

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



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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
EU	European Union
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
MEMAP	Manual on Effective Mutual Agreement Procedures
OECD	Organisation for Economic Co-operation and Development
TRNC	Turkish Republic of Northern Cyprus

Executive summary

Romania has an extensive tax treaty network with over 85 tax treaties and it has signed and ratified the EU Arbitration Convention. Further, Romania has limited experience with resolving MAP cases. It has a modest MAP inventory, with a small number of new cases submitted each year and 53 cases pending on 31 December 2018. Of these cases, 77% concern attribution/allocation cases. Overall Romania meets less than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Romania worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Romania solved some of the identified deficiencies.

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

- One third of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 22% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention, whereby the majority of these treaties do not contain the equivalent of Article 25(1), second sentence, to provide for a filing period for MAP requests of three years.
- Almost 10% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention, stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Romania needs to amend and update a certain number of its tax treaties. In this respect, Romania signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Romania 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, but has not yet put a plan in place for almost all the treaties.

Romania does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-backs of bilateral APAs.

Romania meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Romania's policy is to provide access to MAP in

most eligible cases, although it has since 1 January 2016 not received cases concerning the application of anti-abuse provisions. Notably it does not provide access to MAP in cases where a MAP request is submitted after the expiration of domestic time limits and where the treaty does not contain a filing period for MAP requests. Romania further has not in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Romania has introduced its guidance on the availability of MAP and how it applies this procedure in practice, which however only contains limited information. Furthermore, Romania's MAP profile contains limited information that is also not in line with its practice and policy.

Concerning the average time needed to close MAP cases, the MAP statistics for Romania 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	17	30	6	41	16.73
Other cases	6	12	6	12	24.76
Total	23	42	12	53	20.74

* 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, Romania used as a start date the date of receipt of the MAP request from the taxpayer and as the end date the date when the taxpayer is informed of the outcome of the MAP.

The number of cases Romania closed in 2016-18 is 29% of the number of all cases started in those years. During these years, Romania's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 20.74 months. This only regards attribution/allocation cases, as the average time to close these cases is 16.73 months, while for other cases this average is above the pursued 24-month timeframe (24.76 months). Furthermore, Romania's MAP inventory as on 31 December 2018 significantly increased by 130% as compared to its inventory as on 1 January 2016, which regards both type of cases. While Romania intends to reorganise the competent authority function and add new staff to its competent authority, it should closely monitor whether the additional resources foreseen will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of other cases. If this would not be the case, in particular for other cases, additional resources or further actions are necessary to ensure a timely resolution of these MAP cases and also to be able to cope with the increase in the number of MAP cases, which regards both attribution/allocation and other cases.

Furthermore, Romania meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Romania's competent authority operates fully independently from the audit function of the tax authorities. Romania does not use any performance indicators to evaluate staff in charge of MAP function. Apart from this, Romania has not provided for transparency on its position on MAP arbitration.

Lastly, Romania does not meet the Action 14 Minimum Standard as regards the implementation of MAP agreements, since it has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that not all MAP agreements

will be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. However, Romania did not enter into any agreements that required implementation by Romania in 2016-18 and therefore no problems have surfaced regarding the implementation throughout the peer review process.

Introduction

Available mechanisms in Romania to resolve tax treaty-related disputes

Romania has entered into 87 tax treaties on income (and/or capital), all of which are in force.¹ These 87 treaties apply to 88 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the 87 treaties provides for a voluntary arbitration procedure as a final stage to the mutual agreement procedure.³

Furthermore, Romania 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.⁴ In addition, Romania also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as per 21 August 2019.⁵

Under the tax treaties Romania entered into, the competent authority function to conduct mutual agreement procedure (“**MAP**”) is delegated to the president of the National Tax Agency of Fiscal Administration under Article 282 of Law No. 207/2015 on the Fiscal Procedural Code.⁶ The competence is further delegated to the Transfer Pricing and Tax Ruling Directorate within the General Directorate for the Co-ordination of Fiscal Control. The competent authority of Romania currently employs ten employees, who handle all MAP cases as well as requests for APAs.

Romania has issued rules, guidelines and procedures on the MAP process in specific MAP guidelines (“**MAP guidance**”) in August 2020, which is after the review period, and available at:

https://static.anaf.ro/static/10/Anaf/Prezentare_R/GUIDE_eliminating_double_taxation20082020.pdf
(in English)

http://static.anaf.ro/static/10/Anaf/Prezentare_R/Ghid_ANAF_procedura_amiabila07082020.pdf
(in Romanian)

Developments in Romania since 1 May 2018

Developments in relation to the tax treaty network

While in the stage 1 peer review report of Romania it is reflected that all of Romania’s tax treaties entered into force, the newly signed treaty with Bosnia and Herzegovina (2016) was at that time not in force, but has entered into force on 18 May 2018. Furthermore, Romania also signed a new treaty with Spain (2017) to replace the existing treaty in

force. This new treaty was not yet taken into account in the stage 1 peer review. Since the adoption of Romania's stage 1 peer review report the new treaty with Spain was only ratified by Romania and therefore this treaty has not yet entered into force. This treaty contains Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

Furthermore, Romania signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. With the signing of the Multilateral Instrument, Romania also submitted its list of notifications and reservations to that instrument.⁷ In relation to the Action 14 Minimum Standard, Romania reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁸ This reservation is in line with the requirements of the Action 14 Minimum Standard. Romania reported that it expects the ratification process of the Multilateral Instrument will be completed in the first semester of 2021. It noted that it has changed its position on some notifications/reservations to that instrument following the recommendations under the Action 14 peer review process, which are currently being analysed by Romania's Ministry of Foreign Affairs.

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Romania reported that it strives updating them through future bilateral negotiations. In the stage 1 peer review report, it, however, was noted that Romania had no plan for such purpose and was therefore recommended to put a plan in place and to bilaterally work on the renegotiation of these treaties. In total, 23 of Romania's tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard. In this respect, Romania reported that Mexico has informed Romania that it will withdraw its reservation under the Multilateral Instrument, following which the treaty will be in line with the requirements under the Action 14 Minimum Standard. Furthermore, Romania reported that it intends to revise its list of notifications and reservations under the Multilateral Instrument upon the deposit of its instrument of ratification, following which it is expected that some treaties will be modified by that instrument to include the required provisions. For the remaining treaties, Romania reported that it does not yet have a specific plan for the bilateral renegotiation to bring those treaties in line with the requirements under the Action 14 Minimum Standard.

Other developments

Romania reported that in June 2019 the National Agency for Fiscal Administration adopted the procedure regulating issuance of Advanced Pricing Agreements, which is Operational Procedure 43.06 on issuing the advanced pricing agreement.

Romania also reported that it has published its MAP guidance in August 2020, which is after the review period.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Romania'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 (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Romania'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 Romania in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁹ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Romania. In this update report, Romania 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 Romania is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaty or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis takes into account the treaty with the former Federal Republic of Yugoslavia for the jurisdictions to which this treaty is still being or to be applied by Romania. Reference is made to Annex A for the overview of Romania's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Romania launched on 10 April 2018, with the sending of questionnaires to Romania and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Romania in September 2018, with the subsequent approval by the BEPS Inclusive Framework on 19 October 2018. On 22 November 2019, Romania submitted its update report, which initiated stage 2 of the process.

The period for evaluating Romania's implementation of the Action 14 Minimum Standard ranges 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 eleven peers provided input during stage 1: Austria, Belgium, Canada, Denmark, Finland, Germany, Italy, Sweden, Switzerland, Turkey and the United States. Out of these eleven peers, seven had MAP cases with Romania that started on or after 1 January. These

peers represent approximately 94% of post-2015 MAP cases in Romania’s inventory that started in 2016 or 2017. Generally, most peers indicated they have limited experiences in handling cases with Romania. Apart from that, those peers reported a good working relationship with Romania’s competent authority, thereby specifying the easiness to contact them, the fluency of communications and their timely and quick responses. A few peers, however, mentioned that communications via email and telephone could be improved. During stage 2, the same peers provided input, apart from the United States. In addition, Australia provided input during stage 2. For this stage, these peers represent approximately 74% of post-2015 MAP cases in Romania’s inventory that started in 2016, 2017 or 2018. Generally, all peers indicated having good relationships with Romania. Specifically with respect to stage 2, all peers that provided input reported that the update report of Romania fully reflects the experiences these peers have had with Romania since 1 May 2018 and/or that there was no addition to previous input given. One of these peers, however, noted some difficulties in resolving a MAP case efficiently due to the changes of staff being part of the MAP function as well as case handlers.

Input by Romania and co-operation throughout the process

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

- MAP profile¹⁰
- MAP statistics¹¹ according to the MAP Statistics Reporting Framework (see below), albeit that for 2016 no MAP statistics were submitted until after its peer review commenced in April 2018.

Concerning stage 2 of the process, Romania submitted its update report with significant delay and the information included therein was extensive. Romania was co-operative during stage 2 and the finalisation of the peer review process.

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

Overview of MAP caseload in Romania

The analysis of Romania’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2017. For stage 2 the period ranges from 1 January 2018 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Romania. The analysis of Romania’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 (“**Statistics Reporting Period**”). According to the statistics provided by Romania, 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	17	30	6	41
Other cases	6	12	6	12
Total	23	42	12	53

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹² Apart from analysing Romania’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Romania. Furthermore, the report depicts the changes adopted and plans shared by Romania 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 Romania relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Romania 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 Romania has entered into are available at: https://static.anaf.ro/static/10/Anaf/AsistentContribuabili_r/Conventii/Conventii.htm. Reference is made to Annex A for the overview of Romania’s tax treaties.
2. Romania continues to apply the treaty with the former Federal Republic of Yugoslavia (1996) to Serbia and Montenegro.
3. This concerns the treaty with Mexico.

4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
5. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
6. Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.pdf.
7. Available at: www.oecd.org/tax/treaties/beps-mli-position-romania.pdf.
8. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Romania reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.
9. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-romania-stage-1-9789264309883-en.htm.
10. Available at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
11. The MAP statistics of Romania are included in Annexes B and C of this report.
12. 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.

References

- 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 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 Romania’s tax treaties

2. Out of Romania’s 87 tax treaties, 84 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.¹ Two of the remaining three treaties do not contain the term “interpretation”. For the third remaining treaty, both the terms “doubts” and “interpretation” are missing. Therefore, these three treaties are considered not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Romania reported that where the applicable treaty does not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), there are no obstructions in its domestic legislation or administrative practices to enter into interpretative MAP agreements concerning the interpretation or the application of tax treaties in Romania.

