OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

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

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Luxembourg has an extensive tax treaty network with more than 80 treaties and has signed and ratified the EU Arbitration Convention. Luxembourg has an established MAP programme and has long-standing and large experience with resolving MAP cases. It has a large MAP inventory with a very large number of new cases submitted each year and 170 cases pending on 31 December 2017. Of these cases, approximately 85% concern other cases than attribution/allocation cases. The outcome of the stage 1 peer review process was that overall Luxembourg met most of the elements of the Action 14 Minimum Standard. Where deficiencies were identified, Luxembourg worked to address most of them, which has been monitored in stage 2 of the process. In this respect, Luxembourg has solved almost all identified deficiencies.

All of Luxembourg's tax treaties contain a provision relating to MAP. These treaties generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that almost 20% of its tax treaties do not 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 the four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Luxembourg signed and ratified, without any reservation on the MAP article, the Multilateral Instrument. Through this instrument the majority of the relevant tax treaties have been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Furthermore, Luxembourg opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Luxembourg reported that it already initiated bilateral negotiations with some jurisdictions and that it intends to update all of its remaining tax treaties via bilateral negotiations to be compliant with the requirements of the Action 14 Minimum Standard. Luxembourg, however, has not put a plan in place to that effect to bring, where necessary, the relevant treaties in line with the requirements of this standard. Taking this into account, negotiations need to be initiated without further delay for a small number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

Luxembourg meets the Action 14 Minimum Standard concerning the prevention of disputes. It can enter into bilateral APAs and it also enables taxpayers to request roll-back of bilateral APAs. Luxembourg has received one of such requests since 1 April 2017, which is still under consideration.

Luxembourg meets all the requirements regarding the availability and access to MAP. Luxembourg provides access to MAP in all eligible cases. Furthermore, Luxembourg has in place a documented notification process for those situations in which its competent

authority considers the objection raised by taxpayers in a MAP request as not justified. In its stage 1 peer review it was identified that Luxembourg's comprehensive MAP guidance was not available. In August 2017, Luxembourg has published clear and comprehensive MAP guidance on the availability of MAP and how it applies this procedure in practice.

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

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017	Average time to resolve cases (in months)*
Attribution/allocation cases	15	16	7	24	40.74
Other cases	303	518	675	146	12.58
Total	318	534	682	170	12.87

*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, Luxembourg used as the start date the date of receipt of the MAP request and as the end date, one of the following ones: the date when the competent authority orders the office responsible for the implementation of the MAP agreement or, if no agreement was reached, the date of receipt of the closing letter from the other competent authority or, in cases where Luxembourg denies access to MAP, the date when the taxpayer is informed of the outcome of the MAP process.

The number of cases Luxembourg closed in 2016 or 2017 is almost 30% higher than the number of all new cases started in those years. During these years, MAP cases were closed on average within a timeframe of less than 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 12.87 months. The time taken to close attribution/allocation cases remained stable over time, and it is still significantly longer (almost 41 months) than the average time to close other cases (less than 13 months) and the caseload for this type of cases has increased by more than 50% over the period. In this respect, Luxembourg reported that it has reorganised the team in charge of attribution/allocation cases in order to be more efficient and is ready to schedule more face to face meetings with its treaty partners in order to discuss the pending attribution/allocation cases.

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

Lastly, Luxembourg also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Luxembourg now actively monitors the implementation and no issues have surfaced throughout the peer review process.

Introduction

Available mechanisms in Luxembourg to resolve tax treaty-related disputes

Luxembourg has entered into 85 tax treaties on income (and/or capital),[1] 81 of which are in force. These 85 treaties apply to the same number of jurisdictions.[2] All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 15 of these 85 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[3]

Luxembourg 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.[4] Furthermore, Luxembourg adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which had to be implemented in its domestic legislation as per 1 July 2019, but for which the legislative proposal is still pending before Luxembourg's parliament.[5]

In Luxembourg, the competent authority function responsible for the mutual agreement procedure is the Minister of Finance or his authorised representative. In practice, this is the Executive Committee of the Directorate of Direct Tax Administration, specifically the Economic Division for Transfer Pricing cases and the International Relations Division for all other cases.[6] In total, 10 people work on mutual agreement procedures within the competent authority of Luxembourg.

Developments in Luxembourg since 1 April 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Luxembourg it is reflected that it signed treaties with Brunei Darussalam (2015) and Uruguay (2016). Both treaties concern newly negotiated treaties and have entered into force in 2017. Furthermore, Luxembourg signed a treaty with Albania in 2009, which has not yet entered into force. For this treaty, Luxembourg reported that a draft protocol was sent to Albania in 2017, *inter alia* to incorporate Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report.

Furthermore, on 7 June 2017 Luxembourg signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**") to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 9 April 2019 Luxembourg deposited its instrument of ratification, following which the Multilateral Instrument has for Luxembourg entered into force on 1 August 2019. With the depositing of its instrument of ratification,

Luxembourg also submitted its list of notifications and reservations to the Multilateral Instrument.[7] In relation to the Action 14 Minimum Standard, Luxembourg has not made any reservation on 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.

In addition, Luxembourg reported that since 1 April 2017 it has concluded several treaty negotiations, *inter alia* with a view to ensure compliance with the Action 14 Minimum Standard. This has resulted in newly signed treaties with Botswana (2018), Cyprus[8] (2018), France (2018) and Kosovo (2017). Luxembourg also signed an amending protocol to the existing treaty with Uzbekistan (2018). Of these treaties, the one with Cyprus[9] has entered into force on 18 July 2018 and concerns a treaty partner with which there is no treaty currently in force. The same applies with respect to the treaties with Botswana and Kosovo, albeit that these have not yet entered into force. Furthermore, the treaty with France will replace the existing treaty and recently has entered into force.

Taking these developments into consideration, the number of tax treaties of Luxembourg is 85 treaties instead of 81 treaties that was taken as the basis in the stage 1 peer review report.

Further to the above, Luxembourg indicated that it is currently conducting treaty negotiations with Albania, Argentina, Cabo Verde, Ghana, Kuwait, Kyrgyzstan, Moldova, Oman and the Slovak Republic and that it intends to include in these treaties the first three paragraphs of Article 25, as amended by the Action 14 final report as well as the second paragraph of Article 9 of the OECD Model Tax Convention.[10] In addition, Luxembourg reported that it has approached Brazil and has been approached by Brazil in 2018 with the proposal to include these provisions in the tax treaty via an amending protocol, which is still under consideration.

For those tax treaties that were in stage 1 of the peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard, Luxembourg reported that it intends to contact in the near future the treaty partners with a view to initiate bilateral negotiations to be compliant with this standard, thereby focussing on the treaty partners that are members of the EU and with which it has MAP cases. It, however, neither has a specific plan in place nor took it any actions to that effect.

Other developments

On 28 August 2017 Luxembourg issued MAP guidance in Circular L.G. – Conv. D.I. no. 60 regarding the implementation of MAP provided in tax treaties signed by Luxembourg. This document clarifies 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.[11]

This document clarifies the relationship between MAP and domestic remedies. It further reflects that MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, (iii) multilateral disputes, and (iv) bona fide foreign-initiated self-adjustments. The conditions for suspension of tax collection during the course of a MAP, the consideration of interest and penalties in the MAP and the steps of the process for the implementation of MAP agreements, including the actions to be taken by taxpayers are also addressed in this document.

Further to the above, Luxembourg reported that in May 2017 it circulated an internal procedure for staff in charge of MAP that contains guidance on the administrative steps to be followed in cases where its competent authority considers an objection as not justified.

Basis for the peer review process

Outline of the peer review process

The peer review process entails an evaluation of Luxembourg'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 Luxembourg and its peers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Luxembourg's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 13 October 2017. This report identifies the strengths and shortcomings of Luxembourg in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[12] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Luxembourg. In this update report, Luxembourg reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

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

Timing of the process and input received by peers

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

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Luxembourg opted to provide information on the period starting as from 1 January 2015 and also requested peer input relating to that period. The period for evaluating Luxembourg's implementation of this standard ranges from 1 January 2016 up to 31 March 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2017 and depicts all developments as from that date until 30 September 2018. Next to its assessment on the compliance with the Action 14 Minimum

Standard, Luxembourg also addressed best practices and asked for peer input on these best practices.

In total, 12 peers provided input during stage 1: Belgium, Canada, France, Germany, Italy, Japan, Portugal, Russia, Slovak Republic, Spain, Sweden and Switzerland. In stage 1, these peers represented almost 100% of the number of post-2015 MAP cases in Luxembourg's MAP inventory that started in 2016. During stage 2, apart from the Slovak Republic, the same peers provided input on the update report of Luxembourg. Furthermore, also Australia, Austria, Ireland, Korea, the Netherlands, Turkey and the United States provided input during stage 2. Also for this stage, these peers represent almost 100% of post-2015 MAP cases in Luxembourg's inventory that started in 2016 or 2017.[13] Broadly, peers indicated that their experience with Luxembourg was very good and several peers indicated Luxembourg's competent authority was effective. Specifically with respect to stage 2 the peers confirmed having had the same experience and noted the efforts made by Luxembourg's competent authority in order to resolve MAP cases and implement MAP agreements in a timely manner.

Input by Luxembourg and cooperation throughout the process

During stage 1, Luxembourg provided adequate answers in its questionnaire which was submitted on time. Luxembourg also responded promptly and accurately to requests for additional information and provided further clarity where necessary. In addition, Luxembourg provided the following information:

- MAP profile[14]
- MAP statistics[15] according to the MAP Statistics Reporting Framework (see below).

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

Finally, Luxembourg is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Luxembourg provided detailed peer input on other jurisdictions in the framework of their peer review and made constructive suggestions on how to improve the process with the concerned assessed jurisdictions.

Overview of MAP caseload in Luxembourg

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

2016-17	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 31/12/2017
Attribution/allocation cases	15	16	7	24
Other cases	303	518	675	146
Total	318	534	682	170

General outline of the peer review report

This report includes an evaluation of Luxembourg'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[16] ("**Terms of Reference**"). Apart from analysing Luxembourg's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Luxembourg, both during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Luxembourg to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Luxembourg relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes in the recent development sections.

