

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



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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Reference	10
Introduction	11
References	16
Part A. Preventing disputes	17
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	17
[A.2] Provide roll-back of bilateral APAs in appropriate cases	18
References	20
Part B. Availability and access to MAP	21
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	27
[B.3] Provide access to MAP in transfer pricing cases	29
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	32
[B.5] Provide access to MAP in cases of audit settlements	33
[B.6] Provide access to MAP if required information is submitted	35
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	37
[B.8] Publish clear and comprehensive MAP guidance	39
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	41
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	42
References	44
Part C. Resolution of MAP cases	45
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	45
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	46
[C.3] Provide adequate resources to the MAP function	51
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	57
[C.5] Use appropriate performance indicators for the MAP function	58
[C.6] Provide transparency with respect to the position on MAP arbitration	60
References	61

Part D. Implementation of MAP agreements	63
[D.1] Implement all MAP agreements	63
[D.2] Implement all MAP agreements on a timely basis	65
[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties or alternative provisions in Article 9(1) and Article 7(2)	66
Reference	69
Summary	71
Annex A. Tax treaty network of Lithuania	73
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	78
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	80
Glossary	83
Figures	
Figure C.1 Evolution of Lithuania’s MAP caseload	47
Figure C.2 Evolution of Lithuania’s MAP inventory: Pre-2016 cases	47
Figure C.3 Evolution of Lithuania’s MAP inventory: Post-2015 cases	48
Figure C.4 Cases closed in 2016, 2017, 2018 or 2019 (15 cases)	49
Figure C.5 Average time (in months) to close cases in 2016-19	55

Abbreviations and acronyms

APA	Advance Pricing Arrangement
EDS	Electronic Declaration System
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
Rules	Rules on the Conclusion of Agreement on Taxes and Related Amounts Between the Tax Administrator and a Taxpayer
STI	State Tax Inspectorate under the ministry of Finance of the Republic of Lithuania

Executive summary

Lithuania has a relatively large tax treaty network with over 50 tax treaties, and has signed and ratified the EU Arbitration Convention. Lithuania has an established MAP programme, but has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and with two cases pending on 31 December 2019. These two cases concern other cases. Overall Lithuania meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Lithuania worked to address some of them, which has been monitored in stage 2 of the process. In this respect, Lithuania solved most of the identified deficiencies.

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

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

Lithuania does not meet the Action 14 Minimum Standard concerning the prevention of disputes. While it has in place a bilateral APA programme, this programme does not allow roll-back of bilateral APAs, although Lithuania intends to allow such roll-back in the future.

Lithuania meets almost all 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 January 2016 not received any MAP request concerning cases where anti-abuse provisions are applied. Furthermore, Lithuania has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Lithuania also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. In addition, Lithuania has in place an administrative dispute settlement/resolution process that is independent from the audit and examination functions and which can only be accessed through a request from the taxpayer. The outcome of this

process will prevent taxpayers' access to MAP, if the MAP request is submitted after the process has been finalised. The effect of this process on MAP is clarified in the guidance on this process.

Concerning the average time needed to close MAP cases, the MAP statistics for Lithuania 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	5	2	7	0	34.67
Other cases	2	8	8	2	9.86
Total	7	10	15	2	21.44

* 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, Lithuania used as a start date the rules as defined under the MAP Statistics Reporting Framework: one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date. However, where Lithuania's competent authority receives a MAP request that does not include all required information, then the Start date will be set at the date when such missing information is submitted. For the end date, Lithuania used the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request.

The number of cases Lithuania closed in 2016-19 is more than the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 21.44 months, while the average time to close attribution/allocation cases is longer (34.67 months) than the average time to close other cases (9.86 months). Furthermore, Lithuania's MAP inventory as on 31 December 2019 decreased as compared to 1 January 2016, which regards attribution/allocation cases.

Furthermore, Lithuania meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Lithuania's competent authority operates fully independently from the audit function of the tax and the performance indicators used are appropriate to perform the MAP function.

Lastly, Lithuania also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Although Lithuania does not monitor the implementation of MAP agreements, no issues have surfaced regarding the implementation throughout the peer review process.

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 Lithuania to resolve tax treaty-related disputes

Lithuania has entered into 57 tax treaties on income (and/or capital), 56 of which are in force.¹ These 57 treaties apply to an equal number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, two of the 57 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Furthermore, Lithuania is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³ In addition, Lithuania also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been transposed in its domestic legislation on 24 July 2019.⁴

Under the tax treaties Lithuania entered into, the competent authority function to conduct mutual agreement procedure (“**MAP**”) is assigned to the Ministry of Finance, which has delegated it to the State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (“**STI**”). In practice, it is the Permanent working group for handling Double Taxation Dispute Resolution Procedures (“**Working Group**”) within this inspectorate, which is responsible for handling and resolving MAP cases. The Working Group consists of eight employees, which includes the head of the Group as well as two deputy heads, one of whom is responsible for attribution/allocation cases and one for other cases. The remaining five members work on both types of MAP cases. In addition to handling MAP cases, these eight employees also work on other daily tasks, performing ordinary functions of the Divisions of the STI within which they are employed and also some of the members take part in other processes, such as issuing APAs or working on tax rulings.

Lithuania issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in July 2018, and has updated it in September 2019 on the STI MAP website, which is available at:

<https://www.vmi.lt/cms/en/abipusio-susitarimo-procedura>

The Rules for the Initiation and Execution of the Mutual Agreement Procedure

Developments in Lithuania since 1 September 2018

In the stage 1 peer review report of Lithuania, it is reflected that one of Lithuania’s 56 treaties has not entered into force. This concerns the treaty with Morocco (2013). While Lithuania has ratified this treaty, Morocco has not yet. Since 1 September 2018, this status has not changed. In addition, Lithuania signed a new treaty with Liechtenstein (2019). This

treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015).

Furthermore, on 7 June 2017 Lithuania 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 11 September 2018, it deposited the instrument of its ratification, following which the Multilateral Instrument has for Lithuania entered into force on 1 January 2019. With the depositing of its instrument of ratification, Lithuania also submitted its list of notifications and reservations to the Multilateral Instrument.⁵ In relation to the Action 14 Minimum Standard, Lithuania has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

For those tax treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Lithuania reported that it strives to update them through future bilateral negotiations. In the stage 1 report, however, it was noted that Lithuania had no plan for such purpose and was therefore recommended to put a plan in place and to bilaterally work on the renegotiation of these treaties. In total, two of Lithuania’s tax treaties need a bilateral modification in order to be in line with the requirements under the Action 14 Minimum Standard. In this respect, Lithuania reported that:

- Communications with Italy will be initiated on the amendment of the treaty as soon as Italy has completed its internal procedures to deposit its ratification of the Multilateral Instrument and Lithuania finds that bilateral negotiation is still necessary.
- Negotiations with Switzerland to amend Article 25 (2), second sentence, are envisaged. In addition, the Competent Authority Agreement implementing the Multilateral Instrument is being finalised to modify Article 9(2).

Other developments

Lithuania reported that its MAP guidance has been updated on 12 September 2019 according to the recommendations made in the stage 1 peer review report and the newly issued Law on Double Taxation Dispute Resolution of the Republic of Lithuania, which was issued regarding implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union and has entered into the force on 24 July 2019.

Lithuania further reported that its “Rules on the Conclusion of Agreement on Taxes and Related Amounts Between the Tax Administrator and a Taxpayer” have been updated to explain the effects of the administrative or statutory dispute settlement/resolution process on MAP.

In addition, Lithuania noted that the competent authority function has been partially renewed and the number of members has been increased from seven to eight. While two former members resigned from the STI, three new members were involved, one from each of the following departments: the Law department, the Control department, and the Large taxpayers monitoring and consultancy department. Lithuania further noted that following the entry into force of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU, its competent authority function is also responsible for handling the cases received under the Directive.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Lithuania’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 Lithuania and its peers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Lithuania’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 Lithuania 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. 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 Lithuania. In this update report, Lithuania 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 Lithuania 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, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Lithuania’s tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

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

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Lithuania opted to provide information and requested peer input on a period starting as from 1 January 2015. The period for evaluating Lithuania’s implementation of the Action 14 Minimum Standard ranges 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 seven peers provided input: Denmark, Germany, Latvia, Norway, Slovenia, Sweden and Turkey. Out of these seven peers, four had MAP cases with Lithuania that started on or after 1 January 2016, but only two of them have such cases that were started

in 2016 or 2017. These two peers represent 75% of post-2015 MAP cases in Lithuania’s inventory that started in 2016 or 2017. Generally, all peers indicated a positive relationship with Lithuania’s competent authority. During stage 2, the same peers provided input. In addition, also Switzerland provided input. For this stage, these peers represent 60% of post-2015 MAP cases in Lithuania’s inventory that started in 2016, 2017, 2018 or 2019. Generally, all peers indicated having good relationships with Lithuania. Specifically with respect to stage 2, all peers that provided input reported that the update report of Lithuania fully reflects the experiences these peers have had with Lithuania since 1 September 2018 and/or that there was no addition to previous input given. Two of these peers confirmed the analysis in the update report of Lithuania. The input from these peers is reflected throughout this document under the elements where they have relevance.

Input by Lithuania and co-operation throughout the process

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

- MAP profile⁶
- MAP statistics⁷ according to the MAP Statistics Reporting Framework (see below).

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

Finally, Lithuania is a member of the FTA MAP Forum and has shown good co-operation during the peer review process. Lithuania provided peer input and made constructive suggestions on how to improve the process with one of the concerned assessed jurisdictions as well as in previous reviews.

Overview of MAP caseload in Lithuania

The analysis of Lithuania’s MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2017. For stage 2 the period ranges from 1 January 2018 to 31 December 2019. Both periods are taken into account in this report for analysing the MAP statistics of Lithuania. The analysis of Lithuania’s MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Lithuania, 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	5	2	7	0
Other cases	2	8	8	2
Total	7	10	15	2

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁸ Apart from analysing Lithuania’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Lithuania 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 Lithuania relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Lithuania 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 Lithuania has entered into are available at: <https://www.vmi.lt/cms/en/tarptautines-dvigubo-apmokestinimo-ismengimo-sutartys>. The signed treaties that have not yet entered into force is with Morocco.
2. This concerns the treaties with Japan and the Netherlands. Reference is made to Annex A for the overview of Lithuania’s tax treaties.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-lithuania-instrument-deposit.pdf.
6. Available at www.oecd.org/tax/dispute/Lithuania-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of Lithuania are included in Annex B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- 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 Lithuania's tax treaties

2. All of Lithuania's 57 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring its competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

3. All peers that provided input during stage 1 confirmed that their treaty with Lithuania meets the Action 14 Minimum Standard for this element, which conforms with the above analysis.