4. Of the peers that provided input, four indicated that their treaty with Romania meets the requirements under this element, which conforms with the below analysis. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer’s intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

5. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), these three relevant peers did not provide input relating to this element.

Recent developments

Bilateral modifications

6. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). This treaty is pending ratification. The effects of the newly signed treaty has been reflected in the analysis above where they have relevance.

Multilateral Instrument

7. Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

8. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (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).

9. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Romania 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)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner, being a signatory to the Multilateral Instrument, also made such a notification. Therefore, at this stage, one of the three tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for this treaty, to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Peer input

10. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Romania. One of these peers concerns a treaty partner to one of the two treaties identified above that do not contain Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and that will not be modified by the Multilateral Instrument. This peer noted that it encourages Romania to update its notifications under the Multilateral Instrument to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) when ratifying that instrument.

Anticipated modifications

11. For the remaining two tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and that will not be modified by the Multilateral Instrument, Romania reported that for one it intends to revise its notification under the Multilateral Instrument upon the deposit of its instrument of ratification, following which it is expected that the treaty will be modified by that instrument to include the required provision. For the other treaty, Romania does not have a specific plan for bilateral renegotiations to bring it in line with the requirements under the Action 14 Minimum Standard.

12. Regardless, Romania 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]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). Of these three treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). • Two will not be modified by the Multilateral Instrument to include the required provision. Of these two treaties: <ul style="list-style-type: none"> - For one Romania will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. - For one no actions have been taken nor are any actions planned to be taken. 	<p>Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Romania should:</p> <ul style="list-style-type: none"> • continue to work in accordance with its plan for the treaty at this time not be modified via the Multilateral Instrument to include the required provision via the Multilateral Instrument • without further delay request the inclusion of the required provision via bilateral negotiations for the remaining treaty.

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

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

13. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.² The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Romania's APA programme

14. Romania reported that it has implemented an APA programme, which has been established by Article 52 of the Law No. 207/2015 on the Fiscal Procedural Code³ and Order No. 3735/2015 of 23 December 2015.⁴ Under this law and the order, more specifically Article 52(15), Romania's National Agency for Fiscal Administration is allowed to enter into unilateral, bilateral or multilateral APAs. In this respect, Romania clarified that bilateral and multilateral APAs can only be issued for transactions with associated enterprises that are resident of a jurisdiction with which Romania has entered into a tax treaty and those treaties contain a MAP provision.

15. Further to the above, Article 52 of Law No. 207/2015 describes in more details the circumstances under which an APA can be entered into, the process to be followed and the requirements to be met by taxpayers when submitting a request for an APA. Article 52(12) sets a time limit for issuing an APA, which is 12 months in case of a unilateral APA, and 18 months for a bilateral or a multilateral APA. Furthermore, Article 52(17) details the fees to be paid by taxpayers for obtaining an APA, which range from EUR 10 000 to EUR 20 000 and from EUR 6 000 to EUR 20 000 for a renewal of an existing APA, and is dependent on the size of the taxpayer and the amount of the transactions to be covered by the APA.

16. Order No. 3735/2015, in particular Annex I, further defines the process to be followed for issuing and renewing APAs, the data/information or documents that taxpayers need to submit when requesting an APA and the list of the information to be reflected in an issued APA. In addition, paragraph 12 of Annex I stipulates that the maximum period to be covered by an APA is five years, which, however, can be longer in case of a long-term contract that underlies the transaction to be covered by the APA. An existing APA can also be renewed, such subject to a request by the taxpayer and provided the facts and circumstances underlying the APA have remained the same.

Roll-back of bilateral APAs

17. Romania reported that its legislation does not allow a roll-back of bilateral APAs issued. In this respect, paragraph 13 of Annex I of Order No. 3735/2015 notes that an APA only takes effect for future years, whereby the first year covered is the fiscal year following the year in which the transaction under review was entered into. Under certain circumstances and by way of exception, the first year covered may also be the year of submission of the APA request.

Recent developments

18. Romania reported that the National Agency for Fiscal Administration adopted the procedure regulating issuance of Advanced Pricing Agreements, which is Operational Procedure 43.06 on issuing the advanced pricing agreement, in June 2019.

19. Romania reported that it has not yet followed-up on the recommendation to introduce the possibility of roll-back of bilateral APAs, as such mechanism in its view contradicts the principles of APA, which establish conditions and ways in which transfer prices are to be determined for future transactions, and determines a discriminatory treatment towards taxpayers who request a unilateral APA. Romania noted that such mechanism does not ensure the unitary application of tax legislation for all taxpayers.

Practical application of roll-back of bilateral APAs

20. Romania publishes statistics on APAs on the website of the EU Joint Transfer Pricing Forum.⁵

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

21. Romania reported that it has not received any requests for roll-backs in the period 1 January 2016-30 April 2018.

22. All but one peer that provided input reported that in the period 1 January 2016-30 April 2018 they do not have received any APA requests concerning Romania, nor any requests for roll-backs of such APAs. In addition, one peer reported that roll-backs are currently not possible under Romanian law.

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

23. Romania reported that since 1 May 2018 its competent authority has not received any requests for bilateral APAs.

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

Anticipated modifications

25. Romania indicated that it is currently analysing whether it should allow for the roll-back of bilateral APAs.

Conclusion

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

Notes

1. These 84 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.
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: https://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.pdf.
4. Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/ORDER3735_2015_11042018.pdf.
5. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-3.pdf. The most recent statistics published are up to 2018.

References

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

OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

26. 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 the Romania's tax treaties

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

27. Out of Romania's 87 tax treaties, 63 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 when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ None of Romania's tax treaties contains 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.

28. The remaining 24 treaties are considered not to have the full 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 non-resident national

where the case comes under the non-discrimination article. However, for the following reasons 14 of those 24 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (13 treaties).

29. For the remaining ten treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which these ten treaties are not in line with this part of element B.1.

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

30. Out of Romania's 87 tax treaties, 62 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.²

31. The remaining 25 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	11
Filing period more than three years for a MAP request (four/five years)	2
Filing period more than three years for a MAP request (four years), but with the requirement to submit a MAP request to both competent authorities	1
Filing period less than three years for a MAP request (two years)	11

32. With respect to the treaty in the third row of the table above, the first sentence of paragraph 1 of the MAP provision in that treaty stipulates that a taxpayer should submit a MAP request in its state of residence. The second sentence, however, requires that taxpayers should submit the request within a period of four years from the first notification of action resulting in taxation not in accordance with the provisions of the particular tax treaty and to the other competent authority concerned. While the filing period for a MAP request is longer than three years, the requirement to file a MAP request to both competent authorities concerned puts a more restrictive obligation on taxpayers and for that reason the treaty is for this part not considered to be in line with element B.1.

Peer input

33. Of the peers that provided input, four peers indicated that the treaty with Romania meets the requirements of the Action 14 Minimum Standard or will meet them through the modifications by the Multilateral Instrument. Two peers, however, are a signatory to a tax treaty that does in fact not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), and will not be modified by the Multilateral Instrument to meet

the requirements under element B.1. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer's intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument. For one of these peers, this indeed is the case for the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2017).

34. For the treaties identified above that do not meet the requirements under this element, other than the peers reflected above, the relevant peers did not provide input concerning the element.

Practical application

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

35. As follows from the above analysis, all of Romania's tax treaties allow a taxpayer to file a MAP request irrespective of domestic remedies. In this respect, Romania reported that where a taxpayer seeks to resolve the case by simultaneously applying these remedies, access to MAP will be given. However, in practice, the MAP process will be suspended until the judicial bodies have made a final decision on the case under review. As its competent authority is bound to such a decision, Romania reported that where the decision of the court does not concern the annulment of a tax decision (and the audit report), the MAP case may continue to allow the other competent authority concerned to provide for relief of double taxation. Where the decision of the court, however, leads to an annulment of the tax decision, there is no longer a case of double taxation, following which the MAP process may be ended.

36. Romania further reported that access to MAP may be denied in situations where the taxation that is the subject of the mutual agreement procedure has already been settled through judicial proceedings before a MAP request was submitted. While this policy is not documented in Romania's legislation, it reported that it is in the process of a draft legislative proposal that would describe the instances in which access to MAP may be denied, which *inter alia* would also concern cases that have been settled via judicial procedures. The system used, however, bears the risk that taxpayers do not have access to MAP in all appropriate cases, which is not in line with the rights granted to them under Article 25(1) of the OECD Model Tax Convention (OECD, 2017).

37. In this regard, one peer provided input and noted that it is for this peer unclear whether a judicial decision will limit access to MAP. This peer also noted that Romania's competent authority, in practice, generally is reluctant to consider a MAP request while the case under review is also pending before a domestic court. The peer therefore expressed its concern that the binding effect of a judicial decision and such reluctance by Romania's competent authority may effectively deny a taxpayer's access to MAP, or deprive the taxpayer of the possible correlative relief via the MAP process. This peer therefore urged that Romania reviews its policies and practices with respect to interaction between MAP and domestic judicial proceedings, such to ensure that taxpayers have equitable access to MAP. However as Romania has reported, access to MAP will be given as long as there is no court decision delivered yet, but it may not be possible to resolve the case as Romania cannot deviate from decisions by its domestic courts. This latter is not necessarily contrary to the requirement of element B.1.

38. Romania further reported that since 1 May 2018 it has received MAP requests for which domestic remedies have been initiated or have already been completed. It noted that for these cases access to MAP was granted while such MAP was suspended until the court decision was issued.

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

39. For those tax treaties identified in paragraph 31 above that do not contain a filing period for MAP requests, Romania reported that it will not accept a MAP request if such a request is being filed after the domestic statute of limitation has expired. This statute of limitation is five years and generally starts to run as from 1 July of the fiscal year following the fiscal year in which the tax liability becomes due. These rules bear the risk that taxpayers can for these 11 treaties not file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

40. Romania further reported that since 1 May 2018 it has not received MAP requests under those treaties that currently do not contain a filing period for such requests.

Recent developments

Bilateral modifications

41. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(1), first sentence and second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is pending ratification. The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

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

42. Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

43. 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.

44. Romania 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.³ In this reservation, Romania 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.

45. In view of the above, following the reservation made by Romania, those ten treaties identified in paragraph 29 above that are considered not including 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

46. 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 (OECD, 2017).

