAP cases.

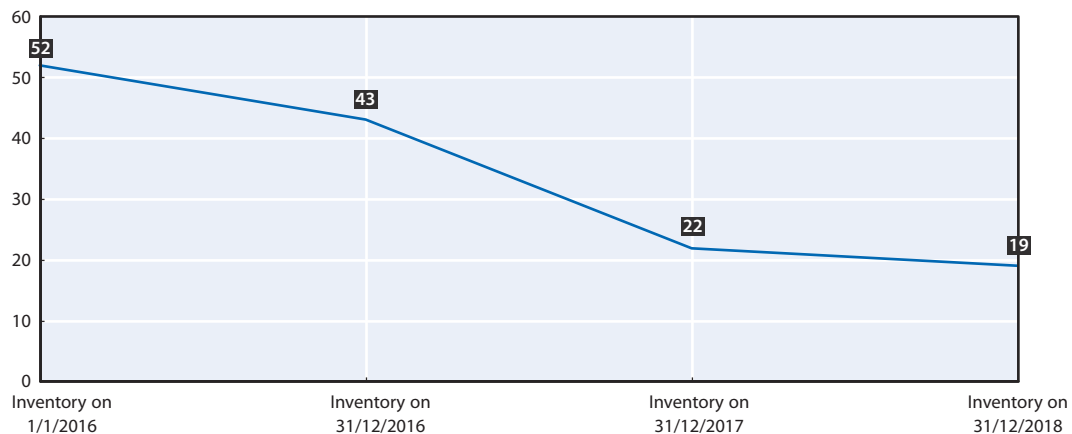
162. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2018 (71 cases)

*Pre-2016 cases*

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

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



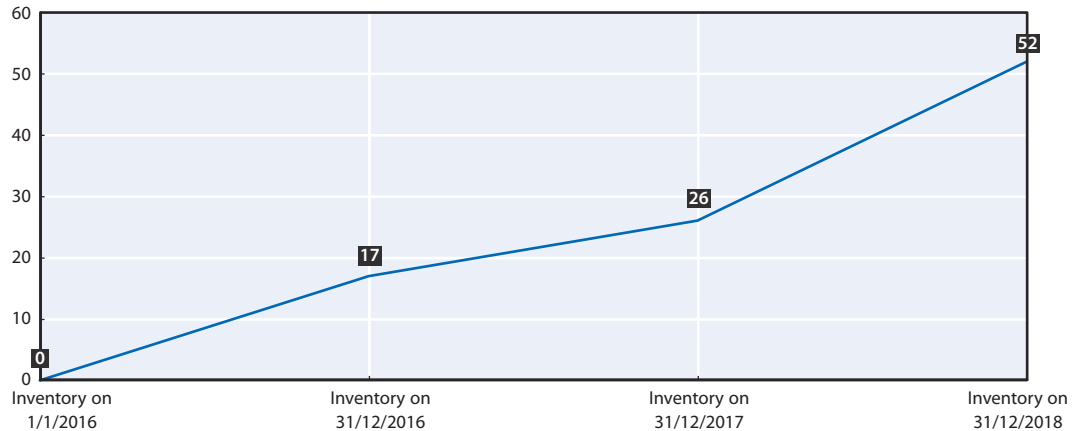
164. At the beginning of the Statistics Reporting Period, Portugal's MAP inventory of pre-2016 MAP cases consisted of 52 cases, of which were 39 attribution/allocation cases and 13 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 19 cases, consisting of 10 attribution/allocation cases and 9 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 | -21% | -65% | -9% | -74% |
| Other cases | -8% | -8% | -18% | -31% |

Post-2015 cases

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

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



166. In total, 84 MAP cases started during the Statistics Reporting Period, 38 of which concerned attribution/allocation cases and 46 other cases. At the end of this period the total number of post-2015 cases in the inventory was 52 cases, consisting of 31 attribution/allocation cases and 21 other cases. Accordingly, Portugal closed 32 post-2015 cases during the Statistics Reporting Period, seven of them being attribution/allocation cases and 25 of them of them being other cases. The total number of closed cases represents 38% of the total number of post-2015 cases that started during the Statistics Reporting Period.

167. 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.

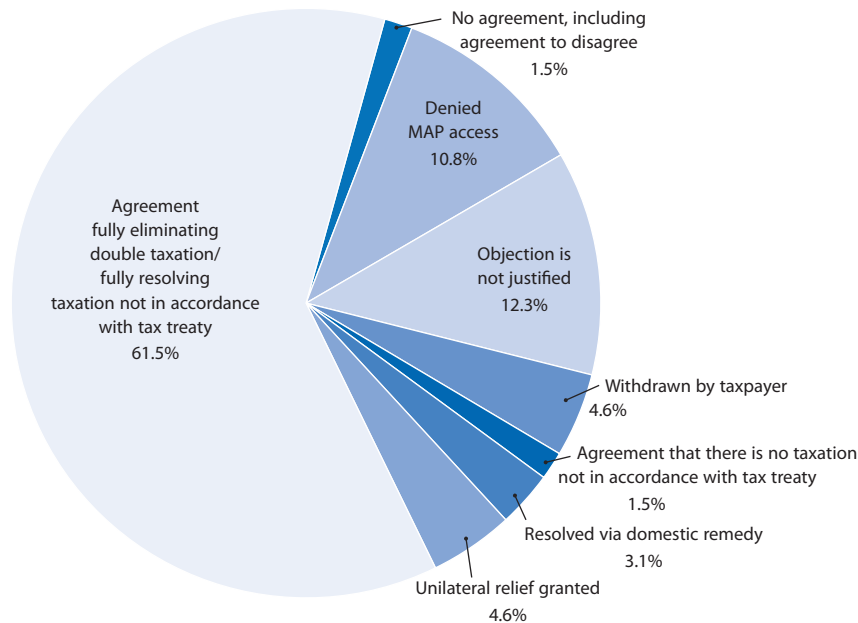
| | % of cases closed compared to cases started in 2016 | % of cases closed compared to cases started in 2017 | % of cases closed compared to cases started in 2018 | Cumulative percentage of cases closed compared to cases started over the three years (2016-18) |
|------------------------------|---|---|---|--|
| Attribution/allocation cases | 17% | 36% | 7% | 18% |
| Other cases | 0% | 82% | 57% | 54% |

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

168. During the Statistics Reporting Period Portugal in total closed 65 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (65 cases)



169. Figure C.5 shows that during the Statistics Reporting Period, 40 out of 65 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with tax treaty.

Reported outcomes for attribution/allocation case

170. In total, 36 attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (86%)
- denied MAP access (6%)
- unilateral relief granted (6%)
- withdrawn by taxpayer (3%).

Reported outcomes for other cases

171. In total, 29 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (31%)
- objection not justified (28%)
- denied MAP access (17%)
- withdrawn by taxpayer (7%)
- resolved via domestic remedy (7%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

172. The average time needed to close MAP cases during the Statistics Reporting Period was 38.56 months. This average can be broken down as follows:

| | Number of cases | Start date to End date (in months) |
|------------------------------|-----------------|------------------------------------|
| Attribution/Allocation cases | 36 | 60.46 |
| Other cases | 29 | 11.37 |
| All cases | 65 | 38.56 |

Pre-2016 cases

173. For pre-2016 cases Portugal reported that on average it needed 73.27 months to close 29 attribution/allocation cases and 45.02 months to close four other cases. This resulted in an average time needed of 69.85 months to close 33 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Portugal reported that it uses the following dates:

- *Start date*: the date of reception of the MAP request, and for MAP cases submitted in other state, the date that the other state communicated as “start date”
- *End date*: the date of the notification of the taxpayer on the outcome of the MAP case.

