OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 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 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 9 August 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
CTN	Brazil's National Tax Code (*Código Tributário Nacional*)
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
RFB	Brazil Federal Revenue *(Receita Federal do Brasil*)

Executive summary

Brazil has a modest tax treaty network with 35 tax treaties. Brazil has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 23 cases pending on 31 December 2018. Of these cases, 48% concern allocation/attribution cases. Overall Brazil meets the majority of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Brazil is working to address them.

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

- The majority (80%) of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- More than half (51%) of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Less than a quarter (20%) of its tax treaties do not contain the equivalent of Article 25(1), as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Brazil needs to amend and update a significant number of its tax treaties. Brazil reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard and has already contacted all the relevant treaty partners to enter into bilateral negotiations. As Brazil has no bilateral APA programme in place, there were no elements to assess regarding the prevention of disputes.

Brazil meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Brazil has published clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice. It provides access to MAP in eligible cases, although it has since 1 January 2016 not received any MAP requests concerning cases where anti-abuse provisions are applied and it has no audit settlement process in place. However, the absence of response from Brazil and the expiration of Brazil's domestic time limit have caused that some MAP cases could not be resolved in the past. Furthermore, Brazil does not have in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified.

Concerning the average time needed to close MAP cases, the MAP statistics for Brazil for the period 2016-18 are as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018	Average time to close cases (in months)*
Attribution/allocation cases	5	12	2	15	23.28
Other cases	7	9	4	12	28.01
Total	12	21	6	27	26.43

*The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Brazil used as a start date: the date of the initial letter requesting for a MAP; and as end date: the date Brazil receives a letter from the other competent authority agreeing to close the case. Brazil may also consider the end date as being the date of its competent authority's letter suggesting the closure of the MAP case if it fails to receive any response regarding the subject in the course of several months.

The number of cases Brazil closed in 2016, 2017 or 2018 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2018 more than doubled as compared to its inventory as per 1 January 2016. During these years, Brazil's MAP caseload has increased significantly and 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 necessary was 26.43 months. This mainly concerns the resolution of other cases, as the average time to close these cases is thereby considerably longer (28.01 months) than the average time to close attribution/allocation cases (23.28 months). This might indicate that additional resources specifically dedicated to handling MAP cases may be necessary. Brazil has indicated it is restructuring the competent authority function and provided more resources to that function. In this respect, Brazil should closely monitor whether the steps recently taken will contribute to accelerate the resolution of MAP cases.

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

Lastly, Brazil does not meet all the Action 14 Minimum Standard as regards the implementation of MAP agreements, as Brazil has a domestic statute of limitation which impacts on the implementation of MAP agreements. This leads to a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Brazil has taken measures to mitigate this risk, mainly through a better communication with the relevant stakeholders. With respect to the agreements that could be reached, no issues have surfaced throughout the peer review process and Brazil monitors their implementation via a tracking system.

Introduction

Available mechanisms in Brazil to resolve tax treaty-related disputes

Brazil has entered into 35 tax treaties on income (and/or capital), 32 of which are in force.[1] These 35 treaties are being applied to 36 jurisdictions.[2] All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these treaties contains an arbitration procedure as a final stage to the MAP Process.

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

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

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

Recent developments in Brazil

Brazil reported it is currently conducting tax treaty negotiations with a few jurisdictions. Brazil recently signed new treaties with Singapore, Switzerland and the United Arab Emirates, which have not yet entered into force.

For those treaties that do not contain all provisions in line with the requirements of the Action 14 Minimum Standard, Brazil reported it will strive to update them via bilateral negotiations. Brazil further reported that it has contacted all of its relevant treaty partners in this respect. Brazil also reported that in cases where any treaty partner would decide not to renegotiate a certain treaty at this point, Brazil would periodically contact such treaty partners with a view to do so.

Basis for the peer review process

The peer review process entails an evaluation of Brazil's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Brazil, its peers and taxpayers. The questionnaires for the peer review process were sent to Brazil and the peers on 29 December 2018.

The period for evaluating Brazil's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2018 ("**Review Period**"). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Brazil's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Brazil is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Czechoslovakia for those jurisdictions to which these treaties are still being applied by Brazil. As it concerns the same tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Brazil's tax treaties regarding the mutual agreement procedure.

In total 10 peers provided input: Austria, Belgium, China (People's Republic of), France, Italy, Korea, Norway, Portugal, Sweden and Turkey. Out of these 10 peers, eight had MAP cases with Brazil that started on or after 1 January 2016. These eight peers represent 95% of post-2015 MAP cases in Brazil's inventory that started in 2016, 2017 or 2018. Generally, all peers indicated that communication was good with Brazil's competent authority, some of them emphasising that they had little experience with Brazil. Nonetheless, some of these peers reported having experienced difficulties in resolving MAP cases because of the expiration of Brazil's statute of limitation for the relevant cases.

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

- MAP profile[3]
- MAP statistics[4] according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Brazil

The analysis of Brazil's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018 ("Statistics Reporting Period"). According to the statistics provided by Brazil, its MAP caseload during this period was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	5	12	2	15
Other cases	7	9	4	12
Total	12	21	6	27

General outline of the peer review report

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

A. Preventing disputes

B. Availability and access to MAP

C. Resolution of MAP cases

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[5] Apart from analysing Brazil's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Brazil. Furthermore, the report depicts the changes adopted and plans shared by Brazil to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Brazil continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement for this specific element.

