

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



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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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

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Abbreviations and acronyms

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

Executive summary

Bulgaria has a relatively large tax treaty network with 70 tax treaties and has signed and ratified the EU Arbitration Convention. Bulgaria also has a MAP programme with modest experience in resolving MAP cases. It has a small MAP inventory with a small number of new cases submitted each year and 11 cases pending on 31 December 2019. Of these cases, 55% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Bulgaria met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Bulgaria worked to address them, which has been monitored in stage 2 of the process. In this respect, Bulgaria solved almost all identified deficiencies.

All of Bulgaria's tax treaties contain a provision relating to MAP. Those treaties mostly 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 for the fact that that 20% 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 of the OECD Model Tax Convention (OECD, 2017)), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Bulgaria signed the Multilateral Instrument. Through this instrument, a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of the Multilateral Instrument, Bulgaria 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 Bulgaria has no bilateral APA programme in place, there were no specific elements to assess concerning the prevention of disputes.

Bulgaria meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2019 not received any MAP requests concerning transfer pricing cases or the application of anti-abuse provisions. It further has in place a documented bilateral consultation process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, although no such cases have surfaced since 1 January 2019. Bulgaria also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, under tax treaties and the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

Concerning the average time needed to close MAP cases, the MAP statistics for Bulgaria 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	8	8	10	6	10.70
Other cases	7	7	9	5	35.40
Total	15	15	19	11	25.82

*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, Bulgaria used as a start date the date of receipt of the MAP case by the competent authority and as the end date notification by the competent authority to the taxpayer of the outcome of the MAP request.

The number of cases Bulgaria closed in 2016-19 is higher than the number of all cases started in those years. In addition, Bulgaria has closed 67% of the post-2015 MAP cases that were started during this period and has managed to decrease its MAP inventory by 27%. During these years, MAP cases were not on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 25.82 months. However, the median time to resolve MAP cases from 2016-19 was 23.72 months, which concerns 12.02 months for attribution/allocation cases and 22.16 months for other cases. On this basis, Bulgaria's competent authority is considered adequately resourced.

Furthermore, Bulgaria meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Bulgaria'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, Bulgaria almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Bulgaria monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), albeit that no problems have surfaced regarding implementation throughout the peer review process.

Reference

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

Introduction

Available mechanisms in Bulgaria to resolve tax treaty-related disputes

Bulgaria has entered into 70 tax treaties on income (and/or capital), all of which are in force.¹ These 70 treaties are being applied to 71 jurisdictions.² All of these treaties provide for a mutual agreement procedure (“**MAP**”) for resolving disputes on the interpretation and application of the provisions of the tax treaty.

Furthermore, Bulgaria is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.³ In addition, Bulgaria adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.⁴ This directive has been implemented in Bulgaria’s domestic legislation by the insertion of Articles 134a-134t of Bulgaria’s Tax and Social Insurance Procedure Code, with effect from 13 August 2019.⁵

Under Bulgaria’s tax treaties, the competent authority function is assigned to the Minister of Finance and is further delegated to the Tax Treaties Directorate of the National Revenue Agency. The competent authority of Bulgaria currently employs 16 staff members, including one director and two technical assistants. All of these employees (except for the technical assistants) work on MAP cases in addition to other tasks relating to international taxation and co-operation.

Bulgaria issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”) in March 2019 and which is available at:

<https://nra.bg/wps/portal/nra/mezhdunarodni-deinosti/siddo/protsedura-vzaimno-sporazumenie> (in Bulgarian)

<https://old.nra.bg/en/page?id=711> (in English)

In addition, Bulgaria issued detailed procedural rules on the conduct of MAP with other member states of the EU, arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, through the introduction of Articles 134a-134t of Bulgaria’s Tax and Social Insurance Procedure Code, which is also considered best practice as regards MAP arising from Bulgaria’s tax treaties and is available at:

<https://old.nra.bg/en/document?id=240>

Developments in Bulgaria since 1 January 2019

Developments in relation to the tax treaty network

The stage 1 peer review report of Bulgaria noted that it was conducting tax treaty negotiations with the Netherlands and Pakistan. Bulgaria clarified that new tax treaties have been signed with both treaty partners, as noted below. Further, the stage 1 report noted that Bulgaria had signed a new treaty with Saudi Arabia (2017) which had not yet entered into force. Bulgaria noted that this treaty has since entered into force.

In addition, Bulgaria reported that it has signed a new tax treaty with Pakistan (2019) which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place and which entered into force. This treaty includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). Further, Bulgaria signed a new tax treaty with the Netherlands (2020) which concerns the replacement of the 1990 treaty. This treaty includes Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015). This treaty has not yet entered into force.

Furthermore, on 7 June 2017 Bulgaria signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Bulgaria reported that it expects to ratify the Multilateral Instrument by the end of 2019. With the signing of the Multilateral Instrument, Bulgaria also submitted its list of notifications and reservations to that instrument.⁶ In relation to the Action 14 Minimum Standard, Bulgaria has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Bulgaria indicated that the Multilateral Instrument is undergoing its internal approval process, but that the expected date of such approval is not clear.

For the five treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Bulgaria reported that it intends to update them via bilateral negotiations. In this regard, Bulgaria indicated that it plans to first modify three of these treaties in respect of which negotiations have already been initiated. In respect of the remaining two treaties, where modifications are not possible through the Multilateral Instrument, Bulgaria indicated that it would initiate negotiations following conclusion of ongoing negotiations.

Other developments

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

- *notification/consultation process*: the introduction and documentation of a bilateral consultation process in its internal procedures based on Bulgaria’s implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union
- *MAP guidance*: issuance of comprehensive MAP guidance including *inter alia* the contact details of the competent authority and the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance

- *handling and resolving MAP cases*: the addition of two new staff members to the competent authority and the attendance of OECD MAP trainings by the competent authority staff.

Basis for the peer review process

The peer review process entails an evaluation of Bulgaria'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 Bulgaria, its peers and taxpayers. The questionnaires for the peer review process were sent to Bulgaria 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, Bulgaria'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 Bulgaria 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.⁷ 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 Bulgaria. In this update report, Bulgaria 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 Bulgaria 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 state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia. As it concerns the same tax treaty that is applicable to multiple jurisdictions, each treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Bulgaria'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 Bulgaria was launched on 31 December 2018, with the sending of questionnaires to Bulgaria and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Bulgaria in June 2019, with the subsequent approval by the BEPS Inclusive Framework on 9 August 2019. On 9 August 2020, Bulgaria submitted its update report, which initiated stage 2 of the process.

The period for evaluating Bulgaria'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 six peers provided input: Belgium, Germany, Israel, Switzerland, Turkey and the United Kingdom. Out of these six peers, three had MAP cases with Bulgaria that started on or after 1 January 2016. These three peers represented approximately 65% of post-2015 MAP cases in Bulgaria’s inventory that started in 2016, 2017 or 2018. During stage 2, the same peers provided input. In addition, Italy also provided input during stage 2. For this stage, these peers represent approximately 60% of post-2015 MAP cases in Bulgaria’s MAP inventory that started in 2016, 2017, 2018 or 2019. Generally, peers indicated that communication was good with Bulgaria’s competent authority, some of them emphasising that they had little experience with Bulgaria. Specifically with respect to stage 2, all peers that provided input reported that the update report of Bulgaria fully reflects the experiences these peers have had with Bulgaria since 1 January 2019 and/or that there was no addition to previous input given.

Input by Bulgaria and co-operation throughout the process

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

- a. MAP profile⁸
- b. MAP statistics⁹ according to the MAP Statistics Reporting Framework (see below).

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

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

Overview of MAP caseload in Bulgaria

The analysis of Bulgaria’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 Bulgaria, 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	8	8	10	6
Other cases	7	7	9	5
Total	15	15	19	11

General outline of the peer review report

This report includes an evaluation of Bulgaria’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**”).¹⁰ Apart from analysing Bulgaria’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Bulgaria during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Bulgaria 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 Bulgaria 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 Bulgaria 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 Bulgaria has entered into are available at: <https://nra.bg/wps/portal/nra/mezhdunarodni-deinosti/siddo/spisak-sas-spogodbi> and <https://old.nra.bg/en/document?id=192>. Bulgaria signed a new treaty with the Netherlands (2020), which will replace the existing treaty of 1990, once entered into force. For this reason, this newly negotiated treaty is taken into account in the treaty analysis. Reference is made to Annex A for the overview of Bulgaria’s tax treaties.
2. Bulgaria continues to apply the 1998 treaty with the former state of the Federal Republic of Yugoslavia to both Montenegro and Serbia.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
4. Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.
5. Available at: <https://www.nra.bg/en/document?id=240>.
6. Available at: www.oecd.org/tax/treaties/beps-mli-position-Bulgaria.pdf.
7. Available at: <https://www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-bulgaria-stage-1-30ffa4a6-en.htm>.

8. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
9. The MAP statistics of Bulgaria are included in Annex B and C of this report.
10. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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

Part A

Preventing disputes

[A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Bulgaria's tax treaties

2. Out of Bulgaria's 70 tax treaties, 69 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 The remaining treaty does not contain the word "interpretation" and is therefore considered to not contain the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017a).

3. Bulgaria 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), there is nothing in its domestic legislation and/or administrative practices that limits it from entering into an interpretive MAP agreement.

4. All peers that provided input during stage 1 indicated that their treaty with Bulgaria meets the requirements under element A.1. For the treaty identified above that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peer did not provide input.

Recent developments

Bilateral modifications

5. Bulgaria signed a tax treaty with a treaty partner 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) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) as was the case in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

7. With regard to the tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Bulgaria listed it as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Bulgaria as a covered tax agreement and also made such notification. Therefore, at this stage, the tax treaty identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Peer input

8. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Bulgaria. This peer does not concern the treaty partner to the treaty that is not line with this element.

Anticipated modifications

9. Bulgaria 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]	One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.

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

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

10. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.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.

Bulgaria’s APA programme

11. Bulgaria 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

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

Recent developments

13. 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)

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

15. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Bulgaria in the period 1 January 2016-31 December 2018.

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

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

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

Anticipated modifications

18. Bulgaria indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 69 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
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.

19. 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 Bulgaria's tax treaties

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

20. Four of Bulgaria's 70 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, 58 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.

21. Bulgaria reported that its model tax treaty text used as a basis for treaty negotiations also contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) that allows taxpayers to submit a MAP request to the competent authority of either state.

22. The remaining eight treaties can be categorised as follows:

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

23. The seven treaties mentioned in the first row above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, five of those seven treaties are considered to be in line with this part of element B.1. This is because the non-discrimination provision of these five tax treaties only covers nationals that are resident of one of the contracting states. Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident.¹

24. For the remaining two treaties, 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 these two treaties are not in line with this part of element B.1.

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

... the term “irrespective of the remedies provided by domestic law” means that invoking a mutual agreement procedure is not alternative with national contentious proceedings which, in any case, shall be preventively initiated, when the claim is related with an application of taxes not in conformity with the Convention.

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

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

27. Out of Bulgaria’s 70 tax treaties, 64 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.²

28. The remaining six 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	3
Filing period less than 3 years for a MAP request (2-years)	3

Peer input

29. Several peers that provided input during stage 1 indicated that their tax treaties with Bulgaria are in line with Element B.1. For the treaties identified above that do not contain the full equivalent of either sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), the relevant peers did not provide input.

Practical application

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

30. As noted in paragraphs 20-26 above, all but one of Bulgaria's tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Bulgaria reported that it would grant access to MAP even in cases where there is a pending court proceeding or if a court decision has been issued regarding the same subject matter. However, Bulgaria noted that its competent authority cannot derogate from a court decision in MAP and therefore it will only seek to resolve the MAP case by having the treaty partner providing for correlative relief in line with the decision of its court. This is confirmed in section 9.3 of Bulgaria's MAP guidance as well. Bulgaria further noted that its competent authority or the taxpayer may request for court proceedings to be suspended for a certain period of time in order to let the competent authorities reach an agreement in MAP, but that its judges ultimately have discretion whether such suspension should be granted and if granted, regarding the length of such suspension before resuming consideration of the case in question.

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

31. With respect to the three tax treaties that do not contain a filing period for MAP requests, Bulgaria reported that there is no domestic legislation regulating the filing of MAP requests. However, Bulgaria noted that in such cases it would apply in practice a three-year filing period for filing a MAP request starting as from the notification of the action resulting in taxation not in accordance with the provisions of the relevant tax treaty. This is confirmed in section 6 of Bulgaria's MAP guidance as well.

Recent developments

Bilateral modifications

32. Bulgaria signed a tax treaty with a treaty partner 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 sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (2017) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not

entered into force yet. This treaty contains a provision that is equivalent to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) as opposed to Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) contained in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

33. Bulgaria signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

34. With the signing of the Multilateral Instrument, Bulgaria opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Bulgaria's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which a resident, Bulgaria opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Bulgaria listed 65 of its 70 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for 64 of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).³ None of these 64 treaties concern the treaties mentioned in paragraph 20 above that already allows the submission of a MAP request to either competent authority.

35. In total, 14 of the 65 relevant treaty partners to these 64 treaties are not a signatory to the Multilateral Instrument, whereas three have not listed their treaty with Bulgaria as a covered tax agreement under that instrument and 21 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.⁴ The remaining 27 treaty partners listed their treaty with Bulgaria as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report

(OECD, 2015b). Therefore, at this stage, 27 of the 70 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

36. In view of the above and in relation to the three treaties identified in paragraphs 20-26 above that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final Action 14 final report (OECD, 2015b), none are part of the 27 treaties that will be modified via the Multilateral Instrument.

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

37. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

38. With regard to the three tax treaties identified in paragraph 28 above that contain a filing period for MAP requests of less than three years, Bulgaria listed all three treaties as a covered tax agreement under the Multilateral Instrument and for all of them made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All of the relevant treaty partners are signatories to the Multilateral Instrument, listed their treaties with Bulgaria as covered tax agreements under that instrument and also made such notification. Therefore, at this stage, all of the three tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

39. For the three tax treaties that do 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) and which will not be modified by the Multilateral Instrument to include such equivalent, Bulgaria reported that it has already initiated negotiations with two treaty partners and that once these negotiations are completed, it would initiate negotiations with the remaining treaty partner to make this treaty in line with element B.1.

Peer input

40. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Bulgaria. This peer concerns a treaty partner to one of the three tax treaties that do 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) and which will not be modified by the Multilateral Instrument to

include such equivalent. This peer confirmed that they have exchanged communications with Bulgaria and note that discussions regarding renegotiation of this treaty are underway.

Anticipated modifications

41. Bulgaria reported it will seek to include Article 25(1), first and second sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and 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. This treaty is expected be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. With respect to this treaty, negotiations are pending</p>	<p>Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>As this treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), Bulgaria should continue negotiations with the treaty partner with a view to including the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> as amended by the Action 14 final report (OECD, 2015b); or as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	<p>Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending.</p>	<p>For the two treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Bulgaria should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> as amended by the Action 14 final report (OECD, 2015b); or as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties 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. Both of these treaties are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017)	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those two treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaties concerned.

[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).

42. 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

43. As discussed under element B.1, out of Bulgaria's 70 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. However, as was also discussed under element B.1, 27 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

44. Bulgaria reported that Article 134e of Bulgaria's Tax and Social Insurance Procedure Code, concerning MAP cases arising from the implementation of Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, states that Bulgaria's competent authority is obliged to notify the other competent authority, without any delay, on its decision regarding acceptance or rejection of the MAP request along with underlying reasons.

45. Bulgaria clarified in this regard that this practice has been made a standard for its competent authority staff even for MAP cases arising from tax treaties where Bulgaria's competent authority considers the objection raised in a MAP request not to be justified. Bulgaria further reported that such process has been documented internally and that the staff responsible for MAP cases have been briefed about such process and are required to follow this process for all MAP cases.

Recent developments

46. In the stage 1 report, it was noted that although Bulgaria had introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on a case when Bulgaria's competent authority considered the objection raised in the MAP request not to be justified, this process was not documented as yet.

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

Practical application

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

48. Bulgaria 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 2016-18 MAP statistics submitted by Bulgaria also show that none of its MAP cases was closed with the outcome "objection not justified".

49. All peers that provided input indicated not being aware of any cases for which Bulgaria'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 Bulgaria'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 have occurred in Bulgaria during this period.

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

50. Bulgaria reported that since 1 January 2019, its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2019 MAP statistics submitted by Bulgaria also show that none of its MAP cases was closed with the outcome "objection not justified".

51. All peers 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 Bulgaria'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 one peer that only provided input during stage 2.

Anticipated modifications

52. Bulgaria indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

53. 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

54. Out of Bulgaria’s 70 tax treaties, 41 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.⁵ Of the remaining 29 tax treaties, nine do not contain a provision that is based on Article 9 of the OECD Model Tax Convention (OECD, 2017) with regard to associated enterprises.

