

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Latvia (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 7 May 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 |
| FTA | Forum on Tax Administration |
| MAP | Mutual Agreement Procedure |
| OECD | Organisation for Economic Co-operation and Development |

Executive summary

Latvia has a relatively large tax treaty network with over 60 tax treaties and has signed and ratified the EU Arbitration Convention. Latvia also has a MAP programme with modest experience in resolving MAP cases. It has a small MAP inventory, except for a set of cases submitted in 2016 where almost 200 taxpayers were involved, with a small number of new cases submitted each year and three cases pending on 31 December 2019. All of these cases concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Latvia met more than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Latvia worked to address them, which has been monitored in stage 2 of the process. In this respect, Latvia solved most of the identified deficiencies.

All of Latvia's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except for the fact that almost 10% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Latvia signed and ratified the Multilateral Instrument. Through this instrument, a number of its tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of the Multilateral Instrument, Latvia reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

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

Latvia meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 September 2018 not received any MAP request concerning the application of anti-abuse provisions. However, Latvia does not have 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. Finally, Latvia has not yet published its guidance on the availability of MAP and how it applies this procedure in practice although it has issued detailed procedural rules on the conduct of MAP with other member states of the EU, arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Concerning the average time needed to close MAP cases, the MAP statistics for Latvia for the period 2016-19 are as follows:

| 2016-19 | Opening inventory 1/1/2016 | Cases started | Cases closed | End inventory 31/12/2019 | Average time to close cases (in months)* |
|------------------------------|----------------------------|---------------|--------------|--------------------------|--|
| Attribution/allocation cases | 2 | 3 | 2 | 3 | 37.55 |
| Other cases | 4 | 201 | 205 | 0 | 6.25 |
| Total | 6 | 204 | 207 | 3 | 6.54 |

* 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, Latvia used as a start date five weeks from the receipt of a MAP request received from the taxpayer, and as the end date the date the taxpayer is informed of the outcome of the MAP.

The number of Latvia closed in 2016-19 is higher than the number of all cases started in those years. Further, as noted above, Latvia has ensured that all old cases i.e. pre-2016 cases have been resolved by the end of 2019. During these years, MAP cases were on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 6.54 months. However, the average time taken to resolve attribution/allocation cases was higher than 24 months and the average time taken to resolve all cases outside of the grouped 197 cases mentioned above was higher than 24 months. Further, Latvia's competent authority took more than 24 months to resolve several pre-2016 cases in the unilateral stage. On this basis, Latvia should closely monitor whether its existing resources will ensure that pending and future MAP cases are resolved in a timely, efficient and effective manner.

Furthermore, Latvia meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Latvia's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. However, the performance indicators used for the evaluation of staff in charge of MAP are based on the maintained amounts of tax revenues, although no issues have surfaced during the period under review.

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

Reference

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

Introduction

Available mechanisms in Latvia to resolve tax treaty-related disputes

Latvia has entered into 62 tax treaties on income (and/or capital), 61 of which are in force.¹ These 62 treaties apply to 63 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, three of the 62 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Furthermore, Latvia 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, Latvia also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.⁵ This directive has been implemented in Latvia’s domestic legislation by the amendments to the law “On Taxes and Duties” with effect from 23 October 2019.⁶

Under Latvia’s tax treaties, the competent authority function to conduct MAP is assigned to the Minister of Finance and further delegated to the State Revenue Department. The competent authority of Latvia currently employs approximately eight employees across several divisions who also deal with other tasks in the respective divisions.

Latvia has not yet issued any guidance on governance and administration of the mutual agreement procedure (“MAP”), but indicated that it is currently preparing such guidance which it expects to be published in 2021.

However, Latvia issued detailed procedural rules on the conduct of MAP with other member states of the EU, arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, through the introduction of Chapter XV of the law “On Taxes and Duties”, which is available at:

<https://www.vestnesis.lv/op/2019/214.2>

Developments in Latvia since 1 September 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Latvia noted that it was conducting tax treaty negotiations with eleven jurisdictions. This situation remains the same. Further, the stage 1 report noted that Latvia had signed an amending protocol to its existing treaty with Switzerland, which would amend the MAP provision to include an arbitration provision, which had not entered into force. This amending protocol has now entered into force.

In addition, Latvia reported that since 1 September 2018 it has signed a new tax treaty with Saudi Arabia (2019), which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains Article 9(2) and the equivalent of Articles 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). It has not entered into force as yet.

Furthermore, Latvia on 7 June 2017 signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 29 October 2019, Latvia deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Latvia on 1 February 2020. With the deposit of the instrument of ratification of the Multilateral Instrument, Latvia also submitted its list of notifications and reservations to that instrument.⁷ In relation to the Action 14 Minimum Standard, Latvia 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.

For the two treaties that are 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, Latvia reported that it intends to update them via bilateral negotiations. In this regard, Latvia clarified that it envisaged the initiation of negotiations with one treaty partner on an amending protocol so as to make this treaty in line with the Action 14 minimum standard. As regards the other treaty partner, Latvia reported that it has exchanged official letters to agree on entering into a memorandum of understanding with this treaty partner to make the treaty in line with the Action 14 minimum standard. However, since Latvia’s treaty with the treaty partner has not been modified through an amending protocol, Latvia reported that negotiations will remain ongoing.

Other developments

Further to the above, Latvia reported that it has made a few changes to the operation of the MAP in Latvia and that it has updated its MAP guidance. These changes can be summarised as follows:

- *APA programme*: a change in the interpretation of Latvia’s tax treaties to allow bilateral or multilateral requests filed in Latvia, provided that the request clearly states that the taxpayer wants to pursue such a bilateral or multilateral APA and provided that the relevant treaty contains a provision equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017) and the introduction of guidance on the conduct of advance pricing arrangements in Latvia through the introduction of Regulation No. 802 of the Cabinet dated 18 December 2018 as well as the documentation of the possibility of granting roll-back in transfer pricing adjustments in general, including advance pricing arrangements through amendments made to the law “On Taxes and Duties” with effect from 1 January 2019.
- *Legislative changes relating to MAP*: the official delegation of competent authority function to the State Revenue Department through the law “On Taxes and Duties” with effect from 28 November 2019 as well as the introduction of detailed procedural rules on the conduct of the MAP with other EU member States arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017

on tax dispute resolution mechanisms in the European Union through amendments made to the law “On Taxes and Duties” with effect from 23 October 2019.

Handling and resolving MAP cases: some internal steps to improve the MAP, including the introduction of a new system for the monitoring of MAP caseload and resources, the introduction of new conflict of interest policies to avoid conflict of interest while setting up the responsible team for a MAP case and the introduction of new performance indicators for the competent authority staff.

Training of staff: the organisation of internal training for and the attendance of OECD MAP trainings by the competent authority staff.

Basis for the peer review process

The peer review process entails an evaluation of Latvia’s implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Latvia, its peers and taxpayers. The questionnaires for the peer review process were sent to Latvia and the peers on 31 August 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Latvia’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 8 May 2019. This report identifies the strengths and shortcomings of Latvia 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 Latvia. In this update report, Latvia 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 Latvia is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol were taken into account, even if it concerns a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Serbia and Montenegro for both Serbia and Montenegro to which this treaty is still being applied by Latvia. As it concerns the same tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Latvia’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Latvia was launched on 31 August 2018, with the sending of questionnaires to Latvia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Latvia in March 2019, with the subsequent approval by the BEPS Inclusive Framework on 8 May 2019. On 8 May 2020, Latvia submitted its update report, which initiated stage 2 of the process.

The period for evaluating Latvia’s implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 31 August 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 September 2018 and depicts all developments as from that date until 30 April 2020.

In total nine peers provided input: Germany, Lithuania, the Netherlands, Norway, Slovenia, Sweden, Switzerland, Turkey and the United States. Out of these eight peers, three had MAP cases with Latvia that started on or after 1 January 2016, according to the MAP statistics reported by Latvia. These three peers represent 99.5% of post-2015 MAP cases in Latvia’s inventory that started in 2016 or 2017. During stage 2, the same peers provided input. In addition, Denmark also provided input during stage 2. For this stage, these peers represent approximately 98 % of post-2015 MAP cases in Latvia’s MAP inventory that started in 2016, 2017, 2018 or 2019. While most peers indicated their limited experiences with Latvia, some of them reported having experienced good co-operation from Latvia’s competent authority. Specifically with respect to stage 2, all peers that provided input reported that the update report of Latvia fully reflects the experiences these peers have had with Latvia since 1 September 2018 and/or that there was no addition to previous input given. The peer that provided input only during stage 2 expressed that its competent authority has experienced good and efficient co-operation in its relationship with Latvia’s competent authority.

Input by Latvia and co-operation throughout the process

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

- a. MAP profile¹⁰
- b. MAP statistics¹¹ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Latvia

The analysis of Latvia’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Latvia, its MAP caseload during this period was as follows:

| 2016-19 | Opening inventory 1/1/2016 | Cases started | Cases closed | End inventory 31/12/2019 |
|------------------------------|-------------------------------|---------------|--------------|-----------------------------|
| Attribution/allocation cases | 2 | 3 | 2 | 3 |
| Other cases | 4 | 201 | 205 | 0 |
| Total | 6 | 204 | 207 | 3 |

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).¹² Apart from analysing Latvia’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Latvia during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Latvia 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 Latvia relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Latvia 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 Latvia has entered into are available at: <https://www.mfa.gov.lv/en/policy/bilateral-agreements?title=double&signer=&country=0&organization=0&branch=28&status=0&date=&search=true>. The treaty that is signed by Latvia but has not yet entered into force is with Saudi Arabia (2019). This treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Latvia's tax treaties.
2. Latvia continues to apply the treaty with former Serbia and Montenegro to both Serbia and Montenegro.
3. These three treaties concern the treaties with Japan, Netherlands and Switzerland. Reference is made to Annex A for the overview of Latvia's tax treaties.
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://www.vestnesis.lv/op/2019/214.2>.
7. www.oecd.org/tax/treaties/beps-mli-position-latvia-instrument-deposit.pdf.
8. *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, LATVIA 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/latvia/making-dispute-resolution-more-effective-map-peer-review-report-latvia-stage-1-b0de32d9-en.htm.
10. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
11. The MAP statistics of Latvia are included in Annex 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.

