OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Ireland (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 80 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 Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already

has more than 115 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 BEPS on 14 August 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
JTPF	Joint Transfer Pricing Forum
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
PMDS	Performance Management Development System

Executive summary

Ireland has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Ireland has an established MAP programme and has significant experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 42 cases pending on 31 December 2017. Of these cases, 64% concern allocation/attribution cases. Ireland meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Ireland is working to address them.

All of Ireland'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 on Capital 2014* (*OECD Model Tax Convention*, OECD, 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost 40% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.
- Almost 30% 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.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Ireland needs to amend and update a certain number of its tax treaties. In this respect, Ireland signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument, Ireland reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. In this respect, it has already contacted almost all of its treaty partners to initiate such negotiations. Furthermore, Ireland opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Ireland meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs and such requests have been accepted in practice.

Ireland also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases although it has since 1 January 2016 not received any MAP request concerning the application of

anti-abuse provisions or where taxpayers and the tax authorities have already entered into an audit settlement. It further has in place a documented bilateral notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not being justified, although no such cases have occurred since 1 January 2016. Ireland also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. Ireland has an administrative/statutory dispute settlement or resolution process, which is independent from the audit and examination function and which can only be accessed through a request by the taxpayer. Applying this process will not limit taxpayers' access to MAP. The effect of this process on MAP, however, has not been described in the guidance on this process.

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

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	23	15	11	27	26.92
Other cases	13	10	8	15	17.22
Total	36	25	19	42	22.83

* 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, Ireland used as (i) start date: the date when the MAP request is considered complete and accepted by a competent authority; and (ii) end date: in general, the date when the taxpayer has officially accepted the resolution.

The number of cases Ireland closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as of 31 December 2017 increased by approximately 17% compared to its inventory as of 1 January 2016. Ireland's competent authority closed MAP cases 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 22.83 months. Although the current available resources for the MAP function in Ireland are in principle adequate, more resources may be necessary to achieve a net reduction of its MAP inventory.

Furthermore, Ireland meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Ireland's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic and principled 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.

Introduction

Available mechanisms in Ireland to resolve tax treaty-related disputes

Ireland has entered into 76 tax treaties on income (and/or capital), 76 of which are in force.[1] These 76 treaties apply to 76 jurisdictions. 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. In addition, four of the 76 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[2]

Furthermore, Ireland is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.[3]

In Ireland, the competent authority function is delegated to the Tax Administration. Within Ireland's Tax Administration two branches of the International Tax Division are responsible for handling mutual agreement procedure ("**MAP**") cases. The Transfer Pricing Branch is responsible for handling attribution/allocation cases as well as bilateral APA requests. It currently consists of ten employees. Secondly, the Tax Treaties Branch handles other MAP cases and currently consists of four employees.

Ireland issued guidance on the governance and administration of MAP, which was last updated in November 2017 and is available at (in English):

https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf

Recent developments in Ireland

Ireland is currently conducting tax treaty negotiations with several jurisdictions.

On 7 June 2017 Ireland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to being compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Ireland reported that it has already contacted almost all of its treaty partners proposing bilateral negotiations with a view to being in line with the Action 14 Minimum Standard. In that regard, Ireland reported having a three-pronged approach: (1) Ireland wrote to eleven treaty partners that are signatories to the Multilateral Instrument, but with which Ireland did not have a bilateral discussion, with a proposal to incorporate wording either under the Multilateral Instrument or through a bilateral protocol; (2) Ireland approached a further nine treaty partners that are not signatories of the MLI to propose to

amend the relevant treaty provisions by protocol, in order to be in line with the Action 14 Minimum Standard; and (3) Ireland will include in current renegotiations of tax treaties or protocols with five treaty partners wording to be in line with the Action 14 Minimum Standard. With the signing of the Multilateral Instrument, Ireland also submitted its list of notifications and reservations to that instrument.[4] In relation to the Action 14 Minimum Standard, Ireland has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process.

Basis for the peer review process

The peer review process entails an evaluation of Ireland's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Ireland and the peers on 29 December 2017.

The period for evaluating Ireland's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 ("**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 Ireland'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.

In total 14 peers provided input: Belgium, Canada, Denmark, Germany, Italy, Japan, Korea, Portugal, Russian Federation, Spain, Sweden, Switzerland, Turkey and the United States. Out of these 14 peers, eight had MAP cases with Ireland that started on or after 1 January 2016. These eight peers represent 68% of post-2015 MAP cases in Ireland's inventory that started in 2016 or 2017. Generally, all peers indicated having a good relationship with Ireland's competent authority with regard to MAP, and almost all of them emphasised the ease of contact and good co-operation in resolving disputes.

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

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

Finally, Ireland is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Ireland provided detailed peer input and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions. Ireland also provided peer input on the best practices for a number of jurisdictions that asked for it.

Overview of MAP caseload in Ireland

The analysis of Ireland's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2017 ("**Statistics Reporting Period**"). According to the statistics provided by Ireland, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017
Attribution/allocation cases	23	15	11	27
Other cases	13	10	8	15
Total	36	25	19	42

General outline of the peer review report

This report includes an evaluation of Ireland'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**").[7] Apart from analysing Ireland's legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Ireland to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides recommendations on 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 Ireland 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 Ireland has entered into are available at: https://www.revenue.ie/en/tax-professionals/tax-agreements/double-taxation-treaties/index.aspx (accessed on 18 July 2018). Reference is made to Annex A for the overview of Ireland's tax treaties.
2. This concerns treaties with Canada, Israel, Mexico and the United States.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

4. Available at: www.oecd.org/tax/treaties/beps-mli-position-ireland.pdf.

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

6. Ireland's MAP statistics are included in Annexes B and C of this report.

7. 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.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

Part A

Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Ireland's tax treaties

2. Out of Ireland's 76 tax treaties, 73 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) 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. The remaining three tax treaties are considered not to have the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In two of these treaties the term "interpretation" is not contained, whereas the third treaty misses the terms "doubts" as well as "interpretation".

3. Ireland reported that irrespective of whether the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), there are under its domestic legislation and/or administrative practices no obstructions to resolve any difficulties or doubts regarding the interpretation or application of its tax treaties.

Anticipated modifications

Multilateral Instrument

4. Ireland signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention

(OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. With respect to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Ireland listed all of them as a covered tax agreement under the Multilateral Instrument, but only for two treaties did it make, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Both treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Ireland as a covered tax agreement and also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify two of the three tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Ireland reported that for the one tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) (OECD, 2015) and that will not be modified by the Multilateral Instrument, it intends to amend the treaty via bilateral negotiations with a view to being compliant with element A.1. Ireland reported already having contacted the relevant treaty partner.

7. In addition, Ireland reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

8. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of the six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element A.1, indicating that their tax treaties are in line with this element.

9. For the three tax treaties identified that do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), one relevant peer provided input. This peer stated in a general manner that its tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that the tax treaty will be modified via the Multilateral Instrument. With respect to element A.1, the relevant tax treaty will indeed be modified.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Ireland should follow up on its request to include the required provision via bilateral negotiations.
		In addition, Ireland 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.

10. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.[1] 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.

Ireland's APA programme

11. Ireland is authorised to enter into bilateral APAs and has implemented an APA programme outlined in bilateral APA Guidelines effective from 1 July 2016. Prior to the introduction of the formal APA programme, Ireland accepted requests for bilateral APAs on an ad hoc basis in situations where a treaty partner had agreed to enter into a bilateral APA negotiation. The legal basis of the bilateral APA programme is to be found in the MAP article of the underlying tax treaty.

12. Ireland published extensive APA Guidelines, which can be found at:

https://www.revenue.ie/en/companies-and-charities/international-tax/transfer-pricing/advance-pricing-agreement-apa.aspx

13. The APA Guidelines specify that the formal APA application should be submitted before the beginning of the first accounting period to be covered by the APA. Ireland reported that bilateral APAs run typically for a period of three to five years. Ireland's APA Guidelines further explain that Ireland is willing to engage in multilateral APAs by a series of bilateral APAs.

Roll-back of bilateral APAs

14. Ireland reported that it is possible to obtain a roll-back of bilateral APAs in appropriate cases.

15. Ireland's APA Guidance states in the chapter "APA term and roll-back" that Ireland will provide for a roll-back in appropriate cases. Ireland reported that a roll-back is subject to applicable domestic time limits in both jurisdictions. In addition, the relevant facts and circumstances in the roll-back years must be the same. Ireland further reported that other factors influencing the granting of a roll-back are potential tax audits or appeals related to the roll-back years.