55. Of the remaining 20 treaties:

- Three treaties do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).
- 12 treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but the granting of a corresponding adjustment could be read as only optional as the word “shall” is replaced by “may”.
- Three treaties contain language that only indicates that the competent authorities may consult together with a view to reach an agreement on the adjustment of profits.
- For two treaties, the second sentence of Article 9 lacks the words “if necessary” in the second sentence thereby imposing a requirement that competent authorities consult each other even where it may not be necessary to do so. Furthermore, one of these treaties imposes the additional requirement that a corresponding adjustment can only be made “subject to domestic tax laws”.

56. With respect to the second bullet point above, Bulgaria has expressed its position on Article 9 of the OECD Model Tax Convention (OECD, 2017) by stating that it reserves “the right to replace ‘shall’ by ‘may’ in the first sentence of paragraph 2 in their conventions.”

57. In addition, Bulgaria is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

58. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Bulgaria’s tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In

accordance with element B3, as translated from the Action 14 Minimum Standard, Bulgaria indicated that it will always provide access to MAP for transfer pricing cases even in the absence of the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in the tax treaty if the relevant treaty contains a provision equivalent to Article 9(1) of the OECD Model Tax Convention (OECD, 2017). This is also confirmed in section 2 of Bulgaria's MAP guidance.

59. Bulgaria reported that for the nine treaties that do not contain a provision equivalent to Article 9 of the OECD Model Tax Convention (OECD, 2017) with regard to associated enterprises, it would still grant access to MAP in transfer pricing cases under another legal instrument that provides for a mutual agreement procedure in transfer pricing cases. Bulgaria, however, noted that it would not do so with one treaty partner with which no such instrument applies and clarified that it has never had any tax treaty related issues with this particular jurisdiction.

Recent developments

Bilateral modifications

60. Bulgaria signed a tax treaty with a treaty partner 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 9(2) of the OECD Model Tax Convention (OECD, 2017) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) which was not contained in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

61. Bulgaria signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017)).

62. Bulgaria has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the 20 treaties identified in paragraph 55 above (disregarding those nine treaties that do not contain Article 9 at all) that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Bulgaria listed all of them as covered tax agreements under the Multilateral Instrument and included five of them in the list of treaties for which Bulgaria has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining treaties, Bulgaria did not make, pursuant to Article 17(4), a notification that treaties do contain such equivalent.

63. Of the remaining 15 treaty partners, three are not a signatory to the Multilateral Instrument and five have, on the basis of Article 17(3), reserved the right not to apply Article 17(2). Therefore, at this stage, seven of the 20 tax treaties identified above will be superseded by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Application of legal and administrative framework in practice

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

64. Bulgaria 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.

65. All peers that provided input indicated that they are not being aware of a denial of access to MAP by Bulgaria in the period 1 January 2016-31 December 2018 on the basis that the case concerned was a transfer pricing case.

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

66. Bulgaria 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. However, since that date no requests in relation hereto were received by its competent authority.

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

69. 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

70. None of Bulgaria's 70 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, Bulgaria reported that its domestic law and/or administrative processes do not contain a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Recent developments

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

Practical application

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

72. Bulgaria reported that in the period 1 January 2016-31 December 2018, it has not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

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

74. Bulgaria 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. However, no such cases in relation hereto were received since that date.

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

Anticipated modifications

76. Bulgaria 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.

77. 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

78. Bulgaria 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

79. Bulgaria reported that it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.⁶

Recent developments

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

Practical application

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

81. In view of the fact that it is in Bulgaria not possible that the taxpayer and the tax administration enter into audit settlements, Bulgaria 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.

82. All peers that provided input indicated not being aware of a denial of access to MAP in Bulgaria in the period 1 January 2016-31 December 2018 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be explained by the fact that such settlements are not possible in Bulgaria.

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

83. Bulgaria 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 Bulgaria.

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

Anticipated modifications

85. Bulgaria 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.

86. 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

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

88. Bulgaria reported that if a submitted MAP request does not contain all the necessary information or documents that Bulgaria requests from taxpayers, Bulgaria will follow up with the taxpayer to request that he provides such missing information. Bulgaria further reported that the taxpayer is generally granted 14 calendar days for all situations under its domestic law unless another time period is prescribed by the revenue authorities. This 14-day period starts on the day immediately following the date of request and is stipulated concerning other matters under Article 22 of Bulgaria's Tax and Social Insurance Procedure Code. Bulgaria also indicated that this time period may be extended if the case presented is determined to be especially complex.

89. However, Bulgaria stated that a taxpayer's failure to submit the requested information does not automatically lead Bulgaria to deny access to MAP. Bulgaria reported that as this 14-day term may be extended for all situations, Bulgaria's competent authority would generally give taxpayers at least one month to respond to its information requests in relation to MAP cases. Bulgaria further clarified that the taxpayer may request a further extension of this term where necessary. If the taxpayer fails to submit such requested information after this reminder, Bulgaria explained that it would close the case and notify the other competent authority of its decision to do so.

90. Section 7 of Bulgaria's MAP guidance states that Bulgaria's competent authority may seek additional information where necessary but no further details are provided therein.

91. Bulgaria further noted that according section 134r (2) of Bulgaria's Tax and Social Insurance Procedure Code, concerning MAP cases arising from the implementation of Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Bulgaria's competent authority may request additional information within three months of receipt of the MAP request in such MAP cases. Bulgaria further noted that section 134r(3) requires the taxpayer to reply to such request within three months from receipt and to send a copy of the same to the competent authorities of the other EU Member States concerned. Bulgaria clarified that it intends to update its MAP guidance to apply this procedure to information requests regarding all MAP cases.

Recent developments

92. There are no recent developments with respect to element B.6, except for the publication of Bulgaria's MAP guidance which contains the information and documentation Bulgaria requires taxpayers to include in a MAP request.

Practical application

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

93. Bulgaria 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.

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

95. Bulgaria 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.

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

Anticipated modifications

97. As noted above, Bulgaria clarified that it intends to update its MAP guidance to apply this procedure specified in 134r of Bulgaria's Tax and Social Insurance Procedure Code to information requests regarding all MAP cases.

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.

98. 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 Bulgaria's tax treaties

99. Out of Bulgaria's 70 tax treaties, 67 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.⁷ The remaining three 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).

100. Several peers that provided input during stage 1 indicated that their tax treaties with Bulgaria are in line with the Action 14 Minimum Standard for this element. For the three treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), one of the relevant peers provided input. This peer indicated that its tax treaty with Bulgaria will be modified via the Multilateral Instrument to be in line with element B.7, which is in line with the below analysis.

Recent developments

Bilateral modifications

101. Bulgaria signed a tax treaty with a treaty partner 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) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

103. With regard to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Bulgaria listed all of them as a covered tax agreement under the Multilateral Instrument and for all of them made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All three of these treaty partners also are signatories to the Multilateral Instrument, listed their treaties with Bulgaria as covered tax agreements and made such notification. Therefore, at this stage, all three of the tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

104. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Bulgaria. This peer does not concern the treaty partner to one of the treaties that is not line with this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	Three out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). All of these treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.

[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.

106. 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.

Bulgaria's MAP guidance

107. Bulgaria issued its MAP guidance in March 2019 and which is available at:

<https://nra.bg/wps/portal/nra/mezhdunarodni-deinosti/siddo/protsedura-vzaimno-sporazumenie>
(in Bulgarian)

<https://old.nra.bg/en/page?id=711> (in English)

108. Bulgaria's MAP guidance consists of ten sections, which inter alia deal with: (i) general information on the mutual agreement procedure under tax treaties, (ii) details as regarding Bulgaria's competent authority, (iii) initiating a mutual agreement procedure, (iv) form and content of a MAP request, (v) place and time limit for submitting the MAP request, (vi) admissibility of the MAP request, (vii) initiation of MAP discussions, (viii) implementation of MAP agreements and (ix) MAP under the EU Arbitration Convention. These sections cover the following information:

- contact information of the competent authority or the office in charge of MAP cases
- the manner and form in which the taxpayer should submit its MAP request
- The specific information and documentation that should be included in a MAP request (see also below)
- how the MAP functions in terms of timing and the role of the competent authorities
- information on availability of arbitration (including the EU Arbitration Convention)
- relationship with domestic available remedies

- access to MAP in transfer pricing cases
- implementation of MAP agreements
- rights and role of taxpayers in the process.