Recent developments

Bilateral modifications

4. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017a) as amended by the Action 14 final report (OECD, 2015). The effects of the 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, two provided input in relation to their tax treaty with Lithuania, but these inputs hold no relevance for element A.1.

Anticipated modifications

6. As all of Lithuania’s 57 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) there is no need for modifications. Regardless, Lithuania reported that it will continue to seek to include Article 25(3), first sentence 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.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Lithuania’s APA programme

8. Lithuania reported that it has established an APA programme since January 2012, under which it is authorised to enter into unilateral, bilateral and multilateral APAs. The legal basis of its APA programme is provided for in Article 37¹ of the Law on Tax Administration, which grants taxpayers the right to request approval for the application of the provisions of the tax legislation to future transactions.² Within Lithuania, the Permanent working group for handling APAs within the STI is responsible for handling requests for APAs. APAs can be entered into for a maximum period of five years following the year in which the APA first applies.

9. Lithuania outlined the process on how it operates its APA programme in a document titled “The Rules for the Submission of the Taxpayer’s Request to Approve the Principles of Pricing of a Future Controlled Transaction, Examination of the Request, the Adoption and Amendment of the Tax Administrator Binding Decision” – (“**APA guidance**”).³ This APA guidance contains extensive information on Lithuania’s APA programme, which is organised into six different chapters: (i) general provisions (ii) how a taxpayer can submit an APA request and what should be included in such a request (iii) the examination of the request (iv) taking a decision on the acceptance of the request (v) the validity and running period of APAs and (vi) final provisions.

Roll-back of bilateral APAs

10. Lithuania reported that it currently does not allow taxpayers to request for a roll-back of bilateral APAs. Article 371(1) of the Law on Tax Administration explicitly defines that APAs can only be requested for future transactions. These are defined as “transactions, a purchase or any group thereof of the taxpayer that will begin after the day of submitting the request specified in this paragraph to the tax administrator”. The fact that APAs are only open for future years is also specified in section 5 of its APA guidance, where it is stated that taxpayers may only submit an APA request for future controlled transactions, and not for transactions that have already taken place. If long term transactions were entered into before the moment an APA request was submitted, section 3.1 of the APA guidance specifies that only the transactions that were carried out after the date of submission of the APA request will qualify as future transactions.

Recent developments

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

Practical application of roll-back of bilateral APAs***Period 1 January 2015-31 August 2018 (stage 1)***

12. Lithuania reported that in the period 1 January 2015-31 August 2018 it received two bilateral APA requests that are currently being considered. As Lithuania does not allow for roll-back of bilateral APAs, requests thereto have not been received since that date.

13. All peers that provided input reported not having any experience with Lithuania concerning the roll-back of bilateral APAs, which to some extent can be clarified by the fact that Lithuania does not allow such roll-backs. Three peers further clarified that they also did not receive any request for a bilateral APA involving Lithuania.

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

14. Lithuania reported that since 1 September 2018 it has not received any bilateral APA requests.

15. Further to the above, Lithuania also reported that the two bilateral APA requests that it received in the period 1 January 2015-31 August 2018 have been granted.

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

Anticipated modifications

17. Lithuania reported that it intends to introduce the possibility of roll-back of bilateral APAs by amending its Law on Tax Administration and that an amendment is being prepared. Lithuania reported that there is no clear timeframe for when exactly the roll-back legislation will take effect.

Conclusion

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

Notes

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.
2. Available at: www.vmi.lt/cms/documents/10162/7977078/LAW+ON+TAX+ADMINISTRATION_EN.pdf/f03d7a66-1439-4f44-926c-b74733328574.
3. Available at: <https://www.vmi.lt/cms/documents/10162/9177010/APA+rules.pdf/5d7e8386-fb12-4661-bbcc-5a6c0477e629>.

References

- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- 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.

18. 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 Lithuania's tax treaties

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

19. Out of Lithuania's 57 tax treaties, three 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 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, 52 of Lithuania's 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 that report.

20. The remaining two treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	1
A variation 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), 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

21. The treaty mentioned in the first row above is 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, this treaty's non-discrimination clause applies only to nationals that are resident of one of the contracting states. Therefore, it is logical that the last part of Article 25(1), first sentence is omitted and that it only allows for the submission of MAP requests to the state of which the taxpayer is a resident. For this reason, this treaty is considered to be in line with this part of element B.1.

22. 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 provision incorporated in the protocol to this treaty reads:

... 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.

23. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request in practice can therefore not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore considered not to be in line with this part of element B.1.

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

24. Out of Lithuania's 57 tax treaties, 55 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.

25. The remaining two tax treaties that do not contain such a 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

26. All peers that provided input during stage 1 confirmed that their treaty with Lithuania meets the requirements under this element of the Action 14 Minimum Standard. One peer mentioned that its treaty will be modified by the Multilateral Instrument to allow the submission of MAP requests to either competent authority, which is in conformity with the analysis below.

27. For the two treaties identified that do not contain the equivalent of Article 25(1), first or second sentence, 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*

28. As follows from the above analysis, in all but one of Lithuania's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Lithuania reported that taxpayers are allowed to request MAP assistance while also seeking to resolve the same dispute via domestically available judicial and administrative remedies, whereby the initiation of the latter is not a prerequisite for submitting a MAP request. Such requests could be made regardless of whether the issue under dispute has already been decided via these judicial and administrative remedies. In both situations, access to MAP would be granted. Furthermore, even if a taxpayer has initiated administrative proceedings, which are considered as pre-trial proceedings, and also submitted a MAP request regarding the same matter, then in Lithuania any pre-trial proceedings would be suspended until the finalisation of the MAP process. This rule is laid down in Article 156 (2) of the Law on Tax Administration, which both applies to MAP cases under Lithuania's tax treaties and under the EU Arbitration Convention. Lithuania further reported that it is not allowed to derogate from decisions issued by a judicial body and that its competent authority might only proceed with a MAP within the limits prescribed by the relevant judicial decision.

29. Lithuania's MAP guidance contains in paragraph 8, 41-43, and 50-51 an explanation addressing the relationship between MAP and domestic law administrative and judicial remedies, which follows the description set forth above.

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

30. Lithuania reported that for the one treaty that does not contain a filing period for MAP requests, it will apply a period of three years as from the first notification of the action that resulted in taxation not in accordance with the tax treaty. Prior to its commitment to follow the Action 14 Minimum Standard, Lithuania would apply its domestic rules as set forth in Article 68 of the Law on Tax Administration, which is five years as from the fiscal year concerned. This policy has according to Lithuania become irrelevant since that commitment. Furthermore, in Lithuania's view it is also a mere theoretical discussion if the impact of the Multilateral Instrument is taken into account (see below).

31. As is mentioned in the Introduction, Lithuania signed the Multilateral Instrument without any reservations to Article 16 concerning the mutual agreement procedure. The same applies with respect to the treaty partner for which the treaty with Lithuania does not contain a filing period for MAP requests. While the treaty itself is in line with element B.1, where both treaty partners listed their treaty with each other as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(5)(b) a

reservation nor, pursuant to Article 16(6)(b), a notification that their mutual treaty contains a filing period for MAP requests of less than three years or of at least three years, the effect of the instrument is that the treaty provision will be superseded to the extent of incompatibility. For the one treaty that does not contain a filing period for MAP request, Lithuania and the relevant treaty partner have already deposited their instrument of ratification, for which Lithuania reported it considered that the relevant treaty provision has been superseded and therefore that it will apply a three-year filing period for MAP requests for this treaty as well.

Recent developments

Bilateral modifications

32. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

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

33. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

34. 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.

35. With the depositing of the Multilateral Instrument, Lithuania opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (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 contracting state. In other words, where under Lithuania's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Lithuania opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Lithuania listed 55 of its 57 treaties as a covered tax agreement under the Multilateral Instrument and made, on the

basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). One of these 55 treaties, however, concerns one of the two treaties mentioned above that already allows for the submission of a MAP request to either competent authority and for that reason is not taken into account in the analysis below. In other words, only 54 treaties are taken into account.

36. In total, all but one treaty partners listed their treaty with Lithuania as a covered tax agreement under that instrument, but seven of the 54 relevant treaty partners are not a signatory to the Multilateral Instrument and 19 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. All the remaining 27 treaty partners listed their treaty with Lithuania as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

37. Of these 27 treaty partners, 22 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Lithuania and these treaty partners, and has therefore already modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). For the remaining five treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

38. In view of the above, for the one treaty identified in paragraphs 21-22 above that is considered not containing 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), it is not included in the list of 27 treaties that will 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

39. 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).

40. In regard of the one tax treaty identified in paragraph 24 above that contains a filing period for MAP requests of less than three years, Lithuania listed it as a covered tax agreement under the Multilateral Instrument and for it made, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Lithuania under that instrument and also made a notification on the basis of Article 16(6)(b)(i). 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 Lithuania and this treaty partner. Therefore, at this stage, the Multilateral Instrument has modified this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

41. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Lithuania, but these inputs hold no relevance for element B.1.

Anticipated modifications

42. From the above analysis it follows that all of Lithuania's tax treaties are or will become in line with the Action 14 Minimum Standard with respect to the filing period for MAP requests. Concerning the inclusion of the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), Lithuania reported that the one tax treaty that does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b), and will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element B.1 and that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the Action 14 final report (OECD, 2015b). In this respect, Lithuania reported that communications will be initiated on the amendment of the treaty as soon as the treaty partner has completed its internal procedures to deposit its ratification of the Multilateral Instrument.

43. Regardless, Lithuania 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 57 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). This treaty will not be modified by the Multilateral Instrument. For this treaty, no actions have been taken, but it is included in the plan for renegotiations.	As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the treaty that currently does not contain such equivalent, Lithuania should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations, either a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

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

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

44. 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

45. As discussed under element B.1, out of Lithuania's 57 tax treaties, three currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. Furthermore, as was also discussed under element B.1, 20 of the remaining 54 treaties have been modified and six will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

46. Lithuania reported that for those treaties that do not allow the filing of a MAP request to either competent authority, it has introduced a bilateral consultation process that allows the other competent authority concerned to provide its views on the case where Lithuania's competent authority considers the objection raised in the MAP request not to be justified. The process for considering MAP requests and the process to be followed can be found in paragraphs 10 and 18-28 of Lithuania's MAP Guidance.