Practical application of roll-back of bilateral APAs

16. Ireland publishes statistics on APAs on the website of the EU JTPF.[2]

17. Ireland reported having received nine requests for bilateral APAs during the Review Period. Concerning roll-backs of bilateral APAs, Ireland reported that since 1 January 2016 it received six requests, which have all been accepted. However, all six requests are still being processed. One APA roll-back request has been granted for an APA request filed before the Review Period.

18. Most of the peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Ireland since 1 January 2016. Two peers indicated that each of them received one or more request(s) for a bilateral APA with Ireland since 1 January 2016 whereby all of these APA requests included requests for a roll-back. These two peers indicated that the requests for a roll-back did not raise any issues. Another peer noted that, while it had not received such requests in the Review Period, roll-backs with Ireland are possible in appropriate cases. An additional peer indicated that, while it had not received a request for a roll-back of a bilateral APA with Ireland during the Review Period, roll-backs of APAs with Ireland have been executed prior to the Review Period.

Anticipated modifications

19. Ireland did not indicate that it anticipates any modifications in relation to element A.2. However, Ireland reported that it regularly reviews its APA Guidance and updates this guidance as necessary.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Ireland is able to extend bilateral APAs to previous fiscal years. Even though Ireland received requests for roll-back of bilateral APAs during the Review Period, these requests, while accepted into Ireland's APA programme, are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	

Notes

1. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). The most recent statistics published are up to 2016.

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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.

20. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties contain 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 Ireland's tax treaties

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

21. Out of Ireland's 76 tax treaties, 55 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective*, *Action 14 – 2015 Final Report* (*Action 14 final report*, OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority 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, one of Ireland's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

22. The remaining 20 tax treaties can be categorised as follows:

Provision	Number of treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	19
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident and only when there is double taxation contrary to the principles of the agreement.	1

23. The 19 tax treaties mentioned in the first row of the table are considered not to have the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), 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, there is justification for these treaties not to contain the phrase of Article 25(1), first sentence for 18 of those 19 tax treaties:

- The relevant tax treaty does not contain a non-discrimination provision (six tax treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (12 tax treaties).

24. The above, however, does not apply to the remaining tax treaty included in the first row of the table as the non-discrimination article applies to both nationals that are and are not resident of one of the contracting states. The omission of the last part of Article 25(1), first sentence is then not clarified by a limited scope of application of the non-discrimination article.

25. The tax treaty mentioned in the second row of the table limits access to the MAP as such procedure is only available in case of "double taxation prohibited by this Convention" instead of "taxation not in accordance with the provisions of the convention". This constitutes a narrower scope than the one of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Therefore, the provision contained in this tax treaty is not the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

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

26. Out of Ireland's 76 tax treaties, 61 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

27. The remaining 15 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
No filing period for a MAP request	11
Filing period less than three years for a MAP request (two years)	4

28. Ireland reported that its domestic legislation does not contain any rule limiting the filing period of a MAP request when there is no filing period in the tax treaty.

Anticipated modifications

Multilateral Instrument

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

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

30. With the signing of the Multilateral Instrument, Ireland opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Ireland's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Ireland opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Ireland listed 71 of its 76 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).

31. In total, 20 of the 71 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Ireland as a covered tax agreement under that instrument and 21 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Of the remaining 29 treaty partners, 28 listed their treaty with Ireland as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 28 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b).[1]

32. In view of the above and in relation to the two treaties identified in paragraphs 24 and 25 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), these two treaties are part of the 28 treaties that will be modified via the Multilateral Instrument.

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

33. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

34. With respect to the four tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, Ireland listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). All relevant treaty partners also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify all four treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

35. As the five treaties that are considered not to contain the equivalent of either the first and/or second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) will be modified via the Multilateral Instrument, there is no need for bilateral modification of these treaties. Ireland reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as amended by the final report on Action 14 (OECD, 2015b), in all of its future tax treaties.

Peer input

36. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of the six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, one peer reported that its tax treaty with Ireland is fully in line with the Action 14 Minimum Standard. Another peer reported that its tax treaty with Ireland does not contain the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). However, this peer interprets this omission as having no time limit for filing a MAP request, so that the peer considered the tax treaty to be in line with this part of element B.1. Lastly, two peers provided specific input with regard to element B.1, indicating that their tax treaties are in line with this element.

37. For the five tax treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), two of the relevant peers provided input. Both peers stated in a general manner that their tax treaty with Ireland is not fully

in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaties will be modified via the Multilateral Instrument. With respect to element B.1 the relevant tax treaties will indeed be modified.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those five tax treaties: • One tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • One tax treaty does not contain the equivalent to Article 25(1), first sentence. • Three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015) in the five treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
		In addition, Ireland should maintain its stated intention to include the required provision in all future tax treaties.

[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).

38. 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

39. As discussed under element B.1, out of Ireland's 76 treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 28 of these 76 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.[2]

40. Ireland reported that it has introduced a notification process which allows the other competent authority concerned to provide its views on the case when Ireland's competent authority considers the objection raised in the MAP request not to be justified. Both of Ireland's internal staff guidelines, i.e. the (i) Transfer Pricing MAP Standard Operating Procedure and (ii) Tax Treaties Branch MAP Procedures Manual, instruct case officers to write to the other treaty partner within 30 days to inform them that Ireland does not consider the objection raised in the MAP request to be justified. This allows the other treaty partner to provide its view on the specific case. Ireland's internal staff guidance provides a template letter for this notification.

Practical application

41. Ireland reported that since 1 January 2016 its competent authority has not considered any objection raised in a MAP request as not being justified.

42. Almost all peers that provided input indicated not being aware of any cases for which Ireland's competent authority denied access to MAP. One peer specified that its treaty with Ireland contains a provision allowing the taxpayer to submit its MAP request to either treaty partner.

Anticipated modifications

43. As previously discussed under element B.1, Ireland signed the Multilateral Instrument, inter alia with the intention to modify covered tax agreements to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be modified via the Multilateral Instrument, Ireland declared it will apply its notification process when its competent authority considers the objection raised in a MAP request not to be justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred in Ireland.	

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

Jurisdictions should provide access to MAP in transfer pricing cases.

44. 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

45. Out of Ireland's 76 tax treaties, 60 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, 11 tax treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). The remaining five treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision for the following reasons:

- Three tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but do not contain that the competent authorities "shall if necessary consult each other".
- Two tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but it is not equivalent to such a provision as a corresponding adjustment can only be provided after involving the competent authorities through a consultation process or an agreement.

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

47. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Ireland'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, Ireland indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. This is also clearly stated in Ireland's MAP Guidance in chapter 2.7, which explains that, if a tax treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), cases of economic double taxation are considered to be implicitly within the scope of relevant tax treaty provisions by virtue of the inclusion of Article 9(1) within a tax treaty, which is in line with paragraph 11 of the commentary to Article 25 of the Model Tax Convention.

Application of legal and administrative framework in practice

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

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

Anticipated modifications

50. Ireland reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Ireland signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a)).

51. Ireland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). With respect to the 16 treaties identified in paragraph 45 above that are considered not to contain such an equivalent provision, Ireland listed 12 as a covered tax agreement under the Multilateral Instrument and included two of them in the list of treaties for which Ireland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For two out of the remaining ten treaties Ireland made a notification that these treaties do contain such an equivalent, pursuant to Article 17(4).

52. With respect to those two treaties for which Ireland made a notification on the basis of Article 17(4), one treaty partner also made such a notification. Therefore, at this stage, the Multilateral Instrument will, upon entry into force, replace the provisions in one treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). The Multilateral Instrument will only supersede the other treaty to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).

53. With respect to the eight other treaties for which Ireland did not make a notification on the basis of Article 17(4), none has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) or has made a notification on basis of Article 17(4). Therefore, at this

stage, the Multilateral Instrument will, upon entry into force, supersede these eight treaties only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

54. Ireland further reported that it intends to amend the two tax treaties for which it has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Ireland has already conducted discussions with both treaty partners and agreed with one treaty partner to amend its reservation and notification before ratification of the Multilateral Instrument. With the second treaty partner Ireland agreed to implement a protocol provision to amend that tax treaty to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Ireland 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.

55. 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

56. None of Ireland's 76 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Ireland 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.

57. Ireland's MAP Guidance specifically addresses in chapter 2.7 that Ireland will engage with the other competent authority in cases in which there is 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 whether the conditions for the application of a domestic law anti-abuse provision are in conflict with the provisions of a tax treaty.

Practical application

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

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

Anticipated modifications

60. Ireland did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	Ireland 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. Ireland 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.

61. 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 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

62. Audit settlements are available in Ireland. When the Irish Tax Administration and taxpayers have entered into an audit settlement, Ireland reported that such settlement does not preclude taxpayers' access to MAP. This is also clarified in Ireland's MAP Guidance in chapter 2.7 and is further discussed in element B.10.