Notes

1. The tax treaties Brazil has entered into are available at: http://receita.economia.gov.br/acesso-rapido/legislacao/acordos-internacionais/acordos-para-evitar-a-dupla-tributacao/acordos-para-evitar-a-dupla-tributacao. The treaties that are signed but have not yet entered into force are with Singapore, Switzerland and the United Arab Emirates. Reference is made to Annex A for the overview of Brazil's tax treaties.
2. The Convention of 26 August 1986 between former Czechoslovakia and Brazil still applies in relation to Czech Republic and Slovak Republic.
3. Available at www.oecd.org/tax/dispute/Brazil-Dispute-Resolution-Profile.pdf.
4. The MAP statistics of Brazil are included in Annex B and C of this report.
5. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing disputes

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

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

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

Current situation of Brazil's tax treaties

2. Out of Brazil's 35 tax treaties, 33 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 the tax treaty.[1] In the two remaining treaties, the sentence only relates to difficulties or doubts arising as to the *application* of the treaty, but not to any difficulties or doubts arising as to the *interpretation* of the treaty. For this reason, these two treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

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

Anticipated modifications

Bilateral modifications

4. For those treaties that do not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, Brazil reported it will strive to update them via bilateral negotiations to be compliant with element A.1. Brazil further reported that it has contacted the two relevant treaty partners in this respect. Brazil also reported that in cases where any treaty partner would decide not to renegotiate the treaty at this point, Brazil would periodically contact such treaty partners with a view to do so. In addition, Brazil reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

5. For the two treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. One relevant peer reported having received a draft protocol from Brazil which contains a new provision regarding the mutual agreement procedure. The other peer reported that there are current no formal treaty negotiations in progress, but confirmed that it has been contacted by Brazil in this sense.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 35 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations.
		In addition, Brazil should maintain its stated intention to include the required provision in all future tax treaties.

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

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

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

Brazil's APA programme

7. Brazil reported that its current legal framework does not provide for the possibility to enter into APAs, be they of a unilateral, bilateral or multilateral nature, by which there is no possibility for providing roll-back of bilateral APAs to previous years.

8. All the peers noted that they did not receive a request for a roll-back of APAs with Brazil. One peer referred to the information available in Brazil's MAP profile and noted that no APA programme is currently in place in Brazil.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Notes

1. These 33 treaties include the treaty with former Czechoslovakia that Brazil continues to apply to Czech Republic and Slovak Republic.

2. This description of an APA based on the definition of an APA in OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.

References

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

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

Part B

Availability and access to MAP

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

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

10. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of Brazil's tax treaties

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

11. Out of Brazil's 35 tax treaties, eight contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as it read prior to the adoption of the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, two of Brazil's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, as changed by the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report, OECD, 2015a), and allowing taxpayers to submit a MAP request to the competent authority of either state.

12. The remaining 25 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 authority of the contracting state of which they are resident.*	25

*These 25 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.

13. The 25 treaties mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the 2015 OECD Model Tax Convention (OECD, 2015b), 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, 24 of those 25 treaties are considered to be in line with this part of element B.1 as the non-discrimination provision of the relevant tax treaties only covers nationals that are resident of one of the contracting states.[1] Therefore, it is logical to allow only for the submission of MAP requests to the state of which the taxpayer is a resident.

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

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

15. Out of Brazil's 35 tax treaties, six 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 no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

16. The remaining 29 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request*	20
Filing period less than 3 years for a MAP request (2 years)	3
Filing period more than 3 years for a MAP request (5 years)	2
Period provided by the domestic law of the contracting states	4

*These 20 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.

Practical application

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

17. As noted in paragraphs 11 and 12 above, in all of Brazil's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. Brazil reported that its competent authority is bound by the outcome of such processes but, as clarified in section 6 of Brazil's MAP guidance, access to MAP is granted in eligible cases, even in situations where there is a pending court proceeding or administrative appeals involving the taxpayer regarding the same subject matter. If an administrative or a judicial decision has been rendered, Brazil reported that its competent authority will provide any information that the other competent authority considers necessary.

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

18. With respect to the 20 tax treaties that do not contain a filing period for MAP requests and for the four treaties that refer to the domestic time limits as a filing period, Brazil reported that the filing period would be of five years, starting as from the first notification to the taxpayer of the actions taken by one or both of the Contracting States resulting in taxation not in accordance with the tax treaty. Brazil clarified that the rule does not distinguish whether the notification of the action not in accordance with the tax treaty occurred in Brazil or in the other Contracting State. This is further clarified in section 3 of Brazil's MAP guidance.

Peer input

19. Three peers provided input relating to similar experience of cases where a MAP case could not be initiated further to the expiration of Brazil's domestic time limits.

20. One peer referred to a MAP case involving Brazil whereby Brazil notified this peer of the expiration of its domestic statute of limitation and the fact that it could not enter into any MAP agreement that would lead to a reimbursement of taxes in Brazil. This peer described the circumstances of such a MAP case, which can be summarised as follows:

- The taxpayer was subject to a withholding tax in Brazil in 2010 and filed a MAP request in September 2012 to this peer's competent authority.
- The peer's competent authority sent a position paper to Brazil's competent authority in January 2013, which was followed up with two requests for responses sent in August 2014 and July 2016. The latter reminder contained a suggestion to close the MAP case without any agreement if no answer was received by 1 November 2016.
- On 10 November 2016, this peer's competent authority received a letter from Brazil's competent authority that referred to Brazil's domestic statute of limitation of five years that had already expired in 2015 (five years after the payment of the withholding tax).

21. This peer sent a last position paper in August 2018. It expressed concerns about the fact that Brazil's first response was sent only after several inquiries and after the expiration of Brazil's statute of limitation, which made it impossible to have a solution for the relevant MAP case. The peer further reported that it did not receive a written response to this position paper, but an oral update during the March 2019 FTA MAP Forum meeting that confirmed (i) that no reimbursement request was made by the taxpayer and (ii) that Brazil's statute of limitation has expired. According to this peer, the delegate from Brazil mentioned that an official letter should be sent proposing to formally close the case.

22. Brazil noted that it did not have a specific team to deal with MAP cases until 2016, which led to delays as the relevant MAP case was not handled properly. Brazil further noted that it has prepared a position paper to close the case and this position paper will be sent to the relevant competent authority in a timely manner in order to improve the processing of MAP cases. The peer confirmed having received an e-mail with the official closing letter attached. The peer reported that it confirmed receipt of the e-mail and that it will confirm closure of the case at hand by official letter. The peer noted that the relevant case will be closed without the elimination of double taxation due to the expiration of Brazil´s statute of limitations.

