

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



Making Dispute Resolution More Effective – MAP Peer Review Report, Brazil (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 30 August 2021 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Reference	10
Introduction	11
References	15
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	25
[B.3] Provide access to MAP in transfer pricing cases	26
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	28
[B.5] Provide access to MAP in cases of audit settlements	29
[B.6] Provide access to MAP if required information is submitted	30
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	32
[B.8] Publish clear and comprehensive MAP guidance	33
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	36
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	37
References	38
Part C. Resolution of MAP cases	39
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	39
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	42
[C.3] Provide adequate resources to the MAP function	48
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	52
[C.5] Use appropriate performance indicators for the MAP function	53
[C.6] Provide transparency with respect to the position on MAP arbitration	55
References	56
Part D. Implementation of MAP agreements	57
[D.1] Implement all MAP agreements	57
[D.2] Implement all MAP agreements on a timely basis	60

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)	61
Reference	63
Summary	65
Annex A. Tax treaty network of Brazil	69
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.	72
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.	74
Glossary	77
Figures	
Figure C.1 Evolution of Brazil’s MAP caseload	43
Figure C.2 End inventory on 31 December 2019 (24 cases)	44
Figure C.3 Evolution of Brazil’s MAP inventory – Pre-2016 cases	44
Figure C.4 Evolution of Brazil’s MAP inventory – Post-2015 cases	45
Figure C.5 Cases closed in 2016, 2017, 2018 or 2019 (14 cases)	46
Figure C.6 Average time (in months) to close cases in 2016-19	49

Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
CTN	Brazil's National Tax Code (<i>Código Tributário Nacional</i>)
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
RFB	Brazil Federal Revenue (<i>Receita Federal do Brasil</i>)

Executive summary

Brazil has a modest tax treaty network with close to 40 tax treaties. Brazil has a MAP programme with modest experience in resolving MAP cases. It has a relatively large MAP inventory, with a small number of new cases submitted each year and 24 cases pending on 31 December 2019. 75% of these cases concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Brazil met the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Brazil worked to address them, which has been monitored in stage 2 of the process. In this respect, Brazil has solved some of the identified deficiencies.

All of Brazil's tax treaties contain a provision relating to MAP. Those treaties generally follow paragraphs 1 to 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is mostly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- 75% 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.
- 50% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Close to 20% of its tax treaties do not contain the equivalent of Article 25(1), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Brazil reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

As Brazil has no bilateral APA programme in place, there were no specific elements to assess concerning the prevention of disputes.

Brazil meets almost all 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 2019 not received any MAP request concerning the application of anti-abuse provisions. However, Brazil does not have in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Brazil has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for Brazil 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	17	4	18	23.41
Other cases	7	9	10	6	51.67
Total	12	26	14	24	43.63

*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, Brazil used as a start date: the date of the initial letter requesting for a MAP; and as end date: the date Brazil receives a letter from the other competent authority agreeing to close the case. Brazil may also consider the end date as being the date of its competent authority's letter suggesting the closure of the MAP case if it fails to receive any response regarding the subject in the course of several months.

The number of cases Brazil closed in 2016-19 is less than half of the number of all cases started in those years. Further, Brazil's MAP inventory as on 31 December 2019 increased by 100% as compared to 1 January 2016, which concerns only attribution/allocation cases which increased by 260% while the number of other cases decreased by 14%. Moreover, during these years, MAP cases were on average not closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 43.63 months, which primarily concerns other cases where the average time taken was 51.67 months since the average time taken for attribution/allocation cases was only 23.41 months. While Brazil has taken some organisational measures and steps to actively improve the resolution of MAP cases in 2019, further actions should be taken to ensure a timely resolution of MAP cases, which primarily concerns other MAP cases. Further, Brazil should devote additional resources to its competent authority to handle these cases and also to be able to cope with the increase in the number of MAP cases, particularly for attribution/allocation cases so as to resolve MAP cases in a timely, efficient and effective manner.

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

Lastly, Brazil does not meet the Action 14 Minimum Standard as regards the implementation of MAP agreements. Brazil monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that MAP agreements cannot be implemented whether or not the applicable tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

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 Brazil to resolve tax treaty-related disputes

Brazil has entered into 36 tax treaties on income (and/or capital), 32 of which are in force.¹ These 36 treaties are being applied to 37 jurisdictions.² All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these treaties contains an arbitration procedure as a final stage to the MAP Process.

Under Brazil’s tax treaties, the competent authority function is assigned to the Secretariat of the Federal Revenue of Brazil (“**RFB**”). Brazil’s competent authority currently employs seven full time employees. All of these employees work on both types of MAP cases in addition to other tasks relating to international taxation and co-operation.

Brazil has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) in December 2018 (“**MAP guidance**”), which is available (in English) at:

http://receita.economia.gov.br/acesso-rapido/legislacao/acordos-internacionais/map/manual-map_en.pdf

Developments in Brazil since 1 January 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of Brazil noted that it was conducting tax treaty negotiations with a few jurisdictions. Brazil clarified that this situation remains the same, except for one jurisdiction where a new treaty has already been signed and another jurisdiction where an amending protocol has been signed. Further, the stage 1 report noted that Brazil had signed new treaties with Singapore, Switzerland and the United Arab Emirates, which had not yet entered into force. This situation remains the same.

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

Further, Brazil reported that it has signed an amending protocol to its existing treaty with Sweden. This amending protocol includes Article 25(1), first and second sentence and Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). This amending protocol has not entered into force as yet either.

For the 30 treaty partners that are considered not to be in line with one or more elements of the Action 14 Minimum Standard, Brazil reported that it intends to update them via bilateral negotiations. Brazil further reported that it has contacted all of its relevant treaty partners to initiate negotiations. Since two of these treaty partners concern the treaty with the former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic, bilateral renegotiations are not necessary for this treaty. With respect to the remaining 28 treaty partners, Brazil shared the following overview regarding the actions taken by it:

- *27 treaty partners*: Negotiations have been initiated or are ongoing to make these treaties in line with the Action 14 Minimum Standard.
- *One treaty partner*: Negotiations will be initiated when all pending negotiations are completed.

Other developments

Further to the above, Brazil reported that it has a few other developments to report in relation to the operation of its MAP process:

- *Electronic system for MAP cases*: MAP cases are now processed using an electronic system, whereby each case is classified according to prioritisation.
- *Organisational changes*: one additional team member has been added to Brazil's competent authority dealing with both attribution/allocation cases and other MAP cases since 1 January 2019 and Brazil has organised an OECD regional MAP training session for its team members in May 2019.

Basis for the peer review process

The peer review process entails an evaluation of Brazil'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 Brazil, its peers and taxpayers. The questionnaires for the peer review process were sent to Brazil and the peers on 31 December 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Brazil'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 9 August 2019. This report identifies the strengths and shortcomings of Brazil 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.³ 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 Brazil. In this update report, Brazil 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 Brazil is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol were taken into account, even if it concerns a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Czechoslovak Socialist Republic for those jurisdictions to which this treaty is still being applied by Brazil. As it concerns the same tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Brazil's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Brazil was launched on 31 December 2018, with the sending of questionnaires to Brazil and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Brazil in June 2019, with the subsequent approval by the BEPS Inclusive Framework on 9 August 2019. On 9 August 2020, Brazil submitted its update report, which initiated stage 2 of the process.

The period for evaluating Brazil's implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 31 December 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 January 2019 and depicts all developments as from that date until 31 July 2020.

In total 10 peers provided input: Austria, Belgium, China (People's Republic of), France, Italy, Korea, Norway, Portugal, Sweden and Turkey. Out of these 10 peers, eight had MAP cases with Brazil that started in 2016, 2017 or 2018. These eight peers represent 95% of post-2015 MAP cases in Brazil's inventory that started in 2016-18. During stage 2, the same peers provided input. In addition, Israel and the Spain also provided input during stage 2. For this stage, these peers represent 100% of post-2015 MAP cases in Brazil's MAP inventory that started in 2016, 2017, 2018 or 2019. Generally, all peers indicated that communication was good with Brazil's competent authority, some of them emphasising that they had little experience with Brazil. Nonetheless, some of these peers reported having experienced difficulties in resolving MAP cases because of the expiration of Brazil's statute of limitation for the relevant cases. Specifically with respect to stage 2, all peers that provided input reported that the update report of Brazil fully reflects the experiences these peers have had with Brazil since 1 January 2019 and/or that there was no addition to previous input given.