47. In regard of the consultation process, Lithuania reported that upon receipt of a MAP request, its competent authority will forward the request to the other competent authority within one month from the date of receipt irrespective of whether or not it considers the case as justified. Afterwards, it will notify the taxpayer hereof. In cases where Lithuania's competent authority considers that the objection raised in a MAP request is not justified, it will reach out to the other competent authority, stating the reasons that led to this decision and invites the other competent authority to express its views on the case. Upon receipt of a response, Lithuania's competent authority then evaluates and takes into account the other competent authority's position. Two outcomes are possible in this respect:

- If the argument received from the other competent authority is sufficient to change Lithuania’s initial position, then it would decide that a MAP could proceed and access will be given.
- If the arguments presented are unconvincing and if Lithuania’s initial reasons for denying access to MAP are still valid, then its competent authority would send a letter restating its position to the other competent authority. Lithuania noted that it would be open to further consultations at this point if the other competent authority requests such action. Otherwise, it would close the case with the outcome “Objection not justified”.

48. Concerning the timing of the steps in the process, Lithuania reported that there are no specific time limits set, but that the consultation process will be initiated within two months after the submission of the initial MAP request or after all required information is submitted by the taxpayer, and no later than four months as of that date. Furthermore, Lithuania mentioned that it would expect the other competent authority to respond within a period of two months, which could be later taking into account the peculiarities of each case as well as earlier communications with that competent authority. Where no response would be received within this two-month period, or within a reasonable timeframe, Lithuania reported it would consider the case to be closed.

Recent developments

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

Practical application

Period 1 January 2015-31 August 2018 (stage 1)

50. Lithuania reported that in the period 1 January 2015-31 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 Lithuania also show that none of its MAP cases was closed with the outcome “objection not justified”.

51. All peers that provided input indicated not being aware of any cases for which Lithuania’s competent authority considered the objection raised in a MAP request as not justified. They also reported not having been consulted/notified in such cases, which can be explained because no such cases occurred since this date.

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

52. Lithuania reported that since 1 September 2018 its competent authority has not considered any objection raised in a MAP request as not being justified. The 2018 and 2019 MAP statistics submitted by Lithuania confirm that none of its MAP cases were closed with the outcome “objection not justified”.

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

Anticipated modifications

54. Lithuania did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

55. 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

56. Out of Lithuania's 57 tax treaties, 46 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring it to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

57. The remaining eight treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- In six of the eight treaties, the granting of a corresponding adjustment is only optional as the word "shall" is replaced by "may".
- In two treaties the requirement to grant a corresponding adjustment is not included nor is the last sentence of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) included. This sentence is replaced by wording that stipulates that the competent authorities may consult together with a view to reach an agreement on the adjustment of profits.

58. Lithuania had formerly made a position to the 2014 version of the OECD Model Tax Convention (OECD, 2017) on Article 9 and its commentary. In this position, Lithuania reserved the right to replace "shall" by "may" in the first sentence of paragraph 2 in their tax conventions. However, Lithuania has since withdrawn this position.

59. Lithuania 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.

60. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Lithuania'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, Lithuania indicated that it will always provide access to MAP for transfer pricing cases. In this respect, paragraphs 5 and 7.1-7.2 of Lithuania's MAP guidance explicitly clarify that taxpayers have access to MAP in transfer pricing cases.

Recent developments

Bilateral modifications

61. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

62. Lithuania 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.

63. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

64. 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)).

65. Lithuania has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). In regard of the 11 tax treaties identified in paragraphs 56 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Lithuania

listed all as a covered tax agreement under the Multilateral Instrument and for nine of them did it make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

66. With regard to those nine treaties, one treaty partner is not a signatory to the Multilateral Instrument, whereas one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Lithuania already contains the equivalent of Article 9(2), and two also made a notification on the basis of Article 17(4). The remaining five treaty partners did not make such a notification. Therefore, at this stage, two of the 11 treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) and five will be superseded to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). With respect to these treaties, four treaty partners have already deposited their instrument of ratification and therefore the Multilateral Instrument has modified one treaty and has superseded three treaties in the case of incompatibility.

67. With regard to the remaining two treaties for which Lithuania did not make a notification on the basis of Article 17(4), both treaty partners are a signatory to the Multilateral Instrument and one of them listed its tax treaty with Lithuania as a covered tax agreement under that instrument. This treaty partner reserved, on the basis of Article 17(3), the right not to apply Article 17(2) as it considered that its treaty with Lithuania already contains the equivalent of Article 9(2). Therefore, at this stage, none of the remaining two treaties will be modified or superseded 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 2015-31 August 2018 (stage 1)

68. Lithuania reported that in the period 1 January 2015-31 August 2018, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

69. All peers that provided input indicated not being aware of a denial of access to MAP by Lithuania in the period 1 January 2015-31 August 2018 on the basis that the case concerned was a transfer pricing case.

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

70. Lithuania reported that since 1 September 2018 it has also not denied access to MAP on the basis that the case concerned a transfer pricing case.

71. All peers that provided input during stage 1, stated in stage 2 that the update report provided by Lithuania fully reflects their experience with Lithuania since 1 September 2018 and/or there are no additions to the previous input given. One of these peers confirmed that the Competent Authority Agreement implementing the Multilateral Instrument that is being finalised will update Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Another peer noted that the Multilateral Instrument has already superseded its tax treaty with Lithuania to include a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). This conforms with the above analysis.

Anticipated modifications

72. Lithuania reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

73. 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

74. None of Lithuania's 57 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 Lithuania does not contain 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.

75. Lithuania reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, paragraph 7.5 of Lithuania's MAP guidance clarifies that MAP is available in cases concerning the application of anti-abuse provisions.

Recent developments

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

Practical application*Period 1 January 2015-31 August 2018 (stage 1)*

77. Lithuania reported that in the period 1 January 2015-31 August 2018 it has not denied access to MAP in any 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 request in relation hereto were received by its competent authority.

78. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Lithuania in the period 1 January 2015-31 August 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

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

79. Lithuania 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.

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

Anticipated modifications

81. Lithuania did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

82. 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

83. Lithuania reported that under its domestic law no process is available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

84. Lithuania reported that it has an administrative dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. The process is, however, only available in cases where neither the taxpayer nor the tax administrator has sufficient evidence to substantiate their calculation. The relevant rules of this process are laid down in Article 71 of Lithuania's Law on Tax Administration.

85. Taxpayers can request the initiation of this process during: (i) the last stage of a tax audit in Lithuania in which there is a draft report on the basis of which it can reasonably be established that there are additional taxes to be paid, (ii) pre-trial proceedings or (iii) trial proceedings. Lithuania reported that this administrative dispute settlement/resolution process is handled by a separate working group that is independent from the audit function of the tax administration. It is also independent from the appeals division within the legal department of the STI, which conducts the general administrative dispute resolution process. This working group consists of employees from different departments of the STI, for which Lithuania further reported that they do not act as representatives from their respective departments but instead follow the specific regulations of the working group that are set for the administrative dispute settlement/resolution process. The working group has a specific mandate to negotiate settlements with taxpayers.

86. Lithuania further reported that if an agreement is reached during the administrative dispute settlement/resolution process, then the taxpayer loses the right to dispute the tax in question. In relation to the mutual agreement procedure, Lithuania specified that access to MAP would only be denied if a MAP request is submitted after an agreement is reached following the application of the administrative dispute settlement/resolution process. Where, however, a MAP case is submitted prior to or simultaneously with a request for the initiation of the administrative dispute settlement/resolution process, Lithuania will accept the MAP request and proceed with the case in a mutual agreement procedure under suspension (or in some cases under termination) of the settlement/resolution process.

Recent developments

87. Lithuania reported that the “Rules on the Conclusion of Agreement on Taxes and Related Amounts Between the Tax Administrator and a Taxpayer” (the Rules) have been updated on 30 October 2019 to explain the effects of the administrative or statutory dispute settlement/resolution process on MAP. Lithuania clarified that a new paragraph 7-1 of the Rules states that the administrative dispute settlement/resolution process shall not be considered if a MAP is in progress. If a taxpayer applies for the same dispute both with a request to initiate the administrative dispute settlement/resolution process and a request for a MAP, the administrative dispute settlement/resolution process will not be considered unless the taxpayer explicitly requests to terminate the MAP process.

Practical application*Period 1 January 2015-31 August 2018 (stage 1)*

88. Lithuania reported that it has in the period 1 January 2015-31 August 2018 not denied access for cases where the issue presented by the taxpayer in a MAP request had already been resolved through its administrative dispute settlement/resolution process. While there was one case where a taxpayer submitted both a MAP request and a request for the initiation of the settlement/resolution process, the case was not accepted under the latter and was therefore dealt with solely in MAP.

89. All peers indicated not being aware of a denial of access to MAP in Lithuania in the period 1 January 2015-31 August 2018 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that such settlements are not possible in Lithuania.

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

90. Lithuania reported that since 1 September 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request had already been resolved through its administrative dispute settlement/resolution process.

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

Anticipated modifications

92. Lithuania did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

95. Lithuania reported that a MAP request generally has to be assessed by its competent authority within two months on whether it can be accepted into the process. In cases where the taxpayer does not initially provide all the required information, Lithuania reported that it would request such additional information from the taxpayer within two months. There are no time limits set for taxpayers to provide this information, although a general term of 30 calendar days (20 working days), which is provided for in the Law on Public Administration, will be used in principle. In specific situations, however, this term should not necessarily be used by the competent authority. In fact, Lithuania specified that the length of time given to the taxpayer is often determined by the complexity of the particular case.

96. In cases where the taxpayer fails to respond to Lithuania's request for additional information, Lithuania may ultimately choose not to consider the request. Lithuania noted that in practice, however, MAP requests are usually processed even if the taxpayer is not able to provide the information requested within the set terms, so long as he explains the reasons for the delay or his inability to provide the information on time. In such a situation, the relevant information may also be requested from the other competent authority concerned. Lithuania further reported that it may initiate the MAP process even if the taxpayer has not submitted all the required information, provided that the case can be processed without this missing information. However, Lithuania reported that this does not relieve the taxpayer from submitting all required information during the course of the MAP process.

97. Sections 18-19 of Lithuania's MAP guidance contains information on how a submitted MAP request is being followed up, which aligns with the rules set out above.

