OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 via treaty provisions. With the negotiation for a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the MLI on 7 June 2017, paving 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 an Inclusive Framework on BEPS, 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.

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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

Austria has an extensive tax treaty network that comprises 90 tax treaties and has signed and ratified the EU Arbitration convention. Austria has an established MAP programme and has experience with resolving MAP cases. It has a relatively large MAP inventory, with a considerable number of new cases submitted each year with more than 200 cases pending on 31 December 2016. Of these cases, 42% concern attribution/allocation cases. Overall Austria meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Austria is working to address them.

All of Austria's tax treaties include a provision relating to MAP. These treaties generally follow paragraphs one through three of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- One-ninth of its tax treaties do not contain a provision that is equivalent to Article 25(1) of the *OECD Model Tax Convention* (OECD, 2015), whereby almost half of these treaties do not allow taxpayers to submit a MAP requests within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
- More than a quarter of its tax treaties include neither 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, 2015)) nor include 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, Austria needs to amend and update a certain number of its tax treaties. In this respect, Austria signed, without any reservation on the MAP article, the Multilateral Instrument, potentially covering 38 tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Austria reported that it intends to update via bilateral negotiations all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard. Furthermore, Austria opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Concerning the prevention of disputes, although Austria can provide bilateral APAs and enables taxpayers to request rollbacks of bilateral APAs in theory, during the review period no requests for roll-back of APAs were received, by which it was not possible to assess the implementation of this element of the Action 14 Minimum Standard in practice.

Furthermore, Austria in essence meets the requirements regarding the availability of and access to MAP under the Action 14 Minimum Standard, as it provides access to MAP in the required situations but it should complete its MAP guidance regarding audit

settlements and the access to MAP. In addition, it has introduced a bilateral consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified. Furthermore, Austria's MAP guidance should clarify that audit settlements do not preclude access to MAP. Apart from that, Austria published comprehensive MAP guidance, which it envisages updating by the end of 2017.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the year 2016 are as follows:

2016	Opening Inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016	Average time to resolve cases (in months)*
Allocation/ attribution cases	81	28	12	97	40.70
Other cases	113	42	25	130	37.06
Total	**194**	**70**	**37**	**227**	**38.24**

***** 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, Austria used as a start date the date on which the competent authority that received the MAP request decided that the objection raised in the request was justified and initiated the bilateral phase of the MAP, and in cases where Austria's competent authority did not receive the MAP request, the date of the official notification of the initiation of the bilateral phase of the MAP by the other competent authority; and as the end date the date on which a MAP agreement was reached in principle (this is not the date of finalisation of the written MAP agreement but the date when competent authorities reached a solution for the case under review), for cases where no agreement could be reached, the date when both competent authorities officially decided to close the case, and for cases where the case was unilaterally closed, the date of such closure.

These figures show that Austria only resolved one of all new cases started in 2016 and its MAP inventory as per 31 December 2016 increased by approximately 15% as compared to its inventory as per 1 January 2016. Moreover, Austria's competent authority did not resolve MAP cases on average 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 38.24 months. These statistics show that Austria has not been adequately resourced in relation to the resolution of MAP cases. It is noted that recently, Austria added a new team to the competent authority function to handle inter alia attribution/allocation cases. It also added staff to the competent authority function, which it envisages to further increase in the near future. Austria should closely monitor whether hiring of additional staff will lead to the resolution of MAP cases in a more timely, effective and efficient manner. Nevertheless, Austria meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases as Austria's competent authority operates fully independently from the audit function of the tax authorities and the performance indicators used are appropriate to perform the MAP function

Lastly, during the review period Austria implemented all MAP agreements reached. However, where treaties do not include a provision on the implementation of MAP agreements, Austria should ensure that MAP agreements will be implemented notwithstanding any time limits in its domestic law in order to continue to meet this part of the Action 14 Minimum Standard.

Introduction

Available mechanisms in Austria to resolve tax treaty-related disputes

Austria has 90 tax treaties on income (and/or capital) in place, 89 of which are in force.[1] All 90 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, ten treaties include an arbitration clause as a final stage to the mutual agreement procedure.[2] Furthermore, Austria 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 Austria, the competent authority function to conduct MAP is performed by the Federal Ministry of Finance, more specific the Directorate International Tax Law (IV/8). This directorate handles MAP cases under Austria's tax treaties and the EU Arbitration Convention and currently employs seven persons. In July 2016 a new team was established to specifically handle attribution/allocation MAP cases as well as requests for APAs. This team was increased from two to six persons in January 2017. Further, a third unit is also responsible for handling MAP cases, which is called the Expert Group International Tax Law, which consists of six persons.

Austria issued guidance in relation to the governance and administration of the mutual agreement procedures ("**MAP Guidance**"), which is available at:

https://www.bmf.gv.at/steuern/int-steuerrecht/rueckerstattung/Verstaendigungs-_und_Schiedsverfahren_13032015.pdf?5b0v19.

Furthermore, Austria also included information on the mutual agreement procedure in its transfer pricing guidelines ("**Transfer Pricing Guidelines**").

Recent developments in Austria

Austria reported that it signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**") on 7 June 2017 with no reservation on the application of Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure), except for Article 16(5)(a) regarding the allowance of submitting a MAP request to the competent authorities of either contracting state.[4] This reservation is in line with the requirements of the Action 14 Minimum Standard. With the signing of the Multilateral Instrument, Austria expects that a significant number of its tax treaties will be modified, and as a consequence thereof become in line with the requirements under the Action 14 Minimum Standard. In that regard, Austria envisages that 38 treaties will be modified via this Multilateral Instrument.

Furthermore, Austria reported that it envisages updating its MAP Guidance and its Transfer Pricing Guidelines to take into account the relevant items under the Action 14 Minimum Standard, the Multilateral Instrument and other recent developments relating to tax dispute resolution, as also the guidance on what information taxpayers should include in their MAP request.

Basis for the peer review process

The peer review process entails an evaluation of Austria'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 Austria and its peers. The period for evaluating Austria's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 March 2017 ("**Review Period**"). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Austria's implementation of this minimum standard. In the update of this report, being stage two of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Austria is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the former 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands. Reference is made to Annex A for the overview of Austria's tax treaties regarding the mutual agreement procedure.

The questionnaires for the peer review process were sent to Austria and the peers on 7 March 2017. In total 15 peers provided input: Belgium, Canada, Denmark, Germany, Greece, Italy, Liechtenstein, Portugal, Russia, Slovakia, Slovenia, Sweden, Switzerland, Turkey and the United States. These peers represent approximately 50% of post-2015 MAP cases in Austria's inventory on 31 December 2016. In addition to its assessment on the compliance with the Action 14 Minimum Standard, Austria also asked for peer input on best practices. Broadly, all peers indicated having a good relationship with Austria's competent authority with regard to MAP, some of them emphasising the ease of contact and good co-operation in resolving disputes.

In addition to completing the Questionnaire for Assessed Jurisdiction, Austria provided the following information:

- MAP profile;[5]
- MAP statistics according to the MAP Statistics Reporting Framework (see below).[6]

Austria is an active member of the FTA MAP Forum and has expressed good co-operation during the peer review process. It provided answers to its questionnaire before the deadline and was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and providing clarity where necessary. Austria provided peer input on one other jurisdiction in the framework of their own peer review and expressed some constructive suggestions to improve the process with the concerned assessed jurisdiction.

Overview of MAP caseload in Austria

The analysis of Austria's MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 ("**Statistics Reporting Period**"). According to the statistics provided by Austria, on 31 December 2016 its MAP inventory was 227 cases, 97 of which concern attribution/allocation cases and 130 other cases. During the Statistics Reporting Period, 70 cases were started and 38 cases were closed.

General outline of the peer review report

This report includes an evaluation of Austria'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; and

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**").[7] Apart from analysing Austria's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Austria. Furthermore, the report depicts the changes adopted and plans shared by Austria 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 objective of Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Austria continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Austria has entered into are available at: https://english.bmf.gv.at/taxation/The-Austrian-Tax-Treaty-Network.html. Austria negotiated a treaty with Syria (2009), which has not yet entered into force. Furthermore, Austria negotiated new treaties with Iceland (2016) and Japan (2017) which will replace the existing treaties with these jurisdictions, but so far have not yet entered into force. Reference is made to Annex A for the overview of Austria's tax treaties.
2. This concerns the treaties with Armenia, Bahrain, Bosnia and Herzegovina, Chile, Germany, Japan, Macedonia, Mongolia, San Marino and Switzerland.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July, 1990.

4. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, the Republic of Austria reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of Austria's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-austria.pdf.

5. Available at: www.oecd.org/tax/dispute/Austria-Dispute-Resolution-Profile.pdf.

6. The MAP statistics of Austria are included in Annex B and C.

7. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).

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OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).