23. Another peer referred to similar circumstances that can be summarised as follows:

- The taxpayer filed a MAP request in November 2009 to this peer's competent authority regarding transactions that occurred in 2007.
- The peer's competent authority sent a position paper to Brazil's competent authority in March 2010, which was followed up with one reminder sent in July 2011.
- In October 2011, this peer's competent authority received a letter from Brazil's competent authority asking for more information.
- On 29 November 2011, this peer's competent authority responded to Brazil's request for more information and followed up with three reminders sent in February 2016, in August 2016 and in April 2017.
- In May 2017, this peer's competent authority received a letter from Brazil's competent authority that referred to Brazil's domestic statute of limitation of five years that had already expired in 2012. Brazil further confirmed its position in December 2018.

24. This peer expressed concerns about the fact that the information regarding Brazil's domestic statute of limitation was sent after the expiration of such statute of limitation, which made it impossible to eliminate the double taxation for the relevant MAP case while acknowledging that this peer had the right to tax in this case. This peer reported having experienced a similar MAP case more recently whereby Brazil's competent authority informed the taxpayer that he had to introduce a reimbursement request in Brazil. This peer asked Brazil's competent authority to provide for the necessary information and documents in order to make such a request, and agreed to consider the MAP case as closed unless the taxpayer's reimbursement request is refused by Brazil's local tax offices.

25. A third peer referred to similar circumstances that can be summarised as follows:

- The taxpayer filed a MAP request to this peer's competent authority regarding facts that occurred in 2008 and 2009.
- This peer's competent authority sent a request to Brazil's competent authority to enter into discussions in January 2013.
- Brazil's competent authority acknowledged receipt of this peer's letter in February 2013.
- This peer sent a position paper to Brazil's competent authority in February 2016.
- In August 2018, Brazil's competent authority responded to this peer's competent authority and referred to Brazil's domestic statute of limitation of five years that had expired.

26. This peer expressed concerns about the fact that the information regarding Brazil's domestic statute of limitation was sent after the expiration of such statute of limitation, which made it impossible to eliminate the double taxation for the relevant MAP case.

27. The three cases referred above were closed without any possibility to find a solution for the relevant cases. While domestic time limits had not expired when it was notified of the filed MAP requests, Brazil's competent authority responded to the relevant peers after the expiration of such time limits, which resulted in a de facto denial of access to MAP for the relevant taxpayers.

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

Anticipated modifications

Bilateral modifications

29. Brazil reported that when the tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Brazil reported that it has contacted the relevant treaty partners in this respect. Brazil also reported that in cases where any treaty partner would decide not to renegotiate the treaty at this point, Brazil would periodically contact such treaty partners with a view to do so. In addition, Brazil reported it proposed to include the equivalent as it read prior to the adoption of the Action 14 final report.

30. In addition, Brazil reported it will also seek to include Article 25(1) of the OECD Model Tax Convention, either as it read prior to or after the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

31. For the one treaty identified that does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention, the relevant peer did not provide input. For the seven treaties that provide for a shorter timeframe or refer to domestic time limits to submit MAP request than Article 25(1), second sentence, of the OECD Model Tax Convention, three relevant peers provided input. Two of these peers reported having received a draft protocol from Brazil which contains a new provision regarding the mutual agreement procedure in order to meet the requirements of the Action 14 Minimum Standard, and both of them specified being currently analysing Brazil's proposal. The remaining peer confirmed that it was contacted by Brazil with respect to the renegotiation of their treaty.

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 35 tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	With respect to Article 25(1), first sentence, of the OECD Model Tax Convention, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	Seven out of 35 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Brazil should follow up on its requests for the inclusion of the required provision via bilateral negotiations. This concerns a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
		In addition, Brazil should maintain its stated intention 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 future tax treaties.
	Because of a delayed response by Brazil's competent authority, access to MAP was *de facto* denied in eligible cases where domestic time limits expired after Brazil's competent authority was notified of filed MAP requests.	Brazil should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can effectively access the MAP.

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

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

32. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

i. of either treaty partner; or, in the absence of such provision,

ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

33. As discussed under element B.1, out of Brazil's 35 treaties, two currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

34. Brazil noted that currently there is an administrative practice in force in order to notify the other competent authority in the case in which taxpayer's objection is considered as not justified. In such cases, a notification is sent to the competent authority of the other state with a summary of the case and the reasons why the objection was considered not justified. Brazil further clarified that this process, however, is not yet documented.

Practical application

35. Brazil reported that since 1 January 2016 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016, 2017 and 2018 MAP statistics submitted by Brazil also show that none of its MAP cases was closed with the outcome "objection not justified".

36. All the peers that provided input indicated not being aware of any cases for which Brazil's competent authority denied access to MAP. They also reported not having been consulted or notified of a case where Brazil's competent authority considered the objection raised in a MAP request as not justified. This can be explained by the fact that Brazil since this date did not consider that an objection raised in a MAP request was not justified.

Anticipated modifications

37. Brazil reported that, aiming to establish a documented standard procedure, it is currently working on a draft of internal rules to outline the administrative practice regarding its notification process.

Conclusion

	Areas for improvement	Recommendations
[B.2]	33 of the 35 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Brazil should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and the timing of these steps. Furthermore, Brazil should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

38. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's

transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

39. None of Brazil's tax treaties contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.[2]

40. One treaty contains a clarification in the protocol (with reference to Articles 9 and 25) stating that access to MAP would be given in those cases.

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

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

Application of legal and administrative framework in practice

43. Brazil reported that since 1 January 2016, it has received several MAP request from taxpayers relating to transfer pricing cases and that it has not denied access to MAP on the basis that these cases concerned transfer pricing cases.

44. All peers that provided input indicated not being aware of a denial of access to MAP by Brazil on the basis that the case concerned was a transfer pricing case.