Post-2015 cases

174. For post-2015 cases Portugal reported that on average it needed 7.41 months to close seven attribution/allocation cases and 5.99 months to close 25 other cases. This resulted in an average time needed of 6.30 months to close 32 post-2015 cases.

Peer input

175. All peers that provided input reported having a good working relationship with Portugal’s competent authority and that no issues have surfaced in the (timely) resolution of MAP cases. The peer input is further discussed under element C.3.

Recent developments

176. Portugal was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 64% of its post-2015 MAP cases that were pending on 31 December 2017 within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. With respect to this recommendation, Portugal reported that in 2018 a dedicated team has been established to handle attribution/allocation MAP cases to solve these type of MAP cases in a more timely, efficient and effective manner. This team currently employs five persons that exclusively devote their time in handling such cases. Other than this, no other developments were reported.

177. From the statistics discussed above, it follows that Portugal 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 38%. Furthermore, its MAP inventory has increased by 37% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

178. Nearly all peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2018. Some of these peers provided additional input, which all is positive. This input will be further discussed under element C.3.

Anticipated modifications

179. Portugal 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.

180. 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 Portugal's competent authority

Organisation of the competent authority

181. Under Portugal's tax treaties, the competent authority function is assigned to the Minister of Finance and the Director General of the Tax and Customs Authority. Ministerial Order No. 320/2011 of 29 December 2011 established the structure of the Tax and Customs Authority.⁶ The Director General delegated the competences related to income taxes and related international affairs to the Deputy Director General for Income Taxes, who is responsible for various departments, including the International Affairs Department. Article 5 of Ministerial Order No. 320/2011 defines the responsibilities of this department, one of which is to handle and resolve MAP cases. The competence to handle MAP cases is further delegated to the MAP team of the international cooperation division within the department.

182. The MAP team consists of six staff members, all of which are involved in handling MAP cases on a full-time basis. Of these six staff members, five work within a dedicated team that deal with attribution/allocation cases on an exclusive basis, and one exclusively devotes its time to handle other MAP cases. The team is supported by two translators and by the administrative staff common to the International Affairs Department.

183. Further to the above, Portugal reported that staff in charge of MAP is highly educated. In addition, they receive general trainings on an annual basis by way of training on the job and e-learning courses. Funding necessary to carry out the competent authority function is furnished from the general budget of the Tax and Customs Authority, which is allocated on the basis of the needs identified. In that regard, Portugal stated that it has sufficient budget available to perform the competent authority functioning and that it does not anticipate budget constraints that may hinder the resolution of MAP cases.

Handling and resolving MAP cases

184. Concerning the process of handling and resolving of MAP cases, Portugal reported that its competent authority prepares a position on the case by taking into account all information that it can obtain by whichever means available. To this end, or to acquire information on the specific case, Portugal's competent authority can request the assistance of other departments, such as auditors in regional tax departments or at the Large Taxpayer Unit within Portugal's Tax and Customs Authority. Furthermore, staff involved in handling MAP cases has autonomy to prepare a position, but prior to the submission of the position paper to the other competent authority concerned the head of the international co-operation team and the Director of the International Affairs Department need to approve such position paper. It subsequently needs approval from the Deputy Director General for income taxes.

185. As regards the resolution of MAP cases, section 5 of Portugal's MAP guidance sets forth that Portugal's competent authority will interpret and apply the provisions of tax treaties in good faith, such in accordance with the terms of these treaties and in light of their objective and purpose. Furthermore, it is stipulated that Portugal's competent authority will take into consideration the updates of the Commentary to the OECD Model Tax Convention (including any observations/reservations by Portugal) when resolving cases on the application of tax treaty provisions. For transfer pricing cases the OECD Transfer Pricing Guidelines are taken into consideration as well.

Monitoring mechanism

186. Portugal regularly monitors whether the resources available for the MAP function are sufficient to resolve MAP cases. When the situation occurs that such resources are insufficient, a proposal for additional resources is submitted to the Director General of the Tax and Customs Authority. Based on the recent addition to the staff in charge of MAP cases, Portugal reported that it considers that resources currently available for the competent authority function are adequate.

Recent developments

187. As discussed under element C.2, Portugal has in 2018 established a dedicated team to exclusively focus on handling attribution/allocation MAP cases and with a view to resolve MAP cases in a more timely, efficient and effective manner. With the establishment of this team, five additional staff members were hired to work in this team. One of these five persons is a former tax auditor within the Tax and Customs Authority, who has twenty years of experience. The four other members of the team also have experience within the Tax and Customs Authority and also with tax audits. Portugal further reported that the transfer pricing team is responsible for drawing up all the proposals for position papers concerning attribution/allocation MAP cases.

188. In view of the addition of resources and the establishment of a dedicated team, Portugal also mentioned that this has allowed a greater interaction with taxpayers, better documentation of processes and better clarifications of cases under review. While it noted that it has made a considerable effort to allocate high qualified staff to work on handling MAP cases, Portugal stressed that it will take some time to see the efforts in a reduction of the MAP inventory and the average time taken to close (attribution/allocation) MAP cases.

189. Further to the above, during stage 1 of the peer review process, peers provided suggestions for improvement as to the organisation of the MAP function in Portugal. This concerns (i) timely issuing of position papers, (ii) more frequent communications and

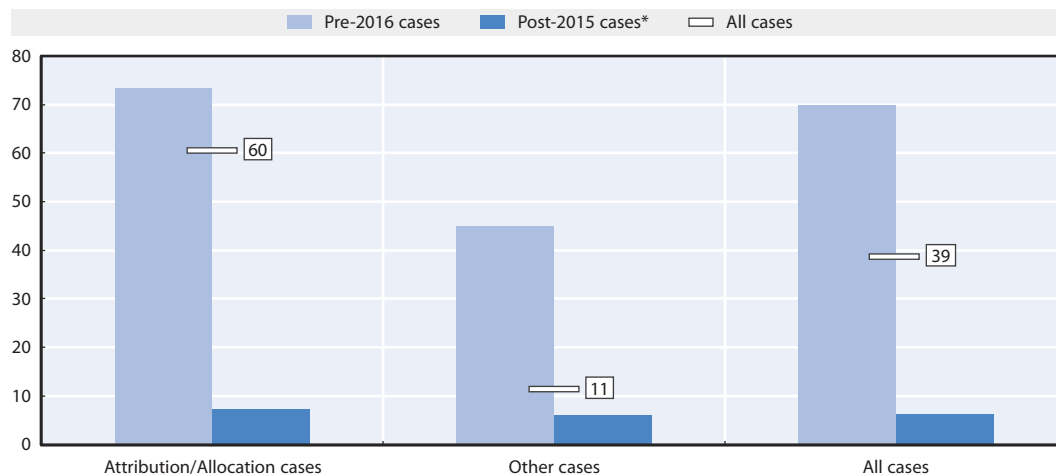
(iii) scheduling of regular face-to-face meetings. In this respect, Portugal reported that position papers and updates to the status of MAP cases have been exchanged via email with those treaty partners for which such correspondence have been duly agreed. Portugal also mentioned that conference calls were held to discuss certain cases and that it strives at scheduling face-to-face meetings with its key MAP partners when the number of pending cases justify this.

