OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD
BETTER POLICIES FOR BETTER LIVES

This document, as well as any data and map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:
OECD (2020), *Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *https://doi.org/10.1787/40c9f1b5-en*.

ISBN 978-92-64-48513-6 (print)
ISBN 978-92-64-50180-5 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project
ISSN 2313-2604 (print)
ISSN 2313-2612 (online)

Photo credits: Cover © ninog-Fotolia.com.

Corrigenda to publications may be found on line at: *www.oecd.org/about/publishing/corrigenda.htm*.

© OECD 2020

The use of this work, whether digital or print, is governed by the Terms and Conditions to be found at *http://www.oecd.org/termsandconditions*.

Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting in February 2013*, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 85 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 136 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 11 December 2019 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms . . . 7

Executive summary . . . 9

Introduction . . . 13

Reference . . . 19

***Part A.* Preventing disputes** . . . 21

[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties . . . 21
[A.2] Provide roll-back of bilateral APAs in appropriate cases . . . 23

References . . . 26

***Part B.* Availability and access to MAP** . . . 27

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties . . . 27
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process . . . 34
[B.3] Provide access to MAP in transfer pricing cases . . . 36
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions . . . 39
[B.5] Provide access to MAP in cases of audit settlements . . . 41
[B.6] Provide access to MAP if required information is submitted . . . 43
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties . . . 45
[B.8] Publish clear and comprehensive MAP guidance . . . 47
[B.9] Make MAP guidance available and easily accessible and publish MAP profile . . . 50
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP . . . 51

References . . . 53

***Part C.* Resolution of MAP Cases** . . . 55

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties . . . 55
[C.2] Seek to resolve MAP cases within a 24-month average timeframe . . . 57
[C.3] Provide adequate resources to the MAP function . . . 64
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable treaty . . . 70
[C.5] Use appropriate performance indicators for the MAP function . . . 72
[C.6] Provide transparency with respect to the position on MAP arbitration . . . 73

References . . . 76

***Part D.* Implementation of MAP Agreements** . . . 77

[D.1] Implement all MAP agreements . . . 77

[D.2] Implement all MAP agreements on a timely basis. . . . 79
[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). . . . 80

References . . . 84

Summary . . . 85

***Annex A.* Tax treaty network of Austria** . . . 89

***Annex B.* MAP statistics pre-2016 cases** . . . 95

***Annex C.* MAP statistics post-2015 cases** . . . 96

Glossary . . . 97

Figures

Figure C.1 Evolution of Austria's MAP caseload . . . 59
Figure C.2 End inventory on 31 December 2017 (255 cases). . . . 60
Figure C.3 Evolution of Austria's MAP inventory . . . 60
Figure C.4 Evolution of Austria's MAP inventory . . . 61
Figure C.5 Cases closed during 2016 and 2017 (107 cases) . . . 62
Figure C.6 Average time (in months) to close cases in 2016 or 2017. . . . 66

Abbreviations and acronyms

APA	Advance Pricing Arrangement
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 significant experience in resolving MAP cases. It has a relatively large MAP inventory, with a considerable number of new cases submitted each year with more than 250 cases pending on 31 December 2017. Of these cases, 44% concern attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Austria met the majority of the elements of the Action 14 Minimum Standard. Where it had deficiencies, Austria worked to address them. In this respect, Austria has solved almost all identified deficiencies.

All of Austria's tax treaties include a provision relating to MAP. These treaties largely follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. 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, 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.
- Almost 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) 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 and ratified the Multilateral Instrument. Furthermore, Austria opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Through this instrument the majority of the relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Austria has put in place a detailed plan for their renegotiation and on the basis thereof has reached out to all the relevant treaty partners with a view to initiate such negotiations. With one treaty partner a new treaty has been negotiated that meets the requirements under the Action 14 Minimum Standard, while with other treaty partners negotiations to that effect have been initiated.

Concerning the prevention of disputes, although Austria can provide bilateral APAs and enables taxpayers to request rollbacks of such APAs, since 1 January 2016 no requests for roll-back of APAs were received.

Austria meets most of the requirements regarding the availability of and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although for those tax treaties that do not contain a filing period for MAP requests, there is a risk that due to Austria's domestic time limits, access to MAP is not available even if the taxpayer filed its MAP request within three years as from the first notification of the action resulting in taxation not in accordance with the tax treaty. Furthermore, Austria has in place a documented consultation process for those situations in which Austria's competent authority considers the objection raised by taxpayers in a MAP request as not justified. Austria also published detailed and comprehensive guidance on the availability of MAP and how it applies this process in practice, both under tax treaties and the EU Arbitration Convention. In its stage 1 peer review report it was identified that this guidance did not specify whether Austria will also grant access to MAP for cases where taxpayers and the tax administration have entered into an audit settlement. This MAP guidance and other domestic guidance also includes a discretion for the competent authority to deny access to MAP in *inter alia* abusive cases, by which access to MAP may be denied In July 2019 Austria has updated this guidance to address these issues, which was after ending of the peer review process.

Concerning the average time needed to resolve MAP cases, the MAP statistics for the period 2016-17 are as follows:

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017	Average time to resolve cases (in months)*
Allocation/attribution cases	81	69	39	111	27.82
Other cases	114	98	68	144	27.17
Total	**195**	**167**	**107**	**255**	**27.93**

*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.

The number of cases Austria closed in 2016 and 2017 is around 65% of the number of all new cases started in those years. During these years, MAP cases were not closed on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time needed was 27.93 months, which is almost equal for both attribution/allocation and other cases. Nevertheless, Austria in 2017 significantly reduced its average time as compared to 2016, which is from 37.29 months to 22.78 months. In that regard, although Austria has made several organisational changes that have led to this reduction, the fact that the overall average for both years remains to be above 24 months and the fact that its MAP inventory as per 31 December increased with 30% as compared to the inventory on 1 January 2016, indicates that more resources or additional actions may be necessary to cope with this increase and to ensure that Austria resolves all MAP cases in a timely, effective and efficient manner.

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

Lastly, Austria also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. While in the stage 1 peer review report it was identified that where treaties do not include a provision on the implementation of MAP agreements, Austria's domestic time limits may prevent the implementation of such agreements, it has amended its domestic legislation to ensure that all MAP agreements can be implemented notwithstanding any time limits in its domestic law.

Introduction

Available mechanisms in Austria to resolve tax treaty-related disputes

Austria has entered into 90 tax treaties on income (and/or capital), 89 of which are in force.[1] These 90 treaties apply to an equal number of jurisdictions.[2] 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, 11 treaties include an arbitration clause as a final stage to the mutual agreement procedure.[3]

Austria is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.[4] Furthermore, Austria adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation as per 1 July 2019.[5]

Under Austria's tax treaties, the competent authority function to conduct MAP is assigned to the Federal Ministry of Finance. This function is further delegated to the Directorate International Tax Law (IV/8) within the Ministry and is the department that in practice handles MAP cases under Austria's tax treaties and the EU Arbitration Convention. The directorate employs 19 persons, six of which work within a dedicated team that handles attribution/allocation MAP cases, as well as requests for APAs, and that was established in 2016. Further, a third unit within this directorate is also responsible for handling MAP cases, which is called the Expert Group International Tax Law and 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/Verstaendigungsverfahren.html

Developments in Austria since 1 April 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Austria it is reflected that it has signed new treaties with Iceland (2016) and Japan (2017). The treaty with Iceland is a newly negotiated treaty and has since then entered into force. The new treaty with Japan concerns a replacement of the 1961 treaty and has also already entered into force. Furthermore, in 2016 Austria also a new treaty with Israel, which was not yet reflected in the stage 1 peer review report. This treaty also concerns a replacement of the treaty of 1970 and has since then also already entered into force.

Furthermore, on 7 June 2017 Austria signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. It further opted in for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process. On 22 September 2017 Austria deposited its instrument of ratification, following which the Multilateral Instrument has for Austria entered into force on 1 July 2018. With the depositing of its instrument of ratification, Austria also submitted its list of notifications and reservations to the Multilateral Instrument.[6] In relation to the Action 14 Minimum Standard, Austria reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.[7] This reservation is in line with the requirements under the Action 14 Minimum Standard.

In addition, Austria reported that since 1 April 2017 it has concluded several treaty negotiations, *inter alia* with a view to ensure compliance with the Action 14 Minimum Standard. This has resulted in a newly signed treaty with Kosovo (2018) and the signing of a treaty with the United Kingdom (2018) to replace the existing treaty, both of which have already entered into force. Furthermore, in 2018 Austria signed an amending protocol to the existing treaty with Russia (2000), which includes a most-favoured nation clause on arbitration. This clause entails the entering into negotiations for the inclusion of an arbitration provision should Austria's treaty partner include an arbitration provision in a tax treaty with a third state. Lastly, in the stage 1 peer review report it was stated that Austria continues to apply the former treaty with Denmark (1961) to the Faroe Islands. With the entering into force of a new treaty with Denmark in 2009, this is no longer the case. Taking these developments into consideration, the number of tax treaties Austria entered into remains 90 treaties that were taken as the basis in the stage 1 peer review report.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and that have not been or will not be modified by the Multilateral Instrument, Austria put a comprehensive and detailed plan in place for the renegotiations of such treaties. Under this plan, Austria has grouped these treaties into categories based on whether an element of the minimum standard or an best practices element was affected, and the importance of the treaty partner in terms of economic relationship and the MAP relationship. As an outflow of this grouping, Austria made a list of priorities on which treaty partners to approach first for the renegotiation of the relevant treaty to bring it in line with the requirements under the Action 14 Minimum Standard. For Austria, priority is at least given to EU Member States because of the economic ties, MAP relationship and the single market.

Based on the plan put in place and for the treaty partners for which the renegotiation of the treaty is considered a high priority or which is an important MAP partner, Austria reported it has contacted all relevant treaty partners. This concerns Canada, Indonesia, Italy, Malaysia, the Philippines, San Marino, Sweden, Switzerland, Thailand and Tunisia. Austria further clarified that it has already started discussions with two treaty partners, while it awaits a response from the other treaty partners. The remaining treaty partners have been approached separately, as for these treaties a renegotiation as a whole is foreseen. Furthermore, with respect to other treaty partners that are also considered to be a high priority, Austria reported that it is already in negotiations with Australia, Brazil, Egypt and the Netherlands. In these negotiations, Austria's policy is to ensure that the requirements

under the Action 14 Minimum Standard are met before finalising such negotiations. Concerning the jurisdiction with which it recently concluded treaty negotiations, Austria mentioned that this treaty now fully meets the requirements under the Action 14 Minimum Standard (see above). Lastly, Austria mentioned that for the remaining treaty, no bilateral negotiations are necessary, since the other treaty partner updated its notifications under the Multilateral Instrument upon which the treaty will be modified by that instrument in order to meet the requirements under the Action 14 Minimum Standard.

Regarding those tax treaties for which Article 9(2) of the OECD Model Convention is not included, Austria reported that it strives to include this provision in all of its tax treaties and to that effect signed without any reservations the Multilateral Instrument. As the non-inclusion of this provision in its treaties follows from either the fact that the treaty partner did not sign the Multilateral Instrument or choices made by them in that instrument, Austria has not initiated bilateral negotiations with the treaty partners concerned only to include the equivalent of Article 9(2), also because having such a provision is only a best practice. Where, however, negotiations with treaty partners are pending or where Austria contacted these partners to initiate such negotiations, *inter alia*, with a view to bring these treaties in line with the Action 14 Minimum Standard, Austria mentioned that it proposed to include Article 9(2), or, alternatively, the conclude a bilateral consultation on the basis of Article 25(3) of the OECD Model Tax Convention to clarify that transfer pricing cases can be dealt with in MAP in the absence of Article 9(2). In the aforementioned treaty for which renegotiations already have been concluded, Austria clarified that this treaty now includes the equivalent of Article 9(2).