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- 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 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 Latvia's tax treaties

2. All of Latvia's 62 tax treaties 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

3. Eight peers indicated during stage 1 that their treaty with Latvia meet the requirement under element A.1, which is in line with the above analysis.

Recent developments

Bilateral modifications

4. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Peer input

5. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Latvia.

Anticipated modifications

6. Latvia 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] | - | - |

[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.

7. 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.

Latvia’s APA programme

8. Latvia reported that it has a unilateral APA programme since 2013, but it has not introduced a formal bilateral or multilateral APA programme.

9. However, Latvia reported that in practice, it is possible to enter into bilateral or multilateral APAs since its competent authority is open to accepting and discussing a bilateral or multilateral APA request, provided that the request clearly states that the taxpayer wants to pursue such a bilateral or multilateral APA and provided that the relevant treaty contains a provision equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017a).

10. Latvia further reported that guidance on the conduct of advance pricing arrangements in Latvia was released through the introduction of Regulation No. 802 of the Cabinet dated 18 December 2018 and available (in English) at:

<http://vvc.gov.lv/image/catalog/dokumenti/Cab.%20Reg.%20No.%20802%20-%20Transfer%20Pricing%20Documentation.docx>

11. This guidance generally deals with the unilateral APA programme in Latvia, but acknowledges the possibility of bilateral or multilateral APAs involving Latvia in the section concerning transfer pricing documentation.

Roll-back of bilateral APAs

12. Latvia reported that it is open to providing roll-back of bilateral or multilateral APAs that are accepted into discussions as noted above. Latvia noted in this regard that the possibility to allow retroactive transfer pricing adjustments, including roll-back of APAs, within the statutory time-limit of 5 years, is provided in its law “On Taxes and Duties”.

Recent developments

13. In the stage 1 report, it was noted that Latvia could not accept bilateral or multilateral APA requests directly from taxpayers but that a bilateral or multilateral APA request submitted before the treaty partner could be discussed through two routes. The first option was the use of a collaborative compliance project in Latvia, whereby Latvian multinational enterprises could ask their foreign affiliates located in other jurisdictions to submit a bilateral or multilateral APA request in those jurisdictions. The other option was through a consultation between Latvia’s tax administration and a Latvian taxpayer which submitted a unilateral APA request, whereby Latvia invited the taxpayer to submit a bilateral or multilateral request through its affiliates in other jurisdictions. However, as clarified above, Latvia has revised its interpretation of its tax treaties to now allow a bilateral or multilateral APA request filed in Latvia as well, provided that the request clearly states that the taxpayer wants to pursue such a bilateral or multilateral APA and provided that the relevant treaty contains a provision equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017a).

14. As noted above, Latvia has also recently introduced guidance on the conduct of advance pricing arrangements in Latvia through Regulation No. 802 of the Cabinet dated 18 December 2018. Further, Latvia has documented the possibility of granting roll-back in transfer pricing adjustments in general, including advance pricing arrangements through amendments made to the law “On Taxes and Duties” with effect from 1 January 2019.

Practical application of roll-back of bilateral APAs

15. Latvia publishes statistics on APAs on the website of the EU JTTPF.³

Period 1 January 2016-31 August 2018 (stage 1)

16. Latvia reported having not received any requests for bilateral APAs during the period 1 January 2016-31 August 2018. Latvia specified that it has two collaborative compliance project related APA requests pending with one jurisdiction.

17. All peers that provided input indicated that they have not received a request for a roll-back of a bilateral APA concerning Latvia in the period 1 January 2016-31 August 2018.

Period 1 September 2018-30 April 2020 (stage 2)

18. Latvia reported having received four requests for bilateral APAs since 1 September 2018, out of which one included a request for roll-back. Latvia noted that all of these APA requests has now been granted and resolved. Latvia further reported that the two pending collaborative compliance project related APAs that were pending on 31 August 2018 have also been granted.

19. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Latvia fully reflects their experience with Latvia since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2, which peer also noted that its APA case pending with Latvia has already been resolved and that it found the co-operation with Latvia’s competent authority good and efficient.

Anticipated modifications

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [A.2] | - | - |

Notes

1. These 62 treaties include the treaty with former Serbia and Montenegro that Latvia continues to apply to both Serbia and Montenegro.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
3. Available at: https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en. The most recent statistics published are up to 2019.

References

- OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.
- OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

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

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

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

Current situation of Latvia's tax treaties

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

22. Three of Latvia's 62 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 56 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

23. The remaining three treaties can be categorised as follows:

| Provision | Number of tax treaties |
|--|------------------------|
| A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident. | 2 |
| A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request. | 1 |

24. The two treaties mentioned in the first row of the table 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 national where the case comes under the non-discrimination article. However, the non-discrimination provision of these two treaties only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow for the submission of MAP requests only to the state of which the taxpayer is a resident, and these treaties are therefore in line with the Action 14 Minimum Standard.

25. The treaty mentioned in the second row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. The protocol prescribes that:

the expression “irrespective of the remedies provided by the domestic law” means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initialled, when the claim is related with an assessment of the taxes not in accordance with this Convention.

26. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). This treaty is therefore considered not in line with this part of element B.1.

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

27. Out of Latvia’s 62 tax treaties, 60 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.

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

| Provision | Number of tax treaties |
|---|------------------------|
| No filing period for a MAP request | 1 |
| Filing period less than 3 years for a MAP request (2 years) | 1 |

Peer input

29. Eight peers indicated during stage 1 that their treaty with Latvia meets the requirement under element B.1, which is in line with the above analysis. For the two treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

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

30. As noted in paragraphs 21-25 above, taxpayers can file a MAP request irrespective of domestic remedies in all but one of Latvia's tax treaties. In this respect, Latvia reported that if a taxpayer submits a MAP request and simultaneously initiates domestic available remedies, access to MAP would be granted. This is clarified in Latvia's MAP profile as well.

31. The stage 1 report noted that Latvia would deny access to MAP where domestic remedies have been finalised. This position was based on Latvia's interpretation of Article 7(3) of the EU Arbitration Convention, which required competent authorities to initiate the arbitration procedure under such instrument when an agreement is not reached within two years of submission of the request.

32. Latvia reported in this regard that since 1 September 2018, Latvia has revised its interpretation of Article 7(3) of the EU Arbitration Convention and that it would grant access to MAP even where there is a judicial decision on the issue in question. However, Latvia clarified that its competent authority would not be able to derogate from a judicial decision in MAP but that it would allow correlative adjustments in the treaty partner jurisdiction. Latvia noted that it presently only applies Article 7(3) of the EU Arbitration Convention as regards the initiation of arbitration under this instrument.

33. Latvia further reported that even if a MAP case is initiated based on its implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, access to MAP would be granted even where there is a judicial decision on the issue. However, Latvia clarified that it would not continue the MAP process where domestic remedies are finalised in an accepted MAP cases which is not yet closed.

34. Since access to MAP is now granted without restrictions in a case where domestic judicial remedies are finalised, the recommendation made in the stage 1 report has now been addressed.

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

35. Latvia reported that in the absence of a provision setting a filing period for MAP requests, its competent authority would in practice apply the three-year period for the date of the first notification of the action resulting in taxation not in accordance with the treaty as prescribed in Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). This is also clarified in Latvia's MAP profile.

Recent developments

Bilateral modifications

36. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not entered into force. It contains a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

37. Latvia signed the Multilateral Instrument and deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument has entered into force for Latvia on 1 February 2020.

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

38. 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.

39. Latvia reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.¹ In this reservation, Latvia 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.

40. In view of the above, following the reservation made by Latvia, the treaty identified in paragraphs 21-25 above that is 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

41. 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).

42. With regard to the treaty identified in paragraph 27 above that contains a filing period for MAP requests of less than three years, Latvia listed this treaty as a covered tax agreement under the Multilateral Instrument but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). For this treaty, Latvia also did not make a notification on the basis of Article 16(6)(b)(ii) that these treaties contain a provision described in Article 16(4)(a)(ii). The treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Latvia as a covered tax agreement and also did not make a notification on the basis of Article 16(6)(b)(ii) that its treaty with Latvia contains a provision described in Article 16(4)(a)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty in question deviates from Article 25(1), second sentence, the provision in this covered tax agreement is considered to be incompatible with the second sentence of Article 16(1).

43. This treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Latvia and this treaty partner, and therefore, this treaty has been superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

44. Latvia reported that for the one treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b) and which will not be modified by the Multilateral Instrument, negotiations have already been initiated.

Peer input

45. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Latvia.