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

Notes

1. The tax treaties Luxembourg has entered into are available at: https://www.creatrust.com/corporate-clients/double-tax-treaties/double-tax-treaties-signed-with-luxembourg. The tax treaties that are signed but not have yet entered into force are with Albania (2009), Botswana (2018), France (2018) and Kosovo (2017). The treaty with France will replace the existing treaty once it enters into force. The other treaties concern treaty partners with which there is currently no tax treaty into force. Furthermore, an amending protocol to the existing treaty with Uzbekistan (2017) has been signed, but also has not yet entered into force. Annex A includes an overview of Luxembourg's tax treaties with respect to the mutual agreement procedure. For purpose of this report and Annex, the newly negotiated treaties that replace an existing treaties, as well as the amending protocols to existing treaties are taken into account.

2. Luxembourg continues to apply the treaty with former Czechoslovakia (1991) to the Slovak Republic.
3. This concerns treaties with Estonia, France, Germany, Guernsey, Hong Kong (China), Isle of Man, Jersey, Liechtenstein, Kosovo, Mauritius, Mexico, San Marino, Seychelles, Switzerland and Uruguay.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: https://eur-lex.europa.eu/eli/dir/2017/1852/oj.
6. www.impotsdirects.public.lu/fr/conventions/map.html.
7. Available at: www.oecd.org/tax/treaties/beps-mli-position-luxembourg-instrument-deposit.pdf.
8. Footnote by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.

   Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
9. Ibid.
10. At the time of the finalisation of the report, Luxembourg further reported that it finalised treaty negotiations with Argentina (the tax treaty was signed on 13 April 2019), Ghana (the tax treaty was initialled on 28 March 2019) and Kuwait (a protocol amending the treaty that was signed in 2007 – but still not in force as it was not ratified by Luxembourg – was initialled on 17 July 2019). These last developments are not reflected in the treaty analysis of Luxembourg, and Annex A does not include the analysis of the provisions contained in these three tax treaties.
11. This Guidance was published on 28 August 2017 and is available in French at www.impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lg-convdi-60.pdf.
12. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-luxembourg-stage-1-9789264285927-en.htm.
13. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework.
14. Available at: www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf.
15. The MAP statistics of Luxembourg are included in Annex B and C of this report.
16. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Reference

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

Part A

Preventing disputes

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

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

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

Current situation of Luxembourg's tax treaties

2. Out of Luxembourg's 85 tax treaties, 84 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining tax treaty does not contain any provision based on Article 25(3), first sentence, of the OECD Model Tax Convention.

3. Luxembourg reported that in practice it endeavours to resolve with its treaty partners by mutual agreement any difficulties or doubts arising as to the interpretation or application of tax treaties, regardless of whether the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.

4. For the treaty identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peer reported not having contacted or being in contact with Luxembourg to insert the relevant provision.

Recent developments

Bilateral modifications

5. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concern a treaty partner with which there was no treaty yet in place. All four treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention, which also was the case for the treaty for which currently a treaty is in force. Of these four treaties, two have

already entered into force, for one the ratification procedures have been completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partner. Furthermore, Luxembourg also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element A.1. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

6. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

8. In regard of the treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, Luxembourg listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(i), for this treaty a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its tax treaty with Luxembourg under that instrument and also made a notification on the basis of Article 16(6)(d)(i). As the treaty partner has deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Luxembourg and this treaty partner, and therefore has modified it to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Other developments

9. Since the treaty that is not in line with element A.1 will be modified by the Multilateral Instrument, there is no need for bilateral modifications and therefore there are no other developments to be mentioned.

Peer input

10. For the treaty identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peer did not comment on this specific element and reported that Luxembourg's update report fully reflects its experience with Luxembourg and/or that no additions are given to the previous input given.

Anticipated modifications

11. Luxembourg indicated that it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

[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.

12. 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.

Luxembourg's APA programme

13. Luxembourg does not have a formal bilateral APA programme but considers that bilateral APAs can be concluded by the competent authority of Luxembourg on the basis of Article 25(3), first sentence, of the *OECD Model Tax Convention*.

14. In practice, Luxembourg applies bilateral APAs from the first year covered by the application, under the conditions set out above, irrespective of the date when the agreement was concluded by the competent authorities.

Roll-back of bilateral APAs

15. Luxembourg may grant an extension of the bilateral APAs for previous financial years, subject to compliance with the applicable statute of limitation.

Recent developments

16. There are no recent developments relating to element A.2.

Practical application of roll-back of bilateral APAs

Period 1 January 2015-31 March 2017 (stage 1)

17. All peers indicated that they had not received a request for roll-back of bilateral APAs with Luxembourg.

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

18. Luxembourg reported that since 1 April 2017, it has received one multilateral APA request as well as two bilateral APA requests. Luxembourg further reported that a roll-back is requested in one of the bilateral APA requests and it is still in the process of being reviewed.

19. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer mentioned that it received one bilateral APA request since 1 April 2017 but that the APA request did not contain any request for a roll-back. This peer emphasised that it does not provide for roll-back of bilateral APAs. One other peer reported not having received any bilateral APA requests with Luxembourg that would have included a roll-back request since 1 April 2017. One last peer reported not having received any bilateral APA requests with Luxembourg since 1 April 2017. The other peers that provided input did not comment on this element.

Anticipated modifications

20. Luxembourg did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	-

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines.

References

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

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

Part B

Availability and access to MAP

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

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

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

Current situation of Luxembourg's tax treaties

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

25. Out of Luxembourg's 85 tax treaties, five contain a provision based on Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by the domestic law of either state. Furthermore, 66 treaties include a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of that report.

26. The remaining 14 tax treaties can be categorised as shown in the table below.

Provision	Number of tax treaties
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	12*
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby the taxpayer can only submit a MAP request for cases of double taxation	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby (i) the taxpayer can only submit a MAP request to the competent authority of the contracting state in which it is a resident and (ii) the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a provision in the exchange of notes the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

*These 12 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.

27. The 12 treaties mentioned in the first row of the table are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 11 of these 12 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not include a non-discrimination provision and only applies to residents of one of the states (one treaty).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (10 treaties).[1]

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

29. Furthermore, the treaty mentioned in the second row of the table is also considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, because it requires "double taxation" for a MAP case and not "taxation not in accordance with the provisions of the tax treaty". This treaty is therefore also not in line with this part of element B.1.

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

> It should be noted that the term "irrespective of the remedies provided by the domestic law" means that the introduction of a mutual agreement procedure is not an alternative to the national legal procedures to which, in all cases, recourse must first be had when the conflict relates to an application of … taxes which is not in accordance with the Convention.

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

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

32. Out of Luxembourg's 85 tax treaties, 71 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.[2]

33. The remaining 14 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
Filing period less than three years for a MAP request (two years)	7
No filing period for a MAP request	7

Peer input

34. For the two treaties identified that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, one of the relevant peers reported not having contacted or being in contact with Luxembourg to insert the relevant provision and the other peer reported that it was considering signing the Multilateral Instrument with a view to modify its treaty with Luxembourg and bring it in line with the requirement of the Action 14 Minimum Standard.

35. For the seven treaties that contained a shorter period than three years starting from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, three peers did not provide input. Two peers reported not having contacted or being in contact with Luxembourg to insert the relevant provision and the other two peers reported that they were considering signing the Multilateral Instrument with a view to modify their treaties with Luxembourg and bring them in line with the requirement of the Action 14 Minimum Standard.

Practical application

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

36. As noted in paragraphs 27-28 above, in all but one of Luxembourg's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Luxembourg reported that taxpayers are entitled to apply for the opening of the mutual agreement procedure and to simultaneously lodge a judicial or administrative appeal, as provided for by domestic law. When a final judicial decision is rendered before the MAP process is concluded, Luxembourg reported that its competent authority is able to continue the MAP process and can enter into MAP agreements, but such agreement must incorporate the judgement rendered and cannot lead to an additional (upward) adjustment of the taxpayer's position.

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

37. With respect to the seven tax treaties that do not contain a filing period to submit MAP requests, Luxembourg reported that no domestic time limit applies for filing a MAP request. In such cases, Luxembourg noted that it would adopt a pragmatic approach and that it would not apply a shorter period than a three-year filing period starting from the notification of the action resulting in taxation not in accordance with the provisions of the relevant tax treaty.

Recent developments

Bilateral modifications

38. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concerns a treaty partner with which there was no treaty yet in place. Furthermore, Luxembourg also signed an amending protocol to an existing treaty. Of these four treaties, two have already entered into force, for one the ratification procedures have been completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partner.

39. Concerning the first sentence of Article 25(1), all four newly negotiated treaties and all the amending protocol contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to file a MAP request to either competent authority. One of these four treaties concerns the replacement of the existing treaty that was considered not to be in line with element B.1 regarding the first sentence of Article 25(1), as a MAP request could only be filed for cases of double taxation.

40. Concerning the filing period for MAP requests, all four newly negotiated treaties and the amending protocol contain the second sentence of Article 25(1) of the OECD Model Tax Convention. One of these four treaties concerns the replacement of the existing treaty that previously did not contain a filing period for MAP requests.

41. The effects of these newly signed treaties and amending protocol have been reflected in the analysis above where they have relevance. This *inter alia* concerns a change of the number of tax treaties that now allow the filing of a MAP request to either contracting state from none to five and the number of treaties that allow a filing period of three years for such requests to 71.

Multilateral Instrument

42. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

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

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

44. With the signing of the Multilateral Instrument, Luxembourg 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 as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Luxembourg's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which they are a resident, Luxembourg opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Luxembourg listed 81 of its 85 tax treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them a notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.[3] One of these 81 treaties, however, concerns the treaty mentioned in paragraph 22 above that already allows the submission of a MAP request to either competent authority and for that reason is not taken into account in the below analysis. In other words, only 80 treaties are taken into account.

45. In total, 16 of the 80 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas 24 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties and one did not list its treaty with Luxembourg under Article 16(6)(a). All the remaining 39 treaty partners listed their treaty with Luxembourg as having a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report.[4]

46. Of these 39 treaty partners, 18 already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Luxembourg and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. For the remaining 21 treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent. Furthermore, for the one treaty mentioned above where Luxembourg's treaty partner did not make a notification on the basis of Article 16(6)(a), the Multilateral Instrument will only supersede this treaty to the extent that the provision contained therein are incompatible with the first sentence of Article 16(1).