Other developments

Other than the developments relating to the tax treaty network, Austria reported it is working on revising its MAP guidance and its Transfer Pricing Guidelines, which has recently been completed in July 2019, but was after the review period. In the current version of its MAP guidance and Austria's Transfer Pricing Guidelines a statement was/is included that the initiation of a MAP case is at the discretion of the competent authority, whereby the reference was/is made to *inter alia* abusive cases and cases of tax evasion as a situation for which access to MAP may be denied. Austria reported that with the update of the MAP guidance and Transfer Pricing Guidelines, this specific statement will be removed, such to reflect Austria's policy and practice to give access to MAP in all eligible cases, thus also including cases concerning the application of anti-abuse provisions.

Basis for the peer review process

Outline of 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 process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Austria's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 13 October 2017. This report identifies

the strengths and shortcomings of Austria in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[8] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Austria. In this update report, Austria reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether 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 and the 1978 treaty with former Czechoslovakia that Austria continues to apply to the Faroe Islands and the Slovak Republic respectively. Reference is made to Annex A for the overview of Austria's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Austria launched on 7 March 2017, with the sending of questionnaires to Austria and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Austria in September 2017, with the subsequent approval by the BEPS Inclusive Framework on 13 October 2017. On 13 October 2018, Austria submitted its update report, which initiated stage 2 of the process.

The commitment to the Action 14 Minimum Standard starts from 1 January 2016. The period for evaluating Austria's implementation of this standard ranges from 1 January 2016 up to 31 March 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2017 and depicts all developments as from that date until 30 September 2018. Next to its assessment on the compliance with the Action 14 Minimum Standard, Austria also addressed best practices and asked for peer input on best practices.

In total 15 peers provided input during stage 1: Belgium, Canada, Denmark, Germany, Greece, Italy, Liechtenstein, Portugal, Russia, the Slovak Republic, Slovenia, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent approximately 55% of post-2015 MAP cases in Austria's inventory on 31 December 2016. During stage 2, apart from Greece, Liechtenstein and the Slovak Republic, the same peers provided input on the update report of Austria. Furthermore, also Australia, Ireland, Japan, Korea, Luxembourg, the Netherlands, Norway and Spain provided input during stage 2. For this stage, these peers represent approximately 68% of post-2015 MAP cases in Austria's inventory that started in 2016 or 2017.[9] 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. Specifically with respect to stage 2, a significant number of peers that provided input reported that the update report of Austria fully reflects the experiences these peers have had with Austria since 1 April 2017 and/or that there was no addition to previous input given. Thirteen peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance.

Input by Austria and cooperation throughout the process

During stage 1, Austria 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 also 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.

In addition, Austria provided the following information:

- MAP profile[10]
- MAP statistics[11] according to the MAP Statistics Reporting Framework (see below).[12]

Concerning stage 2 of the process, Austria submitted its update report on time and the information included therein was extensive. Austria was very co-operative during stage 2 and the finalisation of the peer review process. It has provided, where relevant, peer input in stage 2 of the process and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions.

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

Overview of MAP caseload in Austria

The analysis of Austria's MAP caseload for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2017. Both periods are taken into account in this report for analysing the MAP statistics of Austria. The analysis of Austria's MAP caseload relates to the period starting on 1 January 2016 and ending 31 December 2017 ("**Statistics Reporting Period**"). According to the statistics provided by Austria, its MAP caseload was as follows:

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	81	69	39	111
Other cases	114	98	68	144
Total	195	167	107	255

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

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

("**Terms of Reference**").[13] Apart from analysing Austria's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Austria, both during stage 1 and stage 2. 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements has been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Austria relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Austria should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. The tax treaties 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. In this respect, Austria noted that it has attempted to receive information on the position of the treaty partner with respect to the ratification of this treaty, upon which Austria can determine whether it will initiate the ratification process. So far it has not yet received a response from the treaty partner. Furthermore, an amending protocol to the existing treaty with Russia (2018) was signed, which has entered into force. Annex A includes an overview of Austria's tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex, the newly negotiated treaties that replace existing treaties, as well as amending protocols to existing treaties are taken into account.
2. Austria continues to apply the 1978 treaty with former Czechoslovakia to the Slovak Republic.
3. This concerns the treaties with Armenia, Bahrain, Bosnia and Herzegovina, Chile, North Macedonia, Germany, Japan, Kosovo, Mongolia, San Marino and Switzerland.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: https://eur-lex.europa.eu/eli/dir/2017/1852/oj.

6. Available at: www.oecd.org/tax/treaties/beps-mli-position-austria-instrument-deposit.pdf.

7. *Ibid*. 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".

8. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-austria-stage-1-9789264285750-en.htm.

9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.

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

11. The 2016 and 2017 MAP statistics of Austria are included in Annex B and C of this report.

12. MAP Statistics Reporting Framework, in *Peer Review Documents* (OECD 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

13. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Reference

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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 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, 86 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention 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.[1] Of the four remaining treaties, one does not contain a provision reflecting the first sentence of Article 25(3). The other three treaties include a provision that is based on Article 25(3) first sentence, of the OECD Model Tax Convention, but that deviates from this sentence for the following reasons:

- In one treaty the provision only applies regarding the "application" of the treaty and not the "application" and "interpretation".
- In one treaty the provision only relates to "difficulties" regarding the application and interpretation of the treaty and not "difficulties" and "doubts".
- In one treaty a provision that has similarities with Article 25(3), first sentence is contained, but it does not include all the required wording and for that reason is not considered to have the full equivalent.

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

4. All peers that provided input indicated that their treaty with Austria meets the requirement under element A.1. The relevant treaty partners to the five treaties identified above did not provide peer input.

Recent developments

Bilateral modifications

5. Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which was also the case for the treaty that has been replaced. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

6. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

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

8. In regard of the four tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Austria listed two as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for these two a notification that they do not contain a provision described in Article 16(4)(c)(i). Both relevant treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Austria as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(i).

9. Of the two treaty partners mentioned above, both have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for this treaty between Austria and the treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

10. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Austria has put in place a comprehensive and detailed plan for bringing these treaties in line with that standard. Concerning the two treaties that are not in line with element A.1 and will not be modified by the Multilateral Instrument, Austria

reported that both treaties are currently in the process of being renegotiated and for which Austria strives at including the first sentence of Article 25(3) of the OECD Model Tax Convention.

Peer input

11. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Austria. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer mentioned that there has not been any contact or actions with Austria regarding meeting the requirements under the Action 14 Minimum Standard. The other peer for which the treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

12. Austria responded to the input by this peer and stated that it started negotiations with this treaty partner on the amendment of the treaty in 2010, in which Austria proposed to change the MAP provision in accordance with the 2014 version of the OECD Model Tax Convention. Since then Austria is awaiting a response to its proposal, for which it sent the last reminder in 2014. To this Austria added that it will send out another reminder to this peer shortly. In a reaction, the peer stated that it provided a response to the reminder, outlining that it was unable to resume negotiations in the short-term, as the current priority is on finalising the implementation of the Multilateral Instrument.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	Four 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. Of these four treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include the required provision. For these two treaties negotiations are pending.	For the two treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Austria should continue negotiations to include the required provision.

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

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

14. 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

15. Austria reported that it has implemented a bilateral APA programme, under which 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, the latter which is further described in part C.

16. Austria has not issued specific guidance relating to its APA programme, the conditions for requesting and entering into bilateral APAs, on what information taxpayers should include in a request for a bilateral APA, what the steps for obtaining such APA are and the timing of these steps, the rights and role of taxpayers in the process, and other relevant information on the APA process.

Roll-back of bilateral APAs

17. Austria reported it is under its APA programme 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 process of obtaining an 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.

Recent developments

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

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 March 2017 (stage 1)

19. Austria indicated that it did not receive any requests for roll-back of bilateral APAs in the period 1 January 2016-31 March 2017.

20. 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 APAs. With respect to the period 1 January 2016-31 March 2017, none of the peers that provided input received any request for the roll-back of a bilateral APA, whereby some of them reported that they did not receive a request for a bilateral APA concerning Austria at all. One peer, however,

noted that roll-backs of bilateral APAs with Austria are possible in appropriate cases and have been applied previously.

Period 1 April 2017-30 September 2018 (stage 2)

21. Austria reported that since 1 April 2017 it has received ten requests for bilateral APAs, all of which were accepted into the process and are currently being negotiated with the relevant treaty partners. None of these APA requests concern a request for roll-back.

22. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. Furthermore, four peers specifically provided input relating to element A.2. One of these peers mentioned it has no experiences with Austria concerning bilateral APAs or roll-back of such APAs, while a second peer noted that since 1 April 2017 it did not receive any application for a bilateral APA or a roll-back thereof concerning Austria. The third peer repeated its earlier input by stating that it has not received any request for a roll-back of a bilateral APA, but that it applied such roll-backs with Austria in the past. It also mentioned that it negotiated two renewals of bilateral APAs. Lastly, the fourth peer mentioned that it received a request for a bilateral APA in 2017, which regards the period 2017-21 and for which no issues were encountered to reach an agreement in 2017. This APA, however, did not concern a roll-back. Austria confirmed the correctness of this input.

Anticipated modifications

23. Austria indicated that it envisages including information on its APA programme with the update of its MAP guidance and its Transfer Pricing Guidelines, which are currently being prepared. The information would also include guidance on roll-back of bilateral APAs. Austria further reported that it will make available an English language version of the guidance in the future. In July 2019, the update to the MAP guidance was published (including an unofficial English translation), which was after the ending of the peer review process. Section E of this updated guidance includes information on Austria's APA programme, which concerns:

- a general outline of the APA programme and legal basis of this programme
- the process for obtaining an APA, including the information to be included in a request for an APA and a schematic overview
- the possibility of roll-back of bilateral APAs
- the effect of a concluded APA, its implementation and monitoring
- the possibility of cancellation, revocation or renewal of granted APAs.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 86 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

References

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, https://doi.org/10.1787/g2g972ee-en.

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

Part B

Availability and access to MAP

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

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

24. 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

25. Out of Austria's 90 tax treaties, two contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either contracting state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by the domestic law of either state. Furthermore, 67 treaties contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report.[1]

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

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

27. The 18 treaties mentioned in the first row of the table are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention 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).
- 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).

28. The non-discrimination provision in the remaining two treaties are almost identical to Article 24(1) of the OECD Model Tax Convention and applies both to nationals that are resident of one of the contracting states as to nationals that are not. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by the absence or a limited scope of the non-discrimination article, following which both treaties are considered not to be in line with this part of element B.1.

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

30. The treaty mentioned in the last row of the table incorporates a provision in the protocol to this tax treaty, which reads:

> With reference to paragraph 1 of Article 25, the expression "notwithstanding the remedies provided by the national laws" means that the mutual agreement procedure

> is not alternative with the national contentious proceeding which shall be, in any case where this is legally possible, preventively initiated, when a claim is related with an assessment of the taxes not in accordance with his Convention.