Anticipated modifications

46. Latvia 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 |
|-------|---|--|
| [B.1] | One out of 62 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) as it read prior to or as amended by the Action 14 final report (OECD, 2015b). This treaty will not be modified by the Multilateral Instrument. With respect to this treaty, negotiations are pending. | <p>As the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to or as amended by the Action 14 final report (OECD, 2015b) will not be modified by the Multilateral Instrument to include such equivalent upon its entry into force for the treaty concerned, Latvia should continue negotiations with the treaty partner with a view to including the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either</p> <p>a. as amended by the Action 14 final report (OECD, 2015b); or</p> <p>b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.</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).

47. 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

48. As discussed under element B.1, three out of Latvia's 62 treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, Latvia reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.² Therefore, none of the remaining 59 treaties will be modified by the Multilateral Instrument, upon its entry into force for these treaties concerned, to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

49. Latvia reported that in practice, where its competent authority feels that an objection raised by a taxpayer in a MAP request is not justified, it will notify the other competent authority of such proposed decision providing reasoning for the same. Latvia clarified that it would also invite the other competent authority to give its opinion on the case and that such opinion would be taken into account before a final decision on the case. However, Latvia has not documented this process for its competent authority staff to follow as yet.

Recent developments

50. In the stage 1 report, Latvia reported that it follows a notification/consultation process only where the objection is not considered justified in transfer pricing cases arising out of the EU Arbitration Convention. Latvia has clarified that at the moment, it applies such a process in practice, as noted above, for all cases whether arising from tax treaties, the EU Arbitration Convention or the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

51. Latvia reported that in the period 1 January 2016-31 August 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 Latvia also show that none of its MAP cases was closed with the outcome "objection not justified".

52. All peers that provided input indicated not being aware of any cases for which Latvia's competent authority considered an objection in a MAP request not justified in the period 1 January 2016-31 August 2018, which can be clarified by the fact that no such instances have occurred in Latvia during this period.

Period 1 September 2018-30 April 2020 (stage 2)

53. Latvia reported that since 1 September 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2018 and 2019 MAP statistics submitted by Latvia also show that none of its MAP cases was closed with the outcome "objection not justified".

54. All peers that provided input during stage 1 also indicated in stage 2 that since 1 September 2018 they are not aware of any cases for which Latvia’s competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Latvia since that date. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

55. Latvia reported that it intends to document a bilateral consultation/notification process in its forthcoming MAP guidance as well as in its internal guidance for its competent authority staff.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|---|
| [B.2] | 59 of the 62 treaties do not contain a provision equivalent to Article 25(1) 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 partners. 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. | Latvia should without further delay follow up on its stated intention to document its bilateral notification 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, Latvia should apply its notification process for future 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.

56. 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

57. Out of Latvia’s 62 tax treaties, 54 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The remaining five 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 two treaties, the term “may” is used instead of “shall” when it concerns the granting of a corresponding adjustment

- in two treaties, its provision only indicates that the competent authorities may consult together for granting a corresponding adjustment
- in one treaty, it requires the agreement by the competent authorities of both states to grant a corresponding adjustment.

58. Latvia 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.

59. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Latvia's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Latvia indicated that it will provide appropriate adjustments or will endeavour to resolve issues with other competent authorities in accordance with the MAP article in the respective tax treaty. It also indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties. Since Latvia has not published its MAP guidance, there is no publicly available information in Latvia on this subject. However, this is confirmed in Latvia's MAP profile.

Recent developments

Bilateral modifications

60. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

61. Latvia signed the Multilateral Instrument and has deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument has entered into force for Latvia on 1 February 2020.

62. 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)).

63. Latvia 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). Furthermore, Latvia reserved its right not to apply the provision on the basis that in the absence of a provision referred to in Article 17(2) in its Covered Tax Agreement:

- i. it shall make the appropriate adjustment referred to in Article 17(1); or
- ii. its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to the mutual agreement procedure

64. Therefore, at this stage, none of the eight tax treaties identified in paragraph 56 above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

Application of legal and administrative framework in practice

Period 1 January 2016-31 August 2018 (stage 1)

65. Latvia reported that in the period 1 January 2016-31 August 2018, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, since that date no requests in relation hereto were received from a taxpayer by its competent authority.

66. Peers indicated not being aware of a denial of access to MAP by Latvia in the period 1 January 2016-31 August 2018 on the basis that the case concerned was a transfer pricing case.

Period 1 September 2018-30 April 2020 (stage 2)

67. Latvia reported that also since 1 September 2018, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case.

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

Anticipated modifications

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.3] | - | - |

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

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

70. 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

71. None of Latvia's 62 tax treaties allows 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 Latvia 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.

72. Latvia reported that it will grant access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. This is confirmed in Latvia's MAP profile.

Recent developments

73. The stage 1 report noted that after receiving MAP requests for such cases, Latvia's competent authority would consult the other competent authority and clarify the relevant facts relating to the taxpayers' actions, the actions taken by the competent authorities as well as the information provided in both countries on transactions performed with a view detect to more accurately abuses of treaty or domestic provisions prior to giving or denying access to MAP after analysing such information.

74. However, as noted above, Latvia has now revised its practice to provide access to MAP in all cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. This change is now reflected in Latvia's MAP profile as well. Therefore, the recommendation made in the stage 1 report has been addressed.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

75. Latvia reported that in the period 1 January 2016-31 August 2018 it did not deny access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, since that date no requests in relation hereto were received by its competent authority.

76. Peers that provided input indicated not being aware of cases that have been denied access to MAP in Latvia in the period 1 January 2016-31 August 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 September 2018-30 April 2020 (stage 2)

77. Latvia reported that since 1 September 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.

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

Anticipated modifications

79. Latvia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.4] | - | - |

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

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

80. 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

81. Under Latvia's domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement.

Administrative or statutory dispute settlement/resolution process

82. Latvia 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 assessed through a request by the taxpayer, which may limit access to MAP.

Recent developments

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

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

84. Latvia reported that in the period 1 January 2016-31 August 2018 it has not received or 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, which can be explained by the fact that audit settlements are not available in Latvia.

85. All peers indicated not being aware of a denial of access to MAP in Latvia in the period 1 January 2016-31 August in cases where there was an audit settlement between the taxpayer and the tax administration.

Period 1 September 2018-30 April 2020 (stage 2)

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

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

Anticipated modifications

88. Latvia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.5] | - | - |

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

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

89. 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

90. As discussed in element B.8, Latvia reported that with respect to information and documentation to be included in a MAP request, it refers to the principles contained in Chapter XV of the law "On Taxes and Duties". In addition, since Latvia has not issued its MAP guidance, it reported that its competent authority notifies the taxpayer individually of any additional information necessary by regular post or electronically via email.

91. Latvia reported that there is no set timeframe given to the taxpayer to provide additional information and that the time provided would vary from case to case, depending on the information requested as well. However, Latvia reported that generally, the timeframe given to the taxpayer to provide the requested information or documentation is one month, and that such timeframe can be extended for valid reasons.

92. For cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Latvia noted that the taxpayer is obliged to respond to additional information request within three months and if the taxpayer does not respond in such time, the MAP request may be proposed to be rejected. However, if the taxpayer provides a valid reason for such delay within six months, this timeframe may be extended.

Recent developments

93. Other than the additional conditions mentioned above that are applicable to cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, there are no recent developments with respect to element B.6.

Practical application***Period 1 January 2016-31 August 2018 (stage 1)***

94. Latvia reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements. It further reported that since 1 January 2016 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

95. All peers that provided input indicated not being aware of a limitation of access to MAP by Latvia since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Period 1 September 2018-30 April 2020 (stage 2)

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

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

Anticipated modifications

98. Latvia indicated that it does not anticipate any modifications in relation to element B.6, apart from the fact that its forthcoming MAP guidance will also address the information and documentation required to be submitted along with a MAP request.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.6] | - | - |

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

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

99. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Latvia's tax treaties

100. Out of Latvia's 62 tax treaties, 57 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.³ The remaining five treaties do not contain a provision that is based on or equivalent to such provision.

101. Eight peers indicated during stage 1 that their treaty with Latvia meets the requirement under element B.7, which is in line with the above analysis. For the five treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input.

Recent developments

Bilateral modifications

102. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

103. Latvia signed the Multilateral Instrument and has deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument entered into force for Latvia on 1 February 2020.

104. 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).

105. With regard to the five 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), Latvia listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All of the relevant five treaty partners are signatories to the Multilateral Instrument, listed their treaty with Latvia as a covered tax agreement and made such notification.

106. Of the five treaty partners mentioned above, four have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Latvia and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified four treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

107. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Latvia.

Anticipated modifications

108. Latvia reported that 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] | - | - |

[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.

109. 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.

Latvia’s MAP guidance

110. Latvia reported that since it does not have its published or internal MAP guidance, its staff in charge of MAP refers to best practices included in the OECD Manual on Effective Mutual Agreement Procedures, the commentary of Article 25 of the OECD Model Tax Convention (OECD, 2017) (if necessary), and the Code of Conduct of the Arbitration Convention.

111. However, Latvia issued detailed procedural rules on the conduct of MAP with other member states of the EU, arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, through the introduction of Chapter XV of the law “On Taxes and Duties”, which is available at:

<https://www.vestnesis.lv/op/2019/214.2>

112. Latvia noted that till it releases its MAP guidance, in practice, the conduct of MAP cases arising from tax treaties would also be considered under the rules contained in Chapter XV of the law “On Taxes and Duties” unless the rules therein go against the provisions of the tax treaty concerned.

Information and documentation to be included in a MAP request

113. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.⁴ Latvia reported that with respect to information and documentation to be included in a MAP request, it refers to Chapter XV of the law “On Taxes and Duties”. This list provides the information and documentation necessary for a request arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. On this basis, the items to be included in a request for MAP assistance in Latvia 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.