47. In view of the above, for those three treaties identified in paragraphs 24-28 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, two treaty partners have already deposited its instrument of the Multilateral Instrument.

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

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

49. In regard of the seven tax treaty identified in paragraph 30 above that contain a filing period for MAP requests of less than three years, Luxembourg listed all 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 of the relevant seven treaty partners are a signatory to the Multilateral Instrument, listed their tax treaty with Luxembourg under that instrument and also made such a notification.

50. Of the seven treaty partners, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Luxembourg and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. For the remaining five treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

Other developments

51. There are no other developments with respect to element B.1.

Peer input

52. For the two treaties that are not in line with element B.1 and will not be modified by the Multilateral Instrument, one peer did not provide input and the other peer did not comment on actions taken to bring the treaty in line with this part of the Minimum Standard.

Anticipated modifications

53. For those tax treaties that are not in line with element B.1 and which will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to contact in the near future the treaty partners with a view to initiate bilateral negotiations to be compliant with this standard, thereby focussing on the treaty partners that are members of the EU and with which it has MAP cases. It, however, took no specific action to that effect nor were any details given as to which treaty partners are prioritised for such negotiations. Regardless, Luxembourg indicated that it will seek to include Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Three out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these three treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • One will not be modified by that instrument to include the required provision. With respect to this treaty, no actions have been taken, but it is intended to approach the treaty partner in the near future to initiate bilateral negotiations.	For the remaining treaty that will not be modified by the Multilateral Instrument, Luxembourg should follow its stated intention and without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the final report of Action 14; or b. as it read prior to the adoption of final report of Action 14.

[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).

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

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

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

Domestic bilateral consultation or notification process in place

55. Out of Luxembourg's 85 tax treaties, five treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was discussed under element B.1, 39 of these 85 treaties have been or will be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, also allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

56. For the remaining 41 tax treaties that do or will not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, Luxembourg had indicated in the course of the stage 1 review that it had implemented a notification process as from 1 April 2017, after the end of the Review Period.

Recent developments

57. Luxembourg reported that it introduced a notification process for the cases where its competent authority considers an objection as being not justified. Luxembourg reported that such a process provides that its competent authority should notify its treaty partner of its conclusion and explain the reasons why it considers the objection as being not justified. Luxembourg further reported having documented such a process in an internal note that was distributed to all its competent authority staff on 5 May 2017, and that this note provides the steps and timing of the steps to be taken by its competent authority when it considers an objection being not justified.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

58. Since 1 January 2015, Luxembourg has considered an objection not to be justified in one MAP request (submitted in 2016). No notification or consultation regarding this case was performed with Luxembourg's treaty partners.

59. Peers generally indicated that they are not aware of cases where Luxembourg's competent authority has refused to open a MAP since 1 January 2015. One peer mentioned that Luxembourg was one of the countries most inclined to opening a MAP.

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

60. Luxembourg reported that between 1 April 2017 and 30 September 2018 it considered the objection not justified in four cases involving two treaty partners. Luxembourg reported having notified its treaty partners as well as the relevant taxpayers. The relevant peers confirmed that they were notified by Luxembourg's competent authority. The other peers did not provide comments on this specific element.

Anticipated modifications

61. Luxembourg did not indicate it anticipates any modification relating to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	-

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

Jurisdictions should provide access to MAP in transfer pricing cases.

62. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Countries should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

63. Out of Luxembourg's 85 tax treaties, 68 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention, requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is made by the other treaty partner.[5] Furthermore, in 12 tax treaties such a provision is not contained. With respect to the remaining five treaties, the following analysis is made:

- In two treaties a provision is contained that is based on Article 9(2) of the OECD Model Tax Convention, but the granting of corresponding adjustments is only optional, as the word "may" is used instead of "shall" and therefore is not considered to be equivalent thereto.
- In three treaties a provision is contained that is based on Article 9(2) of the OECD Model Tax Convention, but this provision requires that competent authorities have to consult each other before granting a corresponding adjustment and therefore is not considered to be equivalent thereto.

64. Luxembourg 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.

65. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is included in Luxembourg'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, Luxembourg indicated it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments, regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention is contained in its tax treaties.

Recent developments

Bilateral modifications

66. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concerns a treaty partner with which there was no treaty yet in place. Of these four treaties, two have already entered into force, for one the ratification procedures has been completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partner. Furthermore, Luxembourg also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to Article 9(2). The effects of these newly

signed treaties and amending protocol have been reflected in the analysis above where they have relevance.

67. With respect to the inclusion of Article 9(2) of the OECD Model Tax Convention, all four treaties contain the equivalent of Article 9(2), which was not the case for the one treaty that is currently in force and which will be replaced by the newly negotiated treaty upon entry into force of this treaty.

Multilateral Instrument

68. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

70. Luxembourg has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 17 tax treaties identified in paragraph 60 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Luxembourg listed all as a covered tax agreement under the Multilateral Instrument and for five of these 17 treaties it did make a notification on the basis of Article 17(4).

71. With regard to those five treaties, all treaty partners are a signatory to the Multilateral Instrument, one of which has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Luxembourg already contains the equivalent of Article 9(2). The other four treaty partners also made a notification on the basis of Article 17(4). Of these four treaty partners, three already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Luxembourg and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention. For the remaining treaty, the instrument will, upon entry into force for this treaty, modify them to include this equivalent.

72. With regard to the remaining 12 treaties for which Luxembourg did not make a notification on the basis of Article 17(4), two treaty partners are not a signatory to the Multilateral Instrument. The other ten treaty partners listed their treaty with Luxembourg as a covered tax agreement under that instrument, whereby two, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Luxembourg already contains the equivalent of Article 9(2). None of the remaining eight treaty partners made a notification on the basis of Article 17(4).

73. Of the relevant eight treaty partners, six already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Luxembourg and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). For the remaining two treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Other developments

74. As is described in the Introduction, for those treaties that are not in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to contact in the near future the treaty partners with a view to initiate bilateral negotiations to be compliant with this standard, thereby focussing on the treaty partners that are members of the EU and with which it has MAP cases. In this respect, Luxembourg has approached and was approached by a treaty partner to initiate bilateral negotiations *inter alia* to include Article 9(2) of the OECD Model Tax Convention, which is under consideration.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

75. According to Luxembourg, it provides access to MAP in all transfer pricing cases. Between 1 January 2015 and 31 March 2017, Luxembourg reported that its competent authority did not deny access to MAP on the basis that the case concerned a transfer pricing case while it received two such requests from taxpayers (one of them being sent to both competent authorities concerned).

76. Peers indicated not being aware of a denial of access to MAP by Luxembourg on the grounds that it was a transfer pricing case between 1 January 2015 and 31 March 2017.

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

77. Luxembourg reported that it received three MAP requests on transfer pricing cases from taxpayers (one of them being sent to both competent authorities concerned) and that it did not deny access to MAP to any of these cases.

78. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Luxembourg having denied access to MAP in any of the cases concerning this peer. The other peers that provided input did not comment on this element.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

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

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

80. 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

81. None of Luxembourg's 85 tax treaties specifically allows competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, no provision in Luxembourg domestic law would limit access to MAP in cases of discussion as on whether the conditions for the application of a treaty anti-abuse provision have been met, or on whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

82. Luxembourg stated that both the application of a treaty anti-abuse provision and of a domestic anti-abuse provision are within the scope of MAP.

Recent developments

83. There are no recent developments relating to element B.4.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

84. Luxembourg indicated that between 1 January 2015 and 31 March 2017 it has not denied access to MAP in cases where 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. Luxembourg clarified, however, that its competent authority has not received any such MAP request during that period.

85. Peers indicated not being aware of a case that would have been denied access to the MAP in Luxembourg on the grounds that it was about an anti-abuse provision between 1 January 2015 and 31 March 2017.

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

86. Luxembourg reported that it has not received any cases since 1 April 2017 relating to the application of domestic of treaty anti-abuse provisions.

87. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Luxembourg having denied access to MAP in any of the cases concerning this peer. The other peers that provided input did not comment on this element.

Anticipated modifications

88. Luxembourg did not indicate it anticipates any modification relating to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

90. Audit settlements are not available in Luxembourg.

Administrative or statutory dispute settlement/resolution process

91. Luxembourg has no administrative or statutory dispute settlement or resolution process(es) in place that allows Luxembourg to deny access to the MAP for issues resolved through that process.

Recent developments

92. There are no recent developments relating to element B.5.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

93. Due to the fact that audit settlements are not available in Luxembourg, there are no cases where Luxembourg has denied access to the mutual agreement procedure in cases where a transaction would have been concluded following a tax audit.

94. Peers indicated not being aware of denial of access to MAP by Luxembourg where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities between 1 January 2015 and 31 March 2017.

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

95. Luxembourg reported that its practice did not change and that taxpayers and tax authorities are still not allowed to enter into a settlement agreement in the course of or after an audit. Luxembourg further reported that no other administrative or statutory dispute settlement or resolution process(es) have been introduced in Luxembourg.

96. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. The other peers that provided input did not comment on this element.

Anticipated modifications

97. Luxembourg did not indicate it anticipates any modifications relating to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

98. 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

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

100. Luxembourg reported that when not all required information/documentation is provided by the taxpayer, the following process applies. The taxpayer is reminded of the requirements, and is invited to provide the missing information within two months. This is further clarified in section 3.4.(a) of Luxembourg's MAP guidance.

Recent developments

101. Apart from the publication of its MAP guidance, which will be discussed under element B.8., there are no recent developments in Luxembourg related to the information and documentation that it requires taxpayers to include in a MAP request.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

102. Luxembourg indicated that it has limited access to MAP for 1 case since 1 January 2015 on the grounds that information provided was insufficient (this case was submitted in 2016). In this case, Luxembourg's competent authority sent a letter to the taxpayer concerned requesting him to complete its application. In general, the taxpayer must provide the additional information within a time limit set by the competent Luxembourg authority between one week and two months, which varies according to the content of the information required.

103. Peers indicated not being aware of denial of access to MAP by Luxembourg in situations where taxpayers complied with information and documentation requirements between 1 January 2015 and 31 March 2017.