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, 2015) 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 Austria's tax treaties

2. Out of Austria's 90 tax treaties, 85 contain a provision requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties. One of the five remaining treaties does not contain a provision reflecting the first sentence of Article 25(3). The other four remaining treaties include a provision that is based on Article 25(3) first sentence, of the *OECD Model Tax Convention* (OECD, 2015), but does not include the full equivalent, as the provision included only applies regarding the "application" of the convention (1 treaty) and not the "application" and "interpretation," or only relates to "difficulties" (1 treaty) regarding such application and interpretation and not "difficulties" and "doubts." The other two treaties contain a provision that has similarities with Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) but do not include all the required wording and for that reason are not considered to have the full equivalent.[1]

3. Austria reported that where a treaty does not include the full equivalent of Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), it would still consider the MAP article to be applicable to all types of cases that would fall under the scope of application of Article 25(3), first sentence.

Anticipated modifications

4. Austria reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(c)(i) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015). Austria is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties that do not contain a provision equivalent to Article 25(3), first sentence of the *OECD Model Tax Convention* (OECD, 2015), will not be modified by the Multilateral Instrument, Austria reported it will subsequently strive to update them via bilateral negotiations to be compliant with element A.1. In addition, Austria reported it will seek to include Article 25(3), first sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

5. All peers that provided input indicated that their treaty with Austria meets the requirement under element A.1.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Five out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.

[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.

6. 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.

Austria's APA programme

7. Austria reported that it has implemented a bilateral APA programme and that it is authorised to enter into bilateral APAs. The competent authority for handling bilateral APA requests is directorate IV/8 of the Federal Ministry of Finance. Furthermore, the legal basis for entering into bilateral APAs is the MAP article under the applicable tax treaty. In that regard, Austria reported that bilateral APAs are dealt with under the same principles as MAP cases. More specifically, the timeline for requesting a bilateral APA is dependent on the specific timelines for filing a MAP request under the applicable tax treaty and the process for obtaining a bilateral APA is similar to the process for handling MAP cases. There, however, is no specific guidance relating to this programme or the conditions for requesting and entering into bilateral APAs. In this respect, Austria indicated that they will revise their transfer pricing guidelines of November 2010 ("**Austrian Transfer Pricing Guidelines**") and MAP Guidance to reflect recent developments and also to outline their APA programme.

Roll-back of bilateral APAs

8. Austria reported it is allowed to grant roll-back of bilateral APAs. Generally, APAs are applied to future fiscal years, whereby roll-backs are not part of the APA, but dealt with in the course of MAP. Taxpayers should file a request for roll-back of a bilateral APA before the APA is finalised, but there are no additional requirements to be met in order to grant such roll-backs. Roll-backs will generally be granted, except where there are important obstacles, which, for example, is the case where there are pending court proceedings without the granting of a suspension of collection or penal proceedings.

Practical application of roll-back of bilateral APAs

9. Austria indicated that since 1 January 2016 it did not receive any requests for roll-back of bilateral APAs.

10. Peers generally reported that Austria is willing to grant roll-back of bilateral APAs. Not all peers, however, have experience with granting roll-back of such bilateral APAs. With respect to the Review Period, none of the peers that provided input received any roll-back request made for bilateral APAs since 1 January 2016, whereby some of them also did not receive a bilateral APA request at all. One peer, however, noted that roll-backs of bilateral APAs with Austria are possible in appropriate cases and have been applied previously.

Anticipated modifications

11. Austria reported that it envisages introducing guidance on roll-back of bilateral APAs when revising its domestic Transfer Pricing Guidelines or MAP guidance.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Austria is in theory able to extend bilateral APAs to previous fiscal years. However it was not possible at this stage to evaluate the effective implementation of this element in practice since no cases could be observed during the Review Period.	

Notes

1. These two treaties include the 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands.
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.

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OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, http://dx.doi.org/10.1787/tpg-2017-en.

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-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.

12. 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 Austria's tax treaties

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

13. Out of Austria's 90 tax treaties, 66 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 *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD 2015b), allowing taxpayers to submit a MAP request to the competent authority in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, or in the state of which they are a national where the case comes under the non-discrimination article. Furthermore, 2 treaties contain a provision that is equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b) allowing taxpayers to submit a MAP request in either contracting state.

14. The 22 remaining tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), either as

changed by the *Action 14 final report* (OECD, 2015b) or as it read prior to that report, can be categorised as follows:

Provision	Number of 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 authorities of the contracting state of which they are resident.	18
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 (i) can only submit a MAP request to the competent authorities of the contracting state of which they are resident and (ii) cannot submit a MAP request irrespective of domestic available remedies or whereby the treaty includes wording that may restrict the latter submission.	1
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 (ii) can only submit a MAP request to the competent authorities of the contracting state of which they are resident and (ii) can only submit a MAP request for double taxation contrary to the convention.[1]	2
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a) as it read prior to the adoption of the Action 14 final report, OECD (2015b) whereby taxpayers cannot submit a MAP request irrespective of domestic available remedies.	1

15. The 18 treaties mentioned 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, 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, for the following reasons 16 of these 18 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (two treaties); and
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (14 treaties).

16. The remaining two of the 18 treaties include a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not. These treaties are therefore considered not to have the full equivalent of Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as the limitation of the scope of the MAP provision is not clarified by the absence or a limited scope of the non-discrimination provision.

17. Further to the above, the four treaties separately mentioned in the table are also not considered to have the full equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015), as they either do not allow a MAP to be submitted irrespective of domestic available remedies, or limit access to MAP to cases of "double taxation" or "double taxation not in accordance with the provisions of the convention," instead of "taxation not in accordance with the provisions of the convention."

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

18. Out of Austria's 90 tax treaties, 69 contain a provision 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.

19. The remaining 21 tax treaties Austria can be categorised as follows:

Provision	Number of treaties
Filing period less than three years for a MAP request (two years)	5
No filing period for a MAP request	16

20. Austria reported that in the absence of a filing period for MAP requests in tax treaties, its domestic statute of limitation applies. This is reiterated in paragraph B.2.1.1 of its MAP guidance. The statute of limitations in Austria is a five-year period for taxes on income and capital, with an absolute deadline of ten years. Austria reported that, pursuant to Section 208(1) of the Federal Fiscal Code, such period starts at the end of the fiscal year during which the tax liability arose. There, however, is a risk that such period is less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

21. Specifically with respect to the EU Arbitration Convention, paragraph C.2.2 of Austria's MAP Guidance stipulates that if a MAP request is submitted in Austria, it considers the date of receipt of the request as determinative on whether the request is timely filed. Austria reported that the same also applies to MAP requests filed under a tax treaty.

Anticipated modifications

22. Austria reported it has recently signed the Multilateral Instrument. Austria thereby reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[2] In this reservation, Austria declared that it will ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), as it read prior to the adoption of the final report on Action 14. It subsequently declared that it will implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction of such a notification/consultation process in Austria will be further discussed under element B.2.

23. Most peers that provided input mentioned that their treaty with Austria meets the requirements under element B.1. Two peers indicated that their treaty with Austria does not meet these requirements, but reported they envisage amending such treaty via signing the Multilateral Instrument. Peers generally did not mention any pending bilateral negotiations to amend their treaty with Austria.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a). Of those ten tax treaties: • five do not contain a provision that is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), either as it read prior to the adoption of the final report on Action 14 or as amended by that final report; • four do not contain a provision based on Article 25(1), second sentence of the OECD Model Tax Convention, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and • one does not contain a provision that is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), either as it read prior to the adoption of the final report on Action 14 or as amended by that final report and does not contain a provision based on Article 25(1), second sentence of the OECD Model Tax Convention, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: a. As amended in the Action 14 final report, OECD (2015b); or b. As it read prior to the adoption of the Action 14 final report, OECD (2015b); thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Austria should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

[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).

24. 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 include 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

25. Out of the 90 treaties Austria entered into, 2 contain a provision equivalent to Article 25(1), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. Austria reported that in the beginning of 2017 it has introduced internal instructions on how to pursue when the objection raised by a taxpayer in a MAP request is considered as not being justified. In that regard, staff in charge of MAP within Austria's competent authority is instructed to inform the other competent authority concerned of such consideration and consult them on their views of this consideration.

Practical application

26. Austria reported that even though in 2016 no bilateral consultation process was formally in place, it had one MAP case in 2016 where its competent authority considered that the request submitted was not admissible and that it informed the other competent authority concerned of its considerations, thereby stating the reasons thereof. Apart from that particular case, Austria reported that it has since 1 January 2016 not denied access for a MAP request, or closed a MAP case because it considered the objection raised by the taxpayer as not being justified.

27. Peers generally indicated not being aware of MAP cases for which access has been denied as of 1 January 2016. However, one peer, being the peer for which Austria indicated that it informed this peer of its decision that the MAP request was not admissible, confirmed that it was informed of this decision. Peers did not further report whether they are or are not aware of a bilateral notification/consultation process in place in Austria to be applied when its competent authority considers the objection raised in a MAP request as being not justified.

