

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Hungary (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 11 January 2021 and prepared for publication by the OECD Secretariat.

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*Abbreviations and acronyms*

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



## Executive summary

Hungary has an extensive tax treaty network with over 80 tax treaties and has signed and ratified the EU Arbitration Convention. Hungary also has a MAP programme with modest experience in resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 16 cases pending on 31 December 2018. Of these cases, 44% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Hungary met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Hungary worked to address them, which has been monitored in stage 2 of the process. In this respect, Hungary solved almost all of the identified deficiencies.

All of Hungary'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 (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except for the fact that approximately 15% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Hungary signed the Multilateral Instrument. Through this instrument, a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Hungary is in contact with a few treaty partners to strive to include the required provisions via the Multilateral Instrument. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, Hungary 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. However, Hungary does not have a specific plan in place nor has it taken or planned any specific actions for such negotiations.

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

Hungary also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 May 2018 not received any MAP request concerning the application of anti-abuse provisions. It further has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although no such cases have surfaced since 1 May 2018. Hungary also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, under tax treaties, the EU Arbitration Convention and the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Concerning the average time needed to close MAP cases, the MAP statistics for Hungary 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	11	7	11	7	56.14
Other cases	7	7	5	9	19.73
Total	18	14	16	16	44.76

\* 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, Hungary used as the start date the following: the date on which Hungary received the request by the taxpayer to initiate the MAP procedure (irrespective of whether Hungary had to ask more information from the taxpayer in order to be able to determine whether to initiate the MAP or not); and as the end date either (i) the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request; or (ii) the date the competent authority receives a notification from the taxpayer on the withdrawal of its MAP request.

The number of cases Hungary closed in 2016-18 is 36% of the number of all cases started in those years. During these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 44.76 months. This particularly concerns the resolution of attribution/allocation cases, as the average time to close these cases is much longer (56.14 months) than the average time to close other cases (19.73 months). However, Hungary's MAP inventory as on 31 December 2018 decreased by 11% as compared to 1 January 2016, with a decrease of 46% in 2018 as compared to the situation depicted in the stage 1 report. Hungary further clarified that the average time taken to close attribution/allocation cases is high since it managed to resolve several long pending pre-2016 attribution/allocation cases in 2018. As additional personnel has been assigned to Hungary's competent authority function in recent years and Hungary has been able to increase the number of cases closed, Hungary should closely monitor whether these additional resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. This is particularly so for attribution/allocation cases where the average time taken to resolve such cases has been significantly higher than the pursued 24-month average. Where needed, it should in particular devote additional resources or take additional actions to be able to close long-pending cases.

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

Lastly, Hungary also meets all the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation.

## *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>.

## *Introduction*

### **Available mechanisms in Hungary to resolve tax treaty-related disputes**

Hungary has entered into 81 tax treaties on income (and/or capital), 80 of which are in force.<sup>1</sup> These 81 treaties apply to 82 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of the 81 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

Furthermore, Hungary 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.<sup>3</sup> In addition, Hungary also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in Hungary’s domestic legislation through Act XXXVII of 2013 (Chapter III/A) and is in force as from 24 July 2019.<sup>4</sup>

Under Hungary’s tax treaties, the competent authority function is assigned to the Minister of Finance, which is further delegated to the Central Administration of the National Tax and Customs Administration for attribution/allocation cases and to the Ministry of Finance for other cases. The competent authority of Hungary currently employs 15 employees (ten of them handling attribution/allocation cases and the remaining five handling other MAP cases), who all deal with other international tax matters in addition to MAP cases.

Hungary issued procedural rules on the conduct of the MAP arising from tax treaties, the EU Arbitration Convention as well as the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, respectively, in Chapters IV/A, IV and III/A of Act XXXVII of 2013, which are available (in Hungarian) at:

<http://net.jogtar.hu/jogszabaly?docid=a1300037.tv>

Further, Hungary issued guidance on the governance and administration of the mutual agreement procedure (“MAP”) in 2016 and last updated it in 2020, which is available at:

[https://nav.gov.hu/nav/ado/egyeb/map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html)  
(relating to tax treaties in Hungarian)

[https://nav.gov.hu/nav/ado/egyeb/ac-map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/ac-map_tajekoztato.html)  
(relating to the EU Arbitration Convention in Hungarian)

[https://nav.gov.hu/nav/ado/egyeb/drd-map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/drd-map_tajekoztato.html)  
(relating to the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union in Hungarian)

<https://en.nav.gov.hu/taxation/MAP>  
(English versions of the above)

## Developments in Hungary since 1 May 2018

### *Developments in relation to the tax treaty network*

The stage 1 peer review report of Hungary noted that it was conducting tax treaty negotiations with several jurisdictions. Hungary reported that it is, at present, conducting or has finalised tax treaty negotiations with Andorra, Ghana, Kyrgyzstan, New Zealand and Sri Lanka for new tax treaties and with Latvia, Lithuania and Pakistan on amending protocols to existing tax treaties. Further, the stage 1 report noted that Hungary had signed a new treaty with Iraq, which had not entered into force at that time. The treaty with Iraq has up to now only been ratified by Hungary and therefore, has not yet entered into force.

Furthermore, on 7 June 2017 Hungary signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Hungary also submitted its list of notifications and reservations to that instrument.<sup>5</sup> In relation to the Action 14 Minimum Standard, Hungary 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.<sup>6</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard. Hungary reported that it expects that it will deposit its instrument of ratification of the Multilateral Instrument in early 2021.

Where treaties will not be modified by the Multilateral Instrument, Hungary reported that it intends to update them via bilateral negotiations. In this respect, Hungary reported that it is in the process of revising its list of notifications and reservations to the Multilateral Instrument to ensure that all treaties with other signatories to the Multilateral Instrument may be revised upon the deposit of its instrument of ratification to make them in line with the Action 14 Minimum Standard. In respect of the remaining treaties, Hungary reported that it intends to initiate bilateral negotiations afterwards. Hungary further reported that due to time and resource constraints, countries with which economic ties are stronger would be given preference in such renegotiations.

In view of the above, where treaties that do not meet all requirements under the Action 14 Minimum Standard cannot be modified to be in line with the Action 14 Minimum Standard through Hungary’s actions in relation to the Multilateral Instrument, no details were shared as to planned actions, specifically as regards which treaty partners are prioritised for bilateral negotiations.

### *Other developments*

Further to the above, Hungary reported that it has made several changes to the operation of its MAP process, owing to the revision of Act XXXVII of 2013 with effect from July 2019 to introduce Chapter IV/A that contains specific rules on the submission, content and withdrawal of a MAP request arising from a tax treaty, the decision on acceptance of the MAP request, the various stages of the MAP and rules for conduct of the MAP and interaction with domestic remedies. These changes include:

- the introduction of new legislation that allows the acceptance of MAP requests filed in relation to tax years starting from 2018 even where domestic time-limits have expired, whether the MAP request is received in Hungary or in the treaty partner State

- the introduction of a bilateral notification process in Hungary’s domestic law where Hungary’s competent authority has to inform the other competent authority about its decision to accept or reject a MAP request along with underlying reasons without delay and the introduction of internal procedures for implementing this
- the introduction of new information and documentation requirements for the submission of a MAP request along with the procedure to be followed when the required information is not provided by the taxpayer
- the introduction of new procedures that are applicable in relation to the implementation of MAP agreements.

In addition, Hungary reported that an additional team member having experience with MAP cases as well as interpretation of tax treaties was added to its competent authority dealing with other MAP cases in October 2018 and that another team member attended training sessions organised by the OECD and shared experiences with the competent authority staff in Hungary afterwards.

### **Basis for the peer review process**

The peer review process entails an evaluation of Hungary’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 questionnaires for the peer review process were sent to Hungary and the peers on 10 April 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Hungary’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 19 October 2018. This report identifies the strengths and shortcomings of Hungary 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.<sup>7</sup> 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 Hungary. In this update report, Hungary 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 Hungary 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 modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the 1985 tax treaty with former Socialist Federal Republic of Yugoslavia and the 2001 tax treaty with former Republic of

Yugoslavia for those jurisdictions to which these treaties are still being or to be applied by Hungary. As it concerns the same tax treaties that are applicable to multiple jurisdictions, each of these two treaties is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Hungary’s tax treaties regarding the mutual agreement procedure.

### *Timing of the process and input received from peers and taxpayers*

Stage 1 of the peer review process for Hungary was launched on 10 April 2018, with the sending of questionnaires to Hungary and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Hungary in September 2018, with the subsequent approval by the BEPS Inclusive Framework on 19 October 2018. On 19 October 2019, Hungary submitted its update report, which initiated stage 2 of the process.

The period for evaluating Hungary’s implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 30 April 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 May 2018 and depicts all developments as from that date until 31 October 2019.

In total nine peers provided input during stage 1: Austria, Belgium, Canada, Germany, Italy, Spain, Switzerland, Turkey and the United Kingdom. Out of these nine peers, five had MAP cases with Hungary that started in 2016 or 2017. These five peers represented 56% of post-2015 MAP cases in Hungary’s inventory that started in 2016 or 2017. During stage 2, the same peers provided input. In addition, Australia and Denmark also provided input during stage 2. For this stage, these peers represent approximately 57% of post-2015 MAP cases in Hungary’s MAP inventory that started in 2016, 2017 or 2018.<sup>8</sup> Generally, although most peers indicated having a good relationship with Hungary, some had emphasised the difficulties they encountered to resolve MAP cases in a timely manner with Hungary’s competent authority. However, some peers reported having experienced recent improvements in their communication with Hungary’s competent authority. Specifically with respect to stage 2, most of the peers that provided input reported that the update report of Hungary fully reflects the experiences these peers have had with Hungary since 1 May 2018 and/or that there was no addition to previous input given. However, two peers have reported having encountered difficulties in resolving long pending pre-2016 MAP cases with Hungary.

### *Input by Hungary and co-operation throughout the process*

Hungary provided informative answers in its questionnaire, which was submitted on time. Hungary was 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, Hungary provided the following information:

- MAP profile<sup>9</sup>
- MAP statistics<sup>10</sup> according to the MAP Statistics Reporting Framework (see below).

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

Finally, Hungary is a member of the FTA MAP Forum and has shown good co-operation during the peer review process.



## Overview of MAP caseload in Hungary

The analysis of Hungary’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 Hungary, 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	11	7	11	7
Other cases	7	7	5	9
Total	18	14	16	16

## General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).<sup>11</sup> Apart from analysing Hungary’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Hungary during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Hungary 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 Hungary 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 included 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 Hungary should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

## Notes

1. The tax treaties Hungary has entered into are available at: [http://en.nav.gov.hu/taxation/double\\_taxation\\_treaties](http://en.nav.gov.hu/taxation/double_taxation_treaties). The tax treaties that are signed but have not yet entered into force are with Iraq (2016) and the United States (2010). These newly negotiated treaties are taken into account in the treaty analysis. While the tax treaty with Iraq (2016) is a new treaty, the tax treaty currently in force with the United States will be replaced by the newly negotiated treaty once the latter enters into force. Reference is made to Annex A for the overview of Hungary's tax treaties.
2. Hungary continues to apply the 2001 tax treaty with the former Federal Republic of Yugoslavia to both (i) Serbia and (ii) Montenegro as well as the 1985 tax treaty with former Socialist Federal Republic of Yugoslavia to Bosnia and Herzegovina.
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: <http://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: [www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf).
6. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Hungary 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/fr/fiscalite/beps/making-dispute-resolution-more-effective-map-peer-review-report-hungary-stage-1-9789264309982-en.htm](http://www.oecd.org/fr/fiscalite/beps/making-dispute-resolution-more-effective-map-peer-review-report-hungary-stage-1-9789264309982-en.htm).
8. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
9. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).
10. The MAP statistics of Hungary are included in Annex B and C of this report.
11. 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](http://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 Hungary tax treaties*

2. Out of Hungary’s 81 tax treaties, 79 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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.<sup>1</sup> The remaining two treaties are considered not to have the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) since one tax treaty does not include the term “application” and the other tax treaty does not contain both the terms “doubts” as well as “interpretation”.