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

104. Luxembourg reported that its competent authority has not limited access to MAP since 1 April 2017 in cases where taxpayers have complied with information and documentation requirements.

105. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer confirmed that it is not aware of Luxembourg having denied access to MAP in any of the cases concerning this peer. The other peers that provided input did not comment on this element.

Anticipated modifications

106. Luxembourg did not indicate that it anticipates any modifications relating to element B.6.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

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

Current situation of Luxembourg's tax treaties

108. Out of Luxembourg's 85 tax treaties, 81 contain a provision allowing their competent authority to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining four treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.[6]

109. For the four treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, one peer did not provide input. Another of the relevant peers reported not having contacted or being in contact with Luxembourg to insert the relevant provision and the other two peers reported that they were considering signing the Multilateral Instrument with a view to modify their treaties with Luxembourg and bring them in line with the requirement of the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

110. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concerns a treaty partner with which there was no treaty yet in place. All four treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention, which also was the case for the treaty for which currently a treaty is in force. Of these four treaties, two have already entered into force, for one the ratification procedures has been completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partner. Furthermore, Luxembourg also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element B.7. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

111. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

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

114. Of these four treaty partners, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Luxembourg and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining twos treaties, the instrument will, upon entry into force for these treaties, modify them to include this equivalent.

Other developments

115. Since the treaties that are not in line with element B.7 will all be modified by the Multilateral Instrument, there is no need for bilateral modifications and therefore there are no other developments to be mentioned.

Anticipated modifications

116. Luxembourg indicated that it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	-	-

[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.

117. 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.

Luxembourg's MAP guidance

118. In addition to information that was already available during the period under review for its stage 1 report, Luxembourg has published in August 2017 a specific document clarifying the rules, guidelines and procedures about the MAP. This document is available in French at:

https://impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lg-convdi-60.pdf

119. 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 domestic available remedies

g. access to MAP in transfer pricing cases, anti-abuse provisions, multilateral disputes, bona fide foreign-initiated self-adjustments

h. implementation of MAP agreements (including the steps of the process and any actions to be taken by taxpayers)

i. rights and role of taxpayers in the process

j. suspension of tax collection

k. interest charges, refunds and penalties.

120. The above-described MAP guidance of Luxembourg 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 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 MPA request.[7]

121. The previously published guidance stipulated that

"in practice, MAP requests should be sent to:

- the Management Committee for all MAPs
- the Economic Division for Transfer Pricing cases and,
- the International Relations Division for all other cases."

122. Luxembourg clarified that only one MAP request to one of these three addressees was necessary and that requests for MAPs addressed to the wrong entity would be redirected to the correct one where appropriate. In the most recent version of its MAP guidance, the relevant paragraph reads:

"in practice, MAP requests should be sent to:

- the Management Committee for all MAPs, or
- the Economic Division for Transfer Pricing cases, or
- the International Relations Division for all other cases."

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

- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the timing of steps of the process for the implementation of MAP agreements.

Information and documentation to be included in a MAP request

124. 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.[8] This agreed guidance is shown below. Luxembourg's MAP Guidance enumerates the items that must be included in a request for MAP assistance (if available), which are checked below:

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

125. In addition, Luxembourg requires the taxpayer to provide detailed information on any administrative or litigation appeals, if any, and any APA, any ruling or judicial decision concerning the case.

Anticipated modifications

126. Luxembourg did not indicate that it anticipates any modifications in relation to element B.8

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.

127. 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[9] further promotes the transparency and dissemination of the MAP programme.

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

128. Luxembourg's MAP Guidance can be found since August 2017 at:

https://impotsdirects.public.lu/content/dam/acd/fr/legislation/legi17/lg-convdi-60.pdf

129. This document is accessible by searching for the words "mutual agreement procedure" in the search engine of the website of the Direct Tax Administration.[10]

MAP Profile

130. The MAP profile of Luxembourg is published on the website of the OECD. This profile includes the necessary information and detailed explanations are provided where necessary.

Recent developments

131. In addition to the publication of its MAP guidance in August 2017, Luxembourg has also updated its MAP profile on 16 January 2019 to reflect the most recent information on the MAP process in Luxembourg.[11]

Anticipated modifications

132. Luxembourg did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

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

MAP and audit settlements in the MAP guidance

134. As previously mentioned in B.5, audit settlements are not available in Luxembourg.

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

135. Luxembourg reported that there is no other administrative or statutory dispute settlement/resolution process in Luxembourg that impacts the access to the MAP.

Notification of treaty partners of administrative or statutory dispute settlement/ resolution process

136. It is not necessary to notify treaty partners since Luxembourg does not limit access to MAP in audit settlement cases or internal statutory dispute settlement resolution processes.

Recent developments

137. There are no recent developments relating to element B.10.

Anticipated modifications

138. Luxembourg did not indicate that it expects any modifications relating to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. Ibid.
2. These 71 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.
3. These 81 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.
4. Ibid. for the 39 treaties.
5. These 68 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.
6. These 81 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.
7. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
8. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
9. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
10. Available in French at: www.impotsdirects.public.lu/fr.html.
11. Available at: www.oecd.org/ctp/dispute/Luxembourg-Dispute-Resolution-Profile.pdf.

References

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

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

Part C

Resolution of MAP cases

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

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

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

Current situation of Luxembourg's tax treaties

144. Out of Luxembourg's 85 tax treaties, 83 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.[1]

145. Of the remaining two tax treaties, one contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but this provision stipulates that the objective of the MAP process is to avoid "double taxation" instead of "taxation not in accordance with the tax treaty". Furthermore, the second treaty also contains a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention, but this provision is supplemented with a sentence, that stipulates that the MAP process shall automatically expire by the end of the third year following the year in which the taxpayer submitted a MAP request. The automatic termination of the process bears the risk that cases are not resolved if they are not concluded within the three-year period. For these reasons both treaties are considered not containing the equivalent of Article 25(2), first sentence.

146. For one of the treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant treaty partner did not

provide input. For the other treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peer reported not having contacted or being in contact with Luxembourg to insert the relevant provision.

Recent developments

Bilateral modifications

147. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concerns a treaty partner with which there was no treaty yet in place. All four treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention, which was not the case for the treaty for which currently a treaty is in force. Of these four treaties, two have already entered into force, for one the ratification procedures has been completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partner. Furthermore, Luxembourg also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element C.1. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

148. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

150. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Luxembourg listed all of them as a covered tax agreement under the Multilateral Instrument, but only for one did it make, 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 is a signatory to the Multilateral Instrument, listed its treaty with Luxembourg as a covered tax agreement and also made a notification on the basis of Article 16(6)(c)(i). This treaty partner has deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Luxembourg and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Other developments

151. There are no other developments with respect to element C.1.

Peer input

152. For the relevant treaty that is not in line with element C.1 and that will not be modified by the Multilateral Instrument, the relevant peer did not provide input.

Anticipated modifications

153. For the remaining tax treaty that is not in line with element C.1 and which will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to contact in the near future the treaty partner with a view to initiate bilateral negotiations to be compliant with this standard. Regardless, Luxembourg indicated that it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One has been modified by the Multilateral Instrument to contain the required provision. • One will not be modified by that instrument to contain the required provision. With respect to this treaty no actions have been taken or are planned to be taken.	For the remaining treaty that will not be modified by the Multilateral Instrument, Luxembourg should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

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

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

154. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

155. Statistics regarding all tax treaty related disputes are published on the website of the OECD as of 2007.[2] Luxembourg publishes statistics as regards transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.[3]

156. The FTA MAP Forum has agreed on rules for the 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. Luxembourg provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Luxembourg and of which its competent authority was aware.[4] The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and

Annex C respectively,[5] and should be considered jointly for an understanding of the MAP caseload of Luxembourg. With respect to post-2015 cases, Luxembourg reported having reached out to all its MAP partners with a view to have their MAP statistics matching both for the years 2016 and 2017. Luxembourg noted a difference of approximately 0.1% in the average times computed by another MAP partner.

157. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. Two peers reported having successfully matched their MAP statistics with Luxembourg. The other peers that provided input did not provide specific comment on this element.

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

Monitoring of MAP statistics

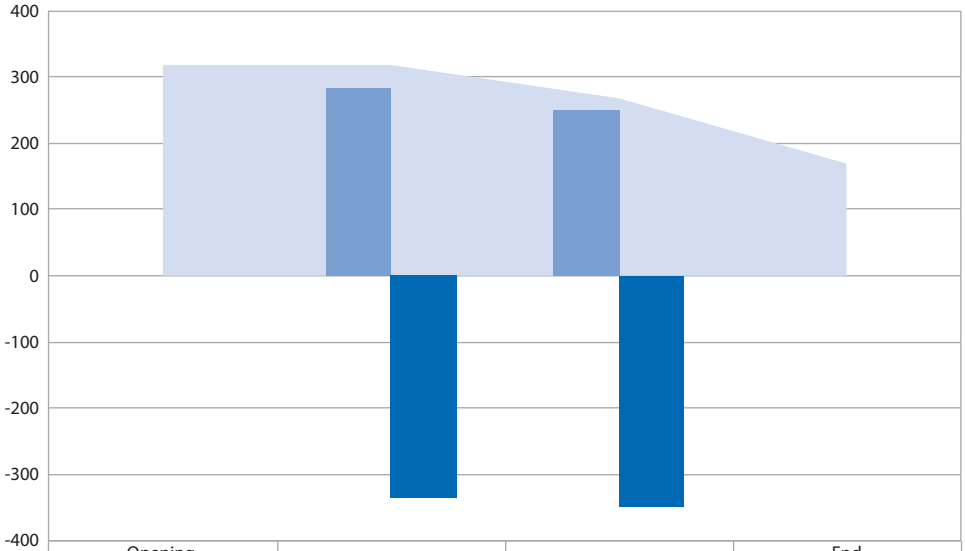
159. Luxembourg reported that it monitors on a continuous basis (i) the number of cases in its MAP inventory, (ii) the number of new MAP requests and (iii) the time taken to resolve MAP cases.