Anticipated modifications

28. As previously discussed under element B.1, Austria has recently signed the Multilateral Instrument. Specifically regarding element B.2, Austria reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[3] Apart from that, Austria did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	-	As Austria has done thus far, it should continue to apply its consultation process for cases in which its competent authority considered the objection raised in a MAP request as not being justified.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

29. 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. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

30. Out of Austria's 90 tax treaties, 58 contain a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is made by the other treaty partner. Furthermore, three treaties include a provision that is based on Article 9(2), but whereby corresponding adjustments can only be made via the mutual agreement procedure. For this reason all three treaties are considered not having the full equivalent of Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a).

31. Austria 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.

32. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Austria's tax treaties and irrespective of whether its domestic legislation enables it to do corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Austria states it will always provide access to MAP for transfer pricing cases. However, there is no section in Austria's MAP guidance that explicitly clarifies whether taxpayers have access to MAP in transfer pricing cases. Nevertheless, in section B.2.1.1 of Austria's MAP guidance it is explained that in cases of associated enterprises, as a general rule, a MAP request should be submitted in the state of domicile of the parent company, by which it can be derived that MAP is available for transfer pricing cases. In addition, paragraph 4.2 of Austria's Transfer Pricing Guidelines discusses the availability of MAP for transfer pricing cases, which clarifies that taxpayers can ask for MAP in such cases.

Application of legal and administrative framework in practice

33. Austria reported that it has since 1 January 2016 not denied access to MAP on the basis that the case concerned a transfer pricing case.

34. Peers have indicated not being aware of a denial of access to MAP by Austria for transfer pricing cases since 1 January 2016.

Anticipated modifications

35. Austria reported that it is in favour of including Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in its tax treaties where possible. In that regard, Austria recently signed the Multilateral Instrument to incorporate – on the basis of Article 17(2) of that instrument – Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in

those tax treaties that do not contain the equivalent of that provision. Austria however, has, pursuant to Article 17(3)(a) of the Multilateral Instrument, reserved the right not to apply Article 17(2) to those treaties that already include a provision equivalent to Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a). In addition, Austria reported it will seek to include Article 9(2) of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

Conclusion

	Areas for Improvement	Recommendations
[B.3]	-	As Austria has thus far granted access to the MAP in eligible transfer pricing cases, it should continue to grant access for these cases.

[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.

36. 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

37. None of Austria's 90 tax treaties allows competent authorities to restrict access to MAP for cases when an anti-abuse provision applies or when 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. In addition, the domestic law of Austria does not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

38. Austria reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. However, section B.2.1.3 of its MAP guidance states that the initiation of a MAP case is at the discretion of the competent authority, whereby reference is made to inter alia abusive cases and cases of tax evasion for which access to MAP may be denied. This has been confirmed in paragraph 4.2 of Austria's Transfer Pricing Guidelines, which mention that the Federal Ministry of Finance has discretion to initiate a MAP case and if there is an abuse of the law, it may decide to deny access to MAP.[4]

39. Austria reported that it envisages updating its MAP guidance and Transfer Pricing Guidelines in relation to access to MAP in abusive cases and that it will delete section B.2.1.3 of its MAP guidance as well as paragraph 4.2 of its Transfer Pricing Guidelines concerning this subject. Austria further reported that the updates to both documents will take place at the same time.

Practical application

40. Austria reported that since 1 January 2016 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

41. Peers have indicated not being aware of a denial of access to MAP by Austria in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2016.

Anticipated modifications

42. Austria did not indicate that it anticipates any modifications relating to element B.4.

Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	As Austria has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

[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.

43. 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 independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

44. In Austria, it is possible that taxpayers and the tax authorities enter into a settlement in the course of or after an audit has been completed. Austria reported that it will not deny access to MAP for cases where a taxpayer and the tax authorities have entered into an audit settlement. Its MAP guidance, however, does not include any information in relation hereto.

45. Austria reported it does not have an administrative or statutory dispute settlement/resolution process whereby issues resolved via such process(es) may be denied access to MAP.

Practical application

46. Austria reported that since 1 January 2016 it has not denied access to MAP in any cases where an audit settlement has been reached.

47. Peers have indicated not being aware of a denial of access to MAP by Austria since 1 January 2016.

Anticipated modifications

48. Austria did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	As Austria has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and the taxpayer, it should continue granting access for these cases.

[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.

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

Legal framework on access to MAP and information to be submitted

50. The information and documentation that Austria requires taxpayers include in a request for MAP assistance are discussed under element B.8.

Practical application

51. In section B.4 of Austria's MAP guidance it is mentioned that the taxpayer is required to assist in the procedure by inter alia submitting evidence. In instances where the taxpayer did not provide the required information or documentation as set out in Austria's MAP guidance, the Austrian competent authority either asks the taxpayer directly to provide the missing information or contacts the local tax authorities in order to obtain such information. The time limit for the submission of such information is dependent on the nature of the information missing. Generally, taxpayers are granted six weeks to supply the necessary additional information, which may be extended upon a request by taxpayers and if deemed appropriate by the Austrian competent authority. In that regard, such extension

is only possible after taxpayers submitted a MAP request and when the Austrian competent authority requested additional information. Such extension can be requested informally, but also in writing or by e-mail. There is no fixed time limit for requesting such extension and there is no formalised procedure for granting or denying requests for an extension, but it will generally be granted. If, however, the taxpayer did, after a request hereto, still not provide sufficient information for a consideration of the case, the Austrian competent authority may grant the taxpayer another opportunity to submit the information if it deems this appropriate (inappropriateness may occur in case of extensive delays caused by the taxpayer). In the case that a taxpayer still does not provide the requested information and such information is also not available from other sources such as regional tax offices, then the Austrian competent authority would deny access to MAP.

52. Austria reported it has not limited access to MAP since 1 January 2016 in any cases on the grounds that insufficient information was provided. It further reported that access to MAP will not be denied if taxpayers (initially) did not include all the required information and documentation, as long as the MAP request meets the requirements under the MAP article included in Austria's tax treaties.

53. Peers indicated not being aware of a denial of access to MAP by Austria since 1 January 2016 in situations where taxpayers complied with information and documentation requirements set out in the MAP guidance of Austria.

Anticipated modifications

54. Austria did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for Improvement	Recommendations
[B.6]	-	As Austria has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Austria's information and documentation requirements for MAP requests, it should continue this practice.

[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.

55. 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 includes the second sentence of Article 25(3) of the *OECD Model Tax Convention* (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Austria's tax treaties

56. Out of Austria's 90 tax treaties, 80 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[5]

57. Austria reported that where a treaty does not include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), its competent authority would consider that it does not have the authority to enter into negotiations in cases outside the scope of the treaty.

Anticipated modifications

58. Austria reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(c)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Austria is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties that do not contain a provision equivalent to Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a), will not be modified by the Multilateral Instrument, Austria reported it will subsequently strive to update them via bilateral negotiations to be compliant with element B.7. In addition, Austria reported it will seek to include Article 25(3), second sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

59. Most peers that provided input mentioned that their treaty with Austria meets the requirement under element B.7. Three peers, however, mentioned that their treaty with Austria does not meet this requirement. Only one of these peers indicated that it envisages amending their treaty via signing the Multilateral Instrument. Peers generally did not mention any pending bilateral negotiations to amend their treaty with Austria.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	Ten out of 90 tax treaties do not contain a provision allowing the competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.	Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.

[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.

60. 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.

Austria's MAP guidance

61. Austria published guidance on the mutual agreement procedure and the arbitration procedure under tax treaties and the EU Arbitration Convention, which was last updated on 31 March 2015 ("**MAP guidance**"). This MAP guidance is available on the website of the Federal Ministry of Finance and can be found at:

https://www.bmf.gv.at/steuern/int-steuerrecht/rueckerstattung/Verstaendigungs-_und_Schiedsverfahren_13032015.pdf?5b0v19.

62. This guidance includes basic information on MAP and arbitration procedures, as well as additional information on how taxpayers can access MAP, the functioning of the process in practice and the availability of arbitration under the tax treaties Austria entered into. It also contains information on the EU Arbitration Convention and how Austria applies that convention in practice. More specific, the information included in the MAP guidance concerns:

a. *General remarks on MAP and arbitration*
   - Scope and objectives of MAP and arbitration procedures;
   - Types of procedures and legal bases of MAP under tax treaties and under the EU Arbitration Convention;
   - Information on Austria's competent authority;

b. *Mutual agreement procedures under tax treaties*
   - Types of mutual agreement procedures;
   - Initiation of the mutual agreement procedure (submission of a MAP request, content of a MAP request, filing periods, possibility of suspension of tax collection);
   - Phases of the mutual agreement procedure;
   - Rights and role of the taxpayer during the process;
   - Conclusion of the mutual agreement procedure;
   - Implementation of mutual agreements reached (process of implementation, role of the taxpayer and relationship with domestic available remedies);

c. *Arbitration under tax treaties*

- Arbitration under Austria's tax treaties;
- Relationship with domestic available remedies;

d. *Mutual agreement procedures and arbitration under the EU Arbitration Convention*

- Scope of application of the EU Arbitration Convention;
- Initiation of proceedings (preliminary procedure, applicable time limits, suspension of tax collection, phases of the mutual agreement procedure, exchange of position papers and implementation); and
- The arbitration procedure (relationship with domestic available remedies, appointment of the advisory commission, applicable procedures, implementation and costs).