3. Hungary reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), there are under its domestic legislation and/or administrative practices no obstructions to resolve any difficulties or doubts regarding the interpretation or application of its tax treaties.

4. Of the peers that provided input in relation to their tax treaty with Hungary, seven peers indicated in a general manner that their tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to this element, the relevant tax treaties are already in line with the Minimum Standard. Further, one peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which is confirmed by the analysis above. For the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peers did not provide input.

## ***Recent developments***

### *Multilateral Instrument*

5. Hungary signed the Multilateral Instrument. 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 (OECD, 2017a) – 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 (OECD, 2017a). 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 (OECD, 2017a).

6. With regard to 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 (OECD, 2017a), Hungary listed both of them as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Therefore, at this stage, neither of the two tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

### *Other developments*

7. Hungary reported that for the two remaining tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and which will not be modified by the Multilateral Instrument, it intends to revise its list of notifications and reservations to the Multilateral Instrument upon deposit of its instrument of ratification to bring these treaties in line with the requirements under the Action 14 minimum standard.

### *Peer input*

8. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Hungary, out of which only one provided input in relation to this element. This peer concerns one of the two treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). This peer only provided input during stage 2 and stated that it encourages Hungary to update its notifications for its final positions for the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) its treaty with Hungary.

### *Anticipated modifications*

9. Hungary reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

## Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument.	As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) will at this time not be modified via the Multilateral Instrument, Hungary should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.

### [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.

10. 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.<sup>2</sup> 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.

#### *Hungary’s APA programme*

11. Hungary is authorised to enter into bilateral or multilateral APAs and has implemented an APA programme. The legal basis of the bilateral APA programme is derived from the MAP article of the underlying tax treaty as well as in Chapter XXI (Section 174-183) of Hungary’s Act on the Rules of Taxation, in Government Decree 465/2017 (Sections 111-116) on specific rules of taxation and in Decree 32/2017 of the Minister for National Economy on transfer pricing documentation requirements.

12. Hungary reported that the request for a bilateral APA should generally be submitted before the transaction is entered into and a contract is concluded. A request for a bilateral APA could be accepted even after entering into a transaction/concluding a contract, if the transaction/contract is performed on a continuous basis. According to domestic law in Hungary, a continuous contract is a contract that is concluded for at least six months and under which (a) a transaction has to occur at least every month; or (b) a credit facility is maintained for a related party; or (c) a requirement for the continuous availability of either related party is prescribed. Based on this, Hungary reported that a bilateral APA takes effect as from the APA application and that bilateral APAs generally run for a period of three to five years.

### ***Roll-back of bilateral APAs***

13. Hungary reported that roll-backs of bilateral APAs are possible in Hungary since 1 January 2018. The conditions necessary for the roll-back of bilateral APAs are provided in Section 181(2) of Hungary’s Act on the Rules of Taxation as well as in Government Decree 465/2017. Hungary further reported that any period prior to the submission of the bilateral APA request may be considered in a roll-back request, provided the prior fiscal year is not closed by an audit and has not been subject to an audit resulting in a period closed by an audit in progress. In addition, Hungary reported that the fiscal years covered should not be time barred at the time of conclusion of the agreement of the competent authorities. In this respect, Hungary reported that its domestic time limit expires five years after the last day of the calendar year in which the taxes should have been declared or reported (usually the year following the fiscal year concerned).

### ***Recent developments***

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

### ***Practical application of roll-back of bilateral APAs***

15. Hungary publishes statistics on APAs on the website of the EU JTPF.<sup>3</sup>

#### *Period 1 January 2016-30 April 2018 (stage 1)*

16. Hungary reported having received six requests for bilateral APAs in the period 1 January 2016-30 April 2018 and that none of these requests included a request for a roll-back, which can be explained by the fact that roll-backs have only been possible in Hungary since 1 January 2018.

17. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Hungary in the period 1 January 2016-30 April 2018.

#### *Period 1 May 2018-31 October 2019 (stage 2)*

18. Hungary reported having received six requests for a bilateral APA since 1 May 2018, five of which included a request for roll-back. All of these requests are presently under consideration.

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

### ***Anticipated modifications***

20. Hungary indicated that it does not anticipate any modifications in relation to element A.2.

### ***Conclusion***

	Areas for improvement	Recommendations
[A.2]	-	-

## Notes

1. These 79 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).
3. Available at: [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apo\\_statistics\\_en.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apo_statistics_en.pdf). The most recent statistics published are up to 2017.

## 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.

21. 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 Hungary's tax treaties***

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

22. None of Hungary's 81 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 (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 73 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.<sup>1</sup>

23. The remaining eight 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	7
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

24. The seven tax treaties mentioned in the first row of the table are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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 all of those seven tax treaties are considered to be in line with this part of element B.1:

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

25. With respect to the one tax treaty mentioned in the second row of the table above, the provision incorporated in the protocol to this tax treaty reads:

With reference to paragraph 1 of Article 26 the term “notwithstanding the remedies provided for by the domestic laws” shall be construed as meaning that, where the mutual agreement procedure has been put in motion, recourse to the judicial procedures under national law shall not be precluded and that, in any case, where a dispute involves taxation not in accordance with the Convention recourse should be in the first place to those national procedures.

26. 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Therefore, this tax treaty is considered not to be in line with this part of element B.1.

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

27. Out of Hungary’s 81 tax treaties, 71 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) 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.<sup>2</sup>

28. However, Hungary made a reservation with respect to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), which reads as follows:

Hungary reserves its position on the last sentence of paragraph 1 as it could not agree to pursue a mutual agreement procedure in the case of a request that would be presented to its competent authority outside the prescription period provided for under domestic legislation.

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

Provision	Number of tax treaties
No filing period for a MAP request	6
Filing period less than 3 years for a MAP request (2 years)	4

### *Peer input*

30. Of the peers that provided input in relation to their tax treaty with Hungary, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.1 the relevant tax treaties are in line with the Minimum Standard with two exceptions described below. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis above.

31. For the five treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 Final Report (OECD, 2015b), two relevant peers provided input. The first peer stated that to the extent its tax treaty with Hungary will not be modified via the Multilateral Instrument, a bilateral solution will be explored. This tax treaty will for element B.1 be modified by the Multilateral Instrument with regard to Article 25(1), second sentence, of the OECD Model Tax Convention. The second peer noted that its tax treaty with Hungary will be modified with regard to element B.1, which is, however, not in line with the above analysis.

### ***Practical application***

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

32. All but one of Hungary's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. Hungary reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies are still pending or have already been concluded. This is confirmed in Section 42/J of Act XXXVII of 2013.

33. However, with regard to a decision rendered by a Hungarian court, Hungary made an observation to the OECD Model Tax Convention, which reads:

Hungary does not fully share the interpretation in paragraph 27 of the Commentary on Article 25 and is not in a position to pursue a mutual agreement procedure where a Hungarian court has already rendered a decision on the merits of the case.

34. To clarify its reservation, Hungary reported that it would grant access to a MAP case, the underlying issue of which has already been decided by a court in Hungary. However, Hungary further reported that its competent authority is not able to deviate from the decision

of a Hungarian court during the MAP. Subsequently, Hungary clarified that the taxation not in accordance with the underlying treaty would only be (fully) eliminated, if the treaty partner adopts Hungary's position. This is clarified in Section 42/J of Act XXXVII of 2013 and section 8 of Hungary's MAP guidance.

35. Additionally, one peer, reported that Hungary is not willing to discuss a MAP case relating the attribution of profits to a permanent establishment in Hungary because such permanent establishment no longer existed in Hungary when the MAP request was submitted to the competent authority of this peer. The peer considers this approach not to be in line with the underlying treaty (being the EU Arbitration Convention in the case at stake) as the foreign taxpayer is still in existence in its country and taxation not in accordance with the tax treaty may not be resolved.

36. While it is not Hungary's competent authority that will deny access to MAP in such cases, as the request has not been filed in Hungary, by not discussing the case, Hungary factually deprives the taxpayer from having effective access to MAP in such situations and having its case to be resolved accordingly. This is, in line with the peer's conclusion, contrary to the requirements under the Action 14 Minimum Standard.

37. Hungary reported in this regard that Hungary's competent authority would consider initiating MAP discussions under the equivalent of Article 25(3), first sentence in its tax treaties in such cases. However, as the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) only allows Hungary to discuss MAP cases based on its discretion, Hungary does not grant access to MAP based on the request of a taxpayer in such cases and thus, the recommendation in stage 1 has not been addressed.

38. Hungary reported that it is open to undertaking a review of this policy in the future, considering possible administrative or legislative changes to address the recommendation.

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

39. In the stage 1 report, it was noted that where the underlying tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary's general domestic statute of limitation applies. At that time, Section 202(1) of Hungary's Act on the Rules of Taxation provided that the general domestic time limit to amend a tax assessment expires five years after the last day of the calendar year in which the taxes should have been declared or reported, which is typically the year following the fiscal year concerned.

40. It was further noted that this domestic timeline also applied in addition to a timeline when such is prescribed in a tax treaty owing to Section 205(1) of Hungary's Act on the Rules of Taxation, in line with its reservation on Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

41. In this respect, one peer indicated that in several cases with Hungary, which are all based on the EU Arbitration Convention, even where the MAP request was not filed in Hungary, Hungary's competent authority had not been willing to discuss certain fiscal years of the MAP request after exchanging position papers, arguing that the MAP request had been filed after the expiration of Hungary's domestic time limit, even though the request had been filed within the filing period provided by the EU Arbitration Convention. The peer stated further that this practice was not in line with the rules on access to MAP of the EU Arbitration Convention.

42. In this respect, it was concluded in the stage 1 report that Hungary's approach lead to the situation as reported by the peer that even if a tax treaty contains the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) and

a MAP request has been filed within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the treaty, but after the expiration of Hungary's domestic time limit, Hungary would refuse such a MAP case without any investigation on the merits of the case. More specifically, it was noted that Hungary's competent authority would have denied access if the MAP request has been filed in Hungary or would refuse to discuss the MAP case if the case has been filed in the treaty's partner jurisdiction stating that the application was received outside the domestic time limit. This approach was considered to not be in line with the Action 14 Minimum Standard, which prescribes that taxpayers that meet the requirements of paragraph 1 of article 25 can access the MAP, while one of these requirements is that taxpayers submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty and thus, was Hungary was recommended to ensure that its domestic time limits do not prevent taxpayers from having access to MAP if a MAP request is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

43. Hungary reported that pursuant to this recommendation, it has revised its domestic law as of July 2019 for all MAP requests related to tax years starting 2018 onwards, submitted on or after such entry into force date. Section 42/B(3) of Act XXXVII of 2013 states that MAP requests under tax treaties may be submitted within three years from the first notification of the action resulting in taxation not in accordance with the tax treaty in question. Hungary noted that in such cases, taxpayers cannot be denied access to MAP by its competent authorities even if the domestic time limits have expired. Hungary reported that these new rules are applicable for cases submitted under tax treaties as well as based on the EU Arbitration Convention as well as Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. Hungary further clarified that this rule stands true for initiating MAP in relation to requests received by the treaty partner's competent authority as well. This is further clarified in Hungary's MAP guidance as well under sections 4 and 5.

44. One peer indicated in this regard that it welcomes the legislative change in Hungary, but noted that it has experienced the negative effect of Hungary's time-limits in relation to access of MAP in one transfer pricing case based on the EU Arbitration Convention where although the filing period under that instrument is met, the case might not be initiated for one tax year owing to these time limits. This peer stated its view that according to the recommendation in Hungary's stage 1 report, MAP access should be granted to all cases, including those arising from the EU Arbitration Convention. However, this peer further clarified that its experience with Hungary in such cases is only in relation to tax years prior to 2018 and reiterated that it welcomes the changes that have been made which should be applicable to future cases with Hungary.