109. The above-described MAP guidance of Bulgaria 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.⁸

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

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

111. In addition, Bulgaria issued detailed procedural rules on the conduct of MAP with other member states of the EU, arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, through the introduction of Articles 134a-134t of Bulgaria's Tax and Social Insurance Procedure Code, which is also considered best practice as regards MAP arising from Bulgaria's tax treaties and is available at:

<https://old.nra.bg/en/document?id=240>

Information and documentation to be included in a MAP request

112. 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.⁹ Bulgaria's MAP guidance enumerates in section 5 which items must be included in a request for MAP (if available), which 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.

113. In addition to the above, Bulgaria’s MAP guidance requires taxpayers to provide details regarding associated enterprises connected to the request, annual financial statements for the fiscal years concerned where applicable and information regarding whether a MAP request is protective in nature.

Recent developments

114. As detailed above, Bulgaria reported that it has issued its MAP guidance in March 2019. Since the guidance includes the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request, the recommendation made in stage 1 has been addressed.

Anticipated modifications

115. Bulgaria indicated that it intends to update its MAP guidance to make it in line with Articles 134a-134t of Bulgaria’s Tax and Social Insurance Procedure Code in the near future.

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.

116. 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.¹⁰

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

117. Bulgaria issued its MAP guidance in March 2019 and which is available at:

<https://nra.bg/wps/portal/nra/mezhdunarodni-deinosti/siddo/protsedura-vzaimno-sporazumenie>
(in Bulgarian)

<https://old.nra.bg/en/page?id=711> (in English)

118. As regards its accessibility, Bulgaria’s MAP guidance can easily be found on the website of the National Revenue Agency under the sub-section titled “International Treaties” in the section titled “taxes”. It can also be easily found by searching on that website for “mutual agreement procedure”.

MAP profile

119. The MAP profile of Bulgaria is published on the website of the OECD and was last updated in February 2021, which is after the review period. This MAP profile is complete and contains detailed information. It contains external links that provide extra information and guidance where appropriate.

Recent developments

120. As mentioned above, Bulgaria has introduced MAP guidance in March 2019 and has made it publicly available on the website of its National Revenue Agency. Further, Bulgaria has updated its MAP profile to provide more detailed information, including links to such guidance where appropriate. Therefore, the recommendation made in stage 1 has been addressed.

Anticipated modifications

121. Bulgaria 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 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

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

123. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Bulgaria’s MAP guidance.

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

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

125. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process that may limit access to MAP in Bulgaria, which can be clarified by the fact that such process is not in place in Bulgaria.

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

126. As Bulgaria does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for Bulgaria to notify its treaty partners of such process.

Recent developments

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

Anticipated modifications

128. Bulgaria indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These five treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
2. These 64 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
3. These 64 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
4. The 14 treaty partners that are not signatories to the Multilateral Instrument include Montenegro and the 21 treaty partners which made a reservation on the basis of Article 16(5)(a) include Serbia. Therefore, the instrument will not take effect as to the treaty with former Serbia and Montenegro, which continues to be applied to both (i) Serbia and (ii) Montenegro.
5. These 41 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
6. In the stage 1 peer review report it was reported that Bulgaria had in place an administrative/statutory dispute settlement/resolution process. However, as this process is part of the regular appellate chain in Bulgaria's tax dispute resolution framework, it is considered not to be such process and therefore the report has on this point be modified.
7. These 67 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
8. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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Part C

Resolution of MAP cases

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

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

129. 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 Bulgaria’s tax treaties

130. Out of Bulgaria’s 70 tax treaties, 69 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.¹ The remaining treaty omits the unilateral assessment of a MAP request by the competent authority of receipt (if “the objection appears to it to be justified”) and is therefore considered as not being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

131. Several peers that provided input during stage 1 indicated that their tax treaties with Bulgaria are in line with the Action 14 Minimum Standard. For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input.

Recent developments

Bilateral modifications

132. Bulgaria signed a tax treaty with a treaty partner 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) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

133. Bulgaria signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

134. With regard to the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Bulgaria did not list it as a covered tax agreement. Therefore, at this stage, the treaty identified above will not be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

135. For the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Bulgaria reported that it has already initiated negotiations with this treaty partner to make this treaty in line with element C.1.

Peer input

136. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Bulgaria. This peer does not concern the treaty partner to the treaty that is not line with this element.

Anticipated modifications

137. Bulgaria 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]	One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, negotiations are pending.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument, Bulgaria should continue negotiations with the treaty partner with a view to including the required provision.

[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).

138. 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

139. Statistics regarding all tax treaty related disputes concerning Bulgaria are published on the website of the OECD as from 2016.² Bulgaria publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.³

140. 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. Bulgaria provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Bulgaria 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 Bulgaria.⁴

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

142. No peer input was received as regards the matching of MAP statistics with Bulgaria.

143. Based on the information provided by Bulgaria’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

144. Bulgaria reported that it has introduced a file registering system where each MAP case is registered. Bulgaria further reported that this system helps it monitor the timeliness of handling each MAP case. Bulgaria noted that the Director of the Tax Treaties Directorate is responsible for such monitoring.

145. In addition, Bulgaria reported that it typically communicates its statistics with its MAP partners in order to match them prior to official reporting. Bulgaria further noted that it has made good use of the new MAP Statistics reporting tool, which it will continue using to actively detect possible mismatches prior to reporting.

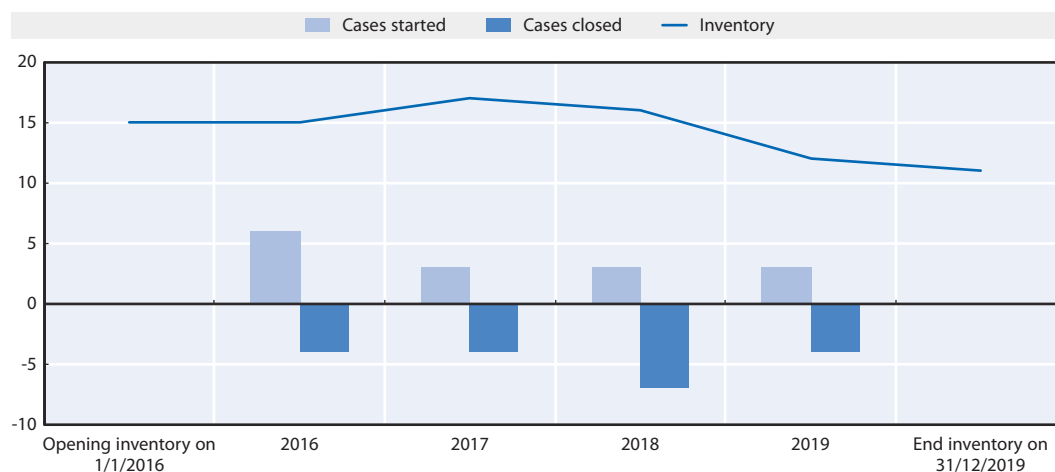
Analysis of Bulgaria's MAP caseload

Global overview

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

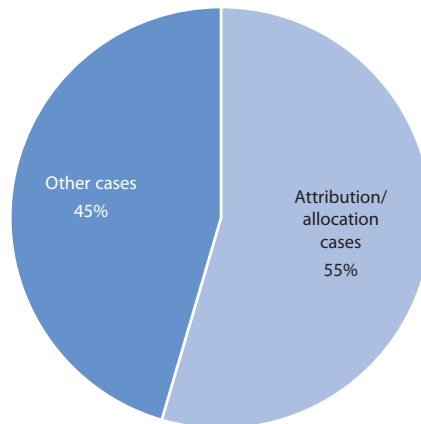
147. Figure C.1 shows the evolution of Bulgaria's MAP caseload over the Statistics Reporting Period.