Analysis of Luxembourg's MAP caseload

Global overview of the MAP caseload

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

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

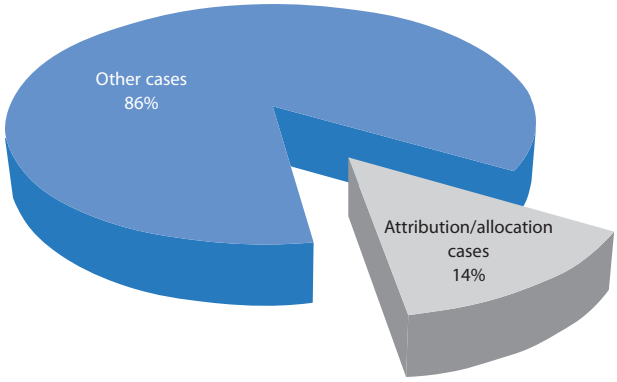


	Opening inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	318	318	267	170
Cases started		284	250	
Cases closed		-335	-347	

161. At the beginning of the Statistics Reporting Period Luxembourg had 318 pending MAP cases, of which 15 were attribution/allocation cases and 303 other MAP cases.[6] At the end of the Statistics Reporting Period, Luxembourg had 170 MAP cases in its inventory, of which 24 are attribution or allocation cases and 146 other MAP cases. On the 682 cases that were closed during the period, seven cases were attribution/allocation cases. While the total number of cases decreased by almost 50% during the Statistics Reporting Period, the number of attribution/allocation cases has increased by 60% and the number of other cases decreased by more than 50% during the same period.

162. The breakdown of the end inventory can be illustrated as follows:

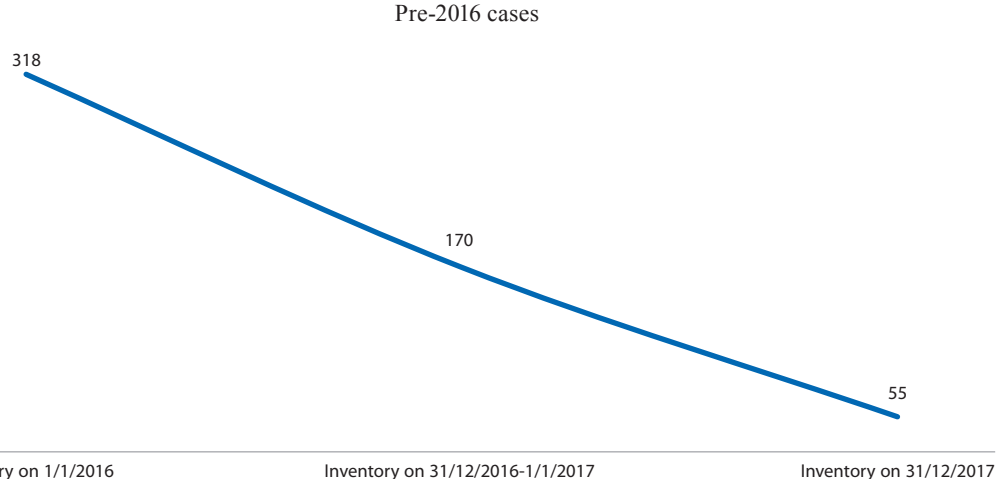
Figure C.2. **End inventory on 31 December 2017 (170 cases)**



Pre-2016 cases

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

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



164. At the beginning of the Statistics Reporting Period, Luxembourg's MAP inventory of pre-2016 MAP cases consisted of 318 cases, of which were 15 attribution/allocation cases and 303 other cases. At the end of the Statistics Reporting Period the total inventory of

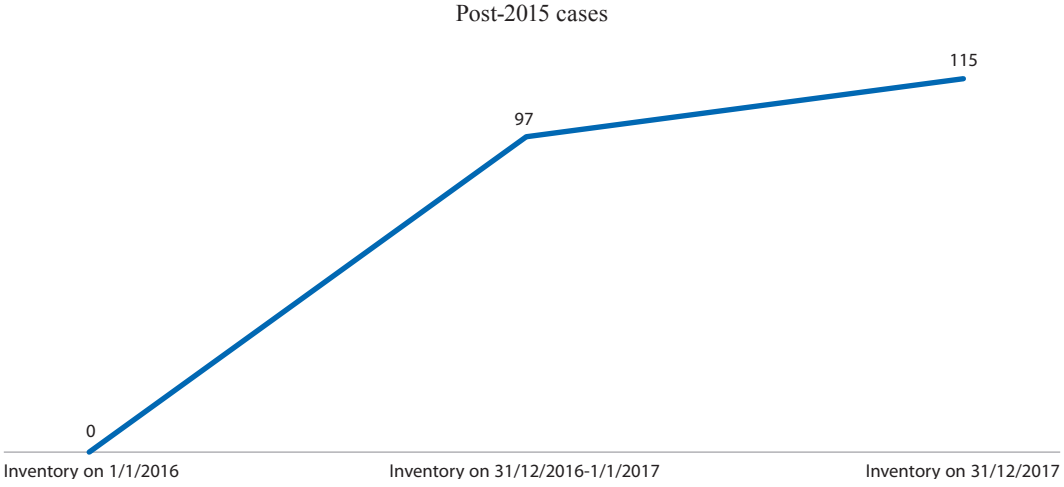
pre-2016 cases had decreased to 55 cases, consisting of 10 attribution/allocation cases and 45 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

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	-7%	-29%	-33%
Other cases	-49%	-71%	-85%

Post-2015 cases

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

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



166. As mentioned previously, 534 MAP cases were started on or after 1 January 2016, 16 of which concerned attribution/allocation cases and 518 were other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 115 cases, consisting of 14 attribution/allocation cases and 101 other cases. Luxembourg in total resolved 419 post-2015 cases during the Statistics Reporting Period, two of them being attribution/allocation cases and the remaining being other cases. The number of post-2015 cases closed represents almost 80% of the total number of post-2015 cases that started during the Statistics Reporting Period. 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.

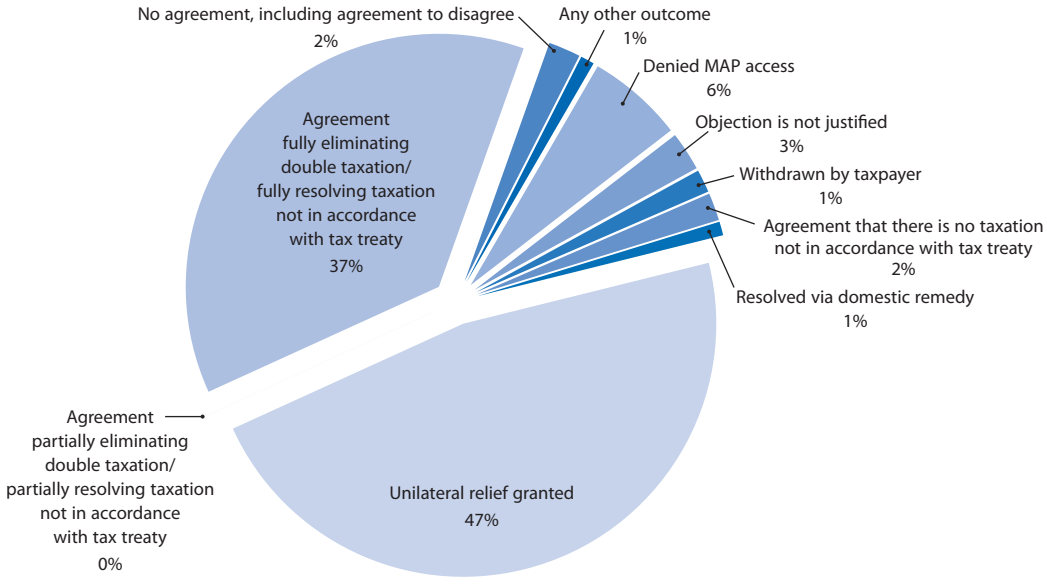
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016 + 2017)
Attribution/allocation cases	0%	33%	13%
Other cases	68%	94%	81%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

167. During the Statistics Reporting Period, Luxembourg closed 682 MAP cases and the following outcomes were reported:

Figure C.5. **Cases closed during 2016 and 2017 (682 cases)**



168. This chart points out that during the Statistics Reporting Period, 321 out of 682 cases were resolved through a unilateral relief and 254 out of 682 cases were resolved 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

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

- unilateral relief granted (43%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (29%).

Reported outcomes for other cases

170. In total, 675 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- unilateral relief granted (47%)
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty (37%).

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

171. The average time needed to close MAP cases during the Statistics Reporting Period was12.87 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	7	40.74
Other cases	675	12.58
All cases	682	12.87

Pre-2016 cases

172. Luxembourg reported that on average it needed 54.55 months to close five attribution/allocation cases and 29.28 months to close 258 other cases. This resulted in an average time needed of 29.76 months to close 263 pre-2016 cases. For the purpose of computing the time to resolve pre-2016 cases, Luxembourg used:

- as the start date, the date of receipt of the MAP request
- as the end date, the date when the competent authority orders the office responsible for the implementation of the MAP agreement or, if no agreement was reached, the date of receipt of the closing letter from the other competent authority or, in cases where Luxembourg denies access to MAP, the date when the taxpayer is informed of the outcome of the MAP process.

Post-2015 cases

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

174. It is noted that Luxembourg closed 78% of the post-2015 cases that started during the Statistics Reporting Period. During these 24 months, Luxembourg closed two post-2015 attribution/allocation cases in an average time of 6.22 months and closed 417 other cases in an average time of 2.25 months. This resulted in an average time needed of 2.27 months to close 419 post-2015 cases.

Peer input

Period 1 January 2015-31 March 2017 (stage 1)

175. Several peers indicated that they were able to resolve MAP cases within a reasonable period of time with Luxembourg. One peer reported that cases submitted in 2015 with Luxembourg have already been resolved. In particular, one peer (who is also a significant partner for Luxembourg) has indicated that many cases involving Luxembourg are resolved within a few months after the taxpayer submits a MAP request. According to this peer, Luxembourg is very responsible and responds to letters in a very short time. As a result, the time to resolve cases with the peer varies between short and very short. Furthermore, in 2016, Luxembourg resolved unilaterally 80 cases that were submitted by natural persons in the same year, whereas the tax adjustment had occurred in the country of the pair (and not in Luxembourg).