45. However, as noted above, Hungary's newly enacted domestic law only allows a MAP request to be filed irrespective of domestic time limits if the case concerned involves fiscal years 2018 and onwards. Since this change does not apply to MAP requests filed by taxpayers relating to fiscal years prior to 2018 while it is reasonably conceivable that taxpayers may continue to do so, the obstruction would still remain in place. In fact, Hungary has reported that it has in the period 1 May 2018-31 October 2019, denied an attribution/allocation related MAP request since its domestic time limits had expired.

46. Therefore, owing to this reason, although the necessary legislative amendments have been made to avoid the recurrence of this issue in the future, Hungary has not fully addressed the recommendation that was made in its stage 1 report.

## *Recent developments*

### *Multilateral Instrument*

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

47. Hungary signed the Multilateral Instrument. 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 (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

48. Hungary 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.<sup>3</sup> In this reservation, Hungary 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 (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). 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.

49. In view of the above, following the reservation made by Hungary, the one treaty identified in paragraph 25 above that is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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

50. 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 (OECD, 2017) – 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.

51. With regard to the four tax treaties identified in paragraph 29 above that contain a filing period for MAP requests of less than three years, Hungary listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the four relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining three tax treaties partners also listed their treaty with Hungary as a covered tax agreement and made such notification. Therefore, at this stage three of the four treaties identified above will be modified by the Multilateral Instrument, upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

### *Peer input*

52. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Hungary, out of which only one provided input in relation to this element. This peer concerns the one treaty identified above that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). This peer stated that it has proposed to Hungary to enter into a memorandum of understanding to address the issue that taxpayers have to initiate domestic remedies when submitting a MAP request.

### *Anticipated modifications*

53. For the remaining two tax treaties that do not contain the equivalent of Article 25(1), first and/or second 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 which will not be modified by the Multilateral Instrument to include such equivalent, Hungary has not put in place a plan for bringing these treaties in line with the requirements under element B.1.

54. Regardless, Hungary reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[B.1]	<p>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 (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b).</p> <p>This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty, no actions have been taken nor are any actions planned to be taken.</p>	<p>For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Hungary should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report (OECD, 2015b); or</li> <li>b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.</li> </ol>

	Areas for improvement	Recommendations
	<p>Four 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 (OECD, 2017), 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 four treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary should without further delay request via bilateral negotiations the inclusion of the required provision.</p>
[B.1]	<p>Hungary's policy is not to discuss cases where a permanent establishment ceased to exist in Hungary and where a MAP request was submitted at the level of the competent authority of the treaty partner.</p>	<p>Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP and in particular, ensure that MAP cases where a permanent establishment ceased to exist in Hungary are effectively discussed in MAP with the other competent authority concerned to whom the MAP request was filed.</p>
	<p>Although the necessary legislative amendments have been made to resolve this issue for MAP requests in relation to tax years on or after 2018, Hungary's policy is still to deny access to MAP in eligible cases where the MAP request is filed in relation to tax years prior to 2018, but after the expiration of Hungary's domestic time limit, even if the MAP request is filed within the filing period provided in the concerned tax treaty.</p>	<p>Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP and in particular, ensure that as its domestic time limit applies for the filing of MAP requests in relation to fiscal years prior to 2018, this time limit does not prevent taxpayers from having access to MAP if a request is made within a period of three years from the first notification of the taxation not in accordance with the concerned treaty.</p>

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

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

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

- i. of either treaty partner; or, in the absence of such provision
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases,



jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

### ***Domestic bilateral consultation or notification process in place***

56. As discussed under element B.1, none of Hungary’s 81 tax treaties currently 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 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. Moreover, as was also discussed under element B.1, none of these tax treaties will, due to Hungary’s reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

57. Hungary reported that its domestic law dealing with MAP cases arising from tax treaties was revised with effect from July 2019. Section 42/E(5) of Act XXXVII of 2013 states that Hungary’s competent authority is obliged to notify the other competent authority, without any delay, on its decision regarding acceptance or rejection of the MAP request along with underlying reasons.

58. Hungary further reported that the staff responsible for MAP cases in Hungary have been briefed about these domestic law changes. Hungary’s competent authority dealing with attribution/allocation cases usually sends a written registered postal notification to the other competent authority in these cases and the letter becomes part of the case file, which the taxpayer has access to as well. The competent authority for other MAP cases usually follows the same procedure but may also inform the other CA through email. Hungary clarified that an internal checklist has been prepared as well so as to allow its competent authority to follow the amended legislation correctly.

### ***Recent developments***

59. In the stage 1 report, it was noted that although Hungary informs the treaty partner’s competent authority about MAP requests submitted in Hungary, it had not yet introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on the case when Hungary’s competent authority considered the objection raised in the MAP request not to be justified.

60. As detailed above, Hungary has, with effect from July 2019, introduced a bilateral notification process that is applicable in situations where its competent authority considers the objection raised in the MAP request not to be justified. Therefore, the recommendation made in stage 1 has been addressed.

### ***Practical application***

#### ***Period 1 January 2016-30 April 2018 (stage 1)***

61. Hungary reported that in the period 1 January 2016-30 April 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such requests was not justified. The 2016 and 2017 MAP statistics submitted by Hungary also show that none of its MAP cases were closed with the outcome “objection not justified”.

62. All peers that provided input indicated not being aware of any cases for which Hungary’s competent authority denied access to MAP in the period 1 January 2016-30 April 2018, which can be clarified by the fact that no such instances have occurred in Hungary during this period.

*Period 1 May 2018-31 October 2019 (stage 2)*

63. Hungary reported that since 1 May 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2018 MAP statistics submitted by Hungary also show that none of its MAP cases was closed with the outcome “objection not justified”.

64. All peers that provided input during stage 1 also indicated in stage 2 that since 1 May 2018 they are not being aware of any cases for which Hungary’s competent authority denied access to MAP. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Hungary since that date. The same input was given by the two peers that only provided input during stage 2.

***Anticipated modifications***

65. Hungary 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.

66. 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***

67. Out of Hungary’s 81 tax treaties, 44 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 30 do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2017).<sup>4</sup> The remaining seven treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- One treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but which includes additional language, providing that such a corresponding adjustment is subject “to the time limits provisioned in the domestic law of each Contracting State”.

- Six treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but whereby a corresponding adjustment is only optional, as the phrase “... shall make an appropriate adjustment” is replaced by “may make an appropriate adjustment”.

68. With respect to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Hungary reserved the right to specify in paragraph 2 that a correlative adjustment will be made only if Hungary considers that the primary adjustment is justified. This addition neither affects access to MAP nor is it in conflict with the Action 14 Minimum Standard.

69. In addition, Hungary 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.

70. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Hungary’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, Hungary indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

71. Section 42/B of Act XXXVII of 2013 refers to the authority to which transfer pricing MAP cases should be submitted, thereby considering them cases for which MAP access is provided. Further, Hungary’s MAP guidance refers to transfer pricing cases and states that applications for transfer pricing cases should be done via a specific form called TPMAP. In this respect, Hungary reported that transfer pricing cases are typical MAP cases.

## ***Recent developments***

### *Multilateral Instrument*

72. Hungary signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017), 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 (OECD, 2017). 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).

73. Hungary has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. With regard to the 37 treaties identified in paragraph 67 above that are considered not to contain such equivalent, Hungary listed 34 as a covered tax agreement under the Multilateral Instrument and included seven of them in the list of treaties for which Hungary has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 27 tax treaties Hungary did not make, pursuant to Article 17(4), a notification that this treaty does contain such equivalent. Of the relevant 27 treaty partners, four are not a signatory to the Multilateral Instrument and one has not listed its treaty with Hungary under that instrument. Of the remaining 22 treaty partners, one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) to all its covered tax agreements. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining 21 treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).<sup>5</sup>

### *Application of legal and administrative framework in practice*

#### *Period 1 January 2016-30 April 2018 (stage 1)*

74. Hungary reported that in the period 1 January 2016-30 April 2018, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

75. All peers that provided input indicated not being aware of a denial of access to MAP by Hungary in the period 1 January 2016-30 April 2018 on the basis that the case concerned was a transfer pricing case.

#### *Period 1 May 2018-31 October 2019 (stage 2)*

76. Hungary reported that since 1 May 2018 for none of the MAP requests it received it has denied access to MAP on the basis that the case concerned was a transfer pricing case. Hungary further reported that the one transfer pricing case for which access to MAP was denied during this period was because the MAP request was a case filed in relation to a fiscal year prior to 2018 and following the expiry of Hungary's domestic time limits.

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

### *Anticipated modifications*

78. Hungary reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. Other than this, Hungary did not indicate that it anticipates any modifications in relation to element B.3.

### *Conclusion*

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

79. 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*

80. None of Hungary'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, the domestic law and/or administrative processes of Hungary also do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

81. Hungary's MAP Guidance does not specifically address whether taxpayers have access to MAP in cases in which there is 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 whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

### *Recent developments*

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

### *Practical application*

#### *Period 1 January 2016-30 April 2018 (stage 1)*

83. Hungary reported that in the period 1 January 2016-30 April 2018 it did not deny 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.

84. Peers indicated not being aware of cases that have been denied access to MAP in Hungary in the period 1 January 2016-30 April 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

*Period 1 May 2018-31 October 2019 (stage 2)*

85. Hungary reported that since 1 May 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.

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

*Anticipated modifications*

87. Hungary 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.

88. 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*

89. Hungary reported that according to its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement.

*Administrative or statutory dispute settlement/resolution process*

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

**Recent developments**

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

**Practical application***Period 1 January 2016-30 April 2018 (stage 1)*

92. Hungary reported that it has in the period 1 January 2016-30 April 2018 not denied access to MAP for cases where the taxpayer and the tax administration have entered into an audit settlement, which is explained by the fact that such settlements are not possible in Hungary.

93. All peers indicated not being aware of a denial of access to MAP in Hungary in the period 1 January 2016-30 April 2018 in cases where there was an audit settlement between the taxpayer and the tax administration.

*Period 1 May 2018-31 October 2019 (stage 2)*

94. Hungary reported that since 1 May 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in Hungary.

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

**Anticipated modifications**

96. Hungary indicated that it does not anticipate 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.

97. 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***

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

99. Hungary reported that its domestic law was revised with effect from July 2019 to make new rules applicable for when a MAP request is incomplete. Hungary noted that the information provided has to be complete for Hungary's competent authority to accept a MAP request. This is clarified in Section 42/C(1) of Act XXXVII of 2013.

100. Section 42/C(2) of Act XXXVII of 2013 further clarifies that in case the MAP request is incomplete, its competent authority would request the missing information from the taxpayer within three months from the receipt of the request and that the taxpayer is then provided three months from such information request to furnish the additional information. The provision also provides that missing information may be requested multiple times during the MAP.

101. In case the missing information is not provided within this time, Hungary reported that the MAP request would be rejected, which decision can be appealed by the taxpayer in Court. This is also provided in Sections 42/E(4) and 42/F of Act XXXVII of 2013.

### ***Recent developments***

102. Hungary's stage 1 report discussed the procedure that was previously applicable when a MAP request was incomplete. As detailed above, Hungary's domestic law was revised with effect from July 2019 to establish the rules currently applicable when a MAP request is incomplete.

### ***Practical application***

#### ***Period 1 January 2016-30 April 2018 (stage 1)***

103. Hungary reported that it has received six MAP requests in the period 1 January 2016-30 April 2018 for other cases and that it provided access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2016-30 April 2018 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

104. All peers that provided input indicated not being aware of a limitation of access to MAP by Hungary in the period 1 January 2016-30 April 2018 in situations where taxpayers complied with information and documentation requirements.