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

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

32. Out of Austria's 90 tax treaties, 71 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.[2]

33. The remaining 19 that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period less than 3 years for a MAP request (two years)	5
No filing period for a MAP request	14

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

Practical application

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

35. As noted in paragraphs 29-30 above, in all but two of Austria's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Austria reported that access to MAP is available regardless of whether for the relevant case under review domestic available remedies have been initiated or where judicial and administrative remedies already led to a decision. Austria, however, also noted that under its domestic law its competent authority is not allowed to derogate from decisions of domestic courts in a MAP process. To avoid that a court renders a decision before a MAP case is closed, it is, pursuant to section 281 of the Federal Fiscal Code, possible in Austria to suspend domestic appeals procedures until the case under review is resolved in MAP. Where the taxpayer requests a continuation of the appeals procedure while the case is under consideration in MAP, the suspension procedure is no longer valid and it may constitute a ground for interrupting or ending the MAP, which, however, is dependent on the situation of each case.

36. Sections B.2.1.1 and B.6.3 of Austria's MAP guidance specifically confirms that taxpayers are in Austria allowed to request MAP assistance and seek to resolve the same dispute via domestically available judicial and administrative remedies. Those sections also include information on how the MAP process is conducted in relation to these domestic remedies. Furthermore, section C.1.3 of Austria's MAP guidance clarifies the relationship between the arbitration procedure and domestic remedies, where it is stated that an arbitration procedure under a tax treaty may not be pursued if a domestic court has decided

the case. If the court case has been suspended, the arbitration procedure can be initiated. In addition, section D.3.2 of that guidance notes that as Austria is not allowed to deviate from court decisions, the arbitration procedure under the EU Arbitration Convention will not be applied unless taxpayers withdraw or waive appellate remedies.[3]

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

37. Austria reported that for those 14 tax treaties that do not contain a filing period for MAP requests, 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 five years for taxes on income and capital, with an absolute deadline of ten years. Austria further 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.

38. While a period of ten years is extensive, these rules nevertheless bear the risk that in a specific case 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. In this respect, Austria noted that the domestic statute of limitation only commences as from the end of the respective taxable period. Actions by the tax administration to assess the taxpayer's tax return would prolong the period for the time taken to complete such actions. While Austria acknowledged there is a risk this period is less than three years as from the first notification of the action resulting in taxation not in accordance with the treaty, it noted that in its view this risk is minimal, if not merely theoretical, and that in practice no issues have arisen in relation hereto. Further to the above, Austria reported that since 1 April 2017 it has in five cases received a MAP request under a treaty that does not contain a filing period for MAP request and that access to MAP was granted in all situations.

Recent developments

Bilateral modifications

39. Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, which was also the case for the treaty that has been replaced. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

40. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

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

41. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final

report. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. Article 16(4)(a)(i) will not take effect for a tax treaty if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

42. With the signing of the Multilateral Instrument, Austria reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[4] In this reservation, Austria declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The presence and application of such process will be further discussed under element B.2.

43. In view of the above, following the reservation made by Austria, those five tax treaties identified in paragraphs 28-30 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

45. In regard of the five tax treaties identified in paragraph 32 above that contain a filing period for MAP requests of less than three years, Austria listed three of these five treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that these three treaties do not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Austria under that instrument and also made such a notification.

46. Of the three treaty partners mentioned above, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for these treaties between Austria and the treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. The remaining treaty will, upon on

entry into force for this treaty, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Other developments

47. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Austria has put in place a comprehensive and detailed plan for bringing these treaties in line with that standard. Concerning the follow-up to this plan, Austria reported it has conducted the following actions:

- For the four treaties that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, three are currently in the process of being renegotiated and for which Austria strives at including the first sentence of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report. For the remaining treaty, Austria has contacted the relevant treaty partner to initiate such negotiations.
- For the treaty that does not contain a filing period for MAP requests of at least three years, Austria has contacted the relevant treaty partner to initiate negotiations on the inclusion of the second sentence of Article 25(1) of the OECD Model Tax Convention. With this treaty partner negotiations have been initiated.
- For the treaty that does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention, Austria has contacted the relevant treaty partner to initiate negotiations on the inclusion of this provision. With this treaty partner negotiations have been initiated.

Peer input

48. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Austria. Two of these peers concern a treaty partner to the treaties identified above that do not contain Article 25(1), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. The first peer mentioned that the position put forward by Austria – as reflected above – is correct and that it is indeed in negotiations with Austria on the renegotiation of the treaty. The second peer confirmed that it has recently been approached by Austria with a view to initiate such negotiations. Furthermore, a third peer mentioned that while its treaty with Austria is considered to be in line with the requirements under element B.1, its treaty does not incorporate the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read in the 2014 version. It confirmed that Austria contacted them with a view to initiate such negotiations to include this equivalent.

Anticipated modifications

49. Austria reported it will seek to include Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report in all of its future tax treaties. This is also reflected in section B.2.1.1 of Austria's MAP guidance after its update in July 2019.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. None of these four treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For these four treaties negotiations are pending.	For the four treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended in the Action 14 final report, Austria should continue negotiations to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these four treaties: • Two have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty negotiations are pending to include the required provision.	For the remaining treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that has not been or will not be modified by the Multilateral Instrument to include such equivalent, Austria should continue such negotiations with respect to the treaty partner to include the required provision.
	One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report, and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and a three year filing period for MAP request. For this treaty negotiations are pending to include the required provision.	For the treaty that does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include such equivalent, Austria should continue such negotiations with respect to the treaty partner to include the required provision. This concerns a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention either: • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	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.	As it has done in practice, Austria should continue to 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).

50. 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

51. As discussed under element B.1, out of Austria's 90 tax treaties, two currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of the other 88 tax treaties will, following Austria's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

52. Austria reported that in the beginning of 2017 it has introduced internal instructions to staff in charge of MAP 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.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

54. Austria reported that even though in 2016 no documented bilateral consultation process was formally in place, there was in 2016 one MAP case for which 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 in the period 1 January 2016-31 March 2017 its competent authority has for none of MAP requests received decided that the objection raised by the taxpayer was not justified. The 2016 MAP statistics submitted by Austria also show that none of its MAP cases was closed with the outcome "objection not justified".

55. All but one peer that provided input indicated not being aware of any cases for which Austria's competent authority denied access to MAP in the period 1 January 2016-31 March 2017. They also reported not having being consulted/notified of a case where the competent authority of Austria considered the objection raised in a MAP request as not justified, which can be clarified by the fact that no such instances have occurred in Austria during this period. 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 (reflected above), confirmed that it was informed of this decision.

Period 1 April 2017-30 September 2018 (stage 2)

56. Austria reported that since 1 April 2017 its competent authority decided in three cases that the objection raised by the taxpayer in its MAP request was not justified. The reasons for such decisions were (i) that the taxpayer failed to comply with information/documentations requirements, even after being requested so, (ii) the MAP request did not relate to a taxation that would be contrary to the provisions of the treaty, and (iii) or where the person was not a resident for tax purposes in either of the contracting states and where the case did not relate to the non-discrimination provision. Austria further reported that in all these three cases the relevant two treaty partners were notified of this consideration and that the final decision not to proceed with the case was only taken after consultation with these competent authorities, which was in 2018. In all three instances the other competent authorities concerned agreed with the conclusion by Austria's competent authority.

57. The 2017 MAP statistics submitted by Austria show that in none of its MAP cases were closed with the outcome "objection not justified", which confirms with the above analysis, as the decision in the three cases were only made in 2018.

58. Almost all of the peers that provided input during stage 1 also indicated that since 1 April 2017 they are not being aware of any cases for which Austria's competent authority considered the objection raised in a MAP request as not justified. Concerning the three cases for which Austria's competent authority considered the objection raised by the taxpayer in its MAP request as not being justified, the peers confirmed that they were notified and consulted.

Anticipated modifications

59. Austria did not indicate that it anticipates any modifications in relation to element B.2. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. In section B.2.1.3 of the

updated guidance criteria are included on what basis it will be assessed whether a MAP request is admissible and whether the objection raised is justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

60. 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

61. Out of Austria's 90 tax treaties, 61 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the other treaty partner.[5] Furthermore, in 26 tax treaties such a provision is not contained. The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention. However, as under these treaties a corresponding adjustment can only be made via the mutual agreement procedure, they are considered not having the full equivalent of Article 9(2).

62. 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.

63. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Austria's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Austria indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, such regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

64. While, Austria's MAP guidance does not explicitly clarify whether taxpayers have access to MAP in transfer pricing cases, in section B.2.1.1 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.

Recent developments

Bilateral modifications

65. Austria signed new treaties with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention. This was not the case for the treaty that has been replaced. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

66. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

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

68. Austria has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 29 tax treaties identified in paragraph 61 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Austria listed 17 as a covered tax agreement under the Multilateral Instrument and for two of these 17 treaties did it make a notification on the basis of Article 17(4).[6]

69. With regard to those two latter treaties, one treaty partner has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Austria already contains the equivalent of Article 9(2) and the other treaty partner also made a notification on the basis of Article 17(4). This latter treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Austria and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

70. With regard to the remaining 15 treaties for which Austria did not make a notification on the basis of Article 17(4), all treaty partners are a signatory to the Multilateral Instrument and listed their tax treaty with Austria under that instrument. However, two of these 15 treaty partners have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Austria already contains the equivalent of Article 9(2). Concerning the remaining 13 treaty partners, six have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Austria and these treaty partners, and therefore have superseded relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).[7] The other seven treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

71. Austria reported that it has in the period 1 January 2016-31 March 2017 not denied access to MAP on the basis that the case concerned was a transfer pricing case.

72. All peers that provided input indicated not being aware of a denial of access to MAP by Austria in the period 1 January 2016-31 March 2017 on the basis that the case concerned was a transfer pricing case. One of these peers also noted that Austria notified the peer's competent authority about the case and provided all relevant information.

Period 1 April 2017-30 September 2018 (stage 2)

73. Austria reported that since 1 April 2017 it has also not denied access to MAP on the basis that the case concerned was a transfer pricing case.

74. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. In addition, two peers confirmed that Austria provided access to MAP in a transfer pricing case under the treaty with these peers.

Anticipated modifications

75. Austria reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. For those treaties for which Article 9(2) of the OECD Model Convention is not included, Austria reported that it strives to include this provision in all of its tax treaties and to that effect signed without any reservations the Multilateral Instrument. If the effect of this instrument is that Article 9(2) will not be incorporated in the relevant tax treaties, Austria pointed to the fact that this follows from either the fact that the treaty partner did not sign the Multilateral Instrument or choices made by them in that instrument. In this respect, Austria mentioned it has not initiated bilateral negotiations only to include the equivalent of Article 9(2), also because having such a provision is a

best practice. Where, however, negotiations with treaty partners are pending or where Austria contacted these partners to initiate such negotiations, *inter alia*, with a view to bring these treaties in line with the Action 14 Minimum Standard, Austria proposed to include Article 9(2), or, alternatively, the conclude a bilateral consultation on the basis of Article 25(3) of the OECD Model Tax Convention to clarify that transfer pricing cases can be dealt with in MAP in the absence of Article 9(2).

76. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. As a consequence of the update, the 2015 version of the MAP guidance as well as paragraphs 351-358 of the Transfer Pricing Guidelines have been repealed. Section B.2.1.1 now includes examples of cases for which taxpayers can request the initiation of the mutual agreement procedure, which includes transfer pricing cases. Furthermore, section B.8 specifically confirms that the MAP process is available for transfer pricing cases, including a statement that access to MAP in such cases will be given regardless of whether the tax treaty contains Article 9(2) of the OECD Model Tax Convention.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

77. 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

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

79. 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 discretion is also reflected 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.[8] Giving such discretion to the competent authority, however, bears the risk that access to MAP can be denied for cases concerning the application of treaty or domestic anti-abuse provisions.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

81. Austria reported that it has in the period 1 January 2016-31 March 2017 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. In this respect, Austria specified that it received one MAP request relating to a case that could potentially concern the application of anti-abuse measures and that access to MAP was granted in this particular case.