Input by Brazil and co-operation throughout the process

Brazil provided extensive answers in its questionnaire, which was submitted on time. Brazil was very responsive in the course of the drafting of the peer review report and provided further clarity where necessary. In addition, Brazil provided the following information:

- a. MAP profile⁴
- b. MAP statistics⁵ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Brazil

The analysis of Brazil’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019 (“**Statistics Reporting Period**”). According to the statistics provided by Brazil, 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	17	4	18
Other cases	7	9	10	6
Total	12	26	14	24

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁶ Apart from analysing Brazil’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Brazil during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Brazil 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 Brazil relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the

relevant element has been modified accordingly, but Brazil 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 Brazil has entered into are available at: <http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao>. The treaties that are signed but have not yet entered into force are with Singapore, Switzerland, Uruguay and the United Arab Emirates. Reference is made to Annex A for the overview of Brazil’s tax treaties.
2. Brazil continues to apply the 1986 tax treaty with the former Czechoslovak Socialist Republic to the Czech Republic and the Slovak Republic.
3. Available at: <https://www.oecd.org/brazil/making-dispute-resolution-more-effective-map-peer-review-report-brazil-stage-1-12acb5ea-en.htm>.
4. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
5. The MAP statistics of Brazil are included in Annex B and C of this report.
6. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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- OECD (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 Brazil's tax treaties

2. Out of Brazil's 36 tax treaties, 34 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.¹ In the two remaining treaties, the sentence only relates to difficulties or doubts arising as to the application of the treaty, but not to any difficulties or doubts arising as to the interpretation of the treaty. For this reason, these two treaties are considered to not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Brazil reported that irrespective of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), its competent authority would be allowed to enter into MAP agreements with respect to the interpretation of the tax treaty. One peer, whose treaty with Brazil contains the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), reported having initiated a MAP procedure with Brazil regarding the interpretation of the tax treaty.

4. Both relevant peers concerning the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) provided input during stage 1. One peer reported having received a draft protocol from Brazil which contains a new provision regarding the mutual agreement procedure. The other peer reported that there are currently no formal treaty negotiations in progress, but confirmed that it has been contacted by Brazil for this purpose.

Recent developments

Bilateral modifications

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

Other developments

6. Brazil reported that for the two tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), negotiations have been initiated or are ongoing with both concerned treaty partners with a view to make these treaties compliant with element A.1.

Peer input

7. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Brazil. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

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

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Two out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision.

[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.

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

Brazil's APA programme

10. Brazil reported that its current legal framework does not provide for the possibility to enter into APAs, whether they are of a unilateral, bilateral or multilateral nature.

Roll-back of bilateral APAs

11. Since Brazil does not have an APA programme in place, there is no possibility to provide roll-back of bilateral APAs to previous years.

Recent developments

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

Practical application of roll-back of bilateral APAs***Period 1 January 2016-31 December 2018 (stage 1)***

13. Brazil reported not having received any requests for bilateral APAs in the period 1 January 2016-31 December 2018, which is logical given that Brazil does not have such a programme in place.

14. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Brazil in the period 1 January 2016-31 December 2018. One peer referred to the information available in Brazil's MAP profile and noted that no APA programme is currently in place in Brazil.

Period 1 January 2019-31 July 2020 (stage 2)

15. Brazil reported also not having received any requests for a bilateral APA since 1 January 2019, which is logical given that Brazil still does not have such a programme in place.

16. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

17. Brazil indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	-	-

Notes

1. These 34 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD, 2017b).

References

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

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

Part B

Availability and access to MAP

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

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

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 Brazil's tax treaties

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

19. Four of Brazil's 36 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, eight tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

20. The remaining 24 treaties contain 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 These

24 treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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, 23 of those 24 treaties are considered to be in line with this part of element B.1 as the non-discrimination provision of the relevant tax treaties only covers nationals that are resident of one of the contracting states.² Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident.

21. For the remaining treaty, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2017) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which this treaty is not in line with this part of element B.1.

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

22. Out of Brazil's 36 tax treaties, eight 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.

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

Provision	Number of tax treaties
No filing period for a MAP request*	19
Filing period less than 3 years for a MAP request (2 years)	3
Filing period more than 3 years for a MAP request (5 years)	2
Filing period as allowed by the domestic law of the contracting states	4

* These 19 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.

24. The provisions contained in the last row of the table are considered not to be in line with this part of element B.1 as taxpayers cannot file a MAP request within a period of three years as from the first notification of the action resulting in taxation not in accordance with the treaty in all situations in both treaty partner jurisdictions.

Peer input

25. For the one treaty identified that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), the relevant peer did not provide input during stage 1. For the seven treaties that refer to domestic time limits to submit MAP request or provide for a shorter timeframe than Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), three relevant peers provided input during stage 1. Two of these peers reported having received a draft protocol from Brazil which

contains a new provision regarding the mutual agreement procedure in order to meet the requirements of the Action 14 Minimum Standard, and both of them specified that they are currently analysing Brazil’s proposal. The remaining peer confirmed that it was contacted by Brazil with respect to the renegotiation of their treaty.

Practical application

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

26. As noted in paragraphs 19-21 above, all of Brazil’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. Brazil reported that access to MAP is available regardless of whether, for the relevant case under review, domestic available remedies are still pending or have already been concluded. In this regard, Brazil reported that tax cases can be litigated in administrative courts or judicial courts in its system. Brazil noted in this regard that if the taxpayer may choose to litigate in administrative courts, the case is initially heard and decided by a court called the *Delegacias de Julgamento* or DRJ, a collegiate court, which comprises around four judges. Brazil clarified that in certain situations, the decision issued by the DRJ can be final. In other situations, taxpayers or the tax administration may appeal and the process will be heard and decided by a court of second instance, which is also a collegiate court, called the *Conselho Administrativo de Recursos Fiscais* or CARF. Brazil noted that decisions issued by DRJ and CARF are considered decisions by administrative courts. Accordingly, Brazil reported that its competent authority is bound by decisions of the DRJ, CARF and judicial Courts in respect of the same taxpayer or different taxpayers where the legal effects extend to the taxpayer concerned and that therefore, it would only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with such decisions. Brazil also confirmed that its competent authority will provide any information that the other competent authority considers necessary for this purpose. This position is confirmed in section 6 of Brazil’s MAP guidance. Brazil clarified that this would also be the case where appeals against such decisions are pending before higher appellate authorities, where applicable.

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

27. With respect to the 19 tax treaties that do not contain a filing period for MAP requests and for the four treaties that refer to time limits under domestic law as a filing period, Brazil reported that the filing period would be of five years, starting from the first notification to the taxpayer of the actions taken by one or both of the Contracting States resulting in taxation not in accordance with the tax treaty. Brazil clarified that the rule does not distinguish whether the notification of the action not in accordance with the tax treaty occurred in Brazil or in the treaty partner jurisdiction. This is further clarified in section 3 of Brazil’s MAP guidance.

Recent developments

Bilateral modifications

28. Brazil signed a new treaty which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(1), first and second sentences, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b). This treaty has not entered into force as yet. Furthermore, Brazil also signed an amending protocol to

an existing treaty, adding the equivalent of Article 25(1), first and second sentences, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) to this treaty where such provisions were previously not present. The effects of this newly signed treaty and amending protocol have been reflected in the analysis above where it has relevance.

Other developments

29. Brazil reported that for the eight tax treaties that do not contain the equivalent of Article 25(1), first or second sentences, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), negotiations have been initiated or are ongoing with both concerned treaty partners with a view to make these treaties compliant with element B.1.

Peer input

30. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Brazil. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

31. Brazil reported it will seek to include Article 25(1), first and second sentences, 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 36 tax treaties does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b). With respect to this treaty, negotiations are envisaged, scheduled or pending.	For the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b), Brazil should continue (the initiation of) negotiations with the treaty partner concerned with a view to including the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Seven out of 36 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request can be shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the seven treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required 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).

32. 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

33. As discussed under element B.1, out of Brazil's 36 treaties, four currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

34. Brazil noted that as a matter of administrative practice, its competent authority notifies the other competent authority in cases where the taxpayer's objection is considered not justified. Brazil clarified that in such cases, a notification is sent to the competent authority of the other state with a summary of the case and the reasons why the objection was considered not justified. However, Brazil noted that this process is not yet documented.

Recent developments

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

Practical application

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

36. Brazil reported that in the period 1 January 2016-31 December 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, 2017 and 2018 MAP statistics submitted by Brazil also show that none of its MAP cases was closed with the outcome "objection not justified".

37. All peers that provided input indicated not being aware of any cases for which Brazil's competent authority denied access to MAP in the period 1 January 2016-31 December 2018. They also reported not having been consulted/notified of a case where Brazil's competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no such instances occurred in Brazil during this period.

Period 1 January 2019-31 July 2020 (stage 2)

38. Brazil reported that since 1 January 2019 its competent authority has for one MAP request it received decided that the objection raised by taxpayers in such request was not justified. The 2019 MAP statistics submitted by Brazil also confirm this. Brazil reported that the relevant peer was consulted before this decision was taken on the case.

39. All but one peer that provided input during stage 1 also indicated in stage 2 that since 1 January 2019 they are not aware of any cases for which Brazil's competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases. The same input was given by the two peers that only provided input during stage 2. The remaining peer relates to the case reported above where Brazil considered the objection not to be justified. This peer confirmed that it was consulted prior to the decision and that the outcome was discussed and agreed.

Anticipated modifications

40. Brazil reported that it is currently working on a draft of internal rules to outline the administrative practice regarding its notification process.

Conclusion

	Areas for improvement	Recommendations
[B.2]	32 of the 36 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Brazil should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and the timing of these steps. Furthermore, Brazil should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

41. 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

42. None of Brazil’s 36 tax treaties contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.³ However, one treaty contains a clarification in the protocol (with reference to Articles 9 and 25) stating that access to MAP would be given in transfer pricing cases.

43. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Brazil’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, Brazil indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties. This is also clarified in section 1 of Brazil’s MAP guidance, as it refers to transfer pricing cases as typical cases for MAP.

44. Brazil’s MAP guidance, in section 2, further notes that in case of transfer pricing adjustments affecting associated companies resident in different jurisdictions, it is recommended for each entity to submit a request for the opening of a MAP case to the competent authority of the state of which they are resident.

Recent developments

45. There are no recent developments with respect to element B.3.

Application of legal and administrative framework in practice

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

46. Brazil reported that in the period 1 January 2016-31 December 2018, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

47. All peers that provided input indicated that they are not aware of a denial of access to MAP by Brazil in the period 1 January 2016-31 December 2018 on the basis that the case concerned was a transfer pricing case. One peer noted that Brazil’s updated MAP profile showed that Brazil has worked to seek improvement in giving access to MAP in transfer pricing cases. The peer appreciated this effort and noted that this would certainly contribute to increase the number of transfer pricing MAP cases solved.

Period 1 January 2019-31 July 2020 (stage 2)

48. Brazil reported that also since 1 January 2019, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case.

49. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2, with one of them also confirming that it presently has an attribution/allocation case pending with Brazil.

Anticipated modifications

50. Brazil reported it does not anticipate any changes in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

51. 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

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

Recent developments

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

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

54. Brazil reported that in the period 1 January 2016-31 December 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. This can be clarified by the fact that no requests in relation hereto were received by its competent authority in that period.

55. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Brazil in the period 1 January 2016-31 December 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 January 2019-31 July 2020 (stage 2)

56. Brazil reported that since 1 January 2019, 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. This can be clarified by the fact that no such cases in relation hereto were received in that period.

57. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

58. Brazil indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

59. 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

60. Brazil reported that under its domestic law it is not possible for taxpayers and the tax administration to enter into an audit settlement.

Administrative or statutory dispute settlement/resolution process

61. Brazil reported that under its domestic law it is not possible for taxpayers and the tax administration to enter into an administrative or statutory dispute settlement/resolution process.

Recent developments

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

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

63. Brazil reported that in the period 1 January 2016-31 December 2018, it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that audit settlements are not available in Brazil.

64. All peers that provided input indicated not being aware of a denial of access to MAP in Brazil in the period 1 January 2016-31 December 2018 in cases where there was an audit settlement between the taxpayer and the tax administration.

Period 1 January 2019-31 July 2020 (stage 2)

65. Brazil reported that since 1 January 2019, it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in Brazil.

66. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

67. Brazil indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

68. 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

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

70. Brazil reported that if a submitted MAP request does not contain all the necessary information or documents that Brazil requests from taxpayers, Brazil will require the taxpayer to provide such missing information within 30 days. This is also provided in section 3 of its MAP guidance. Brazil further clarified that if the 30-day period is not sufficient for the presentation of all the documentation, the taxpayer may request for an extension of the deadline, which will be granted if his justifications seem to be reasonable. Brazil further reported that failure to meet the legal requirements will lead to the denial of access to MAP, based on the absence of the required documentation.

Recent developments

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

Practical application

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

72. Brazil reported that in the period 1 January 2016-31 December 2018 it has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

73. All peers that provided input indicated not being aware of a limitation of access to MAP by Brazil in the period 1 January 2016-31 December 2018 in situations where taxpayers complied with information and documentation requirements.

Period 1 January 2019-31 July 2020 (stage 2)

74. Brazil reported that since 1 January 2019 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

75. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

76. Brazil indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

77. 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 Brazil's tax treaties

78. Out of Brazil's 36 tax treaties, 18 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 18 treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).⁴

79. For the 18 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), five relevant peers provided input during stage 1. Two peers confirmed that bilateral negotiations are ongoing to update the concerned treaty, one of them having reported that it has received a draft protocol from Brazil containing a new MAP provision. Two other peers confirmed that it was contacted by Brazil with respect to the renegotiation of their treaty, and one of them specified that it is currently analysing Brazil's proposal. The remaining peer reported that its treaties with Brazil could be modified via the Multilateral Instrument, but noted that Brazil did not express its intention to sign the Multilateral Instrument.

Recent developments

Bilateral modifications

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

Other developments

81. Brazil reported that for the 19 treaty partners relevant to the 18 tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention

(OECD, 2017), negotiations have been initiated or are ongoing with 18 of these concerned treaty partners with a view to make these treaties compliant with element B.7. For the remaining treaty partner, negotiations will be initiated once all other pending negotiations are completed.

Peer input

82. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Brazil. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>18 out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to the 19 relevant treaty partners for these 18 treaties:</p> <ul style="list-style-type: none"> • For two, negotiations are not required. • For 17, negotiations are envisaged, scheduled or pending. 	<p>One of the 18 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) is the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic. Negotiations are ongoing with both concerned treaty partners. In that regard, Brazil should, in such negotiations, ensure the inclusion of the required provision.</p> <p>For the remaining 17 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision.</p>

[B.8] Publish clear and comprehensive MAP guidance

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

84. 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.

Brazil's MAP guidance

85. Brazil has issued guidance on the governance and administration of the MAP in December 2018, which is available (in English) at:

http://receita.economia.gov.br/aceso-rapido/legislacao/acordos-internacionais/map/manual-map_en.pdf

86. Brazil's MAP guidance is divided into seven sections titled as follows: 1) Introduction, 2) Who may request a MAP, 3) How to initiate a MAP, 4) MAP proceeding, 5) Solution implementation, 6) MAP and the internal legislation and 7) Reference legislation, and covers the following information:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. relationship with domestic available remedies
- f. access to MAP in transfer pricing cases and in cases where treaty anti-abuse provisions apply
- g. implementation of MAP agreements (steps of the process and the timing of such steps, including any actions to be taken by taxpayers)
- h. rights and role of taxpayers in the process
- i. the lack of availability of suspension of tax collection.

87. The above-described MAP guidance includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁵

88. Although the information included in Brazil's MAP guidance is detailed and comprehensive, a few subjects are not specifically discussed in Brazil's MAP guidance. This concerns information on the following items:

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

Information and documentation to be included in a MAP request

89. 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.⁶ This agreed guidance is shown below. Brazil'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.

90. In addition, Brazil also requires for the following information to be submitted with a MAP request:

- identity of the foreign tax administration involved
- identity of the direct and the final controlling entity, in case of request by a legal entity, as well as the respective countries of residence for tax purposes, if the issue of the request applies to them
- a copy of any document or request received from the foreign administration, including the information provided in response
- evidence whether the matter has been submitted to judicial or administrative review in Brazil, together with a copy of the application, the corresponding reply and other documents, if applicable
- a copy of any contract or adjustment made with any foreign tax administration that may be connected to the request.

Recent developments

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

Anticipated modifications

92. Brazil noted that it intends to keep the MAP Guidance regularly updated and to add an FAQ document with the main questions of the taxpayers regarding MAP. Brazil also noted that is currently working to address items on the guidance related to the resolution and implementation of MAP cases. On the resolution of MAP Cases, Brazil reported that it is developing model timeframes for the steps taken by the competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers. On the implementation of MAP Agreements, Brazil reported that it is working on the timeframes in which taxpayers could expect its tax position to be amended in agreements reached through the MAP process. Brazil also noted that it intends to prepare an English version of Normative Instruction No. 1717/2017, which provides for rules on restitution, compensation, reimbursement and refund in the scope of the RFB.

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.

93. 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.⁷

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

94. The MAP guidance of Brazil is published and can be found (in English) at:

http://receita.economia.gov.br/acesso-rapido/legislacao/acordos-internacionais/map/manual-map_en.pdf

95. This guidance was first published in December 2018. As regards its accessibility, Brazil’s MAP guidance can easily be found on the website of Brazilian Federal Revenue (<http://receita.economia.gov.br/>) by searching for “*procedimento amigável*” or “*mutual agreement procedure*” on such website.

MAP profile

96. The MAP profile of Brazil is published on the website of the OECD and was last updated in February 2019. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Recent developments

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

Anticipated modifications

98. Brazil indicated that it does not anticipate 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.

99. 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

100. As previously discussed under B.5, it is not possible under Brazil's domestic law that taxpayers and the tax administration enter into audit settlements.

101. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Brazil's MAP guidance, which can be explained by the fact that audit settlements are not available in Brazil.

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

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

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

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

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

Recent developments

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

Anticipated modifications

106. Brazil indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 24 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
2. These 23 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
3. These 36 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
4. These 18 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
5. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. 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.

106. 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 Brazil's tax treaties

107. All of Brazil's 36 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹

108. None of the peers that provided input during stage 1 reported that their treaty with Brazil was not in line with this element, which is in line with the above analysis.

Practical application

109. Three peers provided input relating to their experience in cases where a MAP case could not be discussed with Brazil owing to the expiration of Brazil's domestic time limits regarding taxes for a particular fiscal year on the grounds that Brazil would not be able to implement the results of MAP in such situations.