#### ***Period 1 May 2018-31 October 2019 (stage 2)***

105. Hungary reported that since 1 May 2018 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

106. All peers that provided input during stage 1 stated during stage 2 that the update report provided by Hungary fully reflects their experience with Hungary since 1 May 2018 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.



*Anticipated modifications*

107. Hungary 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.

108. 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 (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

*Current situation of Hungary’s tax treaties*

109. Out of Hungary’s 81 tax treaties, 78 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>6</sup> Of the remaining three tax treaties:

- Two do not contain a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), but that restricts the consultation only so that “double taxation may be eliminated through an amendment of this agreement”. The requirement to eliminate double taxation by an amendment of the underlying tax treaty is more restrictive and therefore this treaty provision is considered not being equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

110. Of the peers that provided input in relation to their tax treaty with Hungary, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element B.7 the relevant tax treaties are in line with the Minimum Standard with one exception discussed below. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis above.

111. For the three treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), one relevant peer provided input. This peer indicated in a general manner that its tax treaty with Hungary will be modified via the Multilateral Instrument if it is not in line with the Action 14 Minimum Standard, which is in fact the case.

## ***Recent developments***

### *Multilateral Instrument*

112. Hungary signed the Multilateral Instrument. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

113. With regard to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary listed all of them as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, also listed its treaty with Hungary as a covered tax agreement and made such notification. Therefore, at this stage, one of the three tax treaties identified above will be modified by the Multilateral Instrument, upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

### *Other developments*

114. Hungary reported that for one of the two remaining tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, it intends to revise its list of notifications and reservations to the Multilateral Instrument upon deposit of its instrument of ratification to bring these treaties in line with the requirements under the Action 14 minimum standard. For the remaining treaty, no actions have been taken nor are any actions been planned to be taken.

### *Peer input*

115. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Hungary, out of which only one provided input in relation to this element. This peer concerns one of the three treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). This peer only provided input during stage 2 and stated that it encourages Hungary to update its notifications for its final positions for the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) its treaty with Hungary.

### ***Anticipated modifications***

116. Hungary reported it will seek to include Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

## Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>Three 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 (OECD, 2017). With respect to these three treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> <li>- For one, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument.</li> <li>- For one, no actions have been taken nor are any actions planned to be taken.</li> </ul> </li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary should:</p> <ul style="list-style-type: none"> <li>• for one treaty, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument</li> <li>• for one treaty, without further delay, request via bilateral negotiations the inclusion of the required provision.</li> </ul>

### [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.

117. 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.

#### *Hungary's MAP guidance*

118. Hungary introduced, with effect from July 2019, Chapters III, IV and IV/A of Act XXXVII of 2013, providing for procedural rules governing MAP cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, the EU Arbitration Convention and tax treaties respectively, available (in Hungarian) at:

<http://net.jogtar.hu/jogszabaly?docid=a1300037.tv>

119. Further, Hungary has issued in 2016 guidelines for the mutual agreement procedure based on Hungary's tax treaties ("**MAP Guidance**"), which are updated annually and was last updated in Hungarian in 2020. An English translation of the guidance was also added in 2018 and last updated in 2020. This guidance is available at:

[https://nav.gov.hu/nav/ado/egyeb/map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html)

(in Hungarian)

[https://en.nav.gov.hu/data/cms479735/DTA\\_MAP\\_Guidance\\_2020\\_\\_EN.pdf](https://en.nav.gov.hu/data/cms479735/DTA_MAP_Guidance_2020__EN.pdf)

(in English)

120. In addition, Hungary also issued in 2016 guidelines for the mutual agreement procedure with an arbitration procedure as final stage of such a MAP based on the EU Arbitration Convention which was last updated in Hungarian in 2020. An English translation of the guidance was added in 2018 and last updated in 2020. This guidance is available at:

[http://nav.gov.hu/nav/ado/egyeb/ac-map\\_tajekoztato.html](http://nav.gov.hu/nav/ado/egyeb/ac-map_tajekoztato.html)

(in Hungarian)

[https://en.nav.gov.hu/data/cms479736/AC\\_MAP\\_Guidance\\_2020\\_\\_\\_EN.pdf](https://en.nav.gov.hu/data/cms479736/AC_MAP_Guidance_2020___EN.pdf)

(in English)

121. Moreover, Hungary also issued in 2020 guidelines for the mutual agreement procedure with an arbitration procedure as final stage of such a MAP based on the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. The guidance is available at:

[http://nav.gov.hu/nav/ado/egyeb/drd-map\\_tajekoztato.html](http://nav.gov.hu/nav/ado/egyeb/drd-map_tajekoztato.html)

(in Hungarian)

[https://en.nav.gov.hu/data/cms533394/EU\\_MAP\\_Guidance\\_2020\\_\\_\\_EN.pdf](https://en.nav.gov.hu/data/cms533394/EU_MAP_Guidance_2020___EN.pdf)

(in English)

122. Chapter IV/A contains detailed information on:

- the manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request (see also below)
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration (including the EU Arbitration Convention)
- relationship with domestic available remedies
- access to MAP in transfer pricing cases
- rights and role of taxpayers in the process
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including actions to be taken by taxpayers.

123. In addition to these rules contained in its domestic law, Hungary's MAP guidance contains information on:

- contact information of the competent authority or the office in charge of MAP cases
- information on availability of arbitration (in the guidance applicable for the EU Arbitration Convention).

124. Hungary reported that it also follows the OECD Manual on Effective Mutual Agreement Procedure (MEMAP)<sup>7</sup> and for transfer pricing cases according to the EU Arbitration Convention the Code of Conduct to the EU Arbitration Convention.<sup>8</sup>

125. The above-described domestic law and MAP guidance of Hungary include information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This 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.<sup>9</sup>

126. Although the information included in Hungary’s domestic law and MAP guidance is detailed and comprehensive, a few subjects are not specifically discussed. This concerns information on

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP.

### ***Information and documentation to be included in a MAP request***

127. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance.<sup>10</sup> This agreed guidance is shown below. Hungary’s domestic law i.e. Section 42/C(1) of Act XXXVII of 2013 provides which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

128. Further to the above, Section 42/C(1) of Act XXXVII of 2013 requires the following additional information:

- relationship, situation, structure of transactions of the involved parties
- the details of legal remedies initiated by the affected taxable entity, or information about ongoing litigation and of court decisions concerning the question in dispute
- a copy of valid decision issued in a tax assessment proceedings, a copy of the tax audit report, and a copy of any other documents issued with regard to the question in dispute.

### *Recent developments*

129. As detailed above, Hungary has amended its domestic law in relation to the procedure that is applicable to MAP cases arising from tax treaties, through the introduction of Chapter IV/A of Act XXXVII of 2013 as well as introduced new legislation for procedure in relation to the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, through the introduction of Chapter III of Act XXXVII of 2013, both having effect from July 2019.

### *Anticipated modifications*

130. In accordance with domestic law changes described above, Hungary reported that it is in the process of updating its MAP guidance, by which the following will be reflected:

- a statement confirming that MAP may be granted in eligible cases involving bona fide foreign-initiated self-adjustments
- a statement confirming that taxpayers can request for the multi-year resolution of recurring issues through MAP
- a statement on the possibility of suspension of tax collection during the course of a MAP.

131. Finally, Hungary reported that it is in the process of introducing separate MAP guidance for MAP cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, in line with Chapter III of Act XXXVII of 2013.

### *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.

132. 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.<sup>11</sup>

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

133. Hungary introduced, with effect from July 2019, Chapter IV/A of Act XXXVII of 2013, providing for procedural rules governing the MAP, available (in Hungarian) at:

<http://net.jogtar.hu/jogszabaly?docid=a1300037.tv>

134. Further, Hungary’s MAP guidance is published and can be found (in Hungarian) at:

[http://nav.gov.hu/nav/ado/egyeb/map\\_tajekoztato.html](http://nav.gov.hu/nav/ado/egyeb/map_tajekoztato.html)  
(relating to tax treaties)

[https://nav.gov.hu/nav/ado/egyeb/ac-map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/ac-map_tajekoztato.html)  
(relating to the EU Arbitration Convention)

[https://nav.gov.hu/nav/ado/egyeb/drd-map\\_tajekoztato.html](https://nav.gov.hu/nav/ado/egyeb/drd-map_tajekoztato.html)  
(relating to the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union)

135. This guidance was issued in 2016 and is updated annually and was last updated in 2020. As regards its accessibility, Hungary’s MAP guidance can easily be found on the website of the National Tax and Customs Administration [<http://nav.gov.hu/>]. English translations of the guidance relating to MAP arising from tax treaties and the EU Arbitration Convention, last updated in 2020, have also been added to the website and can also be easily found by searching on that website for “double taxation” or “mutual agreement procedure”.

### ***MAP profile***

136. The MAP profile of Hungary is published on the website of the OECD as was last updated in October 2020. 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***

137. The stage 1 report reflected that Hungary’s MAP profile required an amendment. Specifically, Hungary reported that it grants access to MAP in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law. However, its MAP profile stipulated that access would not be granted where a Hungarian court rendered a decision. Hungary updated its MAP profile to clarify that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law. Taking this into account, Hungary has addressed the recommendation that was included in its stage 1 peer review report.

138. Further, English translations of Hungary’s various MAP guidance documents, updated as of 2020, have been uploaded at:

<https://en.nav.gov.hu/taxation/MAP>

### ***Anticipated modifications***

139. Hungary did not indicate that it anticipates any modifications in relation to element B.9.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

140. 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***

141. As previously mentioned in B.5, Hungary reported that audit settlements are not available as it is under Hungary's domestic law not possible that taxpayers and the tax administration enter into audit settlements. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

142. As previously mentioned under element B.5, Hungary 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 Hungary's MAP guidance the effects of such process with respect to MAP.

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

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

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



***Recent developments***

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

***Anticipated modifications***

146. Hungary indicated that it does not anticipate any modifications in relation to element B.10.

***Conclusion***

	Areas for improvement	Recommendations
[B.10]	-	-

**Notes**

1. These 73 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.
  2. These 71 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.
  3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Hungary 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 Hungary’s positions on the Multilateral Instrument is available at: [www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf).
4. These 30 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

5. These 21 treaties include the tax treaty with the former Republic of Yugoslavia concerning Serbia and Montenegro that Hungary continues to apply to both (i) Serbia and (ii) Montenegro. Of both treaty partners, only Serbia is a signatory to the Multilateral Instrument. Therefore, the tax treaty will only be modified with respect to Serbia.
6. These 78 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.
7. Available at: [www.oecd.org/ctp/dispute/manualoneffectivemutualagreementprocedures-index.htm](http://www.oecd.org/ctp/dispute/manualoneffectivemutualagreementprocedures-index.htm).
8. Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF>.
9. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
10. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
11. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

## *References*

- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

## *Part C*

### **Resolution of MAP cases**

#### **[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

147. 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 Hungary’s tax treaties***

148. Out of Hungary’s 81 tax treaties, 80 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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.<sup>1</sup>

149. The remaining tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “... provided that the competent authority of the other Contracting State is notified of the case within 4 (four) and a half years from the due date or the date of filing of the return in that other State, whichever is later”. Therefore, this provision is considered not being equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2017).

150. Of the peers that provided input in relation to their tax treaty with Hungary, seven peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element C.1 the relevant tax treaties are in line with the Minimum Standard. Another peer stated that its tax treaty with Hungary is

in line with the Minimum Standard, which has been confirmed by the analysis described above. For the tax treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer did not provide input.

### ***Recent developments***

#### ***Multilateral Instrument***

151. Hungary signed the Multilateral Instrument. 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 (OECD, 2017) – 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 (OECD, 2017). 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 (OECD, 2017).