Figure C.1. **Evolution of Bulgaria's MAP caseload**



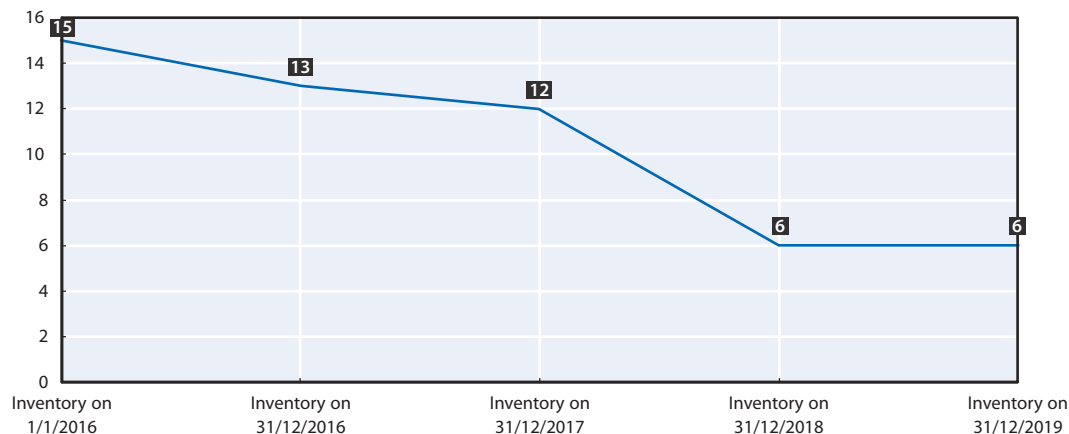
148. At the beginning of the Statistics Reporting Period, Bulgaria had 15 pending MAP cases, eight of which were attribution/allocation cases and seven other MAP cases.⁵ At the end of the Statistics Reporting Period, Bulgaria had 11 MAP cases in its inventory, of which six are attribution/allocation cases and five are other MAP cases. Bulgaria's MAP caseload has decreased by 27% during the Statistics Reporting Period. This concerns a 25% decrease in attribution/allocation cases and 29% decrease in other cases. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2019 (11 cases)

*Pre-2016 cases*

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

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



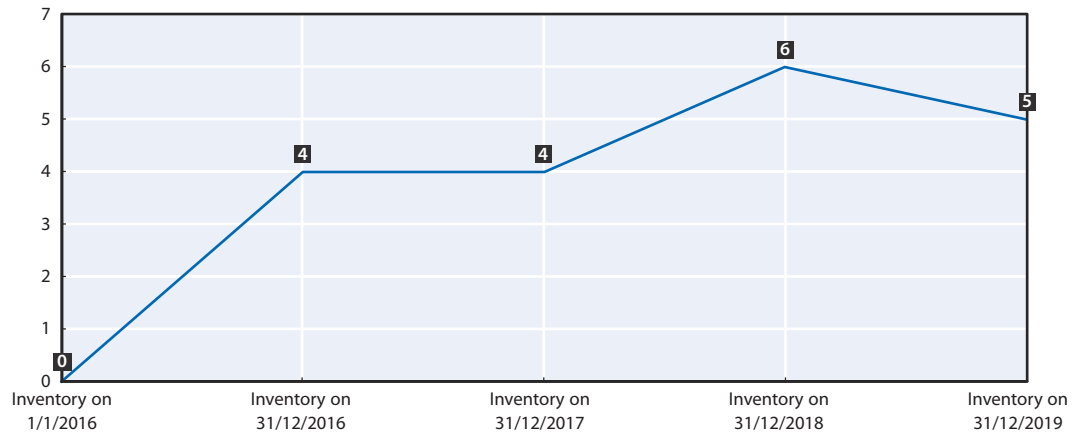
150. At the beginning of the Statistics Reporting Period, Bulgaria's MAP inventory of pre-2016 MAP cases consisted of 15 cases, eight of which were attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to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

Pre-2016 cases	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload in 2019	Cumulative evolution of total MAP caseload over the three years (2016-19)
Attribution/allocation cases	-25%	(no case closed)	-50%	(no case closed)	-63%
Other cases	(no case closed)	-14%	-50%	(no case closed)	-57%

Post-2015 cases

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

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



152. In total, 15 MAP cases started during the Statistics Reporting Period, eight of which concerned attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total number of post-2015 cases in the inventory was five cases, consisting of three attribution/allocation cases and two other cases. Accordingly, Bulgaria closed ten post-2015 cases during the Statistics Reporting Period, five of them being attribution/allocation cases and five of them being other cases. The total number of closed cases represents 67% of the total number of post-2015 cases that started during the Statistics Reporting Period.

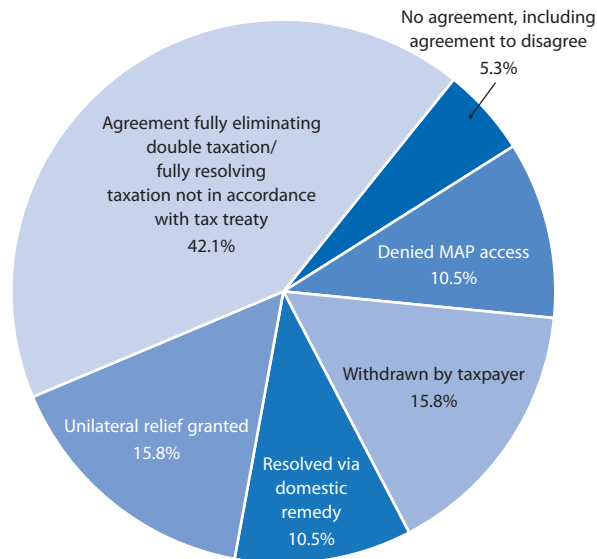
153. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

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	33%	(no case started)	0%	67%	63%
Other cases	33%	33%	100%	(no case started)	71%

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

154. During the Statistics Reporting Period, Bulgaria in total closed 19 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2016, 2017, 2018 or 2019 (19 cases)



155. Figure C.5 shows that eight out of 19 cases were closed during the Statistics Reporting Period with the outcome “agreement fully eliminating double taxation or fully resolving taxation not in accordance with tax treaty.”

Reported outcomes for attribution/allocation cases

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

- agreement fully eliminating double taxation/taxation not in accordance with the tax treaty (30%)
- unilateral relief granted (30%)
- denied MAP access (20%).

Reported outcomes for other cases

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

- agreement fully eliminating double taxation/taxation not in accordance with the tax treaty (56%)
- withdrawn by taxpayer (22%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

158. The average time needed to close MAP cases during the Statistics Reporting Period was 25.82 months. This average can be broken down as shown in the table below.

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	10	10.70
Other cases	9	35.40
All cases	19	25.82

Pre-2016 cases

159. For pre-2016 cases Bulgaria reported that on average it needed 24.60 months to close five attribution/allocation cases and 58.25 months to close four other cases. This resulted in an average time needed of 39.55 months to close nine pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Bulgaria reported that it uses the following dates:

- *Start date*: the date of receipt of the MAP case by the competent authority
- *End date*: the date of notification by the competent authority to the taxpayer of the outcome of the MAP request.

Post-2015 cases

160. For post-2015 cases, Bulgaria reported that on average it needed 9.80 months to close five attribution/allocation cases and 17.12 months to close five other cases. This resulted in an average time needed of 13.46 months to close ten post-2015 cases.

Peer input

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

Recent developments

162. Bulgaria was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 50% of the post-2015 cases pending on 31 December 2018 (six cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

163. With respect to this recommendation, Bulgaria 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 four post-2015 MAP cases in 2019. Bulgaria noted that it has only two remaining post-2015 cases in its MAP inventory, which were both started by the same treaty partner where Bulgaria's competent authority was still awaiting further information.

164. In view of this and the statistics discussed above, it follows that Bulgaria's MAP inventory has decreased by 27% which relates to a 25% decrease in attribution/allocation cases and a 29% decrease in other MAP cases. However, the statistics also show that Bulgaria 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 67%. Element C.3 will further consider these numbers in light of the adequacy of resources.

165. All peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 January 2019.

Anticipated modifications

166. Bulgaria indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

167. 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 Bulgaria's competent authority

168. Under Bulgaria's tax treaties, the competent authority function is assigned to the Minister of Finance or his authorised representative. Bulgaria reported that the competent authority function is then further delegated to the Tax Treaties Directorate as the Minister of Finance has issued an order to the director of the Tax Treaties Directorate to act as the competent authority.

169. Bulgaria reported that the MAP function is performed by 16 persons within the Tax Treaties Directorate, including one director and two technical assistants. Bulgaria noted that all of the staff members work on tasks in addition to MAP. Bulgaria indicated that transfer pricing cases are typically handled by two or three employees who have expertise in such issues. Furthermore, Bulgaria reported that four of its personnel have significant experience in dealing with issues in international taxation such as tax treaties or transfer pricing issues.

170. Bulgaria 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 of performing the MAP function. Such additional tasks include (i) administrative co-operation and exchange of information (ii) transfer-pricing legislation and methodology (iii) methodological support of the local authorities (iv) drafting legislation concerning direct taxes and (v) tax treaties negotiation, application and interpretation.