Practical application

MAP statistics

190. As discussed under element C.2 Portugal did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. In addition, the average time taken to close attribution/allocation cases is higher than the average time needed for other 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.

191. Based on these figures, it follows that on average it took Portugal 38.56 months to close MAP cases, which is above the pursued average of 24 months. This, however, only regards attribution/allocation cases, for which the average is 60.46 months. The average for other cases is far below the pursued average of 24 months, namely 11.37 months.

192. The stage 1 peer review report of Portugal analysed the 2016 and 2017 statistics and showed an average of 49.94 months, which is above the pursued average of 24 months to close MAP cases. This, however, also only regarded attribution/allocation cases, for which the average is 62.34 months. In that regard, it was concluded that Portugal's competent authority was not adequately resourced. Portugal itself also arrived at this conclusion and anticipated: (i) hiring more staff, (ii) a specialisation of staff within the international co-operation team, (iii) the establishment of a transfer pricing team that will support the resolution of MAP cases and (iv) the implementation of administrative procedures to ensure a better monitoring of deadlines for resolving MAP cases. On that basis Portugal was recommended to follow-up its stated intention to add staff to its competent authority specifically dedicated to handle MAP cases, the creation of a specific transfer pricing team

and the implementation of administrative procedures for monitoring MAP cases. This with a view to ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. Portugal was further recommended to closely monitor whether the above measures will indeed contribute to the resolution of MAP cases in a timely, efficient and effective manner.

193. 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 | 28.64 |
| Other cases | 11.23 |
| All cases | 12.97 |

194. The 2018 statistics of Portugal show that the average completion time of MAP cases decreased significantly from 49.94 months to 12.97 months, whereby the average for attribution/allocation cases decreased critically from 62.34 months to 28.64 months. For other cases the average decreased slightly to be further below the pursued average of 24-months, namely from 11.61 months to 11.23 months.

195. Furthermore – as analysed in element C.2 – the MAP inventory of Portugal 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 | 39 | 38 | 36 | 41 | 5% |
| Other cases | 13 | 46 | 29 | 30 | 131% |
| Total | 52 | 84 | 65 | 71 | 37% |

Clarifications by Portugal

196. During stage 1, Portugal provided the following clarification for why MAP cases were not closed within the 24-month average time period:

- a shortage of human resources within its competent authority
- 14 cases were resolved in 2016 and 2017 in more than 24 months on average, four of which were the four oldest cases that were closed in 2017 all related to a single treaty partner and were resolved at the same time. For these cases more than one meeting was needed to discuss the case, exchange positions and find an agreement. At some point Portugal's competent authority came close to proposing to close the case, but after a subsequent face-to-face meeting, an agreement could be reached.
- translation difficulties (e.g. because Portugal's competent authority does not always receive information on the case in English) or communication difficulties
- In some cases the information provided by the other competent authority was not sufficient to fully analyse the case, which caused that information needed to be collected internally first or to be requested with that other competent authority.

197. For stage 2, Portugal noted that since its stage 1 report, it invested in hiring high qualified staff to work in the competent authority and specifically dedicated to handling MAP cases. Although it takes some time to ascertain this investment in terms of a reduced average to resolve MAP cases, Portugal noted that this can already be seen in that the number of cases closed above 24 months is remote (e.g. four of the 20 cases closed in 2018). The addition of these resources contributed in Portugal's view also in a more efficient MAP process, leading to the situation that for most of the pending cases, it is awaiting a position from the other competent authority concerned.

198. Further to the above, Portugal also provided the following clarification why MAP cases were not closed within the 24-month average time period:

- the need to solve long pending cases that are the most complicated
- One case concerned a taxpayer that has a presence in several jurisdictions, for which more efforts were needed to reach a solution on a multijurisdictional level.

199. In view of the above and the investment in personnel made, Portugal reported that it considers that the resources available in the competent authority function are sufficient to deal with its inventory.

Peer input

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

200. In total, 13 provided input on their contacts with Portugal's competent authority in general and their experience as regards the resolution of MAP cases.

201. Almost all peers that provided input noted that their MAP caseload with Portugal is relatively low. Two peers reported having a MAP inventory of more than five cases with Portugal. Regardless hereof, all peers reported having a good working relationship with Portugal. They noted that contacts with Portugal's competent authority are easy, one of them emphasising that the communication was fluent and effective.

202. Given the relative modest MAP caseload of the peers with Portugal, most peers noted that face-to-face meetings are not scheduled on a regular basis. In that regard, they reported that communication mainly takes place via letters and e-mail.

203. Further to the above, all peers that provided input reported that their experience with Portugal in resolving MAP cases have been positive. For example, one peer noted that Portugal's competent authority is available and open to discussions of pending cases, which take place in a cordial atmosphere. This was also echoed by a second peer, who noted that during the last face-to-face meeting fruitful and principle discussions took place in a very friendly environment, following which most cases could be resolved, including two very old cases. Two other peers mentioned that although it had a limited number of MAP cases with Portugal, its competent authority has responded to any communication in a timely manner. Nevertheless, one of these peers also noted that meeting target timeframes for resolving MAP cases, for example, to timely issue position paper, is often challenging and that Portugal's competent authority and its own competent authority are not always able to meet these timeframes. Furthermore, another peer also noted that in some long-pending MAP cases position papers are still to be provided by Portugal's competent authority, which may delay their resolution.

204. A number of peers provided for suggestions to improve the (timely) resolution of MAP cases with Portugal. In this respect and with regard to communications between

competent authorities, one peer reported that it agreed with Portugal's competent authority to streamline the procedures through using e-mails for correspondence and to provide required clarifications in cases, such with a view to make progress in resolving MAP cases. Two other peers also believed more frequent use of emails would enhance the timely resolution of MAP cases. Furthermore, another peer, in respect of MAP meetings, observed the necessity to schedule regular face-to-face meetings and that both Portugal and the peer should keep in mind that they schedule such meetings when it would be necessary or adequate for resolving pending cases. Such meetings could in this peer's view take place at alternative venues, e.g. in the course of OECD meetings. Lastly, one peer suggested that more frequent communications between the CAs could improve the timelines for resolving MAP cases. This peer also suggested that additional use of translation services by Portugal's competent authority to improve the efficiency of resolving pending MAP cases. This peer further recommended that Portugal's competent authority responds or provides status updates on requests for information or position papers by this peer in more timely manner, which in this peer's view would help to build a better working relationship and also would reduce uncertainties that can delay the resolution of MAP cases.

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

205. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal since 1 January 2018 and/or there are no additions to the previous input given.