152. With regard to the one tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary listed it as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(c)(i), a notification that it does contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, the tax treaty identified above will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

#### ***Other developments***

153. Hungary reported that for the tax treaty that does not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, it intends to revise its list of notifications and reservations to the Multilateral Instrument upon deposit of its instrument of ratification to bring this treaty in line with the requirements under the Action 14 minimum standard.

#### ***Peer input***

154. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Hungary. Neither of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

#### ***Anticipated modifications***

155. Hungary reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

## Conclusion

	Areas for improvement	Recommendations
[C.1]	<p>One out of 81 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).</p> <p>This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument.</p>	<p>As the one tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will at this time not be modified via the Multilateral Instrument, Hungary should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p>

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

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

156. 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*

157. Statistics regarding all tax treaty related disputes concerning Hungary are published on the website of the OECD as of 2007.<sup>2</sup> Hungary publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

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

159. With respect to post-2015 cases, Hungary 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, Hungary indicated that it could match its statistics with all of them.

160. One peer provided input on the matching of MAP statistics with Hungary and stated that it was able to successfully match statistics with Hungary.

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

### *Monitoring of MAP statistics*

162. Hungary reported that Hungary’s competent authority regularly reviews the progress, number of cases and time to resolve Hungary’s MAP cases in quarterly reviews. As part of this process, Hungary’s MAP statistics are annually reported to the OECD. Further, Hungary noted that it has recently started to apply the OECD tool for the monitoring of MAP cases.

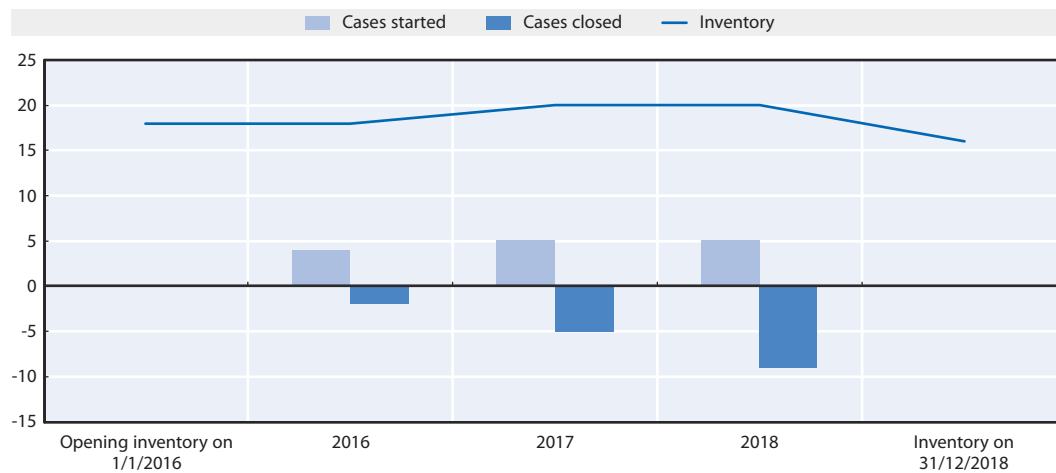
### *Analysis of Hungary’s MAP caseload*

#### *Global overview*

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

164. Figure C.1 shows the evolution of Hungary’s MAP caseload over the Statistics Reporting Period<sup>5</sup>:

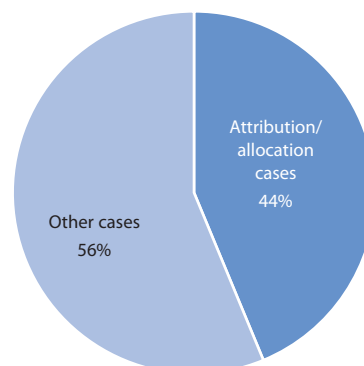
Figure C.1. Evolution of Hungary’s MAP caseload



165. At the beginning of the Statistics Reporting Period Hungary had 18 pending MAP cases, of which 11 were attribution/allocation cases and seven other MAP cases.<sup>6</sup> At the end of the Statistics Reporting Period, Hungary had 16 MAP cases in its inventory, of which seven are attribution/allocation cases and nine are other MAP cases. Hungary’s MAP caseload has decreased by approximately 11% during the Statistics Reporting Period.

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

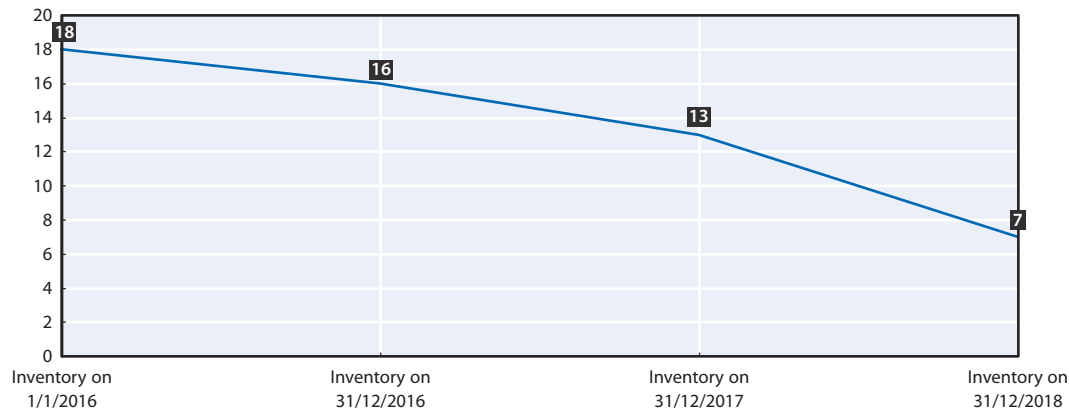
Figure C.2. End inventory on 31 December 2018 (16 cases)



*Pre-2016 cases*

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

Figure C.3. Evolution of Hungary’s MAP inventory  
Pre-2016 cases



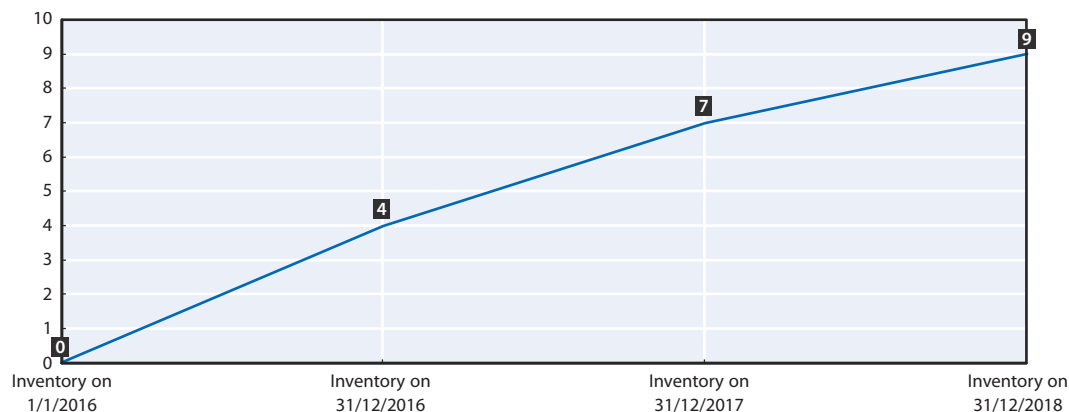
168. At the beginning of the Statistics Reporting Period, Hungary’s MAP inventory of pre-2016 MAP cases consisted of 18 cases, of which 11 were attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to seven cases, consisting of three attribution/allocation cases and four 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)
<b>Pre-2016 cases</b>				
Attribution/allocation cases	(no cases closed)	-18%	-67%	-73%
Other cases	-29%	-20%	(no cases closed)	-43%

*Post-2015 cases*

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

Figure C.4. Evolution of Hungary’s MAP inventory  
Post-2015 cases



170. In total, 14 MAP cases started during the Statistics Reporting Period, seven of which concerned attribution/allocation cases and seven other cases. At the end of this period the total number of post-2015 cases in the inventory was nine cases, consisting of four attribution/allocation cases and five other cases. Accordingly, Hungary closed five post-2015 cases during the Statistics Reporting Period, three of them being attribution/allocation cases and two of them being other MAP cases. The total number of closed cases represents approximately 36% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

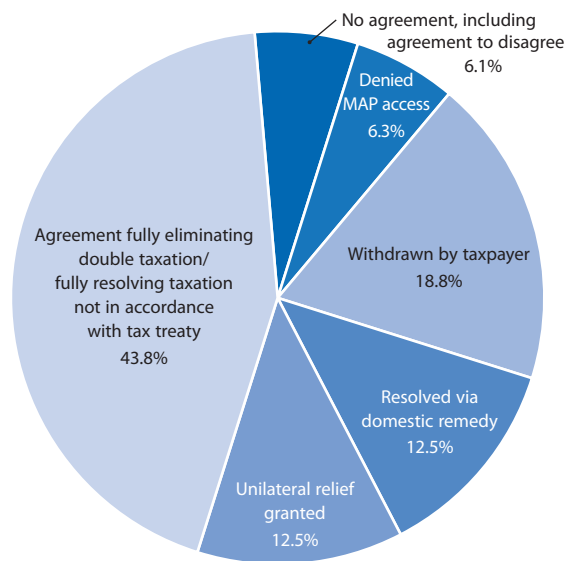
Post-2015 cases	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	0%	50%	67%	43%
Other cases	0%	33%	50%	29%

### *Overview of cases closed during the Statistics Reporting Period*

#### *Reported outcomes*

172. During the Statistics Reporting Period Hungary in total closed 16 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (16 cases)



173. Figure C.5 shows that almost half of the 16 cases that were closed during the Statistics Reporting Period were reported with the outcome “agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty”.



*Reported outcomes for attribution/allocation cases*

174. In total, 11 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 the tax treaty (45%)
- unilateral relief granted (18%).

*Reported outcomes for other cases*

175. In total, five other MAP 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 the tax treaty (40%)
- withdrawn by taxpayer (40%)
- resolved via domestic remedy (20%).

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

176. The average time needed to close MAP cases during the Statistics Reporting Period was 44.76 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	11	56.14
Other cases	5	19.73
All cases	10	44.76

*Pre-2016 cases*

177. For pre-2016 cases Hungary reported that on average it needed 74.42 months to close eight attribution/allocation cases and 25.50 months to close three other cases. This resulted in an average time needed of 61.08 months to close eleven pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Hungary reported that it uses the following dates:

- *Start date*: the date on which Hungary received the request by the taxpayer to initiate the MAP procedure (irrespective of whether Hungary had to ask more information from the taxpayer in order to be able to determine whether to initiate the MAP or not).
- *End date*: either (i) the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request; or (ii) the date the competent authority receives a notification from the taxpayer on the withdrawal of its MAP request.

*Post-2015 cases*

178. For post-2015 cases Hungary reported that on average it needed 7.40 months to close three attribution/allocation cases and 11.08 months to close two other cases. This resulted in an average time needed of 8.87 months to close five post-2015 cases.

### *Peer input*

179. Peers provided mixed input with regard to the time needed to resolve MAP cases with Hungary's competent authority. On the one hand, some peers reported no impediments in resolving MAP cases and stated a professional and efficient working relationship with Hungary's competent authority. One peer explicitly mentioned that its case with Hungary was closed within six months and was handled efficiently and effectively by the Hungarian competent authority. On the other hand, several peers reported difficult communication and slow responses by Hungary as well as difficulties to set up face-to-face meetings and reaching agreements. One of these peers, however, reported a recent improvement with regard to the ease and speed of the communication since the establishment of a new unit in Hungary. Hungary replied to this peer input that the challenges with regard to communication relate all to cases before the establishment of the new unit for transfer pricing methodology. In addition, Hungary commented that it is a general challenge for attribution/allocation cases to receive late and incomplete information from the other competent authority that does not support the adjustment under discussion (missing transfer pricing documentation, calculations, database searches, etc.). Hungary reported that the lack of such basic information is a significant impediment for it to draft position papers.