110. One peer described the circumstances of a MAP case where the taxpayer was subject to a withholding tax in Brazil in 2010 and filed a MAP request in September 2012 to this peer's competent authority. The peer reported that its competent authority sent a position

paper to Brazil's competent authority in January 2013, which was followed by two requests for responses sent in August 2014 and July 2016. The peer clarified that the last reminder contained a suggestion to close the MAP case without any agreement if no answer was received by 1 November 2016. The peer further noted that on 10 November 2016, its competent authority received a letter from Brazil's competent authority indicating that a MAP was not possible owing to the fact that Brazil's domestic statute of limitation of five years following the payment of withholding tax had already expired in 2015.

111. The peer reported that its competent authority shared a final position paper with Brazil's competent authority in August 2018 and expressed concerns that Brazil's first response was sent only after several inquiries and after the expiration of Brazil's statute of limitation, which made it impossible to find a solution for the MAP case. The peer further noted that its competent authority did not receive a written response to this position paper, but an oral update during the March 2019 meeting of the FTA MAP Forum that confirmed that since (i) no reimbursement request was made by the taxpayer; and (ii) Brazil's statute of limitation had expired, an official letter should be sent to Brazil's competent authority proposing to formally close the case.

112. Brazil clarified that it did not have a specific team to deal with MAP cases until 2016, which led to delays and that this MAP case was not handled properly. Brazil further noted that it has prepared a position paper to close the case and that this position paper would be sent to the peer's competent authority in a timely manner. The peer later confirmed that it had received an e-mail with the official closing letter attached and that it would confirm officially closure of the case without the elimination of double taxation due to the expiration of Brazil's statute of limitations.

113. Another peer referred to similar circumstances where the taxpayer filed a MAP request in November 2009 to this peer's competent authority regarding transactions in 2007. In this regard, the peer noted that its competent authority sent a position paper to Brazil's competent authority in March 2010, which was followed by one reminder in July 2011. The peer further reported that in October 2011, its competent authority received a letter from Brazil's competent authority asking for more information to which it responded in November 2011, followed by three reminders sent in February 2016, in August 2016 and in April 2017. The peer noted that in May 2017, its competent authority received a letter from Brazil's competent authority stating that a MAP was not possible owing to the fact that Brazil's domestic statute of limitation of five years had already expired in 2012, which was further confirmed in December 2018. This peer expressed concerns about the fact that the information regarding Brazil's domestic statute of limitation was sent after the expiration of such statute of limitation, which made it impossible to eliminate the double taxation for the relevant MAP case while acknowledging that this peer had the right to tax in this case.

114. This peer reported having faced this issue in another MAP case more recently where Brazil's competent authority informed the taxpayer of its requirement to file a reimbursement request in Brazil. In this regard, the peer requested Brazil's competent authority for the necessary information and documents in order to make such a request and agreed to consider the MAP case as closed unless the taxpayer's reimbursement request is refused by Brazil's local tax offices.

115. A third peer referred to a case where the MAP request to its competent authority regarding facts that occurred in 2008 and 2009. This peer noted that its competent authority sent a request to Brazil's competent authority to enter into discussions in January 2013 and that Brazil's competent authority acknowledged receipt of its letter in February 2013. This

peer reported that in February 2016, its competent authority sent a position paper to Brazil's competent authority to which it received a response in August 2018 stating that a MAP was not possible owing to the fact that Brazil's domestic statute of limitation of five years had already expired. This peer also expressed concerns that the information regarding Brazil's domestic statute of limitation was sent after the expiration of such statute of limitation, which made it impossible to eliminate the double taxation for the relevant MAP case.

116. Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to come to taxation that is in accordance with the provisions of the convention. In this respect paragraph, 5.1 of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that this obligation entails that competent authorities are obliged to seek to resolve the case in a fair and objective manner, on its merits, in accordance with the terms of the convention and applicable principles of international law on the interpretation of treaties.

117. The three cases mentioned above were closed without any possibility to find a solution for the relevant cases. While domestic time limits had not expired when Brazil's competent authority was notified of the filed MAP requests, it responded to the relevant peers only after the expiration of such time limits, which resulted in a situation where Brazil's competent authority could not endeavour to resolve cases in MAP for the relevant taxpayers. Therefore, this policy was considered in stage 1 to not be in line with the Action 14 minimum standard.

118. In this regard, Brazil noted that the cases concerned are pre-2016 cases and noted that by the time that Brazil had the resources to deal with MAP cases, it was not possible to reach the ideal solution in these cases. Brazil further clarified that currently, in order to avoid this kind of problem, its competent authority is actively communicating with the competent authority of the other Contracting State about the need to file a return request within the domestic statute of limitation to ensure the effective implementation of a possible refund after entering into a MAP agreement. Brazil also reported that it is working to amend the domestic legislation to mitigate this issue. As will be discussed under element D.1, Brazil noted that it is currently working on a bilingual version of the relevant application forms and that it intends to prepare an English version of Normative Instruction No. 1717/2017, which provides for rules on restitution, compensation, compensation and reimbursement in the scope of the RFB.

119. In stage 2, Brazil reported that it has given access to MAP wherever the requirements under the equivalent of Article 25(1) in its tax treaties are met. Brazil further clarified that it is working on changes to its domestic law to be able to comply with the Action 14 minimum standard regarding this issue, as Brazil's constitutional and legal framework presently has strict time-limits for tax refunds.

120. Peers that provided input during stage 2 did not cite any experiences with Brazil where access to MAP was denied or affected owing to Brazil's domestic time-limits. One peer that provided input only during stage 2 noted that Brazil had communicated with them in a timely manner the need to file a reimbursement request in Brazil before the expiration of domestic time limits for tax refund.

Recent developments

Bilateral modifications

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

Peer input

122. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Brazil. Neither of these peers concern treaty partners to treaties that are not line with this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

[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).

124. 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

125. Statistics regarding all tax treaty related disputes concerning Brazil are published on the website of the OECD as of 2016.²

126. 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. Brazil provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Brazil and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand the MAP caseload of Brazil.³

127. With respect to post-2015 cases, Brazil reported that for the years 2016-19, it has reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Brazil reported that it could match its statistics with all of its MAP partners.

128. One peer reported during stage 1 that it did not experience any issues in matching its 2017 statistics with Brazil. Another peer reported during stage 1 that it only became aware of a MAP case it had with Brazil in the course of the matching process of MAP statistics. In stage 2, one peer provided input on the matching of MAP statistics with Brazil and confirmed that they were able to match their statistics with Brazil for the years 2016-19.

129. Based on the information provided by Brazil's MAP partners, its post-2015 MAP statistics for the years 2016-19 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

130. Brazil reported that it has a system in place to monitor and manage its MAP caseload. Brazil further reported that as its caseload is moderate, this tool mainly consists of spreadsheets that highlight the most relevant information for statistical purposes. Brazil also noted that all MAP cases are processed in an electronic format, whereby they are marked with an exclusive system classification and colour identification in order to accelerate their processing.

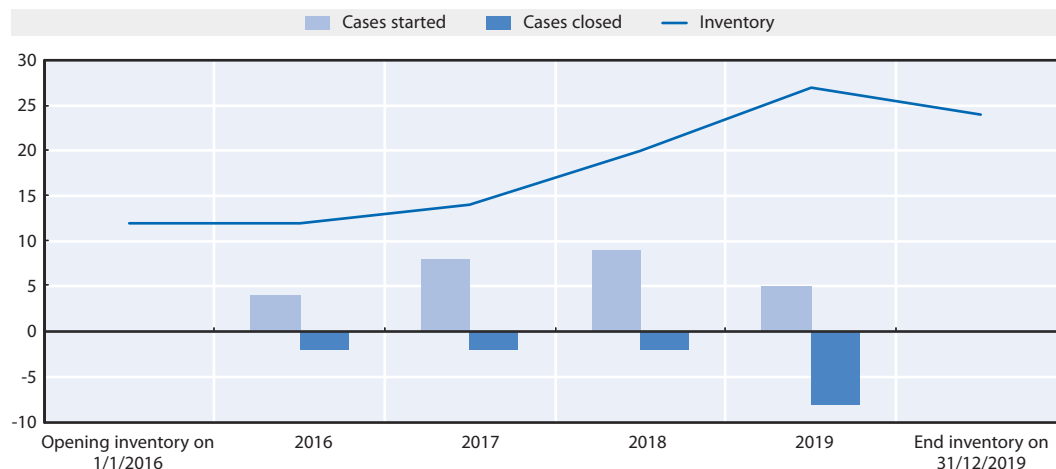
Analysis of Brazil's MAP caseload

Global overview

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

132. Figure C.1 shows the evolution of Brazil's MAP caseload over the Statistics Reporting Period⁴.

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

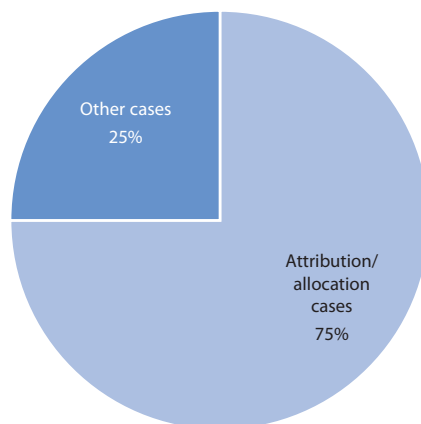


133. At the beginning of the Statistics Reporting Period, Brazil had 12 pending MAP cases, out of which five were attribution/allocation cases and seven were other MAP cases.⁵ At the end of the Statistics Reporting Period, Brazil had 24 MAP cases in its inventory, of which 18 are attribution/allocation cases and six are other MAP cases. Brazil's MAP

caseload has increased by 100% during the Statistics Reporting Period, which can be attributed to an increase of 260% of the number of attribution/allocation cases as the number of other cases decreased by 14%.