47. In regard of the 11 tax treaties identified in paragraph 31-32 above that contain a filing period for MAP requests of less than three years and the one treaty that is considered not to be in line with element B.1, Romania listed all 12 as a covered tax agreement under the Multilateral Instrument and for 11 of them made, 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 11 relevant treaty partners, three are not a signatory to the Multilateral Instrument. The remaining eight treaty partners listed their treaty with Romania as a covered tax agreement under that instrument. Of the relevant eight tax treaties partners, seven also made such notification. Therefore, at this stage, seven of 12 treaties identified above will be modified by the Multilateral Instrument, upon 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

48. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Romania. None of these peers concerns a treaty partner to one of the 13 treaties identified above that do not contain Article 25(1), first and/or second sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to or as amended by the adoption of the Action 14 final report (OECD, 2015b) and that will not be modified by the Multilateral Instrument.

Anticipated modifications

49. For the remaining 13 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) and that will not be modified by the Multilateral Instrument, Romania reported that it does not have a specific plan for the bilateral renegotiation to bring those treaties in line with the requirements under the Action 14 Minimum Standard.

50. In addition, Romania indicated that it intends, upon the deposit of its instrument of ratification, to withdraw its reservation of the right not to apply Article 16(1) of the Multilateral Instrument that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.

51. Regardless, Romania reported it will seek to include 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), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
	Seven out of 87 tax treaties do 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 (OECD, 2015b) or amended by the report. All of these seven treaties will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are any actions planned to be taken.	For these seven treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), Romania should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
[B.1]	Nine out of 87 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 nine treaties: <ul style="list-style-type: none"> • Six are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Three will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these treaties no actions have been taken nor are any actions planned to be taken. 	Romania 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 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>For these three treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Romania should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

	Areas for improvement	Recommendations
[B.1]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017). Of these three tax treaties:</p> <ul style="list-style-type: none"> • Two tax treaties do not contain the 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), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties: <ul style="list-style-type: none"> - One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are any actions planned to be taken. - One will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1). For this treaty, no actions have been taken nor are any actions planned to be taken. • One tax treaty does not contain the equivalent to Article 25(1), first sentence and obliges taxpayers to submit its MAP requests to both competent authorities, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1). For this treaty, no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>With respect to the first sentence of the treaty mentioned above and for the remaining two treaties that will not be modified by the Multilateral Instrument to include such equivalent, Romania should request for these treaties the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. as amended in the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Romania should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>
	<p>There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Romania's domestic law.</p>	<p>Romania should ensure that taxpayers that meet the requirements of Article 25(1) of the OECD Model Tax Convention (OECD, 2017) can access the MAP.</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).

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

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

Domestic bilateral consultation or notification process in place

53. As discussed under element B.1, out of Romania's 87 treaties, none 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. As was also discussed under element B.1, none of these treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. Romania reported that when it receives a MAP request, it will notify the other competent authority concerned hereof within 60 days as from the date of the receipt of the request and will inform the other competent authority of the decision immediately after it considers the objection raised in the MAP request not to be justified. The information included in such notification will *inter alia* reflect the taxpayer involved, the legal grounds of the MAP request, domestic legislative provisions that may affect the MAP process, agreements on the language to be used during the process and the applicable data for statistical purposes. Apart from this notification process upon receipt of a MAP request, Romania has not introduced a bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when Romania's competent authority considers the objection raised in the MAP request not to be justified. While such documented process is not in place, Romania also reported that the other competent authority concerned will in such a situation be informed in writing on the particularity of the case and the reasons for not considering the application eligible for MAP.

Recent developments

55. Romania reported that by transposing Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union into national law in August 2019, provisions on the conduct of MAP became clearer and more transparent. The National Agency for Fiscal Administration will notify the other competent authority concerned of the receipt of the application within 60 days from the date of its receipt, and will immediately inform the other competent authority of the decision that the objection raised by taxpayers in such request was not justified. Romania noted that the reasons for such decision are listed more clearly, such that the application does not contain the required information and documents.

56. Romania reported that staff in charge of MAP in the General Directorate for Tax Audit have been trained to inform and request the point of view of the other competent authority when its staff consider an objection raised not to be justified.

Practical application

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

57. Romania 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 request was not justified. The 2016 and 2017 MAP statistics submitted by Romania also show that none of its MAP cases were closed with the outcome “objection not justified”.

58. All peers that provided input indicated not being aware of any cases for which Romania’s competent authority denied access to MAP in the period 1 January 2016-30 April 2018. They also reported not having been consulted/notified during the Review Period of a case where Romania’s competent authority considered the objection raised in a MAP request as not justified, which is logical as no such instances have occurred in Romania during this period.

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

59. Romania reported that since 1 May 2018 its competent authority has not considered any objection raised in a MAP request as not being justified. The 2018 MAP statistics submitted by Romania confirm that none of its MAP cases were closed with the outcome “objection not justified”.

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

Anticipated modifications

61. As previously discussed under element B.1, Romania intends to withdraw its reservation of the right not to apply Article 16(1) of the Multilateral Instrument that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state upon the deposit of its instrument of ratification.

62. Nevertheless, Romania indicated that it intends to introduce a documented notification and/or consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and that it is now in the process of drafting its operational procedure.

Conclusion

	Areas for improvement	Recommendations
[B.2]	Out of the 87 tax treaties, none contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Romania should without further delay follow its stated intention to introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Romania should apply such process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

63. 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

64. Out of Romania's 87 tax treaties, 56 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.⁴ Furthermore, 17 treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The remaining 14 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:

- In six treaties the term “may” is used instead of “shall” when it concerns the granting of a corresponding adjustment.
- In two treaties competent authorities need to consult each other in determining the granting of a corresponding adjustment.
- In three treaties a corresponding adjustment can only be granted on the basis of a mutual agreement between the competent authorities.
- In one treaty the part of the last sentence of Article 9(2), reading “competent authorities of the Contracting States shall if necessary consult each other”, is missing.
- In one treaty its provision only indicates that the competent authorities may consult together for granting a corresponding adjustment.
- In one treaty a provision on granting corresponding adjustments is contained, but this provision contains different wording from and has a different structure as compared to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

65. Romania 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.

66. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Romania’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Romania indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. As Romania has not published MAP guidance, there is no publically available information on this subject.

Recent developments

Bilateral modifications

67. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty does not contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). This treaty is pending ratification. The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

68. Romania 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. In that regard, Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

69. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (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 not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (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 [OECD, 2017]).

70. Romania 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 (OECD, 2017). In regard of the 31 treaties identified in paragraph 64 above that are considered not to contain such equivalent, Romania listed all of them as a covered tax agreement under the Multilateral Instrument and included 15 of them in the list of treaties for which Romania has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 16 treaties Romania did not make, pursuant to Article 17(4), a notification that these treaties contain such equivalent. Of the relevant 16 treaty partners, three are not a signatory to the Multilateral Instrument. Of the remaining 13 treaty partners, two have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Romania already contains the equivalent of Article 9(2). Therefore, at this stage, the remaining 11 treaties will be superseded by the Multilateral Instrument, upon entry into force for these 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).

Application of legal and administrative framework in practice

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

71. Romania 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.

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

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

73. Romania reported that also 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.

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

Anticipated modifications

75. Romania 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 Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

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

Legal and administrative framework

77. None of Romania's 87 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 Romania do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

78. Romania reported that its competent authority does not limit access to MAP for cases concerning the application of anti-abuse provisions. As Romania has not published MAP guidance, there is no publically available information on this subject. Furthermore, Romania's MAP profile indicates that issues relating to the application of treaty or domestic anti-abuse provisions are not covered within the scope of MAP, which is opposite to the previous reflected statement.

Recent developments

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

Practical application

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

80. Romania reported that in the period 1 January 2016-30 April 2018 it did not deny access to MAP for cases where there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

81. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Romania 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)

82. Romania 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.

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

85. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to 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*

86. Romania reported that under its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement during the course of or after the end of an audit. There is no publicly available information on this subject. Furthermore, Romania's MAP profile states that issues where there is already an audit settlement between the tax authority and the taxpayer are not covered within the scope of MAP.

Administrative or statutory dispute settlement/resolution process

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

Recent developments

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

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

89. In view of the fact that it is in Romania not possible that the taxpayer and the tax administration enter into audit settlements, Romania reported that in the period 1 January 2016-30 April 2018 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

90. All peers that provided input indicated not being aware of a denial of access to MAP in Romania in the period 1 January 2016-30 April 2018 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that such settlements are not possible in Romania.

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

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

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

Anticipated modifications

93. Romania did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

94. 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

95. Romania reported that there are no specific domestic legislative provisions pertaining to the MAP process. Furthermore, it has not published MAP guidance. However, Romania indicated that there is a draft legislative proposal pending *inter alia* relating to the information and documentation taxpayers need to include in their MAP request.

96. Romania further reported that in practice, in cases where the taxpayer does not provide the information/documents required by its competent authority, he will be requested in writing to provide this information. The deadline for the submission of this information will be decided on a case-by-case basis, taking into account the volume and the complexity of the information to be submitted. Where the taxpayer does not submit the requested information within a reasonable time frame (for example, within two months), he will be notified of the fact that in the absence of those information/documents the MAP cannot further proceed and there is the risk for the case not to continue.

Recent developments

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

Practical application

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

98. Romania reported that it provides 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.

99. All peers that provided input indicated not being aware of a limitation of access to MAP by Romania 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)

100. Romania reported that since 1 May 2018 it has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation. Romania further reported that there was a case that was closed due to the fact that the taxpayer did not provide requested information.

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

Anticipated modifications

102. As discussed above, Romania reported that there is a draft legislative proposal pending, which *inter alia* contains a provision related to the information and documentation taxpayers need to include in their MAP requests.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

103. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Romania's tax treaties

104. Out of Romania's 87 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.⁵ Eight of the remaining nine treaties do not contain such provision at all. The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), but this provision refers to the consultation "regarding cases not provided for in the convention", whereas the second sentence of Article 25(3) refers to the consultation "for the elimination of double taxation in cases not provided for in the convention". As the particular tax treaty provides for a scope of application that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

105. Of the peers that provided input, four peers indicated that their treaty with Romania meets the requirements under element B.7 which is in line with the above analysis. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

106. For the eight treaties identified above that are considered not containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), one peer noted that its treaty with Romania does not contain such a provision. Another peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but reported that it intends to update the treaty with Romania through the Multilateral Instrument.

Recent developments

Bilateral modifications

107. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is pending ratification. The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

108. Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

109. 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).