63. The FTA MAP Forum agreed on what information 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. The above-described MAP guidance of Austria includes those two requirements. In that regard, the information included in Austria's MAP guidance is detailed and comprehensive. It, however, does not include information on: (i) whether MAP is available in transfer pricing cases, the application of anti-abuse provisions, audit settlements, multilateral disputes and bona fide foreign-initiated self-adjustments, (ii) whether taxpayers can request the multi-year resolution of recurring issues through MAP and (iii) the steps of the process for the implementation of MAP agreements and the timing of such steps.

64. In addition to its MAP guidance, Austria also published Transfer Pricing Guidelines, which include in section 4.2 basic information on MAP under tax treaties and under the EU Arbitration Convention. This *inter alia* concerns the availability of MAP and to which jurisdiction a MAP request should be submitted, information on Austria's competent authority, the possibility of suspension of tax collection, implementation of MAP agreements and relationship with domestic available remedies.

Information and documentation to be included in a MAP request

65. 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 a request for MAP assistance. In light of this list, the requirements in Austria on what information and documentation should be included in a MAP request are checked below:

- ☑ 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; and
- ☐ 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.

66. Section B.2.1.1 of Austria's MAP guidance notes that taxpayers are allowed to submit a MAP request both in writing or electronically and that there are no special requirements of forms to be used when submitting a MAP request. In addition to the above checked list, information to be included in a MAP request is set out in section B.2.1.2 of Austria's MAP guidance and concerns:

- Tax office with jurisdiction over the taxpayer;
- Details on pending legal remedies; and
- Appropriate documentation (e.g. tax assessment notices and tax audit report) which may be of relevance to MAP.

Anticipated modifications

67. Austria reported that it envisages substantially revising its MAP guidance (as well as its Transfer Pricing Guidelines in relation to MAP) to take into account the relevant items under the Action 14 Minimum Standard, the Multilateral Instrument and other recent developments relating to tax dispute resolution. This updated MAP guidance will:

- Clarify that the taxpayer who submits a MAP request will be given a notification of receipt by the Austrian competent authority;
- Indicate that the other competent authority will be notified about a MAP request submitted in Austria;
- Delete the part of section B.2.1.3 that currently states: "the initiation of a mutual agreement procedure is at the discretion of the competent authority. Thus in certain cases such as treaty abuse and tax evasion, an application may be denied";
- Clarify that audit settlements between tax authorities and taxpayers do not preclude access to MAP;
- Clarify the relationship between MAP and domestic procedures; and
- Clarify the rights of taxpayers during MAP.

68. Austria further reported that it also envisages to update the guidance on what information taxpayers should include in their MAP request, which concerns inter alia information on: (i) whether the taxpayer has applied for other national/international available remedies for the case under review and (ii) the contact details to be provided by the taxpayer or its advisor.

69. As regards the timing of the update of the MAP guidance, Austria indicated it will aim to finalise a first revision towards the end of 2017, which also depends on developments at the level of the EU. A further revision is envisaged to incorporate the changes following the signing of the Multilateral Instrument, which will be done once the impact of that instrument on Austria's tax treaties has become clear.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, Austria, when updating its MAP guidance, could consider including in this guidance information on: • Whether MAP is available in cases of (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments; • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and • The steps of the process and the timing of such steps for the implementation of MAP agreements. Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

[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.

70. 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.[6]

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

71. The MAP guidance of Austria is published (in German) and can be found at:

https://www.bmf.gv.at/steuern/int-steuerrecht/rueckerstattung/Verstaendigungs-_und_Schiedsverfahren_13032015.pdf?5b0v19.

72. This guidance was last updated in March 2015. It is available on the government website of the Federal Ministry of Finance and is logically grouped on that website, under the section international taxation, which includes a specific sub-section on MAP. This section contains a link to Austria's MAP guidance.

MAP Profile

73. The MAP profile of Austria is published on the website of the OECD.[7] This MAP profile is almost complete, as the question on whether there is guidance on multilateral MAPs and the question on whether interest and penalties resulting from adjustments are pursuant to a MAP agreement waived or dealt with as part of a MAP are not filled in.

Anticipated modifications

74. Austria reported that with the envisaged update of its MAP Guidance it intends to update both the English and German language version and publish them accordingly.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	As Austria has thus far made its MAP guidance available and easily accessible and published its MAP profile, Austria should ensure its future updates to the MAP guidance continue to be available and easily accessible and that its MAP profile, published on the shared public platform is updated if needed.

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

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

75. 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

76. As previously mentioned in B.5, Austria's MAP guidance does not specify that taxpayers have access to MAP in case of audit settlements.

77. Peers indicated no issues regarding element B.10 in relation to audit settlements.

MAP and other internal dispute settlement/resolution process in available guidance

78. There is no other administrative or statutory dispute settlement/resolution process in Austria that impacts access to the MAP.

Notification of treaty partners of existing internal dispute settlement/resolution process

79. There is no need for notification of treaty partners as Austria does not deny access to MAP for cases that may be solved through an administrative or statutory dispute settlement or resolution process.

Anticipated modifications

80. Austria did not indicate that it anticipates any modifications relating to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	Austria's MAP guidance should clarify that audit settlements do not preclude access to MAP.

Notes

1. These two treaties include the 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands.

2. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, the Republic of Austria reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of Austria's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-austria.pdf.

3. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, Italy reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent

authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified." An overview of Italy's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-italy.pdf.

4. In Austria's Transfer Pricing Guidelines reference is made to a decision by the Federal Fiscal Court of 26 May 1982, in which it was stated that where there has been an abuse of the law, it is not an abuse of discretion to refuse to initiate a mutual agreement procedure.

5. The ten treaties that do not contain the required provision include the 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands.

6. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

7. Available at: www.oecd.org/tax/dispute/Austria-Dispute-Resolution-Profile.pdf.

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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.

81. 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, 2015a), 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 Austria's tax treaties

82. Out of Austria's 90 tax treaties, 86 contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) requiring its competent authority to endeavour 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. The remaining four treaties include a provision that is based on or has similarities with Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), but are for the following reasons not considered equivalents of that provision.[1]

- The objective of the MAP is to come to an agreement to avoid *double taxation* instead of *taxation that is not in accordance with the provisions of the treaty* (2 treaties);
- The possibility to discuss a case in MAP is dependent on the notification of the other competent authority concerned of the existence of the case within a four-and-a-half year period from the due date or the date of filing the tax return, whichever is the latest (one treaty); and
- The provision does not include the sentence stating *if the objection appears to it to be justified and it is not itself able to arrive at satisfactory solution* (one treaty).

83. Austria reported that where the scope of the MAP pursuant to Article 25(2) is limited to avoiding double taxation, Austria would consider that cases which do not involve double taxation cannot be submitted to the MAP by the taxpayer. However, a MAP pursuant to Article 25(3) could be entered into.

Anticipated modifications

84. Austria reported it has recently signed the Multilateral Instrument with a view to inter alia update – on the basis of Article 16(4)(b)(i) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a). Austria is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where tax treaties, which do not contain a provision equivalent to Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a), will not be modified by the Multilateral Instrument, Austria reported it will subsequently strive to update them via bilateral negotiations to be compliant with element C.1. In addition, Austria reported it will seek to include Article 25(2), first sentence, of the *OECD Model Tax Convention* (OECD, 2015a) in all of its future treaties.

85. All peers that provided input mentioned that their treaty with Austria meets the requirement under element C.1.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.

[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).

86. 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

87. Statistics regarding all tax treaty related disputes concerning Austria are published on the website of the OECD as of 2007.[2] Austria also publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.[3] In that regard, Austria reported on its published MAP profile that statistics relating to the time taken to resolve MAP cases are not publically available.

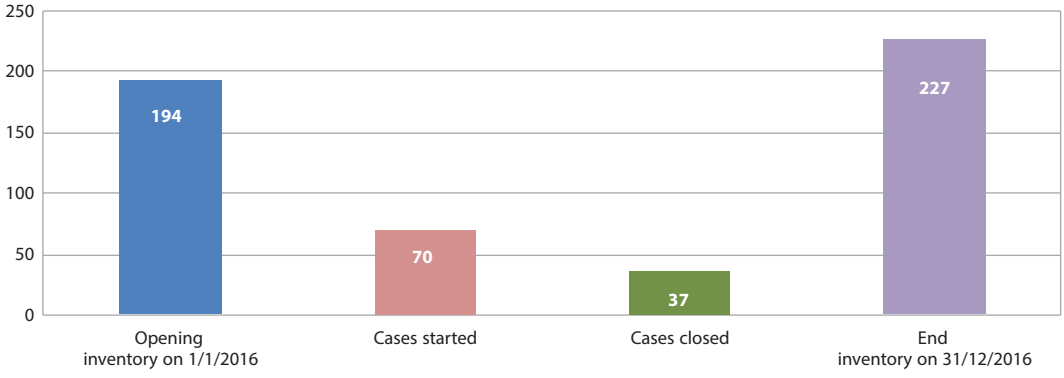
88. The FTA MAP Forum has agreed on rules for reporting of MAP statistics **("MAP Statistics Reporting Framework")** for MAP requests submitted on or after 1 January 2016 **("post-2015 cases")**. Also, for MAP requests submitted prior to that date **("pre-2016 cases")** the FTA MAP Forum agreed to report MAP statistics on the basis of a jointly-developed template. Austria provided their MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Austria 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 C respectively and should be considered jointly for an understanding of the MAP caseload of Austria.[4] With respect to post-2015 cases, Austria reported having reached out to almost all of its MAP partners with a view to have their MAP statistics matching. Austria indicated it could match its statistics with these partners.