Administrative or statutory dispute settlement/resolution process

63. Ireland reported it has an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer. The Tax Appeals Commission is an independent statutory body that hears and determines appeals against assessments and decisions of the Irish Tax Administration. It is legislated for in Part40A of the Taxes Consolidation Act 1997. Taxpayers may appeal assessments made by the Irish Tax Administration to the Tax Appeals Commission, which will review the case and issue a determination. The Tax Appeals Commission determinations are final and conclusive in the sense of Section 949AP(1) of the Taxes Consolidation Act 1997, but may be appealed by either party to the High Court on a point of law.

64. Ireland indicated that it always grants access to MAP in cases where a decision has been rendered by the Tax Appeals Commission. However, Ireland's competent authority cannot derogate in a MAP agreement from the decision of the Tax Appeals Commission. In these cases double taxation would only be fully eliminated, if the competent authority of the treaty partner adopts Ireland's position.

Practical application

65. Ireland reported that it has not denied access to MAP in the Review Period 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.

66. All peers indicated not being aware of a denial of access to MAP in Ireland since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the Tax Administration.

Anticipated modifications

67. Ireland did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Ireland reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Ireland is therefore recommended to follow its policy and grant access to MAP in such cases.	

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

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

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

Legal framework on access to MAP and information to be submitted

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

70. Both of Ireland's internal staff guidelines, i.e. the (i) Transfer Pricing MAP Standard Operating Procedure and (ii) Tax Treaties Branch MAP Procedures Manual, instruct case officers to request outstanding information within two months from the receipt of the taxpayer's MAP request. The taxpayer is given a timeframe of two months to provide this information. If the taxpayer does not provide the requested information within the two months period, a reminder will be sent allowing the taxpayer a further 30 days to submit the information and informing them that failure to meet this extended deadline will result in their MAP case not being progressed until the requested information has been received by the competent authority. In cases where the taxpayer has not provided the outstanding information after being reminded, the case officer will inform by letter the taxpayer as well as the other competent authority that the MAP request has been put on hold. Ireland's internal staff guidelines have for all aforementioned scenarios the following template letters:

- template letter notifying the taxpayer that their MAP request is incomplete
- template letter reminding the taxpayer to submit outstanding information
- template letter notifying the taxpayer that their MAP request is on hold pending receipt of outstanding information
- template letter notifying the other competent authority that a MAP is on hold pending receipt of outstanding information.

Practical application

71. Ireland reported that it provides access to MAP in all cases where taxpayers have provided the required information and documentation as set out in its MAP Guidance. It further reported that in the Review Period there has not been any case where the taxpayer not providing the required information or documentation has resulted in the competent authority denying access to MAP.

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

Anticipated modifications

73. Ireland did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Ireland has thus far not limited access to MAP in eligible cases when taxpayers have complied with Ireland'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.

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

Current situation of Ireland's tax treaties

75. Out of Ireland's 76 tax treaties, 47 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. Moreover, 29 tax treaties do not contain any provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

76. Ireland signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to contain such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

77. With respect to the 29 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Ireland listed 26 treaties as a covered tax agreement under the Multilateral Instrument and for all of them it made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 26 treaty partners, four are not a signatory to the Multilateral Instrument. All remaining 22 treaty partners also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 22 of the 29 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

78. Ireland reported that for the seven tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them as follows. Ireland approached three treaty partners, which are signatories of the Multilateral Instrument, but with which Ireland had no bilateral discussions, with a proposal to amend the tax treaty either under the Multilateral Instrument or through a bilateral protocol. An additional treaty partner, which is currently not a signatory to the Multilateral Instrument, informed Ireland of its intention to sign the Multilateral Instrument, which would lead to a modification of the tax treaty being in line with element B.7. Therefore, in this case the matter will be addressed via the Multilateral Instrument.

79. In addition, Ireland reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future comprehensive tax treaties.

80. Further to the above, Ireland also reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in tax treaties with a limited scope as such inclusion would contradict the purpose of those treaties. When states agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Ireland's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) should enable the competent authorities to deal with rare and exceptional cases, i.e. function as a backup-clause. The opposite applies for treaties with a limited scope. The intention here is to cover certain type of situations. Accordingly, in Ireland's view it is inappropriate to give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

Peer input

81. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of the six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element B.7, indicating that their tax treaties are not in line with this element.

82. For the 31 tax treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), six of the relevant peers provided input. Two of the peers specifically indicated that their tax treaties are not in line with element B.7, but both tax treaties will be modified via the Multilateral Instrument. The remaining four peers stated in a general manner that their tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaties will be modified via the Multilateral Instrument. With respect to element B.7 the relevant tax treaties will indeed be modified.

Conclusion

	Areas for improvement	Recommendations
[B.7]	29 out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Ireland should follow up for four of the seven on the request that it has made to include the required provision in the envisaged bilateral negotiations or via the Multilateral Instrument. For the remaining three treaties Ireland should request the inclusion of the required provision via bilateral negotiations.
		In addition, Ireland 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.

83. 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.

Ireland's MAP Guidance

84. The MAP Guidance for Ireland is published and can be found at:

https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf

85. 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. information on availability of arbitration (including the EU Arbitration Convention)

f. relationship with available domestic remedies

g. access to MAP in transfer pricing, audit settlement and anti-abuse provision cases and for multi-year resolution of cases

h. implementation of MAP agreements

i. rights and role of taxpayers in the process

j. suspension of tax collection

k. interest and penalties.

86. In addition to the MAP Guidance Ireland published a document named "The Role of the Competent Authority", which provides an overview of the role of the competent authority in Ireland in resolving international tax disputes. This is available at:

https://www.revenue.ie/en/companies-and-charities/international-tax/transfer-pricing/the-role-of-the-competent-authority.aspx

87. As discussed under element A.2. Ireland also published APA Guidelines, which set out the details of Ireland's formal bilateral APA programme.

88. The MAP guidance of Ireland described above 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.

89. The information included in Ireland's MAP Guidance is detailed and comprehensive. This concerns information on:

- whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- whether taxpayers can submit MAP requests that span multiple years
- the possibility of suspension of tax collection during the period a MAP case is pending
- the consideration of interest and penalties in MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers.

90. In particular, Ireland reported that the section with regard to MAP requests for multiple years in its MAP Guidance clarifies that taxpayers can request for the multi-year resolution of recurring issues through MAP.

Information and documentation to be included in a MAP request

91. 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.[3] This agreed guidance is shown below. Ireland'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.

92. In addition to the above shown minimum information to be provided agreed by the FTA MAP Forum, Ireland requires the following information:

- Details of the relationship between the taxpayer and the other parties to the relevant transaction(s).

Anticipated modifications

93. Ireland did not indicate that it anticipates any modifications in relation to element B.8, but reported that it regularly reviews its MAP Guidance and will publish updates as required.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	-

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

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

94. 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.[4]

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

95. The MAP Guidance of Ireland is published and can be found at:

https://www.revenue.ie/en/tax-professionals/tdm/income-tax-capital-gains-tax-corporation-tax/part-35/35-02-08.pdf

96. Ireland reported that this guidance was substantially updated in July 2017, with further minor updates in November 2017. As regards its accessibility, the information on

MAP is logically grouped within the section for "Companies and Charities", subsection "International Tax" on the website of Ireland's Tax Administration (https://www.revenue.ie/en/Home.aspx) and as such easily accessible. Recently, Ireland added a reference to its MAP Guidance within the section for individual taxpayers. As regards its accessibility, Ireland's MAP Guidance can easily be found within a few clicks from the homepage of the website of Ireland's Tax Administration or by searching for "mutual agreement procedure" in the search engine of the website.

97. Ireland reported that taxpayers are notified about any updates to the MAP Guidance by a notification system of Ireland's Tax Administration known as eBrief. These eBriefs are sent to tax practitioners and other interested parties in Ireland informing them that new/amended guidance has been made available. Furthermore, Ireland reported that eBriefs appear in the news section on the homepage of Ireland's Tax Administration website and they are typically reported in the weekly newsletters of taxation and accountancy bodies in Ireland.

MAP profile

98. The MAP profile of Ireland is published on the website of the OECD. This MAP profile is complete and includes detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

99. Ireland reported that it regularly reviews its MAP Guidance and will publish updates as required.

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, Ireland should ensure that its future updates to the MAP Guidance continue to be publically 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.

100. 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

101. As previously discussed under B.5, it is possible in Ireland that taxpayers and the Tax Administration enter into audit settlements. The relationship between access to MAP and audit settlements is described in the MAP Guidance. The MAP Guidance clarifies in chapter 2.7 that taxpayers have access to MAP in case of audit settlements.

102. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information thereon in Ireland's MAP Guidance.