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

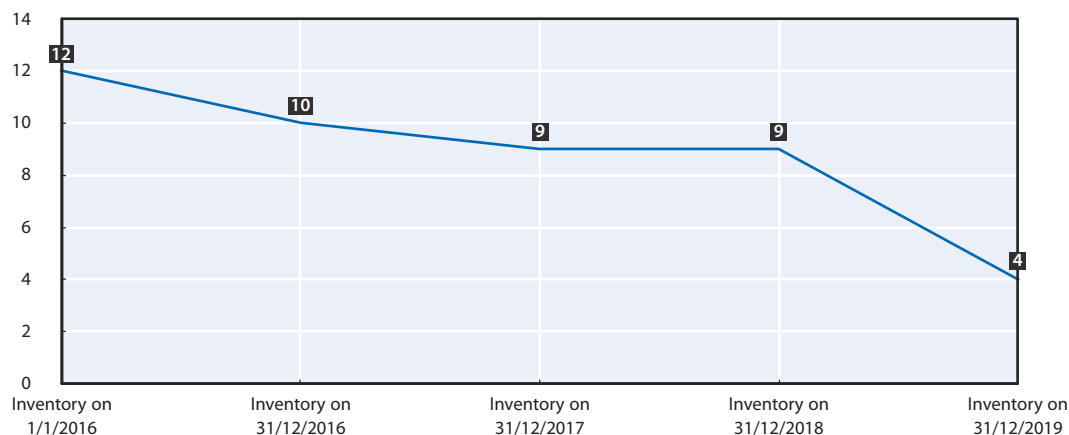
Figure C.2. End inventory on 31 December 2019 (24 cases)



Pre-2016 cases

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

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



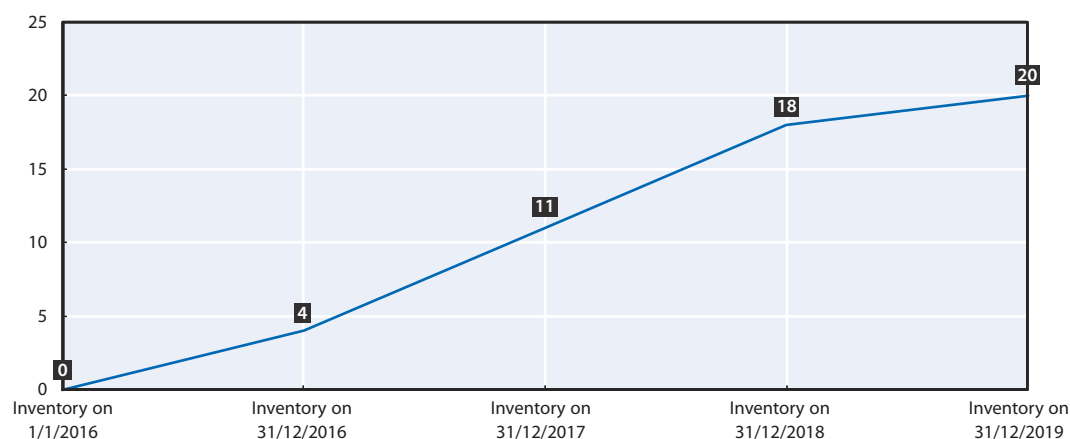
136. At the beginning of the Statistics Reporting Period, Brazil's MAP inventory of pre-2016 MAP cases consisted of 12 cases, out of which five were attribution/allocation cases and seven were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to four cases, consisting of three attribution/allocation cases and one other case. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the three years (2016-19)
Attribution/allocation cases	-20%	(no case closed)	(no case closed)	-25%	-40%
Other cases	-14%	-17%	(no case closed)	-80%	-86%

Post-2015 cases

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

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



138. In total, 26 MAP cases started during the Statistics Reporting Period, 17 of which concerned attribution/allocation cases and nine concerned other cases. At the end of this period, the total number of post-2015 cases in the inventory was 20 cases, consisting of 15 attribution/allocation cases and five other cases. Accordingly, Brazil closed six post-2015 cases during the Statistics Reporting Period, two of them being attribution/allocation cases and four of them being other cases. The total number of closed cases represents 23% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

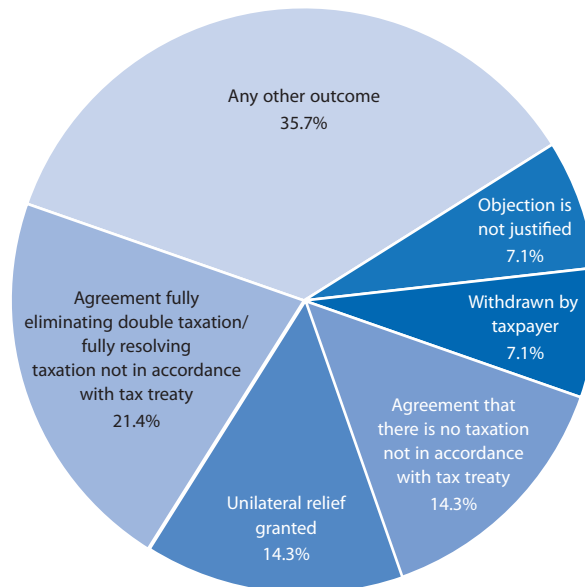
Post-2015 cases	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	% of cases closed in 2019 compared to cases started in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	0%	50%	0%	20%	12%
Other cases	(no case started)	0%	67%	(no case started)	44%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

140. During the Statistics Reporting Period Brazil in total closed 14 MAP cases for which the outcomes in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (14 cases)



141. Figure C.5 shows that three out of the 14 cases were closed with the outcome “agreement fully eliminating double taxation/fully resolved taxation not in accordance with the tax treaty”.

Reported outcomes for attribution/allocation cases

142. The four attribution/allocation cases that were closed during the Statistics Reporting Period had the following outcomes:

- unilateral relief granted (50%)
- any other outcome (50%).

Reported outcomes for other cases

143. The ten other cases that were closed during the Statistics Reporting Period had the following outcomes:

- agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty (30%)
- any other outcome (30%)
- agreement that there is no taxation not in accordance with tax treaty (20%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

144. The average time needed to close MAP cases during the Statistics Reporting Period was 43.63 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	4	23.41
Other cases	10	51.67
All cases	14	43.63

Pre-2016 cases

145. For pre-2016 cases Brazil reported that on average it needed 30.28 months to close two attribution/allocation cases and 73.01 months to close six other cases. This resulted in an average time needed of 62.33 months to close eight pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Brazil reported that it followed the reporting rules as contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes, as follows:

- *Start date*: the date of the initial letter requesting for a MAP
- *End date*: the date Brazil receives a letter from the other competent authority agreeing to close the case. Brazil may also consider the end date as being the date of its competent authority's letter suggesting the closure of the MAP case if it fails to receive any response regarding the subject in the course of several months.

Post-2015 cases

146. For post-2015 cases Brazil reported that on average it needed 16.54 months to close two attribution/allocation cases and 19.68 months to close four other cases. This resulted in an average time needed of 18.70 months to close six post-2015 cases.

Peer input

147. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Recent developments

148. Brazil was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 85.7% of the post-2015 cases pending on 31 December 2018 (18 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

149. With respect to this recommendation, Brazil reported that since 1 January 2019 it has taken active steps to ensure the timely and efficient resolution of MAP cases, which has resulted in it closing eight MAP cases in 2019, representing a significant increase in productivity as compared to 2018.

150. In view of this and the statistics discussed above, it follows that Brazil's MAP inventory has increased by 100% whereby the number of attribution/allocation cases has

increased by 260%. Further, the statistics also show that Brazil has in the period 2016-19 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 23%. Element C.3 will further consider these numbers in light of the adequacy of resources.

151. All peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 January 2019. However, a few peers have commented on their experience with Brazil concerning the resolution of MAP cases since that date. This input is further discussed under element C.3.

Anticipated modifications

152. Brazil reported that it is currently working on a draft of internal rules to improve the procedure and reduce the average time needed to resolve the MAP requests.

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.

153. 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 Brazil's competent authority

154. Under Brazil's tax treaties, the competent authority function is assigned to the Federal Revenue of Brazil ("RFB"). Brazil reported that this function is delegated to the Special Secretary of the RFB, which is responsible for the MAP function. This is also clarified in Brazil's MAP guidance.

155. Brazil reported that the competent authority function is performed by seven employees within the RFB. Brazil noted that three of these employees joined the competent authority function in 2018 and 2019 and that all of these employees work on both types of MAP cases (attribution/allocation cases and other cases), but that none of them works exclusively on MAP cases. Brazil further reported that these employees are responsible for a wide range of tasks in the field of international direct taxation and co-operation in addition to their role performing the MAP function, including: (i) the interpretation of tax law, (ii) the issuance of related normative acts and (iii) the issuance of rulings.