82. All peers that provided input 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 in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

83. Austria reported that since 1 April 2017 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is conflict with the provisions of a tax treaty. Austria further reported that in this period it received two MAP requests relating to cases that could potentially concern the application of anti-abuse measures and that access to MAP was granted in both cases.

84. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

85. Austria reported that it is working to update its MAP guidance and its Transfer Pricing Guidelines in relation to access to MAP in abusive cases. In more detail, with this update it will delete the respective statement in section B.2.1.3 of its MAP guidance as well as paragraph 4.2 of its Transfer Pricing Guidelines concerning this subject. With the

update, Austria will also reflect its policy and practice to give access to MAP in all eligible cases, thus also including cases concerning the application of anti-abuse provisions. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. As a consequence of the update, the 2015 version of the MAP guidance as well as paragraphs 351-358 of the Transfer Pricing Guidelines have been repealed. The updated guidance no longer includes the statement 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. The statement now included in section B.2.1.3 now clearly states that access to MAP will not be denied in case of the application of anti-abuse provisions. Taking this into account, the risk of denial of access in such cases, as was identified in the stage 1 report no longer is apparent.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

86. 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

Audit settlements

87. Austria reported that in its domestic law no provision is included allowing taxpayers and the tax authorities enter into a settlement during the course of or after an audit has been completed. While in practice it may occur that an auditor enters into an "agreement" with the taxpayer, such agreement does not have any legal relevance in Austria and it does not preclude access to domestic legal remedies or to the MAP process.

88. In this respect, Austria stated that it will not deny access to MAP for cases where a taxpayer and the tax authorities have entered into such settlement. However, neither its MAP guidance nor its Transfer Pricing Guidelines include any information in relation hereto.

Administrative or statutory dispute settlement/resolution process

89. Austria reported that it does not have an administrative or statutory dispute settlement/resolution process in place that allows its competent authority to deny access to MAP for issues resolved through that process

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

91. Austria reported that in the period 1 January 2016-31 March 2017 it has not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. However, no such cases in relation hereto were received in that period.

92. All peers that provided input have indicated not being aware of a denial of access to MAP by Austria in the period 1 January 2016-31 March 2017 in case there was already an audit settlement between the taxpayer and the tax authorities.

Period 1 April 2017-30 September 2018 (stage 2)

93. Austria reported that since 1 April 2017 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities. However, no such cases in relation hereto were received in that period.

94. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

95. Austria did not indicate that it anticipates any modifications in relation to element B.5. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. As a consequence of the update, the 2015 version of the MAP guidance as well as paragraphs 351-358 of the Transfer Pricing Guidelines have been repealed. The updated guidance now includes in section B.2.1.3 an explicit statement that the entering into an audit settlement will not preclude access to MAP.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	

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

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

96. 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

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

98. In section B.4 of Austria's MAP guidance it is mentioned that taxpayers are required to assist in the procedure by inter alia submitting evidence. In instances where they did not provide the required information or documentation as set out in Austria's MAP guidance, Austria reported that its competent authority either asks the taxpayer directly to provide the missing information or it will contact the local tax authorities in order to obtain such information. Austria further reported that 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 Austria's competent authority. In that regard, Austria clarified that such extension is only possible after taxpayers submitted a MAP request and when its competent authority requested additional information. Such extension can be requested informally, but also in writing or by e-mail. Furthermore, there is no fixed time limit for requesting an extension and there is no formalised procedure for granting or denying requests for an extension, but Austria mentioned that in practice it will generally be granted.

99. If, however, the taxpayer did, after being requested so, still not provide sufficient information for a consideration of the case, Austria reported that its 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 then still does not provide the requested information and such information is also not available from other sources such as the local tax authorities, then Austria's competent authority would limit access to MAP.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

101. According to Austria it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements by its competent authority and as set out in its MAP guidance. In this respect, Austria reported it has in the period

1 January 2016-31 March 2017 not limited access to MAP cases on the grounds that the information in the MAP request was not the information or documentation required by its competent authority. 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 provision included in Austria's tax treaties.

102. All peers that provided input have indicated not being aware of a limitation of access to MAP by Austria in the period 1 January 2016-31 March 2017 in situations where taxpayers complied with information and documentation requirements set out in the MAP guidance of Austria.

Period 1 April 2017-30 September 2018 (stage 2)

103. Austria reported that since 1 April 2017 it has also not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

104. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

105. Austria did not indicate that it anticipates any modifications in relation to element B.6. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. The updated guidance now includes in section B.2.1.2 a description of the process for requesting additional information by the taxpayer when its MAP request is considered incomplete. It is stated that with the request for additional information, generally a deadline of six weeks is given to the taxpayer to provide the information (which can under certain circumstances be extended). It also describes the further process when taxpayers do not provide the requested information, even after being reminded so, which reflects Austria's practice discussed in paragraphs 98-99 above. Furthermore, the updated guidance in section B.2.1.3 also reflects the process and timing for requesting additional information under those treaties for which part VI of the Multilateral Instrument applies.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

106. 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, 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

107. Out of Austria's 90 tax treaties, 82 contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[9] The remaining eight treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence.

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

109. 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 its treaty with Austria via signing the Multilateral Instrument. Peers further did not mention any pending bilateral negotiations to amend their treaty with Austria.

Recent developments

Bilateral modifications

110. Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This was not the case for the treaty that has been replaced. The effect of these newly signed treaty has been reflected in the analysis above where it has relevance.

Multilateral Instrument

111. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

112. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. In other words,

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

113. In regard of the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Austria listed five as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), for all of them a notification that they do not contain a provision described in Article 16(4)(c)(ii). All relevant five treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Austria as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii).

114. Of the five treaty partners mentioned above, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for these treaties between Austria and the treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. The remaining three treaties will, upon entry into force for these treaties, be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention

Other developments

115. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Austria has put in place a comprehensive and detailed plan for bringing these treaties in line with that standard. Concerning the three treaties that are not in line with element B.7 and will not be modified by the Multilateral Instrument, Austria reported that two treaties are currently in the process of being renegotiated and for which Austria strives at including the second sentence of Article 25(3) of the OECD Model Tax Convention. Furthermore, for one treaty Austria reported it has approached the treaty partner with a view to renegotiate the entire treaty.

Peer input

116. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Austria. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer confirmed it has been contacted by Austria with a view to initiate treaty negotiations, inter alia, to include the second sentence of Article 25(3). The other peers for which the treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	Eight out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention Of these eight treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three will not be modified by the Multilateral Instrument to include the required provision. These three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the three treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending to include the required provision.

[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.

118. 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

119. 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/Verstaendigungsverfahren.html

120. 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:

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

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)
Arbitration under tax treaties • Arbitration under Austria's tax treaties • Relationship with domestic available remedies
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, phases of the mutual agreement procedure, exchange of position papers and implementation) • The arbitration procedure (relationship with domestic available remedies, appointment of the advisory commission, applicable procedures, implementation and costs)

121. 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.

122. 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

123. 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
- ☐ 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.

124. 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
- appropriate documentation (e.g. tax assessment notices and tax audit report) which may be of relevance to MAP.

Recent developments

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

Anticipated modifications

126. Austria reported that it is in the process of substantially revising its MAP guidance as well as its Transfer Pricing Guidelines in relation to MAP, such 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 (e.g. the adoption of the EU's Tax Dispute Resolution Directive). This updated MAP guidance will:

- clarify that the taxpayer who submits a MAP request will be given a notification of receipt by Austria's 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" (see also element B.4)
- clarify that audit settlements between tax authorities and taxpayers do not preclude access to MAP
- clarify the relationship between MAP and domestic procedures
- clarify the rights of taxpayers during MAP.

127. Austria further reported that it also is working 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, (ii) the contact details to be provided by the taxpayer or its advisor, (iii) whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes, (iv) whether the issue(s) involved were dealt with previously and (v) a statement confirming that all information and documentation provided in the MAP request is correct and complete and that the taxpayer will assist the competent authority in conducting the MAP process in a reasonable time.

128. As regards the timing of the update of the MAP guidance and its Transfer Pricing Guidelines, Austria reported that the update is foreseen by the second half of 2019. In July 2019, the update to the MAP guidance was published (including an unofficial English translation), which was after the ending of the peer review process. As a consequence of the update, the 2015 version of the MAP guidance as well as paragraphs 351-358 of the Transfer Pricing Guidelines have been repealed. With this update the items mentioned in paragraphs 126-127 above have been reflected, apart from the information in relation to the Tax Dispute Resolution Directive, for which it is in section A.1 stated that such information will be included in the next update of the guidance. In addition, the update guidance includes examples of cases for which a MAP request can be submitted and information on:

a. the initial assessment of the MAP request, once submitted
b. the availability of MAP for transfer pricing cases
c. the functioning of part VI of the Multilateral Instrument and its effects on Austria's tax treaties
d. the APA programme of Austria.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

129. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.[10]

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

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

https://www.bmf.gv.at/steuern/int-steuerrecht/Verstaendigungsverfahren.html

131. This guidance was last updated in July 2019. 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

132. The MAP profile of Austria is published on the website of the OECD, which was last updated in October 2017.[11] 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.

Recent developments

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

Anticipated modifications

134. Austria reported that with the envisaged update of its MAP Guidance and its Transfer Pricing Guidelines it intends to publish an English language version of the MAP guidance. In July 2019, the update to the MAP guidance was published (including an unofficial English translation), which was after the ending of the peer review process.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

135. 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 processes mentioned previously.

MAP and audit settlements in the MAP guidance

136. As previously discussed under B.5, in Austria it is under domestic law not possible that the tax authorities and taxpayers enter into audit settlements during the course of or after an audit has been completed. The previous version of Austria's MAP guidance, however, did not include information on whether access to MAP is available in case where the tax administration and taxpayers entered into an audit settlement (see paragraph 142 below).

137. All peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Austria's MAP guidance.

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

138. As previously mentioned under element B.5, Austria does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, following which there is no need to include information hereon in Austria's MAP guidance.

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

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

140. As Austria does not have an administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

Recent developments

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

Anticipated modifications

142. As was discussed under element B.8, Austria reported that it is in the process of updating its MAP guidance, in which it will also be stated that access to MAP is not restricted for cases where taxpayers and the tax administration have entered into an audit settlement. In July 2019, Austria published an update to MAP guidance (including an unofficial English translation), which was after the ending of the peer review process. As a consequence of the update, the 2015 version of the MAP guidance as well as paragraphs 351-358 of the Transfer Pricing Guidelines have been repealed. The updated guidance now includes in section B.2.1.3 an explicit statement that the entering into an audit settlement will not preclude access to MAP. Taking this into account, Austria has followed up on the recommendation included in the stage 1 peer review report.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 67 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
2. These 71 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
3. Ibid.
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-instrument-deposit.pdf.
5. These 61 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
6. These 17 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
7. Ibid.
8. 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.
9. These 82 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
10. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
11. Available at: www.oecd.org/tax/dispute/Austria-Dispute-Resolution-Profile.pdf.

References

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, https://doi.org/10.1787/g2g972ee-en.

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris, https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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.

143. 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, 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

144. Out of Austria's 90 tax treaties, 87 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.[1] The remaining three treaties include a provision that is based on or has similarities with Article 25(2), first sentence, of the OECD Model Tax Convention, but are for the following reasons not considered equivalents of that provision:

- 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" (one treaty).
- The possibility to discuss a case in the MAP process 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. Such an obligation may prevent that cases are effectively dealt with in MAP (one treaty).