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

103. As previously mentioned under element B.5, Ireland has 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. The independent Tax Appeals Commission provides the first stage of this process. Ireland's MAP Guidance explains the relationship between access to MAP and the Tax Appeals Commission process as well as other domestic remedies in chapter 2.6 "Interaction with domestic remedies" and clarifies that access to MAP will always be granted in these cases. However, Ireland's competent authority cannot derogate in a MAP agreement from the decision of the Tax Appeals Commission. Ireland reported that, in these cases, double taxation will only be fully eliminated if the competent authority of the treaty partner adopts Ireland's position.

104. Guidance on rules of procedures for the processing of appeals explains the process in Ireland to file a notice of objection against a tax (re)assessment. This guidance, however, does not specify the relationship between proceedings under the Tax Appeals Commission and the availability of MAP when cases have been settled through Ireland's domestic appeals process.

105. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Ireland that may limit access to MAP.

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

106. Ireland reported that all treaty partners were notified of the existence of its statutory/administrative dispute settlement/resolution process and its consequences for MAP, because this process is identified and described in Ireland's MAP Guidance and MAP profile, both of which are publicly available. All peers that provided input on Ireland's compliance with the Action 14 Minimum Standard, however, reported that they were not aware of the existence of such a process in Ireland. While Ireland did not separately notify their treaty partners of the existence of its statutory/administrative dispute settlement/resolution process by means of a formal letter, Ireland includes detailed information on this process in its MAP

profile, with a reference to its domestic MAP Guidance in which the process is outlined in detail. This is considered to be in line with the requirement of element B.10.

Anticipated modifications

107. Ireland did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	The guidance on rules of procedures for the processing of appeals does not include information on the relationship between internal administrative or statutory dispute settlement/resolution process available and MAP (while this relationship is explained in the MAP Guidance).	Ireland's guidance on rules of procedures for the processing of appeals should address the consequences of settling a dispute through Ireland's domestic appeals process regarding the right for a taxpayer to submit a MAP request.

Notes

1. The 29th treaty partner also listed its treaty with Ireland under the Multilateral Instrument, however, it did not make a notification on the basis of Article 16(6)(a) of that instrument. In that situation Article 16(6)(a) stipulates that the first sentence of Article 16(1) will supersede the provision of the relevant tax treaty only to the extent that this provision is incompatible with that first sentence.
2. The 29th treaty partner also listed its treaty with Ireland under the Multilateral Instrument, however, it did not make a notification on the basis of Article 16(6)(a) of that instrument. In that situation Article 16(6)(a) stipulates that the first sentence of Article 16(1) will supersede the provision of the relevant tax treaty only to the extent that this provision is incompatible with that first sentence.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, OECD Publishing, Paris, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241633-en (accessed on 18 July 2018).

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.

108. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also contain the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Ireland's tax treaties

109. Out of Ireland's 76 tax treaties, 73 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) 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.

110. For the remaining three tax treaties the following analysis has been made:

- One tax treaty limits the efforts within the bilateral phase to "the avoidance of double taxation" instead of "the avoidance of taxation which is not in accordance with the Convention". This follows from the scope of the MAP article itself in this tax treaty, but is considered being narrower and not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).
- Two tax treaties omit the language "with a view to the avoidance of taxation which is not in accordance with the Convention" and are therefore considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

111. Ireland signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

112. With respect to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Ireland listed one treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify one of the three tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

113. Ireland reported that for the two tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to their being compliant with element C.1.

114. In addition, Ireland reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future comprehensive tax treaties.

Peer input

115. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of the six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty.

116. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, two peers provided specific input with regard to element C.1, indicating that their tax treaties are in line with this element.

117. For the three tax treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), one relevant peer provided input. The peer stated in a general manner that its tax treaty with Ireland is not fully in line with the Action 14 Minimum Standard and that it is envisaged that their tax treaty will be modified via the Multilateral Instrument. With respect to element C.1 the relevant tax treaty will indeed be modified.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Ireland should request the inclusion of the required provision via bilateral negotiations.
		In addition, Ireland 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).

118. 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

119. Statistics regarding all tax treaty related disputes concerning Ireland are published on the website of the OECD as of 2007.[1] Ireland publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.[2] In addition, MAP statistics are also published annually in Ireland's annual report of the Tax Administration (Revenue's Annual Report), which is a comprehensive report on Ireland's Tax Administration's activities throughout the preceding year.

120. 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. Ireland provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Ireland and of which its competent authority was aware.[3] The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively and should be considered jointly for an understanding of the MAP caseload of Ireland. With respect to post-2015 cases, Ireland reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Ireland reported that it could match its statistics with all of its MAP partners.

Monitoring of MAP statistics

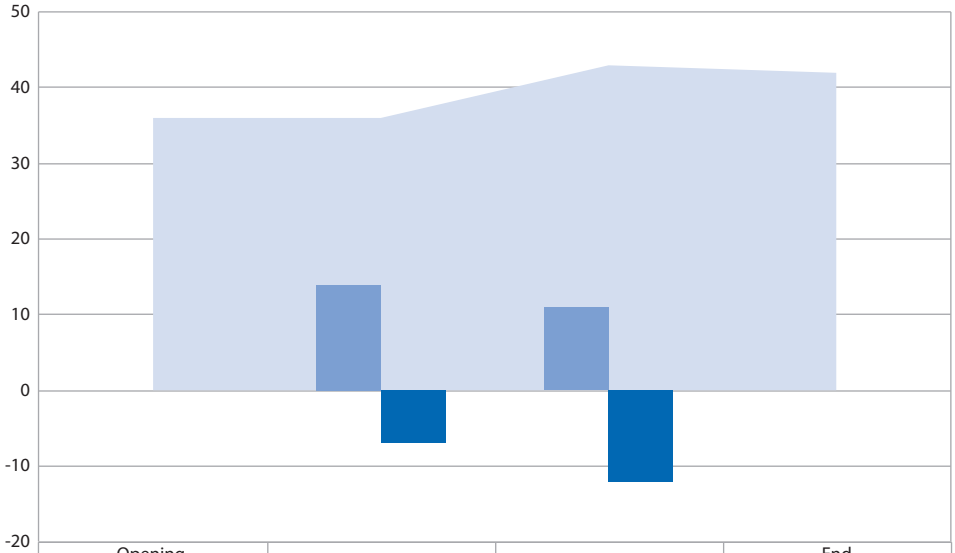
121. Ireland reported that it closely monitors progress made on each MAP case. Ireland further reported that the case managers are responsible to report on the progress of their assigned cases during the weekly staff meetings and are responsible to ensure that all necessary contacts and actions have been made. Ireland also indicated that it uses a MAP cases tracker, which is continuously updated by the case managers, to monitor the duration of each MAP case, contacts made and required further actions. Ireland mentioned that MAP cases approaching a duration of 24 months are highlighted by the tracker and will be specifically discussed during the weekly meetings.

Analysis of Ireland's MAP caseload

Global overview

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

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

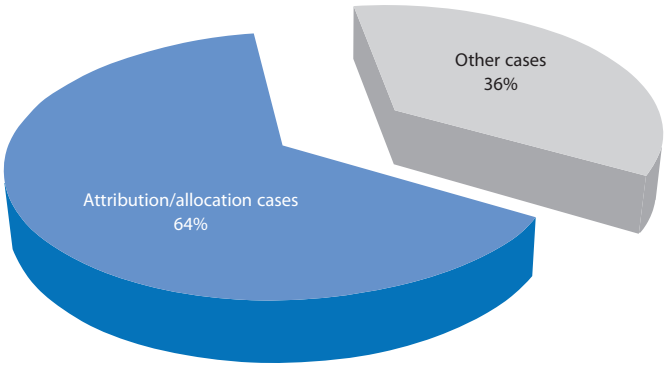


	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	36	36	43	42
Cases started		14	11	
Cases closed		-7	-12	

123. At the beginning of the Statistics Reporting Period, Ireland had 36 pending MAP cases, of which 23 were attribution/allocation cases and 13 other MAP cases.[4] At the end of the Statistics Reporting Period, Ireland had 42 MAP cases in its inventory, of which 27 are attribution/allocation cases and 15 are other MAP cases. Ireland's MAP caseload has increased by approximately 15% during the Statistics Reporting Period, which applies equally to attribution/allocation cases and other cases.