176. However, one peer pointed out that intermediate steps (such as the submission of a position paper) were not always achieved within the expected timeframe (e.g. as provided for in the European Union Code of Conduct on the implementation of the arbitration agreement). Another peer reported that Luxembourg had not forwarded to them all the information and elements necessary for the analysis and resolution of the file.

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

177. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer reported not having experienced any difficulty in its exchanges with Luxembourg's competent authority and emphasised that Luxembourg's competent authority aims at resolving MAP cases in a timely and efficient manner. One other peer reported having experienced one MAP case with Luxembourg that was both initiated and resolved in 2018 through a unilateral relief provided by Luxembourg's competent authority. The other peers did not provide comments on this element.

Recent developments

178. As it will be discussed under element C.3, Luxembourg reported that the number of staff of the International Relations division has been increased by an additional person and that it reorganised the Economic division. Luxembourg further reported that it endeavours to resolve all cases, including attribution/allocation cases, in a timely manner.

Anticipated modifications

179. As will be discussed in C.6, Luxembourg's tax treaty policy is to provide for mandatory and binding MAP arbitration in its bilateral tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

180. 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 Luxembourg's competent authority

181. In Luxembourg, the Executive Committee of the Directorate of Direct Tax Administration is responsible for the competent authority function. The Executive Committee is made of the director of the Direct Tax Administration and four deputy directors. Under the responsibility of the Executive Committee, the Economic Division handles Transfer Pricing cases and the International Relations Division handles all other cases. Luxembourg indicated

that it regularly informs its treaty partners of any change in this respect. In addition, contact information is published on the OECD website (MAP profile[7]) and EU Joint Transfer Pricing Forum website.[8]

182. Overall, 10 people are handling MAP cases within Luxembourg's competent authority. These 10 people can be categorised as follows:

- Five people are responsible for MAP cases related to transfer pricing within the Economic Division which overall consists of seven people, while one of them is the deputy head of division. Luxembourg reported that among the five people, two predominantly work on MAP cases whereas the other three work primarily on other issues related to corporate income tax, and are available to assist in the resolution of MAP cases. Luxembourg further mentioned that the five members of the Economic Division have an extensive knowledge in transfer pricing, given that they participate both in internal and external trainings. The members of the Economic Division also attend, among others, the following working group meetings : (a) within OECD: Working Party 6 on the Taxation of Multinational Enterprises; FTA MAP Forum; Forum on Harmful Tax Practices and (b) with the European Union: Joint Transfer Pricing Forum; Code of Conduct and subgroups of the Code of Conduct.
- Five people are responsible for other MAP cases within the International Relations Division, which consists of these five people, while two of them are the deputy heads of division. Most of these five people have more than 10 years of experience within the International Relations Division, and some have more than 20 years. The five people referred to here are also involved in tax treaty negotiations for Luxembourg. Two members of the team are also participants in the works of the OECD Working Party 1 on Tax Conventions. Another person working with the International Relations Division attends the OECD's FTA MAP Forum as well as the Committee of Experts on International Cooperation in Tax Matters. Another person attends the Task Force on the Digital Economy.

183. The staff of Luxembourg's competent authority is given a global training within the tax administration over six years as well as specific modules such as those proposed by the OECD. In addition, the budget that is dedicated to travel has always been sufficient for all the meetings that the competent authority wished to attend.

Monitoring mechanism

184. Luxembourg indicated assessing both on a continuous basis whether the resources allocated to the competent authority are adequate. In addition, the heads of division would inform their director in case of need of additional resources (staff, budget or training) on a yearly basis. This assessment is made with regard to (i) the number of MAP cases in inventory, (ii) the number of new MAP cases, (iii) the current time needed to resolve MAP cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks.

185. In this respect, Luxembourg specified that, before the end of the year 2016, the team responsible for handling attribution/allocation MAP cases was made of four persons and two more persons were hired to join the Economic Division, and the number of employees in this team then increased to 6 persons (being an increase by 50%). Among the new two members, Luxembourg reported that one person was assigned to handle the data base of MAP cases in order to increase the efficiency in the resolution of such cases.

Recent developments

186. Luxembourg reported that one additional person has recently been hired in the International Relations Division whereas the Executive Committee has been reinforced by two additional deputy directors. These recent developments have been reflected in the above description of Luxembourg's competent authority.

187. In addition, Luxembourg reported that the Economic Division has been reorganised in order to improve its performance and now two members of the division predominantly work on attribution/allocation cases. Luxembourg noted an overall increase in the efficiency of the division, although this has not yet been visible in its statistics.

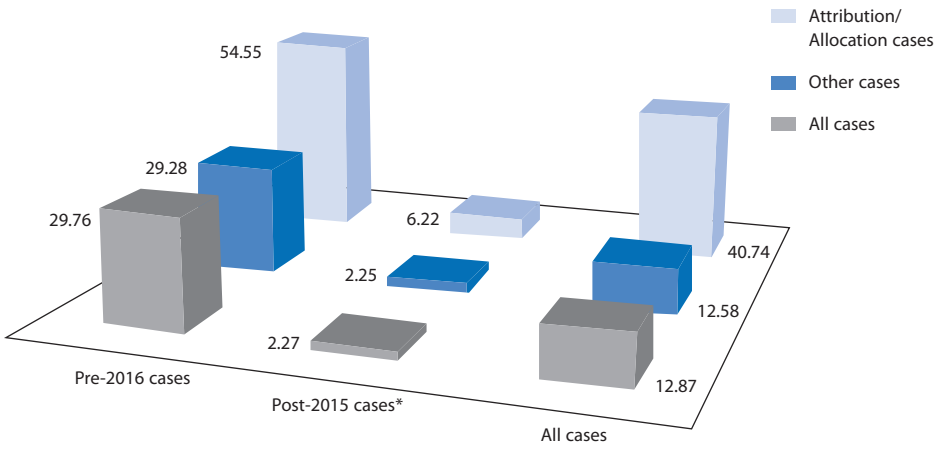
188. With respect of the monitoring mechanism described previously, Luxembourg reported that the appointment of one person to handle the database of MAP cases has enabled the Economic Division to capture more efficiently the influx of attribution/allocation cases and to manage more adequately the output.

Practical application

MAP Statistics

189. As discussed under element C.2 Luxembourg resolved its MAP cases within the pursued 24-month average. A discrepancy can, however, be noted between the average time taken to resolve attribution/allocation cases and other cases. This can be illustrated by the following graph:

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



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

190. Based on these figures, it follows that on average it took Luxembourg 12.87 months to close MAP cases. However, the average time needed to resolve attribution/allocation cases is 40.74 months, while the average time required to resolve other cases is 12.58 months. In practice, these elements seem to indicate that additional resources dedicated to the resolution of attribution/allocation cases may be necessary in order to accelerate the resolution of such cases, especially since the number of attribution/allocation cases in inventory on 31 December 2017 increased by 60% compared to the number of such cases in inventory on 1 January 2016.

191. In stage 1, Luxembourg indicated that out of the 14 cases pre-2016 that were still in progress on 31 December 2016, 11 cases had been in progress for more than 24 months. Of these 14 cases, Luxembourg had specified that:

- For three cases, Luxembourg has been informed by the other competent authority that an appeal is under way and that the mutual agreement procedure is suspended.
- For one case, Luxembourg is waiting for the position paper from the other competent authority.
- For ten cases, Luxembourg is actively in contact with the other competent authorities with a view to resolving them, which includes three very complex cases requiring several exchanges between competent authorities before they can be resolved. Out of these 10 cases, Luxembourg indicated that two cases had been resolved in the first half of 2017, and another case was about to be resolved.

192. With respect to the average time taken to resolve cases of attribution/allocation, Luxembourg had clarified that this was the time required to resolve a single attribution/allocation case closed in 2016. Additionally, Luxembourg had clarified that the time taken to resolve this case was explained by the fact that the taxpayer had also filed an appeal in the other jurisdiction and that the other competent authority had wished to suspend the discussions on the mutual agreement procedure until the judgment had been rendered. Once the judgment has been rendered, the two competent authorities have closed the case as "resolved by domestic remedy", taking into account that the competent authority of the other jurisdiction could not derogate from the solution resulting from that judgment.

193. The average time to close MAP cases can be broken down as follows for 2016 and 2017:

	2016	2017
Attribution/allocation cases	40.70	40.75
Other cases	8.52	16.55
All cases	8.62	16.97

194. In this respect, Luxembourg reported that most of the attribution/allocation cases MAP cases are either very complex and therefore time consuming, or may also be highly dependent on the efficiency and rapidity of the other country involved, which can explain the time taken to close these cases. Luxembourg further clarified that some attribution/allocation cases need more than one exchange of position paper and that, if appropriate, Luxembourg reaches out to the other competent authorities in order to organise physical meetings.

Peer input

195. A lot of peers confirmed in stage 1 that their competent authorities are frequently in contact with Luxembourg's competent authority and that communication was efficient, be it via mail, emails, phone conversations or, more rarely, via joint commissions. Nine peers provided input in stage 2 and mentioned that the update reports of Luxembourg fully reflects its experiences with Luxembourg since 1 April 2017 and/or that there were no additions to the previous input given. One peer reported not having experienced any difficulty in its exchanges with Luxembourg's competent authority and emphasised that Luxembourg's competent authority aims at resolving MAP cases in a timely and efficient manner. The other peers did not provide comments on this element.

196. One of these peers specified that as the files are dealt with, there is no need for face-to-face meetings. Luxembourg reported in stage 2 that a face-to face meeting will be scheduled with the competent authority of this peer. The relevant peer provided input in stage 2 and mentioned that the update reports of Luxembourg fully reflects its experiences with Luxembourg since 1 April 2017 and/or that there were no additions to the previous input given.

197. Another peer had mentioned in stage 1 that an annual meeting could be helpful as it has a high number of MAP cases with Luxembourg. In addition, this peer had indicated that the staff of Luxembourg's competent authority is very stable, which helps to solve MAP cases efficiently. Luxembourg reported in stage 2 that a face-to face meeting was held in June 2018 with the competent authority of this peer. The relevant peer provided input in stage 2 and mentioned that the update reports of Luxembourg fully reflects its experiences with Luxembourg since 1 April 2017 and/or that there were no additions to the previous input given.