156. Brazil reported that the staff members handling MAP cases are tax auditors who have already handled a few MAP cases, but that their experience remains limited. Brazil noted that two staff members have participated in a number of trainings and seminars organised by the OECD concerning MAP. Brazil clarified that there is not a specific budget dedicated to the MAP function but that the relevant costs currently fall under the international relations budget of the RFB.

Monitoring mechanism

157. Brazil reported that the current level of resources allocated to the MAP function seems adequate, taking into account Brazil's MAP caseload. Brazil reported that the framework for the monitoring/assessment of whether such resources are adequate consists of monitoring the level of resources compared with the MAP caseload, the complexity of MAP cases and the relevance of the matter. Brazil further noted that as a result of this evaluation, three additional staff members joined the competent authority in the period under review.

Recent developments

158. In the stage 1 report, Brazil was recommended to ensure that the steps taken recently and the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.

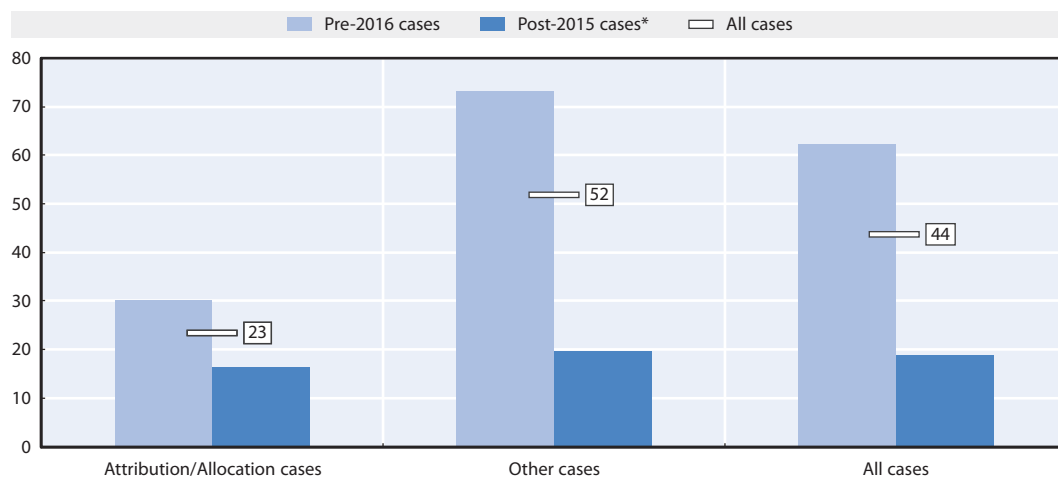
159. In this regard, Brazil reported that its competent authority function has followed up on this recommendation by adding one new staff member. Further, Brazil also reported that its MAP requests are now handled through a fully integrated electronic system and that this has made the process of resolving MAP cases more organised.

Practical application

MAP statistics

160. As discussed under element C.2, Brazil has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 43.63 months to close MAP cases. This concerns other MAP cases where the time needed was 51.67 months, where the time needed to resolve attribution/allocation cases was 23.41 months. The average time to resolve MAP cases in 2016, 2017, 2018 and 2019 can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2016-19



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

161. The stage 1 peer review report of Brazil analysed the 2016-18 MAP statistics and showed an average of 26.43 months to resolve six MAP cases, which concerned 23.28 months for two attribution/allocation cases and 28.01 months for four other MAP cases that were closed.

162. For stage 2, the 2019 MAP statistics are also taken into account. The average times to close MAP cases for this year are as follows:

	2019
Attribution/Allocation cases	23.54
Other cases	67.45
All cases	56.48

163. The 2019 statistics of Brazil show that the average completion time of MAP cases increased from 26.43 months (2016-18) to 56.48 months (2019). Brazil clarified that this is owing to the time taken to resolve five pre-2016 cases in 2019. Brazil further noted that till 2016, Brazil lacked dedicated resources to solve MAP cases which contributed to the increase of the average time needed to close these cases. Brazil also clarified that some treaty partners did not reply to Brazil's position paper for a long time, which also increased the average time to close these pre-2016 cases.

164. As discussed in element C.2, the MAP inventory of Brazil has increased by 100% since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2019	Increase in %
Attribution/allocation cases	5	17	4	18	260%
Other cases	7	9	10	6	-14%
Total	12	26	14	24	100%

165. These numbers show that there was a significant increase of 260% in attribution/allocation MAP cases during this period although there was a slight decrease by 14% of other MAP cases.

166. The figures in the above table show that the number of closed cases is around half of the number of all cases started in the period 2016-19. In addition, Brazil has only managed to close four attribution/allocation cases and six post-2015 cases in total over this period.

167. In this regard, Brazil clarified that as of December 2019, there were five remaining pending pre-2016 cases out of which Brazil is waiting for a response from the treaty partner in four cases and were finalising the final case. Brazil further noted that once these cases are resolved, they would have a further impact on the average time required to resolve the case. In addition, as noted above, Brazil also clarified that as of 31 December 2019, out of 20 pending post-2015 cases, 17 were pending a response by the other competent authority and that Brazil was working on responses in the remaining three cases.

Peer input

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

168. All peers that provided input noted that they had limited MAP experience with Brazil in the period 1 January 2016-31 December 2018. Five peers provided additional input. One peer reported that Brazil’s competent authority was easy to get in contact with and replied quickly to its requests although it noted that their pending cases were closed during the unilateral phase. Another peer reported as having several exchanges with Brazil’s competent authority by letter and since 2017 via e-mail. Brazil responded that since then it has been upgrading its internal rules and increasing the resources dedicated to MAP, in order to improve the processing time of MAP cases. A third peer reported having sent letters to Brazil’s competent authority via regular post and having received replies via both e-mail and regular post and that it received a reply from Brazil approximately six months after sending its position paper in one case, whereas in the other case, a formal response was only received after a year and a half following the issue being revisited during treaty negotiations.

169. A fourth peer mentioned that, while no meeting has taken place with Brazil’s competent authority, there has never been any issues in its relationship with Brazil’s competent authority. A fifth peer reported that while there has not been any joint commission with Brazil’s competent authority since 1 January 2016, there was a meeting early 2016, which Brazil’s competent authority and this peer’s team in charge of tax treaty negotiation attended and MAP cases were discussed. One last peer reported that the pending MAP cases were initiated in 2017 and 2018 and are still pending. Brazil responded that the position paper was issued later in one of these cases, which was confirmed by the peer. Another peer reported that it was notified of one case initiated by Brazil in 2018. The peer noted that it has received the notification letter in 2018, but no further detailed information about the case. Brazil clarified that it was analysing the case and planning to send a position paper to reply to this peer at the time.

170. As discussed under element B.1., one peer expressed concerns about the fact that Brazil’s first letter regarding the possible solution of the case at stake was sent only after several inquiries. This peer further noted that the use of secure electronic communication may prevent future delays in responses and suggested using a process by which this peer exchanges a list of passwords with its MAP partners. Brazil responded that it is interested in getting more information about the secure electronic communication system that could avoid delays in responses. Brazil further reported that it was taking steps to avoid future delays.

Period 1 January 2019-31 July 2020 (stage 2)

171. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2. One of these peers and one peer that only provided input during stage 2 provided additional input in this regard.

172. One peer, which is a treaty partner to one of the pre-2016 cases that could not be discussed owing to Brazil’s domestic time-limits as discussed in element C.1, noted that this peer resolved this MAP case with Brazil in 2019 with the outcome “any other outcome” owing to Brazil’s domestic time limits and mentioned above and noted that the time taken for the case was much higher than the pursued 24-month average. Further, the peer that provided input only during stage 2 noted that its competent authority has a good working relationship with Brazil’s competent authority based on experience from a small number of cases and that correspondence by email has been timely and efficient, leading to a positive experience.

Anticipated modifications

173. Brazil indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	<p>MAP cases were resolved in 43.63 months on average, which concerns especially other MAP cases, as the average time needed to close these cases was 51.67 months, whereas for attribution/allocation cases the average time was below 24 months (23.41 months). There is therefore a risk that post-2015 cases are not resolved within the average of 24 months, especially concerning other MAP cases.</p> <p>Further, there was a significant increase in MAP inventory during the Statistics Reporting Period, especially concerning attribution/allocation cases with only around half the number of these cases resolved during this time and very few attribution/allocation cases being resolved in total. This may indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Brazil has taken some organisational measures by increasing the number of staff members in its competent authority function and has taken some steps to actively improve the resolution of MAP cases in 2019, further actions should be taken to ensure a timely resolution of MAP cases, which primarily concerns other MAP cases. In that regard, Brazil should devote additional resources to its competent authority to handle these cases and also to be able to cope with the increase in the number of MAP cases, particularly for attribution/allocation cases so as to resolve MAP cases in a timely, efficient and effective manner.</p>

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

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

174. 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

175. Brazil reported that all MAP cases are handled by its competent authority without any instructions or direction given by the Ministry of Finance. Brazil further clarified that its competent authority may consult local tax auditors to obtain more information about a given case. However, Brazil emphasised that the staff in charge of MAP is not influenced by the positions taken by local tax auditors and that the latter are not involved in the decision making process about a given MAP case.