Analysis of Austria's MAP caseload

Global overview

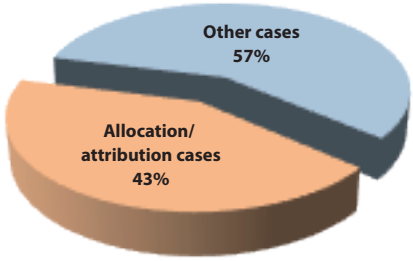
89. The following graph shows the evolution of Austria's MAP caseload over the Statistics Reporting Period:

Figure C.1. **Austria's MAP inventory**



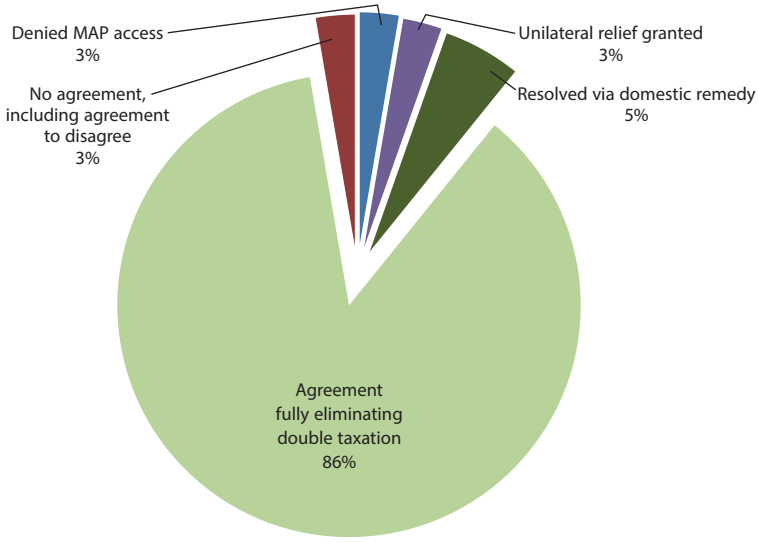
90. At the beginning of the Statistics Reporting Period Austria had 194 pending MAP cases, of which 81 concerned attribution/allocation cases and 113 other cases.[5] At the end of the Statistics Reporting Period, Austria had 227 MAP cases, 97 of which are attribution/allocation cases and 130 other cases. The total number of cases increased by 17% during the Statistics Reporting Period, which consisted of an approximately equal increase for both types of cases. This end inventory can be illustrated as follows:

Figure C.2. **End inventory on 31 December 2016 (227 cases)**



91. During the Statistics Reporting Period Austria in total resolved 37 cases, for which the following outcomes were reported:

Figure C.3. **Cases resolved during the Reporting Period (37 cases)**



92. This chart shows that during the Statistics Reporting Period, 32 out of 37 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty. Of the remaining five cases that were resolved, the following outcomes were reported: one case was denied MAP access, one was resolved via granting unilateral relief, in one case there was no agreement reached (including agreement to disagree) and two cases were resolved via domestic remedy.

Pre-2016 cases

93. At the beginning of the Statistics Reporting Period, Austria's MAP inventory of pre-2016 cases consisted of 194 cases, of which 81 were attribution/allocation cases and 113 were other cases. At the end of the Statistics Reporting Period the total inventory had decreased to 158 cases, consisting of 69 attribution/allocation cases and 89 other cases. This decrease concerns approximately 18% of opening MAP inventory, consisting of a 15% decrease of attribution/allocation cases and a 21% decrease in other cases. In total, 12 of the 36 cases closed concerned attribution/allocation cases and 24 concerned other MAP cases.

Post-2015 cases

94. In total, 70 MAP cases were started on or after 1 January 2016, of which 28 concerned attribution/allocation cases and 42 other cases. At the end of the Statistics Reporting Period, the total post-2015 cases inventory had decreased by 1 case, which followed from the resolution of one other MAP case.

Average timeframe needed to resolve MAP cases

Pre-2016 cases

95. For pre-2016 cases, Austria reported that on average it needed 40.70 months to resolve attribution/allocation cases and 38.45 months to resolve other cases. This resulted in an average time of 39.20 months needed to resolve pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Austria used in general as the:

- *Start date*: the date on which the competent authority that received the MAP request decided that the objection raised in the request was justified and initiated the bilateral phase of the MAP, and in cases where Austria's competent authority did not receive the MAP request, the date of the official notification of the initiation of the bilateral phase of the MAP by the other competent authority; and
- *End date:* the date on which a MAP agreement was reached in principle (this is not the date of finalisation of the written MAP agreement but the date when competent authorities reached a solution for the case under review), for cases where no agreement could be reached, the date when both competent authorities officially decided to close the case, and for cases where the case was unilaterally closed, the date of such closure.

Post-2015 cases

96. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics of Austria only comprises 12 months.

97. During the Statistics Reporting Period, Austria resolved 1 case, which concerned one other MAP case. This case was resolved via domestic remedy and needed 3.77 months to close. There were no attribution/allocation cases resolved by Austria during the Statistics Reporting Period.

All cases resolved during the Reporting Period

98. The average time needed to resolve MAP cases during the Statistics Reporting Period was 37.74 months, which average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	12	40.70
Other cases	25	37.06
All cases	37	38.24

99. In relation to this table, Austria reported that 2 cases took more than 100 months to resolve due to the fact that the other jurisdiction needed several years to respond to Austria's position paper. Austria further reported that 10 cases lasted more than 50 months. Reference is made to paragraph 109 for a more detailed explanation of the effect of these 12 cases on the overstep of the 24 month average.

Peer input

100. As will be mentioned under element C.3, most peers that provided input reported having a positive experience resolving MAP cases with Austria, thereby stating that they were able to resolve cases in a timely manner. One peer reported that Austria's competent authority endeavours to resolve MAP cases in a reasonable timeframe.

Anticipated modifications

101. Austria mentioned that following the creation of a new team in July 2016 to handle attribution/allocation cases it expects to enhance the timely resolution of MAP cases.

102. The target of the Federal Ministry of Finance is to foster the efficiency of the MAP regime with a view of not hindering international business activities. In that regard, and as will be mentioned under element C.6, Austria has committed to provide for mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. Austria further reported it opted in for part VI of the Multilateral Instrument that includes a mandatory and binding arbitration clause.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Austria submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Austria's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Austria, it resolved during the Statistics Reporting Period one out of 70 of its post-2015 cases in 3.77 months. In that regard, Austria is recommended to resolve the remaining 99% of the post-2015 cases pending on 31 December 2016 (69 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

103. 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 Austria's competent authority

104. In Austria the competent authority function to handle MAP cases is performed by the Federal Ministry of Finance, more specifically the International Tax Law Directorate (IV/8). This directorate handles MAP cases under Austria's tax treaties and the EU Arbitration Convention. Next to handling MAP cases, staff in charge of MAP within this directorate also has other tasks, which include (a) negotiating tax treaties, (b) representing Austria in international organisations, such as the OECD and (c) preparing legal and administrative measures with regard to transfer pricing, exchange of information and tax measures for diplomatic missions, international organisations and their officials.

105. Prior to July 2016, the International Tax Law Directorate consisted of six persons and one head of directorate. As per 1 July 2016 a new team (Transfer Pricing Team) was established that holds responsibility to handle attribution/allocation MAP cases, request for APAs and also is involved in quality management for transfer pricing rulings provided by local tax offices. Next to this work, the team also represents Austria at an international level, primarily within Working Party 6 of the OECD. Initially, the team consisted of two persons, a head and a deputy, but was increased to six persons (including the head of the team) at the beginning of 2017. In this respect, Austria noted that due to the fact that this team has a number of time-consuming tasks in addition to handling MAP/APA cases, its personnel can only devote part of its time to handling such cases.

106. Further to the above, Austria deploys a third team that functions as a competent authority to handle MAP cases. This is the so-called Expert Group International Tax Law and currently employs five persons and one head of unit. This team's main responsibility, however, is to provide support to tax offices in the field of international tax law. Both the expert group on international tax law and the transfer pricing team are supervised by the head of Directorate IV/8.