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

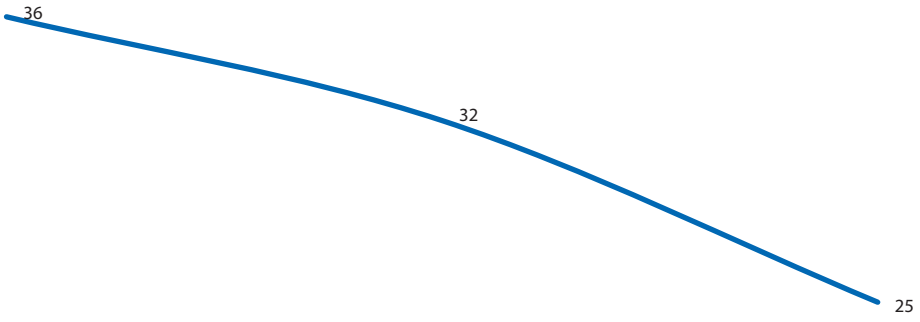
Figure C.2. **End inventory on 31 December 2017 (42 cases)**



Pre-2016 cases

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

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



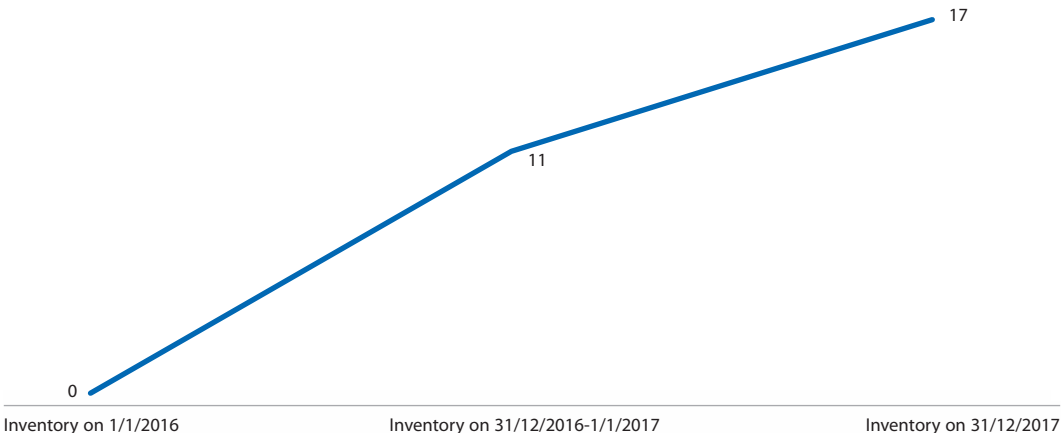
126. At the beginning of the Statistics Reporting Period, Ireland's MAP inventory of pre-2016 MAP cases consisted of 36 cases, of which 23 were attribution/allocation cases and 13 were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 25 cases, consisting of 16 attribution/allocation cases and nine other cases. The decrease in the number of pre-2016 MAP cases is shown in the following table.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	0%	-30%	-30%
Other cases	-31%	0%	-31%

Post-2015 cases

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

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



128. In total, 25 MAP cases started during the Statistics Reporting Period, 15 of which concerned attribution/allocation cases and ten other cases. At the end of this period, the total number of post-2015 cases in the inventory was 17 cases, consisting of 11 attribution/allocation cases and six other cases. Conclusively, Ireland closed eight post-2015 cases during the Statistics Reporting Period, four of them being attribution/allocation cases and four of them being other cases. The total number of closed cases represents approximately 30 % of the total number of post-2015 cases that started during the Statistics Reporting Period, which can be broken down in slightly less than 30% for attribution/allocation cases and 40% for other cases.

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

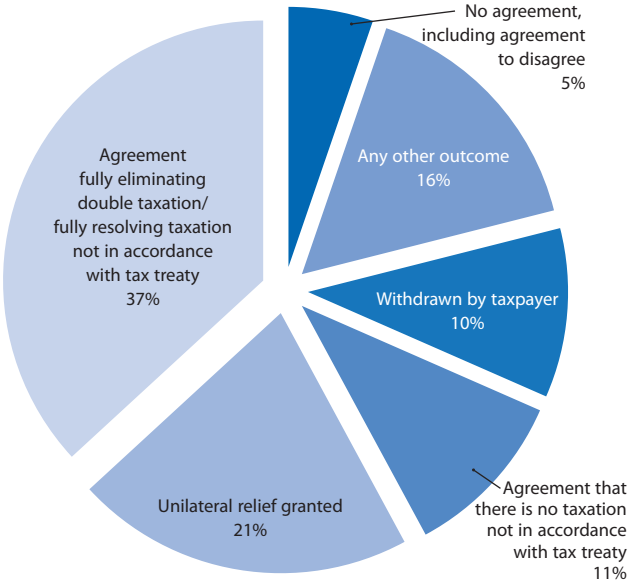
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	0%	57%	27%
Other cases	50%	25%	40%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

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

Figure C.5. **Cases closed during the Statistics Reporting Period (19 cases)**



131. This chart shows that during the Statistics Reporting Period, seven out of 19 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

132. In total, 11 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases is:

- Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (64%)
- Unilateral relief granted (27%)
- Withdrawn by taxpayer (9%)

Reported outcomes for other cases

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

- Any other outcome (38%)
- Agreement that there is no taxation not in accordance with tax treaty (25%)
- Unilateral relief granted (13%)

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

134. The average time needed to close MAP cases during the Statistics Reporting Period was 22.83 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	11	26.92
Other cases	8	17.22
All cases	19	22.83

Pre-2016 cases

135. For pre-2016 cases Ireland reported that on average it needed 35.03 months to close attribution/allocation cases and 29.61 months to close other cases. This resulted in an average time needed of 33.06 months to close 11 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Ireland reported that it uses the following dates:

- *Start date*: the date when the MAP request is considered complete and accepted by a competent authority
- *End date*: in general, the date when the taxpayer has officially accepted the resolution.

Post-2015 cases

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

137. For post-2015 cases Ireland reported that on average it needed 12.72 months to close attribution/allocation cases and 4.83 months to close other cases. This resulted in an average time needed of 8.77 months to close eight post-2015 cases.

Peer input

138. Of the peers that provided input, almost all peers reported that contacts with Ireland's competent authority are easy and professional with timely responses. Almost all peers appreciate Ireland's flexible and solution-oriented approach to resolve MAP cases in a principled manner. Several peers indicated specifically that they did not observe any impediments that led to a delay in finding a MAP resolution. Two peers emphasised that MAP cases with Ireland can be resolved in a timely and effective manner: one peer mentioned that nine attribution/allocation cases have been resolved with Ireland since 1 January 2016, while another peer also indicated that one attribution/allocation case and one other case have been resolved since 1 January 2016.

Anticipated modifications

139. Ireland did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Ireland submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Ireland's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Ireland's MAP statistics show that during the Statistics Reporting Period it closed 32% (eight out of 25 cases) of its post-2015 cases in 8.77 months on average. In that regard, Ireland is recommended to seek to resolve the remaining 68% of the post-2015 cases pending on 31 December 2017 (17 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.

140. 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 Ireland's competent authority

141. In Ireland, the competent authority function is delegated to the Tax Administration. Ireland's competent authority is divided into two teams within the International Tax Division of Ireland's Tax Administration, one being (1) the Transfer Pricing Branch and the other being (2) the Tax Treaties Branch. The Transfer Pricing Branch has responsibility for attribution/allocation cases, whereas the Tax Treaties Branch has responsibility for other cases.

142. Ireland indicated that each branch is headed by a Director who is a competent authority and has overall responsibility for all cases within the branch. In the Transfer Pricing Branch there are six Assistant Principals (who also act as competent authority), who are the case managers responsible for the day-to-day work on the MAP cases. The Assistant Principals are supported in their work by three Administrative Officers. In summary, the Transfer Pricing Branch consists thus of ten employees. To ensure the successful functioning of the MAP process within the Transfer Pricing Branch, Ireland reported that all staff have to adhere to the internal process and procedures set out in Ireland's internal Transfer Pricing MAP Standard Operating Procedure, which is reviewed annually and updated as required.

143. Ireland further reported that within the Tax Treaties Branch there are, in addition to the Director, two Assistant Principals (who also act as competent authority) and one Administrative Officer. In summary, the Tax Treaties Branch consists thus of four employees. Ireland specified that the Tax Treaties Branch ensures consistency and high standards in all the MAP processes under its responsibility by following its internal Tax Treaties Branch MAP Procedures Manual, which is developed and updated on an ongoing basis.

144. Ireland reported that both teams have significant experience in the areas of transfer pricing, international tax, economics, law and accountancy. Internal training is provided to new joiners and also to existing team members on an ongoing basis. Learnings from working on particular MAP cases are shared at weekly team meetings. Ireland further reported that staff members have the possibility to attend external trainings related to

specific topics when the need arises. Ireland also indicated having sufficient budget available to conduct bilateral meetings.