176. Brazil further reported that its competent authority staff is not involved in negotiation of tax treaties and that the staff in charge of the negotiation of tax treaties is not involved in the MAP cases. Brazil further clarified that both areas are physically and functionally separate. Brazil emphasised that its competent authority performs its own legal analysis without being influenced by the team in charge of tax treaty negotiation.

177. With regard to the above, Brazil reported that staff in charge of MAP operates independently in practice 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 that Brazil would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

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

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

Period 1 January 2019-31 July 2020 (stage 2)

180. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

181. Brazil indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

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

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

182. 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 Brazil

183. Brazil reported that it has set targets for staff in charge of MAP process to evaluate their work performance. These are related to time needed to accomplish individual tasks. Brazil reported that for instance, there is a time estimate to assess whether a unilateral

solution can be found for each case and staff in charge must balance this task with other assignments to deliver results on time. Brazil further reported that individual scores are then compared to the average and if necessary training is offered to the relevant officials.

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

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

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

Recent developments

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

Practical application

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

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

Period 1 January 2019-31 July 2020 (stage 2)

188. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

189. Brazil indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

190. 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

191. As clarified in Brazil’s MAP profile, Brazil reported that MAP arbitration is not a mechanism currently available for the resolution of tax treaty related disputes in any of Brazil’s tax treaties.

Recent developments

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

Practical application

193. To date, Brazil has not incorporated an arbitration clause in any of its treaties as a final stage to the MAP.

Anticipated modifications

194. Brazil indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 36 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. For post-2015 cases, if the number of MAP cases in Brazil’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Brazil reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

4. Brazil's 2016 and 2017 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016 and 2017. See further explanations in Annex B and Annex C.
5. For pre-2016 and post-2015 Brazil follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

References

OECD (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.

195. 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

196. Brazil reported that based on its legal framework and current Supreme Court jurisprudence regarding hierarchy of tax treaties, implementation of MAP agreements can only be made within its domestic statute of limitation even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), both for upward and downward adjustments that would result from a MAP agreement. Brazil indicated that according to its general domestic rules (articles 165 and 168 of the National Tax Code (*Código Tributário Nacional – CTN*)), any refund request shall be submitted within five years from the date of payment of the relevant taxes. Brazil reported that the submission of such a refund request by means of the form contained in Annex III to the MAP regulation would suspend domestic time limits and allow the implementation of a subsequent MAP agreement. Brazil clarified that if such a refund request is not submitted within five years after the date of payment of the relevant taxes, it will no longer be possible to implement a MAP agreement in Brazil if the domestic statute of limitation has expired. Brazil further mentioned that this applies both when the MAP request was submitted to its competent authority and when it was submitted to the competent authority of its treaty partner. In this respect, both Brazil's MAP regulation and its MAP guidance highlight the need to submit a refund request to have a MAP agreement implemented after the expiration of Brazil's domestic time limits.

197. Brazil reported that any solution reached during the unilateral phase or after the bilateral phase is implemented only if it is accepted by the taxpayer and its foreign related party(ies) where applicable. In addition, Brazil reported that the taxpayer needs to withdraw from any pending appeals or legal proceedings in Brazil or abroad. Brazil further specified that the taxpayer is invited to provide its acceptance of the solution found within 30 days after being notified of the outcome of its MAP case. Brazil explained that the taxpayer may request for an extension of this period, which may be accepted by Brazil's competent authority if the reasons presented by the taxpayer seem reasonable. Brazil also clarified that if the taxpayer fails to answer and accept the MAP agreement, the case is closed. This is also clarified in section 5 of Brazil's MAP guidance.

198. In practice, Brazil reported that the implementation of MAP agreements is made by the local office of the RFB that is responsible for the reimbursement of taxes unduly paid. Brazil reported that after reaching an agreement, its competent authority provides the local offices with instructions regarding the implementation of the MAP agreement.

Recent developments

199. There are no recent developments with respect to element D.1, except that Brazil reported that it has continued to notify treaty partners without delay in all cases where the implementation of MAP agreements may be affected by domestic time-limits. Brazil noted in this regard that it is still in the process of creating a bilingual version of the relevant application forms.

Practical application

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

200. Brazil reported that it has reached one MAP agreement in the period 1 January 2016-31 December 2018 that needed to be implemented in Brazil, and that it was implemented.

201. Four peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 December 2018 that was not implemented by Brazil.

202. Three other peers provided input about similar circumstances that are further discussed under element B.1. In two of these cases, Brazil reported that the expiration of its domestic statute of limitation forced Brazil to close the MAP cases without reaching any agreement. All of these three peers were concerned by the fact that the implementation of a MAP agreement became statute barred in the course of the process, in part due to Brazil's competent authority's late responses. One of these three peers suggested that its competent authority is informed in due time of the expiration of Brazil's statute of limitation so that any taxation not in accordance with the treaty could still be resolved. This peer further noted that Brazil's competent authority provided the relevant documents and steps to be taken by the taxpayer after being requested to do so. This peer also noted that it would be helpful that Brazil's competent authority provides upfront the necessary documents or a reference to a website where the documents can be found and where the request has to be introduced.

203. Brazil reported that in order to mitigate the risk of non-implementation of MAP agreements when its domestic statute of limitation has expired, its competent authority now informs its treaty partner of the need of submitting a refund request and does so immediately after being notified of the existence of a filed MAP request in the other jurisdiction. Two peers confirmed that this happened in cases they had with Brazil. One of these peers reported that Brazil's competent authority informed this peer's competent authority of the fact that the entitlement to a corresponding adjustment that would result of the MAP is subject to Brazil's domestic statute of limitation that expires five years after the overpayment was made. This peer further reported that Brazil's competent authority suggested that the taxpayer submits a refund request to Brazil's tax administration before the domestic statute of limitation expires and referred to the website where the refund request form can be downloaded. Brazil responded that it has informed this competent authority, as well it is currently informing all the other ones about this procedure, by providing the link with all relevant information and documents, including the request form. Brazil clarified that these documents highlight the need to submit a refund request

to have a MAP agreement implemented after the expiration of Brazil's domestic time limits. Another peer reported a similar experience and noted that the information that it could find online on the matter is only available in Portuguese. This peer suggested that this information is translated into English and available online too. Brazil noted that the need for submitting the refund request within the domestic time limits is also stressed in its MAP guidance and in its regulation. Brazil further reported that it is currently working on a bilingual version of the relevant application forms and that it intends to prepare an English version of Normative Instruction No. 1717/2017, which provides for rules on restitution, compensation, compensation and reimbursement in the scope of the RFB.

Period 1 January 2019-31 July 2020 (stage 2)

204. Brazil reported that since 1 January 2019, no MAP agreements were reached with another competent authority.

205. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2, with one of them confirming that it was informed of the need for the taxpayer to file a reimbursement request in Brazil before the expiration of domestic time limits for tax refund in a timely manner.

Anticipated modifications

206. Brazil reported that in order to further mitigate the risk of non-implementation of MAP agreements when its domestic statute of limitation expired, it is currently exploring amending its legislation, which is still under consideration.

207. In addition, Brazil reported that it intends to document the implementation process in its internal guidance and require the local offices to notify the competent authority when the implementation is concluded, in order to mitigate the risk of non-implementation of a MAP agreement. Brazil further reported that it intends to check periodically if any MAP agreement has already been implemented.

Conclusion

	Areas for improvement	Recommendations
	Implementation of MAP agreements is subject to Brazil's domestic statute of limitation of five years, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).	When the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), Brazil should ensure that all MAP agreements entered into are implemented.
[D.1]	As will be discussed under element D.3 not all of Brazil's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Brazil's relevant tax treaty, prevent the implementation of a MAP agreement, Brazil should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Brazil should, for clarity and transparency purposes, notify the treaty partner thereof without delay.

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

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

208. 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

209. As discussed under element D.1, Brazil reported that the taxpayer is invited to provide its acceptance of the solution found within 30 days after being notified of the outcome of its MAP case. This is specified in section 5 of Brazil's MAP guidance. No other specific timeframe applies for the implementation of MAP agreements once the taxpayer has notified its acceptance of the solution.

Recent developments

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

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

211. Brazil reported that it has entered into one MAP agreement in the period 1 January 2016-31 December 2018, which was implemented the same day as the agreement was reached.

212. All peers that provided input have not indicated experiencing any problems with Brazil regarding the implementation of MAP agreements reached on a timely basis in the period 1 January 2016-31 December 2018.

Period 1 January 2019-31 July 2020 (stage 2)

213. Brazil reported that since 1 January 2019, no MAP agreements were reached with another competent authority.

214. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Brazil fully reflects their experience with Brazil since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the two peers that only provided input during stage 2.

Anticipated modifications

215. Brazil indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

216. 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 Brazil's tax treaties

217. As discussed under element D.1, Brazil's domestic legislation includes a statute of limitations of five years applicable in all instances, even when treaties contain the equivalent of article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017).

218. Out of Brazil's 36 tax treaties, eight 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 both the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments.