Recent developments

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

Practical application

Period 1 January 2015-31 August 2018 (stage 1)

99. Lithuania reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation required requirements set out in its MAP guidance. It further reported that in the period 1 January 2015-31 August 2018 its competent authority has not denied access to MAP for cases where the taxpayer did not provide the required information or documentation.

100. All peers that provided input indicated not being aware of a limitation of access to MAP by Lithuania in the period 1 January 2015-31 August 2018 in situations where taxpayers complied with information and documentation requirements.

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

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

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

Anticipated modifications

103. Lithuania did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

104. 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 Lithuania's tax treaties

105. Out of Lithuania's 57 tax treaties, 52 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. The remaining five treaties do not contain any provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

106. During stage 1, 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*

107. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

108. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

109. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

110. In regard of the 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), Lithuania listed all as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All five relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Lithuania as a covered tax agreement under that instrument and also made a notification on the basis of 16(6)(d)(ii).

111. Of the five treaty partners mentioned above, four have deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Lithuania and these treaty partners, and has modified these 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

112. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Lithuania, but these inputs hold no relevance for element B.7.

Anticipated modifications

113. As all five treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) will be modified by the Multilateral Instrument, no bilateral modifications are necessary. Regardless, Lithuania reported that it will continue to 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.

114. Information on a jurisdiction’s MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction’s MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction’s MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Lithuania’s MAP guidance

115. Lithuania’s rules, guidelines and procedures are included in the document titled “The Rules for the Initiation and Execution of the Mutual Agreement Procedure”. This guidance has been updated on 12 September 2019 and is available at:

<https://www.vmi.lt/cms/en/abipusio-susitarimo-procedura>

The Rules for the Initiation and Execution of the Mutual Agreement Procedure

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

1. general provisions
2. appeal regarding the mutual agreement procedure
3. examination of the request and the commencement of the mutual agreement procedure
4. implementation of the mutual agreement procedure
5. the relation of the mutual agreement procedure with other procedures and liabilities
6. completion of the mutual agreement procedure after the resolution of the dispute
7. implementation of the mutual agreement reached
8. final provisions.

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

Information and documentation to be included in a MAP request

118. 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.¹ This agreed guidance is shown below. Lithuania's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

119. Further to the above, Lithuania's MAP guidance, also requires that a MAP request must include: (i) information on the other competent authority concerned, (ii) the relevant tax years, (iii) the reference to the applicable domestic rules and tax treaties, (iv) for the EU Arbitration Convention, a reasoning why the arm's length principle has not been observed and the data necessary to determine the commencement date of the two-year period for triggering arbitration, (v) whether domestic procedures have been initiated and (vi) whether the taxpayer has applied to the tax administrator with a proposal for the conclusion of an agreement under Article 71 of the Law on Tax Administration. Where the case concerns multiple taxpayers or multiple jurisdictions, concerned, section 13 of Lithuania's MAP guidance stipulates that separate MAP requests should be filed.

120. Lithuania's MAP guidance in paragraph 16 also states that where a taxpayer submits a MAP request in a non-official language, then a translation of such documents into the Lithuanian language should, at the request of its competent authority, be provided within a specified deadline.

Recent developments

121. Lithuania reported that it has updated its MAP guidance on 12 September 2019 to reflect the recommendations and suggestions made in the stage 1 peer review report. This, inter alia, concerns: (i) the contact details of its competent authority and (ii) the clarification that taxpayers can request for the multi-year resolution of recurring issues through MAP. Taking this development into consideration, Lithuania has followed up on the recommendation that was made under element B.8 in its stage 1 peer review report.

122. In addition, Lithuania reported that sub-paragraph 12.12 of the updated MAP guidance clarifies that taxpayers should include information in their MAP request whether they have applied to the tax administrator with a proposal for the conclusion of an agreement under Article 71 of the Law on Tax Administration. It noted that this update was made to reflect the changes of the Rules in the MAP guidance.

Anticipated modifications

123. Lithuania did not indicate that it anticipates any modifications in relation to element B.8.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

124. 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.²

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

125. The MAP guidance of Lithuania is published and can be found at:

<https://www.vmi.lt/cms/en/abipusio-susitarimo-procedura>

126. This guidance was last updated in September 2019 and is available in Lithuanian as well as in English. As regards its accessibility, Lithuania’s MAP guidance can easily be found on the website of the State Tax Inspectorate by searching for “MAP” on its homepage.

MAP profile

127. The MAP profile of Lithuania is published on the website of the OECD, which was last updated in April 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

128. Lithuania reported that its updated MAP guidance has been published on 12 September 2019. It further reported that its MAP profile was also updated in April 2020 to reflect changes in its MAP guidance and the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU.

Anticipated modifications

129. Lithuania did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

130. 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

131. As previously discussed under B.5, audit settlements are not possible in Lithuania.

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

132. As also previously mentioned under element B.5, Lithuania has an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. In this respect, paragraph 22.2 of Lithuania's MAP guidance clarifies that where an agreement has been reached between the taxpayer and the tax administration through this settlement/resolution process, then the mutual agreement procedure shall not be initiated.

133. Lithuania reported that it has not issued separate guidance on its administrative or statutory dispute settlement/resolution process and its relationship with MAP. However, it noted that separate rules are published in Lithuanian that regulate this process, which can be found in the Rules as well as in the commentary on Article 71 of its Law on Tax Administration. Lithuania further reported that the Rules have been updated in 2019 and include an explanation of the effects of its administrative or statutory dispute settlement/resolution process on MAP. A new paragraph 7-1 states that the proposal to sign an agreement between the tax administrator and the taxpayer on the amount of taxes and

related amounts shall not be considered, if the MAP is in progress. If a taxpayer applies for the same dispute both with the administrative dispute settlement/resolution process and with a request to initiate a MAP, the administrative dispute settlement/resolution process will not be considered, unless the taxpayer explicitly requests to terminate the MAP process. The Rules have also been supplemented by a clause (13.4-1) stating that when submitting a request for the signing of an agreement with the tax administrator, a taxpayer must indicate in the request whether it has initiated double taxation dispute resolution proceedings on the same issue. In addition, a new paragraph 31-1 of the Rules provides that in cases where an agreement has been signed between the tax administrator and the taxpayer, the double taxation dispute resolution procedure provided for in international agreements shall not apply to the same dispute issue.

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

134. Lithuania reported that all treaty partners were notified of the existence of its statutory/administrative dispute settlement/resolution process and its consequences for MAP, because this process is identified and described in Lithuania’s MAP guidance and MAP profile, both of which are publicly available. Five of the seven peers that provided input on Lithuania’s compliance with the Action 14 Minimum Standard, however, reported that they were not notified of the existence of such process in Lithuania, while another peer reported that it learned about the existence of such process through Lithuania’s MAP profile. The last peer stated that it is aware of this process and also noted that information regarding this process is available on Lithuania’s MAP profile.

135. While Lithuania did not separately notify their treaty partners of the existence of its statutory/administrative dispute settlement/resolution process by means of a formal letter, Lithuania includes detailed information on this process in its MAP profile, with a reference to its domestic MAP guidance in which the process is outlined in detail. This is considered to be in line with the requirement on element B.10.

Recent developments

136. As discussed under element B.5, Lithuania reported that “Rules on the Conclusion of Agreement on Taxes and Related Amounts Between the Tax Administrator and a Taxpayer” were updated on 30 October 2019 to include an explanation of the effects of its administrative or statutory dispute settlement/resolution process on MAP. This development has been reflected above in “MAP and other administrative or statutory dispute settlement/resolution processes in available guidance”. Taking this development into account, the recommendation made in the stage 1 peer review report has been followed up.

Anticipated modifications

137. Lithuania did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

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

References

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

Part C

Resolution of MAP cases

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

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

138. 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 Lithuania’s tax treaties

139. All of Lithuania’s 57 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.

140. All peers that provided input during stage 1 confirmed that their treaty with Lithuania meets the Action 14 Minimum Standard for this element.

Recent developments

Bilateral modifications

141. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Peer input

142. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Lithuania, but these inputs hold no relevance for element C.1.

Anticipated modifications

143. As all of Lithuania’s 57 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) there is no need for modifications. Regardless, Lithuania reported that it will continue to seek to include Article 25(2), first sentence 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).

144. 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

145. Statistics regarding all tax treaty related disputes concerning Lithuania are published on the website of the OECD as of 2015.¹

146. 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. Lithuania provided its post-2015 MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Lithuania and of which its competent authority was aware. However, not all its pre-2016 cases were reported, as five of such cases were only reported during the course of the peer review report.²

147. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively and should be considered jointly for an understanding of the MAP caseload of Lithuania. With respect to post-2015 cases, Lithuania reported 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, based on the information provided by Lithuania’s MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

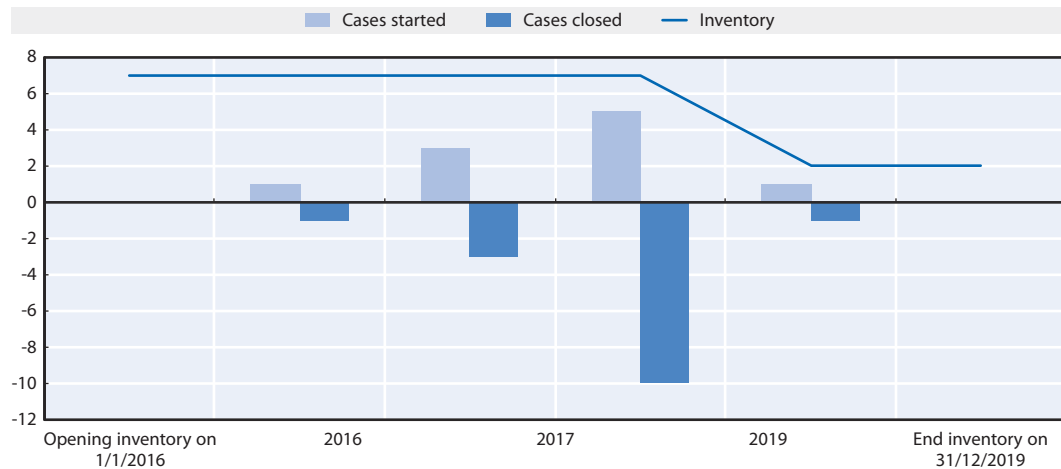
148. Lithuania reported that its work organisation and document management system monitors deadlines within the MAP process and helps track performance of tasks relating to the timely resolution of MAP cases.

Analysis of Lithuania's MAP caseload

149. The analysis of Lithuania'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 Lithuania's MAP caseload over the Statistics Reporting Period.