45. One peer noted that Brazil's updated MAP profile showed that Brazil has worked in seeking improvement in giving access to MAP in transfer pricing cases. The peer appreciated this effort that will certainly contribute to increase the number of transfer pricing MAP cases solved.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Brazil has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

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

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

47. 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

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

Practical application

49. Brazil reported that since 1 January 2016 it has not denied access to MAP in any cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, since that date no requests in relation hereto were received by its competent authority.

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.4]	Brazil reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Brazil is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

52. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

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

Administrative or statutory dispute settlement/resolution process

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

Practical application

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

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

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

Legal framework on access to MAP and information to be submitted

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

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

Practical application

61. Brazil reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 it has received several MAP requests from taxpayers and that it has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

62. All peers that provided input indicated not being aware of a limitation of access to MAP by Brazil since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

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

Conclusion

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

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

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

64. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention, enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Brazil's tax treaties

65. Out of Brazil's 35 tax treaties, 17 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The other 18 treaties do not contain such provision at all.[3]

Anticipated modifications

Bilateral modifications

66. Brazil reported that when the tax treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Brazil reported that it has contacted the relevant treaty partners in this respect. Brazil also reported that in cases where any treaty partner would decide not to renegotiate the treaty at this point, Brazil would periodically contact such treaty partners with a view to do so. Brazil reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	18 out of 35 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Brazil should follow up on its requests for the inclusion of the required provision via bilateral negotiations.
		In addition, Brazil should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

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

Brazil's MAP guidance

69. Brazil's rules, guidelines and procedures are included in Brazil's MAP guidance and are available at:

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

70. This contains information on:

a. contact information of the competent authority or the office in charge of MAP cases

b. the manner and form in which the taxpayer should submit its MAP request

c. the specific information and documentation that should be included in a MAP request (see also below)

d. how the MAP functions in terms of timing and the role of the competent authorities

e. relationship with domestic available remedies

f. access to MAP in transfer pricing cases and in cases where treaty anti-abuse provisions apply

g. implementation of MAP agreements (steps of the process and the timing of such steps, including any actions to be taken by taxpayers)

h. rights and role of taxpayers in the process

i. non suspension of tax collection.

71. The above-described MAP guidance includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[4]

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

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

Information and documentation to be included in a MAP request

73. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.[5] This agreed guidance is shown below. Brazil's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

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

- identity of the foreign tax administration involved
- identity of the direct and the final controller, in case of request by a legal entity, as well as the respective countries of residence for tax purposes, if the issue of the request applies to them

- a copy of any document or request received from the foreign administration, including the information provided in response
- evidence of whether the matter has been submitted to a judicial or administrative review in Brazil, together with a copy of the application, the corresponding reply and other documents, if applicable
- a copy of any contract or adjustment made with any foreign tax administration that may be connected to the request.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Brazil could consider including information on: • Whether MAP is available in cases of: (i) the application of domestic anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The consideration of interest and penalties in the MAP.

[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.

76. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.[6]

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

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

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

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

MAP profile

79. The MAP profile of Brazil is published on the website of the OECD. This MAP profile is complete and often with detailed information. This profile includes external links that provide extra information and guidance where appropriate.

Anticipated modifications

80. Brazil indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

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

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

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

81. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP

programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

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

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

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

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

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

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

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 24 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.
2. These 35 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.

3. These 18 treaties include the treaty with former Czechoslovakia that Brazil continues to apply to Czech Republic and Slovak Republic.

4. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

5. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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

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Part C

Resolution of MAP cases

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

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

88. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017),, which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Brazil's tax treaties

89. All of Brazil's 35 tax treaties 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]

Anticipated modifications

Bilateral modifications

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

Peer input

91. No peers reported any actions being taken related to this element of the minimum standard, which can be clarified by the fact that all of Brazil's tax treaties contain the relevant provision.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	Brazil should maintain its stated intention to include the required provision in all future tax treaties.

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

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

92. 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

93. Statistics regarding all tax treaty related disputes concerning Brazil are published on the website of the OECD as of 2016.[2]

94. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Brazil provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Brazil and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and Annex C respectively[3] and should be considered jointly to understand the MAP caseload of Brazil. With respect to post-2015 cases, Brazil reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Brazil reported that it is waiting for confirmation from one MAP partner regarding 2018 MAP statistics. In that regard, based on the information provided by Brazil's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter [conclusion made for 2016 and 2017 MAP statistics but pending for 2018].

Monitoring of MAP statistics

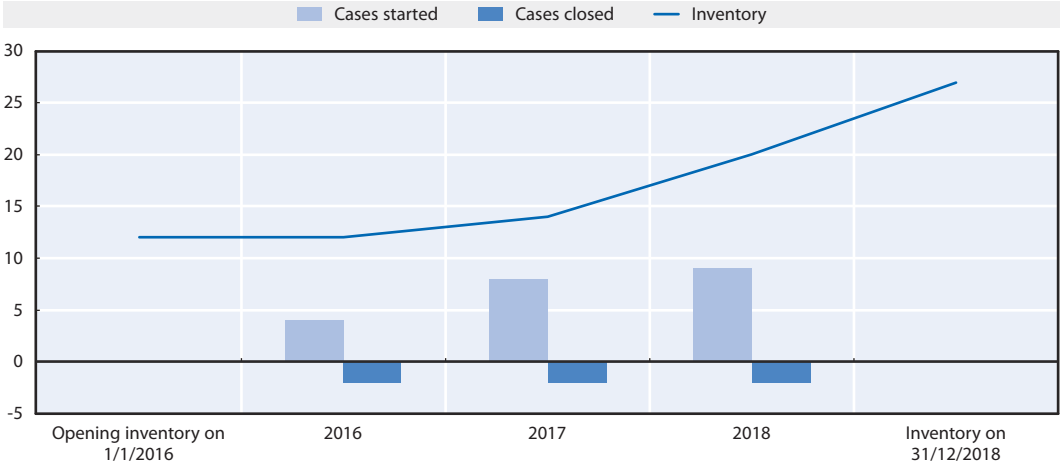
95. Brazil reported that it has a system in place that monitors and manages the MAP caseload. Brazil further reported that as its caseload is moderate, this tool mainly consists of spreadsheets that highlight the most relevant information for statistical purposes. It further reported that all MAP cases are processed in an electronic format, whereby they receive an exclusive system classification and have a colour identification in order to accelerate their proceeding.