Anticipated modifications

198. Luxembourg did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

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

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

199. 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 adjustments at issue and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

200. When a MAP request is received by the Luxembourg's competent authority following a tax audit that occurred in Luxembourg, some information may be obtained from the relevant audit departments as regards the relevant taxpayers. Nevertheless, both the Economic Division and the International Relations Division make their decisions independently to resolve MAP cases.

201. As mentioned previously, two persons handling MAP cases in the International Relations Division are also in charge of negotiating tax treaties. However, Luxembourg reported that, in order to resolve MAP cases, Luxembourg's competent authority takes into account the treaty provisions that are in force, the *OECD Model Tax Convention* and the OECD Transfer pricing guidelines.[9]

Recent developments

202. There are no recent developments relating to element C.4.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

203. Broadly, peers indicated not being aware of any difficulty encountered in Luxembourg in relation to element C.4. One peer mentioned that its experience with Luxembourg does not reveal that the staff would be dependent on the approval or the direction of the tax administration personnel who made the adjustments that led to double taxation.

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

204. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer mentioned not having experienced any difficulties relating to the independence of Luxembourg's competent authority. The other peers did not comment on this element.

Anticipated modifications

205. Luxembourg did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

206. 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 Luxembourg

207. Luxembourg indicated that it does not use performance indicators to assess the staff in charge of the mutual agreement procedures. However, a multi-year evaluation is carried out by the managers and is based on the cases handled and/or resolved by staff.

208. The *Action 14 final report* includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist. They are checked when they are taken into account by Luxembourg's competent authority:

- ☐ 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).

Recent developments

209. There are no recent developments relating to element C.5.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

210. Peers generally indicated that they were not aware of any difficulty in Luxembourg in relation to element C.5. One peer indicated that his experience with Luxembourg did not show that Luxembourg would use inappropriate performance indicators for the evaluation of staff in charge of MAP.

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

211. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. The other peers did not comment on this element.

Anticipated modifications

212. Luxembourg did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

213. 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

214. Luxembourg reported it has no domestic law limitations for including MAP arbitration in its tax treaties. In addition, Luxembourg reported it is committed to include a mandatory and binding arbitration procedure in its tax treaties, as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. In this respect, its policy is to include in its tax treaties an arbitration clause modelled after Article 25(5) of the OECD Model Tax Convention.

215. In addition, Luxembourg is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive had to implemented in Luxembourg's domestic legislation as per 1 July 2019, but for which the legislative proposal is still pending before Luxembourg's parliament

Recent developments

216. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concern a treaty partner with which there was no treaty yet in place. Furthermore, Luxembourg also signed an amending protocol to an existing treaty. Of these four treaties, two have already entered into force, for one the ratification procedures has completed by the treaty partner and for the remaining treaty such procedures have not been completed by either treaty partners. Of these four treaties, two contain an arbitration procedure that is modelled after Article 25(5) of the OECD Model Tax Convention, which is further discussed below.

217. Furthermore, Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019. With the signing of that instrument, Luxembourg also opted for part VI, which includes a mandatory and binding arbitration provision. The effects of this opting in is also further described below.

Practical application

218. Luxembourg has incorporated an arbitration clause in 15 tax treaties as a final stage to the MAP. These clauses are as follows:

- 14 treaties contain an arbitration clause that is based on Article 25(5) of the OECD Model Tax Convention. In one treaty a deviation from this provision was agreed, namely that at the request of one of the competent authorities the two-year period for the MAP process can be extended to three years.
- One treaty provides for a voluntary and binding arbitration procedure, which, however, only applies to transfer pricing disputes concerning the allocation of profits between associated enterprises and is contained in Article 9. For this treaty, Luxembourg and the treaty partner agreed on detailed rules to be applied during this procedure.

219. Furthermore, with respect to the effect of part VI of the Multilateral Instrument on Luxembourg's tax treaties, there are next to Luxembourg in total 28 signatories to this instrument that also opted for part VI. Concerning these 28 signatories, Luxembourg listed 22 as a covered tax agreement under the Multilateral Instrument and all of them also listed their treaty with Luxembourg under that instrument. Of these 22 treaty partners, Luxembourg has already included an arbitration provision in four tax treaties. With respect

to these treaties, Luxembourg opted, pursuant to Article 26(4) of the Multilateral Instrument, for one treaty not to apply part VI, whereas two other treaty partners opted, pursuant to Article 26(4), not to apply part VI to their treaty with Luxembourg. For the remaining treaty, the relevant treaty partner has already deposited its instrument of ratification, for which part VI will apply and the arbitration provision of the Multilateral Instrument will supersede this treaty to the extent that the current arbitration provision is incompatible with the provisions of part VI.[10]

220. For the remaining 18 treaties that do not contain an arbitration provision, 12 treaty partners already deposited their instrument of ratification. In this respect, part VI will apply to these 12 treaties and introduce the arbitration provision of the Multilateral Instrument in these treaties.[11] For the remaining six treaties for which the treaty partner has not yet ratified the Multilateral Instrument, Luxembourg reported it expects that part VI will introduce a mandatory and binding arbitration procedure in all of these six treaties.

Anticipated modifications

221. Luxembourg did not indicate that it anticipates any modifications in relation to element C.6, but mentioned that it has initialled a treaty with a treaty partner that will also include an arbitration provision.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 83 treaties include the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2017.
3. Available at http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en These statistics are up to and include fiscal year 2017.
4. Luxembourg'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 Annex B and Annex C.
5. For post-2015 cases, if the MAP inventory was more than five at the beginning of the reporting period, Luxembourg reported its MAP caseload on a jurisdiction-by-jurisdiction basis.
6. For pre-2016 cases and post-2015 cases, Luxembourg 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".

7. www.oecd.org/tax/dispute/Luxembourg-Dispute-Resolution-Profile.pdf.
8. http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/profiles/tpprofile-lu.pdf.
9. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
10. Annex A reflects the effect of part VI of the Multilateral Instrument for this treaty.
11. Ibid.

References

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

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Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

240. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

241. Where a MAP agreement is concluded by the competent authorities, Luxembourg's competent authority requests the taxpayer to give its approval and, where appropriate, to withdraw any administrative or legal appeal in relation to both the substance and the form of the tax concerned. If the taxpayer accepts the MAP agreement, it is then implemented by Luxembourg, subject to the limits described below. Implementation of the MAP agreement is carried out by the local tax office for the taxpayer concerned, to which Luxembourg's competent authority gives instructions to carry out such implementation.

242. Luxembourg implements MAP agreements, with specificities depending on whether the implementation results in upward or downward adjustments. Downward adjustments are made irrespective of any time limitations in domestic laws. Upward adjustments, however, are only possible within the time limitation provided for in domestic law, generally 5 years (or 10 years under certain conditions) from 31 December of the year for which the tax amount is due.[1]

Recent developments

243. As discussed under element B.8, Luxembourg's MAP guidance describes the implementation process and the steps to be taken by the taxpayer in this respect.

244. In addition, Luxembourg reported that since 15 September 2018, the local tax offices are instructed to report back to the competent authority the date of the implementation of the agreement.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

245. Luxembourg reported that all MAP agreements reached on or after 1 January 2015 and accepted by taxpayers have been (or will be) implemented.

246. Peers generally indicated that they were unaware of any problems with the implementation of MAP agreements in Luxembourg since 1 January 2015.

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

247. Luxembourg reported that all MAP agreements that were reached between 1 April 2017 and 30 September 2018 have been (or will be) implemented timely.

248. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer reported not having been informed by any taxpayer in any issue encountered with respect to the resolution of MAP cases. The other peers did not provide input related to that element.

Anticipated modifications

249. Luxembourg did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

250. 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

251. Luxembourg has not adopted a timetable to follow the implementation MAP agreements. In practice, Luxembourg's competent authority is not itself responsible for the implementation of MAPs. Furthermore, Luxembourg does not monitor and verify the implementation of MAP agreements.

Recent developments

252. Luxembourg reported that since 15 September 2018, the local tax offices are instructed to report back to the competent authority the date of the implementation of the agreement.

Practical application

Period 1 January 2015-31 March 2017 (stage 1)

253. Luxembourg reported that all MAP agreements that were reached on or after 1 January 2015 have been (or will be) implemented timely.

254. Peers indicated that they did not know of any MAPs that had not been timely implemented by Luxembourg since 1 January 2015. In addition, a peer reported that MAP agreements were implemented in an efficient and rapid manner. Another peer reported that the agreements were implemented in a timely and correct manner by Luxembourg.

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

255. Luxembourg reported that all MAP agreements that were reached between 1 April 2017 and 30 September 2018 have been (or will be) implemented timely.

256. Eleven peers stated in stage 2 that the update report provided by Luxembourg fully reflects their experiences with Luxembourg since 1 April 2017 and/or there are no additions to the previous input given in stage 1. One peer reported not having been informed by any taxpayer in any issue encountered with respect to the resolution of MAP cases. Two peers reported that the implementation of the 2018 cases they had with Luxembourg were implemented without delay. The other peers did not provide input related to that element.

Anticipated modifications

257. Luxembourg did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of Luxembourg's tax treaties

259. As discussed under element D.1, Luxembourg's domestic legislation does not include a statute of limitations for implementing MAP agreements.

260. Out of Luxembourg's 85 tax treaties, 69 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[2] In three of these 69 treaties the provision is supplemented with a sentence that sets a two-year deadline for competent authorities to reach a MAP agreement. As all these treaties contain an arbitration provision that is based on Article 25(5) of the OECD Model Tax Convention, this wording does not obstruct or limit the resolution of MAP cases and the subsequent implementation of MAP agreements. Therefore, these three treaties are considered to be in line with element D.3.

261. For the remaining 16 treaties, the following analysis is made:

- 14 contain neither the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention nor the alternative provisions provided for in Article 9(1) and 7(2), setting a time limit for making primary adjustments
- Two do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, but contain the alternative provision in Article 9(1).

262. For the 16 treaties that are not in line with element D.3, 13 peers did not provide input, one mentioned that no actions were necessary and the remaining three reported that they were considering signing the Multilateral Instrument to bring the treaty in line with this part of the Minimum Standard.