Monitoring mechanism

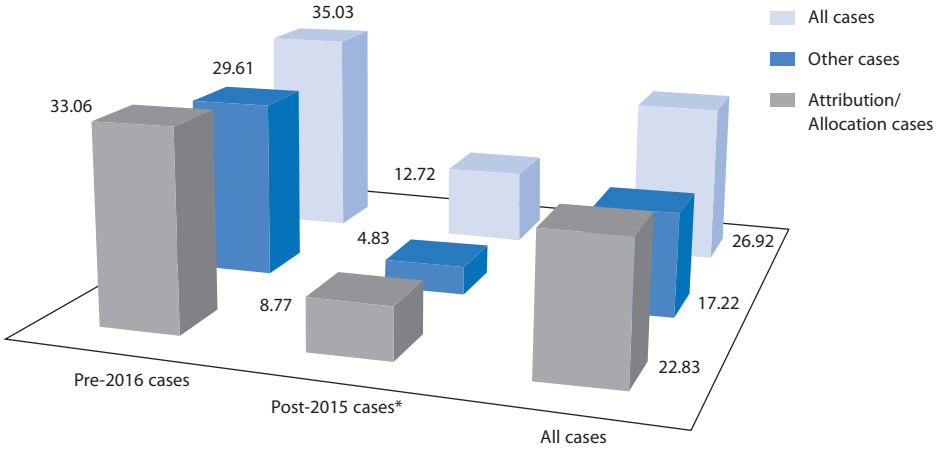
145. Ireland indicated assessing on a continuous basis whether the resources (staff, funding or training) allocated to the competent authority are adequate. This assessment is made with regard to (i) the number of MAP and APA cases in inventory, (ii) the number of new MAP and APA cases, (iii) the current time needed to resolve MAP and APA cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks. These factors are considered at regular meetings with the Head of the International Tax Division, who then requests such resources when considered to be necessary. Ireland reported that in recent years additional resources have been added (a net increase of four team members in the Review Period) when specific needs were identified.

Practical application

MAP statistics

146. As discussed under element C.2 Ireland closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. However, the average time taken to close attribution/allocation cases is higher than the average time needed for other cases. This can be illustrated by Figure C.6.

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



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

147. Based on these figures, it follows that on average it took Ireland 22.83 months to close MAP cases during the Statistics Reporting Period, by which Ireland is considered to be adequately resourced. However, as during this period it took Ireland 26.92 months to resolve attribution/allocation cases, this may indicate that additional resources specifically dedicated to attribution/allocation cases may be necessary to accelerate the resolution of these cases.

148. Ireland provided the following clarification for why it did not succeed in closing its MAP cases within the 24-month average time period during the Statistics Reporting Period:

Attribution/allocation cases

- awaiting further information or documentation from the taxpayer
- awaiting a position paper from the other competent authority
- meetings between the competent authorities have taken place and no resolution has yet been reached, but the taxpayer has asked both competent authorities to keep the case open
- judicial proceedings ongoing in the other jurisdiction, therefore halting the progression of the MAP
- the other competent authority engaging in discussions with the taxpayer
- the complex nature of certain cases

149. In addition, Ireland reported taking further steps in order to resolve MAP cases in a timely and principled manner are:

- holding frequent discussions with other competent authorities (Ireland reported that the Transfer Pricing Branch of its competent authority had discussion with six competent authorities in 2017 and scheduled two sets of discussions for early 2018.)
- regularly reviewing and ensuring that the competent authority function remains appropriately resourced
- providing regular training to case managers
- sharing learnings from cases with other case managers by discussing cases at weekly meetings or bespoke meetings for more complex or unusual cases.

Other cases

- one case which remained open at the request of the taxpayer while being appealed through another jurisdiction's legal system, which was ultimately adjudicated upon in the Supreme Court. Not taking into account this case would result in a reduction of the average time for all other cases closed in 2016 or 2017 from 17.22 to 11.21 months.

Peer input

General

150. In total 13 of the 14 peers that provided input provided details in relation to their contacts with Ireland's competent authority and their experiences in resolving MAP cases since 1 January 2016.

Contacts and correspondence with Ireland's competent authority

151. All peers reported having good contacts with Ireland's competent authority. One peer reported that it has a well-established relationship with Ireland's competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. Ten peers reported having a productive

relationship with Ireland and consider its competent authority professional, competent and very easy to get in contact with. The ease of liaising has been echoed by almost all other peers, thereby pointing out that there were no difficulties encountered.

Organisation of face-to-face meetings

152. Three of the peers that provided input pointed out that they could easily set up face-to-face meetings with Ireland's competent authority in order to resolve MAP cases.

Resolving MAP cases

153. Generally, peers consider Ireland's competent authority solution-oriented and most of them reported no impediments in resolving MAP cases. The peers also generally emphasised their experience of a timely and efficient resolution of MAP cases, which is also discussed in element C.2. One peer in particular appreciated Ireland's informal, flexible and solution oriented approach to always find a solution in a principled manner. Another peer mentioned that in its opinion Ireland's competent authority staff are competent and efficient in resolving MAP cases. Lastly, one of Ireland's major treaty partners reported that it has an active and productive relationship with Ireland's competent authority and highlighted that cases are resolved in a principled manner. In particular, this peer appreciated that Ireland's competent authority could take into consideration a provision of its MAP Guidance that affected the implementation of the mutual agreement in entering into such an agreement.

154. One peer, acknowledging a good co-operation with Ireland's competent authority, pointed out having experienced delays because of taxpayers on both sides not providing fast and complete answers to competent authorities' requests. Ireland reported that it has internal procedures in place for tracking information requests made to taxpayers and for following up with taxpayers where information requests are not responded to in a timely manner. By implementing these internal procedures, Ireland actively monitors and follows up on information requests made to taxpayers.

Suggestions

155. One peer commented that both treaty partners should continue to follow up on outstanding items by phone on a regular basis. A further peer suggested continuing and fostering consistent and direct communication.

Anticipated modifications

156. Ireland did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Ireland should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, for attribution/allocation cases, Ireland could monitor, if the procedures in place to follow up on the information/documentation requested from the taxpayers are appropriate with a view to accelerate the resolution of these cases.

[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.

157. 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

158. Ireland reported that the responsibility for the resolution of MAP cases in accordance with the provisions of the relevant tax treaty or the EU Arbitration Convention lies with the Director of the Transfer Pricing Branch or the Director of the Tax Treaties Branch depending, if it is an allocation/attribution case or respectively an other case. The Director of each branch is directly involved in the negotiation of all cases with the competent authority of the other jurisdiction. Each Director has the authority to agree to a resolution with the other competent authority. Within each branch, Ireland reported that MAP cases are assigned to a case manager at Assistant Principal level, who also acts as competent authority. The case manager is responsible for handling the case, which includes performing the detailed analysis of the case, drafting the position paper for the Director's review, liaising with the taxpayer (e.g. to request outstanding information) and liaising with their counterpart in the other competent authority, as necessary.

159. Ireland reported that the case manager keeps the Director updated on the progress of the case and meets regularly with the Director to discuss specific aspects of the case. Letters, position papers and resolutions relating to MAP disputes are subject to approval by the Director of either the Transfer Pricing Branch or the Tax Treaties Branch, as appropriate.

160. Ireland further reported that the MAP office operates independently of the audit function within Ireland's Tax Administration. Accordingly, the MAP process is carried out entirely separately from the personnel in the Tax Administration that raise tax audit adjustments. Ireland further indicated that the staff from the MAP office may liaise with the local tax districts to confirm factual matters relating to the cases. In situations where an adjustment has been raised by the Tax Administration of the other jurisdiction, staff within the MAP office notify the relevant local Irish tax office, which deals with the taxpayer's matters and provides updates on the case, as necessary.

161. When a resolution is reached with the competent authority of the other jurisdiction, Ireland reported that its competent authority writes to the taxpayer within 30 days of reaching the MAP agreement informing the taxpayer of the terms of the settlement and requesting to confirm within 30 days whether the MAP agreement will be accepted. In addition, a copy of the resolution reached with the other competent authority is provided by the MAP office to the local Irish tax office dealing with the taxpayer's matters. The Director of each branch notifies the Head of the International Tax Division of the outcome of each MAP case. Furthermore, Ireland reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations. Ireland also indicated that

staff in charge of MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed not to be influenced by policy considerations that Ireland would like to see reflected in future amendments to the treaty.

162. In conclusion of the above, Ireland reported that staff in charge of MAP in practice operate independently and have 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.

Practical application

163. Peers generally reported no impediments in Ireland 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 policy considerations. Three peers specifically mentioned that they are not aware that staff in charge of the MAP in Ireland are dependent on the approval of MAP agreements by the personnel within the Tax Administration that made the adjustment under review or influenced by policy considerations that the jurisdictions would like to see reflected in future amendments to the treaty.

Anticipated modifications

164. Ireland did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Ireland 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 Ireland 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.

165. 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 Ireland

166. Ireland reported that the primary objective of the MAP office is to seek to resolve MAP cases within the 24 month period. Ireland further indicated that it has the following system in place to evaluate the performance of staff in charge of MAP processes.

