OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the multilateral instrument on 7 June 2017, paving the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established an Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 100 members, will monitor and peer review the implementation of the minimum standards as well as complete the work on standard setting to address BEPS issues. In addition to BEPS Members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

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Abbreviations and acronyms

APA	Advance Pricing Agreement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development
TOA	Tax Ordinance Act of 29 August 1997

Executive summary

Poland has an extensive tax treaty network with over 80 tax treaties and has signed and ratified the EU Arbitration Convention. Poland has an established MAP programme and has significant experience with resolving MAP cases. It has a modest MAP inventory, with a modest number of new cases submitted each year and almost 80 cases pending on 31 December 2016. Of these cases, around 55% concern allocation/attribution cases. Overall Poland meets most of the elements of the Action 14 Minimum Standard.

All of Poland's tax treaties include a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD 2015). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 10% of its tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015), as the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the final report on Action 14, since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.
- Approximately 25% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- More than 15% of its tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015).
- In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Poland needs to amend and update a portion of its tax treaties. In this respect, Poland signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force and entry into effect of this Multilateral Instrument, Poland reported that it intends to initiate bilateral negotiations to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard.
- Poland does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but it does not allow rollbacks of bilateral APAs.
- Poland does not meet all requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible

cases except for transfer pricing cases where the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015) is not contained in the applicable tax treaty. Although Poland recently introduced a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified, it has already applied this process in practice. Furthermore, Poland has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

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

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/ allocation cases	39	9	4	44	38.00
Other cases	39	19	24	34	15.70
Total	78	28	28	78	18.89

* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for closing pre-2016 MAP cases Poland used as a start date the date when a request was submitted to Poland's competent authority; and as the end date, the date of closing letter to the other competent authority or the agreed minutes for attribution/allocation cases.

The number of cases Poland closed is exactly the same as the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 remained the same as its inventory that existed as per 1 January 2016. Poland's competent authority resolved MAP cases on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 18.89 months. However, the average time to close attribution/allocation cases is considerably longer (38.00 months) than the average time to close other cases (15.70 months). Although the current resources for the MAP function in Poland are in principle adequate to manage the influx of new attribution/allocation cases, more resources may also be necessary to achieve a net reduction of its MAP inventory for such cases. In this respect, Poland recently provided additional resources to its competent authority function. It will be monitored whether these additional resources will contribute to the resolution of MAP cases in a more timely, effective and efficient manner.

Furthermore, Poland meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Poland's competent authority operates fully independently from the audit function of the tax authorities. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Poland meets the Action 14 Minimum Standard as regards implementation of MAP agreements. Although Poland does not monitor the implementation of MAP agreements, no issues have surfaced regarding the implementation throughout the peer review process.

Introduction

Available mechanisms in Poland to resolve tax treaty-related disputes

Poland has entered into 85 tax treaties on income (and/or capital)[1], of which 81 are in force.[2] These 85 treaties apply to 86 jurisdictions.[3] All of these 85 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 4 of the 85 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[4] Poland is also a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.[5]

In Poland, the competent authority function to conduct MAP is assigned to the Ministry of Finance. The MAP function employs seven people who are split between two separate units. Poland's Minister of Economic Development and Finance delegated to Poland's National Fiscal Administration the authority to handle attribution/allocation cases. This unit consists of four employees. The second unit is responsible for other MAP cases and is part of the Ministry of Finance. This unit consists of three employees.

Poland issued guidance on the governance and administration of the mutual agreement procedure on the website of its Ministry of Finance titled "The Mutual Agreement Procedure In Individual Cases" ("**MAP guidance**"), which is available in Polish at:

www.finanse.mf.gov.pl/abc-podatkow/umowy-miedzynarodowe/procedura-wzajemnego-porozumiewania-sie

Recent developments in Poland

Poland signed new treaties with Ethiopia (2015), Malaysia (2013), Sri Lanka (2016) and the United States (2013), all of which have not yet entered into force. A tax treaty between Poland and Malaysia, signed in 1977, is currently in force. This treaty will be replaced by the treaty signed in 2013, once it enters into force. For purposes of the treaty analysis, the newly negotiated treaty is taken into account.[6] Poland has also signed an amending protocol with Belgium in 2014, which has not yet entered into force. Poland reported that it is currently engaged in treaty negotiations to sign a tax treaty with Brazil as well as negotiations to amend its existing treaty with France, Germany and the Netherlands. Furthermore, Poland reported that it has recently signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), inter alia with a view to make the necessary amendments to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. For those treaties that will not be modified by the Multilateral Instrument, Poland reported it has a plan in place

to update these treaties via bilateral negotiations. This plan includes criteria that take into account Poland's existing MAP inventory and relationships to prioritise with whom Poland decides to begin negotiations. Poland has also scheduled upcoming negotiations with four countries, two of whom have existing treaties with Poland that are not fully compliant with the Action 14 Minimum Standard and for which Poland indicated that it will strive to amend the non-compliant provisions accordingly. With the signing of the Multilateral Instrument, Poland also submitted its list of notifications and reservations to that instrument.[7] In relation to the Action 14 Minimum Standard, Poland reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.[8] This reservation is in line with the requirements of the Action 14 Minimum Standard.