114. In addition to the above, the list of required information contains (i) the copies of the tax assessment notices, tax audit report or equivalent leading to the alleged double taxation (unless they were issued by the State Revenue Department) and (ii) details of any appeals and litigation procedures initiated by the taxpayer.

115. Since Latvia has not issued its MAP guidance, it reported that its competent authority notifies the taxpayer individually of any additional information necessary by regular post or electronically via email.

Recent developments

116. There are no recent developments with respect to element B.8, except that Latvia would now follow the rules contained in Chapter XV of the law “On Taxes and Duties” for all MAP cases unless the rules therein go against the provisions of the tax treaty concerned.

Anticipated modifications

117. Latvia reported that its forthcoming MAP guidance is expected to address the following items:

- contact information of the competent authority or the office in charge of MAP cases
- the manner and form in which the taxpayer should submit its MAP request
- criteria for refusal of MAP requests
- the specific information and documentation that should be included in a MAP request (which would include all information contained in the list described above as indicative guidance of the FTA MAP Forum)
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration (including under the EU Arbitration convention and under Chapter XV of the law “On Taxes and Duties”)
- relationship with domestic available remedies

- access to MAP in transfer pricing cases, for multilateral disputes, bona fide foreign-initiated self-adjustments and for multi-year resolution of cases
- implementation of MAP agreements
- rights and role of taxpayers in the process
- suspension of tax collection.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-------------------------------------|--|
| [B.8] | There is no published MAP guidance. | Latvia should, without further delay, follow its stated intention to introduce guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a 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.

118. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁵

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

119. As discussed under element B.8, Latvia has not published any MAP guidance.

MAP profile

120. The MAP profile of Latvia is published on the website of the OECD and was last updated in November 2020. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

122. Latvia reported that it would update its MAP profile as soon as its MAP guidance is introduced.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|---|
| [B.9] | The MAP guidance is not publically available. | Latvia should make its MAP guidance currently in preparation publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed. |

[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.

123. 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

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

125. 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

126. As previously mentioned under element B.5, Latvia has no 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 this regard, there is no need for Latvia to address the effects of such process with respect to MAP.

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

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

128. Since the administrative or statutory dispute settlement/resolution process in Latvia does not preclude access to MAP, there is no need for Latvia to notify its treaty partners of this process. Peers also reported not informed of the existence of this process and its effect on MAP.

Recent developments

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

Anticipated modifications

130. Latvia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

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

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, LATVIA 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 Latvia’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-latvia-instrument-deposit.pdf.
2. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, LATVIA 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 Latvia's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-latvia.pdf.

3. These 57 treaties include the treaty with former Serbia and Montenegro that Latvia continues to apply to both Serbia and Montenegro.
4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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Part C

Resolution of MAP cases

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

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

131. 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 Latvia's tax treaties

132. All but one of Latvia's 62 tax treaties 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 The remaining treaty contains an additional condition stipulating that the competent authority of the other Contracting State is notified of the case within four and a half years from the due date or date of filing of the return in that other State, whichever is later. This provision is, therefore, considered not being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

133. Eight peers indicated during stage 1 that their treaty with Latvia meets the requirement under element C.1, which is in line with the above statement. For the treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input.

Recent developments

Bilateral modifications

134. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

135. Latvia signed the Multilateral Instrument and has deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument has entered into force for Latvia on 1 February 2020.

136. 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).

137. With regard to the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Latvia listed this treaty as a covered tax agreement under the Multilateral Instrument and it made, pursuant to Article 16(6)(c)(i), a notification that the treaty does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is also a signatory to the Multilateral Instrument, listed its treaty with Latvia as a covered tax agreement and made such a notification.

138. Therefore, at this stage, the treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

139. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Latvia.

Anticipated modifications

140. Latvia reported that 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] | - | - |

[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).

141. 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

142. Statistics regarding all tax treaty related disputes concerning Latvia are published on the website of the OECD as of 2013.² Latvia publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

143. 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. Latvia provided its MAP statistics for 2016-19 within the given deadline, but a significant number of post-2015 cases was not included in its 2016 MAP statistics as initially reported and published on the OECD website. Those cases involved 197 taxpayers who were Latvian residents having earned employment income in another jurisdiction and were granted unilateral relief in Latvia. The statistics discussed below include all of both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively⁴ and should be considered jointly for an understanding of the MAP caseload of Latvia. Because Latvia omitted the cases mentioned above in its initial reporting, Annex C provides information that is significantly different from the published version of Latvia’s MAP statistics for 2016.

144. With respect to post-2015 cases, Latvia reported that for the years 2016-19, it has reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Latvia indicated that it could match its statistics with all of them, except for the issue noted above in relation to the 197 MAP cases missed out in 2016.

145. Based on the information provided by Latvia’s MAP partners, its post-2015 MAP statistics for the years 2016-19, as modified as noted above, actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

146. Latvia reported that it has a specific system in place that communicates, monitors and manages with its treaty partners the MAP caseload. Latvia reported in this regard that upon receiving a new case, its competent authority creates a taxpayer electronic file where all documents relevant to the case would be organised. Further, Latvia noted that its competent authority maintains a tool on Microsoft Excel with detailed information on active/resolved cases, monitoring the relevant dates to measure progress for each MAP case and containing a list of next steps.

147. In addition, Latvia reported that for statistics reporting, its competent authority has introduced changes in its internal tax information system, where it is now possible to register the start dates and end dates of MAP cases for monitoring.

148. Finally, Latvia noted that it takes proactive efforts for the matching of active MAP cases with treaty partners.

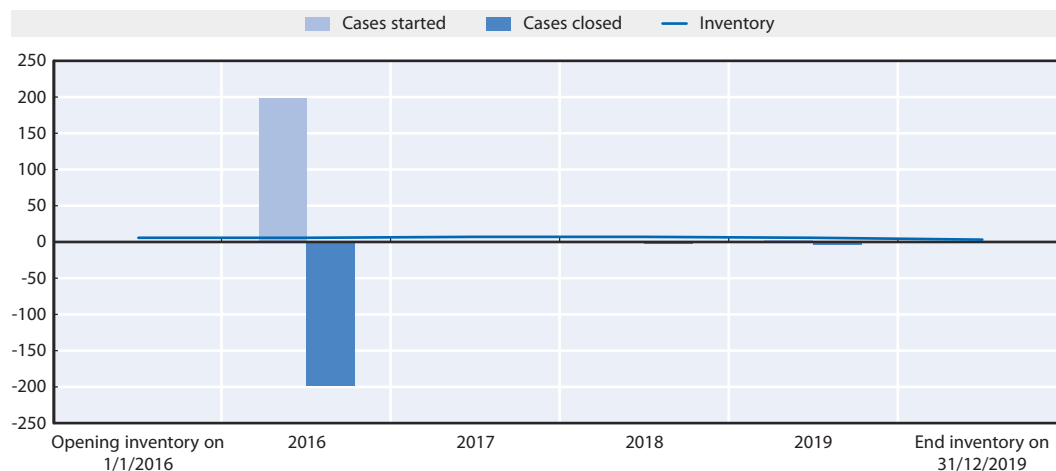
Analysis of Latvia's MAP caseload

Global overview

149. The analysis of Latvia's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

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

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

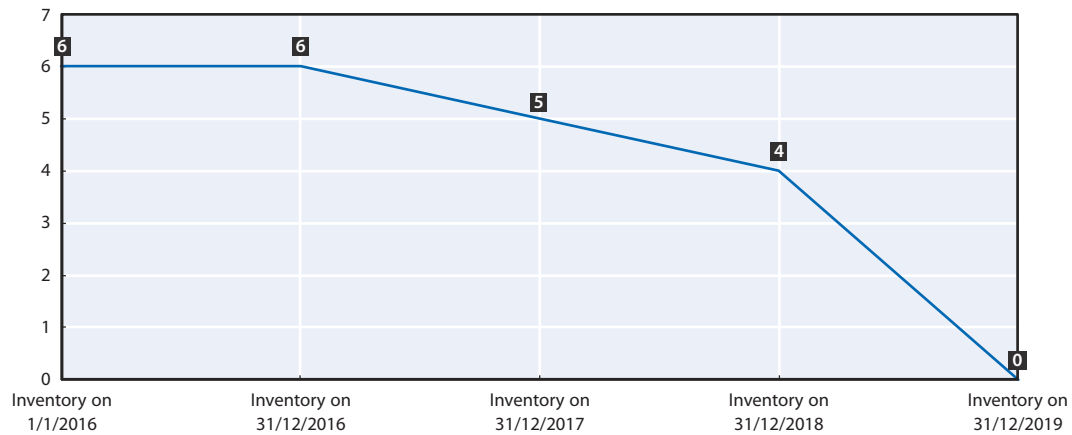


151. At the beginning of the Statistics Reporting Period, Latvia had six pending MAP cases, two of which were attribution/allocation cases and four were other MAP cases.⁶ At the end of the Statistics Reporting Period, Latvia had three MAP cases in its inventory, all of them being attribution/allocation. Latvia's MAP caseload has decreased by 50% during the Statistics Reporting Period.