Analysis of Brazil's MAP caseload

Global overview

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

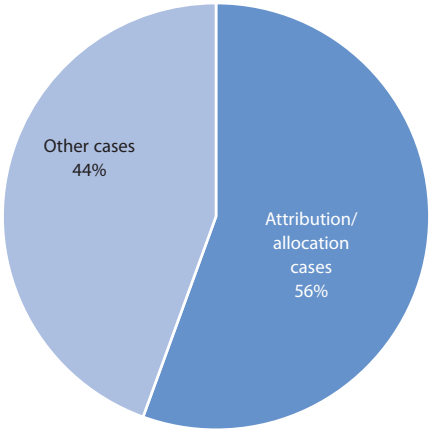
Figure C.1. **Evolution of Brazil's MAP caseload**



97. At the beginning of the Statistics Reporting Period, Brazil had 12 pending MAP cases, of which five were attribution/allocation cases and seven other MAP cases.[4] At the end of the Statistics Reporting Period, Brazil had 27 MAP cases in its inventory, of which 15 are attribution/allocation cases and 12 are other MAP cases. Brazil's MAP caseload has increased by 125% during the Statistics Reporting Period, which can be broken down into an increase by 200% of the number of attribution/allocation cases and an increase by 71% of the other cases.

98. The breakdown of the end inventory can be shown as follows:

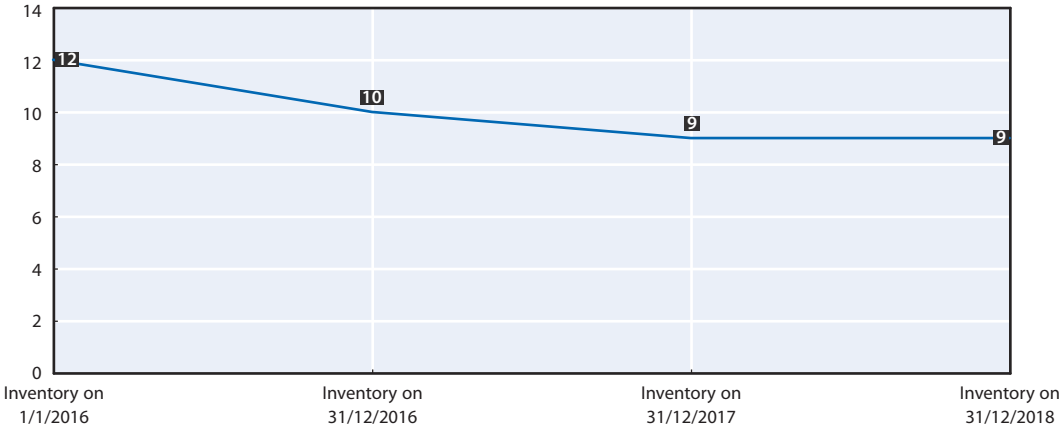
Figure C.2. **End inventory on 31 December 2018 (27 cases)**



Pre-2016 cases

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

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



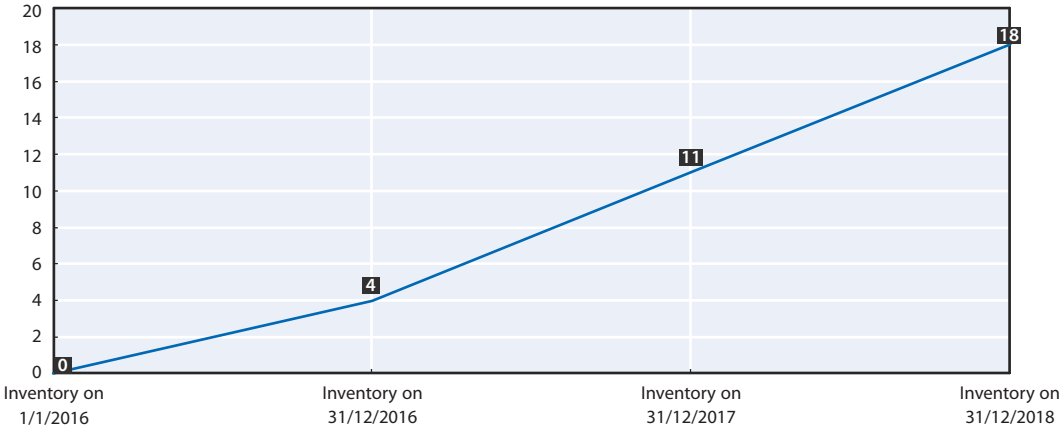
100. At the beginning of the Statistics Reporting Period, Brazil's MAP inventory of pre-2016 MAP cases consisted of 12 cases, of which were five attribution/allocation cases and seven other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to nine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

	% of cases closed compared to cases started in:			Cumulative % of cases closed compared to cases started over the three years (2016-18)
Pre-2016 cases only	**2016**	**2017**	**2018**	
Attribution/allocation cases	-20%	(no cases closed)	(no cases closed)	-20%
Other cases	-14%	-17%	(no cases closed)	-29%

Post-2015 cases

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

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



102. In total, 21 MAP cases started during the Statistics Reporting Period, 12 of which concerned attribution/allocation cases and nine other cases. At the end of this period the total number of post-2015 cases in the inventory was 18 cases, consisting of 11 attribution/allocation cases and seven other cases. Conclusively, Brazil closed three post-2015 cases during the Statistics Reporting Period, one of them being attribution/allocation cases and two of them of them being other cases. The total number of closed cases represents 14.3% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