206. Of the peers that provided input during stage 1, four provided input during stage 2 in relation to their experience with Portugal as to handling and resolving MAP cases. One of these peers mentioned that it has currently one pending MAP case with Portugal. While so far it only had limited experiences in handling MAP cases with Portugal, it noted that it has not experienced any issues with respect to the timely resolution of MAP cases. The second peer specified the number of MAP cases that it had initiated with Portugal since 1 January 2018. For pending attribution/allocation cases it mentioned that for most of them both competent authorities exchanged their positions. For the pending other MAP cases, the peer noted that two of them were closed on a unilateral basis. The third reported that since 1 January 2018 it experienced a positive development in that contacts with Portugal's competent authority have been more frequent and that both competent authorities have managed to solve a number of cases under written procedure. The fourth peer noted that since 1 January 2018 the co-operation and communication between the competent authorities has been good and effective in resolving MAP cases.

207. Further to the above, a peer that only provided input in stage 2 stated that for one MAP case there was some initial delay following the issuing of its position paper to Portugal, but also that both competent authorities were quickly able to reach agreement and the case will be resolved within 24 months.

Anticipated modifications

208. Portugal did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|--|
| [C.3] | <p>While Portugal has significantly reduced the average completion time of MAP cases in 2018 as compared to 2016-17, resulting in an average for 2018 below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average timeframe is 60.46 months and which may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has increased with 37% since 1 January 2016, which primarily regards other cases as for these type of cases, the MAP caseload more than doubled. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p> | <p>As since 1 January 2018 Portugal has added new staff to its competent authority and established a dedicated team to handle attribution/allocation MAP cases, causing a decrease in the average completion time from 49.94 months in 2016-17 to 12.97 months in 2018, it should closely monitor whether the addition of resources recently provided will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of attribution/allocation cases.</p> <p>If this would not be the case, Portugal should, in particular for attribution/allocation cases, hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases and also to be able to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases.</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.

209. 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

210. As discussed under element C.3, Portugal reported that staff handling MAP cases has the autonomy to negotiate cases and enter into MAP agreements, which are subject to approval by the head of the international co-operation team. As a matter of formality, the Director of the International Relations Department signs the letters to be exchanged with other competent authorities, which *inter alia* concerns the sending of positions papers. When Portugal's competent authority has entered into a (tentative) MAP agreement, it is sent to the Deputy Director General of the Tax and Customs Authority responsible for income taxes for signing if the case under review concerns a value over EUR 250 000 (for individuals) or EUR 500 000 (for companies). In all other cases the MAP agreement is only signed by the Director of the International Affairs Department.

211. In regard of the above, Portugal reported that in practice the competence to handle cases and conclude MAP agreements is solely at the level of the International Affairs Department 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. While other departments within the Tax and Customs Authority, such as auditors, may be requested to provide information

or assistance, Portugal specified that a position in a MAP case is only prepared by its competent authority, such taking into account all relevant information. In this respect, section 7 of Portugal’s MAP guidance explicitly indicates that the MAP process is totally independent from procedures of control and tax audit.

Recent developments

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

Practical application

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

213. All peers that provided input reported not being aware of any impediments in Portugal to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2016-31 December 2017. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Portugal is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

214. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 C.4.

Anticipated modifications

215. Portugal 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.

216. 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 Portugal

217. Portugal reported that by Law No. 66-B/2007 of 28 December 2007 the performance/management indicators were established for each sector within Portugal’s public administration in the so-called “Integrated System for the Evaluation of Public Administration Performance (SIADAP)”. Under this system, for each department a performance evaluation is made, which are based on an assessment and accountability framework that specifies: (a) the mission of the department, (b) multi-annual strategic objectives, (c) annual operational objectives and targets to be achieved, (d) performance indicators and respective sources of verification, (e) available financial and human resources, and (f) the degree to which the objectives have been achieved, including any deviations and their causes, and the final evaluation process.

218. In view of the above, Portugal reported that the International Affairs Department, in which its competent authority is placed, is subject to this assessment methodology on an annual basis, following which each staff member, including those involved in handling MAP cases, is evaluated.

219. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are below. None of the below items is specifically used by Portugal.

- 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).

220. Further to the above, Portugal reported that within the International Affairs Department an internal indicator is set for the staff responsible for handling MAP cases. This indicator concerns the average time taken to complete a report on the MAP case. In practice, this comes down to the time needed to prepare a position paper to the other competent authority concerned, for which the average timeframe should be less than six months.

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

Recent developments

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

Practical application

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

223. All peers that provided input did not report any impediments in Portugal to perform its MAP function absent from approval or the direction of the tax administration personnel directly involved in the adjustments at issue or Portugal being influenced by considerations of the policy that it would like to see reflected in future amendments to the tax treaty. One peer noted that it is not aware of the use of performance indicators by Portugal 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)

224. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal 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 C.5.

Anticipated modifications

225. Portugal 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.

226. 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

227. Portugal reported that it has no general impediments under its domestic law for including MAP arbitration in its tax treaties, but there may be some legal limitations on the scope of issues that can be dealt with by arbitration. While Portugal's tax treaty policy was to neither propose nor accept a mandatory and binding arbitration provision in its bilateral tax treaties, it recently changed its policy, which now is to include such a provision, subject to the reservations formulated under the related provisions of the Multilateral Instrument. Portugal's MAP guidance includes in section 5 information on the scope and arbitration process provided by a bilateral tax treaty as well as under the EU Arbitration Convention.

228. Furthermore, Portugal 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 has been implemented in Portugal's domestic legislation as per 19 September 2019 (Law n.º 120/2019).

Recent developments

229. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020. With the depositing of the instrument of ratification, Portugal opted in for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. The effects of this opting in is further described below.

Practical application

230. Portugal has incorporated an arbitration clause in one of its 81 treaties as a final stage to the MAP. The clause is equivalent to Article 25(5) of the OECD Model Tax Convention, except for its scope of application which is based on a protocol provision limited to transfer pricing cases only. Furthermore, Portugal included a most-favoured nation clause in the protocol of the same treaty, entailing that where Portugal in the future agrees on an arbitration provision in a treaty with a third state that has a broader scope of application, Portugal will notify the treaty partner and the broader scope will apply in their bilateral treaty as well. Portugal reported that so far the condition under this clause has not been fulfilled.

231. In addition, with respect to the effect of part VI of the Multilateral Instrument on Portugal's tax treaties, there are next to Portugal in total 29 signatories to this instrument that also opted for part VI. Concerning these 29 signatories, Portugal listed 22 as a covered tax agreement under the Multilateral Instrument and 20 out of these 22 treaty partners also listed their treaty with Portugal under that instrument. In one of these treaties, Portugal has already included an arbitration provision. While Portugal did not reserve, pursuant to Article 26(4) of the Multilateral Instrument, the right not to apply the first sentence of Article 26(1) of that instrument to its existing tax treaties, with a view to replace the arbitration provision contained in that treaty by part VI, its treaty partner did so. Since both Portugal and the treaty partner already ratified the Multilateral Instrument, part VI has not replaced the arbitration provision contained in this treaty.

232. For the remaining 19 treaties that do not contain an arbitration provision, 14 treaty partners have already deposited their instrument of ratification. In this respect, part VI will apply to these 14 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.⁷ For the other five treaties for which the treaty partners have not yet ratified the Multilateral Instrument, Portugal reported it expects that part VI will introduce a mandatory and binding arbitration procedure in those treaties.

Anticipated modifications

233. Portugal 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 2018.
2. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2018.