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

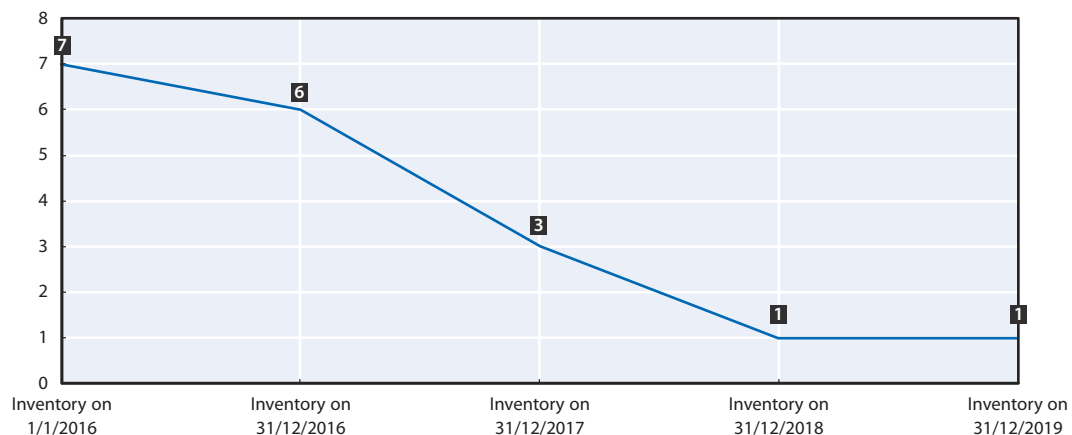


151. At the beginning of the Statistics Reporting Period, Lithuania had seven pending MAP cases, of which five were attribution/allocation cases and two other MAP cases.³ At the end of the Statistics Reporting Period, Lithuania had two MAP cases in its inventory, both other MAP cases. Accordingly, Lithuania's MAP caseload has decreased by 71% during the Statistics Reporting Period, which concerns a decrease of 100% in the number of attribution/allocation cases and the same number of other MAP cases.

Pre-2016 cases

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

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



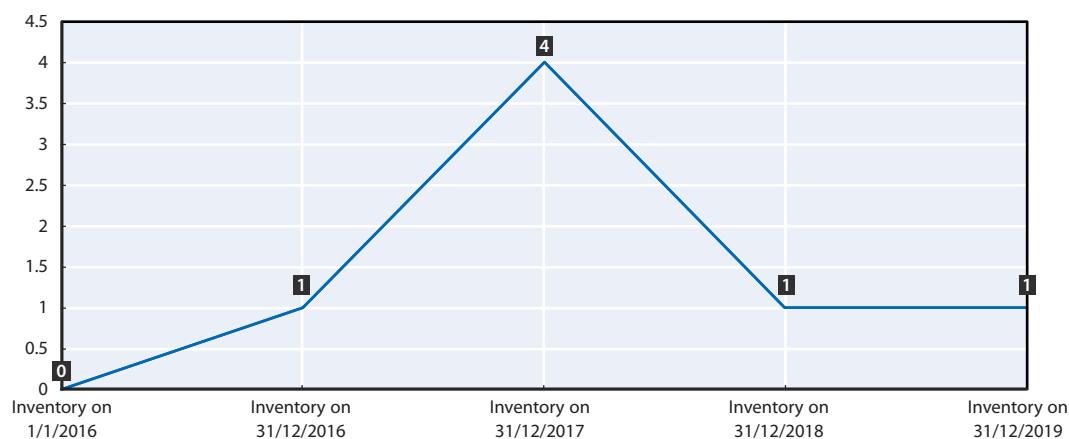
153. At the beginning of the Statistics Reporting Period, Lithuania’s MAP inventory of pre-2016 MAP cases consisted of seven cases, of which were five attribution/allocation cases and two other cases. At the end of the Statistics Reporting Period, the total inventory of pre-2016 cases had decreased to one case, which is an other case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	-20%	-50%	-100%	(no case closed)	-100%
Other cases	(no case closed)	-50%	(no case closed)	(no case closed)	-50%

Post-2015 cases

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

Figure C.3. Evolution of Lithuania’s MAP inventory: Post-2015 cases



155. In total, ten MAP cases started during the Statistics Reporting Period, two of which concerned attribution/allocation cases and eight other MAP cases. At the end of this period the total number of post-2015 cases in the inventory was one case, which is an other case. Accordingly, Lithuania closed nine post-2015 case during the Statistics Reporting Period, two of which concerned attribution/allocation cases and seven other cases. The total number of closed cases represent 90% of the total 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.

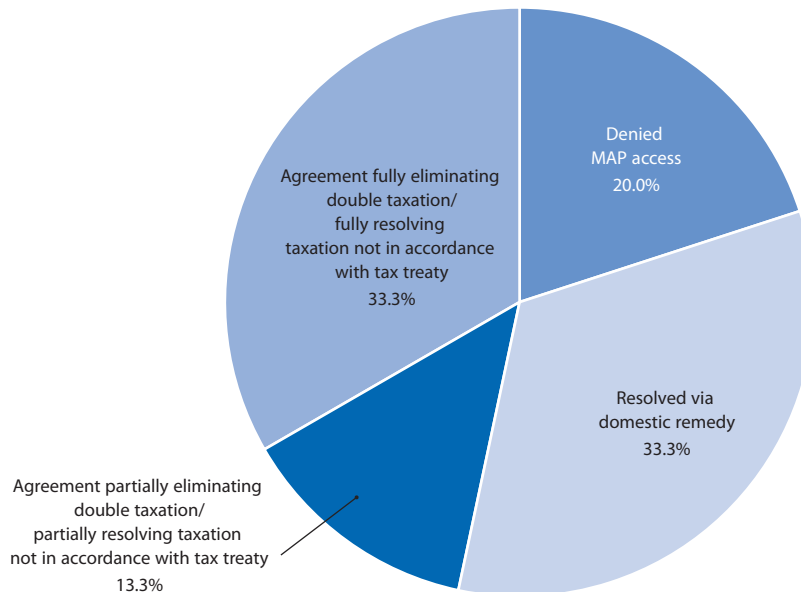
	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	% of cases closed compared to cases started in 2018	% of cases closed compared to cases started in 2019	Cumulative percentage of cases closed compared to cases started over the four years (2016-19)
Attribution/allocation cases	(no case started)	0%	(no case started)	(no case started)	100%
Other cases	0%	0%	120%	100%	88%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

157. During the Statistics Reporting Period Lithuania in total closed 15 MAP cases for which the outcomes shown in Figure C.4 were reported.

Figure C.4. Cases closed in 2016, 2017, 2018 or 2019 (15 cases)



158. Figure C.4 shows that during the Statistics Reporting Period, approximately 33% of these 15 cases were closed with the outcomes “agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty” and “resolved via domestic remedy”.

Reported outcomes for attribution/allocation cases

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

- resolved via domestic remedy (57%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (29%)

- agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty (14%).

Reported outcomes for other cases

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

- denied MAP access (38%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (38%)
- agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty (13%)
- resolved via domestic remedy (13%).

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 21.44 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	7	34.67
Other cases	8	9.86
All cases	15	21.44

Pre-2016 cases

162. For pre-2016 cases Lithuania reported that on average it needed 42.65 months to close five attribution/allocation cases and 30.61 months to close one other case. This resulted in an average time needed of 40.65 months to close six pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Lithuania reported that it uses the following dates:

- *Start date*: the rules as defined under the MAP Statistics Reporting Framework: one week from the date of notification by the competent authority that receives the MAP request from the taxpayer or five weeks from the receipt of the taxpayer's MAP request, whichever is the earlier date. However, where Lithuania's competent authority receives a MAP request that does not include all required information, then the Start date will be set at the date when such missing information is submitted.
- *End date*: the date of an official communication (typically in the form of a letter) from the competent authority to inform the taxpayer of the outcome of its MAP request.

Post-2015 cases

163. For post-2015 cases Lithuania reported that it needed 14.73 months to close two attribution/allocation cases and 6.90 months to close seven other cases. This resulted in an average time needed of 8.64 months to close nine post-2015 cases.

Peer input

164. Peer input in relation to the timely resolution of MAP cases is discussed under element C.3.

Recent developments

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

166. With respect to this recommendation, Lithuania reported that all the four post-2015 MAP cases pending on 31 December 2017 were resolved in 2018 within a timeframe of less than 24 months.

167. All peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 September 2018. One peer noted that it has no experiences in resolving MAP cases with Lithuania in that period.

Anticipated modifications

168. Lithuania did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

169. 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 Lithuania's competent authority**Organisation of the competent authority*

170. Under Lithuania's tax treaties the competent authority function is assigned to the Ministry of Finance, which it has delegated to the STI. Within this directorate it is the permanent working group for handling Double Taxation Dispute Resolution Procedures ("**Working Group**") that in practice handles and resolves MAP cases, the role of which is defined in section 4.1 of Lithuania's MAP guidance. Following the entry into force of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU, the Working Group is also responsible for handling the cases received under the Directive.

171. The Working Group handles both attribution/allocation cases as well as other MAP cases. MAP cases were previously handled by several ad-hoc groups, but given that Lithuania receives more MAP requests nowadays, it decided in 2015 to install a permanent working

group. How the Working Group handles MAP cases is defined in an internal working regulation in Lithuania, which also specifies the Group's tasks and working procedures. In this respect, Lithuania reported that the Working Group currently consists of eight members, which includes the head as well as two deputy heads, one of whom is responsible for attribution/allocation cases and one for other MAP cases. The remaining five members of the Working Group work on both types of MAP cases.

172. Further to the above, Lithuania reported that it has implemented a one-stop-shop concept. Where a MAP agreement is submitted to a governmental entity other than the competent authority, the request will be forwarded to the Working Group within five working days from receipt of the request, which is regulated by Article 14(8) of the Law on Public Administration.