### *Recent developments*

180. Hungary was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 78% of its post-2015 MAP cases that were pending on 31 December 2017 (seven cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

181. With respect to this recommendation, Hungary reported that since 1 May 2018 it has taken some internal steps to improve the MAP process. This includes:

- conducting intensive negotiations with foreign competent authorities in pending transfer pricing cases
- informing treaty partners about Hungary's positions, updating the concerned treaty partners with the latest information or requesting further information from the other competent authority in relation to pending other MAP cases
- collecting and analysing relevant information from its tax authorities for the resolution of pending cases.

182. In view of these steps and the statistics discussed above, it follows that Hungary was able to reduce its MAP inventory by 11%, whereby the number of attribution/allocation cases was reduced by almost 36%. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 36%. However, the statistics also show that Hungary has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. Element C.3 will further consider these numbers in light of the adequacy of resources.

183. Almost all peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 May 2018, albeit that some peers and the additional peer that provided input commented on their experience with Hungary concerning the resolution of MAP cases since that date. Their input is further discussed under element C.3.

### *Anticipated modifications*

184. Hungary indicated that it does not anticipate any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

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

#### *Description of Hungary's competent authority*

186. Under Hungary's tax treaties, the competent authority function is assigned to the Minister of Finance, which is further delegated to two different authorities depending on the type of MAP cases.

187. The competent authority for other MAP cases (including the determination of the existence of a permanent establishment) is the International Taxation Division within the Ministry of Finance by order of Appendix 2, chapter 3.3.1.5 point 4 under the provision of the Ministry's rules of organisation and operation 1/2020 (I.31). The competent authority for attribution/allocation cases is the Central Administration of the National Tax and Customs Administration according to government decree no. 485/2015 (XII. 29) on the competency and authority of the National Tax and Customs Administration (article 7 (f)). Hungary reported that its competent authority consists of 15 people, who deal partly with MAP cases besides other international tax matters, among which the negotiation of tax treaties:

- four of the employees, plus the head of the division, are dedicated to other cases within the Ministry for National Economy (two staff members have been added since 2016)
- nine employees, plus the head of division, deal with attribution/allocation cases as well as APAs within the National Tax and Customs Administration.

188. Hungary specified that a new unit (transfer pricing methodology department) was established in 2017, which can provide assistance in attribution/allocation cases to Hungary's competent authority.

189. Hungary reported that the employees working on MAP cases have master's degrees in law or economics and in general several years of experience in the area of international taxation. The case handlers for attribution/allocation cases are mostly trained tax experts with multiple years of transfer pricing experience. The members of Hungary's competent authority regularly participate in meetings of international working parties like OECD's working parties 1 and 6, the EU Joint Transfer Pricing Forum or the Intra-European Organisation of Tax Administrations. They also attend regularly specialised training on tax treaty application and transfer pricing (e.g. organised by the OECD). Hungary further reported that no additional funding is granted specifically for travels of the staff of its competent authority. However, the department to which the competent authority belongs has a general budget, which includes a travel budget, which Hungary reported can be used and that it is sufficient for competent authority meetings.

### *Monitoring mechanism*

190. Hungary reported that its competent authority regularly monitors whether appropriate resources are allocated to resolve MAP cases. If required due to a permanent increase of MAP cases, Hungary’s competent authority would request additional staff.

### *Recent developments*

191. In the stage 1 report, Hungary was recommended to continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

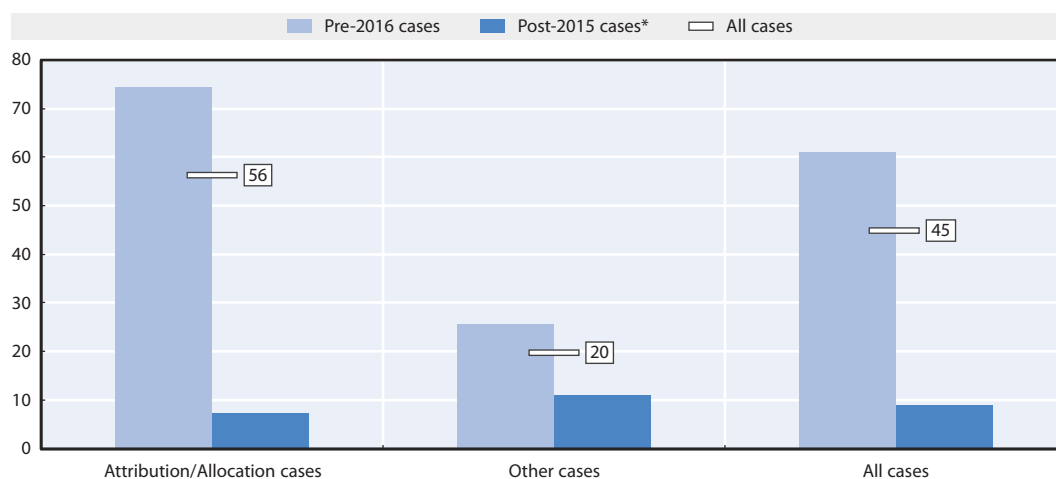
192. For this purpose, Hungary reported that an additional team member having experience with MAP cases as well as interpretation of tax treaties was added to its competent authority dealing with other MAP cases in October 2018. Hungary further reported that another team member attended training sessions organised by the OECD and shared experiences with the competent authority staff in Hungary afterwards.

193. Hungary further reported that its revised domestic legislation on MAP, which has come into effect in July 2019, provides a more specific and reliable framework for the MAP process. Hungary also noted that its competent authority has started using templates for formulating opening letters and position papers as contained in the OECD MEMAP.

### *Practical application – MAP statistics*

194. As discussed under element C.2, Hungary has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 44.76 months to close MAP cases. This primarily concerns attribution/allocation cases where the average time needed was 56.14 months, as the average time to close other MAP cases was 19.73 months. The average time to resolve MAP cases in 2016, 2017 and 2018 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, 2017 or 2018.

195. The stage 1 peer review report of Hungary analysed the 2016-17 MAP statistics and showed an average of 18.90 months, which concerns an average of 13.31 months for attribution/allocation cases and 23.10 months for other cases. It was on that basis concluded that as the overall average was below the pursued average of 24 months, Hungary was considered to be adequately resourced.

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

	2018
Attribution/Allocation cases	72.20
Other cases	6.27
All cases	64.87

197. The 2018 statistics of Hungary show that the average completion time of MAP cases increased from 18.9 (2016-17) months to 64.87 (2018) months, which is now much higher than the pursued 24-month average, owing to the time taken to resolve pending pre-2016 attribution/allocation cases in 2018.

198. However – as analysed in element C.2 – the MAP inventory of Hungary decreased since 1 January 2016, owing to a decrease in attribution/allocation cases. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	11	7	11	7	-36%
Other cases	7	7	5	9	29%
Total	18	14	16	16	-11%

199. The figures in the above table show that the number of closed cases is higher than the number of all cases started in the period 2016-18. In addition, Hungary reduced its MAP inventory by 46% in 2018 alone, with a 67% decrease in attribution/allocation cases.

200. Hungary further clarified that the pre-2016 attribution/allocation cases that were resolved in 2018 involved a significant tax amount and the facts and circumstances involved were complicated, leading to protracted discussions over the years. Hungary clarified that an improvement in its competent authority's resources and experience in MAP allowed it to find a solution for such cases.

### ***Practical application – Peer input***

#### *Period 1 January 2016-30 April 2018 (stage 1)*

##### **General**

201. In total, seven of the nine peers that provided input provided details in relation to their communication with Hungary's competent authority and their experiences in resolving MAP cases since 1 January 2016. The remaining two peers stated that they have no experience in dealing with Hungary's competent authority.

### Contacts and correspondence with Hungary's competent authority

202. One peer reported having a good working relationship with Hungary's competent authority, although based on a small number of cases (two other cases). Another peer reported that it has smooth communication with Hungary's competent authority based on emails, while also stressing that Hungary is not an important treaty partner. A third peer emphasised that the communication with Hungary worked very well. A fourth peer indicated that no problems were encountered while contacting the Hungarian competent authority. A fifth peer reported having a fair relationship with Hungary's competent authority, while stating that communication could be more timely and responses could be more complete. However, this peer emphasised being aware of the establishment of a new unit in Hungary in 2017 and reported a significant improvement in communication since then. Finally, a sixth peer reported that contact with Hungary's competent authority takes only place via traditional letters and that an e-mail address has only been provided very recently upon request.

### Organisation of face-to-face meetings

203. One of the peers that provided input pointed out that it never had a face-to-face meeting with Hungary's competent authority given the low number of MAP cases. A second peer reported having had the last face-to-face meeting with Hungary's competent authority in 2012 where one other case was closed. This peer reported further that no additional cases could be closed since then and that its attempts to schedule another face-to-face meeting remained unanswered. This peer finally reported that only recently (in March 2018) had this face-to-face meeting been scheduled for July 2018.

### Resolving MAP cases

204. One peer reported no impediments in the timely resolutions of MAP cases with Hungary. Another peer reported that its relationship with Hungary's competent authority is professional and efficient and that the two attribution/allocation cases in their inventory have progressed and are still within the 24 months timeframe to resolve MAP cases. A third peer explicitly mentioned that its case with Hungary was closed by fully resolving the MAP request within six months and that the case was handled efficiently and effectively by the Hungarian competent authority. A fourth peer reported that occasionally, Hungary's competent authority takes time to react to position papers, which leads to challenges to meet set timeframes. A fifth peer reported having MAP cases in its inventory with Hungary which were initiated a long time ago, but that discussions were extremely slow due to slow responses from Hungary's competent authority. This peer, however, reported that communication has improved significantly since 2017, although the discussions with regard to the old cases had to be entirely restarted. A last peer highlighted difficulties reaching agreements with Hungary's competent authority due to different positions on the timely submission of a MAP request as described in detail in the peer input for element B.1.

### *Period 1 May 2018-31 October 2019 (stage 2)*

205. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Hungary fully reflects their experience with Hungary since 1 May 2018 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2. Two of these peers and the one peer who provided input only during stage 2 provided additional input in this regard.

206. One peer noted that although it has very limited MAP experience with Hungary, the one MAP case that they had since 1 May 2018 was settled within seven months of commencement. This peer emphasised that it had a good working relationship with Hungary on this case.

207. Another peer reported that it has two MAP cases that have been pending with Hungary for longer than ten years. This peer noted that Hungary's competent authority did not react to its position paper for several years due to lost letters. The peer further stated that when it received the position paper from Hungary's competent authority, the position taken was in line with the peer's own position i.e. that the taxation was not in line with the treaty. However, the peer noted that Hungary was, owing to its domestic law, not able to accept documentation sent by its competent authority showing proof of working days spent in Hungary. This peer expressed concerns that Hungary's domestic time limits may have expired even if a solution is possible since it has been long since these cases were initiated.

208. Hungary clarified in this regard that its domestic statute of limitation does not affect the implementation of MAP agreements. Hungary noted that its law only hindered access to MAP where a request was received by its competent authority following expiry of the time limit. As noted under element B.1, Hungary reported that this time limitation has now been removed for all MAP cases relating to tax years on or after 2018. Hungary also noted in this regard that where a MAP request is accepted by its competent authority, any MAP agreement arrived at has always been implemented irrespective of domestic time limits.

209. Finally, the third peer, that only provided input during stage 2, stated that it had not provided input to Hungary's stage 1 report owing to an error. This peer reported details regarding a pre-2016 attribution/allocation case pending with Hungary concerning a transfer pricing adjustment in its own jurisdiction. The peer noted that although there were no physical meetings for this case, there have been many written exchanges of questions and position papers between the two competent authorities and a change of case handlers in its own jurisdiction over the years. This peer further reported that it received a position paper and a proposal for a physical meeting from Hungary's competent authority in March 2019. Although the meeting could not be scheduled in 2019, the peer expressed hope that it could meet with or discuss with Hungary's competent authority in 2020 to resolve this case.