110. In regard of the eight 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), Romania listed all of them as a covered tax agreement under the Multilateral Instrument, but only for seven of them, pursuant to Article 16(6)(d)(ii), made a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant seven treaty partners, one is not a signatory to the Multilateral Instrument. All remaining six treaty partners listed their treaty with Romania as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii). Therefore, at this stage, six of eight tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

111. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Romania. None of these peers concern a treaty partner to one of the two treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument.

Anticipated modifications

112. For the remaining two tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Romania reported that it does not have a specific plan for the bilateral renegotiation to bring those treaties in line with the requirements under the Action 14 Minimum Standard.

113. Nevertheless, Romania 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>Eight out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these eight treaties:</p> <ul style="list-style-type: none"> • Six are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these two treaties, no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 those six 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 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), Romania should without further delay request the inclusion of the required provision via bilateral negotiations.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

114. 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.

Romania's MAP guidance

115. Romania's rules, guidelines and procedures are included in specific MAP guidelines ("MAP guidance"), which are available at:

https://static.anaf.ro/static/10/Anaf/Prezentare_R/GUIDE_eliminating_double_taxation20082020.pdf
(in English)

http://static.anaf.ro/static/10/Anaf/Prezentare_R/Ghid_ANAF_procedura_amiabila07082020.pdf
(in Romanian)

116. This MAP guidance was published in August 2020, which is after the review period, and contains information on:

- legal basis
- steps/development of mutual agreement procedure
- notes to taxpayers.

117. Romania reported that some information related to MAP are included in Law No. 207/2015 on the Fiscal Procedural Code. Furthermore, the website of its tax administration contains (both in English and Romanian) information on the domestic law provisions on MAP

as well as several links to documents relating to MAP, such as the Manual on Effective Mutual Agreement Procedures (“MEMAP”).⁶

118. The above-described MAP guidance of Romania does not include detailed information on the availability and the use of MAP and how its competent authority conducts the process in practice. This guidance does not include the information that the FTA MAP Forum agreed should be included in such guidance, namely (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.⁷ Furthermore, information on various subjects is not specifically addressed. This concerns information on:

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

Information and documentation to be included in a MAP request

119. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁸ This agreed guidance is shown below. Romania’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

Recent developments

120. As has been reflected above, Romania reported that it has published its MAP guidance on 7 August 2020, which is after the review period, and only provides some information related to mutual agreement procedures.

Anticipated modifications

121. Romania indicated that it is in the process of updating its MAP guidance to include the following items that are not included in the current guidance:

- contact information of Romania’s competent authority
- the manner and form in which the taxpayer should submit its MAP request
- whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP.

Conclusion

	Areas for improvement	Recommendations
[B.8]	MAP guidance is available, but some further clarity should be provided.	Romania should improve the level of clarity of its MAP guidance.
	Contact details of Romania’s competent authority are not included in the MAP guidance.	Romania should update its MAP guidance to include the contact information of its competent authority as soon as possible.
	Information on what information taxpayers should include in a MAP request is included in the published guidance, but is not comprehensive and may lead to (unnecessary) requests for additional information.	Romania should introduce in its MAP guidance more detailed guidance on the manner and form in which taxpayers should submit their MAP request.

[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.

122. 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.⁹

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

123. Romania’s rules, guidelines and procedures are included in specific MAP guidelines (“MAP guidance”), which are available at:

https://static.anaf.ro/static/10/Anaf/Prezentare_R/GUIDE_eliminating_double_taxation20082020.pdf
(in English)

http://static.anaf.ro/static/10/Anaf/Prezentare_R/Ghid_ANAF_procedura_amiabila07082020.pdf
(in Romanian)

124. As regards its accessibility, Romania’s MAP guidance can be found on the website of the National Agency for Fiscal Administration by searching for are “ghid ANAF” in Romanian (which is “NAFA guidance” in translation) or “dubla impunere ANAF” in Romanian (which is “NAFA double taxation” in translation) and “guide” for English users.

MAP profile

125. The MAP profile of Romania has been published on the website of the OECD, which was last updated in December 2018. While a response is given to all questions addressed in this MAP profile and it sometimes includes external links which provide extra information and guidance where appropriate, the information presented is not entirely clear or consistent with Romania’s practice, and also lacks certain details. This concerns *inter alia* the responses to questions on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published.

Anticipated modifications

126. Romania indicated that it is working on updating its MAP profile to reflect the newest legislative provisions (transposition of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union into national law by adopting Government Urgency Ordinance no. 19 of 21 August 2019 for amending and completing Law 207/2015 on the Code of fiscal procedure) as well as its published MAP guidance.

Conclusion

	Areas for improvement	Recommendations
[B.9]	The MAP profile contains information not in line with Romania’s practice and policy and responses given are limited. In addition, there are no references to the MAP guidance in the profile.	<p>Romania should follow its stated intention to update its MAP profile to refer to the MAP guidance and reflect the correct information on its policy and practice on MAP. This concerns information on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published. Furthermore, Romania could consider providing more details in its MAP profile on its MAP process.</p> <p>In addition, as it has published its MAP profile and made its MAP guidance available and easily accessible as from August 2020, Romania should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>

[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.

127. 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

128. As previously discussed under B.5, it is under Romania's domestic law not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need for Romania to address in the MAP guidance under preparation whether taxpayers have access to MAP in such situations.

129. Peers raised no issues with respect to this element concerning audit settlements.

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

130. As previously mentioned under element B.5, Romania 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 for Romania to address the effects of such process with respect to MAP.

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

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

132. As Romania 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

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

Anticipated modifications

134. Romania did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 63 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.
2. These 62 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro, as well as the newly signed treaty with Spain that will replace the existing treaty with Spain once it enters into force.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Romania 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 Romania’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-romania.pdf.
4. These 56 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.
5. These 78 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.
6. Available at: <https://www.anaf.ro>.
7. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

8. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

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

135. 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 Romania’s tax treaties

136. Out of Romania’s 87 tax treaties, 85 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.¹ In one of the remaining two treaties, the phrase “if the objection appears to it to be justified” is missing. The other treaty does not contain the phrase “if the objection appears to it to be justified and if it is itself not able to arrive at a satisfactory solution”. Instead, it contains the words “should the resident’s claim be considered to have merit by the competent authority”. Therefore, the provisions in both treaties are considered not being the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

137. Of the peers that provided input, four peers indicated that their treaty with Romania meets the requirements under element C.1, which is in line with the above analysis. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer’s intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

138. For the two treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), both of the relevant peers did not provide input relating to this element.

Recent developments

Bilateral modifications

139. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is pending ratification. The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

140. Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

141. 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).

142. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Romania listed both of them as a covered tax agreement under the Multilateral Instrument, but for neither of them did it make, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, none of the two tax treaties 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).

Peer input

143. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Romania. None of these peers concerns a treaty partner to one of the two treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument.

Anticipated modifications

144. For the remaining two tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Romania reported that for one it has reached out

to the treaty partner to propose the inclusion of the required provision via the Multilateral Instrument, while for the other it does not have a specific plan for the bilateral renegotiation to bring the treaty in line with the requirements under the Action 14 Minimum Standard.

145. Regardless, Romania 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>Two out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). These two treaties will not be modified by the Multilateral Instrument. Of these two treaties:</p> <ul style="list-style-type: none"> • For one Romania will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. • For one no actions have been taken nor are any actions planned to be taken. 	<p>For the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Romania should:</p> <ul style="list-style-type: none"> • continue to work in accordance with its plan for the treaty at this time not be modified via the Multilateral Instrument to include the required provision via the Multilateral Instrument • without further delay request the inclusion of the required provision via bilateral negotiations.

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

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

146. 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

147. Statistics regarding all tax treaty related disputes concerning Romania are not yet published on the website of the OECD.² Romania publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.³

148. 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. Romania provided its MAP statistics pursuant to the MAP Statistics Reporting Framework, albeit that for 2016 no MAP statistics were submitted until after its peer review commenced in April 2018. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Romania.⁴ With respect to post-2015 cases, Romania reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Romania reported that with the submission of the MAP Statistics for 2019, it identified some inaccuracies in its MAP statistics for the years 2016-18, but which could be resolved.

149. One peer provided input on the matching of MAP statistics with Romania and confirmed that it was able to match the statistics for 2018.

150. Based on the information provided by Romania’s MAP partner, 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

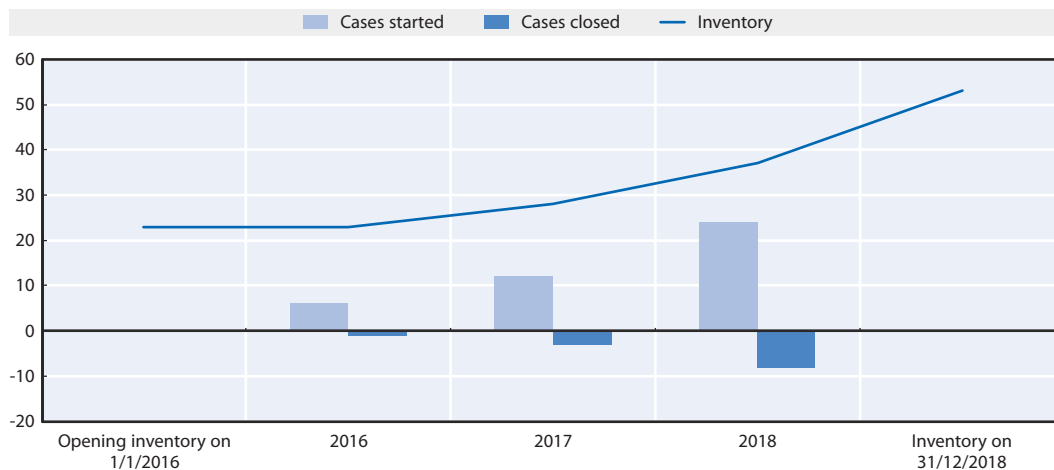
151. Romania reported it does not have a system in place that communicates, monitors and manages with its treaty partners the MAP caseload. It, however, noted that the monitoring of MAP cases is performed in line with the MAP Statistics Reporting Framework and the rules in relation to the EU Arbitration Convention.