107. In regard of the application of the EU Arbitration Convention, section D.2.7.2 of Austria's MAP guidance sets timeframes for sending and receiving position papers, which follows the timelines set out in the code of conduct to that convention. Austria strives to send such position papers within four months after the tax assessment notice or, if later, within four months from the date of the submission of the MAP request that includes the minimum required information. Further, when the Austrian competent authority receives a position paper, it strives at sending a response within six months. Where appropriate, the Austrian competent authority will propose to schedule a face-to-face meeting after 18 months of initiation of the case.

Monitoring mechanism

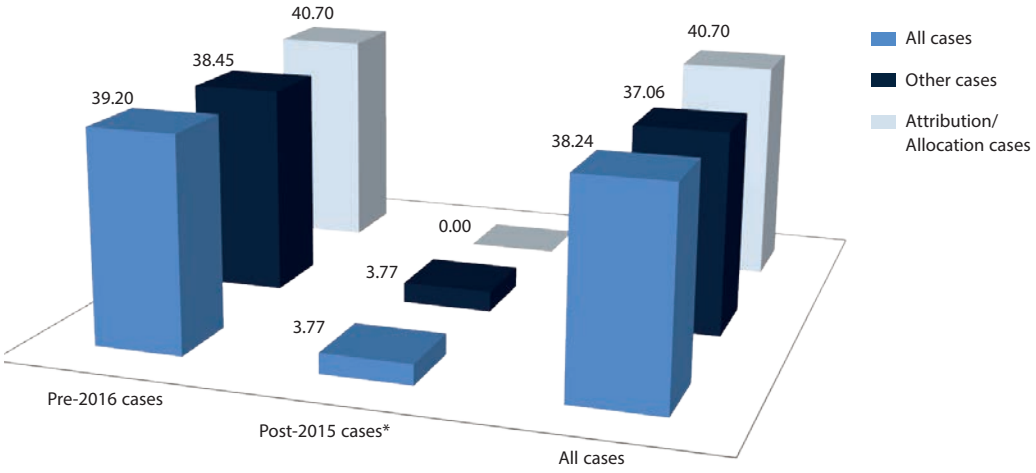
108. Austria reported that it does not have in place a formal framework for the monitoring/assessment of whether the resources to perform the MAP function are adequate.

Practical application

MAP statistics

109. As discussed under element C.2, Austria has resolved its MAP cases during the Statistics Reporting period significantly above the pursued 24-month average. This both concerns attribution cases and other cases and can be illustrated by the following graph:

Figure C.4. **Average time (in months)**



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

110. Based on these figures, it follows that on average it took Austria 38.24 months to resolve MAP cases. This figure indicates that additional resources are likely necessary to accelerate their resolution, especially considering the fact that both attribution/allocation and other cases are significantly above the pursued 24 month average timeframe. In this respect, Austria reported that of the 36 pre-2016 cases resolved during the Statistics Reporting Period, 12 cases took considerably longer to resolve. For two cases the time needed to resolve them was over 100 months (both other MAP cases) and for ten cases, the average time needed was over 50 months (two attribution/allocation cases and eight other MAP cases.

111. For these cases, Austria provided the following specifications:

- *Longer than 100 months (two cases)*: for one case a delay of 72 months was caused due to the fact that the Austrian competent authority had to wait several years on a response to its position paper. For the second case both the taxpayer and the other competent authority concerned failed to confirm that double taxation had been relieved unilaterally by the other competent authority, following which Austria was not able to close the case and which caused a delay of 55 months;
- *Longer than 50 months (ten cases)*:
  - No reply by the other competent authority to an Austrian issued position paper (4 cases), which on average caused a delay of 47 months;
  - Pending court procedures (four cases), which caused on average a delay of 59.5 months;
  - Differing positions among competent authorities on the interpretation of a specific provision of a tax treaty (one case), which caused a delay of over two years; and
  - Lack of response from taxpayer (one case), where the taxpayer only provided information with substantial delays, which caused a delay of approximately 18 months.

Peer input

112. Most peers reported having a good working relationship with Austria in resolving MAP cases. These peers also noted that contacts with Austria's competent authority are good and that they were able to communicate with Austria in a timely manner in various ways (e-mails, telephone calls and meetings). One peer noted that they have used various means of communication with Austria, which according to this peer has improved the timeliness of the discussion of MAP cases. Other peers also mentioned that they have received information quickly from the Austrian competent authority. Another peer noted that it could easily identify the responsible persons in charge of MAP and that contact details of these persons are also made available in the relevant correspondence.

113. One peer, which is a neighbouring jurisdiction, reported that they had regular face-to-face meetings with the Austrian competent authority. Also other peers that are neighbouring jurisdictions to Austria reported that such face-to-face meetings are occasionally held. Furthermore, with respect to the resolution of MAP cases peers generally reported that they were able to resolve cases with Austria in a time-efficient and effective manner and that the Austrian competent authority takes reasonable positions. One peer in particular noted that relevant information and the position paper were shared in due time by the Austrian competent authority. Another peer echoed this and mentioned that responses to its positions were quickly received.

114. Three peers provided suggestions on improving the resolution of MAP cases. One peer suggested increasing the frequency of communication among each other with respect to open cases. Another peer suggested finding new and secure electronic means to exchange relevant information for the cases under discussion to improve the frequency and ease of exchange of information and the efficient resolution of MAP cases with Austria. The third peer mentioned that it has the impression that Austria's competent authority follows the initial position taken by the tax administration, without making its own assessment of the merits of the MAP case in light of the applicable tax treaty. This peer mentioned that if such a position would be established at an earlier stage, it may be that time could be saved to resolve MAP cases.

Anticipated modifications

115. Austria mentioned that it plans to continue increasing the number of staff in charge of MAP so as to enhance the efficiency of its MAP regime.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	As Austria resolved MAP cases in 38.24 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016. This might indicate that the available resources are not adequate.	Austria should ensure that it has adequate resources available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In particular, Austria should closely monitor whether the additional resources recently provided will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

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

116. 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 consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

117. Austria reported that when its competent authority handles MAP cases, staff in charge of MAP is required to take into account the Commentaries to the *OECD Model Tax Convention* (OECD, 2015a), legal information publicly provided by the Federal Ministry of Finance, memoranda of understanding for specific treaties and comparable MAP cases that have previously been resolved with the other competent authority concerned. When in a MAP case an agreement is reached, such agreement will generally be reviewed and approved by the head of the Austrian competent authority.

118. When a MAP request is submitted in Austria, staff in charge of MAP generally informs the competent local tax office of the initiation of a MAP case and can request the local tax office to provide further information or documentation where required. When a MAP request is submitted with the other competent authority concerned, section B.2.3 of Austria's MAP guidance stipulates that they will notify the local tax office hereof and solicit its comments.[6] In addition, section B.3 of its MAP guidance mentions that the local tax office is informed of the progress of the case and where necessary the local tax office is requested to perform additional research to substantiate the facts of the case under review.

119. Austria reported that MAP agreements reached are approved by the head of each team if the case was delegated to a member of that team. Some team leaders are personally involved in the resolution of MAP cases, all of which are overseen by the head of Directorate IV/8, who has the ultimate competency to decide the MAP case. Furthermore, Austria also reported that the local tax offices and audit teams are involved in the beginning of a MAP case as sources of information. Position papers are composed by the persons working in the competent authority and part of the teams outlined above. These position papers are prepared on the basis of the information provided by the local tax offices, but these offices are not consulted as to the context of the case. Local tax offices and audit teams may thereby be asked for their response to position papers issued by the other competent authorities concerned, but these responses are always drafted by the people working in the competent authority without any direct involvement of the local tax offices and/or audit teams. In addition, negotiations of MAP agreements are only carried out by the staff in charge of MAP. Austria reported that the local tax offices are never involved in the negotiations and no personnel of the tax administration are involved in resolving MAP cases with the other competent authority concerned.

120. In regard of the above, Austria reported that its competent authority operates independently and has full authority to resolve MAP cases. There is neither a (formal) system in place requiring the competent authority to ask other government institutions (i.e. the audit department of the local tax administration) for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations.

Practical application

121. Peers did not report any impediment by Austria to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Several peers mentioned that their experience resolving cases with Austria's competent authority is positive. One peer in particular noted that it is not aware that staff in charge of MAP in Austria is dependent on the approval of the tax administration personnel who made the adjustment that is under review in MAP.

Anticipated modifications

122. Austria did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for Improvement	Recommendations
[C.4]	-	As it has done thus far, Austria should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on the approval or direction from the tax administration personnel directly involved in the adjustment at issue, or being influenced by considerations of the policy that Austria would like to see reflected in future amendments to the treaty.

[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.

123. 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 Austria

124. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These are:

- 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); and
- 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).