167. Ireland reported that in both branches (the Transfer Pricing Branch as well as the Tax Treaties Branch) the key performance indicators used refer to the resolution of the MAP cases in an efficient, consistent and principled manner, adhering to Ireland's internal staff guidelines and the published MAP Guidelines. Other performance indicators used are also the number of MAP cases closed in a year and the time taken to resolve such cases.

168. Ireland reported that at the start of each year, the MAP office reviews its MAP inventory and sets a target for the number of cases to be resolved in that year. This target forms part of the annual business plan for the branch, which is in turn incorporated into the annual business plan for the International Tax Division. Ireland reported that the target number of cases is based on several factors, primarily the number of months for which a case has already been open, but also the complexity of the case, status of the case (e.g. whether a case is near completion or not or whether a position paper is pending from another competent authority), and whether the taxpayer is providing relevant information in a timely manner.

169. Ireland reported that such targets are incorporated into the formal Performance Management Development System ("**PMDS**") for the staff of the MAP office. Ireland further reported that the PMDS is the process used in Ireland's Tax Administration to manage and evaluate the performance of staff and that it involves members of staff setting goals for the year ahead (including cases to be resolved) and outlining how these goals will be achieved. It also addresses the learning and development needs of staff. Ireland indicated that the PMDS forms are reviewed mid-year and also at the end of the year.

170. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and are for Ireland 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).

171. Further to the above, Ireland 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 are not evaluated on the basis of the material outcome of MAP discussions.

Practical application

172. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. Two peers particularly noted that they are not aware of the use of performance indicators by Ireland that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

173. Ireland did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Ireland 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.

174. 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

175. Ireland reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Ireland indicated that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties.

176. In addition, Ireland is a signatory to the EU Arbitration Convention. Ireland was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, Ireland reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.[5] Finally, Ireland's MAP Guidance outlines in chapter 3.2.1 Ireland's position on arbitration and explains available arbitration provisions in Ireland's current tax treaties.

Practical application

177. Up to date, Ireland has incorporated an arbitration clause in four of its 76 tax treaties as a final stage to the MAP. All of these four clauses are voluntary and binding arbitration clauses, subject to the exchange of notes between the competent authorities.

178. The protocol to a further tax treaty contains a most favoured nation clause with regard to arbitration. It stipulates that both states shall, without delay, enter into negotiations with a view to include a provision on arbitration taking account of paragraph 5 of Article 25 of the OECD Model Tax Convention (OECD, 2015a), if at any time after the date of signature of such protocol, Ireland agrees to include a provision on arbitration in any of its double taxation conventions.

Anticipated modifications

179. Ireland reported that, regarding the above-mentioned tax treaty containing a most favoured nation clause, a new protocol has been negotiated to include an arbitration provision.

180. Additionally, Ireland reported that it will include a mandatory and binding arbitration clause in the current renegotiation of another tax treaty.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). These statistics are up to and include fiscal year 2016.
3. Ireland's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annexes B and C.
4. For pre-2016 and post-2015 Ireland 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".
5. An overview of Ireland's position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-ireland.pdf.

References

OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, OECD Publishing, Paris, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).

OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264241633-en (accessed on 18 July 2018).

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.

181. 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

182. Ireland reported that when competent authorities reach a MAP agreement, the case manager informs the taxpayer hereof within 30 days from the date the agreement was reached. The taxpayer has to give its consent to the agreement in written form within 30 days of the receipt of the notification. At the same time the case manager informs the local tax district of the outcome of the MAP to initiate the process of implementation. For a downward adjustment (tax refund) the taxpayer is required to submit a revised tax computation, reflecting the result of the MAP agreement, to the local tax district. The letter from Ireland's competent authority informing the taxpayer about the outcome of the MAP and asking for the taxpayer's approval will include this requirement, if necessary. Where a MAP agreement involving an upward adjustment is reached, Ireland will request the taxpayer's acceptance of the agreement. Where the taxpayer accepts the MAP agreement, it will be implemented without delay by the local tax district. If the taxpayer does not accept the MAP agreement, the taxpayer may instead pursue any available domestic remedies.

183. Ireland's MAP Guidance includes a detailed description of this process in chapter 3.1 – "Competent Authority agreement has been reached".

184. Ireland reported that under its domestic legislation there is a general time limit of four years for claims for overpayment and underpayment of tax. However, Ireland's domestic legislation contains an overriding provision which allows for MAP agreements to be implemented beyond the four year domestic time limit. This provision is contained within Section 959AA of the Taxes Consolidation Act 1997 and states that assessments can be amended "to take account of any fact or matter arising by reason of an event occurring after the return is delivered". The event in the treaty partner country would be a tax assessment or an audit, for example. However, Ireland reported that this overriding provision (Section 959AA of the Taxes Consolidation Act) is subject to filing a tax return in Ireland. Therefore, cases might arise, which cannot be implemented as the domestic four year time limit has lapsed and the tax treaty does not contain Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015).

Practical application

185. Ireland reported that since 1 January 2016 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	2
2017	7

186. In view of these closed MAP cases, seven out of the nine required an implementation by Ireland. In this respect, Ireland reported that one of them, once accepted by taxpayers, has been implemented. For the remaining six MAP agreements, Ireland reported that implementation is pending as its competent authority is waiting for amended tax computations from the taxpayers.

187. Ireland confirmed that one case occurred in the past where the overriding provision of Section 959AA of the Taxes Consolidation Act could not be applied as described above. Ireland further reported that for one other case, which was initiated in the treaty partner's jurisdiction, it did not enter into discussions with the other competent authority because of the expiration of Ireland's domestic statute of limitation for implementation. However, upon review, Ireland established that the original claim for refund by the taxpayer in question was, in fact, made within the relevant domestic time limit for the repayment of the tax. Ireland reported that it would reopen this specific MAP case with a view to providing the relief due.

188. Ireland further indicated that it monitors the implementation of MAP agreements by requesting that the local tax district informs the competent authority when the MAP agreement has been implemented, or of any delays that may arise.

189. All 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 Ireland.

Anticipated modifications

190. Ireland did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Ireland's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the four year time limit in its domestic law that may apply.	Even though Ireland has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.

[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.

191. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

192. As discussed under element D.1, once a MAP agreement has been reached and has been accepted by the taxpayer, Ireland will implement it without delay.

193. Ireland reported that implementation of upwards adjustments resulting from MAP will be performed, after the taxpayer has accepted the MAP agreement, without delay by the local tax district. In cases where there is a downward adjustment (tax refund) resulting from a MAP, that has been accepted by the taxpayer, the taxpayer is required to file revised tax computations for the affected accounting periods to the local tax district before the refund can be processed. In cases where a refund is due to the taxpayer, Ireland specified that if Ireland's Tax Administration does not process a refund of tax arising from the mutual agreement within 93 days of the receipt from a taxpayer of a valid claim for repayment of tax, interest will become due and payable.

194. As explained under element B.8, Ireland's MAP Guidance specifically addresses the steps of the process and the timing of such steps for the implementation of MAP agreements, including the requirement for taxpayers to submit revised tax computations for tax refunds resulting from a MAP.

Practical application

195. As discussed under element D.1, since 1 January 2016, Ireland entered into seven MAP agreements that required implementation by Ireland. In this respect, Ireland reported that one MAP agreement has already been implemented and that no cases of noticeable delays have occurred. For the remaining six MAP agreements, Ireland reported that implementation is pending as its competent authority is waiting for amended tax computations from the taxpayers.

196. Almost all peers that provided input have indicated not experiencing any problems with Ireland regarding the implementation of MAP agreements reached on a timely basis.

Anticipated modifications

197. Ireland did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Ireland should continue to implement all MAP agreements reached 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.

198. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Ireland's tax treaties

199. As discussed under element D.1, Ireland's domestic legislation includes a statute of limitations of four years for implementing MAP agreements (request for tax refunds), unless overridden by tax treaties or if applicable a MAP agreement is reached under the EU Arbitration Convention.

200. Out of Ireland's 76 tax treaties, 54 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. In addition, one tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015), but contains a provision in the MAP article setting a time limit for making primary adjustments, which is considered having both alternative provisions in Article 9(1) and Article 7(2). Furthermore, 16 tax treaties neither contain such equivalent nor any alternative provisions in Article 9(1) or Article 7(2), setting a time limit for making primary adjustments.