3. For post-2015 cases, if the number of MAP cases in Portugal’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Portugal reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
4. Portugal’s 2016-18 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for the years 2016-18. See further explanations in Annex B and C.
5. For pre-2016 Portugal classified as attribution/allocation cases all cases referring to transfer pricing or attribution of profits to a permanent establishment, and for post-2015 Portugal 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. The text of the Ministerial Order is available at http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_320-A_2011.pdf.
7. Annex A reflects the effect of part VI of the Multilateral Instrument for these 14 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.

234. 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

235. Portugal reported that any MAP agreement shall be implemented notwithstanding any time limits foreseen in the domestic law provided that a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The same applies to cases for which an agreement has been reached under the EU Arbitration Convention. Where a tax treaty, however, does not contain a provision on the implementation of MAP agreements, Portugal reported its domestic statute of limitation applies. Article 45(1) of the General Tax Law stipulates that this concerns a limit of four years generally from the end of the fiscal year, which can be subject to suspension or extension under certain conditions (e.g. in case of initiated audits or pending court procedures). The time limit only applies to upward adjustments. In this respect, Portugal reported there is no time limit for making downward adjustments.

236. Concerning the process of entering into MAP agreements, Portugal reported that before entering into a definitive MAP agreement, its competent authority notifies the terms and conditions of the tentative agreement to the taxpayer and requests it to provide a response within 30 days as to whether it accepts the agreement reached. If so, it is obliged to withdraw any pending administrative or judicial procedures. Upon receiving acceptance from the taxpayer, Portugal's competent authority will subsequently formalise the MAP agreement with the other competent authority concerned. If the taxpayer does not accept the agreement, or does not respond within the 30 day-period, Portugal reported its competent authority will propose to the other competent authority concerned to close the case without an agreement.

237. Portugal further reported that after the MAP agreement is formalised with the other competent authority concerned, its competent authority will send the agreement to the competent department within the Tax and Customs Authority, which will arrange for implementation. In that regard, Portugal noted that feedback is requested from the competent department and that a MAP case is closed only after the receipt of confirmation of the implementation by that department. If so, the taxpayer will be informed hereof.

Recent developments

238. There are no recent developments with respect to element D.1.

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

239. Portugal reported that in the period 1 January 2016-31 December 2017 it has reached 33 MAP agreements (11 in 2016 and 22 in 2017), 30 of which required an implementation by Portugal. Portugal reported that as per 31 December 2017, 18 of them, once accepted by taxpayers, were implemented. For the remaining 12 MAP agreements, implementation was at that time pending.

240. 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 Portugal.

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

241. Portugal reported that for the 12 MAP agreements that were pending implementation on 31 December 2017, all have been implemented.

242. In addition, Portugal reported that in 2018 its competent authority has entered into seven MAP agreements, six of which required implementation in Portugal. Portugal clarified that all of these six agreements, once accepted by taxpayers, have been implemented. It further reported that in 2019 its competent authority has entered into 18 MAP agreements, 16 of which required implementation in Portugal. Portugal clarified that 14 of these 16 agreements have been implemented. For the remaining two MAP agreements, one was pending implementation due to a late response from the taxpayer, but which has been implemented in March 2020, whereas for the other case implementation is pending of the submission of data from external entities.

243. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal since 1 January 2018 and/or there are no additions to the previous input given. Two of these peers provided additional input. One of them noted that in 2018 it had one MAP case pending with Portugal, which was resolved in that year and implemented early 2019. The second peer mentioned that the implementation of MAP agreements sees to take a long time and can be burdensome for taxpayers. This input is further discussed under element D.2. Furthermore, one peer only provided input during stage 2 and reported that implementation of a MAP agreement has been delayed due to the taxpayer taking time to accept the agreement.

Anticipated modifications

244. Portugal indicated that it does not anticipate 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.

245. 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

246. Portugal reported that in respect of the timing for implementing MAP agreements, Article 20(2) of the Ministerial Order No. 1446-C/2001 prescribes that in attribution/allocation cases an adjustment has to be implemented within 120 days after the date Portugal's competent authority entered into a MAP agreement with the competent authority of the treaty partner concerned.¹ While such rule is not applicable to other MAP cases, Portugal reported that in practice the same timeline is applied for these cases.

Recent developments

247. In the stage 1 peer review report it was noted that Portugal was examining the possibility of assigning its competent authority the necessary legal competence to implement MAP agreements directly, such with a view to enable a timely implementation of such agreements. In that regard, Portugal reported that the outcome of this examination is that for organizational reasons within the tax administration, its competent authority cannot be assigned competence to implement MAP agreements directly and for that reason the implementation process remains the responsibility of regional tax offices. It, however, noted that its competent authority remains to monitor the implementation process for each case and, where needed, follows up with these regional offices.

Practical application

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

248. As discussed under element D.1, in the period 1 January 2016-31 December 2017, 30 of the 33 MAP agreements that Portugal entered into in this period required an implementation by Portugal. In this respect, Portugal reported that 18 MAP agreements have already been implemented on 31 December 2017 and that no cases of noticeable delays have occurred. For the remaining 12 MAP agreements, implementation was pending on that date.

249. All peers that provided input indicated not having experienced any problems with the assessed jurisdiction regarding the implementation of MAP agreements reached on a timely basis.

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

250. As discussed under element D.1, in 2018, Portugal has entered into seven MAP agreements, five of which required implementation in Portugal. Portugal reported that all of the five MAP agreements, once accepted by taxpayers, have been or will be implemented and it has not experienced any delays in the implementation process. It further reported that

in 2019 its competent authority has entered into 18 MAP agreements, 16 of which required implementation in Portugal. Portugal clarified that 14 of these 16 agreements have been implemented, for which no noticeable delays have occurred. For the remaining two MAP agreements, one was pending implementation due to a late response from the taxpayer, but which has been implemented in March 2020, whereas for the other case implementation is pending of the submission of data from external entities.

251. All but two peers that provided input during stage 1 stated in stage 2 that the update report provided by Portugal fully reflects their experience with Portugal since 1 January 2018 and/or there are no additions to the previous input given. Two of these peers provided additional input. One of them mentioned that in 2018 it had one MAP case pending with Portugal, which was resolved in that year and implemented early 2019.

252. The second peer noted that whilst resolution of MAP cases has been positive, the implementation of MAP agreements it reached with Portugal seems to take a long time and be burdensome for the taxpayers. The peer specified that in the period concerned it closed two MAP cases with Portugal. In one of these cases, the MAP agreement was reached in September 2018 and was implemented in May 2019, resulting in a refund to the taxpayer in Portugal. The peer noted that for this case, the taxpayer received a number of checks, which he had to redeem at the bank at a cost for each check, which in the taxpayer's view as lengthy and costly. As to the second case, it concerned two fiscal years, for which an agreement was reached in September 2018 and March 2019 respectively, which were not yet implemented. The peer concluded by stating that since these were the only cases they had with Portugal recently and that needed to be implemented by Portugal, it was not in a position to conclude whether the delays in implementation were only for these cases or is general practice in Portugal.

253. As to the input from this latter peer, Portugal responded and stated that for the first case referred to by this peer implementation of the MAP agreement indeed is taking more time, as it is dependent on information from an external entity. It further specified that refunds of taxes are handled centrally by the tax administration in one designated department that is independent from the competent authority and that refund procedures are for all taxes, not only those resulting from a MAP agreement. If such refunds have to be made to taxpayers not resident in Portugal, however, bank checks must be issued. While changes for this process are foreseen for non-resident taxpayers (e.g. adding an IBAN number allowing a bank transfer), these changes are not yet implemented. Portugal concluded that it recognises that in some sporadic cases, issuance of refunds is not as quick as would be desirable, but that it has invested in the monitoring of MAP agreements to avoid delays as much as is possible and further that its competent authority is following the case carefully and using every efforts to implement the agreement as soon as possible.