125. In regard of these performance indicators, Austria reported that it does not use performance indicators to evaluate staff in charge of MAP and in that regard does not set targets for this staff. It specified that this staff is only evaluated on its general performance as part of a yearly evaluation. Austria further reported that the person who handles MAP cases has an annual meeting with their head of unit. In the course of this meeting, targets are set in a written agreement that usually relate to a specific project (e.g. "updating of MAP guidance"). Each target has to be determined in a percentage so that all targets set at the level of each person comprise 100%. These targets have to be described in detail and external factors that influence whether these targets are achievable have to be mentioned. Furthermore, whether the target has been met is evaluated biannually. Targets of previous agreements are evaluated, but there is no specific evaluation regarding the outcome or duration of MAP cases.

Practical application

126. Peers indicated not being aware that Austria uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

Anticipated modifications

127. Austria did not indicate that it expected any modifications in relation to element C.5.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, Austria should continue to use appropriate performance indicators.

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

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

128. 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

129. Austria has no domestic law limitations for including MAP arbitration in its tax treaties. As a matter of practice, Austria proposes the incorporation of an arbitration clause during tax treaty negotiations. In addition, Austria is a signatory to the EU Arbitration Convention and has been a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument.

Practical application

130. Austria has incorporated an arbitration clause in ten of 90 treaties as a final stage in the mutual agreement procedure. In two treaties this concerns an equivalent of Article 25(5) of the *OECD Model Tax Convention* (OECD, 2015a) (although one treaty deviates from that provision by having a three-year period for MAP instead of two years) and in another treaty it concerns a voluntary and binding arbitration procedure. The other seven treaties provide for a mandatory and binding arbitration procedure, one of which is conducted via the European Court of Justice.

Anticipated modifications

131. Austria reported that it has opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision. It is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate this arbitration provision.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

1. These four treaties include the 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands.
2. Available at www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
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 2015.
4. For post-2015 cases, if the number of MAP cases in Austria'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, Austria 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. Austria reported that for pre-2016 and post-2015 cases it follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case. Annex D of the MAP Statistics Reporting Framework defines such case as: "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 (OECD, 2015a)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention,(OECD, 2015a)), which is also known as a transfer pricing MAP case".
6. Specifically with respect to the EU Arbitration Convention, section D.2.6 of Austria's MAP guidance stipulates that when a request for the convention's application is submitted with the other competent authority concerned, the Austrian competent authority will initially review whether the formal requirements have been met and subsequently forward the request to the local tax office for comments.

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Part D

Implementation of MAP Agreements

[D.1] Implement all MAP agreements

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

132. 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

133. Under Austrian law there is a statute of limitations for implementing MAP agreements, which is, pursuant to section 207(2) of the Federal Fiscal Code, generally five years. This period may, pursuant to section 209(1), be expanded where the local tax administration takes measures in order to enforce the respective taxation or in order to determine the person liable to tax. Such extension, however, is not possible after a period of ten years, as is determined in section 209(3) of the Federal Fiscal Code. This domestic statute of limitations is overridden where a treaty includes the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).[1] In such a situation, Austria will implement all agreements reached in MAP discussions both for upward and downward adjustments of taxpayers' positions and notwithstanding domestic time limits. This approach also applies to cases where Austria has concluded a consultation with the other state specifying that the implementation must take place notwithstanding domestic time limits. In these cases, these consultations take precedence over domestic law and replace the second sentence of Article 25(2). It is Austria's tax treaty policy to include the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

134. Section B.5 of Austria's MAP guidance stipulates that a mutual agreement is considered to be concluded when the competent authorities enter into a written agreement. Upon conclusion, the Austrian competent authority will inform both the local tax office and the taxpayer concerned of this agreement. Subsequently, section B.6 of Austria's MAP guidance describes the process of implementation of MAP agreements. In this respect, the local tax office is notified of the outcome of the MAP and is in turn responsible for implementing the MAP agreement. With respect to taxpayers' position on implementing MAP agreements, Austria does not request the taxpayer concerned to give its approval to the agreement reached as a prerequisite for implementation, which applies for agreements reached as the result of the MAP, as also for any agreements reached following the decision of an arbitration panel as a final stage to the MAP.[2] Furthermore, section B.6.3 also notes that the implementation of MAP agreements is not obstructed if domestic available remedies are pending or appellate remedies have not yet been exhausted.

135. Austria's MAP guidance further explains in section B.6.3 that if the implementation of a MAP agreement is given effect by issuing a new tax assessment, then taxpayers are allowed to file an objection to such assessment if they consider the solution reached in MAP to be incorrect. However, it is under procedural law not possible to directly challenge the outcome of the mutual agreement procedure.

136. Specifically with respect to the EU Arbitration Convention, section D.3.5 of Austria's MAP guidance stipulates that the procedural implementation of a binding opinion by the advisory commission is carried out in the same manner as the implementation of a MAP agreement reached under tax treaties.

Practical application

137. Austria reported that all MAP agreements reached since 1 January 2016 have or will be implemented and were all notified to the taxpayer. Austria also reported that in some cases its competent authority requests the local tax office for information about the state of implementation of MAP agreements, but it does not have a system in place that keeps track of the implementation of all MAP agreements.

138. Peers have not indicated experiencing any issues with Austria regarding the implementation of MAP agreements reached on or after 1 January 2016.

Anticipated modifications

139. Austria did not indicate that it anticipates any modifications relating to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Austria's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the alternatives provided in Article 9(1) and 7(2). There is a risk that for those tax treaties that do not include those provisions, not all MAP agreements can be implemented due to the ten year time limit in Austria's domestic law.	Even though Austria has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. In addition, to keep a record of whether all future MAP agreements are implemented if the conditions for such implementation are fulfilled, Austria could introduce a tracking system.

[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.

140. 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

141. In its domestic legislation and administrative framework, Austria does not have in place a timeframe for implementation of mutual agreements reached. Furthermore, Austria's existing MAP guidance does not address timing with respect to the implementation of MAP agreements.

Practical application

142. Austria reported that upon request by the taxpayer it on a case-by-case basis follows-up the actual implementation of MAP agreements and subsequently, if necessary, ensures implementation. In that regard Austria noted that such requests, however, are in practice extremely rare.

143. Peers indicated not experiencing any problems with Austria regarding the implementation of MAP agreements in general or on a timely basis.

Anticipated modifications

144. Austria did not indicate that it expected any modifications relating to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	-	As it has done thus far, Austria should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

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

145. 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, 2015) 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 Austria's tax treaties

146. As discussed under element D.1, Austria has a domestic statute of limitation for implementing MAP agreements. Such statute of limitation is overridden by tax treaties including the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015).

147. Out of Austria's 90 tax treaties, 67 contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, in 1 treaty the other competent authority should be notified of a MAP request within four and a half years. If that condition is fulfilled, then any MAP agreement shall be implemented within ten years or, if later, the longer period provided for under the domestic law of the treaty partner. For this reason, this treaty is not considered to be equivalent to Article 25(2) second sentence, of the *OECD Model Tax Convention* (OECD, 2015). The remaining 22 treaties contain neither a provision that is equivalent to Article 25(2), second sentence nor the alternative provisions setting a time limit making adjustments in Article 9(1) nor in Article 7(2).[3]

Anticipated modifications

148. Austria reported it has recently signed the Multilateral Instrument with a view to inter alia modify – on the basis of Article 16(4)(b)(ii) of that instrument – those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) stipulating that any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the contracting states. In that regard, Austria reported it has not, as is allowed pursuant to Article 16(5)(c) of the Multilateral Instrument, reserved the right not to apply the second sentence of Article 16(2) of that instrument. Austria is currently in the process of analysing which of its tax treaties will be modified via the Multilateral Instrument, the outcome of which is dependent on the choices made by its treaty partners. Where the above discussed tax treaties that do not contain a provision equivalent to Article 25(2), second sentence of the *OECD Model Tax Convention* (OECD, 2015) and which will not be modified by the Multilateral Instrument, Austria reported it will subsequently strive to update them via bilateral negotiations to be compliant with element D.3. In addition, Austria reported it will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015) in all of its future treaties.

149. Nine peers provided input in relation to element D.3. Four peers noted that their treaty with Austria meets the requirement under this element. Five peers, however, mentioned that their treaty with Austria does not include the equivalent to Article 25(2), second sentence, of the *OECD Model Tax Convention* (OECD, 2015). Of these five, three peers indicated that they envisage amending their treaty via signing the Multilateral Instrument. Peers generally did not mention any pending bilateral negotiations to amend their treaty with Austria.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	23 out of 90 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in Article 9(1) and Article 7(2).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.

	Areas for Improvement	Recommendations
[D.3]		Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions. In addition, Austria should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.

Notes

1. This is also explained in section 4.2 of Austria's Transfer Pricing Guidelines.
2. This is also explained in section 6.4 of Austria's MAP guidance and section 4.2 of Austria's Transfer Pricing Guidelines.
3. These 23 treaties include the 1961 treaty with Denmark that Austria continues to apply to the Faroe Islands.