171. Bulgaria reported that all such employees have a master's degree in either economics or legal studies and have participated in a number of trainings and seminars organised by the OECD, Intra-European Organisation of Tax Administrations and the European Union concerning tax treaties, transfer-pricing, exchange of information and MAP. Although no designated funding is currently allocated to the MAP function, Bulgaria reported that face-to-face meetings could be organised and funded, if necessary, from the general budget of the National Revenue Administration as part of the international activities of the Directorate. Bulgaria further noted that following the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union in Bulgaria, its competent authority has been allocated additional funds in Bulgaria's annual budget dedicated exclusively to the handling of MAP cases. Bulgaria noted in this regard that these funds are to be included in each three year budget forecast that Bulgaria is obliged to prepare.

Monitoring mechanism

172. Bulgaria reported that as a result of its relatively low number of MAP cases each year it considers the resources currently devoted to MAP to be adequate. Bulgaria further reported that the Director of the Tax Treaties Directorate monitors and seeks to ensure that the available resources are sufficient and notifies the head management if any particular need is identified.

Recent developments

173. In the stage 1 report, Bulgaria was recommended to continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner and to consider devoting additional resources to the competent authority for the resolution of other cases.

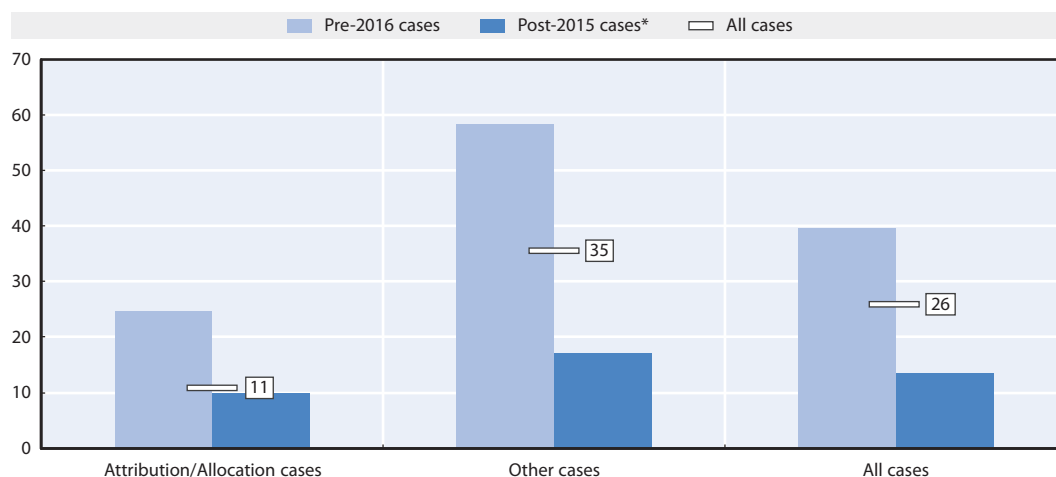
174. In this regard, Bulgaria reported that its competent authority function has followed up on this recommendation by adding two new staff members. Bulgaria further reported all of its competent authority staff members attended training sessions organised by the OECD.

Practical application

MAP statistics

175. As discussed under element C.2, Bulgaria has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 25.82 months to close MAP cases. This primarily concerns other MAP cases where the average time needed was 35.40 months, as the average time to close attribution/allocation cases was 10.70 months. The average time to resolve MAP cases in 2016-19 can be illustrated by Figure C.6.

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



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

176. The stage 1 peer review report of Bulgaria analysed the 2016-18 MAP statistics and showed an average of 24.63 months, which concerns an average of 16.33 months for attribution/allocation cases and 37.01 months for other cases. However, it was noted that the total median time needed to close MAP cases during that period was only 17.5 months, whereby the median time needed to close attribution/allocation cases was 3.35 months and was 17.56 months for other cases. It was on that basis concluded that Bulgaria should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner, but should consider devoting additional resources to the competent authority for the resolution of other cases since the average time required to resolve such cases was much higher than the pursued 24 month average.

177. 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	20.68
Other cases	26.76
All cases	23.72

178. The 2019 statistics of Bulgaria show that the average completion time of MAP cases decreased from 24.63 (2016-18) months to 23.72 (2019) months, which is below the pursued 24-month average.

179. Further, as analysed under element C.2, the MAP inventory of Bulgaria decreased since 1 January 2016, owing to a decrease in both attribution/allocation cases and other cases. 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	8	8	10	6	-25%
Other cases	7	7	9	5	-29%
Total	15	15	19	11	-27%

180. The figures in the above table show that the number of closed cases is higher than the number of all cases started in the period 2016-19. In addition, Bulgaria has closed 67% of the post-2015 MAP cases that were started during this period.

181. Bulgaria clarified that at the end of the Statistics Reporting Period, it was waiting for actions from the treaty partner as regards the two remaining post-2015 cases in its MAP inventory. As regards the six pending pre-2016 cases, Bulgaria provided the following clarifications:

- Two of these cases were with the same treaty partner. For both of these cases, Bulgaria reported that it had sent its final position to the treaty partner's competent authority in December 2018 and had not received further communications from it.
- Two other cases concerned separate MAP requests received by Bulgaria's competent authority, where Bulgaria had already shared a position paper with the competent authority of each respective treaty partner. However, Bulgaria reported that even though its competent authority had sent a reminder, it had not received a response from either treaty partner.

- In one case, Bulgaria had exchanged correspondences with the treaty partner’s competent authority and had received a position paper from them but that discussions were delayed owing to the taxpayer appealing the decision under the treaty partner’s domestic law.
 - In the final remaining case, Bulgaria initiated a MAP case and shared a position paper in April 2016 and although it received one response from the treaty partner’s competent authority in September 2016, Bulgaria’s competent authority has received no further responses.
182. Bulgaria further clarified that as of April 2021, five out of six cases had been closed.
183. Bulgaria further noted that the median time to resolve MAP cases from 2016-19 was 23.72 months, which concerns 12.02 months for attribution/allocation cases and 22.16 months for other cases.
184. Taking into account that Bulgaria has managed to decrease its MAP inventory, has managed to close a large proportion of cases started between 2016-19 and that the median time for all cases is below 24 months, Bulgaria’s competent authority is considered adequately resourced

Peer input

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

185. Most of the peers that provided input indicated that its feedback was limited due to lack of experience of dealing with Bulgaria’s competent authority. Two peers specifically noted that they did not have any MAP cases with Bulgaria and therefore no input could be provided. One other peer noted that it is too early to comment on its relationship with Bulgaria in any detail but that so far Bulgaria’s competent authority has acknowledged the application of MAP cases that are still in its very early stages.
186. One peer remarked that cases either were closed with agreement or are still pending. Another peer noted that two MAP cases are still pending and that it was still awaiting a reaction from Bulgaria’s competent authority regarding a position paper it sent in March 2018. Furthermore, this peer mentioned that further use of communication via email and telephone calls would help accelerate the timeframes needed to resolve MAP cases.
187. In general, peers noted that it was easy to contact Bulgaria’s competent authority and that communication was good. A peer remarked that such communication generally takes place via traditional letters and that personal meetings have not been considered necessary thus far for cases that have been very occasional and that do not relate to attribution/allocation issues. Another peer noted that its contacts with Bulgaria have been good and that it has not faced any technical or legal difficulties in its communication with Bulgaria’s competent authority.

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 Bulgaria fully reflects their experience with Bulgaria since 1 January 2019 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

189. One of these peers added to this by stating that its one MAP case with Bulgaria was closed through unilateral relief. This peer noted that its competent authority was unable to inform Bulgaria’s competent authority about the same owing to an information security breach in Bulgaria and sought information as to whether this issue has been resolved. Bulgaria clarified that this breach did not relate to any communications with the peer’s competent authority and that it would initiate bilateral discussions with this peer to clarify this issue. This was confirmed by the peer, which also confirmed that Bulgaria’s competent authority had written to its competent authority to provide additional information and clarity on the remedial steps undertaken to ensure that adequate information security arrangements are in place. The peer further noted that it is comfortable with the steps taken to allow its competent authority to share information with Bulgaria’s competent authority in a secure manner and intended to initiate discussions on the MAP case soon.