254. In response to Portugal's response, this peer noted that all the agreements have now been implemented, and mentioned that it understands that Portugal is not able to transfer the tax refund to the applicants foreign bank account currently, but is pleased to learn that Portugal is looking into this possibility to make the process less costly for the taxpayers.

255. In addition to the above, one peer that only provided input during stage 2 reported that the implementation of a MAP agreement has been delayed due to the taxpayer taking time to accept the agreement.

Anticipated modifications

256. Portugal 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.

257. 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 Portugal's tax treaties

258. As discussed under element D.1, Portugal's domestic legislation contains a statute of limitations of four years for upward adjustment, unless overridden by tax treaties that contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or, if applicable, a MAP agreement is reached under the EU Arbitration Convention. There are no time limits for downward adjustments.

259. Out of Portugal's 81 tax treaties, 57 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.

260. The remaining 24 treaties can be categorised as follows:

- 22 treaties do not contain the second sentence of Article 25(2) of the OECD Model Tax Convention or the alternative provisions for Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.
- One treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention, but contains the alternative provisions in Article 9(1), setting a time limit for making transfer pricing adjustments.
- One treaty does also not contain the second sentence, but contains a protocol provision requiring that Portugal implements any MAP agreement notwithstanding domestic time limits. This provision, however, is considered as not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, as it is only one-sided formulated and does not put any obligation on the side of the treaty partner.

261. Further to the above, until 2017 Portugal made a reservation to the Commentary to Article 25 of the OECD Model Tax Convention not to include the second sentence in its tax treaties. With the 2017 update of the OECD Model Tax Convention Portugal has withdrawn this reservation.

262. Five peers that provided input commented that their treaty with Portugal contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

263. For the 24 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, three relevant peers provided input and confirmed that their treaty with Portugal does not contain this equivalent. Two of these peers expected that their treaty with Portugal will be modified via the Multilateral Instrument, whereas the third peer specifically mentioned that it is willing to accept the alternative provisions in Articles 9(1) and 7(2) in the context of bilateral negotiations. Four other peers noted in general that their treaty with Portugal does not meet all the requirements under the Action 14 Minimum Standard, but also expected that their treaty with Portugal will be modified via the Multilateral Instrument.

Recent developments

Bilateral modifications

264. Portugal signed new treaties with two treaty partners, both of which concern a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. Both newly signed treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. One of these newly signed treaties has already entered into force. 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

265. Portugal signed the Multilateral Instrument and has deposited its instrument of ratification on 28 February 2020. The Multilateral Instrument has for Portugal entered into force on 1 June 2020.

266. 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.

267. In regard of the 24 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Portugal listed all of them as covered tax agreements under the Multilateral Instrument and made, 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 24 treaty partners, four are not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Portugal as a covered tax agreement under that instrument and three made a reservation on the basis of Article 16(5)(c). All remaining 16 treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

268. Nine of these 16 treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Portugal and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these nine tax treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining seven treaties, the instrument will, upon its entry into force for these treaties, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

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

270. Furthermore, Portugal also reported that for three of the remaining seven 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, that negotiating treaties are pending with two treaty partners with a view to incorporate the second sentence, while for the other tax treaty it has contacted the treaty partner to enter into such negotiations for that purpose. For the remaining four tax treaties Portugal reported that invitations to start negotiations will be sent shortly through diplomatic channels to the relevant treaty partners.

Peer input

271. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Portugal. Two of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. Two of them mentioned that its treaty with Portugal will be modified by the Multilateral Instrument, to meet the requirements under *inter alia* element D.31, which conforms with the above analysis. The second peer, whose treaty with Portugal will also not be modified by the Multilateral Instrument, mentioned that it is in contact with Portugal to bring the treaty in line with the requirements under *inter alia* element D.3, for which it noted that it is willing to accept the alternative provisions. In this regard, Portugal responded that there are on-going bilateral discussions between this peer and Portugal on the implications of the Multilateral Instrument to the relevant tax treaty, which is reflected in the above paragraph.

Anticipated modifications

272. Portugal 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] | <p>24 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 24 tax treaties:</p> <ul style="list-style-type: none"> • Nine have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • Seven are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include the required provision. With respect to these seven treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - Portugal has approached one treaty partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For four actions have been taken to initiate negotiations on their amendment. | <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision or be willing to accept the inclusion of both alternative provisions. • continue with the process to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in the remaining four treaties. |

Note

1. Available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_320-A_2011.pdf.

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] | Roll-back of bilateral APAs is not available. | Portugal should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases. |
| Part B: Availability and access to MAP | | |
| | One out of 81 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report or as amended by that report. This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty actions have been taken to initiate negotiations on the amendment. | For the treaty that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, Portugal should continue with the process to request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. as amended in the final report of action 14 (OECD, 2015b); or b. as it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision. |
| [B.1] | 17 out of 81 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these 17 treaties: <ul style="list-style-type: none"> • Eight have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Five are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Four will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. With respect to these four treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - For two actions have been taken to initiate negotiations on their amendment. | For the four treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, Portugal should: <ul style="list-style-type: none"> • continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations • for two treaty partners continue with the process to request the inclusion of the required provision via bilateral negotiations. |

| | Areas for improvement | Recommendations |
|--|---|--|
| [B.1] | <p>Two out of 81 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, actions have been taken to initiate negotiations on the amendment. • One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, actions have been taken to initiate negotiations on the amendment. | <p>With respect to the first sentence, Portugal should for the two treaties concerned continue with the process to request via bilateral negotiations the inclusion of a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention either:</p> <ul style="list-style-type: none"> • as amended by the Action 14 final report; or • as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision. |
| [B.2] | - | - |
| [B.3] | - | - |
| [B.4] | - | - |
| [B.5] | - | - |
| [B.6] | - | - |
| [B.7] | <p>42 out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Of these 42 tax treaties:</p> <ul style="list-style-type: none"> • 18 tax treaties have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • 12 tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • 12 tax treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these 12 tax treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - For ten actions have been taken to initiate negotiations on their amendment. | <p>For the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partner with a view to include the required provision • for ten continue with the process to request the inclusion of the required provision via bilateral negotiations. |
| [B.8] | - | - |
| [B.9] | - | - |
| [B.10] | - | - |
| Part C: Resolution of MAP cases | | |
| [C.1] | - | - |
| [C.2] | - | - |