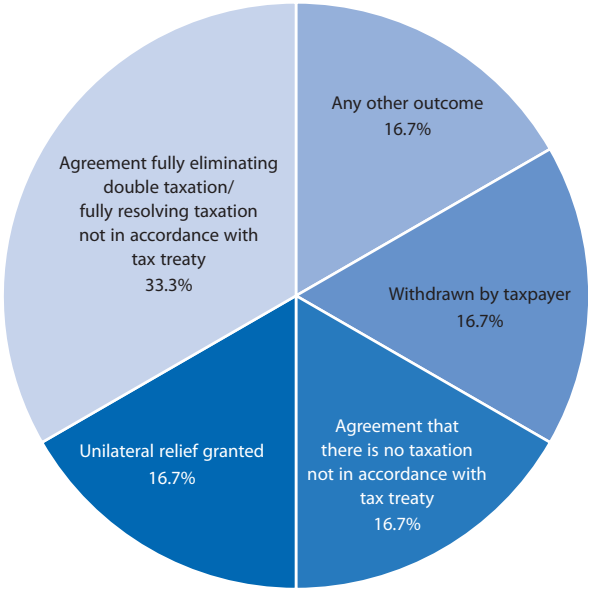
	% of cases closed compared to cases started in:			Cumulative % of cases closed compared to cases started over the three years (2016-18)
Post-2015 cases only	2016	2017	2018	
Attribution/allocation cases	(no cases closed)	50%	(no cases closed)	8%
Other cases	(no casesclosed)	(no cases closed)	67%	22%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

104. During the Statistics Reporting Period Brazil in total closed six MAP cases for which the following outcomes were reported:

Figure C.5. **Cases closed in 2016, 2017 or 2018 (six cases)**



105. This chart shows that two out of the six cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

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

- unilateral relief granted [50%]
- any other outcome [50%].

Reported outcomes for other cases

107. In total, four other cases were closed during the Statistics Reporting Period:

- agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty [50%]
- agreement that there is no taxation not in accordance with tax treaty [25%]
- withdrawn by the taxpayer [25%].

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

108. The average time needed to close MAP cases during the Statistics Reporting Period was 26.43 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	2	23.28
Other cases	4	28.01
All cases	6	26.43

Pre-2016 cases

109. For pre-2016 cases Brazil reported that on average it needed 34.16 months to close attribution/allocation cases and 44.34 months to close other cases. This resulted in an average time needed of 40.95 months to close three pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Brazil reported that it followed the reporting rules as contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes:

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

Post-2015 cases

110. For post-2015 cases Brazil reported that on average it needed 12.40 months to close attribution/allocation cases and 11.67 months to close other cases. This resulted in an average time needed of 11.91 months to close three post-2015 cases.

Peer input

111. One peer specified that it did not experience any issues in matching its 2017 statistics with Brazil. Another peer reported that it only became aware of a MAP case it had with Brazil in the course of the matching process of MAP statistics.

112. One peer reported that it did not experience any issues regarding the timeliness of answers since the cases were closed during the unilateral phase, so it has no comments relating to the resolution of cases in the bilateral phase. Another peer reported having received a reply from Brazil approximately six months after sending its own position. One last peer reported that the pending MAP cases were initiated in 2017 and 2018 and are still pending. Brazil responded that the position paper was issued later in one of these cases, which was confirmed by the peer. Another peer reported that it was notified of one case initiated by Brazil in 2018. The peer noted that it has received the notification letter in 2018, but no further detailed information about the case. Brazil clarified that is currently concluding the relevant analysis and will send a position paper in a timely manner.

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

114. As discussed under the anticipated modifications, Brazil further reported that it is currently taking steps to avoid future delays.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.2]	Brazil submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided Brazil's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. [At this stage this concerns 2016 and 2017 MAP statistics and needs to be confirmed for 2018]. Brazil's MAP statistics show that during the Statistics Reporting Period it closed 14.3% (three out of 21 cases) of its post-2015 cases in 11.91 months on average. In that regard, Brazil is recommended to seek to resolve the remaining 85.7% of the post-2015 cases pending on 31 December 2018 (18 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

116. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of Brazil's competent authority

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

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

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

Monitoring mechanism

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

Practical application

MAP statistics

121. As discussed under element C.2 Brazil did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. However, the average time taken to close other cases is higher than the average time needed for attribution/allocation cases. This can be illustrated by the following graph.

Figure C.6. **Average time (in months) to close cases in 2016-18**



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

122. Based on these figures, it follows that on average it took Brazil 26.43 months to close MAP cases during the Statistics Reporting Period. Brazil reported that the average time to close MAP cases during that period was 23.28 months for attribution/allocation cases and 28.01 months for other cases. However, during this period Brazil's MAP inventory has doubled, as shown in the table below.

	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Evolution of total MAP caseload over the three years (2016-18)
Attribution/allocation cases	+60%	+13%	+67%	+200%
Other cases	-14%	+83%	+9%	+71%
Total	+17%	+43%	+35%	+125%

123. Brazil clarified that it lacked dedicated resources to solve most of its pre-2016 cases, and that it failed to communicate timely with its treaty partners, which contributed to increase the average time needed to close MAP cases. Brazil also reported that it lacked practice in resolving MAP cases and that it did not have a specific team to deal with them. Finally, Brazil reported that since the publication of BEPS Action 14, several steps have been taken in order to reduce such shortcomings, which consists of having more adequate resources and internal guidance to deal with MAP cases.

Peer input

124. All the peers that provided input noted that they had limited experience with Brazil as they have been involved in a limited number of MAP cases with Brazil. Three peers noted that they did not have specific contacts with Brazil's competent authority and did not comment on this element in their peer input. One peer reported that Brazil's competent authority was easy to get in contact with and replied quickly to its requests. Brazil responded that since then it has been upgrading its internal rules and increasing the resources dedicated to MAP, in order to improve the processing time of MAP cases.

125. One peer reported having several exchanges with Brazil's competent authority by letter and since 2017 via e-mail. Another peer reported having sent letters to Brazil's competent authority via regular post and having received replies via both e-mail and regular post.