Pre-2016 cases

152. Figure C.2 shows the evolution of Latvia's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.2. Evolution of Latvia's MAP inventory: Pre-2016 cases



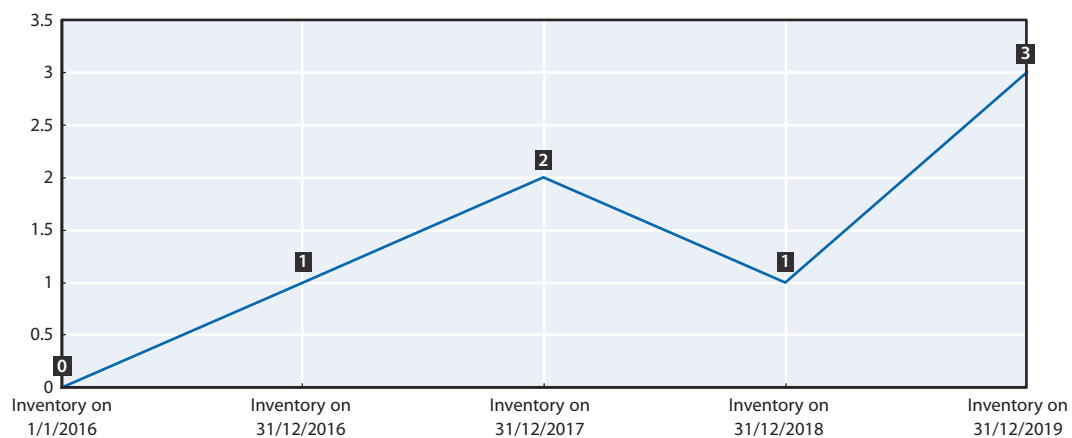
153. At the beginning of the Statistics Reporting Period, Latvia's MAP inventory of pre-2016 MAP cases consisted of six cases, including two attribution/allocation cases and four other cases. As Latvia resolved all of its pre-2016 cases by the end of 2019, the total inventory of pre-2016 cases had decreased to nil cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

| Pre-2016 cases | Evolution of total MAP caseload in 2016 | Evolution of total MAP caseload in 2017 | Evolution of total MAP caseload in 2018 | Evolution of total MAP caseload in 2019 | Cumulative evolution of total MAP caseload over the three years (2016-19) |
|------------------------------|---|---|---|---|---|
| Attribution/allocation cases | (no cases closed) | (no case closed) | -50% | -100% | -100% |
| Other cases | (no cases closed) | -25% | (no case closed) | -100% | -100% |

Post-2015 cases

154. Figure C.3 shows the evolution of Latvia's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Latvia's MAP inventory: Post-2015 cases



155. In total, 204 MAP cases started during the Statistics Reporting Period, three of which concerned attribution/allocation cases and 201 of which concerned other cases. At the end of this period, the total number of post-2015 cases in the inventory was three cases, which are all attribution/allocation cases. Accordingly, Latvia closed all of its 201 post-2015 other cases that were started during the Statistics Reporting Period. The total number of closed cases represents 99% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

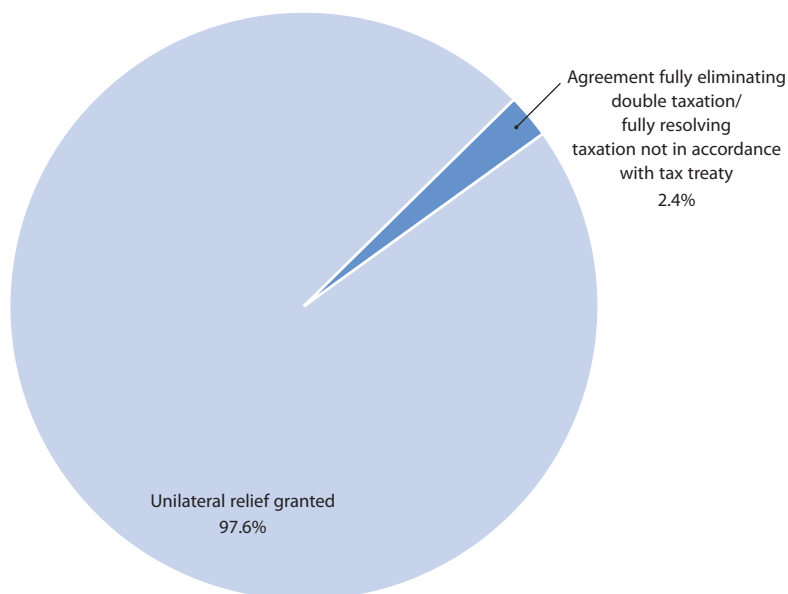
| Post-2015 cases | % of cases closed in 2016 compared to cases started in 2016 | % of cases closed in 2017 compared to cases started in 2017 | % of cases closed in 2018 compared to cases started in 2018 | % of cases closed in 2019 compared to cases started in 2019 | Cumulative evolution of total MAP caseload over the four years (2016-19) |
|------------------------------|---|---|---|---|--|
| Attribution/allocation cases | (no cases started) | (no cases started) | (no cases started) | 0% | 0% |
| Other cases | 99% | 0% | 200% | (no cases started) | 100% |

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

157. During the Statistics Reporting Period Latvia in total closed 207 MAP cases for which the outcomes shown in Figure C.4 were reported.

Figure C.4. Cases closed in 2016, 2017, 2018 or 2019 (207 cases)



158. Figure C.4 shows that during the Statistics Reporting Period, 202 out of 207 cases were closed with the outcome “unilateral relief granted” whereas the remaining five cases were closed with the outcome “agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty”.

Reported outcomes for attribution/allocation cases

159. In total, two attribution/allocation cases were closed during the Statistics Reporting Period, where one case was closed with the outcome “unilateral relief granted” and one case was closed with the outcome “agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty”.

Reported outcomes for other cases

160. In total, 205 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- unilateral relief granted (98%)
- agreement fully eliminating double taxation or fully resolving taxation not in accordance with a tax treaty (2%).

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

161. The average time needed to close MAP cases during the Statistics Reporting Period was 6.54 months. This average time mainly relates to other cases.

| | Number of cases | Start date to End date (in months) |
|------------------------------|-----------------|------------------------------------|
| Attribution/Allocation cases | 2 | 37.55 |
| Other cases | 205 | 6.25 |
| All cases | 207 | 6.54 |

Pre-2016 cases

162. For pre-2016 cases, Latvia reported that on average it needed 37.55 months to close two attribution/allocation cases and 42.50 months to close four other cases. This resulted in an average time needed of 40.50 months to close six pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Latvia reported that it uses the following dates:

- *Start date*: the date after five weeks from the receipt of the MAP request from the taxpayer
- *End date*: the date when the taxpayer is informed of the outcome of the MAP.

Post-2015 cases

163. For post-2015 cases, Latvia reported that on average it needed 5.53 months to close 201 cases, all of which were other MAP cases.

Peer input

164. All peers that provided input indicated that there were no impediments which led to unnecessary delays in finding the resolution of MAP cases with Latvia. One peer that reported having been involved in four MAP cases with Latvia since 2014 reported that all MAP cases were resolved within the 24-month timeframe.

Recent developments

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

166. With respect to this recommendation, Latvia reported that it has been able to manage its MAP inventory with its current resources.

167. In view of the statistics discussed above, it also follows that Latvia was able to decrease its inventory by 50%, by closing more cases than were started in the Statistics Reporting Period. Latvia has also, by the end of 2019, been able to close all of its pre-2016 cases. Further, the statistics also show that Latvia has in the period 2016-19 closed its MAP cases within the pursued average of 24 months. Element C.3 will further consider these numbers in light of the adequacy of resources.

168. All peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 September 2018, albeit that one additional peer that provided input only during stage 2 commented on its experience with Latvia concerning the resolution of MAP cases since that date. This input is further discussed under element C.3.

Anticipated modifications

169. Latvia indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.2] | - | - |

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

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

170. 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 Latvia's competent authority

171. Under Latvia's tax treaties, the competent authority function is assigned to the Minister of Finance and its authorised representatives, and is further delegated to the State Revenue Department, Latvia's tax administration unit. Latvia reported that in practice, the function is performed by the following bodies within Latvia's tax administration:

- for attribution/allocation cases: the Transfer Pricing Unit within the International Transactions' Control, Analysis and Methodology Division of the Tax Control Department, the head of the Transfer Pricing Unit being the one competent to participate in face-to-face meetings

- for other cases: within the National Tax Board, the Natural Persons' Tax Division handles MAP cases involving natural persons and the Tax and Fee Accounting Methodology Division handles other MAP cases involving legal persons.

172. Latvia further noted that in terms of the number of staff in charge of MAP, there are six staff members in total, four of them handling attribution/allocation cases and the remaining two handling other cases. Latvia clarified that all of these staff members are also involved in other tasks in the respective bodies.

173. Latvia reported that the Tax Control Department is primarily responsible for risk analysis and audits or other control measures, and the Transfer Pricing Unit is in charge of providing consultation on mechanisms on avoidance of double taxation to taxpayers as well as providing support to administration personnel in charge of audit. Latvia further noted that support to administration personnel in charge of audit also covers consultation to avoid double taxation not in accordance with treaties. In addition, Latvia clarified that the National Tax Board is generally in charge of compliance and consultations.

174. Latvia reported that the staff in charge of MAP have experience in MAP ranging from three to ten years. Latvia further noted that training is provided to the staff by way of educational courses jointly provided by the IOTA and the OECD, and Latvia is currently providing training for two additional persons.

Monitoring mechanism

175. Latvia reported that it monitors whether it needs additional resources based on its monitoring of MAP caseload as noted under element C.2.

Recent developments

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

177. Pursuant to this recommendation, Latvia clarified that it envisages an increase in the number of staff members dealing with attribution/allocation cases.