| | Areas for improvement | Recommendations |
|---|---|---|
| [C.3] | <p>While Portugal has significantly reduced the average completion time of MAP cases in 2018 as compared to 2016-17, resulting in an average for 2018 below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards attribution/allocation cases, for which the average timeframe is 60.46 months and which may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has increased with 37% since 1 January 2016, which primarily regards other cases as for these type of cases, the MAP caseload more than doubled. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p> | <p>As since 1 January 2018 Portugal has added new staff to its competent authority and established a dedicated team to handle attribution/allocation MAP cases, causing a decrease in the average completion time from 49.94 months in 2016-17 to 12.97 months in 2018, it should closely monitor whether the addition of resources recently provided will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of attribution/allocation cases.</p> <p>If this would not be the case, Portugal should, in particular for attribution/allocation cases, hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases and also to be able to cope with the increase in the number of MAP cases, which both regards attribution/allocation cases and other cases.</p> |
| [C.4] | - | - |
| [C.5] | - | - |
| [C.6] | - | - |
| Part D: Implementation of MAP agreements | | |
| [D.1] | - | - |
| [D.2] | - | - |
| [D.3] | <p>24 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 24 tax treaties:</p> <ul style="list-style-type: none"> • Nine have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • Seven are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include the required provision. With respect to these seven treaties: <ul style="list-style-type: none"> - For two negotiations are pending. - Portugal has approached one treaty partner to initiate discussions on the amendment of the treaty with a view to include the required provision, but the treaty partner has not yet responded. - For four actions have been taken to initiate negotiations on their amendment. | <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should:</p> <ul style="list-style-type: none"> • continue negotiations with two treaty partners for which negotiations are currently pending to include the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions • upon receipt of a response from the relevant treaty partner agreeing to include the required provision, work towards updating the treaty to include this provision or be willing to accept the inclusion of both alternative provisions. • continue with the process to request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions in the remaining four treaties. |

Annex A

Tax treaty network of Portugal

| Treaty partner | Column 1 | | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | | | |
|----------------|--|---|--|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Article 25(1) of the OECD Model Tax Convention ("MTC") | Article 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | |
| | B.1 | B.3 | B.4 | B.3 | B.3 | B.4 | C.1 | D.3 | A.1 | B.7 | C.6 | | | | | | | | | | | | | |
| | 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. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(3) first sentence? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion Art. 25(3) first sentence? (Note 7) | Inclusion Art. 25(3) second sentence? (Note 8) | Inclusion Art. 25(3) first sentence? (Note 9) | Inclusion Art. 25(3) second sentence? (Note 10) | Inclusion Art. 25(3) first sentence? (Note 11) | Inclusion Art. 25(3) second sentence? (Note 12) | Inclusion Art. 25(3) first sentence? (Note 13) | Inclusion Art. 25(3) second sentence? (Note 14) | Inclusion Art. 25(3) first sentence? (Note 15) | Inclusion Art. 25(3) second sentence? (Note 16) | Inclusion Art. 25(3) first sentence? (Note 17) | Inclusion Art. 25(3) second sentence? (Note 18) | Inclusion Art. 25(3) first sentence? (Note 19) | Inclusion Art. 25(3) second sentence? (Note 20) | Inclusion Art. 25(3) first sentence? (Note 21) | Inclusion Art. 25(3) second sentence? (Note 22) |
| | 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? | 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, but access will be given to TP cases ii = no and access will not be given to TP cases | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes 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 |
| | DTC in force? | E = yes, either CAs O = yes, only one CA N = No | Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons | Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases | Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes 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 | |
| Algeria | Y | O | Y | Y | Y | i | Y | N | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Andorra | Y | O | Y | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Angola | N | O | Y | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Austria | Y | O | Y* | Y* | Y | i | Y | Y* | Y | Y | Y* | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Bahrain | Y | O | Y | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Barbados | Y | O | Y | Y | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N* |

| Treaty partner | 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? | 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? | Anti-abuse | Article 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC | Article 25(3) of the OECD MTC |
| Belgium | Y | N | Y* | 2-years | i | Y* | Y* | i | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Y* | Y* | Y* | Y* | Y* | Y* | Y* | Y* |
| Brazil | Y | O | ii | 2-years | i | Y | Y | i | If no, will your CA accept a taxpayer's request for MAP in relation to such cases? | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Bulgaria | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Canada | Y | O | Y* | 2-years | Y | Y | Y | i | | Y | ii | Y | Y* | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Cape Verde | Y | O | ii | 2-years | Y | Y | Y | i | | Y | N | Y | N | Y | Y | Y | Y | Y | Y | Y | N |
| Chile | Y | O | Y | N/A | Y | Y | Y | i | | Y | N* | Y | N* | Y | Y | Y | Y | Y | Y | Y | N |
| China (People's Republic of) | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Colombia | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Côte d'Ivoire | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Croatia | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Cuba | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Cyprus* | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Czech Republic | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Denmark | Y | O | Y | N/A | Y | Y | Y | i | | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Estonia | Y | 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 | |
|-------------------|--|--------------------------------------|--|---|--|---|---|---|--|----------------------------------|-------------------------------|--|-------------------------------|--|-------------|--|-----------|--|-----------|--|
| | Article 25(1) of the OECD Model Tax Convention ("MTC") | | Article 9(2) of the OECD MTC | | Anti-abuse | | Article 25(2) of the OECD MTC | | Article 25(3) of the OECD MTC | | Article 25(3) of the OECD MTC | | Article 25(3) of the OECD MTC | | Arbitration | | | | | |
| | B.1 | B.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 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) | If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion arbitration provision? | | | | | | | | | | |
| Ethiopia | Y | O | Y | N/A | i | Y | Y | Y | N | N | | | | | | | | | | |
| Finland | N | O | Y | N/A | i | Y | Y | Y | Y* | Y*** | | | | | | | | | | |
| France | Y | O | Y* | 2-years | i | Y | Y* | Y* | Y | Y*** | | | | | | | | | | |
| Georgia | Y | O | Y | N/A | i | Y | Y | Y | Y* | N | | | | | | | | | | |
| Germany | Y | O | ii | 2-years | i | Y | N | Y | N | N | | | | | | | | | | |
| Greece | Y | O | ii* | 2-years | i | Y | N* | Y | Y | N | | | | | | | | | | |
| Guinea-Bissau | Y | O | Y | N/A | i | Y | Y | Y | N | N | | | | | | | | | | |
| Hong Kong (China) | Y | O | Y | N/A | i | Y | Y | Y | Y | N | | | | | | | | | | |
| Hungary | Y | O | ii* | 2-years | i | Y | N* | Y | Y | N | | | | | | | | | | |
| Iceland | Y | O | Y | N/A | i | Y | Y* | Y | Y* | N | | | | | | | | | | |
| India | Y | O | Y | N/A | i | Y | Y | Y | Y | N | | | | | | | | | | |
| Indonesia | Y | O | Y* | 2-years | i | Y | Y* | Y | Y | N | | | | | | | | | | |
| Ireland | Y | O | Y* | 2-years | i | Y | Y* | Y | Y* | Y*** | | | | | | | | | | |
| Israel | Y | O | Y | N/A | i | Y | Y | Y | Y* | N | | | | | | | | | | |
| Italy | Y | N | ii* | 2-years | i | Y | N* | Y | N* | N | | | | | | | | | | |
| Japan | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |

| Treaty partner | Column 1 | | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------|--|-----|------------------------------|-----|------------|-----|-------------------------------|-----|-------------------------------|---|-------------------------------|---|-------------|---|----------|---|----------|---|-----------|---|-----------|------|
| | Article 25(1) of the OECD Model Tax Convention ("MTC") | | Article 9(2) of the OECD MTC | | Anti-abuse | | Article 25(2) of the OECD MTC | | Article 25(3) of the OECD MTC | | Article 25(3) of the OECD MTC | | Arbitration | | | | | | | | | |
| | B.1 | B.1 | B.3 | B.4 | C.1 | D.3 | A.1 | B.7 | C.6 | | | | | | | | | | | | | |
| Kenya | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Korea | O | Y* | 2-years | Y* | i | Y* | Y | Y | Y | Y | Y* | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Kuwait | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N* | Y | Y | N |
| Latvia | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Lithuania | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Luxembourg | O | Y* | 2-years | Y* | i | Y | Y | Y | Y | Y | Y* | Y | Y | Y | Y | Y | Y | Y | Y* | Y | Y | Y*** |
| Macao (China) | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Malta | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Mexico | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | N | Y | Y | Y | Y | Y | Y | Y | N* | Y | N | N |
| Moldova | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N | N | Y | N |
| Montenegro | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N | N | Y | N |
| Morocco | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Mozambique | O | ii | 2-years | ii | i | Y | Y | Y | Y | Y | N | Y | Y | Y | Y | Y | Y | Y | N | N | Y | N |
| Netherlands | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Norway | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y* | Y | Y* | N |
| Oman | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N* | Y | N* | N |
| Pakistan | N | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |

| Column 1 | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|-----------------------|--|--|---|---|--|---|---|---|--|----------------------------------|----------|------|-------------|--|----------|--|-----------|--|-----------|--|
| | Article 25(1) of the OECD Model Tax Convention ("MTC") | B.1 | B.1 | Article 9(2) of the OECD MTC | B.3 | B.4 | Article 25(2) of the OECD MTC | C.1 | D.3 | A.1 | B.7 | C.6 | Arbitration | | | | | | | |
| Treaty partner | DTC in force? | Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons | Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion arbitration provision? | | | | | | | | | | |
| Panama | Y | O | Y | Y | i | Y | Y | Y | Y | Y | N | N | | | | | | | | |
| Peru | Y | O | Y | Y | i | Y | Y | Y | Y | N* | N | N | | | | | | | | |
| Poland | Y | O | Y | Y | i | Y | Y | Y | Y | Y | Y | N | | | | | | | | |
| Qatar | Y | O | Y | Y | i | Y | Y | Y | Y | Y | Y | N | | | | | | | | |
| Romania | Y | O | Y | Y | i | Y | Y | Y | Y | Y | Y | N | | | | | | | | |
| Russia | Y | O | Y* | Y | i | Y | Y | Y | Y | Y* | Y | N | | | | | | | | |
| San Marino | Y | O | Y | Y | i | Y | Y | Y | Y | Y* | Y | N | | | | | | | | |
| Sao Tome and Principe | Y | O | Y | Y | i | Y | Y | Y | Y | N | Y | N | | | | | | | | |
| Saudi Arabia | Y | O | Y | Y | i | Y | Y | Y | Y | Y* | Y | N | | | | | | | | |
| Senegal | Y | O | Y | Y | i | Y | Y | Y | Y | N* | Y | N | | | | | | | | |
| Singapore | Y | O | Y | Y* | i | Y | Y* | Y | Y | Y | Y | Y*** | | | | | | | | |
| Slovak Republic | Y | O | Y | Y | i | Y | Y | Y | Y | Y* | Y | N | | | | | | | | |
| Slovenia | Y | O | Y | Y | i | Y | Y | Y | Y | Y | Y | Y*** | | | | | | | | |
| South Africa | Y | O | Y | Y | i | Y | Y | Y | Y | Y | Y | N | | | | | | | | |
| Spain | Y | O | ii* | Y | i | Y | N* | Y | Y | Y | Y | N | | | | | | | | |

| Treaty partner | Column 1 | | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------------|--|-----|------------------------------|-----|------------|-----|-------------------------------|-----|-------------------------------|---|-------------|---|-------------------------------|---|-------------|----|----------|---|-----------|---|-----------|------|
| | Article 25(1) of the OECD Model Tax Convention ("MTC") | | Article 9(2) of the OECD MTC | | Anti-abuse | | Article 25(2) of the OECD MTC | | Article 25(3) of the OECD MTC | | Arbitration | | Article 25(3) of the OECD MTC | | Arbitration | | | | | | | |
| | B.1 | B.1 | B.3 | B.4 | C.1 | D.3 | A.1 | B.7 | C.6 | | | | | | | | | | | | | |
| Sweden | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Switzerland | O | Y* | 2-years | i | Y | N | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y*** |
| Timor-Leste | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Tunisia | O | ii* | 2-years | i | Y | N* | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Turkey | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Ukraine | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| United Arab Emirates | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| United Kingdom | O | i | N/A | i | Y* | Y* | Y | Y | Y | Y | Y* | Y | Y | Y | Y | Y* | Y | Y | Y | Y | Y | Y*** |
| United States | O | ii | 5-years | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Uruguay | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Venezuela | O | Y | N/A | i | Y | N | Y | Y | Y | Y | N | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Viet Nam | O | Y | N/A | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |

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

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

Legend

| | |
|---------------|---|
| E* | The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state. |
| E** | The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard. |
| O* | The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state. |
| 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 |
| | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | Agreement that there is no accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 |
| Attribution/Allocation | 39 | 0 | 0 | 0 | 0 | 0 | 8 | 0 | 0 | 0 | 0 | 31 | -1.00 |
| Others | 13 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 12 | 18.70 |
| Total | 52 | 0 | 0 | 0 | 0 | 0 | 9 | 0 | 0 | 0 | 0 | 43 | 47.88 |

| 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 |
| | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | Agreement that there is no accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 |
| Attribution/Allocation | 31 | 0 | 0 | 0 | 0 | 0 | 20 | 0 | 0 | 0 | 0 | 11 | 83.19 |
| Others | 12 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 11 | 66.08 |
| Total | 43 | 0 | 0 | 0 | 0 | 0 | 21 | 0 | 0 | 0 | 0 | 22 | 82.38 |

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 | 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 | 11 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 10 | 48.82 |
| Others | 11 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 9 | 47.64 |
| Total | 22 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 1 | 0 | 19 | 48.03 |

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 tax 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 | 12 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 10 | 11.21 |
| Others | 0 | 7 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 7 | n.a. |
| Total | 0 | 19 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 17 | 11.21 |

| 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 tax 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 | 10 | 11 | 2 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 17 | 5.25 |
| Others | 7 | 11 | 0 | 6 | 1 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 9 | 4.77 |
| Total | 17 | 22 | 2 | 6 | 2 | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 26 | 4.92 |

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 | 17 | 15 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 31 | 16.63 |
| Others | 9 | 28 | 5 | 2 | 1 | 1 | 1 | 5 | 0 | 1 | 0 | 0 | 0 | 21 | 6.68 |
| Total | 26 | 43 | 5 | 2 | 1 | 2 | 1 | 5 | 0 | 1 | 0 | 0 | 0 | 52 | 6.78 |

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

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|---|---|
| Action 14 Minimum Standard | The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective |
| MAP guidance | Mutual Agreement Procedure Guidelines issued in December 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 that are pending resolution on 31 December 2015 |
| Post-2015 cases | MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016 |
| Statistics Reporting Period | Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018 |
| Terms of Reference | Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective |

OECD/G20 Base Erosion and Profit Shifting Project

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



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