### *Anticipated modifications*

210. Hungary indicated that it does not anticipate any modifications in relation to element C.3.

### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	MAP cases were closed in 44.76 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 56.14 months while for other cases the average is within the pursued 24-month average (19.73 months). Although there was a substantial reduction in Hungary's caseload in 2018, the average time taken to resolve cases in 2018 increased substantially as compared to 2016-17, which was higher than the pursued 24-month average as well. Further, peer input suggests that Hungary still has long pending MAP cases in its inventory which peers find difficulty in resolving with them. Therefore, there is a risk that post-2015 cases are not resolved within the average timeframe of 24 months.	As additional personnel has been assigned to Hungary's competent authority function in recent years and Hungary has been able to increase the number of cases closed, Hungary should closely monitor whether these additional resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. This is particularly so for attribution/allocation cases where the average time taken to resolve such cases has been significantly higher than the pursued 24-month average. Where needed, it should in particular devote additional resources or take additional actions to be able to close long-pending cases.

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

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

211. 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*

212. Hungary reported that when a MAP request is received by Hungary's competent authority, the case handler in charge of the case analyses the MAP request with regard to: (i) the competence of the authority, (ii) the deadline for submitting the MAP request, (iii) the tax residence of the taxpayer and (iv) justification of the power of attorney (if applicable). Hungary clarified that its competent authority confirms receipt of the MAP request within two months to the taxpayer and also informs the foreign competent authority about the submission. If a MAP request was filed abroad and Hungary's competent authority is informed by the foreign competent authority about a MAP application, Hungary noted that its competent authority acknowledges receipt of such a notification and informs the Hungarian taxpayer in transfer pricing cases.

213. Hungary further reported that as a first step, Hungary's competent authority will try to resolve the MAP case unilaterally based on the information provided and other information available to its competent authority such as tax returns or previous tax audit reports. If information is missing, Hungary clarified that the case handler can ask the taxpayer to supplement the MAP request and to provide information as outlined in chapter five of Hungary's MAP guidance. Alternatively, Hungary reported that its competent authority is allowed to initiate an audit involving a local auditor with the aim of collecting the outstanding information. Hungary noted that its legal system requires the formal initiation of an audit. However, Hungary reported that this audit is exclusively aimed at obtaining the outstanding information and that no unrelated issue would be assessed. Hungary further reported that tax auditors do not participate in competent authority discussions.

214. Hungary reported that for attribution/allocation cases, the case handler may liaise with the transfer pricing methodology department, which was established in 2017. Hungary clarified that this department is part of Hungary's tax administration and can provide general guidance on the application of transfer pricing principles. Hungary further reported that this department is not involved in direct tax audits and has no authority to take decisions in the competent authority process.

215. Based on the above, Hungary reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and is committed not to be influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty while handling MAP cases.



**Recent developments**

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

**Practical application***Period 1 January 2016-30 April 2018 (stage 1)*

217. Peers generally reported no impediments in Hungary 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 2016-30 April 2018. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Hungary is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

*Period 1 May 2018-31 October 2019 (stage 2)*

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

**Anticipated modifications**

219. Hungary indicated that it does not anticipate 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.

220. 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 Hungary**

221. Hungary reported that all employees handling MAP cases in Hungary are subject to an annual assessment of their performance, which takes into account their work on MAP cases even though there are no specific MAP related targets set. The number of MAP cases handled, the consistency and the time taken to resolve MAP cases by the employee are considered while assessing the performance of staff in charge of MAP cases.

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

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

223. Further to the above, Hungary 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***

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

### ***Practical application***

#### *Period 1 January 2016-30 April 2018 (stage 1)*

225. All peers that provided input indicated not being aware that Hungary used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-30 April 2018. One peer particularly noted that it is not aware of the use of performance indicators by Hungary that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

#### *Period 1 May 2018-31 October 2019 (stage 2)*

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

### ***Anticipated modifications***

227. Hungary indicated that it does not anticipate any modifications in relation to element C.5.

### ***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

228. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

### *Position on MAP arbitration*

229. Hungary reported that it has no domestic law limitations regarding the inclusion of MAP arbitration in its tax treaties. However, Hungary's tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. This is in line with Hungary's reservation to the OECD Model Tax Convention not to include Article 25(5) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties due to policy and administrative considerations. Hungary further reported that it did not opt for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.<sup>7</sup>

230. However, Hungary is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, both of which includes an arbitration procedure as a final stage to the MAP.

### *Recent developments*

231. Hungary has introduced domestic law by way of Chapters III and IV/A of Act XXXVII of 2013, providing for procedural rules governing the arbitration procedure arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union and the EU Arbitration Convention.

### *Practical application*

232. To date, Hungary has incorporated an arbitration clause in none of its 81 tax treaties as a final stage to the MAP.

233. However, as discussed above, Chapters III and IV of Act XXXVII of 2013, provide for procedural rules governing the arbitration procedure arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union and the EU Arbitration Convention respectively. Further Hungary's MAP guidance in relation to the EU Arbitration Convention provides a comprehensive explanation on the arbitration procedure under the EU Arbitration Convention.

### *Anticipated modifications*

234. Hungary indicated that it is currently examining the possibility to incorporate mandatory and binding arbitration clauses in Hungary's tax treaties to apply arbitration to non-EU countries by opting for part VI of the Multilateral Instrument. Further, Hungary indicated that it is in the process of introducing separate MAP guidance for MAP cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which would provide details on the arbitration procedure therein.

## Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 80 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include fiscal year 2019.
3. Available at [https://ec.europa.eu/taxation\\_customs/news/statistics-apas-and-maps-eu\\_en](https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en). These statistics are up to and include fiscal year 2019.
4. For post-2015 cases, if the number of MAP cases in Hungary’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, Hungary reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Hungary 2016 and 2018 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2018. See further explanations in Annex B and Annex C.
6. For pre-2016 and post-2015 Hungary follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.
7. An overview of Hungary’s position on the Multilateral Instrument is available at: [www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-hungary.pdf).

## 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 (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 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.

235. 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***

236. Hungary reported that its statute of limitation applies to the amendment of tax assessments. According to Section 202(1) of Hungary’s Act on the Rules of Taxation, Hungary’s domestic time limit expires five years after the last day of the calendar year in which the taxes should have been declared or reported (usually the year following the fiscal year concerned). Hungary reported that this time limit, however, is not applicable to the implementation of MAP agreements owing to Article 205(4) of Hungary’s Act on the Rules of Taxation, which reads: “(4) The agreement or resolution concluded as a result of an international mutual agreement procedure shall be implemented also with respect to the tax periods which, at the time of concluding the agreement or resolution, have already lapsed”. Hungary clarified that this is the case for both upward and downward adjustments. This is also provided for in Section 42/H of Act XXXVII of 2013 and clarified in Hungary’s MAP guidance under Section 9.

237. Hungary noted that as per the amendments to its domestic law with effect from July 2019, a MAP agreement in Hungary is considered to be final and enforceable if the taxpayer gives consent within the time provided by the competent authorities and also provides a declaration waiving rights to other legal remedies in either State. Hungary clarified that in case the taxpayer has other remedies pending, it has to prove that such procedures would be terminated. Where these two conditions are met, Hungary reported that Hungary’s tax authority is required to implement the decision without delay and irrespective of domestic time limits. Hungary further clarified that where the binding decision is not prepared in time, the taxpayer can appeal before its domestic Court. This is provided in Section 42/H of Act XXXVII of 2013 clarified in Hungary’s MAP guidance under Section 6.2.

238. Concerning the process of implementing MAP agreements, Hungary reported that when competent authorities reach a MAP agreement, its competent authority determines the amended tax liability and informs the taxpayer as well as the National Tax and Customs Administration. Hungary reported that MAP agreements are implemented either by the taxpayer via a self-assessment or by the tax authority, without asking the taxpayer for

its consent. Implementation by the tax authority is technically performed via a tax audit/oversight tax inspection. However, this audit is exclusively aimed at implementing the MAP agreement (the tax audit is not allowed to deviate from the MAP agreement) and Hungary reported that no unrelated issue are assessed. Hungary reported that its tax laws do not prescribe any timeline for implementation.

239. Similar provisions are also contained for the implementation of MAP agreements arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, in Chapter III of Act XXXVII of 2013.

240. Hungary further indicated that it monitors the implementation of MAP agreements by requesting information either from the local tax office that is in charge of tax audits/oversight tax inspections for implementing transfer pricing MAP agreements or from the National Tax and Customs Administration for other cases.

### ***Recent developments***

241. As detailed above, Hungary has, with effect from July 2019, revised its domestic law to include more details on the implementation of MAP agreements.

### ***Practical application***

#### *Period 1 January 2016-30 April 2018 (stage 1)*

242. Hungary reported that in the period 1 January 2016-30 April 2018 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	0
2017	1
2018 (until 30 April 2018)	1

243. Hungary reported that only the closed MAP case in 2017 required an implementation by Hungary and that Hungary has already refunded the tax in July 2017 according to the MAP agreement reached.

244. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-30 April 2018 that was not implemented by Hungary.

#### *Period 1 May 2018-31 October 2019 (stage 2)*

245. Hungary reported that all but one MAP agreement that was reached on or after 1 May 2018 have also been implemented. Hungary clarified that the one MAP agreement for an attribution/allocation case which has not yet been implemented is because the foreign taxpayer has not signified its acceptance of the agreement.

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

***Anticipated modifications***

247. Hungary did not indicate that it anticipates any modifications in relation to element D.1.

***Conclusion***

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

248. 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***

249. Hungary's competent authority will notify the taxpayer as well as the National Tax and Customs Administration. For implementing MAP agreements Hungary's tax laws do not prescribe a specific timeline. However, Section 42/H (6) of Act XXXVII of 2013 provides that mutual agreements should be implemented immediately following the agreement. Further, for MAP cases under the EU Arbitration Convention, Hungary reported that it follows the recommended three-month timeframe for implementation by the EU Joint Transfer Pricing Forum. However, detailed provisions regarding the timing of the implementation of MAP agreements arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union has been included in Chapter III of Act XXXVII of 2013.

***Recent developments***

250. As detailed above, Hungary has, with effect from July 2019, revised its domestic law to include more details on the implementation of MAP agreements, especially those arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. Apart from this, there are no recent developments with respect to element D.2.

***Practical application******Period 1 January 2016-30 April 2018 (stage 1)***

251. As discussed under element D.1, in the period 1 January 2016-30 April 2018, Hungary entered into one MAP agreement that required implementation by Hungary. In this respect, Hungary reported that the taxpayer requested for implementation within three months after the MAP agreement was reached and that this MAP agreement has then been implemented within four months from the taxpayer's request

252. All peers that provided input have not indicated experiencing any problems with Hungary regarding the implementation of MAP agreements reached on a timely basis in the period 1 January 2016-30 April 2018. One peer, however, remarked that no MAP agreements were reached between its competent authority and Hungary's competent authority in the Review Period.

*Period 1 May 2018-31 October 2019 (stage 2)*

253. Hungary reported that all but one MAP agreement that was reached on or after 1 May 2018 have also been implemented on a timely basis.

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

***Anticipated modifications***

255. Hungary indicated that it does not anticipate 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.

256. 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 (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

***Legal framework and current situation of the Hungary's tax treaties***

257. Out of Hungary's 81 tax treaties, 67 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup> In addition, two tax treaties do not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contain a provision in the MAP article setting a time limit for making primary adjustments, which is considered equivalent to containing both alternative provisions in Article 9(1) and Article 7(2).