Analysis of Romania’s MAP caseload

152. The analysis of Romania’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.⁵

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

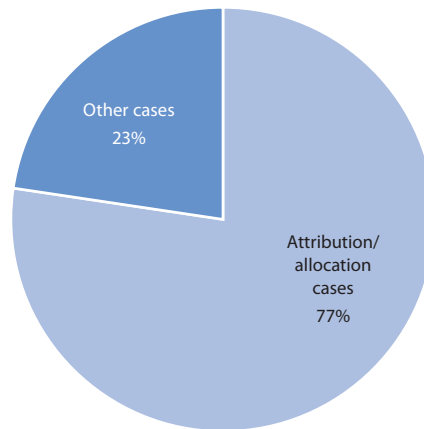
Figure C.1. Evolution of Romania’s MAP caseload



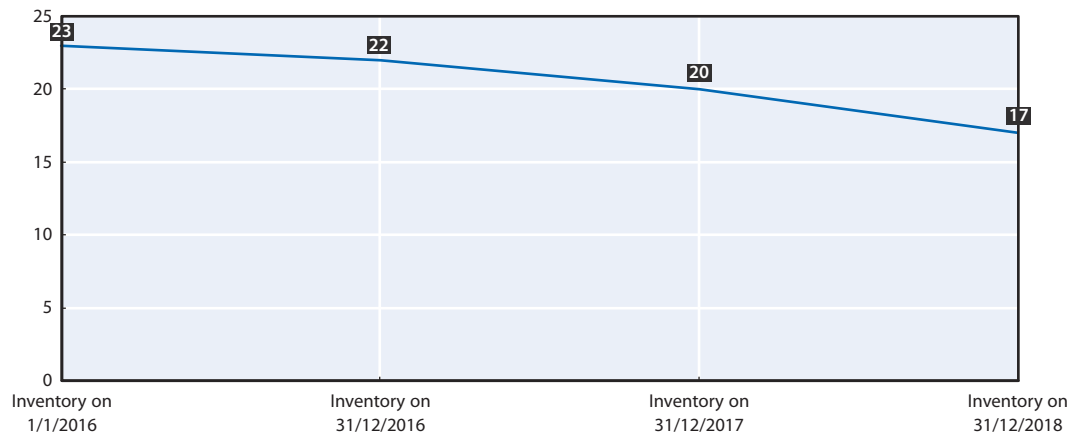
154. At the beginning of the Statistics Reporting Period Romania had 23 pending MAP cases, of which 17 were attribution/allocation cases and six other MAP cases.⁶ At the end of the Statistics Reporting Period, Romania had 53 MAP cases in its inventory, of which 41 are attribution/allocation cases and 12 are other MAP cases. Romania’s MAP caseload has increased by 130% during the Statistics Reporting Period.

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

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

*Pre-2016 cases*

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

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

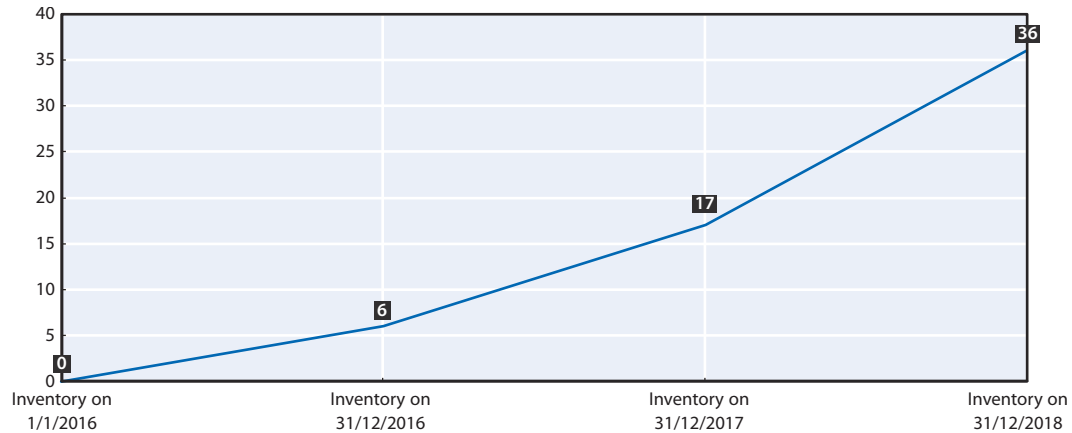
157. At the beginning of the Statistics Reporting Period, Romania's MAP inventory of pre-2016 MAP cases consisted of 23 cases, of which were 17 attribution/allocation cases and six other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 17 cases, consisting of 15 attribution/allocation cases and two other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	(no case closed)	-6%	-6%	-12%
Other cases	-17%	-20%	-50%	-67%

Post-2015 cases

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

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



159. In total, 42 MAP cases started during the Statistics Reporting Period, 30 of which concerned attribution/allocation cases and 12 other cases. At the end of this period the total number of post-2015 cases in the inventory was 36 cases, consisting of 26 attribution/allocation cases and ten other cases. Conclusively, Romania closed six post-2015 cases during the Statistics Reporting Period, four of them being attribution/allocation cases and two of them being other cases. This closed case represents 14% of the total number of post-2015 cases that started during the Statistics Reporting Period.

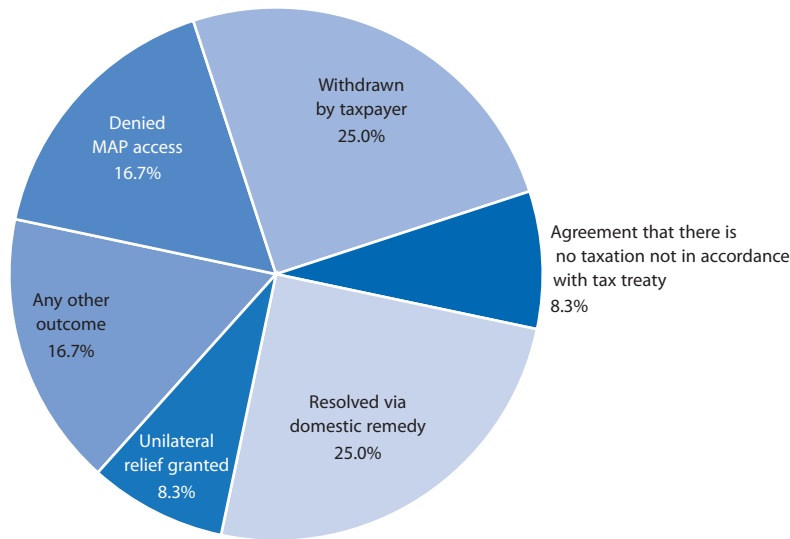
160. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	Cumulative percentage of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	0%	11%	17%	13%
Other cases	0%	0%	33%	17%

Overview of cases closed during the Statistics Reporting Period*Reported outcomes*

161. During the Statistics Reporting Period Romania in total closed 12 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017 or 2018 (12 cases)



Reported outcomes for attribution/allocation cases

162. In total, six attribution/allocation cases were closed during the Statistics Reporting Period with the following outcomes:

- resolved via domestic remedy (50%)
- withdrawn by taxpayer (17%)
- unilateral relief granted (17%)
- any other outcome (17%).

Reported outcomes for other cases

163. In total, six other cases were closed during the Statistics Reporting Period with the following outcomes:

- denied MAP access (33%)
- withdrawn by taxpayer (33%)
- agreement that there is no taxation not in accordance with tax treaty (17%)
- any other outcome (17%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

164. The average time needed to close MAP cases during the Statistics Reporting Period was 20.74 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	6	16.73
Other cases	6	24.76
All cases	12	20.74

Pre-2016 cases

165. For pre-2016 cases Romania reported that on average it needed 37.43 months to close two attribution/allocation cases and 36.30 months to close four other cases. This resulted in an average time needed of 36.68 months to close six pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Romania reported that it uses the following:

- *start date*: the date of receipt of the MAP request from the taxpayer
- *end date*: the date when the taxpayer is informed of the outcome of the MAP.

166. Romania further reported that for two of the six pre-2016 cases the average completion time was computed as 0.00 month with the following clarification for the above definition on start and end dates:

- *start date*: the date on which the competent authority considers eligible the taxpayer's application to open the MAP case
- *end date*: the date on which the competent authorities agreed to close the MAP case.

167. In this respect, Romania clarified that for both cases, the start date was considered to be the same as the end date, since for one attribution/allocation case the taxpayer did not provide the requested information and was closed, and one other case was not eligible for MAP and was denied access to MAP on the same date.

Post-2015 cases

168. For post-2015 cases Romania reported that it needed 6.38 months to close four attribution/allocation cases and 1.68 months to close two other cases. This resulted in an average time needed of 4.81 months to close six post-2015 cases.

169. Romania also reported that for two of the six post-2015 cases, the average completion time was reported as 0.00 month since both cases were withdrawn by the taxpayers before starting.

Peer input

170. Several peers provided input concerning the timely resolution of MAP cases, which will be further discussed under element C.3. In relation to element C.2, two peers in particular appreciated the timeliness of the response by Romania's competent authority to communications by these peers. Another peer noted that Romania's competent authority endeavours to resolve MAP cases in a reasonable timeframe.

Recent developments

171. Romania was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 94% of its post-2015 MAP cases that were pending on 31 December 2017 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

172. With respect to this recommendation, Romania reported that in order to have more staff that exclusively handle MAP cases, it is in the process of reorganising its competent authority function in 2020, following which the number of such staff will be increased from ten to 16.

173. From the statistics discussed above, it follows that Romania has in the period 2016-18 closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 14%.

Furthermore, its MAP inventory has increased by 130% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

174. Of the peers that provided input during stage 2, two provided input in relation to their experience with Romania as to handling and resolving MAP cases. Their input is further discussed under element C.3.

Anticipated modifications

175. Romania indicated that as mentioned in the recent development it is in the process of reorganising its competent authority function in 2020 to increase the number of staff that exclusively handle MAP cases.

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.

176. 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 Romania's competent authority

177. Romania reported that, pursuant to Article 282 of Law No. 207/2015 on the Fiscal Procedural Code, the competent authority function to handle MAP cases under its tax treaties and the EU Arbitration Convention is delegated to the president of the National Agency for Fiscal Administration.⁷ This competence is since 2011 further delegated to the Transfer Pricing and Tax Ruling Directorate of the General Directorate for the Co-ordination of Fiscal Control within the National Agency for Fiscal Administration.

178. The Transfer Pricing and Tax Ruling Directorate currently consists of ten persons, who handle MAP cases, as well as requests for APAs. Next to handling MAP cases, this directorate also provides assistance to tax auditors in complex transfer pricing cases, organises transfer pricing trainings and is responsible for issuing domestic transfer pricing guidelines. Romania further reported that training on MAP is given internally and for complex cases its policy is to have complex cases being dealt with by a mix of experienced personnel and less experienced people, such to share experiences and knowledge.