- 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).

145. In view of the above, 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, taxpayers cannot submit a MAP request. However, a MAP pursuant to Article 25(3), first sentence, of the OECD Model Tax Convention could be entered into.

146. All peers that provided input mentioned that their treaty with Austria meets the requirement under element C.1. The relevant treaty partners to the four treaties identified above did not provide peer input.

Recent developments

Bilateral modifications

147. Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have, entered into force and contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which also was the case for the treaty that is replaced. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

148. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

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

150. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Austria listed one of them as a covered tax agreement under the Multilateral Instrument, but did for this treaty not make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, the Multilateral Instrument will not modify any of these three treaties to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

151. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Austria has put in place a comprehensive and detailed plan for

bringing these treaties in line with that standard. Concerning the three treaties that are not in line with element C.1 and will not be modified by the Multilateral Instrument, Austria reported that one treaty currently is in the process of being renegotiated and for which Austria strives at including the first sentence of Article 25(2) of the OECD Model Tax Convention. Furthermore, for the two remaining treaties, Austria reported it has approached the relevant treaty partners with a view to renegotiate the entire treaty.

Peer input

152. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Austria. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer confirmed it has been contacted by Austria with a view to initiate treaty negotiations, inter alia, to include the first sentence of Article 25(2). The other peers for which the treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	Three 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. None of these treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. These three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the three treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or continue negotiations if they are pending to include the required provision.

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

154. 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

155. 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]

156. 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 its 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]

157. With respect to post-2015 cases, Austria reported that for the year 2016 it has reached out to almost all of its MAP partners with a view to have their MAP statistics matching. For this year, Austria indicated that it could match its statistics with these MAP partners. For the year 2017, Austria mentioned it has reached out to all of these major MAP partners, for which it was able to match the statistics. Concerning the other MAP partners, Austria mentioned that it has not reached out to them, as it considered that the statistics were match during the year and there was no indication otherwise.

158. Six peers provided input on the matching of MAP statistics with Austria, five of which confirmed that they were able to match their statistics with Austria. The sixth peer mentioned that there were not any contacts with Austria regarding the matching of statistics. Of these five peers, one mentioned that it was contacted by Austria for the matching of the 2016 statistics, while it contacted Austria for the matching of the 2017 statistics. The peer further reported that for both cases they were able to successfully match their statistics. A second peer mentioned it successfully and efficiently matches its MAP statistics with Austria for both 2016 and 2017. To this it added that any inquiries made by the peer to Austria in this respect were answered quickly and any mismatches in information were successfully resolved. The third peer mentioned that it has reached out to Austria and was able to match the statistics.

159. Based on the information provided by Austria's MAP partners, its post-2015 MAP statistics for 2016 and 2017 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

160. Austria reported that it has in place a system to monitor its MAP caseload, which takes into account the requirements under the MAP Statistics Reporting Framework. Austria further clarified that all MAP cases that it has either already completed or that are currently pending, are recorded, alongside all specific information that is needed to handle each MAP case. This latter concerns *inter alia*: (i) date of the MAP request, (ii) start and end date of each case and (iii) responsible case handler. Each employee is thereby responsible to frequently follow-up on its MAP case and to update the monitoring system.

161. Austria further reported that due to the required implementation of the EU Tax Dispute Resolution Directive by June 2019, it will put a new monitoring system in place that

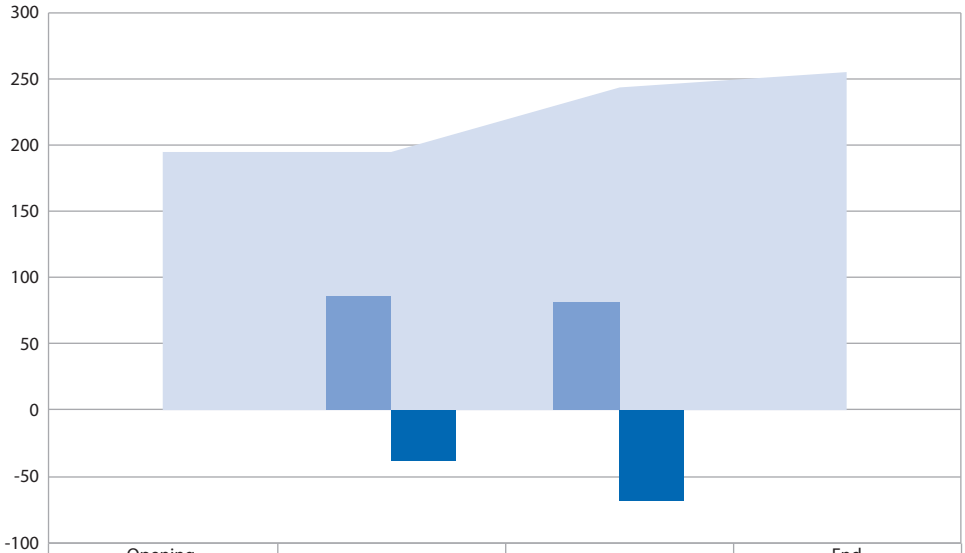
monitors the procedural status of all pending MAP-cases from initiation to implementation. It will also register and monitor the adherence to the time limits constituted in the directive and the OECD suggested deadlines. The system will further generate automatic notifications when a deadline is approaching. To this Austria added that the to be put in place monitoring system is intended to automatically generate MAP-statistics for cases that were initiated under a tax treaty, the EU Arbitration Convention or the Tax Dispute Resolution Directive.

Analysis of Austria's MAP caseload

162. The analysis of Austria's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017.

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

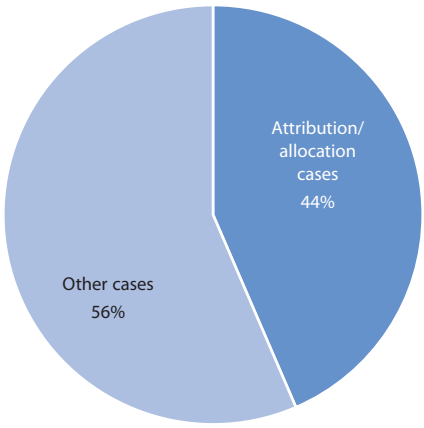
Figure C.1. **Evolution of Austria's MAP caseload**



	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	195	195	243	255
Cases started		86	81	
Cases closed		-38	-69	

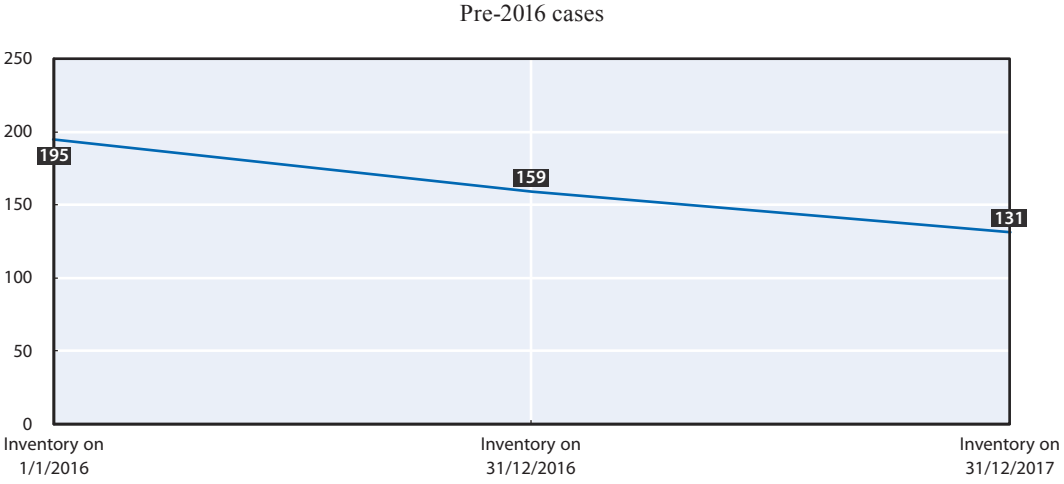
164. At the beginning of the Statistics Reporting Period, Austria had 195 pending MAP cases, of which 81 are attribution/allocation cases and 114 other MAP cases.[5] At the end of the Statistics Reporting Period, Austria had 255 MAP cases in its inventory, of which 111 are attribution/allocation cases and 144 other MAP cases. Consequently, Austria's pending MAP cases have increased by 31% during the Statistics Reporting Period. This increase can be broken down into an increase by 37% for attribution/allocation cases and an increase by 26% for other cases. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. **End inventory on 31 December 2017 (255 cases)**



165. The following graph shows the evolution of Austria's pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. **Evolution of Austria's MAP inventory**



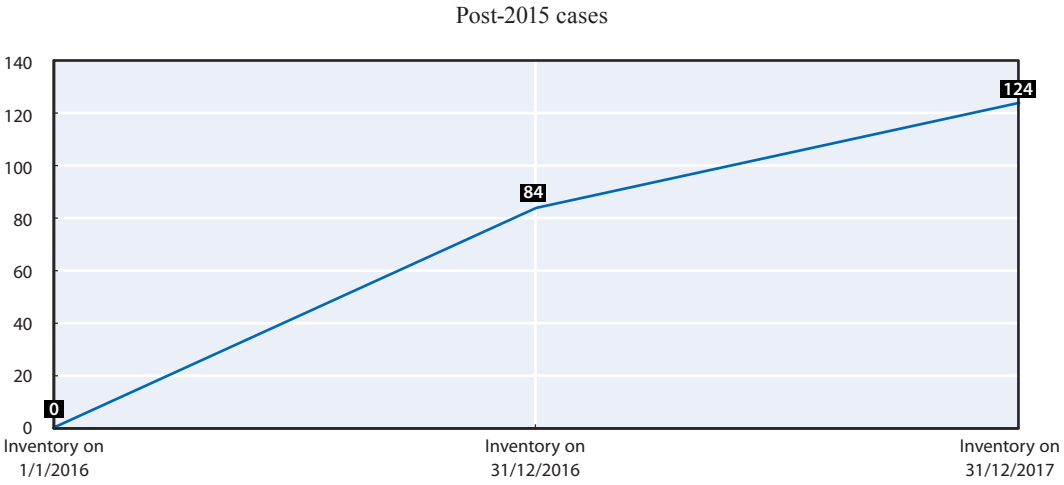
166. At the beginning of the Statistics Reporting Period, Austria's MAP inventory of pre-2016 MAP cases consisted of 195 cases, 81 of which were attribution/allocation cases and 114 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 131 cases, consisting of 57 attribution/allocation cases and 74 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016 + 2017)
Attribution/allocation cases	-15%	-17%	-30%
Other cases	-21%	-18%	-35%

Post-2015 cases

167. The following graph shows the evolution of Austria's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. **Evolution of Austria's MAP inventory**



168. In total, 167 MAP cases started during the Statistics Reporting Period, 69 of which concerned attribution/allocation cases and 98 other cases. At the end of this period the total number of post-2015 cases in the inventory was 124 cases, consisting of 54 attribution/allocation cases and 70 other cases. Conclusively, Austria closed 43 post-2015 cases during the Statistics Reporting Period, 15 of them being attribution/allocation cases and 28 other cases. The total number of closed cases represents 26% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	3%	38%	2%
Other cases	2%	61%	29%

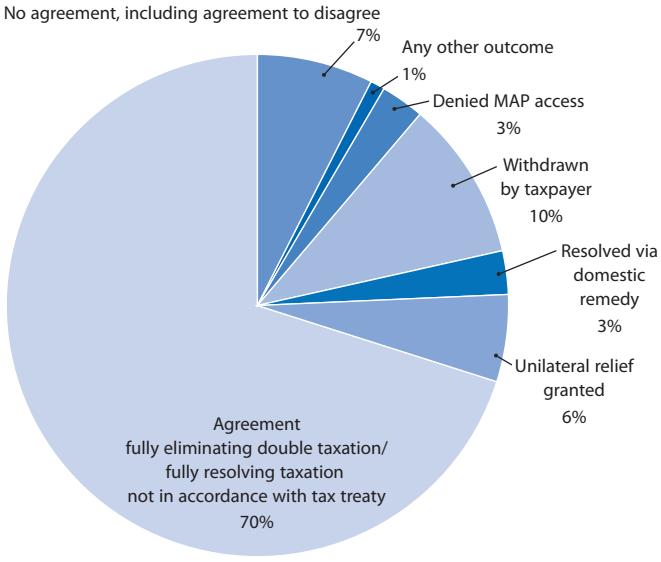
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

170. During the Statistics Reporting Period Austria in total closed 107 MAP cases for which the outcomes shown in Figure C.5 were reported.