201. For the remaining five tax treaties the following analysis is made:

- One tax treaty does not contain a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only contains an alternative provision setting a time limit for making primary adjustments in Article 9, but not in Article 7 of the OECD Model Tax Convention (OECD, 2015). Therefore, this tax treaty is considered not being in line with element D.3 of the Minimum Standard.
- In four tax treaties a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is contained, but all tax treaties also contain a limitation of implementation as it is only possible during a specified period (six to ten years) from the date of presentation of the case to the relevant competent authority. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners or by the fact that the MAP has not been finalised by then, these treaties are considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Anticipated modifications

Multilateral Instrument

202. Ireland signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

203. With respect to the 22 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Ireland listed 21 treaties as covered tax agreements under the Multilateral Instrument, but only for 20 treaties did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 20 treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Ireland as a covered tax agreement and two made a reservation on the basis of Article 16(5)(c). All remaining 16 treaty partners, also made a notification on the basis of Article 16(6)(ii). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 16 of 22 tax treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

204. Ireland further reported that for the five tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. Ireland indicated that it will amend its provisional Multilateral Instrument notifications to include one of these five tax treaties in the modifications via the Multilateral Instrument. Ireland is currently renegotiating another of these treaties and is in the process of finalising a protocol to a second treaty to align both treaties with the Action 14 Minimum Standard. Ireland reported already having contacted both of the remaining treaty partners to amend the respective tax treaties with a view to being compliant with element D.3.

205. In addition, Ireland reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future tax treaties.

Peer input

206. Of the peers that provided input, six peers indicated in a general manner that their tax treaty with Ireland will be modified via the Multilateral Instrument, if it is not in line with the Action 14 Minimum Standard. Of the six peers, one indicated that bilateral solutions will be explored in case the Multilateral Instrument does not modify the tax treaty. In addition, two peers reported that their tax treaties with Ireland are fully in line with the Action 14 Minimum Standard. Lastly, six peers provided specific input with regard to element D.3, whereas five peers indicated that their tax treaties are not in line with this element and one peer indicated that its treaty is in line with element D.3

207. For the five tax treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), two of the relevant peers provided input. The two relevant peers indicated that their tax treaties are not in line with element D.3. Both peers did not indicate any further plans and both treaties will not be modified by the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[D.3]	21 out of 76 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 22 treaties: • 20 neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any alternative provisions provided for in Article 9(1) and Article 7(2). • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) but only the alternative provision provided in Article 9(1).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 16 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining five treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Ireland should progress its existing bilateral contacts to include the required provision and should follow up on its intention to amend its notification in the Multilateral Instrument for the relevant tax treaty.
		In addition, Ireland should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

References

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264239081-en (accessed on 18 July 2018).

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Ireland should follow up on its request to include the required provision via bilateral negotiations.
		In addition, Ireland should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Ireland is able to extend bilateral APAs to previous fiscal years. Even though Ireland received requests for roll-back of bilateral APAs during the Review Period, these requests, while accepted into Ireland's APA programme, are still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	
Part B: Availability and access to MAP		
[B.1]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those five tax treaties: • One tax treaty does not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • One tax treaty does not contain the equivalent to Article 25(1), first sentence. • Three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in the five treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.
		In addition, Ireland should maintain its stated intention to include the required provision in all future tax treaties.
[B.2]	There is a documented process in place to notify the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the notification process is applied in practice because during the Review Period no such cases have occurred in Ireland.	

	Areas for improvement	Recommendations
[B.3]	-	As Ireland has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Ireland 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. Ireland is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Ireland reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Ireland is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.6]	-	As Ireland has thus far not limited access to MAP in eligible cases when taxpayers have complied with Ireland's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	29 out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 22 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining seven treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Ireland should follow up for four of the seven on the request that it has made to include the required provision in the envisaged bilateral negotiations or via the Multilateral Instrument For the remaining three treaties Ireland should request the inclusion of the required provision via bilateral negotiations.
		In addition, Ireland should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	-
[B.9]	-	As it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Ireland should ensure that its future updates to the MAP Guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.
[B.10]	The guidance on rules of procedures for the processing of appeals does not include information on the relationship between internal administrative or statutory dispute settlement/resolution process available and MAP (while this relationship is explained in the MAP Guidance).	Ireland's guidance on rules of procedures for the processing of appeals should address the consequences of settling a dispute through Ireland's domestic appeals process regarding the right for a taxpayer to submit a MAP request.

	Areas for improvement	Recommendations
Part C: Resolution of MAP cases		
[C.1]	Three out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Ireland should request the inclusion of the required provision via bilateral negotiations.
		In addition, Ireland should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Ireland submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Ireland's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Ireland's MAP statistics show that during the Statistics Reporting Period it closed 32% (eight out of 25 cases) of its post-2015 cases in 8.77 months on average. In that regard, Ireland is recommended to seek to resolve the remaining 68% of the post-2015 cases pending on 31 December 2017 (17 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Ireland should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner. In addition, for attribution/allocation cases, Ireland could monitor, if the procedures in place to follow up on the information/documentation requested from the taxpayers are appropriate with a view to accelerate the resolution of these cases.
[C.4]	-	As it has done thus far, Ireland 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 Ireland would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Ireland should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Ireland's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the four year time limit in its domestic law that may apply.	Even though Ireland has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.
[D.2]		As it has done thus far, Ireland should continue to implement all MAP agreements reached on a timely basis if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.3]	22 out of 76 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 22 treaties: • 21 neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any alternative provisions provided for in Article 9(1) and Article 7(2). • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) but only the alternative provision provided in Article 9(1).	Ireland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 16 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Ireland should progress its existing bilateral contacts to include the required provision and should follow up on its intention to amend its notification in the Multilateral Instrument for the relevant tax treaty.
		In addition, Ireland should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Ireland

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
Treaty partner	DTC in force?		Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (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	if yes i-Art. 25(5) ii-mandatory other iii – voluntary
Albania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Armenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Australia	Y	N/A	O**	Y	N/A	Y	i	Y	N**	N	N**	N	N/A

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

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	
	DTC in force?		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? **(Note 1)**		Inclusion Art. 9(2) **(Note 2)** If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? **(Note 3)**	Inclusion Art. 25(2) second sentence? (**Note 4**)	Inclusion Art. 25(3) first sentence? **(Note 5)**	Inclusion Art. 25(3) second sentence? **(Note 6)**	Inclusion arbitration provision?	
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? **(Note 4)**				
Treaty partner													
Ethiopia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Finland	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	N**	N	N/A
Former Yugoslav Republic of Macedonia (FYROM)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O**	i	N/A	i***	i	Y	N**	N**	Y	N	N/A
Georgia	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	N**	N	N/A
Guernsey	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	N	N	N/A
Hong Kong, China	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Iceland	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	N**	N	N/A
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Isle of Man	Y	N/A	O	Y	N/A	i	i	N	Y	Y	N	N	N/A
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii

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

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

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

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

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

** Treaties will be modified upon entry into force of the Multilateral Instrument.

*** Treaties will be modified upon entry into force of the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	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	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 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	23	0	0	0	0	0	0	0	0	0	0	23	0.00
Others	13	0	0	0	1	0	0	0	2	1	0	9	29.61
Total	36	0	0	0	1	0	0	0	2	1	0	32	29.61

Note: The MAP statistics included in this peer review report deviate from Ireland's published MAP statistics for 2016. Ireland corrected the start inventory of pre-2016 cases as of 1 January 2016 of its published MAP statistics for 2016 as follows: (1) One attribution/allocation case was re-classified as other case; (2) one other case was removed from the inventory and (3) one attribution/allocation case was moved from 2016 to 2017 after matching the start date with the treaty partner.

2017 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	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	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 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	23	0	0	1	2	0	4	0	0	0	0	16	35.03
Others	9	0	0	0	0	0	0	0	0	0	0	9	0.00
Total	32	0	0	1	2	0	4	0	0	0	0	25	35.03

Annex C

MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics														
		Number of post-2015 cases closed during the reporting period by outcome												
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	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 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	8	0	0	0	0	0	0	0	0	0	0	8	0.00
Others	0	6	0	0	1	0	0	0	0	0	0	2	3	2.62
Total	0	14	0	0	1	0	0	0	0	0	0	2	11	2.62

2017 MAP Statistics														
			number of post-2015 cases closed during the reporting period by outcome											
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	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	No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 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	8	7	0	0	0	1	0	3	0	0	0	0	11	12.72
Others	3	4	0	0	0	0	0	0	0	0	0	1	6	11.44
Total	11	11	0	0	0	1	0	3	0	0	0	1	17	12.46

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA Guidance	Revenue Operational Manual: Bilateral Advance Pricing Agreement Guidelines, September 2016
MAP Guidance	Guidelines for requesting Mutual Agreement Procedure ("MAP") assistance in Ireland – Part 35-02-08 – Document last updated in November 2017
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 pending resolution on 31 December 2015
Post-2015 cases	MAP cases 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 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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Making Dispute Resolution More Effective – MAP Peer Review Report, Ireland (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 Ireland.

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