Staff in charge of MAP processes

173. Lithuania reported that the current members of the Working Group are experts in a variety of subjects, including transfer pricing, international taxation, economics, law and accountancy. Handling MAP cases is a function in addition to the other daily tasks of these employees, as well as participation in performance of other specific functions, which inter alia includes working on tax rulings. More specifically, Lithuania reported that of the eight-member team:

- Two are from the Law department of the STI, one of whom has been a member of the Working Group since 2015 and is responsible for methodological assistance in direct taxation. The other employee from the Law department Direct taxes division handles various direct taxes cases and represents the State Tax Inspectorate in certain European Commission working groups. This employee has no MAP experience.
- Four are from the Large Taxpayers Department of the STI, two of whom are from the transfer pricing division and have been with the team since 2015. The other employee deals with various transfer pricing issues (including APA, provision of consultation regarding TP, participation in risk analyses process of large taxpayers regarding TP risks). This employee has 14 years of experience in tax administration and has no MAP experience. And one is an auditor who has three years of MAP experience
- One is from the Control Department Control methodology division of the STI and has no MAP experience. This employee participates in the formation of uniform practice of application of the provisions of tax legislation, provides assistance and methodical guidance to County State Tax Inspectorates in calculating taxes and control works. This employee also has several years of experience in the field of auditing of natural persons.
- One is from the International Co-operation Department and has been a member of the Working Group since 2015. This employee is responsible for the representation of the STI with international organisations as well the co-ordination of international programmes.

174. Lithuania further reported that staff in charge of MAP undergo training that is based on practical past case experience. Furthermore, training materials are shared at meetings of the Working Group. These joint discussions of cases in Lithuania's view help to develop a consistent approach to resolving MAP cases. Furthermore, when a new person is hired, it is provided with a comprehensive on boarding package as well as an introductory training. Lithuania further reported that it seeks out all possibilities for staff to attend trainings

organised by international organisations such as the OECD and the Intra-European Organisation of Tax Administrations. In this respect, Lithuania noted that a part of the Working Group members participated in OECD virtual MAP training and in the joint OECD and IOTA case study workshop in November 2019. Lithuania further noted that the STI (including the member of Working group) started using the OECD Knowledge Sharing Platform (KSP).

Handling and resolving MAP cases

175. Lithuania clarified that MAP cases are usually assigned to one or two members, who are responsible for the preparation of the case. However, the preparation of a position is a joint effort by the Working Group and each case is discussed by the whole team in order to create a common understanding and to acquire knowledge in all relevant fields. In that regard, Lithuania further reported that for each case a joint decision is made by majority vote but only after all members of the Working Group have had the opportunity to express their views on the case. Lithuania also explained that a position paper or a response to a position paper is prepared once a decision is made.

176. During meetings of the Working Group, each member is required to present the current progress of his/her assigned MAP case including what actions have been taken, how much time has elapsed and when the two-year period for MAP is expected to be reached. Lithuania further reported that staff members of the Group are periodically required to fill in a reporting table that keeps track of the progress of each MAP case that has been assigned to this member. In this table, staff has to indicate the start/end date, the type of case, the taxpayer involved, subject matter of the case, any relevant concerns, the positions provided/received, the amount of tax under consideration, whether a MAP was ultimately reached and any other relevant remarks.

177. Paragraph 61 of Lithuania's MAP guidance explains that the Working Group shall examine MAP requests and adopt decisions on resolving MAP cases in accordance with tax laws, international treaties, justice, equivalence between taxpayers, non-discrimination and independence.

178. With respect to face-to-face competent authority meetings, Lithuania reported that there is no separate budget planned in advance to facilitate such meetings, but that funds are made available if needed. Furthermore, such meetings would be attended by the main designated people from the Working Group, including the head and the appointed member. However, Lithuania noted that in practice, face-to-face meetings are quite rare and typically take place with competent authorities from neighbouring countries. Lithuania further noted that with more geographically distant countries it typically communicates via written means or by teleconference.

179. Concerning the timelines to apply when handling MAP cases, paragraphs 29-34 of Lithuania's MAP guidance describe in more detail the steps to be taken during the MAP process and which timelines its competent authority adheres to during each phase. Paragraph 29 notes that Lithuania seeks to resolve MAP cases within two years as from the date the case was initiated. In more detail, paragraph 30 and 31 describe the timelines to be applied for issuing a position paper or to respond to a position paper received from another competent authority, which are four and six months respectively. Taxpayers are also informed about the status of their MAP case every six months.

Monitoring mechanism

180. Lithuania reported that its current available resources are adequate to handle its MAP caseload. However, if it concludes that resources are no longer sufficient for the competent authority function, then more resources would be requested.

Recent developments

181. Lithuania reported that since 1 September 2018, the composition of the Working group was partially renewed and the number of the members is currently eight. Instead of two former members who resigned from the STI, three new members were involved, one from each of the following departments: the Law department, the Control department and the Large taxpayers monitoring and consultancy department. Lithuania further reported that following the entry into force of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the EU, the Working Group is also responsible for handling the cases received under the Directive. These developments have been reflected above in the description of Lithuania's competent authority.

182. With respect to the recommendation made in the stage 1 peer review report that Lithuania should analyse whether working procedures within its competent authority could be made more effective and efficient, Lithuania reported that as a result of such analysis no substantial changes in MAP procedures have been initiated, since the number of MAP cases remains small. Lithuania stated that in order to ensure that MAP cases are dealt with in a timely manner, the assigned cases and time set aside for the examination of the cases are discussed with the members of the Working group, and the head of the Working group monitors the time allocated to the examination of cases. Lithuania further stated that a Memorandum on the Conduct of Double Taxation Dispute Resolution Procedures has been updated (in Lithuanian language). The Memorandum is for internal use only and is dedicated to the members of the Working Group. It provides all the basic information necessary to deal with MAP cases such as information on double taxation dispute resolution procedures, legal bases of procedures, main steps of double taxation dispute resolution procedures, filled/prepared documents and deadlines. Furthermore, Lithuania noted that the Memorandum ensures that MAP runs smoothly, both in terms of staff changes and procedural changes, and also helps to seek to resolve MAP cases within a 24-month timeframe.

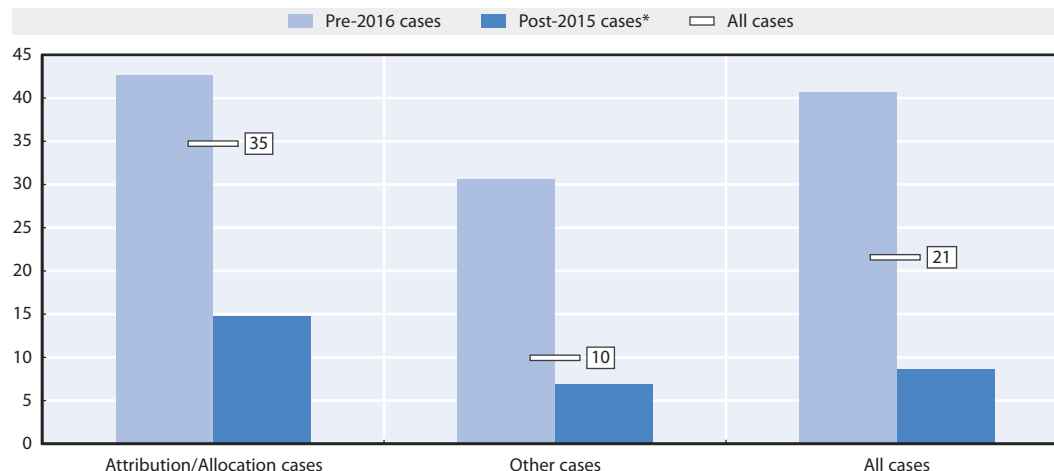
Practical application

MAP statistics

183. As discussed under element C.2, Lithuania closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. However, the average time taken to close attribution/allocation cases is much higher than the average time needed for other cases and is above the pursued 24-month average. This can be illustrated by Figure C.5.

184. Based on these figures, it follows that on average it took Lithuania 21.44 months to close MAP cases during the Statistics Reporting Period, which is below the pursued average of 24 months. This, however, only regards other cases, for which the average is 9.86 months, while attribution/allocation cases are on average closed in a timeframe which is above 24 months (34.67 months).

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 2016-19.

185. The stage 1 peer review report of Lithuania analysed the 2016 and 2017 statistics and showed an average of 36.13 months, which both regards attribution/allocation cases (38.89 months) as well as other MAP cases (30.61 months) and which is above the pursued average of 24 months.⁴ Nevertheless, Lithuania reported that its current available resources are adequate to handle its MAP caseload, and if it concludes that resources are no longer sufficient for the competent authority function, then more resources would be requested. Lithuania was recommended to analyse whether working procedures within its competent authority could be made more effective and efficient to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner.

186. 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:

	2018	2019
Attribution/Allocation cases	31.87	n.a.
Other cases	5.29	16.54
All cases	15.92	16.54

187. The 2018 and 2019 statistics of Lithuania show that the average completion time of MAP cases significantly decreased from 36.47 months to 15.98 months, which is within the pursued average of 24-month. The average for attribution/allocation cases decreased from 38.42 months to 31.87 months which is still above the pursued average of 24-month, while for other cases the average decreased to be further below the pursued average of 24-month, namely from 30.61 months to 6.90 months.

188. Furthermore – as analysed in element C.2 – the MAP inventory of Lithuania decreased since 1 January 2016. This can be shown as in the table below.

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2019	Decrease in %
Attribution/allocation cases	5	2	7	0	100%
Other cases	2	8	8	2	0%
Total	7	10	15	2	71%

Peer input

Period 1 January 2015-31 August 2018 (stage 1)

189. In general, the peers that provided input reported not having extensive MAP experience with Lithuania's competent authority, with three of them noting that they did not have any experience at all with Lithuania. However, one peer noted that Lithuania is an important MAP partner and that it maintains regular contact via post or electronic means and holds face-to-face meetings when necessary. Furthermore, one peer indicated that it had occasional MAP cases with Lithuania during the Review Period, for which it considered that contacts with Lithuania's competent authority has been generally easy and takes place via traditional letters or email, as personal meetings have not been considered necessary so far.

190. One peer mentioned that it currently does not have pending MAP cases with Lithuania, but that it had one pre-2016 allocation/attribution MAP case that was resolved in 2017. In the peer's experience, co-operation with Lithuania's competent authority was very positive and communication was good, and that the MAP negotiations were constructive. Another peer noted that it only had one MAP case with Lithuania during the Review Period and that in its experience, Lithuania's competent authority was efficient and solution oriented.

191. Further to the above, almost all of the peers that provided input did not make any suggestions for improvement. One peer in this regard mentioned that the MAP process works well in Lithuania. However, one peer noted that its current case pending with Lithuania is in the process of being resolved, which is taking more than 24 months. This peer therefore expressed that this case might serve as an example to settle MAP cases in a more efficient and timelier manner with Lithuania's competent authority.

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

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

Anticipated modifications

193. Lithuania did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

[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.