Anticipated modifications

190. Bulgaria reported that its competent authority is expected to add one more staff member by June 2021, the hiring process for which has already been initiated.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

191. 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

192. Bulgaria reported that when a MAP request is filed with the competent authority of Bulgaria, the Director of the Tax Treaties Directorate reviews the request for its eligibility under the relevant tax treaty, the EU Arbitration Convention or under Bulgaria’s domestic law as well as whether the information requirements are met. Bulgaria further reported that depending on the complexity and subject matter, the Director assigns the case to one or more employees within the Directorate.

193. Bulgaria stated that the designated employees will then analyse the case and Bulgaria’s Competent Authority will notify the other competent authority accordingly. Bulgaria noted that these employees will also collect additional information or documents, as needed, and are responsible for drafting any position paper that might be required. Bulgaria reported that once the employees have prepared a position paper, it is reviewed by the Director and endorsed

if no modifications are needed. Bulgaria reported that such position papers are based on the relevant provisions of domestic legislation, tax treaties and the facts and circumstances of the case and that no other policy considerations are taken into account.

194. Bulgaria explained that these employees are not required to consult or involve any other tax administration personnel outside the MAP office as the Tax Treaties Directorate has the authority and competence to handle and resolve cases autonomously.

195. With regard to the above, Bulgaria reported that in practice staff in charge of MAP operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations that Bulgaria would like to see reflected in future amendments to the treaty.

Recent developments

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

Practical application

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

197. Peers generally reported no impediments in Bulgaria 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. One peer specifically mentioned not being aware that staff in charge of the MAP in Bulgaria is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

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

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

Anticipated modifications

199. Bulgaria 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.

200. 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 Bulgaria

201. Bulgaria reported that the Director of the Tax Treaties Directorate periodically monitors the work of the employees who handle MAP cases and provides an annual report on the performance of such employees to the head management of the National Revenue Agency. Bulgaria explained that this report covers all the functions of the Directorate and also provides quantitative data used for evaluation. Bulgaria noted that the Director evaluates the performance of the employees of the Tax Treaties Directorate by taking into consideration whether deadlines are being met, whether the facts and circumstances of cases are interpreted in a fair and consistent manner and whether the employees acted in compliance with applicable legal provisions. Bulgaria further reported that timeliness for resolution of MAP cases is the key consideration by which the staff who work on MAP are evaluated and that the Director seeks to ensure that the positions taken are consistent.

202. 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).

203. Further to the above, Bulgaria 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 discussion.

Recent developments

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

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

205. All peers that provided input indicated not being aware that Bulgaria used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-31 December 2018. One peer specifically noted that it is not aware of the use of performance indicators by Bulgaria that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

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

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

Anticipated modifications

207. Bulgaria 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.

208. 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

209. Bulgaria reported that its policy is not to include an arbitration provision in its tax treaties. This position is also clarified in Bulgaria's MAP profile. However, Bulgaria is a signatory to the EU Arbitration Convention and has adopted the Council Directive on Tax Dispute Resolution Mechanisms (EU 2017/1852), which it has transposed into its domestic law through the insertion of Articles 134a-134t of Bulgaria's Tax and Social Insurance Procedure Code, with effect from 13 August 2019.

Recent developments

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

Practical application

211. To date, Bulgaria has not incorporated an arbitration clause in any of its treaties as a final stage to the MAP. However, one of Bulgaria’s tax treaties contains a most favoured nation clause stating that if Bulgaria agrees to an arbitration clause in a double taxation agreement with any third state then the text of Article 25(5), of the OECD Model Tax Convention (OECD, 2017) would become effective under this treaty.

Anticipated modifications

212. Bulgaria indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 69 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2019.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2017.
4. For post-2015 cases, if the number of MAP cases in Bulgaria’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, Bulgaria reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 Bulgaria 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.

213. 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

214. Bulgaria reported that its domestic time limits would apply for MAP agreements that have been reached under its treaties that do not contain Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017). Bulgaria further noted that in such cases the implementation of MAP agreements is bound by the domestic statute of limitations of five years commencing from the 1st day of January of the year following the year during which a public claim became due, as provided for in Article 171 of Bulgaria's Tax and Social Insurance Procedure Code. Section 9.2 of Bulgaria's MAP guidance clarifies that procedural restrictions may apply if the tax treaty does not allow implementation of MAP agreements irrespective of domestic time limits. Bulgaria further clarified in this regard that this would only be the case for two of its 70 tax treaties, concerning which changes are expected following ongoing bilateral negotiations.

215. Bulgaria reported that its practice is to inform other competent authorities of its time limits in order to mitigate the risk of non-implementation of a MAP agreement. Bulgaria clarified that this practice could help the relevant taxpayer to decide whether he should file a refund request. Bulgaria further reported that such procedure is regulated by Articles 128-132 of Bulgaria's Tax and Social Insurance Procedure Code. Specifically, Article 129 states that with respect to downwards adjustments any offset or refund may be implemented upon initiative of the National Revenue Agency or upon written request of the taxpayer. The request for offset or refund shall be considered if it has been filed before the expiration of the five-year time limit following 1 January of the year that follows the year in which the grounds for refund occurs, unless provided otherwise by law. In the case of downwards adjustments.

216. Bulgaria stated that once a MAP agreement has been reached, it typically sends a written notification to the relevant taxpayer about the outcome of the MAP within one month from the date an agreement was reached. Bulgaria explained that this notification letter usually contains instructions on steps to be taken by the taxpayer. Section 9.1 of Bulgaria's MAP guidance provides that the taxpayer must usually express in writing its acceptance of the MAP agreement and agree to terminate ongoing domestic remedies prior to implementation.

217. Afterwards, a notification in writing containing clear instructions is sent to the competent local office of the National Revenue Agency that describes the outcome of the MAP and specifies the action(s) to be taken in order to implement the MAP agreement. Bulgaria reported that if no refund request has already been submitted, a taxpayer needs to submit such a request as described in the previous paragraph in order to effect implementation of the agreement.

218. In case of upwards adjustments, Bulgaria reported that its National Revenue Agency will send a notification to the taxpayer asking him to file a new tax return or it will decide to begin a tax audit or examination. Bulgaria further reported that if the taxpayer is ultimately asked to file a new tax return it is incumbent upon the taxpayer to do so and to pay the requested amount. Bulgaria noted that if a taxpayer refuses to do so, the local authorities could begin an audit, which would be carried out under the instructions of Bulgaria's competent authority.

219. Bulgaria also noted that it is standard practice for the competent authority to request feedback from the competent local office of the National Revenue Agency regarding the MAP implementation process. Bulgaria explained that such feedback typically consists of the status of adjustment procedures as well as how well the completion of implementation is progressing, which functions as an internal tracking system.

Recent developments

220. There are no recent developments with respect to element D.1, except for the fact that section 9 of Bulgaria's newly issued MAP guidance provides details on the implementation of MAP agreements.

Practical application

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

221. Bulgaria reported that all but one of the MAP agreements that were reached in the period 1 January 2016-31 December 2018, once the conditions for implementation have been fulfilled by taxpayer were implemented. Bulgaria reported that for the one case that has not been implemented yet, it is awaiting action from the taxpayer who has not filed a request for refund regarding a downwards adjustment despite multiple reminders from Bulgaria to do so.

222. All 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 Bulgaria.

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

223. Bulgaria reported that all but one MAP agreements that were reached on or after 1 January 2019 also have been implemented. Bulgaria clarified that the one agreement reached in 2019 that is pending implementation concerns a downward adjustment where the taxpayer is yet to file a claim for refund as required by Bulgaria. Bulgaria further clarified that the agreement that was pending implementation at the end of the stage 1 period is still pending implementation since the taxpayer has not applied for a refund in this case either.

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

Anticipated modifications

225. Bulgaria indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Bulgaria's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the 5 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 an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Bulgaria should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be 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, Bulgaria should for clarity and transparency purposes continue to 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.

226. 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

227. As discussed under element D.1, Bulgaria's domestic legislation or MAP guidance do not stipulate a timeframe for the implementation of MAP agreements. However, Bulgaria reported that its practice is to implement MAP agreements without undue delay and that such implementation occurs within 30 days after a taxpayer submits his refund request in case of downwards adjustments.

Practical application

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

228. Bulgaria reported that all but one of the MAP agreements that were reached in the period 1 January 2016-31 December 2018, once the conditions for implementation have been fulfilled by taxpayer were implemented without undue delay. Bulgaria reported that

for the one case that has not been implemented yet, it is awaiting action from the taxpayer who has not filed a request for refund regarding a downwards adjustment despite multiple reminders from Bulgaria to do so.