258. For the remaining 12 tax treaties the following analysis is made:

- Nine tax treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or the alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but it also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints, this treaty therefore, is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a variation to the provision of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) whereby the actual implementation of a MAP agreement is dependent on the notification of a MAP request to the other competent authority involved within six years from the end of the taxable year to which the case relates. While this time period does not constitute a limitation on the implementation of MAP agreements, the wording used in the provision could nevertheless in practice obstruct such implementation and therefore, this treaty is not considered as having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).
- One tax treaty contains a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (“except such limitations as apply for the purposes of giving effect to such an agreement”). This tax treaty is therefore, considered as not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

259. Of the peers that provided input in relation to their tax treaty with Hungary, five peers indicated in a general manner that its tax treaty with Hungary will be modified either via the Multilateral Instrument and/or via bilateral negotiations if it is not in line with the Action 14 Minimum Standard. With regard to element D.3 one of the relevant tax treaties is already in line with the Minimum Standard as it contains both alternatives in Articles 9(1) and 7(2), three tax treaties will in fact be modified by the Multilateral Instrument whereas the fifth tax treaty will not be modified by the Multilateral Instrument. Another peer stated that its tax treaty with Hungary is in line with the Minimum Standard, which has been confirmed by the analysis above. Two additional peers provided specific input for element D.3, which is discussed below.

260. For the 12 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or the alternatives in Articles 9(1) and 7(2), seven of the relevant treaty partners provided peer input. As described above, one of the relevant tax treaties is already in line with the Minimum Standard as it contains both alternatives in Articles 9(1) and 7(2) and four peers indicated that their tax treaty with Hungary will be modified by the Multilateral Instrument, which is in fact only the case for three of the four tax treaties. Another peer provided similar input specifically for element D.3 and its tax treaty with Hungary will actually be modified by the Multilateral Instrument. The last peer specifically provided input regarding element D.3 and noted that its tax treaty with Hungary is not in line element D.3, but that it already has submitted a draft of an amending protocol to bring the tax treaty in line with element D.3.

## ***Recent developments***

### *Multilateral Instrument*

261. Hungary signed the Multilateral Instrument. 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 (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017). 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.

262. With regard to the 12 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions for Articles 9(1) and 7(2), Hungary listed 12 treaties as covered tax agreements under the Multilateral Instrument, but only for ten treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant ten treaty partners, one is not a signatory to the Multilateral Instrument, one did not list their treaty with Hungary as a covered tax agreement and one made a reservation on the basis of Article 16(5)(c). Of the remaining seven treaty partners, all of them listed their treaty with Hungary as a covered tax agreement and made such notification. Therefore, at this stage, seven of the 12 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

### *Peer input*

263. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Hungary. Neither of these peers concerns a treaty partner to one of the 12 treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

### ***Anticipated modifications***

264. Hungary reported that for one of the five 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 (OECD, 2017), the relevant treaty partner has informed Hungary 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 (OECD, 2017).

265. For the remaining four tax treaties that do not contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) or the alternatives and which will not be modified by the Multilateral Instrument to include such equivalent, Hungary has not put in place a plan for bringing these treaties in line with the requirements under element D.3.

266. Regardless, Hungary reported it will seek to include Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

### **Conclusion**

	<b>Areas for improvement</b>	<b>Recommendations</b>
[D.3]	<p>12 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions provided for in Article 9(1) and Article 7(2). Of these 12 treaties:</p> <ul style="list-style-type: none"> <li>• Seven are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• 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 (OECD, 2017) once the treaty partner has amended its notifications.</li> <li>• Four will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these four treaties, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those eight treaties that currently do not contain such equivalent and that are expected to be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining four 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 (OECD, 2017), Hungary should, without further delay, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

### **Note**

1. These 67 tax treaties include the tax treaty with the former Federal Republic of Yugoslavia that Hungary continues to apply to both (i) Serbia and (ii) Montenegro as well as the tax treaty with former Socialist Federal Republic of Yugoslavia that Hungary continues to apply to Bosnia and Herzegovina.

### **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
<b>Part A: Preventing disputes</b>		
[A.1]	<p>Two out of 81 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).</p> <p>These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument.</p>	<p>As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) will at this time not be modified via the Multilateral Instrument, Hungary should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p>
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
[B.1]	<p>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 (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b).</p> <p>This treaty will not be modified by the Multilateral Instrument to include the required provision. For this treaty, no actions have been taken nor are any actions planned to be taken.</p>	<p>For the treaty that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Hungary should without further delay request via bilateral negotiations the inclusion of the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> <li>a. as amended by the Action 14 final report (OECD, 2015b) or;</li> <li>b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.</li> </ol>
	<p>Four 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 (OECD, 2017), 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 four treaties:</p> <ul style="list-style-type: none"> <li>• Three are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• One will not be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For this treaty, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining tax treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary should without further delay request via bilateral negotiations the inclusion of the required provision.</p>

	Areas for improvement	Recommendations
	Hungary's policy is not to discuss cases where a permanent establishment ceased to exist in Hungary and where a MAP request was submitted at the level of the competent authority of the treaty partner.	Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can access the MAP and in particular, ensure that MAP cases where a permanent establishment ceased to exist in Hungary are effectively discussed in MAP with the other competent authority concerned to whom the MAP request was filed.
[B.1]	Although the necessary legislative amendments have been made to resolve this issue for MAP requests in relation to tax years on or after 2018, Hungary's policy is still to deny access to MAP in eligible cases where the MAP request is filed in relation to tax years prior to 2018, but after the expiration of Hungary's domestic time limit, even if the MAP request is filed within the filing period provided in the concerned tax treaty.	Hungary should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2017) can access the MAP and in particular, ensure that as its domestic time limit applies for the filing of MAP requests in relation to fiscal years prior to 2018, this time limit does not prevent taxpayers from having access to MAP if a request is made within a period of three years from the first notification of the taxation not in accordance with the concerned treaty.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>Three 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 (OECD, 2017). With respect to these three treaties:</p> <ul style="list-style-type: none"> <li>• One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017)</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> <li>- For one, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have them modified by the Multilateral Instrument</li> <li>- For one, no actions have been taken nor are any actions planned to be taken.</li> </ul> </li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Hungary should:</p> <ul style="list-style-type: none"> <li>• For one treaty, continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument</li> <li>• For one treaty, without further delay, request via bilateral negotiations the inclusion of the required provision.</li> </ul>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	<p>One out of 81 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).</p> <p>This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, Hungary will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument.</p>	<p>As the one tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will at this time not be modified via the Multilateral Instrument, Hungary should continue to work in accordance with its stated intention to include the required provision via the Multilateral Instrument.</p>
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were closed in 44.76 months on average, which is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns attribution/allocation cases, as the average time needed for such cases is 56.14 months while for other cases the average is within the pursued 24-month average (19.73 months). Although there was a substantial reduction in Hungary's caseload in 2018, the average time taken to resolve cases in 2018 increased substantially as compared to 2016-17, which was higher than the pursued 24-month average as well. Further, peer input suggests that Hungary still has long pending MAP cases in its inventory which peers find difficulty in resolving with them. Therefore, there is a risk that post-2015 cases are not resolved within the average timeframe of 24 months.</p>	<p>As additional personnel has been assigned to Hungary's competent authority function in recent years and Hungary has been able to increase the number of cases closed, Hungary should closely monitor whether these additional resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. This is particularly so for attribution/allocation cases where the average time taken to resolve such cases has been significantly higher than the pursued 24-month average. Where needed, it should in particular devote additional resources or take additional actions to be able to close long-pending cases.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>12 out of 81 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions provided for in Article 9(1) and Article 7(2). Of these 12 treaties:</p> <ul style="list-style-type: none"> <li>• Seven are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).</li> <li>• 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 (OECD, 2017) once the treaty partner has amended its notifications.</li> <li>• Four will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these four treaties, no actions have been taken nor are any actions planned to be taken.</li> </ul>	<p>Hungary should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those eight treaties that currently do not contain such equivalent and that are expected to be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining four 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 (OECD, 2017), Hungary should, without further delay, request via bilateral negotiations the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>





## Annex A

### Tax treaty network of Hungary

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

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

		Article 25(1) of the OECD Model Tax Convention (“MTC”)				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
Hong Kong, China	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Indonesia	Y	N/A	O	li*	2 years	l**	i	Y	Y	Y	Y	N
Iran	Y	N/A	O	Y	N/A	l	i	Y	Y	Y	Y	N
Iraq	N	22-Nov-16	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Italy	Y	N/A	N	Y	N/A	i**	i	Y	Y	Y	Y	N
Japan	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Y	N/A	l	i	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Kosovo	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	l	i	Y	Y	Y	Y	N
Liechtenstein	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	l	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malaysia	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Mexico	Y	N/A	O	Y	N/A	Y	i	N	N	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?  If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)  If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?  If no, will your CA accept a taxpayer’s request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)  If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
Moldova	Y	N/A	O	Y	N/A	I	i	Y	Y	Y	Y	N
Mongolia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	I	i	Y	Y	Y	Y	N
Morocco	Y	N/A	O	Y	N/A	I	i	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
North Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Norway	Y	N/A	O	i	N/A	I	i	Y	Y	Y	Y	N
Oman	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Pakistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Philippines	Y	N/A	O	ii	2 years	Y	i	Y	iii	Y	Y	N
Poland	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Portugal	Y	N/A	O	ii*	2 years	Y	i	Y	N*	Y	Y	N
Qatar	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	i**	i	Y	N*	Y	Y	N
Russia	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
San Marino	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Saudi Arabia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	i**	i	Y	Y	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

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

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

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

*Legend:*

E*	The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
E**	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/ii*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty 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 on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	11	0	0	0	0	0	0	0	0	0	0	11	n.a.
Others	7	0	0	2	0	0	0	0	0	0	0	5	24
Total	18	0	0	2	0	0	0	0	0	0	0	16	24

Note: The inventory of attribution/allocation cases has been increased by one case as Hungary was informed in 2018 by its treaty partner that a case was received in 2016 and unilaterally resolved in 2017.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	11	0	0	0	1	1	0	0	0	0	0	9	18.67
Others	5	0	0	0	0	0	1	0	0	0	0	4	28.5
Total	16	0	0	0	1	1	1	0	0	0	0	13	21.95

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	9	0	0	0	0	0	5	0	0	1	0	3	93
Others	4	0	0	0	0	0	0	0	0	0	0	4	n.a.
Total	13	0	0	0	0	0	5	0	0	1	0	7	93

*Notes:* The numbers of pre-2016 attribution/allocation cases started and closed during 1 January 2018 and 31 December 2018 and the number of the cases remaining on MAP inventory on 31 December 2018 in the table above are different from the number of such cases in Hungary's published 2018 MAP statistics. Hungary's competent authority and the competent authorities of its treaty partners recognised that six more cases have been concluded with the outcome "agreement fully eliminating double taxation" for five cases and the outcome 'no agreement, including agreement to disagree' in one case during the reporting period after reporting 2018 MAP statistics.



## Annex C

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

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

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	2	2	0	0	0	1	0	0	0	0	0	0	3	2.6
Others	2	3	0	0	0	0	1	0	0	0	0	0	4	15.88
Total	4	5	0	0	0	1	1	0	0	0	0	0	7	9.24

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	3	3	1	0	1	0	0	0	0	0	0	0	4	9.8
Others	4	2	0	0	0	0	0	1	0	0	0	0	5	6.27
Total	7	5	1	0	1	0	0	1	0	0	0	0	9	8.62

## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	Guidance on Mutual Agreement Procedures initiated on the basis of Double Tax Treaties and on Resolution of Possible Double Taxation Cases
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2016 cases</b>	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
<b>Post-2015 cases</b>	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2018
<b>Terms of Reference</b>	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, Hungary (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**