126. One peer mentioned that, while no meeting has taken place with Brazil's competent authority, there has never been any issues in its relationship with Brazil's competent authority. Another peer reported that while there has not been any joint commission with Brazil's competent authority since 1 January 2016, there was a meeting early 2016 to which Brazil's competent authority and this peer's team in charge of tax treaty negotiation attended and MAP cases were discussed.

Anticipated modifications

127. Brazil indicated that it intends to host a MAP training that will be given by the OECD in Brazil in May 2019.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Brazil's MAP caseload has increased significantly since 1 January 2016, this might indicate that Brazil's competent authority is not adequately resourced.	Brazil should ensure that the steps taken recently and the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.

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

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

128. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

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

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

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

Practical application

132. Peers generally reported no impediments in Brazil to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy.

Anticipated modifications

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

Conclusion

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

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

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

134. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by Brazil

135. Brazil reported that it has set targets for staff in charge of MAP process to evaluate their work performance. These are related to time needed to accomplish individual tasks. Brazil reported that for instance, there is a time estimate to assess whether a unilateral solution can be found for each case and staff in charge must balance this task with other assignments to deliver results on time. Brazil further reported that individual scores are then compared to the average and if necessary training is offered to the relevant officials.

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

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

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

Practical application

138. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard.

Anticipated modifications

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

Conclusion

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

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

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

140. 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

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

Practical application

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 35 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.

2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.

3. For post-2015 cases, if the number of MAP cases in Brazil's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Brazil reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

4. For pre-2016 and post-2015 Brazil follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "an attribution/allocation MAP case is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case".

References

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

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris,

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Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

144. 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

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

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

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

Practical application

148. Brazil reported that it has reached one MAP agreement since 1 January 2016 that needed to be implemented in Brazil, and that it was implemented.

149. Four peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Brazil.

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

151. Brazil reported that in order to mitigate the risk of non-implementation of MAP agreements when its domestic statute of limitation has expired, its competent authority now informs its treaty partner of the need of submitting a refund request and does so immediately after being notified of the existence of a filed MAP request in the other jurisdiction. Two peers confirmed that this happened in cases they had with Brazil. One of these peers reported that Brazil's competent authority informed this peer's competent authority of the fact that the entitlement to a corresponding adjustment that would result of the MAP is subject to Brazil's domestic statute of limitation that expires five years after the overpayment was made. This peer further reported that Brazil's competent authority suggested that the taxpayer submits a refund request to Brazil's tax administration before the domestic statute of limitation expires and referred to the website where the refund request form can be downloaded. Brazil responded that it has informed this competent authority, as well it is currently informing all the other ones about this procedure, by providing the link with all relevant information and documents, including the request form. Brazil clarified that these documents highlight the need to submit a refund request to have a MAP agreement implemented after the expiration of Brazil's domestic time limits. Another peer reported a similar experience and noted that the information that it could find online on the matter is only available in Portuguese. This peer suggested that this information is translated into English and available online too. Brazil noted that the need for submitting the refund request within the domestic time limits is also stressed in its MAP guidance and in its regulation. Brazil further reported that it is currently working on a bilingual version of the relevant application forms and that it intends to prepare an English version of Normative Instruction No. 1717/2017, which provides for rules on restitution, compensation, compensation and reimbursement in the scope of the RFB.

Anticipated modifications

152. Brazil reported that it now has a specific team to deal with MAP cases and in order to further mitigate the risk of non-implementation of MAP agreements when its domestic statute of limitation expired, it is currently exploring amending its legislation, which is still under consideration.

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

Conclusion

	Areas for improvement	Recommendations
[D.1]	Implementation of MAP agreements is subject to Brazil's domestic statute of limitation, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention. Therefore, there is a risk that not all MAP agreements will be implemented due to the five-year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may prevent the implementation of a MAP agreement, Brazil should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Brazil should for clarity and transparency purposes continue to notify the treaty partner thereof without delay, as they recently started to do. Brazil could follow its stated intention and introduce a tracking mechanism to ensure that all MAP agreements are implemented in the future.

[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.

154. Delays in implementing 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

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

Practical application

156. Brazil reported that it has entered into one MAP agreement since 1 January 2016, which was implemented the same day as the agreement was reached.

157. All peers that provided input have not indicated experiencing any problems with Brazil regarding the implementation of MAP agreements reached on a timely basis.

Anticipated modifications

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

Conclusion

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

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

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

159. 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.

Legal framework and current situation of Brazil's tax treaties

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

161. Out of Brazil's 35 tax treaties, six contain a provision 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. Furthermore, one tax treaty contains such equivalent as well as both the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments.

162. For the remaining 28 treaties the following analysis is made:

- 27 treaties do not contain any provision based on the second sentence of Article 25(2) second sentence at all.[1]
- One treaty includes additional requirements that may obstruct to the implementation of MAP agreements, as the latter is subject to the time limits in the domestic law of the treaty partners.

Anticipated modifications

Bilateral modifications

163. Brazil reported that when the tax treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternative provisions in Articles 9(1) and 7(2), it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, Brazil reported that it has contacted all the relevant treaty partners. Brazil also reported that in cases where any treaty partner would decide not to renegotiate the treaty at this point, Brazil would periodically contact such treaty partners with a view to do so. Brazil reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

164. For the 28 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives, nine peers provided input. Five peers confirmed that there are currently ongoing bilateral negotiations to update the concerned treaty, two of them having reported having received a draft protocol from Brazil containing a new provision regarding the mutual agreement procedure that is currently under analysis. One of these peers confirmed that this protocol has been signed. Three other peers confirmed that they were contacted by Brazil with respect to the renegotiation of their treaty. The remaining peer reported that its treaty with Brazil could be modified via the Multilateral Instrument. Brazil reiterated it did not express its intention to sign the Multilateral Instrument and that it will amend its treaties via bilateral negotiations.