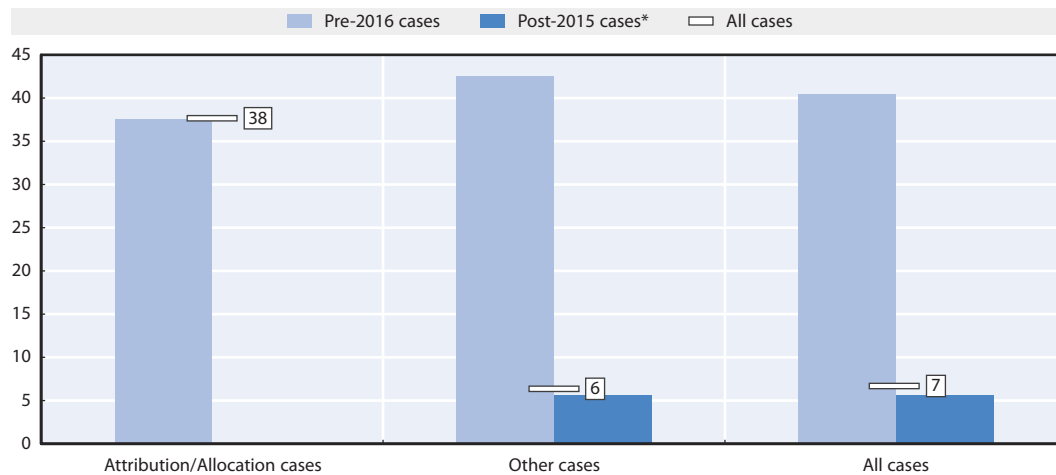
178. Further, Latvia reported that it has undertaken internal training for its staff in charge of MAP and that these staff members have attended MAP training sessions organised by the OECD.

Practical application

MAP statistics

179. As discussed under element C.2, Latvia has closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 6.54 months to close MAP cases. This concerns other MAP cases where the time needed was 6.25 months, although the time needed to resolve attribution/allocation cases was 37.55 months. The average time to resolve MAP cases in 2016, 2017, 2018 and 2019 can be illustrated by Figure C.5.

Figure C.5. Average time (in months) to close cases in 2016-19



* Note that post-2015 cases only concern cases started and closed during 2016, 2017, 2018 or 2019

180. The stage 1 peer review report of Latvia analysed the 2016-17 MAP statistics and showed an average of 5.60 months, which concerned 199 other MAP cases that were closed. It was on that basis concluded that as the overall average was below the pursued average of 24 months, Latvia was considered to be adequately resourced. However, as no attribution/allocation cases were closed in that period, and since both pre-2016 attribution/allocation cases were still pending, Latvia was suggested to analyse the reasons why these cases had not yet been closed and was recommended to ensure that these reasons would not act as an obstacle to resolving pending and future MAP cases in a timely, efficient and effective manner.

181. For stage 2, the 2018 and 2019 MAP statistics are also taken into account. The average time to close MAP cases for these years are as follows:

| | 2018 | 2019 |
|------------------------------|-------|-------|
| Attribution/Allocation cases | 34.10 | 41.00 |
| Other cases | 2.81 | 40.00 |
| All cases | 13.24 | 39.80 |

182. The 2018 and 2019 statistics of Latvia show that the average completion time of MAP cases increased from 5.60 months (2016-17) to 13.24 months (2018) and 39.80 months (2019), which in 2019 was higher than the pursued 24-month average, owing to the time taken to resolve one attribution/allocation case and four other MAP cases.

183. Latvia clarified in this regard that the time taken to resolve cases was higher than 24 months in 2018 and 2019 for attribution/allocation cases and in 2019 for other MAP cases since its competent authority worked towards closing all pending pre-2016 cases during these years. As can be seen from the analysis of Latvia's MAP statistics, four out of five cases resolved during this period were resolved with the outcome "unilateral relief granted", where Latvia reported that its competent authority has provided such relief in all of these cases.

184. In addition, the 197 other MAP cases started and closed in 2016 with a single treaty partner concerned one issue and was resolved in 5.49 months. Excluding these cases, Latvia has taken the following average time to resolve its remaining ten cases:

| | Number of cases | Start date to End date (in months) |
|------------------------------|-----------------|------------------------------------|
| Attribution/Allocation cases | 2 | 37.55 |
| Other cases | 8 | 24.84 |
| All cases | 10 | 27.19 |

185. However – as analysed in element C.2 – the MAP inventory of Latvia has decreased by 50% since 1 January 2016. This can be shown as follows:

| | Opening inventory on 1/1/2016 | Cases started | Cases closed | End inventory on 01/01/2019 | Increase in % |
|------------------------------|-------------------------------|---------------|--------------|-----------------------------|---------------|
| Attribution/allocation cases | 2 | 3 | 2 | 3 | 50% |
| Other cases | 4 | 201 | 205 | 0 | -100% |
| Total | 6 | 204 | 207 | 3 | -50% |

186. The figures in the above table show that the number of closed cases is higher than the number of all cases started in the period 2016-19. Further, as noted above, Latvia has ensured that all old cases i.e. pre-2016 cases have been resolved by the end of 2019.

187. However, also considering that the average time taken to resolve attribution/allocation cases was higher than 24 months, that the average time taken to resolve all cases outside of the grouped 197 cases mentioned above was higher than 24 months and that Latvia's competent authority took more than 24 months to resolve several pre-2016 cases in the unilateral stage, Latvia should closely monitor whether its existing resources will ensure that pending and future MAP cases are resolved in a timely, efficient and effective manner.

Peer input

Period 1 January 2016-31 August 2018 (stage 1)

188. One peer reported that it has frequent communications with Latvia, which is an important treaty partner for its jurisdiction. This peer reported that it encountered some difficulties with Latvia's competent authority in the past, when the first MAP cases were discussed (such as delay for responses, limited scope for discussions, and formal positions taken). However, this peer explained that the MAP process with Latvia became fluent and efficient with the use of various channels of communication, including face-to-face meetings. Finally, this peer noted active efforts made by Latvia's competent authority to explore additional possibilities in finding solutions.

189. Most of the other peers that provided input noted that they have very limited experience in handling MAP cases with Latvia. Three of the peers that provided input did not comment on the resources in Latvia's competent authority. One peer that has had four cases with Latvia since 2014 reported having experienced a good working relationship with Latvia and noted that Latvia's competent authority is highly co-operative in the resolution of MAP cases, which was evidenced by its willingness to resolve the MAP cases, its timely reactions and its timely implementation of the MAP outcomes. Another peer found that Latvia's competent authority was easy to contact, provided prompt responses and was

solution-oriented. This peer further reported not having experienced any impediments that could have led to improvements in the timeliness of the resolution of MAP cases in a principled manner. Another peer referred to its positive and collaborative, relationship with Latvia's competent authority, and stated that both competent authorities can uphold their shared commitments under the Action 14 Minimum Standard by continuing, and fostering, consistent, direct communications to resolve cases efficiently.

190. The last two peers reiterated their very limited interactions with Latvia's competent authority. One of them mentioned that it did not identify any impediments that led to unnecessary delays in finding a resolution to a MAP case. The other peer referred to its expectations that both competent authorities will solve future cases in good co-operation.

Period 1 September 2018-30 April 2020 (stage 2)

191. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Latvia fully reflects their experience with Latvia since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2, which peer also added that it experienced good and efficient co-operation in its relationship with Latvia's competent authority.

Anticipated modifications

192. Latvia indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|---|
| [C.3] | MAP cases were closed in 6.54 months on average, which is below the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns other cases, as the average time needed for such cases is 6.25 months while for attribution/allocation cases the average is above the pursued 24-month average (37.55 months). Further, Latvia has reduced its MAP inventory by 50% in the Statistics Reporting Period. However, the average time taken to resolve all cases outside of the grouped 197 cases mentioned above was higher than 24 months and Latvia's competent authority took more than 24 months to resolve several pre-2016 cases in the unilateral stage. This may indicate that additional resources may need to be devoted by Latvia's competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner. | While Latvia has made efforts to resolve MAP cases and has reduced its MAP inventory substantially, it should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. |

[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.

193. 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

194. Latvia reported that its team dealing with other MAP cases operates fully independently from the staff responsible for audit and that staff responsible for audit would in no case be involved in the decision making of a MAP case. In other MAP cases, Latvia noted that the teams in charge of these MAP cases only co-ordinate with tax auditors to obtain information about the cases and may co-ordinate as regards treaty interpretation in general with the tax treaty Department within the Ministry of Finance.

195. Latvia reported that attribution/allocation cases are handled by a project team, which is led by the head of its transfer pricing unit. In the past, this project team may have included audit personnel, if necessary.

196. However, Latvia has recently added conflict of interest rules in relation to the resolution of all MAP cases, including attribution/allocation cases. Latvia reported that its competent authority staff are now obliged to avoid conflicts of interest by excluding themselves from working on a case where they were involved at the audit stage. Further, Latvia reported that the project team leader would then take the following steps to ensure that none of the assigned team members were involved in the affected issue at the audit stage:

- pre-case screening meetings, including a background check and questionnaires
- ad hoc team assembly
- personal screening to avoid staff may have conflicts of interest
- finalisation of the team.

197. Further, Latvia explained that the project team submits proposals on decisions on MAP to the Director General of Latvia's tax administration, after being confirmed by all members of the project team. Although the Director General signs off on the decisions, Latvia clarified that this approval is formalistic, assuming the routine role of a high level superior.