179. Concerning the steps to be taken when a MAP request is received by Romania's competent authority, Romania reported that the main steps to be taken are:

- analysis of the request in terms of eligibility for MAP under the applicable tax treaty or the Arbitration Convention
- notifying the treaty partner of the MAP request received within one month
- requesting the taxpayer on whether it has initiated or intends to initiate any domestic judicial procedures, if not specified in the MAP request
- requesting additional information/documents from the taxpayer, if needed

- requesting the local tax office to present a written opinion on the issues that are the subject of a MAP, where the double taxation is the result of an action performed by Romania's tax authority, or where double taxation is not the result of an action performed in Romania, requesting the treaty partner to provide the position paper
- informing the taxpayer on whether the MAP will be initiated.

180. Further to the above, where a MAP agreement has been reached, Romania reported that its competent authority will inform the taxpayer and the local tax office on that outcome and the steps to follow for implementing the MAP agreement.

Monitoring mechanism

181. Concerning the available resources for the MAP function, Romania indicated that funding is received from public funds and there are no special funding programmes for the competent authority. The evaluation of whether the available resources for the MAP function is sufficient is performed as per year-end, such depending on the number of MAP requests received. In this respect, given the fact that recently the number of MAP cases has increased, it was identified that more staff who exclusively handle MAP and APA cases are necessary. Based on this evaluation the reorganisation is expected to increase the number of staff who exclusively handle those cases.

Recent development

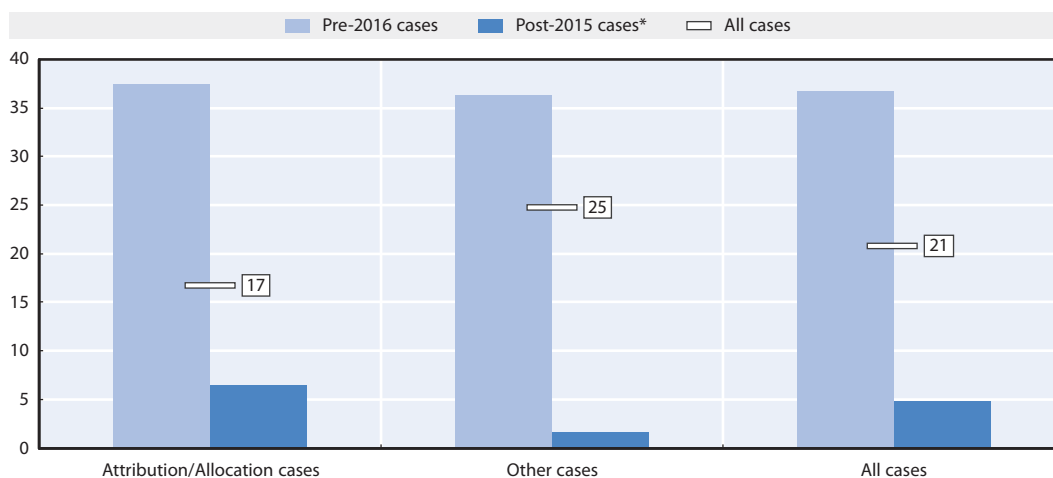
182. With respect to the input given by peers concerning the communication with treaty partners in Romania's stage 1 peer review report, Romania reported that staff training is provided for English classes via its annual training programme and that staff is constantly collaborating with the IT department for any deficiencies associated with the use of email.

Practical application

MAP statistics

183. As discussed under element C.2 Romania closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. However, the average time taken to close other cases is higher than the average time needed for attribution/allocation cases. This can be illustrated by Figure C.6.

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



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

184. Based on these figures, it follows that on average it took Romania 20.74 months to close MAP cases, which is less than the pursued average of 24 months. It took Romania 16.73 months to resolve attribution/allocation cases, and 24.76 months for other cases.

185. The stage 1 peer review report of Romania analysed the 2016 and 2017 statistics and showed an average of 47.78 months, which is above the pursued average of 24 months to close MAP cases. This both regards attribution/allocation cases (38.73 months) and other cases (56.83 months). In addition, as Romania’s MAP caseload has increased significantly in the period 1 January 2016-31 December 2017, it was concluded this may indicate that Romania’s competent authority is not adequately resourced. On that basis Romania was recommended to ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. This, for example, by devoting additional resources or having resources specifically dedicated to handling MAP cases.

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

	2018
Attribution/Allocation cases	5.73
Other cases	8.72
All cases	7.23

187. The 2018 statistics of Romania show that the average completion time of MAP cases decreased significantly from 47.78 months to 7.23 months, whereby the average for both types of cases decreased significantly. For other cases this concerns a decrease from 56.83 months to 8.72 months, and for attribution/allocation cases from 38.73 months to 5.73 months.

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

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2018	Increase in %
Attribution/allocation cases	17	30	6	41	141%
Other cases	6	12	6	12	100%
Total	23	42	12	53	130%

Clarifications by Romania

189. During stage 1 Romania did not provide any clarifications for why MAP cases were not closed within the 24-month average time period. It was noted that Romania considered that the available resources for the MAP function are sufficient. However, it was also noted that due to the increase in MAP cases, a further evaluation of the available resources is necessary, which will be performed at the end of 2018 based on the number of MAP requests received.

190. For stage 2, Romania indicated that more staff who exclusively deal with MAP cases are needed to resolve MAP cases within the 24-month average. In this respect, as discussed under element C.2, Romania is in the process of reorganising its competent authority function to increase the number of staff that exclusively handle MAP and APA cases in 2020.

Peer input

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

191. The peers that provided input reported that in general they had limited experience with Romania concerning the resolution of MAP cases, primarily due to the limited number of such cases. In that regard, only one peer reported having initiated several MAP cases with Romania in the period 1 January 2016-30 April 2018, which all concern attribution/allocation cases.

192. Concerning the working relationship of the peers with Romania, several peers noted that they had good experiences with Romania's competent authority in communicating with them. One peer reported that the relationship and communication with Romania's competent authority is good and that contact is fairly easy to establish. On an overall basis, this peer noted having positive experiences. This input was echoed by other peers, who also noted that there was no need for organising face-to-face meetings to resolve their pending MAP cases and that Romania's competent authority responded timely to communications. One peer, however, reported that due to the limited number of pending MAP cases, there is no robust working relationship between their competent authorities. Concerning its communication, this peer noted that the effectiveness of (informal) communication, which was done via email, varied. Due to language differences and the need for translation, telephone conferences can be ineffective and inefficient. Furthermore, one peer noted that, although it has very limited experiences in resolving MAP cases with Romania, in its experience it was rather difficult to communicate via e-mail.

193. Furthermore, concerning the resolution of MAP cases, most peers that provided input reported that there has not been a substantial experience with Romania in this regard. Nevertheless, these peers generally reported positive experiences. Two peers in particular appreciated the response to position papers within a short notice. Another peer noted that Romania's competent authority endeavours to resolve MAP cases in a reasonable timeframe and that Romania's competent authority provides written position papers to clarify its position. Lastly, two other peers reported that they are not aware of any impediments in Romania that lead to delays to resolve a MAP case, which is particularly due to the very limited number of MAP cases with Romania. One of these peers mentioned it looked forward to working with Romania's competent authority to ensure that taxpayers with pending MAP cases and future MAP cases can obtain effective and efficient access to the MAP process.

194. Two peers provided suggestions for improving the resolution of MAP cases in Romania. Both of them mentioned that a more frequent and better use of email would even more enhance the timeliness for resolving MAP cases.

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

195. Almost all peers that provided input during stage 1, stated in stage 2 that the update report provided by Romania fully reflects their experience with Romania since 1 May 2018 and/or there are no additions to the previous input given. Of the peers that provided input, two provided input in relation to their experience in resolving MAP cases since 1 May 2018.

196. One of these peers reported that with respect to one MAP case with Romania, the case is suspended as the taxpayer has filed an appeal in Romania. It further reported that it had requested an update in March 2019 and was informed by Romania's competent authority that they will inform this peer as soon as they obtain a final decision from the court. This peer noted that it is pleased with its experience dealing with Romania.

197. Another peer mentioned that in general it has a good working relationship with Romania as regards the resolution of MAP cases. It, however, noted that due to the changes in the staff of the MAP function as well as case handlers, the communication and resolution of MAP cases seem to be not efficient and burdensome at times.

Anticipated modifications

198. Romania indicated that it is in the process of reorganising its competent authority function to increase the number of staff that exclusively handle MAP and APA cases in 2020. Romania further indicated that the competent authority function will be delegated to the Directorate of Transfer Pricing and APA (the former Transfer Pricing and Tax Ruling Directorate), which has a new subordinate structure of the Service of APA and MAP.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>While MAP cases were resolved in 20.74 months, which is below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards other cases, for which the average timeframe is 24.76 months and which may indicate that the competent authority is not adequately resourced.</p> <p>Furthermore, the MAP caseload has significantly increased with 130% since 1 January 2016, which regards both attribution/allocation and other cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Romania intends to reorganise the competent authority function and add new staff to its competent authority, it should closely monitor whether the additional resources foreseen will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of other cases.</p> <p>If this would not be the case, Romania should, in particular for other cases, hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases and also to be able to cope with the increase in the number of MAP cases, which regards both attribution/allocation and other cases.</p>

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

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

199. 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

200. Romania reported that its 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 the process for negotiating MAP agreements is not influenced by policy considerations. It also clarified that all position papers on MAP cases are prepared and finalised at the level of the competent authority and there is no involvement from any other department in this regard.

While local tax offices may be requested to provide an opinion as regards the questions that are the subject of the MAP case, there is no involvement in the decision making process on a position paper or whether or not to enter into a MAP agreement.

201. Romania further reported that where its competent authority handles a MAP request, all documents and correspondence are prepared by this competent authority and accordingly to be approved by the head of the Transfer Pricing and Advanced Transfer Pricing Agreement Unit, the Director of the Transfer Pricing and Tax Ruling Directorate, and ultimately the General Director of the General Directorate for the Co-ordination of Fiscal Control. While the title of the directorate is “General Directorate for the Co-ordination of Fiscal Control,” this directorate has no involvement in conducting audits, which is solely performed at the level of the local tax offices. As discussed under element C.3, the Transfer Pricing and Tax Ruling Directorate of the General Directorate for the Co-ordination of Fiscal Control, performs a co-ordinating role in audits that concern complex transfer pricing cases. This involvement, however, is only from a methodological and procedural perspective and *inter alia* relates to providing interpretations of the OECD Transfer Pricing Guidelines, providing trainings or providing guidelines for fiscal risk assessment. In this regard, Romania reported that the General Directorate for the Co-ordination of Fiscal Control is not involved in the audit process or any decisions taken by tax audit teams.