219. For the remaining 27 treaties the following analysis is made:

- 26 treaties do not contain a provision based on or equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).¹
- One treaty includes a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), but prescribes that the implementation of MAP agreements, is subject to the time limits in the domestic law of the States. Therefore, this treaty is not considered to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

220. For the 27 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, nine peers provided input during stage 1. Four peers confirmed that there are currently ongoing bilateral negotiations to update the concerned treaty, two of them having reported having received a draft protocol from Brazil containing a new provision regarding the mutual agreement procedure that is currently under analysis. Three peers confirmed that they were contacted by Brazil with respect to the renegotiation of their treaty. The remaining peer reported that its treaty with Brazil could be modified via the Multilateral Instrument. Brazil reiterated it did not express its intention to sign the Multilateral Instrument and that it will amend its treaties via bilateral negotiations.

Recent developments

Bilateral modifications

221. Brazil signed a new treaty which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty has not entered into force as yet. Furthermore, Brazil also signed an amending protocol to an existing treaty, adding the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) to this treaty where such provisions were previously not present. The effects of this newly signed treaty and amending protocol have been reflected in the analysis above where it has relevance.

Other developments

222. Brazil reported that for the 28 treaty partners relevant to the 27 tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), negotiations have been initiated or are ongoing with 27 of these concerned treaty partners with a view to make these treaties compliant with element D.3. For the remaining treaty partner, negotiations will be initiated once all other pending negotiations are completed.

Peer input

223. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Brazil. One of these peers concerns a treaty partner to a treaty that is not line with this element. This peer noted that it is currently undertaking negotiations with Brazil on an amending protocol to make this treaty in line with element D.3. Further, the other peer indicated that it has signed an amending protocol with Brazil to make its treaty with Brazil in line with element D.3, which is in line with the above analysis.

Anticipated modifications

224. Brazil 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>27 out of 36 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to the 28 relevant treaty partners for these 27 treaties:</p> <ul style="list-style-type: none"> • For two, negotiations are not required. • For 26, negotiations are envisaged, scheduled or pending. 	<p>One of the 27 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) is the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic. Negotiations are ongoing with both concerned treaty partners. In that regard, Brazil should, in such negotiations, ensure the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>For the remaining 26 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Note

1. These 26 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Two out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 36 tax treaties does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b). With respect to this treaty, negotiations are envisaged, scheduled or pending.	For the treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b), Brazil should continue (the initiation of) negotiations with the treaty partner concerned with a view to including the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Seven out of 36 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request can be shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the seven treaties that do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision.
[B.2]	32 of the 36 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Brazil should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and the timing of these steps. Furthermore, Brazil should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).
[B.3]	-	-

	Areas for improvement	Recommendations
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	<p>18 out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to the 19 relevant treaty partners for these 18 treaties:</p> <ul style="list-style-type: none"> • For two, negotiations are not required. • For 17, negotiations are envisaged, scheduled or pending. 	<p>One of the 18 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) is the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic. Negotiations are ongoing with both concerned treaty partners. In that regard, Brazil should, in such negotiations, ensure the inclusion of the required provision.</p> <p>For the remaining 17 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision.</p>
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	<p>MAP cases were resolved in 43.63 months on average, which concerns especially other MAP cases, as the average time needed to close these cases was 51.67 months, whereas for attribution/allocation cases the average time was below 24 months (23.41 months). There is therefore a risk that post-2015 cases are not resolved within the average of 24 months, especially concerning other MAP cases.</p> <p>Further, there was a significant increase in MAP inventory during the Statistics Reporting Period, especially concerning attribution/allocation cases with only around half the number of these cases resolved during this time and very few attribution/allocation cases being resolved in total. This may indicate that the competent authority is not adequately resourced to cope with this increase.</p>	<p>While Brazil has taken some organisational measures by increasing the number of staff members in its competent authority function and has taken some steps to actively improve the resolution of MAP cases in 2019, further actions should be taken to ensure a timely resolution of MAP cases, which primarily concerns other MAP cases. In that regard, Brazil should devote additional resources to its competent authority to handle these cases and also to be able to cope with the increase in the number of MAP cases, particularly for attribution/allocation cases so as to resolve MAP cases in a timely, efficient and effective manner.</p>
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
	Implementation of MAP agreements is subject to Brazil's domestic statute of limitation of five years, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).	When the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), Brazil should ensure that all MAP agreements entered into are implemented.
[D.1]	As will be discussed under element D.3 not all of Brazil's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternatives provided in Article 9(1) and 7(2). Therefore, there is a risk that for those tax treaties that do not contain those provisions, not all MAP agreements will be implemented due to the five year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Brazil's relevant tax treaty, prevent the implementation of a MAP agreement, Brazil should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Brazil should, for clarity and transparency purposes, notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>27 out of 36 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). With respect to the 28 relevant treaty partners for these 27 treaties:</p> <ul style="list-style-type: none"> • For two, negotiations are not required. • For 26, negotiations are envisaged, scheduled or pending. 	<p>One of the 27 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) is the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to the Czech Republic and the Slovak Republic. Negotiations are ongoing with both concerned treaty partners. In that regard, Brazil should, in such negotiations, ensure the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p> <p>For the remaining 26 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Brazil should continue (the initiation of) negotiations with the treaty partners concerned with a view to including the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.3	B.4	C.1	D.3	A.1	B.7	C.6	Arbitration							
Canada	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	N	N	N
Chile	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	N	N	N
China (People's Republic of)	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Czech Republic	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	N	N	N
Denmark	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Ecuador	Y	N/A	O	ii	2 years	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Finland	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
France	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Hungary	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
India	Y	N/A	O	ii	5 years	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Israel	Y	N/A	N	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	N	N	N	N
Italy	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Japan	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	N
Mexico	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	N	N	N
Netherlands	Y	N/A	O	ii	5 years	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	N	N	N
Norway	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	N	N	N
Peru	Y	N/A	O	iv	Domestic law	i	i	Y	N	Y	Y	Y	N	Y	Y	Y	Y	N	N	N
Philippines	Y	N/A	O	i	N/A	i	i	Y	iii	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N
Portugal	Y	N/A	O	ii	2 years	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	Article 25(1) of the OECD MTC	Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration											
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Russia	Y	N/A	O	i	N/A	i	i	i	Y	N	Y	Y	N	Y	N	N	N	N	N	N
Singapore	N	5/7/2018	O	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Slovak Republic	Y	N/A	O	i	N/A	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N
South Africa	Y	N/A	O	iv	Domestic law	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N
Spain	Y	N/A	O	i	N/A	i	i	i	Y	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Sweden	Y	N/A	E	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Switzerland	N	3/5/2018	E	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Trinidad and Tobago	Y	N/A	O	i	N/A	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N
Turkey	Y	N/A	O	iv	Domestic law	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N
United Arab Emirates	N	11/12/2018	O	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Ukraine	Y	N/A	O	iv	Domestic law	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N
Uruguay	N	6/7/2019	E	Y	N/A	i	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Venezuela	Y	N/A	O	i	N/A	i	i	i	Y	N	N	Y	N	Y	N	N	N	N	N	N

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	0	0	0	1	4	34.16
Others	7	0	0	0	0	0	0	0	1	0	0	6	53.16
Total	12	0	0	0	0	0	0	0	1	0	1	10	43.66

Notes: The number of pre-2016 cases was updated by Brazil in 2018 since it was agreed with a treaty partner to add one more pre-2016 attribution/allocation case to its inventory as compared to its published statistics in 2016 and 2017.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	0	0	0	0	0	0	4	0
Others	6	0	0	0	0	0	1	0	0	0	0	5	35.52
Total	10	0	0	0	0	0	1	0	0	0	0	9	35.52

Notes: The number of pre-2016 cases has been updated by Brazil in 2018, which explains the mismatch with the published version of its 2017 statistics.

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
	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	0	0	0	0	0	0	4	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	9	0	0	0	0	0	0	0	0	0	0	9	n.a.

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
	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	0	0	0	0	0	1	3	26.4
Others	5	0	0	0	0	0	0	0	1	0	3	1	87.34
Total	9	0	0	0	0	0	0	0	1	0	4	4	75.15

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) for post-2015 cases

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

2017 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period				
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Attribution/Allocation	4	2	0	0	0	1	0	0	0	0	0	0	0	5	12.4
Others	0	6	0	0	0	0	0	0	0	0	0	0	0	6	n.a.
Total	4	8	0	0	0	1	0	0	0	0	0	0	0	11	12.4

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
		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			
Attribution/Allocation	5	0	0	0	0	0	0	0	0	0	0	0	11	n.a.
Others	6	0	0	1	0	0	1	0	0	0	0	0	7	11.67
Total	11	0	0	1	0	0	1	0	0	0	0	0	18	11.67

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2015 cases during the reporting period			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
		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			
Attribution/Allocation	11	0	0	0	1	0	0	0	0	0	0	0	15	20.68
Others	7	0	1	0	0	0	1	0	0	0	0	0	5	27.68
Total	18	0	1	0	1	0	1	0	0	0	0	0	20	25.35

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	RFB Manual on Mutual Agreement Procedure, December 2018
MAP Regulation	Normative Instruction RFB No. 1846, of 28 December 2018, which regulates the request for mutual agreement procedure under international tax treaties to which Brazil is a signatory.
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, Brazil (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 Brazil.



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