194. 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

195. As discussed under element C.3, Lithuania reported that MAP cases are usually assigned to one or two members of the Working Group who are responsible for the preparation of the case, but that decisions on the case are made by all members of this group. In this respect, Lithuania explained that letters to other competent authorities are signed by the head of the State Tax Inspectorate to whom the Working Group is accountable. Furthermore, Lithuania reported that in cases where MAP negotiations are conducted in face-to-face meetings the mandate to adopt a decision in the MAP case is delegated to the head of the Working Group.

196. Concerning the resolution of MAP cases, Lithuania reported that staff in charge of MAP in practice operate independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations. In more detail, Lithuania explained that the MAP process is conducted entirely independent from the personnel within the tax administration that is responsible for tax audits. While two members of the Working Group have the capacity to conduct any control or supervisory activities concerning large taxpayers, processes have been put in place to ensure they would not be involved in handling MAP cases when such activities were conducted. More specifically, if any of these people were involved in an audit that leads to a MAP case, they would be suspended from working on such case. Furthermore, if a member of the Working Group was involved in an audit, or where there are other circumstances that raise doubts as to its impartiality for the case under review, he must recuse himself from such examination and decision-takings in accordance with the Law on the Alignment of Public and Private Interests in the Public Service. This rule also has been clarified in paragraph 62 of Lithuania's MAP guidance.

197. In practice, when handling MAP cases, staff in charge of MAP process may liaise with the tax administration (both at a central or at a local level) to obtain information in the case under review or clarification of a legal matter. Nevertheless, Lithuania reported that all decisions relating to the MAP cases are taken by the Working Group without any involvement of other departments. To ensure a fully confidential and independent process, Lithuania also noted that members of the Working Group have exclusive access to specific folders on the State Tax Inspectorate webserver that contains information about the MAP process in Lithuania, letters issued to other divisions, documents retrieved from international fora such as the OECD, as well as training materials.

198. Lithuania further reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations and that the staff in charge of MAP cases may only take into consideration the actual terms of a tax treaty as applicable for the relevant year. In Lithuania, the Ministry of Finance is competent to conduct treaty negotiations, whereas the competent authority function falls solely under the auspices of State Tax Inspectorate. How the Working Group should handle MAP cases is defined in an internal working regulation, which also specifies its tasks and working procedures.

Recent developments

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

Practical application

Period 1 January 2015-31 August 2018 (stage 1)

200. Peers generally reported no impediments in Lithuania 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.

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

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

Anticipated modifications

202. Lithuania did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

203. 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 Lithuania

204. Lithuania reported that, in general, performance of its staff in charge of MAP is evaluated by observing each employee’s fulfilment of separate tasks related to MAP cases, such as the time taken to prepare position papers and as well as interactions with taxpayers.

205. Lithuania further reported that a number of performance indicators and targets are used that are related to the timely and principled resolution of MAP cases. More specifically, Lithuania noted that staff are evaluated on how well they progress on cases assigned to individual staff members as well as their efforts to resolve such cases within the 24-month period. Such evaluation includes sending requests and/or reminders for information on the merits of the case where no response is received from the other competent authority. Lithuania also reported that staff is evaluated on how actively they participate in internal discussions and how well they prepare for such discussions, which also includes obtaining relevant information from other units of the tax administration. Interactions with taxpayers are also taken into account, including whether or not they provide the taxpayer with information regarding the progress and merits of the case. Lithuania noted that staff members are periodically assigned a separate score for his/her performance based on such criteria as well as on his/her performance of other ordinary functions.

206. In addition to the above, Lithuania mentioned that the objective of the Working Group is to resolve MAP cases in a manner that complies with international standards and that follows the set time limits and principles of prudence and justice. In that regard, the Working Group is also tasked with implementing the Action 14 Minimum Standard to the extent that this falls under the competence of the State Tax Inspectorate and therefore members of the Working Group are also assessed on how effectively they are carrying out such implementation. Lithuania explained that its internal document management information system acts not only as a repository for relevant MAP materials but also as a system to create and monitor specific tasks that staff are required to complete. Lithuania noted that this system enables management to track the performance of such tasks, give notifications of upcoming deadlines and generate reports for various purposes.

207. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are for Lithuania 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).

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

Recent developments

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

Practical application*Period 1 January 2015-31 August 2018 (stage 1)*

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

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

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

Anticipated modifications

212. Lithuania did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

213. 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

214. Lithuania reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Following the recent revision of its model tax treaty it allows for the consideration of including mandatory binding arbitration in its tax treaties. Furthermore, Lithuania 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, which has been transposed in its domestic legislation on 24 July 2019.

215. Paragraphs 38-40 of Lithuania's MAP guidance contains information on how arbitration provisions in Lithuania's tax treaties and under the EU Arbitration Convention would apply in practice. Paragraph 40 specifically addresses that arbitration is only available where a case has not been dealt with previously in domestic courts (or where taxpayers have withdrawn from domestic court procedures before a ruling was given) and there are no other legal obstacles to the executing of the arbitration panel's decision.

Recent developments

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

Practical application

217. Lithuania has incorporated an arbitration clause in two of its 57 tax treaties as a final stage to the MAP. In one of these treaties, the arbitration provision is based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017). For this treaty Lithuania agreed on additional rules to be applied during the arbitration procedure. The other treaty contains a voluntary arbitration provision.

Anticipated modifications

218. Lithuania did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm.
2. For this reason, Lithuania’s number of pre-2016 MAP cases were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2017. See for a further explanation Annex B.
3. For pre-2016 and post-2015 Lithuania 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”.
4. The average completion time of MAP cases in 2016 and 2017 is 36.47 months, which regards attribution/allocation cases (38.42 months) as well as other MAP cases (30.61 months).

References

OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

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 D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

219. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

220. Article 68(1) of its Law on Tax Administration contains a domestic statute of limitations for amending a taxpayer's taxable income of three years (five years for some issues such as transfer pricing) preceding the fiscal year in which the adjustment is to be made, that is from 1 January of the fiscal year when the tax was calculated. However, where a taxpayer has validly submitted a MAP request within the time limits specified in the tax treaty (which as noted under element B.1 all provide, or will provide, for a three-year period), then the domestic statute of limitation will not apply concerning the implementation of MAP agreements. In other words, irrespective of whether the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) is contained, Lithuania will implement all MAP agreements if the MAP request was validly submitted. This is also clarified in paragraph 54 of Lithuania's MAP guidance.

221. Concerning the process for implementing MAP agreements, Lithuania reported that once a MAP agreement is reached, taxpayers are asked to give their consent within 30 days of receipt of the notification. Upon receiving such consent, Lithuania's competent authority will exchange closing letters with the other competent authority and subsequently close the case. Pursuant to paragraphs 52 of Lithuania's MAP guidance, where a dispute is resolved through arbitration under the EU Arbitration Convention or tax treaties then consent is not required for implementation. The taxpayer shall nevertheless be informed of that outcome within 14 days of receipt of the arbitration decision.

222. For both situations, the following process is followed:

- Downward adjustments: if the MAP was initiated after an adjustment is made by the treaty partner, then the taxpayer is required to submit a revised tax return that reflects the outcome of the MAP agreement either within 60 days from the receipt of notification that the agreement was reached, or within the deadline set by Lithuania's tax administration. In relation hereto, Lithuania reported that this 60-day term is only an indicative timeframe and that, in practice, a taxpayer would

not necessarily be precluded from receiving a refund if he submitted the return later than this 60-day period. Upon processing the return, tax overpayment will be offset against the taxes due, which may be refunded upon request by the taxpayer. Where a MAP has been initiated after an adjustment was made by Lithuania, there is no need for any action by the taxpayer as the tax overpayment will be offset automatically.

- Upward adjustments: once a MAP agreement is finalised, a relevant unit of Lithuania's tax administration will be informed in order to implement the agreement. In this respect, once its national process is resumed, the tax authority would adopt a decision based on which an obligation to pay additional tax is determined. The taxpayer in question has an obligation to pay the amount of additional tax within 20 days from the day of the receipt of the decision, unless another time limit is set in accordance with Article 81(2) of Lithuania's Law on Tax Administration.

223. Paragraphs 45-48 and 54-58 of Lithuania's MAP guidance includes information on the implementation process of MAP agreements, as well as any actions required to be taken by taxpayers to have such agreements implemented, which corresponds to the process described above. Paragraph 47 of the MAP guidance specifies that if a pre-trial process was suspended concerning a dispute for which a MAP case was pending, the relevant institution will be informed of the MAP agreement reached within 20 days after the MAP proceedings have ended. Consequently, these pre-trial process will be terminated, unless the dispute was only partially resolved through MAP, following which for the remaining part the pre-trial process may continue. Where, however, domestic court proceedings were initiated for a case for which also a MAP is pending, and whereby a MAP agreement has been reached before a court ruling was delivered, in that situation, as is stipulated in paragraph 50 of Lithuania's MAP guidance, taxpayers have to withdraw the court case within 60 days as from the date of notification of the MAP agreement to ensure implementation thereof.

Recent developments

224. Lithuania reported that Article 68 of Law on Tax Administration was amended and since 1 January 2020 the statute of limitations was shorten from five to three years with some exceptions – for example for transfer pricing issues the period remains five years. In this respect, Lithuania noted that this change will not affect the implementation of MAP agreements.

Practical application

Period 1 January 2015-31 August 2018 (stage 1)

225. Lithuania reported that since the number of MAP agreements that need implementation in Lithuania is relatively limited, it does not monitor implementation. However, for each MAP case, the case handler who is responsible for the implementation notes whether the agreement was implemented or not. In that regard, Lithuania reported that, apart from one case, all MAP agreements that were reached in the period 1 January 2015-31 August 2018, once accepted by taxpayers, have been (or will be) implemented. Lithuania clarified that one case has still not been implemented because the taxpayer has not provided a corrected tax return and therefore implementation is still pending.

226. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2015-31 August 2018 that was not implemented by Lithuania.

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

227. Lithuania reported that the MAP agreement that was pending implementation on 31 August 2018 is still pending implementation, since the taxpayer has not yet provided a corrected tax return.

228. In addition, Lithuania reported that since 1 September 2018 its competent authority has implemented all MAP agreements that required implementation by Lithuania.

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

Anticipated modifications

230. Lithuania reported that the MAP agreement that was pending implementation on 31 August 2018 has been implemented in November 2020.

231. In addition, Lithuania reported that a more structural approach to monitor the implementation of MAP agreements could be introduced in the future, if necessary.