171. Figure C.5 shows that during the Statistics Reporting Period, 75 out of the 107 cases were resolved through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Figure C.5. **Cases closed during 2016 and 2017 (107 cases)**



Reported outcomes for attribution/allocation cases

172. In total, 39 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (79%)
- withdrawn by taxpayers (10%)
- unilateral relief granted (8%).

Reported outcomes for other cases

173. In total, 68 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (65%)
- withdrawn by taxpayers (10%)
- No agreement, including an agreement to disagree (10%)

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

174. The average time needed to close MAP cases during the Statistics Reporting Period was 27.93 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	39	29.95
Other cases	68	27.17
All cases	107	27.93

Pre-2016 cases

175. For pre-2016 cases Austria reported that on average it needed 41.10 months to close 24 attribution/allocation cases and 40.19 months to close 40 other cases. This resulted in an average time needed of 40.53 months to close 64 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Austria used:

- *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.
- *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

176. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 24 months.

177. For post-2015 cases, Austria reported that on average it needed 10.30 months to close 15 attribution/allocation cases and 8.56 months to close 28 other cases. This resulted in an average time needed of 9.20 months to close 43 post-2015 cases.

Peer input

178. 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.

Recent developments

179. In the stage 1 peer review report Austria was under element C.2 recommended to seek to resolve the remaining 99% of its post-2015 MAP cases that were pending on 31 December 2016 (69 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

180. With respect to the recommendation, Austria reported it has not changed the number of staff handling MAP cases other than finding temporary replacement for staff on maternity leave, such to ensure that the competent authority remains to be fully staffed. In this respect, Austria clarified that in 2016 it has established a specific team handling attribution/allocation cases and that it first wants to analyse the effects of this team on the average time needed to close such cases before further assessing whether additional staff is necessary.

181. Austria further reported that it made some operational changes within its competent authority as to the handling and resolving of MAP cases. Both the general MAP teams and the transfer pricing MAP team have established a practice of holding annual or biannual face-to-face meetings with Austria's main MAP partners. The frequency of such meetings

may be further increased to deal with increases in MAP caseloads. Specific pertaining to the transfer pricing team, Austria specified that this team acts proactive in resolving pending MAP cases, such via organising regular face-to-face meetings and telephone conferences with Austria's main MAP partners for attribution/allocation cases. This resulted in an increase of such meetings and conference calls since 1 January 2017. In addition, Austria reported that also with 16 other MAP partners it has conducted several face-to-face meetings and conference calls, which has led to a swifter resolution of MAP cases with these partners.

182. As follows from the MAP statistics discussed above, Austria has during 2016 and 2017 not closed its MAP cases within the pursued average of 24 months. In 2016 it closed 2% of the post-2015 cases started in that year. By the end of 2017, Austria closed in total 25% of the post-2015 cases that started in 2016 and 2017. Furthermore, its MAP inventory has increased by 31% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

183. All peers that provided input during stage 1 confirmed that this input holds equally relevance for the period starting on 1 January 2017. Specific input on the resolution of MAP cases will be further discussed under element C.3.

Anticipated modifications

184. 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]	-	-

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

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

185. 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

186. The competent authority function to handle MAP cases is under Austria's tax treaties assigned to the Federal Ministry of Finance. This function is further delegated to the International Tax Law Directorate (IV/8). This directorate in practice 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.

187. The directorate employs 19 persons and is since 2016 organised in three units: a general MAP team, a transfer pricing MAP team and the Expert Group International Tax Law. Prior to July 2016, the International Tax Law Directorate consisted of six persons and one head of the 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 the local tax authorities. 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.

188. 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 the local tax authorities in the field of international tax law.

189. In view of the above, Austria reported that both the Expert Group on International Tax Law and the transfer pricing team are supervised by the head of Directorate IV/8.

Monitoring mechanism

190. 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.

Recent developments

191. As noted in paragraphs 179-181 above, Austria has performed several organisational changes within its competent authority function to increase the number of closed MAP cases and to ensure a more timely closure of such cases. At the competent authority level this concerns the establishment of a practice to schedule annual or biannual face-to-face meetings with Austria's main MAP partners, as also a significant increase in the rate of encrypted email communications. If needed due to an increase in the number of MAP cases, Austria reported that a further increase in the number of face-to-face meetings may be scheduled in the future. Specifically to the team that handles attribution/allocation cases, Austria reported that this team has established a very proactive approach to resolve pending cases, such via face-to-face meetings and conference calls with Austria's main MAP partners. This has resulted in more of such meetings and conference calls being held. Also with respect to other MAP cases, Austria reported it has conducted several face-to-face meetings and conference calls with in total 16 MAP partners. It further mentioned that these telephone conferences and face-to-face meetings have proved to be very efficient. Additionally, Austria specified that it has also significantly increased the rate of encrypted email communication with respect to MAP cases.

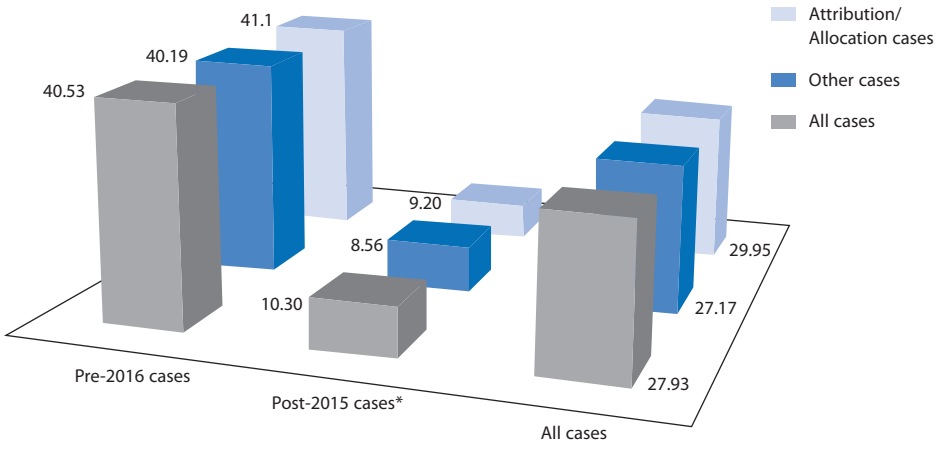
192. Further to the above, Austria also reported that staff in charge of MAP cases attends training on MAP provided by the OECD. Specifically relating to staff that handles attribution/allocation cases, Austria reported that they regularly participate in transfer pricing conferences and courses.

Practical application

MAP statistics

193. As discussed under element C.2, Austria has not resolved its MAP cases during the Statistics Reporting Period within the pursued 24-month average. This both concerns attribution cases and other cases and can be illustrated by the following graph:

Figure C.6. **Average time (in months) to close cases in 2016 or 2017**



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

194. With respect to the year 2016, Austria reported that of the 36 pre-2016 cases it closed during that year, 12 cases took considerably longer to close. For two cases the time needed to close 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.

195. 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 from the other competent authority concerned. 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 (four 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

- lack of response from taxpayer (one case), where the taxpayer only provided information with substantial delays, which caused a delay of approximately 18 months.

196. For the year 2017 Austria did not provide specific input.

197. The stage 1 peer review report of Austria analysed the 2016 statistics and showed an average of 37.29 months. It was on that basis concluded that it did not close MAP cases within the pursued average of 24 months, with both regarded attribution/allocation cases and other cases. Based on this average, it was concluded that the available resources for the MAP function may not be adequate and that 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.

198. The 2017 statistics show that Austria decreased the average completion time of MAP cases to 22.77 months, resulting in an average for both years of 27.93 months. Nevertheless, in both years the average completion time for attribution/allocation cases and other cases was above 24 months, with a slightly higher average for attribution/allocation cases. Furthermore – as analysed in element C.2 – the MAP inventory of Austria considerably increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2016/ Start inventory on 01/01/2017	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/ allocation cases	81	32	13	100	37	26	111
Other cases	114	54	25	143	44	43	144
Total	**195**	**86**	**38**	**243**	**81**	**69**	**255**

199. The fact that the average time to close MAP cases is for both category of cases above the pursued average of 24 months and given the increase in the number of MAP cases with 31% (60 cases) indicates that more resources may be necessary to cope with this increase and to ensure that for current and future MAP cases Austria will be able to resolve them within the pursued average of 24 months.

Peer input

Period 1 January 2016-31 March 2017 (stage 1)

200. 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.

201. 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.

202. 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.

Period 1 April 2017-30 September 2018 (stage 2)

203. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. Eight peers provided specific input on their experiences with Austria concerning the resolution of MAP cases since that date. Two of these eight peers mentioned that the position of Austria reflected above is correct and that a telephone conference was scheduled with a view to reach a swifter solution of a pending MAP case. A third peer mentioned that its competent authority and that of Austria have been in contact recently, whereby they agreed to handle the pending attribution/allocation, for which a position paper is due by Austria, more swiftly. Austria confirmed the correctness of this latter input. Furthermore, a fourth peer mentioned it has little experiences in handling and resolving MAP cases with Austria and it had two MAP cases opened since 1 April 2017. In one of these cases (an other case) its competent authority could provide for unilateral relief, while for the second case (an attribution/allocation case) it reported that Austria recently sent its position paper.

204. Two other peers also voiced positive input, noting that it has a very good experience in resolving MAP cases with Austria's competent authority. One of these peers mentioned that the resolution of such cases runs smoothly between their competent authorities, while the second peer mentioned that its experiences with Austria are good and further that in the period 1 April 2017-30 September 2018 they have resolved quite a few cases, whereby the co-operation was very good and efficient.

205. Further to the above, another peer also pointed to positive experiences with Austria, as responses to the peer's positions were quick and in most cases an agreement could be reached in a timely, effective and efficient manner. This peer also referred to two cases that have not been resolved yet and are pending for quite some time. One of these cases is pending longer than 25 months and has not been resolved yet. In the second case a confirmation letter on the case was received, which included the statement that a position paper will be sent in the future. The peer, however, reported that no response was yet received from Austria. In regard of this input, Austria responded that for the first case, its competent authority and that of the peer had regular contacts to resolve the case, which includes sending of position papers, a face-to-face meeting and follow-up conference calls.