Recent developments

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

Practical application

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

203. All peers that provided input generally reported no impediments in Romania 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. One of these peers specifically mentioned that it is not being aware that staff in charge of the MAP in Romania 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)

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

Anticipated modifications

205. Romania did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

206. 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 Romania

207. Romania reported that there are currently neither performance indicators used nor targets set for staff in charge of MAP. The evaluation of the staff in charge of MAP is annually performed and the criteria used depend on the cases under review. These criteria generally rely on whether deadlines within the process are met and whether staff acted in compliance with legal provisions.

208. The Action 14 final report (OECD, 2015) 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).

209. As discussed, none of these examples are specifically used by Romania. Romania further 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. Therefore, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

Practical application

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

211. All peers that provided input generally provided no specific input relating to this element of the Action 14 Minimum Standard. One of these peers noted that it is not aware of the use of performance indicators by Romania 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)

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

Anticipated modifications

213. Romania indicated that as soon as the envisaged legislative proposal on MAP is approved, it will introduce some performance indicators in order to examine the consistency and the time of resolving MAP cases.

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.

214. 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

215. Romania reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. While Romania's tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties, it is a signatory to the EU Arbitration Convention. Apart from the basic response included in the MAP profile, Romania has not made information on its position on MAP arbitration publicly available, for example, in its MAP profile.

Recent developments

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

Practical application

217. Romania has incorporated a voluntary arbitration clause in one of its tax treaties as a final stage to the MAP. Romania, however, reported that the arbitration procedure does not have any practical effect yet, as it is not supplemented with a diplomatic note to establish procedures. Furthermore, Romania also has included a most-favoured nation clause on arbitration in one of its tax treaties. This provision stipulates that when an arbitration provision in the treaty between that state and a third state becomes effective, the arbitration provision with Romania also becomes effective. In this respect, Romania reported that this condition has not yet been fulfilled.

Anticipated modifications

218. Romania indicated that it intends to provide transparency on its position on using MAP arbitration with the publication of MAP guidance, President Order for approving the MAP procedure and the update of its MAP profile.

Conclusion

	Areas for improvement	Recommendations
[C.6]	Position on using arbitration as a supplement to the mutual agreement procedure is not transparent.	Romania should follow its intention to provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile.

Notes

1. These 85 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are generally up to and include fiscal year 2016.
3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-1.pdf. These statistics are up to and include fiscal year 2018.
4. For post-2015 cases, if the number of MAP cases in Romania’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, Romania 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. Romania’s 2016-18 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for the years 2017-18. See further explanations in Annexes B and C.
6. For pre-2016 and post-2015 cases, Romania 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. Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.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 (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

219. 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

220. Romania reported that where a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), a MAP agreement shall be implemented notwithstanding any time limits under its domestic law. The same applies to cases for which an agreement has been reached under the EU Arbitration Convention. Where a tax treaty does not contain a provision on the implementation of MAP agreements, Romania reported that its domestic statute of limitation applies to both upward and downward adjustments. This statute of limitation is five years and generally starts to run as from 1 July of the fiscal year following the fiscal year in which the tax liability becomes due. Where it concerns an infringement of the criminal law in Romania, the statute of limitations is ten years.

221. Romania further reported that it operates a self-assessment system for determining the amount of tax due. Where a MAP agreement is entered into by its competent authority, this competent authority will inform taxpayers in writing alongside with an explanation of the process to be followed by them in order to have the agreement implemented. In other words, it is the taxpayer that has to implement the MAP agreement through the self-assessment process, including appropriate adjustments to the tax assessed in transfer pricing cases. Romania reported that in the past, under this system no upfront consent from the taxpayer was required as a prerequisite for implementation, but such consent followed indirectly from the self-assessment system used. In this respect, Government Ordinance no. 19/2019 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code, which came in force on 25 August 2019, stipulates that without taxpayer's consent the MAP does not produce legal effects, and therefore the implementation of MAP agreements is subject to taxpayer's consent. Romania noted that in making such consent the taxpayer must waive the right to appeal to either administrative or judicial remedies.

222. In addition to the above, Romania reported that its competent authority will also inform the local tax administration in charge of the taxpayer on the MAP agreement reached and the instructions given to taxpayers for the implementation thereof. It is therefore this

local tax administration that monitors the actual implementation of a MAP agreement, which is not further monitored at the level of Romania's competent authority.

Recent developments

223. As described above, Government Ordinance no. 19/2019 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code clarifies that since 25 August 2019 the implementation of MAP agreements is subject to taxpayer's consent.

Practical application

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

224. Romania reported that in the period 1 January 2016-30 April 2018 it did not enter into any MAP agreements that required implementation by Romania.

225. 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 Romania, some of them noting that this is due to the fact that they have not reached a MAP agreement since that date.

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

226. Romania reported that since 1 May 2018 its competent authority did not enter into any MAP agreements that required implementation by Romania.

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

Anticipated modifications

228. Romania did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Romania's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to a five year time limit for making upward and downward adjustments in domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Romania's relevant tax treaty, prevent the implementation of a MAP agreement, Romania should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Romania should for clarity and transparency purposes notify the treaty partner thereof without delay.

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

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

229. 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

230. As discussed under element D.1, taxpayers are required to implement a MAP agreement and are informed of the tentative agreement and of the procedure to be followed in writing prior to the MAP agreement. In relation hereto, Romania reported that it neither has any timeframe for notifying taxpayers of the MAP agreement reached, nor for taxpayers for implementing MAP agreements.

Recent developments

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

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

232. As discussed under element D.1, Romania did not enter into any MAP agreements that required implementation by Romania.

233. All peers that provided input indicated not experiencing any problems with Romania regarding the implementation of MAP agreements, which can be explained by the fact that there was no MAP agreement to be implemented in the period 1 January 2016-30 April 2018.

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

234. As discussed under element D.1, Romania reported that since 1 May 2018 its competent authority did not enter into any MAP agreements that required implementation by Romania.

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

Anticipated modifications

236. Romania did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

237. 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 Romania’s tax treaties

238. As discussed under element D.1, Romania’s domestic legislation contains a statute of limitations of five years for implementing MAP agreements, unless overridden by tax treaties or when a MAP agreement is reached under the EU Arbitration Convention.

239. Out of Romania’s 87 tax treaties, 56 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.¹ Furthermore, two tax treaties that do not contain this equivalent have a provision in the MAP article, setting a time limit for making adjustments. Both provisions are considered to be the alternative provisions to Article 9(1) and Article 7(2). The remaining 29 tax treaties neither contain the equivalent to Article 25(2), second sentence, nor the alternative provisions. Of these 29 treaties, two contain a provision in Article 9 setting a time limit for making transfer pricing adjustments.

240. Of the peers that provided input, three peers indicated that their treaty with Romania meets the requirements under element D.3. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer’s intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

241. For the 29 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, one peer reported that either its treaty with Romania meets the Action 14 Minimum Standard or will be modified via the Multilateral Instrument, which indeed is the case. Another peer reported that its treaty with Romania does formally not meet the requirements under element D.3, but that it is willing to accept the alternative provisions. This peer further specified that it has submitted a draft amending protocol to adapt the treaty to the Action 14 Minimum Standard. Lastly, one peer noted that the language in its treaty with Romania deviates from the requirement under element D.3.

Recent developments

Bilateral modifications

242. Romania signed a new treaty with one treaty partner, which concerns a replacement of the existing treaty in force. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is pending ratification. The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

243. Romania signed the Multilateral Instrument and is currently in the process of ratifying this instrument, which is expected in the first semester of 2021.

244. 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 for Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

245. In regard of the 29 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), nor both alternative provisions for Article 9(1) and 7(2), Romania listed all of them as covered tax agreements under the Multilateral Instrument, but only for 27 of them, 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 27 treaty partners, five are not a signatory to the Multilateral Instrument, whereas one did not list their treaty with Romania as a covered tax agreement, and one made a reservation on the basis of Article 16(5)(c). All remaining 18 treaty partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, 21 of the 29 tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

246. Romania reported that for the remaining eight tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, it has been informed

by one relevant treaty partner that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

Peer input

247. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Romania. None of these peers concerns a treaty partner to one of the eight treaties identified above that does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument.

Anticipated modifications

248. For the remaining seven tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Romania reported that it does not have a specific plan for the bilateral renegotiation to bring those treaties in line with the requirements under the Action 14 Minimum Standard.

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>29 out of 87 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 290 treaties:</p> <ul style="list-style-type: none"> • 21 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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. • Seven will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 21 of the 22 treaties concerned and once one treaty partner amended its notifications under that instrument.</p> <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) following its entry into force, Romania should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p>

Note

1. These 56 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

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>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). Of these three treaties:</p> <ul style="list-style-type: none"> • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by the Multilateral Instrument to include the required provision. Of these two treaties: <ul style="list-style-type: none"> - For one Romania will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. - For one no actions have been taken nor are any actions planned to be taken. 	<p>Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Romania should:</p> <ul style="list-style-type: none"> • continue to work in accordance with its plan for the treaty at this time not be modified via the Multilateral Instrument to include the required provision via the Multilateral Instrument • without further delay request the inclusion of the required provision via bilateral negotiations for the remaining treaty.
[A.2]	Roll-back of bilateral APAs is not possible.	Romania should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	Seven out of 87 tax treaties do 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 (OECD, 2015b) or amended by the report. All of these seven treaties will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are any actions planned to be taken.	<p>For these seven treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), Romania should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended in the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
	<p>Nine out of 87 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 nine treaties:</p> <ul style="list-style-type: none"> • Six are expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Three will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these treaties no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 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 these three treaties that will not be modified by the Multilateral Instrument following its entry into force to include the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Romania should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[B.1]	<p>Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017). Of these three tax treaties:</p> <ul style="list-style-type: none"> • Two tax treaties do not contain the 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), or as amended by that final report, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these two treaties: <ul style="list-style-type: none"> - One is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor are any actions planned to be taken. - One will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1). For this treaty, no actions have been taken nor are any actions planned to be taken. • One tax treaty does not contain the equivalent to Article 25(1), first sentence and obliges taxpayers to submit its MAP requests to both competent authorities, and also the timeline to submit a MAP request is less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1). For this treaty, no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>With respect to the first sentence of the treaty mentioned above and for the remaining two treaties that will not be modified by the Multilateral Instrument to include such equivalent, Romania should request for these treaties the inclusion of the required provision via bilateral negotiations. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. as amended in the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Romania should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>

	Areas for improvement	Recommendations
[B.1]	There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Romania's domestic law.	Romania should ensure that taxpayers that meet the requirements of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) can access the MAP.
[B.2]	Out of the 87 tax treaties, none contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Romania should without further delay follow its stated intention to introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Romania should apply such process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>Eight out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Of these eight treaties:</p> <ul style="list-style-type: none"> • Six are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by the Multilateral Instrument to include the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For these two treaties, no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 those six 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 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), Romania should without further delay request the inclusion of the required provision via bilateral negotiations.</p>
[B.8]	MAP guidance is available, but some further clarity should be provided.	Romania should improve the level of clarity of its MAP guidance.
	Contact details of Romania's competent authority are not included in the MAP guidance.	Romania should update its MAP guidance to include the contact information of its competent authority as soon as possible.
	Information on what information taxpayers should include in a MAP request is included in the published guidance, but is not comprehensive and may lead to (unnecessary) requests for additional information.	Romania should introduce in its MAP guidance more detailed guidance on the manner and form in which taxpayers should submit their MAP request.