198. Latvia also clarified that staff in charge of MAP is not involved in treaty negotiations and reported that decisions on MAP are not influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

Recent developments

199. The stage 1 report noted that Latvia’s approach of involving audit team members in the team handling attribution/allocation MAP cases bears the risk that the resolution of MAP cases is dependent of the audit personnel who made the adjustment at issue. As noted above, Latvia has recently introduced conflict of interest rules to ensure that no persons involved at the audit stage are part of a team handling attribution/allocation MAP cases.

200. Accordingly, the recommendation made in the stage 1 report has been addressed.

Practical application***Period 1 January 2016-31 August 2018 (stage 1)***

201. Peers generally reported no impediments in Latvia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2016-31 August 2018.

Period 1 September 2018-30 April 2020 (stage 2)

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

Anticipated modifications

203. Latvia indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.4] | - | - |

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

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

204. 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 Latvia

205. As for the evaluation of staff in charge of MAP cases, Latvia reported that it uses the timeframe of 24 months to closes MAP cases as a main performance indicator to evaluate performance by the staff in charge of MAP cases. It also uses a variety of supplementary indicators which concern:

- teamwork: timing, internal discussions, effective organisation on team work, effectiveness in management, quality of proposals to the Director General
- communication with other competent authorities: culture, efficiency and co-operative skills proved during MAP.

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

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

207. In addition to these performance indicators, Latvia reported that targets are set for staff in charge of MAP for the purpose of evaluating their work performance. These targets are monitored in quarterly reports and cover the following:

- specific targets of the year for the Director General of Latvia’s tax administration (first report)
- strategic targets of the year which are included in the Government work plan for the Ministry of Finance (second report)
- main functions for the Director of the Tax Control Department (third report).

208. In this respect, Latvia reported that the second report might contain sums on tax revenue maintained.

209. Further, Latvia reported that in 2019, a review of the performance indicators applicable to the team handling attribution/allocation rules resulted in the addition of a new performance indicator that would also be dependent on the tax revenue maintained.

Recent developments

210. As noted above, a new performance indicator applicable to its competent authority staff dealing with attribution/allocation cases, that also relates to the amount of tax revenue maintained was added.

Practical application***Period 1 January 2016-31 August 2018 (stage 1)***

211. All peers that provided input indicated not being aware that Latvia used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-31 August 2018.

Period 1 September 2018-30 April 2020 (stage 2)

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

Anticipated modifications

213. Latvia indicated that its tax administration has informed its ministry of finance as to how its existing and new performance indicators are not compliant with the Action 14 minimum standard, following which a revision of performance indicators applicable to the competent authority staff has been initiated where all such indicators would be replaced by those based on cases being solved by eliminating taxation not in accordance with a treaty within the time limits applicable.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [C.5] | Performance indicators used in relation to Latvia's competent authority staff are based on the amount of tax revenue maintained. | Latvia should, without further delay, follow its stated intention to ensure that none of the performance indicators used to assess the performance of its competent authority function are based on the amount of tax revenue maintained. |

[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. Latvia reported that it does not have any domestic law limitations for including MAP arbitration in its tax treaties. Latvia's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, as its MAP profile indicates so.

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

Recent developments

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

Practical application

218. Latvia has incorporated an arbitration clause in three of its 62 treaties as a final stage to the MAP. These clauses can be classified as follows:

- equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2017): two treaties
- voluntary and binding arbitration: one treaty.

Anticipated modifications

219. Latvia indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.6] | - | - |

Notes

1. These 61 treaties include the treaty with former Serbia and Montenegro that Latvia continues to apply to both Serbia and Montenegro.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. Available at: https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en. These statistics are up to and include fiscal year 2019.
4. For post-2015 cases, if the number of MAP cases in Latvia’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, Latvia 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. Latvia’s 2016, 2017 and 2018 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016, 2017 and 2018. See further explanations in Annex B and Annex C.
6. For pre-2016 and post-2015 cases, Latvia 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”.

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>.
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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.

220. 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

221. Latvia reported that where its tax treaty contains the provision equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), any agreement reached shall be implemented notwithstanding any time limits in its domestic law.

222. Latvia further reported that notwithstanding its general statute of limitations, it does not apply its domestic time limits for the implementation of MAP agreements reached, even in the absence of the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty. Latvia clarified that it follows the same approach it would take if the relevant treaty would include the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).

223. Latvia further reported that in all cases, the taxpayer is required to submit an application for refund and revised or adjusted tax declaration to enable the implementation process to be initiated. In this respect, Latvia also stated that its competent authority follows up on the implementation of MAP agreements when its tax administration is responsible for it.

224. Further, Latvia reported that for cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, in addition to the above requirements, a taxpayer is required to inform Latvia's competent authority that it accepts the agreement and that it waives its right to pursue any domestic remedies for issues covered by the agreement.

Recent developments

225. There are no recent developments with respect to element D.1, apart from the addition of further requirements for cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union as explained above.

Practical application*Period 1 January 2016-31 August 2018 (stage 1)*

226. Latvia reported that it has reached two MAP agreements on post-2015 cases in the period 1 January 2016-31 August 2018, and that for both cases, it implemented MAP agreements by refunding the relevant taxes.

227. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 August 2018 that was not implemented by Latvia. One peer specifically reported that Latvia provided good assistance with respect to the implementation of the outcomes of the MAP cases they handled together.

Period 1 September 2018-30 April 2020 (stage 2)

228. Latvia reported that also since 1 September 2018 all MAP agreements that were reached have been implemented if the conditions required for implementation under domestic law as mentioned above have been fulfilled by the taxpayer.

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

Conclusion

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

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

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

230. 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

231. Latvia reported that it would implement MAP agreements within a period of one month after the relevant submission by the taxpayer, which is required legally under Latvia's Law on Submissions.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

232. Latvia reported that all MAP agreements that were reached in the period 1 January 2016-31 August 2018, once accepted by taxpayers, have been timely implemented and that no cases of noticeable delays have occurred. Latvia reported that it concerned two agreements and that it took seven days and six months respectively to implement each agreement.

233. All peers that provided input have not indicated experiencing any problems with Latvia regarding the implementation of MAP agreements reached on a timely basis. The peer in the first case referred to in the previous paragraph specifically reported that Latvia provided good assistance with respect to the implementation of the outcomes of the MAP cases they handled together and specified that implementation was performed timely. This peer further clarified that the taxpayer had to fill out a refund form to have refund to have a MAP agreement implemented, and stated that the tax was refunded within around three months after the form was submitted.

Period 1 September 2018-30 April 2020 (stage 2)

234. Latvia reported that also since 1 September 2018 all MAP agreements that were reached have been implemented in a timely manner if the conditions required for implementation under domestic law as mentioned above have been fulfilled by the taxpayer.

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

Anticipated modifications

236. Latvia indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [D.2] | - | - |

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

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

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 Latvia's tax treaties

238. As discussed under element D.1, Latvia's domestic statute of limitations would not apply for the implementation of MAP agreements in all cases.

239. Out of Latvia's 62 tax treaties, 57 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 In addition, one tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but contains a provision in the MAP article setting a time limit for making primary adjustments, which is considered as having both alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).

240. The remaining four treaties are as follows:

- Three treaties do not contain a provision that is based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or the alternative provisions in Article 9(1) and Article 7(2) of the OECD Model Tax Convention (OECD, 2017).
- One treaty contains a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints, this tax treaty therefore is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

241. Eight peers indicated during stage 1 that their treaty with Latvia meets the requirement under element D.3, which is in line with the above analysis.

242. For the four treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives, one of the relevant peers reported the absence of the equivalent and commented that it is willing to accept the alternative provisions. This peer further explained that it is working with Latvia on a draft amending protocol to bring the treaty with Latvia in line with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

243. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

244. Latvia signed the Multilateral Instrument and deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument has entered into force for Latvia on 1 February 2020.

245. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

246. With regard to the four tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Latvia listed three treaties as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). The relevant three treaty partners are also signatories to the Multilateral Instrument and listed their treaty with Latvia as a covered tax agreement. However, only two of these three treaty partners made such notification as one made a reservation on the basis of Article 16(5)(a).

247. Of the remaining two treaty partners, one has already deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Latvia and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

248. Latvia reported that for one of the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant treaty partner has informed Latvia 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).

249. Latvia reported that for the remaining treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives and which will not be modified by the Multilateral Instrument, negotiations have already been initiated to include both alternative provisions in the concerned tax treaty.

Peer input

250. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Latvia.

Anticipated modifications

251. Latvia 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>Four out of 62 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both of the alternative provisions provided for in Article 9(1) and Article 7(2). Of these four treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of 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 of 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. • One will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, negotiations are pending. | <p>For the one remaining treaty that has not been or 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), Latvia should continue negotiations with the concerned treaty partner with a view to including the required provision or both alternative provisions.</p> |

Note

1. These 57 treaties include the treaty with former Serbia and Montenegro that Latvia continues to apply to both Serbia and Montenegro.