Conclusion

	Areas for improvement	Recommendations
[D.3]	28 out of 35 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 provided for in Article 9(1) and Article 7(2).	Where treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.

Note

1. These 27 treaties include the treaty with former Czechoslovak Socialist Republic that Brazil continues to apply to Czech Republic and Slovak Republic.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Two out of 35 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations.
		In addition, Brazil should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	One out of 35 tax treaties does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention.	With respect to Article 25(1), first sentence, of the OECD Model Tax Convention, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a) As amended in the Action 14 final report; or b) As it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	Seven out of 35 tax treaties do not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Where treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, Brazil should follow up on its requests for the inclusion of the required provision via bilateral negotiations. This concerns a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
		In addition, Brazil should maintain its stated intention 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 future tax treaties.
	Because of a delayed response by Brazil's competent authority, access to MAP was *de facto* denied in eligible cases where domestic time limits expired after Brazil's competent authority was notified of filed MAP requests.	Brazil should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention can effectively access the MAP.

	Areas for improvement	Recommendations
[B.2]	33 of the 35 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Brazil should without further delay document its notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and the timing of these steps. Furthermore, Brazil should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	-	As Brazil has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Brazil reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Brazil is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Brazil has thus far not limited access to MAP in eligible cases when taxpayers have complied with Brazil's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	18 out of 35 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	Where treaties do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax, Brazil should follow up on its requests for the inclusion of the required provision via bilateral negotiations. In addition, Brazil should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Brazil could consider including information on: • Whether MAP is available in cases of: (i) the application of domestic anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP The consideration of interest and penalties in the MAP.
[B.9]	-	As it has thus far made its MAP guidance available and easily accessible and published its MAP profile, Brazil should ensure that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	Brazil should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[C.2]	Brazil submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016, 2017 and 2018. Based on the information provided by Brazil's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Brazil's MAP statistics show that during the Statistics Reporting Period it closed 14.3% (three out of 21 cases) of its post-2015 cases in 11.91 months on average. In that regard, Brazil is recommended to seek to resolve the remaining 85.7% of the post-2015 cases pending on 31 December 2018 (18 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Brazil's MAP caseload has increased significantly since 1 January 2016, this might indicate that Brazil's competent authority is not adequately resourced.	Brazil should ensure that the steps taken recently and the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Brazil should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Brazil would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Brazil should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	Implementation of MAP agreements is subject to Brazil's domestic statute of limitation, even when the relevant treaty contains the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention. Therefore, there is a risk that not all MAP agreements will be implemented due to the five-year time limit in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may prevent the implementation of a MAP agreement, Brazil should put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Brazil should for clarity and transparency purposes continue to notify the treaty partner thereof without delay, as they recently started to do. Brazil could follow its stated intention and introduce a tracking mechanism to ensure that all MAP agreements are implemented in the future.
[D.2]	-	As it has done thus far, Brazil should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	28 out of 35 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 provided for in Article 9(1) and Article 7(2).	Where treaties do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax, Brazil should follow up on its request for the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.

Annex A

Tax treaty network of Brazil

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (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	If N, date of signing	E = yes, either CAs O = yes, only one CA N = No	Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different 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
Austria	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Belgium	Y	N/A	O	ii	2 years	i	i	Y	N	N	N	N
Canada	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Chile	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	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)	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?
China (People's Republic of)	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
Czech Republic	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Denmark	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Ecuador	Y	N/A	O	ii	2 years	i	i	Y	N	Y	Y	N
Finland	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N
France	Y	N/A	O	i	N/A	i	i	Y	N	N	Y	N
Hungary	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Israel	Y	N/A	N	i	N/A	i	i	Y	N	Y	N	N
Italy	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Japan	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Korea	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Luxembourg	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Mexico	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Netherlands	Y	N/A	O	ii	5 years	i	i	Y	N	Y	N	N
Norway	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Peru	Y	N/A	O	iv	N/A	i	i	Y	N	Y	N	N
Phillipines	Y	N/A	O	i	N/A	i	i	Y	iii	Y	N	N
Portugal	Y	N/A	O	ii	2 years	i	i	Y	Y	Y	N	N
Russia	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Slovak Republic	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
South Africa	Y	N/A	O	iv	Domestic law	i	i	Y	N	Y	N	N

			Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2		Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (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?
Spain	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Sweden	Y	N/A	O	i	N/A	i	i	Y	N	Y	Y	N
Trinidad and Tobago	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N
Turkey	Y	N/A	O	iv	Domestic law	i	i	Y	N	Y	N	N
Ukraine	Y	N/A	O	iv	N/A	i	i	Y	N	Y	N	N
Venezuela	Y	N/A	O	i	N/A	i	i	Y	N	Y	N	N

Annex B

MAP Statistics Reporting for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	5	0	0	0	0	0	0	0	0	0	1	4	34.16
Others	7	0	0	0	0	0	0	0	1	0	0	6	53.16
Total	12	0	0	0	0	0	0	0	1	0	1	10	43.66

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

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

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

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		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	4	0	0	0	0	0	0	0	0	0	0	4	n.a.
Others	5	0	0	0	0	0	0	0	0	0	0	5	n.a.
Total	9	0	0	0	0	0	0	0	0	0	0	9	n.a.

Annex C

MAP Statistics Reporting for post-2015 cases

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

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

2018 MAP Statistics

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	5	6	0	0	0	0	0	0	0	0	0	0	11	n.a.
Others	6	3	0	0	1	0	0	1	0	0	0	0	7	11.67
Total	11	9	0	0	1	0	0	1	0	0	0	0	18	11.67

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Manual on Mutual Agreement Procedure
MAP Regulation	Normative Instruction RFB No. 1846, of 28 December 2018, which regulates the request for mutual agreement procedure under international tax treaties to which Brazil is a signatory.
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2018
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

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 1 peer review of the implementation of the Action 14 Minimum Standard by Brazil.

Consult this publication on line at ***https://doi.org/10.1787/12acb5ea-en***.

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