	Areas for improvement	Recommendations
[B.9]	The MAP profile contains information not in line with Romania's practice and policy and responses given are limited. In addition, there are no references to the MAP guidance in the profile.	Romania should follow its stated intention to update its MAP profile to refer to the MAP guidance and reflect the correct information on its policy and practice on MAP. This concerns information on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published. Furthermore, Romania could consider providing more details in its MAP profile on its MAP process. In addition, as it has published its MAP profile and made its MAP guidance available and easily accessible as from August 2020, Romania should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Two out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). These two treaties will not be modified by the Multilateral Instrument. Of these two treaties: <ul style="list-style-type: none"> For one Romania will revise its list of notifications and reservations to the Multilateral Instrument with a view to have it modified by the Multilateral Instrument. For one no actions have been taken nor are any actions planned to be taken. 	For the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, Romania should: <ul style="list-style-type: none"> continue to work in accordance with its plan for the treaty at this time not be modified via the Multilateral Instrument to include the required provision via the Multilateral Instrument without further delay request the inclusion of the required provision via bilateral negotiations.
[C.2]	-	-
[C.3]	While MAP cases were resolved in 20.74 months, which is below 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), there is still a risk that post-2015 cases are not resolved within the average of 24 months. This in particular regards other cases, for which the average timeframe is 24.76 months and which may indicate that the competent authority is not adequately resourced. Furthermore, the MAP caseload has significantly increased with 130% since 1 January 2016, which regards both attribution/allocation and other cases. This may also indicate that the competent authority is not adequately resourced to cope with this increase.	While Romania intends to reorganise the competent authority function and add new staff to its competent authority, it should closely monitor whether the additional resources foreseen will be sufficient to ensure a timely, effective and efficient resolution of MAP cases, in particular whether this will lead to a further reduction of the average completion time of other cases. If this would not be the case, Romania should, in particular for other cases, hire or assign more staff to its competent authority, or take further actions to ensure a timely resolution of these MAP cases and also to be able to cope with the increase in the number of MAP cases, which regards both attribution/allocation and other cases.
[C.4]	-	-
[C.5]	-	-
[C.6]	Position on using arbitration as a supplement to the mutual agreement procedure is not transparent.	Romania should follow its intention to provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile.

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Romania's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to a five year time limit for making upward and downward adjustments in domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Romania's relevant tax treaty, prevent the implementation of a MAP agreement, Romania should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Romania should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>29 out of 87 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these 290 treaties:</p> <ul style="list-style-type: none"> • 21 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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. • Seven will not be modified by the Multilateral Instrument to include the required provision. For these treaties no actions have been taken nor are any actions planned to be taken. 	<p>Romania 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 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for 21 of the 22 treaties concerned and once one treaty partner amended its notifications under that instrument.</p> <p>For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) following its entry into force, Romania should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Romania

		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	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes N = no	Y = yes N = no	Y = yes N = no
Albania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Algeria	Y	O	i	N/A	Y	i	Y	Y	Y	Y	N
Armenia	Y	O	ii*	2 years	Y	i	Y	Y	Y	Y	N
Australia	Y	O	Y	N/A	Y	i	Y	Y	N	N*	N
Austria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.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?
Bangladesh	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Belarus	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Belgium	Y	O	Y	N/A	Y	i	Y	N*	Y	N*	N
Bosnia and Herzegovina	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Bulgaria	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Canada	Y	O	ii*	2 years	Y	i	Y	iii	Y	Y	N
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Cyprus ^a	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N
Czech Republic	Y	O	Y	N/A	i	i	Y	N*	Y	Y	N
Denmark	Y	N	Y	N/A	i**	i	Y	N*	Y	Y	N
Ecuador	Y	O	Y	N/A	Y	i	Y	N	Y	N	N
Egypt	Y	O	i	N/A	i	i	Y	N*	Y	Y	N
Estonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ethiopia	Y	O	ii	2 years	Y	i	Y	Y	Y	Y	N
Finland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
France	Y	N	i	N/A	i**	i	Y	Y	N*	Y	N
Georgia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Germany	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Greece	Y	O	Y	N/A	i**	i	Y	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?
Hong Kong (China)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Hungary	Y	O	Y	N/A	i**	i	Y	N*	Y	Y	N
Iceland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
India	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Indonesia	Y	O	ii*	2 years	i**	i	Y	N*	Y	Y	N
Iran	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N
Ireland	Y	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Israel	Y	N	ii*	2 years	i**	i	Y	Y	Y	Y	N
Italy	Y	O	Y	N/A	i	i	Y	N*	Y	Y	N
Japan	Y	N	i	N/A	i**	i	Y	N*	Y	Y	N
Jordan	Y	N	i	N/A	i	i	Y	N*	Y	Y	N
Kazakhstan	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Korea (Democratic People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Korea	Y	O	Y	N/A	i	i	Y	N*	Y	Y	N
Kuwait	Y	O	ii	2 years	Y	i	Y	Y	Y	Y	N
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lebanon	Y	O	ii	2 years	Y	i	Y	Y	Y	Y	N
Lithuania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.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?
Luxembourg	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malaysia	Y	O	i	N/A	i**	i	Y	N*	Y	N*	N
Malta	Y	O	Y	N/A	Y	i	N	Y	Y	Y	N
Mexico	Y	O	Y	N/A	i	i	Y	N*	Y	Y	Y
Moldova	Y	N	ii	2 years	Y	i	Y	Y	Y	Y	N
Montenegro	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Morocco	Y	N	ii	4 years	Y	i	Y	Y	Y	Y	N
Namibia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Netherlands	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Nigeria	Y	O	ii	5 years	Y	i	Y	N*	Y	N*	N
North Macedonia	Y	O	ii*	2 years	Y	i	Y	Y	Y	Y	N
Norway	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Pakistan	Y	O	ii*	2 years	Y	i	Y	Y	Y	Y	N
Philippines	Y	O	Y	N/A	Y	i	Y	ii	Y	Y	N
Poland	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Qatar	Y	O	ii*	2 years	i	i	Y	Y	Y	Y	N
Russia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
San Marino	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Saudi Arabia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Serbia	Y	O	Y	N/A	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?
Singapore	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
Slovak Republic	Y	O	Y	N/A	i	i	Y	N*	Y	Y	N
Slovenia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N
South Africa	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	N
Spain	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sri Lanka	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N
Sudan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Sweden	Y	N	Y	N/A	i**	i	Y	Y	Y	Y	N
Switzerland	Y	O	Y	N/A	i	i	Y	ii	Y	Y	N
Syrian Arab Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Tajikistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Thailand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N
Tunisia	Y	N	iv	N/A	i**	i	Y	N*	Y	Y	N
Turkey	Y	O	i	N/A	Y	i	Y	N*	Y	Y	N
Turkmenistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Ukraine	Y	O	Y	N/A	Y	i	Y	N*	Y	Y	N
United Arab Emirates	Y	N	Y	N/A	Y	i	Y	Y	Y	Y	N
United Kingdom	Y	O	i	N/A	i**	i	Y	N*	Y	N*	N
United States	Y	O	i	N/A	i	i	N	N	N	N	N
Uruguay	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N

		Article 25(1) of the OECD Model Tax Convention (“MTC”)			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.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?
Uzbekistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Zambia	Y	O	i	N/A	i	i	Y	iii	Y	Y	N

Note: 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	17	0	0	0	0	0	0	0	0	0	0	17	n.a.
Others	6	0	0	1	0	0	0	0	0	0	0	5	14.40
Total	23	0	0	1	0	0	0	0	0	0	0	22	14.40

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in 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	17	0	0	0	0	1	0	0	0	0	0	16	74.86
Others	5	0	0	0	0	0	0	0	0	0	1	4	99.25
Total	22	0	0	0	0	1	0	0	0	0	1	20	87.06

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

- The reported number of MAP cases pending on 31 December 2017 was 19 which consists of 16 attribution/allocation cases and three other cases.
- The reported number of MAP cases pending on 1 January 2018 was 20, which consists of 16 attribution/allocation cases and four other cases.

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

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	16	0	0	0	0	0	0	0	0	0	1	15	0.00
Others	4	1	0	0	0	0	0	0	1	0	0	2	15.77
Total	20	1	0	0	0	0	0	0	1	0	1	17	10.51

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	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	0	6	0	0	0	0	0	0	0	0	0	0	6	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	3	9	0	0	0	1	0	0	0	0	0	0	11	2.60
Others	3	3	0	0	0	0	0	0	0	0	0	0	6	n.a.
Total	6	12	0	0	0	1	0	0	0	0	0	0	17	2.60

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

- The reported number of MAP cases pending on 31 December 2016 was five, which consists of two attribution/allocation cases and three other cases.
- The reported number of MAP cases pending on 1 January 2017 was six, which consists of three attribution/allocation cases and three other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2015 cases received in 2016 was corrected.

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	11	18	0	0	1	0	2	0	0	0	0	0	26	16.63
Others	6	6	1	0	1	0	0	0	0	0	0	0	10	1.68
Total	17	24	1	0	2	0	2	0	0	0	0	0	36	5.25

Notes: There is a discrepancy between the number of post-2015 MAP cases in Romania’s inventory on 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 16, which consists of ten attribution/allocation cases and six other cases.
- The reported number of MAP cases pending on 1 January 2018 was 17, which consists of 11 attribution/allocation cases and six other cases.

In order to have matching numbers for 31 December 2018 and 1 January 2019, the number of post-2015 cases received in 2018 was corrected.

Glossary

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

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14