Reference

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

Summary

| | Areas for improvement | Recommendations |
|---|--|---|
| Part A: Preventing disputes | | |
| [A.1] | - | - |
| [A.2] | - | - |
| Part B: Availability and access to MAP | | |
| [B.1] | <p>One out of 62 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) as it read prior to or as amended by the Action 14 final report (OECD, 2015b). This treaty will not be modified by the Multilateral Instrument. With respect to this treaty, negotiations are pending.</p> | <p>As the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to or as amended by the Action 14 final report (OECD, 2015b) will not be modified by the Multilateral Instrument to include such equivalent upon its entry into force for the treaty concerned, Latvia should continue negotiations with the treaty partner with a view to including the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either</p> <ol style="list-style-type: none"> 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.2] | <p>59 of the 62 treaties do not contain a provision equivalent to Article 25(1) 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 partners. 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.</p> | <p>Latvia should without further delay follow up on it stated intention to document its bilateral notification 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, Latvia should apply its notification process for future 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).</p> |
| [B.3] | - | - |
| [B.4] | - | - |
| [B.5] | - | - |
| [B.6] | - | - |
| [B.7] | - | - |

| | Areas for improvement | Recommendations |
|---|---|--|
| [B.8] | There is no published MAP guidance. | Latvia should, without further delay, follow its stated intention to introduce guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request. |
| [B.9] | The MAP guidance is not publically available. | Latvia should make its MAP guidance currently in preparation publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed. |
| [B.10] | - | - |
| Part C: Resolution of MAP cases | | |
| [C.1] | - | - |
| [C.2] | - | - |
| [C.3] | MAP cases were closed in 6.54 months on average, which is below the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). This particularly concerns other cases, as the average time needed for such cases is 6.25 months while for attribution/allocation cases the average is above the pursued 24-month average (37.55 months). Further, Latvia has reduced its MAP inventory by 50% in the Statistics Reporting Period. However, the average time taken to resolve all cases outside of the grouped 197 cases mentioned above was higher than 24 months and Latvia's competent authority took more than 24 months to resolve several pre-2016 cases in the unilateral stage. This may indicate that additional resources may need to be devoted by Latvia's competent authority to ensure that MAP cases continue to be closed in a timely, effective and efficient manner. | While Latvia has made efforts to resolve MAP cases and has reduced its MAP inventory substantially, it should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. |
| [C.4] | - | - |
| [C.5] | Performance indicators used in relation to Latvia's competent authority staff are based on the amount of tax revenue maintained. | Latvia should, without further delay, follow its stated intention to ensure that none of the performance indicators used to assess the performance of its competent authority function are based on the amount of tax revenue maintained. |
| [C.6] | - | - |
| Part D: Implementation of MAP agreements | | |
| [D.1] | - | - |
| [D.2] | - | - |

| | Areas for improvement | Recommendations |
|-------|---|--|
| [D.3] | <p>Four out of 62 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both of the alternative provisions provided for in Article 9(1) and Article 7(2). Of these four treaties:</p> <ul style="list-style-type: none"> • One has been modified by the Multilateral Instrument to include the equivalent of 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 of 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 • One will not be modified by the Multilateral Instrument to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, negotiations are pending | <p>For the one remaining treaty that has not been or 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), Latvia should continue negotiations with the concerned treaty partner with a view to including the required provision or both alternative provisions.</p> |

Annex A

Tax treaty network of Latvia

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | | | |
|----------------|---------------|-----|--------------------------------------|--|-------------------------------------|------------|-------------------------------|--|--|---|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|-------------------|---|---|
| | DTC in force? | | Inclusion Art. 25(1) first sentence? | Inclusion Art. 25(1) second sentence? (Note 1) | Inclusion Art. 9(2) of the OECD MTC | Anti-abuse | Article 25(2) of the OECD MTC | Article 25(3) of the OECD MTC | Arbitration | | | | | | | | | | | | | |
| Albania | Y | N/A | O | | Y | | | 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 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 | Y = yes N = no | Y = yes N = no | Y = yes N = no | Y = yes N = no | Y = yes N = no | Y = yes N = no | Y = yes N = no | | |
| Armenia | Y | N/A | O | | Y | | | 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 | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N | |
| Austria | Y | N/A | O | | Y | | | 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 | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Azerbaijan | Y | N/A | O | | Y | | | 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 | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|------------------------------|---------------|--|----------|-------|----------|-----|----------|-----|----------|-----|----------|-------------------------------|-------------|---|----------|---|-----------|----|-----------|---|
| | DTC in force? | Article 25(1) of the OECD Model Tax Convention ("MTC") | B.1 | B.1 | B.3 | B.4 | C.1 | D.3 | A.1 | B.7 | C.6 | Article 25(3) of the OECD MTC | Arbitration | | | | | | | |
| Belarus | Y | N/A | O | Y | N/A | Y | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Belgium | Y | N/A | O | Y | N/A | Y | ii | Y | Y | Y | Y | Y | Y | Y | Y* | Y | Y | Y | Y | N |
| Bulgaria | Y | N/A | O | Y | N/A | i | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Canada | Y | N/A | O | Y**** | N/A | Y | ii | Y | iii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| China (People's Republic of) | Y | N/A | O | Y | N/A | Y | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Croatia | Y | N/A | O | Y | N/A | Y | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Cyprus* | Y | N/A | O | Y | N/A | Y | ii | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Czech Republic | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Denmark | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Estonia | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Finland | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| France | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Georgia | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Germany | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Greece | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Hong Kong (China) | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Hungary | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Iceland | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| India | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |
| Ireland | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y* | Y | N |
| Israel | Y | N/A | O | Y | N/A | Y | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | N |

| Treaty partner | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|-----------------|---------------|--------------------------------------|--|---|--|---|--|---|--|-------------|----------|--|----------|--|----------|--|-----------|--|-----------|--|
| | DTC in force? | Inclusion Art. 25(1) first sentence? | Inclusion Art. 25(1) second sentence? (Note 1) | Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(2) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Arbitration | | | | | | | | | | |
| | B.1 | B.1 | B.1 | B.3 | B.4 | C.1 | D.3 | A.1 | B.7 | C.6 | | | | | | | | | | |
| Italy | Y | N | Y | N/A | i | Y | N* | Y | N* | N | | | | | | | | | | |
| Japan | Y | E | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Kazakhstan | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Korea | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Kuwait | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Kyrgyzstan | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Lithuania | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Luxembourg | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Malta | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Mexico | Y | O | Y | N/A | i | N* | N | Y | Y | Y | | | | | | | | | | |
| Moldova | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Montenegro | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Morocco | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Netherlands | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| North Macedonia | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Norway | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Poland | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Portugal | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Qatar | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Romania | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Russia | Y | O | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |
| Saudi Arabia | N | E | Y | N/A | i | Y | Y | Y | Y | Y | | | | | | | | | | |

| Column 1 | Column 2 | | Column 3 | | Column 4 | | Column 5 | | Column 6 | | Column 7 | | Column 8 | | Column 9 | | Column 10 | | Column 11 | |
|----------------------|--|--|---|--|---|--|---|--|-------------------------------|---|-------------|---|----------|---|----------|---|-----------|---|-----------|---|
| | 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 | | | | | | | | | | | |
| Treaty partner | Inclusion Art. 25(1) first sentence? | Inclusion Art. 25(1) second sentence? (Note 1) | Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | | | | | | | | | | | | |
| Serbia | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Singapore | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Slovak Republic | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Slovenia | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Spain | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Sweden | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Switzerland | Y | N/A | O | Y | N/A | i | i | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Tajikistan | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Turkey | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Turkmenistan | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Ukraine | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| United Arab Emirates | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| United Kingdom | Y | N/A | O | i | N/A | Y | Y | Y | Y | Y | Y* | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| United States | Y | N/A | E | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Uzbekistan | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |
| Viet Nam | Y | N/A | O | Y | N/A | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y | Y |

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**/Y**** | 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 has been or 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, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) 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 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. |
| Others | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | n.a. |
| Total | 6 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 6 | n.a. |

Note: The inventory of pre-2016 attribution/allocation cases has been increased by one case and pre-2016 other cases has been increased by three cases as Latvia either missed reporting the case or was informed afterwards by its treaty partners about the case.

| 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 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. |
| Others | 4 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 3 | 29 |
| Total | 6 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 5 | 29 |

| 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 |
| | | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | | |
| | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | Column 13 | Column 14 |
| Attribution/Allocation | 2 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 1 | 34.1 |
| Others | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | n.a. |
| Total | 5 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 4 | 34.1 |

| 2019 MAP Statistics | | | | | | | | | | | | | |
|------------------------|--|--|----------------------------|-----------------------|---------------------------|------------------------------|---|--|---|---|-------------------|---|---|
| Category of cases | No. of pre-2016 cases in MAP inventory on 1 January 2019 | 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 2019 | Average time taken (in months) for closing pre-2016 cases during the reporting period |
| | | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | | |
| | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | Column 13 | Column 14 |
| Attribution/Allocation | 1 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 41 |
| Others | 3 | 0 | 0 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 47 |
| Total | 4 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 45 |

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Others | 0 | 199 | 0 | 0 | 0 | 197 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 5.49 |
| Total | 0 | 199 | 0 | 0 | 0 | 197 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 1 | 5.49 |

| 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Others | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. |
| Total | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. |

| 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 | | |
| | | | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | | | Column 12 | Column 13 |
| | 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 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Others | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 2.81 |
| Total | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 2 | 0 | 0 | 0 | 0 | 1 | 2.81 |

| 2019 MAP Statistics | | | | | | | | | | | | | | |
|------------------------|---|--|---|----------|----------|----------|----------|----------|-----------|-----------|--|--|-----------|-----------|
| Category of cases | No. of post-2015 cases in MAP inventory on 1 January 2019 | 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 2019 | Average time taken (in months) for closing post-2015 cases during the reporting period | | |
| | | | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | | | Column 12 | Column 13 |
| | Column 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 | 1 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 19 |
| Total | 1 | 3 | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 19 |

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 2019 |
| 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, Latvia (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Latvia, which is accompanied by a document addressing the implementation of best practices.



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