229. All peers that provided input have not indicated experiencing any problems with Bulgaria 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)

230. Bulgaria reported that all but one MAP agreements that were reached on or after 1 January 2019 also have been implemented without undue delay. Bulgaria clarified that the one agreement reached in 2019 that is pending implementation concerns a downward adjustment where the taxpayer is yet to file a claim for refund as required by Bulgaria. Bulgaria further clarified that the agreement that was pending implementation at the end of the stage 1 period is still pending implementation since the taxpayer has not applied for a refund in this case either.

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

Anticipated modifications

232. Bulgaria 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.

233. 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 Bulgaria’s tax treaties

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

235. In this regard, Bulgaria has expressed its position on Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017), which states that Bulgaria considers that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by its domestic laws.

236. Out of Bulgaria’s 70 tax treaties, 55 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.¹ Furthermore, one tax treaty contains the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments.

237. Out of the remaining 14 treaties, 13 do not contain a provision equivalent to or based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or either of the alternative provisions. The remaining treaty contains additional wording stipulating that any agreement reached shall be implemented “within the time limits in accordance with the domestic laws of the Contracting States”. As the aforementioned wording imposes a potential timing constraint on the implementation of MAP agreements, this treaty is considered not to contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2017).

238. Several peers that provided input during stage 1 indicated that their tax treaties with Bulgaria are in line with the Action 14 Minimum Standard. For the 14 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, three peers provided input. Two of these peers acknowledged that their treaty with Bulgaria did not meet the Action 14 Minimum Standard but that their treaties would be modified by the Multilateral Instrument, which is actually the case. The third peer noted that that it is willing to accept the alternative provisions and has proposed an amendment of their treaty with Bulgaria in this regard.

Recent developments

Bilateral modifications

239. Bulgaria signed a tax treaty with a treaty partner 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) and has entered into force. Further, Bulgaria signed a new tax treaty with a treaty partner which concerns the replacement of an existing treaty currently in force. This treaty has not entered into force yet. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) as was the case in the existing treaty. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

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

241. With regard to the 14 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Bulgaria listed all of them as covered tax agreements under the Multilateral Instrument and for all of them made pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 14 treaty partners, one is not a signatory to the Multilateral Instrument and one did not list its treaty with Bulgaria as a covered tax agreement. All of the remaining 12 treaty partners made such notification. Therefore, at this stage, 12 of the 14 tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

242. For the two tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument to include such equivalent, Bulgaria reported that it has already initiated negotiations with one of these treaty partners to make this treaty in line with element D.3 and that following such negotiations, it would initiate negotiations with the remaining treaty partner.

Peer input

243. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Bulgaria. This peer does not concern the treaty partner to the treaty that is not line with this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>14 out of 70 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). Out of these 14:</p> <ul style="list-style-type: none"> • 12 are expected to be modified by the Multilateral Instrument to include the required provision. • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties, negotiations are envisaged, scheduled or pending. 	<p>Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Bulgaria should continue negotiations with the treaty partner with a view to including the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Note

1. These 55 treaties include the 1998 treaty with the former state of the Federal Republic of Yugoslavia that Bulgaria continues to apply to both Montenegro and Serbia.

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]	One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017).	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention and 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. This treaty is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence. With respect to this treaty, negotiations are pending	<p>Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned.</p> <p>As this treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), Bulgaria should continue negotiations with the treaty partner with a view to including the required provision.</p> <p>This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either:</p> <ol style="list-style-type: none"> a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). These treaties will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the two treaties that do not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b), Bulgaria should continue (the initiation of) negotiations with the treaty partners 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 the Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.
	Two out of 70 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017), as the timeline to file a MAP request is in these treaties 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. Both of these treaties are expected to be modified or superseded by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017)	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those two treaties that currently do not contain such equivalent and that will be modified or superseded by the Multilateral Instrument upon its entry into force for the treaties concerned.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Three out of 70 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). All of these treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).	Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	One out of 70 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to this treaty, negotiations are pending.	For the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument, Bulgaria should continue negotiations with the treaty partner with a view to including the required provision.
[C.2]	-	-
[C.3]	-	-

	Areas for improvement	Recommendations
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Bulgaria's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the 5 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 an assessed jurisdiction's relevant tax treaty, prevent the implementation of a MAP agreement, Bulgaria should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be 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, Bulgaria should for clarity and transparency purposes continue to notify the treaty partner thereof without delay.
[D.2]	-	-
[D.3]	<p>14 out of 70 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). Out of these 14:</p> <ul style="list-style-type: none"> • 12 are expected to be modified by the Multilateral Instrument to include the required provision. • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these two treaties, negotiations are envisaged, scheduled or pending. 	<p>Bulgaria should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Bulgaria should continue negotiations with the treaty partner with a view to including the required provision or be willing to accept the inclusion of both alternative provisions.</p>

Annex A

Tax treaty network of Bulgaria

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

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

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10	Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration								
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6										
Japan	Y	N/A	O*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Jordan	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O*	Y	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea (Democratic People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O*	Y	N/A	N/A	i	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	N/A	i	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lebanon	Y	N/A	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	N/A	O*	Y	N/A	N/A	i	i**	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O*	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	N/A	N	i	N/A	N/A	i	N/A	N	N	Y	Y	Y	Y	Y	Y	Y	Y	N
Moldova	Y	N/A	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Mongolia	Y	N/A	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	Y	N/A	O*	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	E	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
North Macedonia	Y	N/A	O	Y	N/A	N/A	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	N/A	O*	Y	N/A	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		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											
Pakistan	Y	N/A	E	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	N/A	N	Y	N/A	Y	I	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Portugal	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	N/A	O*	Y	N/A	I	I	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	N/A	O	Y	N/A	I	I	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	N/A	O*	Y	N/A	Y	I	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Saudi Arabia	Y	N/A	E	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Serbia	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Singapore	Y	N/A	O	Y	N/A	Y	I	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
South Africa	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	N/A	O	Y	N/A	Y	I	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N/A	O*	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	N/A	O	Y	N/A	Y	I	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Thailand	Y	N/A	O	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	N/A	O*	I	N/A	Y	I	Y	Y	N*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	N/A	O*	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	N/A	O*	Y	N/A	Y	I	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention (“MTC”)		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) first sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion Art. 25(3) second sentence? (Note 6)
United Kingdom	Y	N/A	O*	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
United States	Y	N/A	E	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Uzbekistan	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Viet Nam	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Zimbabwe	Y	N/A	O	Y	N/A	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y

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

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

Legend

- E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.

Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/i1*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv***/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	8	0	0	0	0	0	2	0	0	0	0	6	29
Others	7	0	0	0	0	0	0	0	0	0	0	7	n.a.
Total	15	0	0	0	0	0	2	0	0	0	0	13	29

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	6	0	0	0	0	0	0	0	0	0	0	6	n.a.
Others	7	0	0	0	0	0	0	0	0	1	0	6	61
Total	13	0	0	0	0	0	0	0	0	1	0	12	61

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	6	0	0	1	0	1	1	0	0	0	0	3	21.66
Others	6	0	0	0	0	1	2	0	0	0	0	3	57.33
Total	12	0	0	1	0	2	3	0	0	0	0	6	39.5

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	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Total	6	0	0	0	0	0	0	0	0	0	0	6	n.a.

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	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
		Column 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	1	0	0	0	0	0	0	0	0	0	0	0	0	2	1.67
Others	0	0	0	0	1	0	0	0	0	0	0	0	0	0	2	8.55
Total	0	1	0	0	1	0	0	0	0	0	0	0	0	0	4	5.11

2017 MAP Statistics																
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12			Column 13	Column 14	Column 15
Attribution/Allocation	2	1	0	0	0	1	0	0	0	0	0	0	0	0	0	2.98
Others	2	0	0	0	1	0	0	0	0	0	0	0	0	0	4	17.56
Total	4	1	0	0	1	1	0	0	0	0	0	0	0	0	4	7.84

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	2	0	0	0	0	0	0	0	0	0	0	2	n.a.
Others	4	1	0	0	0	0	0	1	0	0	0	0	4	5.95
Total	4	3	0	0	0	0	0	1	0	0	0	0	6	5.95

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	2	3	0	0	0	2	0	0	0	0	0	0	3	20.68
Others	4	0	0	0	0	0	0	2	0	0	0	0	2	26.76
Total	6	3	0	0	0	2	0	2	0	0	0	0	5	23.72

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	Guidance on the application of the mutual agreement procedure under the double taxation conventions and the convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises 90/436/EEC
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, Bulgaria (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 Bulgaria.



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