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Summary

	Areas for Improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Five out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015).	Where treaties do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, OECD (2015) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.
[A.2]	Austria is in theory able to extend bilateral APAs to previous fiscal years. However it was not possible at this stage to evaluate the effective implementation of this element in practice since no cases could be observed during the Review Period.	
Part B: Availability and access to MAP		
[B.1]	Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, OECD (2015a). Of those ten tax treaties: • five do not contain a provision that is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that final report; • four does not contain a provision based on Article 25(1), second sentence of the OECD Model Tax Convention, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and • one does not contain a provision that is the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, OECD (2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that final report and does not contain a provision based on Article 25(1), second sentence of the OECD Model Tax Convention, OECD (2015a) allowing taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not include the equivalent of Article 25(1) of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention, OECD (2015a) either: a. As amended in the Action 14 final report, OECD (2015b).; or b. As it read prior to the adoption of Action 14 final report, OECD (2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.

	Areas for Improvement	Recommendations
[B.1]	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Austria should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
[B.2]	-	As Austria has done thus far, it should continue to apply its consultation process for cases in which its competent authority considered the objection raised in a MAP request as not being justified.
[B.3]	-	As Austria has thus far granted access to the MAP in eligible transfer pricing cases, it should continue to grant access for these cases.
[B.4]	-	As Austria has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	-	As Austria has thus far granted access to the MAP in eligible cases, even if there was an audit settlement between the tax authority and the taxpayer, it should continue granting access for these cases.
[B.6]	-	As Austria has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Austria's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Ten out of 90 tax treaties do not contain a provision allowing the competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.	Where treaties do not include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of clarity, Austria, when updating its MAP guidance, could consider including in this guidance information on: • Whether MAP is available in cases of (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments; • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and • The steps of the process and the timing of such steps for the implementation of MAP agreements. Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

	Areas for Improvement	Recommendations
[B.9]	-	As Austria has thus far made its MAP guidance available and easily accessible and published its MAP profile, Austria should ensure its future updates to the MAP guidance continue to be available and easily accessible and that its MAP profile, published on the shared public platform is updated if needed.
[B.10]	MAP guidance does not include information on the relationship between MAP and audit settlements.	Austria's MAP guidance should clarify that audit settlements do not preclude access to MAP.
Part C: Resolution of MAP cases		
[C.1]	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a).	Where treaties do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, OECD (2015a) and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision. In addition, Austria should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Austria submitted timely comprehensive MAP statistics and indicated they have been matched with almost all of its MAP partners. The year 2016 was the first year for which MAP statistics were reported under the new MAP Statistics Reporting Framework. These statistics were only recently submitted by most jurisdictions that committed themselves to the implementation of the Action 14 Minimum Standard and some still need to be submitted or confirmed. Given this state of play, it was not yet possible to assess whether Austria's MAP statistics match those of its treaty partners as reported by the latter.	
	Within the context of the state of play outlined above and in relation to the MAP statistics provided by Austria, it resolved during the Statistics Reporting Period 1 out of 70 of its post-2015 cases in 3.77 months. In that regard, Austria is recommended to resolve the remaining 99% of the post-2015 cases pending on 31 December 2016 (67 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Austria resolved MAP cases in 38.24 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016. This might indicate that the available resources are not adequate.	Austria should ensure that it has adequate resources available for the competent authority function in order to resolve MAP cases in a timely, efficient and effective manner. In particular, Austria should closely monitor whether the additional resources recently provided will contribute to the resolution of MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Austria should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on the approval or direction from the tax administration personnel directly involved in the adjustment at issue, or being influenced by considerations of the policy that Austria would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Austria should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for Improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Austria's tax treaties include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015) or the alternatives provided in Article 9(1) and 7(2). There is a risk that for those tax treaties that do not include those provisions, not all MAP agreements can be implemented due to the 10 year time limit in Austria's domestic law.	Even though Austria has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. In addition, to keep a record of whether all future MAP agreements are implemented if the conditions for such implementation are fulfilled, Austria could introduce a tracking system.
[D.2]	-	As it has done thus far, Austria should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	23 out of 90 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention, OECD (2015), nor the alternative provisions in Article 9(1) and Article 7(2).	Where treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, OECD (2015), or include the alternatives provided in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Austria should request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions. Specifically with respect to the treaty with Denmark that Austria continues to apply to the Faroe Islands, Austria should, once it enters into negotiations with this jurisdiction, request the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions. In addition, Austria should maintain its stated intention to include the required provision or be willing to accept the inclusion of both alternative provisions in all future treaties.

Annex A

Tax treaty network of Austria

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**		**Column 3**		**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
	Y = yes N = signed pending ratification	If N, date of signing	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	if ii, specify period	Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases	Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP	Y = yes N = no	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent	Y = yes N = no	Y = yes N = no	Y = yes N = no	if yes: i-Art. 25(5) ii-mandatory other iii – voluntary
Albania	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Algeria	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Armenia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii
Australia	Y	N/A	O	ii	Y	N/A	Y	i	Y	Y	N	N	N	N/A
Azerbaijan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bahrain	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Barbados	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	N/A	O	ii	ii	2-years	i	i	Y	N	N	N	N	N/A
Belize	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bosnia and Herzegovina	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii
Brazil	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Bulgaria	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	ii	ii	2-years	i	i	Y	N	Y	N	N	N/A
Chile	Y	N/A	O	N/A	i	N/A	Y	i	Y	N	Y	N	Y	iii
China	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Chinese Taipei	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Croatia	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Cuba	Y	N/A	O	ii	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Czech Republic	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Denmark	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Egypt	Y	N/A	N	iv and v	i	N/A	i	i	N	N	N	N	N	N/A
Estonia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Faroe Islands	Y	N/A	N	ii + iii = v	i	N/A	i	i	N	N	N	N	N	N/A
Finland	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	N	Y	N	N/A
Georgia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii
Greece	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hong Kong, China	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Iceland	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
India	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	N/A	N	ii	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Iran	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ireland	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Israel	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Italy	Y	N/A	N	ii + iv	Y	N/A	i	i	Y	N	Y	N	N	N/A
Japan	Y	N/A	E	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Kazakhstan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Kuwait	Y	N/A	O	ii	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kyrgyzstan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Liechtenstein	Y	N/A	E	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Macedonia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii
Malaysia	Y	N/A	O	N/A	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Malta	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	N/A	i	N/A	i	i	N	N	Y	N	N	N/A
Moldova	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mongolia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	Y	ii
Montenegro	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Morocco	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Nepal	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Netherlands	Y	N/A	N	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
New Zealand	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Norway	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Pakistan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Philippines	Y	N/A	O	N/A	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Poland	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Portugal	Y	N/A	O	ii	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Qatar	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Romania	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Russia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
San Marino	Y	N/A	O	N/A	ii	2-years	i	i	Y	Y	Y	Y	Y	ii
Saudi Arabia	Y	N/A	O	ii	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	O	N/A	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Slovenia	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Sweden	Y	N/A	N	ii + iii	i	N/A	i	i	N	N	Y	N	N	N/A
Switzerland	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	Y	i
Syria	N	03-03-2009	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tajikistan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Thailand	Y	N/A	O	N/A	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	N/A	O	ii	i	N/A	i	i	Y	N	Y	Y	N	N/A
Turkey	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Action 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1		B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	Column 2		Column 3		Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority?		Inclusion Art. 25(1) second sentence? If no, please state reasons		Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? If no, alternative provision in Art. 7 & 9 OECD MTC?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
Turkmenistan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ukraine	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Arab Emirates	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	N/A	O	N/A	i	N/A	i	i	Y	N	Y	N	N	N/A
United States	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Venezuela	Y	N/A	O	N/A	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	N/A	N	ii	Y	N/A	Y	i	Y	Y	Y	Y	N	N/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.

Annex B

MAP statistics: Pre-2016 cases

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 MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	81	0	0	0	1	0	12	0	0	1	0	67	39.00
Others	113	1	0	0	0	1	21	0	0	0	0	90	38.45
Total	194	1	0	0	1	1	33	0	0	1	0	157	39.20

Annex C

MAP statistics: Post-2015 cases

Treaty Partner	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome											
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation eliminated/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/ partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of post-2015 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	26	0	0	0	0	0	0	0	0	0	0	28	0.00
Others	0	42	0	0	0	0	0	0	0	0	0	0	41	3.77
Total	0	68	0	0	0	0	0	0	0	0	0	0	67	3.77

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Austrian competent authority	Directorate International Tax Law (IV/8) of the Federal Ministry of Finance
Austrian Transfer Pricing Guidelines	Verrechnungspreisrichtlinien issued by the Austrian Bundesministerium für Finanzen of November 2010
Federal Fiscal Code of Austria	Bundesabgabenordnung
MAP guidance	Austrian Mutual Agreement and Arbitration Procedures under Double Taxation Treaties and the EU Arbitration Convention
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 15 July 2014
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration
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 tax-payer on or after 1 January 2016
Review period	Period for the peer review process that started on 1 January 2016 and ended on 31 March 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
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

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Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, jurisdictions have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

The peer review process is conducted in two stages. Stage 1 assesses jurisdictions 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 1 peer review of the implementation of the Action 14 Minimum Standard by Austria, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: *http://oe.cd/bepsaction14*.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264285750-en***.

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