Recent developments

Bilateral modifications

263. Luxembourg signed new treaties with four treaty partners, one of which concerns the replacement of an existing tax treaty and three concerns a treaty partner with which there was no treaty yet in place. All four treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, which was not the case for the treaty for which currently a treaty is in force. Of these four treaties, two have already entered into force, for one the ratification procedures has been completed by the treaty partner and for the remaining treaty such procedure has not been completed by either treaty partner. Furthermore, Luxembourg also signed an amending protocol to an existing treaty, which, however, does not have relevance with respect to element D.3. The effects of these newly signed treaties have been reflected in the analysis above where they have relevance.

Multilateral Instrument

264. Luxembourg signed the Multilateral Instrument and has deposited its instrument of ratification on 9 April 2019. The Multilateral Instrument has for Luxembourg entered into force on 1 August 2019.

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

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

266. In regard of the 16 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Luxembourg listed all as a covered tax agreement under the Multilateral Instrument and for all of them did it make a notification, pursuant to Article 16(6)(c)(ii), that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 16 treaty partners, two are not a signatory to the Multilateral Instrument and three made a reservation on the basis of Article 16(5)(c). The remaining 11 treaty partners all made a notification pursuant to Article 16(6)(c)(ii).

267. Of these 11 treaty partners mentioned above, four have deposited its instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Luxembourg and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified these four treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. For the remaining seven treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

268. As is described in the Introduction, Luxembourg has approached and was approached by a treaty partner to initiate bilateral negotiations *inter alia* to include Article 25(2), second sentence, of the OECD Model Tax Convention, which is under consideration. Furthermore, Luxembourg reported that it has been notified by one treaty partner that it will update its notifications under the Multilateral Instrument, following which the treaty will be in line with the requirements under element D.3.

Peer input

269. For the seven treaties identified that are not in line with element D.3. and that will not be modified by the Multilateral Instrument, four peers did not provide input. One peer did not comment on this specific element and the remaining peer reported that it has been in contact with Luxembourg but only with respect to the modifications that will be made by the Multilateral Instrument. This peer further reporsted that no actions have been taken yet to bring the treaty in line with element D.3 but clarified that it is willing to accept the alternative provisions.

Anticipated modifications

270. For those tax treaties that are not in line with element D.3 and which will not be modified by the Multilateral Instrument, Luxembourg reported that it intends to contact in the near future the treaty partners with a view to initiate bilateral negotiations to be compliant with this standard, thereby focussing on the treaty partners that are members of the EU and with which it has MAP cases. It, however, took no specific action to that effect nor were any details given as to which treaty partners are prioritised for such negotiations. Regardless, Luxembourg indicated that it will seek to include Article 25(2), second sentence, of the *OECD Model Tax Convention* in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[D.3]	16 out of 85 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor include the alternative provisions in Article 9(1) and Article 7(2). Of those 16 tax treaties: • Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • Eight are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One will be modified by the Multilateral Instrument once the treaty partner has updated its notifications under that instrument. • Four will not be modified by that instrument to include this equivalent. With respect to these four treaties: - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining three treaties no actions have been taken or are planned to be taken.	For one of the four remaining 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, Luxembourg should initiate or continue negotiations with this treaty partner to include the required provision or be willing to accept the inclusion of both alternatives. For the remaining three treaties, Luxembourg should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or be willing to accept the alternatives provisions for Article 9(1) and Article 7(2).

Notes

1. Article 10 of the Law on the Collection of Taxes.
2. These 69 treaties includes the treaty with former Czechoslovakia that Luxembourg continues to apply to the Slovak Republic.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	-	-
Part B: Availability and access to MAP		
[B.1]	Three out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention. Of these three treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. • One will not be modified by that instrument to include the required provision. With respect to this treaty, no actions have been taken, but it is intended to approach the treaty partner in the near future to initiate bilateral negotiations.	For the remaining treaty that will not be modified by the Multilateral Instrument, Luxembourg should follow its stated intention and without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the final report of Action 14; or b. as it read prior to the adoption of final report of Action 14.
[B.2]	-	-
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One has been modified by the Multilateral Instrument to contain the required provision. • One will not be modified by that instrument to contain the required provision. With respect to this treaty no actions have been taken or are planned to be taken.	For the remaining treaty that will not be modified by the Multilateral Instrument, Luxembourg should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-

	Areas for improvement	Recommendations
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-
[D.3]	16 out of 85 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention, nor include the alternative provisions in Article 9(1) and Article 7(2). Of those 16 tax treaties: • Three have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • Eight are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One will be modified by the Multilateral Instrument once the treaty partner has updated its notifications under that instrument. • Four will not be modified by that instrument to include this equivalent. With respect to these four treaties: - One is included in the list of treaties for which negotiations are envisaged, scheduled or pending. - For the remaining three treaties no actions have been taken or are planned to be taken.	For one of the four remaining 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, Luxembourg should initiate or continue negotiations with this treaty partner to include the required provision or be willing to accept the inclusion of both alternatives. For the remaining three treaties, Luxembourg should without further delay request via bilateral negotiations the inclusion of the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or be willing to accept the alternatives provisions for Article 9(1) and Article 7(2).

Annex A

Tax treaty overview of Luxembourg

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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	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	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Andorra	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Armenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Austria	Y	O	i	N/A	i***	i	Y	Y*	Y	Y	Y***	N/A
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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?	
Bahrain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Barbados	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	E**	Y*	N/A	i***	i	Y*	Y	Y*	Y*	Y***	N/A
Botswana	N	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Brazil	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Brunei Darussalam	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bulgaria	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	N	N/A
Canada	Y	O	Y*	N/A	Y	i	Y	ii	Y	Y	Y***	N/A
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus[a]	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Denmark	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Estonia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Finland	Y	E*	Y	N/A	i***	i	Y	Y	Y	Y	Y***	N/A
France	N	E	Y	N/A	Y	i	Y	Y	Y	Y	Y**	i
Georgia	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Greece	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Guernsey	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) 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)				
Hong Kong (China)	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Hungary	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Iceland	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
India	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	O	ii*	2-years	Y	i	Y	N*	Y	Y	N	N/A
Ireland	Y	E*	i	N/A	i***	i	Y	Y*	Y	Y	Y***	N/A
Isle of Man	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Italy	Y	N	ii*	2-years	i**	i	Y	N*	Y	N*	N	N/A
Japan	Y	E*	Y	N/A	Y*	i	Y	Y	Y	Y	Y***	N/A
Jersey	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Kazakhstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Korea	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kosovo	N	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Laos	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Liechtenstein	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Lithuania	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malta	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y***	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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?	
Mauritius	Y	O*	Y	N/A	i*	i	Y	Y	Y	Y	Y	i
Mexico	Y	O*	Y	N/A	i	i	Y	N*	Y	Y	Y	iii
Moldova	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Monaco	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Morocco	Y	O*	ii*	2-years	i	i	Y	N*	Y	Y	N	N/A
Netherlands	Y	E**	i	N/A	i***	i	Y	Y*	Y	Y	Y***	N/A
North Macedonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Norway	Y	O*	i	N/A	i**	i	Y	Y	Y	Y	N	N/A
Panama	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Portugal	Y	O	ii*	2-years	Y	i	Y	N*	Y	N*	N	N/A
Qatar	Y	O*	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Romania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Russia	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
San Marino	Y	O	ii*	2-years	Y	i	N	Y	Y	Y	Y	i
Saudi Arabia	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Senegal	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Seychelles	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Singapore	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y***	N/A

		Article 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Article 25(2) of the OECD MTC			Article 25(3) of the OECD MTC		Arbitration	
		B.1			B.3	B.4	C.1	D.3	A.1	B.7	C.6	
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?	
Slovak Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y***	N/A
South Africa	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Spain	Y	O	Y	N/A	i**	i	Y	Y	Y	Y	N	N/A
Sri Lanka	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Sweden	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	Y***	N/A
Switzerland	Y	E*	Y	N/A	Y*	i	Y	ii	Y	Y	Y	i
Chinese Taipei	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tajikistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Thailand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Trinidad and Tobago	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tunisia	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	N	N/A
Turkey	Y	O*	Y	N/A	Y	i	Y	N*	Y	Y	N	N/A
Ukraine	Y	E**	Y	N/A	Y	i	Y	Y	Y	Y**	N	N/A
United Arab Emirates	Y	E*	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	E*	i	N/A	Y*	i	Y	Y*	Y	Y	Y***	N/A
Uruguay	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
United States	Y	O	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

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

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

Legend

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

Annex B

MAP statistics pre-2016 cases

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**
Attribution/ Allocation	15	0	0	0	0	1	0	0	0	0	0	14	40.70
Others	303	1	7	2	34	3	92	0	1	7	0	156	18.31
Total	285	1	7	2	34	4	92	0	1	7	0	170	18.46

Note: During 2017 some jurisdictions sent to Luxembourg MAP cases that arose before 2016, which can explain the mismatch with the published version of Luxembourg's MAP statistics.

Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**
Attribution/ Allocation	14	0	0	0	3	0	1	0	0	0	0	10	58.01
Others	156	10	2	2	11	2	60	0	11	7	6	45	43.81
Total	170	10	2	2	14	2	61	0	11	7	6	55	44.30

Annex C

MAP statistics post-2015 cases

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	0	10	0	0	0	0	0	0	0	0	0	0	10	n.a.
Others	0	274	14	2	3	146	0	22	0	0	0	0	87	0.83
Total	0	284	14	2	3	146	0	22	0	0	0	0	97	0.83

Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**	**Column 12**	**Column 13**	**Column 14**	**Column 15**
Attribution/ Allocation	10	6	0	0	1	0	0	1	0	0	0	0	14	6.22
Others	87	244	17	6	2	127	0	78	0	0	0	0	101	3.40
Total	97	250	17	6	3	127	0	79	0	0	0	0	115	3.42

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
FTA MAP Forum	Forum on Mutual Agreement Procedure in the Forum on Tax Administration
MAP guidance	Circulaire du Directeur des contributions L.G. – Conv. D.I. no. 60 du 28 août 2017 on the implementation of mutual agreement procedures provided in tax treaties signed by Luxembourg
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that were pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

Consult this publication on line at ***https://doi.org/10.1787/ffdb81cc-en***.

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