While efforts have been made by both competent authorities, Austria reported that it was not yet possible to resolve the case and that both parties continuously strive at resolving it. Concerning the second case, Austria responded by stating that it has contacted the peer's competent authority and that it will submit an additional clarification once the case has been discussed. In a reaction, the peer stated that the case that has been open for 25 months, its competent authority has not closed it upon request of the taxpayer, who is in discussions with Austria's competent authority. While the peer noted that the MAP discussions with Austria did not lead to a resolution of the case, it is open to further discuss the case should Austria wish so. Austria responded that it is willing to do so.

206. Another peer also provided positive input and mentioned that its MAP relationship with Austria has further evolved and improved since 1 April 2017. The peer specified that it had held its first face-to-face meeting with Austria in 2017, which was followed-up by a series of conference calls in 2018, whereby in the peer's view Austria provided flexibility. The peer further noted that Austria has been very responsive to emails, and, where necessary, provided additional documents and translations thereof, as also that they have shown a pragmatic approach to resolve MAP cases in an effective and efficient manner. The peer therefore concluded that its experience with Austria in resolving MAP cases has been positive and that its competent authority strives to ensure that no necessary delays occur during the process as well as that the staff in charge of MAP is well trained to handle MAP cases.

207. Lastly, one peer mentioned that it has established contacts with Austria's competent authority concerning a pending pre-2016 case and that a conference call is scheduled. The peer further noted it has also a pending post-2015 case with Austria, for which it took Austria's competent authority almost 16 months to confirm the receipt of a notification of a MAP request concerning an adjustment made by Austria. Austria responded to this input and confirmed the input given by this peer. It also mentioned that for the second case referred to, its competent authority immediately informed the taxpayer of the initiation of the MAP process, such after the receipt of the peer's notification thereof.

Anticipated modifications

208. Austria did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Austria closed MAP cases in 27.93 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 concerns both attribution/allocation cases and other MAP cases, as both type of cases were not closed within the pursued average of 24 months. Furthermore, as the MAP caseload relating to both attribution/allocation cases and other cases has increased substantially since 1 January 2016, this indicates that the competent authority may not be adequately resourced to cope with this increase, albeit that some specific actions have been taken to address this in the meantime.	While Austria has substantially reduced the average time needed to close MAP cases – from 37.29 months to 27.93 months – and given the fact that it has made some organisational changes within its competent authority in 2016 that led to such reduction, Austria should devote additional resources to its competent authority function to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote additional resources to cope with the significant increase in the number of both attribution/allocation and other MAP cases.

[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.

209. 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

210. 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, 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 Austria's competent authority.

211. Further to the above, when a MAP request is submitted in Austria, staff in charge of MAP generally informs the competent local tax authorities of the initiation of a MAP case and, when required, can request it to provide further information or documentation on the case under review. When a MAP request is submitted with the other competent authority concerned, Austria reported that its competent authority will notify the local tax authorities hereof and solicit its comments, which policy is reflected in section B.2.3 of Austria's MAP Guidance. In addition, section B.3 of Austria's MAP Guidance mentions that the local tax authorities is informed of the progress of the case and where necessary it is requested to perform additional research to substantiate the facts of the case under review.

212. Austria reported that the local tax authorities and audit teams are involved in the beginning of a MAP case as sources of information. Position papers are solely prepared by the persons working in Austria's competent authority and that are part of the teams outlined under element C.3 above. These position papers are prepared on the basis of the information provided by the local tax authorities, but Austria specified that these offices are not consulted as to the context of the case. Local tax authorities 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 authorities and/or audit teams. In addition, negotiations of MAP agreements are only carried out by the staff in charge of MAP.

213. Concerning the resolution of MAP cases, Austria reported that the local tax authorities are never involved in MAP negotiations and no personnel of the tax administration are involved in resolving MAP cases with the other competent authority concerned. Austria further 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 on the resolution of a MAP case.

214. 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 authorities) for approval of any MAP agreements nor is the process for negotiating MAP agreements influenced by policy considerations.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

216. All peers that provided input 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.

Period 1 April 2017-30 September 2018 (stage 2)

217. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. In addition, one peer highlighted that during negotiations staff in charge of MAP cases in Austria is able to resolve the case independently and also has the autonomy to resolve the cases, and further that no impediments occurred during the period under review. Another peer added that in its experiences Austria's competent authority operates independently. Lastly, a third peer mentioned that Austria's competent authority seems to be working fairly independent from the tax administration personnel directly involved in the adjustment at issue.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

219. 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

220. 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 staff is only evaluated based 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.

221. The Final Report on Action 14 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)
- 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).

222. In regard of these performance indicators, Austria reported that it does not use any of these indicators to evaluate staff in charge of MAP cases. Furthermore, Austria reported that it does not use performance indicators that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintaining tax revenue amounts. In other word, in Austria, the specific material outcome of MAP discussions is not a criterion to evaluate staff in charge of MAP.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

224. All peers that provided indicated not being aware that Austria uses performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue.

Period 1 April 2017-30 September 2018 (stage 2)

225. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

227. 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

228. Austria reported it 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 based on Article 25(5) of the OECD Model Tax Convention during tax treaty negotiations.

229. In addition, Austria is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in Austria's domestic legislation as per 1 July 2019.

Recent developments

230. Since 1 April 2017 Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain an arbitration provision that is modelled after Article 25(5) of the OECD Model Tax Convention. These treaties are included in the specification below. It also signed an amending protocol to an existing treaty that contains a most-favoured nation clause concerning the inclusion of an arbitration provision, which is also further discussed below.

231. Austria also signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018. With the signing of that instrument, Austria also opted in for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in are also further described below.

Practical application

232. Austria has incorporated an arbitration clause in 12 of its 90 tax treaties as a final stage to the MAP process. These clauses are as follows:

- Four treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention (although one treaty deviates from that provision by having a three-year period for MAP instead of two years and one excludes cases relating to the determination of residence of corporate taxpayers).
- Seven treaties contain an arbitration clause that provide for a mandatory and binding arbitration procedure, one of which is conducted via the European Court of Justice.
- One treaty contains an arbitration clause that provides for a voluntary and binding arbitration procedure.

233. Furthermore, Austria included in one treaty a most-favoured nation clause concerning the inclusion of an arbitration provision.[6] This clause entails the entering into negotiations for the inclusion of an arbitration provision should Austria's treaty partner include an arbitration provision in a tax treaty with a third state.

234. In addition, with respect to the effect of part VI of the Multilateral Instrument on Austria's tax treaties, there are next to Austria in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Austria listed 16 as a covered tax agreement under the Multilateral Instrument and all of these 16 treaty partners also listed their treaty with Austria under that instrument. Of these 16 treaty partners, 12 have already deposited their instrument of ratification. In one of these 12 treaties, Austria has already included an arbitration provision and for which it reserved, pursuant to Article 26(4) of the Multilateral Instrument, the right not to apply part VI. With respect to the other 11 tax treaties, part VI will apply and introduce such a provision in these treaties.[7]

235. For the remaining four treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Austria has already included an arbitration provision in one tax treaty. In this respect, Austria reserved, pursuant to Article 26(4) of the Multilateral Instrument, the right not to apply part VI to this treaty, as it already provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case. For the three other tax treaties that do not contain an arbitration provision, Austria reported it expects that part VI will introduce a mandatory and binding arbitration procedure in these treaties.

Peer input

236. In view of the above, one peer mentioned it has recently been contacted by Austria to negotiate an amending protocol to the treaty, inter alia to include an arbitration procedure analogous to the fifth sentence of Article 25 of the OECD Model Tax Convention. A second peer confirmed Austria's position that via the Multilateral Instrument an arbitration procedure will be added to the treaty between this peer and Austria.

Anticipated modifications

237. Austria reported that as part of its commitments under the BEPS project, it also has committed itself to introduce an arbitration provision in its tax treaties. In that regard, Austria mentioned that it will propose the inclusion of such provision in scheduled, pending or future negotiations of tax treaties. In a recent signed new treaty it already included an arbitration provision that is modelled after Article 25(5) of the OECD Model Tax Convention, which has been included in the overview of paragraph 235 above. Austria further reported that it is currently in the process of negotiating a mutual agreement on the practical application of the arbitration procedure with one treaty partner that is also included in the overview of paragraph 235 above, such with a view to give clarity and certainty to taxpayers to ensure a smooth functioning arbitration procedure.

238. Further to the above, and with respect to the effect of part VI of the Multilateral Instrument for the 16 treaties referred to in paragraphs 232-233 above, Austria also reported that it will soon commence the negotiations of bilateral competent authority agreements to detail the rules for the arbitration procedure.

239. In addition, in July 2019, the update to the MAP guidance was published (including an unofficial English translation), which was after the ending of the peer review process. With this update, section C.2 now includes a general outline of the application of part VI of the Multilateral Instrument and its effect on Austria's tax treaties. This section also reflects that Austria envisages concluding an agreement on the conduct of the operation of the arbitration procedure with all relevant treaty partners.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 87 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2017.
4. For post-2015 cases, if the number of MAP cases in 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); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".

6. This concerns the treaty with Russia, in which the most-favoured nation clause is included in the amending protocol.

7. Annex A reflects the effect of part VI of the Multilateral Instrument for these ten treaties.

References

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, https://doi.org/10.1787/g2g972ee-en.

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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.

240. 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

241. Austria reported that, pursuant to section 207(2) of the Federal Fiscal Code, a domestic statute of limitations applies for implementing MAP agreements, which is 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 whether the person is 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.

242. Austria further reported that its domestic statute of limitations is overridden where a treaty includes the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.[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 its domestic time limits. This approach also applies to cases where Austria has concluded a consultation with a treaty partner specifying that the implementation must take place notwithstanding domestic time limits. In such cases, the outcomes of these consultations take precedence over domestic law. Regardless, Austria reported that it is its tax treaty policy to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in all its tax treaties.

243. Section B.5 of Austria's MAP guidance stipulates that a MAP agreement is considered to be concluded when the competent authorities enter into a written agreement. Upon such conclusion, Austria's competent authority will inform both the local tax authorities and the taxpayer concerned of this agreement. Section B.6 of Austria's MAP guidance subsequently describes the process of implementation of MAP agreements. In this respect, the local tax authorities are responsible for implementing the MAP agreement. With respect to taxpayers' position on implementing MAP agreements, Austria reported it does not request the taxpayer concerned to give its approval to the agreement reached as a prerequisite for implementation. This rule 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 process.[2] Furthermore, section B.6.3 of Austria's MAP

Guidance 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.

Recent developments

244. There are no recent developments with respect to element D.1.

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

245. Austria reported that all MAP agreements reached in the period 1 January 2016-31 March 2017 were implemented and were all notified to the taxpayer. Austria also reported that in some cases its competent authority requests the local tax authorities 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.

246. All peers that provided input indicated not having experienced any issues with Austria regarding the implementation of MAP agreements reached in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

247. Austria reported that all MAP agreements that were reached on or after 1 April 2017, once accepted by taxpayers, have been (or will be) implemented. It further mentioned that there is one pre-2016 MAP case under a tax treaty that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and for which Austria's domestic time limits apply. In this case, Austria reached an agreement with the other competent authority concerned, but the agreement has not yet been implemented. During the MAP process, Austria reported it informed the treaty partner of the expiration of its domestic time limits, but commenced discussions with a view to a potential resolution of the case. In this respect, Austria proposed the conclusion of an agreement with the treaty partner on the interpretation of Article 25(2), which should stipulate that both treaty partners understand their obligations under the treaty to extend an implementation of any MAP agreement notwithstanding domestic time limits, following which it would allow Austria to override its domestic time limits to give effect to such MAP agreement. Austria reported that it is hopeful that an agreement can be reached in the end. To this Austria added that it has with the relevant treaty partner applied a co-operative approach in finding a solution for the taxpayer for the case at hand and that both states have the intention to enter into a consultation agreement to prevent future MAP cases from not being implemented.

248. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. One peer thereby added that it is not aware of any MAP agreement that have not been implemented. Another peer confirmed Austria's reflection above on the one MAP case that could not be implemented.

Anticipated modifications

249. Austria reported that it has initiated measures to ensure that all MAP agreements can be implemented, even when the underlying tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention. These steps concern the introduction of the equivalent of that second sentence in its domestic law, more specifically in sections 48(2) and 295(2a) of the Federal Fiscal Code. Following this introduction, it is guaranteed that in Austria all MAP agreements (also those following the outcome of an arbitration procedure) under Austria's tax treaties and the Tax Dispute Resolution Directive can be implemented irrespective of domestic time limits. Both section 48(2) and 295(2)(a) ensure that all tax assessment notices that are directly related to the MAP agreement are automatically adjusted to reflect this agreement. The amendment of the domestic law to include both sections in the Federal Fiscal Code was already approved by the Austrian parliament and will take effect as per September 2019. Taking this into account, Austria has followed up on the recommendation included in the stage 1 peer review report.

250. In addition, in July 2019, the update to the MAP guidance was published (including an unofficial English translation), which was after the ending of the peer review process. With this update, section B.6.4 now includes a description of the implementation process of MAP agreements in Austria, which conforms with the outline in the preceding paragraph. It is in section B.6.4 now also explicitly stated that Austria's domestic statute of limitation will not be an obstacle to implement a MAP agreement.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

251. 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

252. Austria reported that under its domestic legislation and administrative framework, there is no timeframe for implementation of MAP agreements reached. Furthermore, Austria's MAP Guidance does not address the timing of the implementation of MAP agreements.

Recent developments

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

Practical application

Period 1 January 2016-31 March 2017 (stage 1)

254. Austria reported that, upon request by the taxpayer, it on a case-by-case basis follows-up the actual implementation of MAP agreements with local tax authorities and subsequently, if necessary, ensures implementation. In that regard Austria noted that such requests, however, are in practice extremely rare. In any case, Austria reported that all MAP agreements reached in the period 1 January 2016-31 March 2017 were implemented on a timely basis.

255. All peers that provided input indicated not experiencing any issues with Austria regarding the implementation of MAP agreements in general or on a timely basis in the period 1 January 2016-31 March 2017.

Period 1 April 2017-30 September 2018 (stage 2)

256. Save for the one case discussed under element D.1, Austria reported that generally all MAP agreements reached in the period 1 April 2017-30 September 2018 were implemented on a timely basis.

257. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Austria fully reflects their experience with Austria since 1 April 2017 and/or there are no additions to the previous input given. One peer thereby added that it is not aware of any MAP agreement that was not implemented, and a second peer is not aware of any delays in relation to the implementation of MAP agreements reached.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

259. 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 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.

Current situation of Austria's tax treaties

260. As discussed under element D.1, Austria has a domestic statute of limitation for implementing MAP agreements. Such statute of limitation does not apply in case the tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

261. Out of Austria's 90 tax treaties, 70 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[3]

262. For the remaining 20 treaties, the following analysis is made:

- In 19 tax treaties neither the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention is contained, nor the alternative provisions in Article 9(1) and Article 7(2) setting a time limit for making transfer pricing adjustments.
- In one treaty a provision is contained, which stipulates that the other competent authority should be notified of a MAP request within four and a half years from the due date or the date of filing of a tax return in that state, whichever is later. If that condition is fulfilled, then any MAP agreement shall be implemented within ten years from that date, or a longer period provided for under the domestic law of the treaty partner. Since this provision bears the risk that a non-timely notification may cause that a MAP agreement cannot be implemented notwithstanding domestic time limits, the provision is considered not to be equivalent to Article 25(2) second sentence, of the OECD Model Tax Convention.

263. Nine peers provided input in relation to element D.3. Four of these 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, which conforms with the above analysis. Of these five, three peers indicated that they envisage that their treaty with Austria will be modified via the Multilateral Instrument. Peers did not mention any pending bilateral negotiations to amend their treaty with Austria.

Recent developments

Bilateral modifications

264. Austria signed a new treaty with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. The effect of these newly signed treaties has been reflected in the analysis above where they have relevance.

Multilateral Instrument

265. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

266. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent

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

267. In regard of the 20 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Austria listed 12 as a covered tax agreement under the Multilateral Instrument and for all of them did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). All relevant 12 treaty partners are a signatory to the Multilateral Instrument and listed their treaty with Austria under that instrument. Of these 12 treaty partners, three made a reservation on the basis of Article 16(5)(c), whereas the remaining nine made a notification pursuant to Article 16(6)(c)(ii).

268. Of the last nine treaty partners mentioned above, four have deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Austria and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these four treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining five treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

269. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Austria has put in place a comprehensive and detailed plan for bringing these treaties in line with that standard. Concerning the 11 treaties that are not in line with element D.3 and will not be modified by the Multilateral Instrument, Austria reported that it is currently negotiating on the amendment of the treaty with three jurisdictions. Furthermore, Austria reported it has approached seven partners with a view to include the first sentence of Article 25(2) of the OECD Model Tax Convention.

270. Further to the above, Austria also reported that for the remaining treaty of the 11 treaties that will not be modified by the Multilateral Instrument to the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, the relevant treaty partner has informed Austria that it will withdraw its reservation under the Multilateral Instrument, following which it is expected that the treaty with that treaty partner will be modified by the instrument to include the second sentence of Article 25(2) of the OECD Model Tax Convention.

Peer input

271. Of the peers that provided input during stage 2, eight provided input in relation to their tax treaty with Austria. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and which will be modified by the Multilateral Instrument. Another peer concerns a treaty partner to a treaty that will not be modified by the Multilateral Instrument and which confirmed it has been contacted by Austria with a view to initiate treaty negotiations, inter alia, to include the second sentence of Article 25(2). The other peers for which the treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, did not provide input.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	20 out of 90 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor both alternative provisions in Article 9(1) and Article 7(2). Of these 20 treaties: • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications. • Ten will not be modified by the Multilateral Instrument to include the required provision. These ten treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the ten treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending to include the required provision or be willing to accept the inclusion of both alternative provisions.

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 70 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.

References

OECD (2019), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, https://doi.org/10.1787/g2g972ee-en.

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms – Peer Review Documents*, OECD/G20 Base Erosion and Profit Shifting Project, OECD, Paris. https://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four 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. Of these four treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include the required provision. For these two treaties negotiations are pending.	For the two treaties that have not been or will not be amended by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Austria should continue negotiations to include the required provision.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. None of these four treaties will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For these four treaties negotiations are pending.	For the four treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended in the Action 14 final report, Austria should continue negotiations to include the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	Four out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Of these four treaties: • Two have been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention. • One will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For this treaty negotiations are pending to include the required provision.	For the remaining treaty that does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention and that has not been or will not be modified by the Multilateral Instrument to include such equivalent, Austria should continue such negotiations with respect to the treaty partner to include the required provision.

	Areas for improvement	Recommendations
[B.1]	One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report, and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report and a three year filing period for MAP request. For this treaty negotiations are pending to include the required provision.	For the treaty that does not contain the equivalent of Article 25(1), first and second sentence, of the OECD Model Tax Convention and that will not be modified by the Multilateral Instrument to include such equivalent, Austria should continue such negotiations with respect to the treaty partner to include the required provision. This concerns a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention either: • as amended in the Action 14 final report; or • as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
	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.	As it has done in practice, Austria should continue to 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]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	Eight out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention Of these eight treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three will not be modified by the Multilateral Instrument to include the required provision. These three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the three treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or continue such negotiations if they are pending to include the required provision.
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Three 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. None of these treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention. These three treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the three treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or continue negotiations if they are pending to include the required provision.
[C.2]	-	-

	Areas for improvement	Recommendations
[C.3]	As Austria closed MAP cases in 27.93 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 concerns both attribution/allocation cases and other MAP cases, as both type of cases were not closed within the pursued average of 24 months. Furthermore, as the MAP caseload relating to both attribution/allocation cases and other cases has increased substantially since 1 January 2016, this indicates that the competent authority may not be adequately resourced to cope with this increase, albeit that some specific actions have been taken to address this in the meantime.	While Austria has substantially reduced the average time needed to close MAP cases – from 37.29 months to 27.93 months – and given the fact that it has made some organisatorial changes within its competent authority in 2016 that led to such reduction, Austria should devote additional resources to its competent authority function to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner. Where needed, it should in particular devote additional resources to cope with the significant increase in the number of both attribution/allocation and other MAP cases.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	20 out of 90 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor both alternative provisions in Article 9(1) and Article 7(2). Of these 20 treaties: • Four have been modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • Five are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the required provision once the treaty partner has amended its notifications. • Ten will not be modified by the Multilateral Instrument to include the required provision. These ten treaties are included in the list of treaties for which negotiations are envisaged, scheduled or pending.	For the ten treaties that have not been or will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, Austria should follow-up on its plan to initiate bilateral negotiations or to continue such negotiations if they are pending to include the required provision or be willing to accept the inclusion of both alternative provisions.

Annex A

Tax treaty network of Austria

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

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

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

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

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

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

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

Legend

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

Annex B

MAP statistics 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 on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**
Attribution/ Allocation	81	0	0	0	1	0	10	0	0	1	0	69	40.70
Others	114	1	0	0	0	1	22	0	0	0	0	90	38.45
Total	195	1	0	0	1	1	32	0	0	1	0	159	39.20

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**
Attribution/ Allocation	69	0	0	2	0	0	10	0	0	0	0	57	41.50
Others	90	0	0	3	1	1	8	0	0	2	1	74	42.80
Total	159	0	0	5	1	1	18	0	0	2	1	131	42.24

Annex C

MAP statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	0	32	0	0	0	1	0	0	0	0	0	0	31	1.97
Others	0	54	0	0	0	0	1	0	0	0	0	0	53	3.72
Total	0	86	0	0	0	1	1	0	0	0	0	0	84	2.85

Notes: There is a discrepancy between the number of post-2015 MAP cases in Austria's inventory as per 31 December 2016 and 1 January 2017, which regards attribution/ allocation cases and other cases.

The reported number of attribution/allocation cases pending on 31 December 2016 was 28, while the reported number on 1 January 2017 was 32. In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2016 cases initiated in 2016 was corrected.

The reported number of other cases pending on 31 December 2016 was 40, while the reported number on 1 January 2017 was 54. In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of post-2016 cases initiated in 2016 was corrected.

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	31	37	0	0	2	1	0	11	0	0	0	0	54	10.89
Others	53	44	2	0	4	2	0	14	0	0	5	0	70	8.74
Total	84	81	2	0	6	3	0	25	0	0	5	0	124	9.48

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
Austria's competent authority	Directorate International Tax Law (IV/8) of the Federal Ministry of Finance
Austria's Transfer Pricing Guidelines	Verrechnungspreisrichtlinien issued by the Austrian Bundesministerium für Finanzen of November 2010
Federal Fiscal Code of Austria	Bundesabgabenordnung
MAP guidance	Austria's 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 21 November 2017
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 were pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Austria (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

Consult this publication on line at ***https://doi.org/10.1787/40c9f1b5-en***.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases.
Visit ***www.oecd-ilibrary.org*** for more information.

ISBN 978-92-64-48513-6

OECD*publishing*
www.oecd.org/publishing