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.

232. 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

233. Lithuania reported that there is no specific domestic legislation that governs the timeframe of implementation of MAP agreements in Lithuania. Lithuania further reported that its tax administration, which is responsible for implementing MAP agreements, endeavours to implement such agreements within three months. Where the MAP agreement entails a downward adjustment to be made in Lithuania, it reported that taxpayers usually provide corrected tax returns within a three-month period after the finalisation of a MAP agreement. Lithuania further reported that after such tax returns are submitted, the tax liabilities are changed automatically by Lithuania and refunds may be made accordingly.

Recent developments

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

Practical application

Period 1 January 2015-31 August 2018 (stage 1)

235. Lithuania reported that all MAP agreements that were reached in the period 1 January 2015-31 August 2018, once accepted by taxpayers, have been (or will be) timely implemented, apart for the one case discussed under element D.1 for which implementation is awaiting action by the taxpayer.

236. All peers that provided input have indicated not being aware of any impediments to the implementation of MAP agreements reached on a timely basis in Lithuania.

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

237. Lithuania reported that the MAP agreement that was pending implementation on 31 August 2018 is still pending implementation, since the taxpayer has not yet provided a corrected tax return.

238. In addition, Lithuania reported that since 1 September 2018 its competent authority has implemented all MAP agreements that required implementation by Lithuania.

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

Anticipated modifications

240. As mentioned under element D.2, Lithuania reported that the MAP agreement that was pending implementation on 31 August 2018 has been implemented in November 2020.

241. In addition, Lithuania did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) 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.

242. 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 Lithuania's tax treaties

243. As discussed under element D.1, Lithuania's domestic legislation contains a statute of limitations of five years for implementing MAP agreements, unless overridden by tax treaties or, if applicable, a MAP agreement is reached under the EU Arbitration Convention.

244. Out of Lithuania's 57 tax treaties, 52 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. Furthermore, one tax treaty contains such equivalent as well as the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. The remaining four treaties do not contain such equivalent or the alternative provisions.

245. During stage 1, 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, the relevant peers did not provide input.

Recent developments

Bilateral modifications

246. Lithuania signed a new treaty with one treaty partner. This treaty has entered into force and contains Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). The effects of the newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

247. Lithuania signed the Multilateral Instrument and has deposited its instrument of ratification on 11 September 2018. The Multilateral Instrument entered into force on 1 January 2019 for Lithuania.

248. 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.

249. In regard of 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), Lithuania listed all as covered tax agreements under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). All relevant treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Lithuania as a covered tax agreement but two made a reservation on the basis of Article 16(5)(c). The remaining two treaty partners also made a notification on the basis of Article 16(6)(ii).

250. Of the two treaty partners mentioned above, one has deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Lithuania and this treaty partner, and has modified this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).¹ 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

251. Lithuania reported that for one of the remaining two tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, it has been informed by the relevant treaty partner that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by that instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

Peer input

252. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Lithuania, but these inputs hold no relevance for element D.3.

Anticipated modifications

253. Lithuania reported that for the remaining tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives provided for in Articles 9(1) and 7(2) and will not be modified by the Multilateral Instrument, it intends to propose renegotiations to bring the treaty to be in line with element D.3 after finalising a Competent Authority Agreement with this treaty partner to apply the Multilateral Instrument to the relevant treaty.

254. Lithuania 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 57 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor any 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 to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 the required provision. For this treaty no actions have been taken, but it is included in the plan for renegotiations. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Lithuania should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both alternative provisions.</p>

Note

1. This concerns the treaty with former Yugoslavia that is continued to being applied to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia, as Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.

Reference

OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	Roll-back of bilateral APAs is not possible.	Lithuania should without further delay follow its stated intention to introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	One out of 57 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). This treaty will not be modified by the Multilateral Instrument. For this treaty, no actions have been taken, but it is included in the plan for renegotiations.	As this treaty will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the treaty that currently does not contain such equivalent, Lithuania should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations, either a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	<p>Four out of 57 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor any 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 to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). • 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 the required provision. For this treaty no actions have been taken, but it is included in the plan for renegotiations. 	<p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Lithuania should request the inclusion of the required provision via bilateral negotiations in accordance with its plan for renegotiations or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Lithuania

Treaty partner	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.3		B.4		C.1		A.1										
	Column 4		Column 5		Column 6		Column 7		Column 8			Column 9		Column 10		Column 11			
	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)		Inclusion arbitration provision?		
	Y = yes N = signed pending ratification	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9	Y = yes 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	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Austria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belarus	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Belgium	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y*	Y	Y*	Y	N
Bulgaria	Y	O*	Y	N/A	i**	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	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
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
	DTC in force?	Inclusion Art. 25(1) first sentence?	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)	Inclusion arbitration provision?
Canada	Y	O	Y*	2-years	i	Y	iii	Y	Y	N
China (People's Republic of)	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Croatia	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Cyprus ^a	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Czech Republic	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Denmark	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Estonia	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Finland	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
France	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Georgia	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
Germany	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Greece	Y	O*	Y	N/A	i	Y	Y	Y	Y	N
Hungary	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Iceland	Y	E*	Y	N/A	i	Y	Y	Y	Y	N
India	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Ireland	Y	E*	Y	N/A	i	Y	Y	Y	Y*	N
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	N
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	E*	Y	N/A	i	Y	Y	Y	Y	N
Korea	Y	E*	Y	N/A	i	Y	Y	Y	Y	N

Column 1	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	
	Column 2	Column 3			Column 4	Column 5	Column 6	Column 7		Column 8
Treaty partner	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 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(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)								If no, please state reasons
Kuwait	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Kyrgyzstan	Y	O	Y	N/A	i	Y	Y	Y	Y	N
Latvia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Liechtenstein	Y	E	Y	N/A	Y	Y	Y	Y	Y	N
Luxembourg	Y	E*	Y	N/A	Y	Y	Y	Y	Y	N
Malta	Y	E*	Y	N/A	Y	Y	Y	Y	Y	N
Mexico	Y	O*	Y	N/A	Y	Y	Y	Y	Y	N
Moldova	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Morocco	N	O*	Y	N/A	Y	Y	Y	Y	Y	N
Netherlands	Y	E*	Y	N/A	Y	Y	Y	Y	Y	Y
North Macedonia	Y	O	Y	N/A	i**	Y	Y	Y	Y	N
Norway	Y	E*	Y	N/A	Y	Y	Y	Y	Y	N
Poland	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Portugal	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Romania	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Russia	Y	E*	Y	N/A	Y	Y	Y	Y	Y	N
Serbia	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Singapore	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Slovak Republic	Y	O	Y	N/A	Y	Y	Y	Y	Y	N
Slovenia	Y	O	Y	N/A	i***	Y	Y	Y	Y	N
Spain	Y	O	Y	N/A	Y	Y	Y	Y	Y	N

Treaty partner	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			C.1	D.3	A.1	B.7											
Column 1		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 If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)										
Sweden	Y	E*	Y	N/A	i	Y	Y	Y	Y										
Switzerland	Y	E*	Y	N/A	i	Y	N	Y	Y										
Turkey	Y	O*	Y	N/A	i	Y	Y	Y	Y										
Turkmenistan	Y	O	Y	N/A	i	Y	Y	Y	Y										
Ukraine	Y	E*	Y	N/A	i	Y	Y	Y	Y*										
United Arab Emirates	Y	E*	Y	N/A	i	Y	Y	Y	Y										
United Kingdom	Y	E*	i	N/A	i	Y	Y*	Y	Y*										
United States	Y	E	Y	N/A	i	Y	Y	Y	Y										
Uzbekistan	Y	O	Y	N/A	i	Y	Y	Y	Y										

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

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

Legend

E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.

E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.

O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.

O**/E***	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be or has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/ii*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***/ii****	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP Statistics Reporting for the 2016, 2017, 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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	5	0	0	0	0	0	0	1	0	0	0	4	37.48
Others	2	0	0	0	0	0	0	0	0	0	0	2	-1.00
Total	7	0	0	0	0	0	0	1	0	0	0	6	37.48

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Lithuania's inventory as reflected in the 2016 and 2017 published MAP statistics, and the number of cases in this Annex and used in the peer review report. The actual number of pre-2016 cases pending on 1 January 2016 was seven cases, which consists of five attribution/allocation cases and two other cases. In the published MAP statistics for 2016 and 2017 this number was two cases, one attribution/allocation case and one other case. For purposes of this annex and the peer review report the corrected statistics are used.

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
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
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	4	0	0	0	0	1	1	0	0	0	0	2	38.89
Others	2	0	0	0	0	0	0	1	0	0	0	1	30.61
Total	6	0	0	0	0	1	1	1	0	0	0	3	36.13

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	1	1	0	0	0	0	0	49.00
Others	1	0	0	0	0	0	0	0	0	0	0	1	-1.00
Total	3	0	0	0	0	1	1	0	0	0	0	1	49.00

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	0	0	0	0	0	0	0	0	0	0	0	0	-1.00
Others	1	0	0	0	0	0	0	0	0	0	0	1	-1.00
Total	1	0	0	0	0	0	0	0	0	0	0	1	-1.00

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			
			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	-1.00
Others	0	1	0	0	0	0	0	0	0	0	0	0	1	-1.00
Total	0	1	0	0	0	0	0	0	0	0	0	0	1	-1.00

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			
			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	2	0	0	0	0	0	0	0	0	0	0	2	-1.00
Others	1	1	0	0	0	0	0	0	0	0	0	0	2	-1.00
Total	1	3	0	0	0	0	0	0	0	0	0	0	4	-1.00

2018 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	2	0	0	0	0	0	2	0	0	0	0	0	0	0	14.73
Others	2	5	3	0	0	0	1	2	0	0	0	0	1	5.29	
Total	4	5	3	0	0	0	3	2	0	0	0	0	1	7.65	

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				
			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	-1.00
Others	1	1	0	0	0	0	0	1	0	0	0	0	1	16.54	
Total	1	1	0	0	0	0	0	1	0	0	0	0	1	16.54	

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA Guidance	The Rules for the Submission of the Taxpayer’s Request to Approve the Principles of Pricing of a Future Controlled Transaction, Examination of the Request, the Adoption and Amendment of the Tax Administrator Binding Decision
Working Group	Permanent Working Group for handling Double Taxation Dispute Resolution Procedures
MAP Guidance	The Rules for the Initiation and Execution of the Mutual Agreement Procedure
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that 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, Lithuania (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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



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