Basis for the peer review process

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

The questionnaires for the peer review process were sent to Poland and the peers on 7 July 2017. The period for evaluating Poland's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 ("**Review Period**"). Poland opted to provide information and requested peer input concerning the period starting as from 1 January 2015. While the period starting on 1 January 2015 is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on Poland's compliance with the Action 14 Minimum Standard, Poland also asked for peer input on best practices. This report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Poland's implementation of this minimum standard. In the update of this report, being stage two of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Poland 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 modified by a protocol, as described above, were taken into account, even if it concerns a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Yugoslavia that is still being applied by Poland to Montenegro and Serbia. Although this concerns one treaty that is applicable to two jurisdictions, this is only counted as one treaty for the purposes of the peer review. Reference is made to Annex A for the overview of Poland's tax treaties regarding the mutual agreement procedure.

In total 13 peers provided input: Belgium, Denmark, Germany, Greece, Italy, Norway, Russia, Spain, Sweden, Switzerland, the Netherlands, Turkey and the United States. These peers represent over 60% of the number of cases in Poland's MAP inventory as of 31 December 2016. Broadly all peers indicated good co-operation with Poland's competent authority, although a few commented on the timeliness of the resolution of MAP cases.

Poland provided extensive answers in its questionnaire and provided detailed additional information, which was submitted on time. Poland was very responsive in the course of the drafting of the peer review report, and responded in a timely and comprehensive manner to requests for additional information and provided further clarity where necessary. In addition, Poland provided the following information:

- MAP profile;[9]
- MAP statistics according to the MAP Statistics Reporting Framework (see below)[10]

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

Overview of MAP caseload in Poland

The analysis of Poland's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 ("**Statistics Reporting Period**"). According to the statistics provided by Poland, on 31 December 2016 its MAP inventory was 78 cases, 44 of which concern attribution/allocation cases and 34 other cases. During the Statistics Reporting Period 28 cases were started and 28 cases were closed.

General outline of the peer review report

This report includes an evaluation of Poland'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 implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[11] Apart from analysing Poland's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Poland. Furthermore, the report depicts the changes adopted and plans shared by Poland to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

1. The tax treaties Poland has entered into are available at: www.finanse.mf.gov.pl/abc-podatkow/umowy-miedzynarodowe/wykaz-umow-o-unikaniu-podwojnego-opodatkowania. Reference is made to Annex A for the overview of Poland's tax treaties.
2. The four treaties that are not yet in force concern treaties with Ethiopia (2015), Malaysia (2013), Sri Lanka (2016) and the United States (2013). A tax treaty between Poland and Malaysia, signed in 1977, is currently in force. This treaty will be replaced by the treaty signed in 2013, once the latter enters into force. Poland has also signed an amending protocol with Belgium in 2014 which has not yet entered into force.
3. Poland continues to apply the treaty with former Yugoslavia to both Montenegro and Serbia.
4. This concerns treaties with Belgium, Chile, the Netherlands and Switzerland. With respect to the treaty with Belgium, Poland has signed an amending protocol in 2014, by which a provision based on Article 25(5) of the OECD Model Tax Convention (OECD, 2015) will be included in the current version of this tax treaty. This protocol, however, has not yet entered into force.
5. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
6. The treaty with Malaysia was ratified by both countries but the new tax treaty provides that for the treaty to enter into force each contracting state shall notify each other of the completion of the ratification procedures. Poland reported that it has notified in September 2016 but has not received the notification from Malaysia yet.
7. Available at: www.oecd.org/tax/treaties/beps-mli-position-poland.pdf.
8. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, the Republic of Poland reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified."
9. Available at: www.oecd.org/tax/dispute/Poland-Dispute-Resolution-Profile.pdf.
10. The MAP statistics of Poland are included in Annex B and C of this report.
11. The terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective can be found in the Peer Review Documents (OECD, 2016): www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

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Part A

Preventing disputes

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

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

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

Current situation of Poland's tax treaties

2. Out of Poland's 85 tax treaties, 82 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[1] In two treaties the word "interpretation" is not included, by which this treaty is considered not to have the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In one other treaty the words "or doubts" and "interpretation" are missing and therefore this does not have the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Poland reported that whether or not the applicable treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), it will be able to endeavour to solve any difficulties or doubts regarding the interpretation or application of its tax treaties.

Anticipated modifications

Multilateral Instrument

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

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

5. In regard of the three tax treaties identified above, Poland listed all of those treaties as a covered tax agreement under the Multilateral Instrument and only made, pursuant to Article 16(6)(d)(i), for two of those treaties a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant treaty partners only 1 also made such notification that its treaty with Poland does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify only one of the three tax treaties identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Poland further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. Poland, however, reported not having in place a specific plan for such negotiations. In addition, Poland reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

Peer input

7. Almost all peers reported that the provisions of their tax treaty with Poland meet some or all of the requirements under element A.1 of the Action 14 Minimum Standard.

8. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Three out of 85 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future tax treaties.

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

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

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

Poland's APA programme

10. Poland indicated that it has a bilateral APA program since 2006. Publicly available information and guidance can be found in the Tax Ordinance Act ("**TOA**"), specifically articles 20a to 20r of that act. Poland reported that bilateral APAs may apply, at the earliest, from the date of filing the APA request. In addition, Poland reported that the years to be covered should not be under tax audit or appeal procedures in an administrative court at the time of the APA request. Poland further reported that taxpayers who seek to renew an existing APA should file a request for renewal at least six months in advance of the APA's expiration date and that a fee applies to conclude an APA.[3]

Roll-back of bilateral APAs

11. Poland reported it does not allow roll-back of bilateral APAs.

Practical application of roll-back of bilateral APAs

12. All peers that provided input reported they had not received any requests for roll-backs of bilateral APAs since 1 January 2015.

Anticipated modifications

13. Poland indicated that conceptual work on the possibility and feasibility of introducing roll-back of bilateral APAs has recently been launched.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	Poland should introduce the possibility of and in practice provide roll-back of bilateral APAs in appropriate cases.

Notes

1. These 82 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. The fee for an APA is equal to 1% of the value of the transaction constituting the object of such arrangement is charged to the taxpayer. This fee is between PLN 5 000 and PLN 50 000 for unilateral APAs for domestic transactions. The fee for foreign transactions is between PLN 20 000 and PLN 100 000 for a bilateral (or multilateral) APA. The fee for a renewal of an APA is half of the normal fee for a first time APA.

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Part B

Availability and access to MAP

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

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

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

Current situation of Poland's tax treaties

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

15. Out of Poland's 85 tax treaties, 62 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are a resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of Poland's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015) as changed by the Action 14 final report (OECD, 2015b) allowing taxpayers to submit a MAP request to the competent authority of either state.

16. The remaining 23 treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) can be categorised as follows:

A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	22[1]

17. The one treaty mentioned in the first row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. For this reason, this treaty is considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

18. The other 22 treaties mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 15 treaties are considered to be in line with this part of element B.1:

- The relevant treaty does not contain a non-discrimination provision (one treaty).
- The non-discrimination provision of the relevant tax treaties only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (14 treaties).[2]

19. For the remaining seven of the 22 treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies to both nationals that are and are not residents of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is not clarified by a limited scope of the non-discrimination article, following which these seven treaties are not in line with element B.1.

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

20. Out of Poland's 85 tax treaties, 74[3] contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

21. The remaining 11 treaties that do not contain such provision can be categorised as follows:

Provision	Number of treaties
No filing period for a MAP request	6
Filing period less than three years for a MAP request (two years)	5

22. Poland reported that for the six tax treaties above that do not stipulate a filing deadline, its competent authority accepts a MAP request irrespective of when it is filed.

Anticipated modifications

Multilateral Instrument

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

23. Poland reported it has recently signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14. This, however, only 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 of the fact that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Such modification will for a specific treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its covered tax treaties.

24. Poland reserved the right, pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[4] In this reservation, Poland declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified, which will be further discussed under element B.2.

25. In view of the above, following the reservation made by Poland those 8 treaties identified in paragraphs 17 and 19 above that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 will not be modified by the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

27. In regard of the five tax treaties identified in paragraph 21 above that contain a filing period for MAP requests of less than three years, Poland listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of

the relevant five treaty partners, two are not a signatory to the Multilateral Instrument. Of the remaining three partners, only two listed their treaty with Poland as a covered tax agreement and subsequently as not having a time limit for filing of MAP requests of at least three years. At this stage therefore the Multilateral Instrument will, upon entry into force, modify two of the five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

28. Poland further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Poland, however, reported not having in place a specific plan for such negotiations. In addition, Poland reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

29. All peers that provided input reported that their tax treaty with Poland meets the requirements under element B.1. Furthermore, one relevant peer provided input indicating that it intends to address this treaty via the Multilateral Instrument

30. For the other ten treaties identified that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[B.1]	11 out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 11 tax treaties: • two tax treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty • six tax treaties do not contain the equivalent to Article 25(1), first sentence • three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision. • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.

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

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

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

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

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

Domestic bilateral consultation or notification process in place

32. None of Poland's 85 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

33. Poland reported that as a matter of practice, as from 1 January 2016, it has implemented a notification procedure for post-2015 cases (and that it applied it as from 1 January 2017 for both pre-2016 cases and post-2015 cases) where it considers a MAP request from a taxpayer to be not justified. Under this procedure, when Poland's competent authority considers a request to be not justified it sends a notification to the other competent authority. Moreover, Poland reported that this notification procedure was documented recently, after the Review period had already ended.

34. Poland further reported that if the other competent authority wants to enter bilateral consultations Poland is also open to such consultations on a case-by-case basis. Such notification would be conducted via letter in which Poland would explain the reasons why it considered the case in question to be not justified.

Practical application

35. Poland reported that as from 1 January 2015 its competent authority considered that the objection raised by taxpayers in their MAP requests as being not justified in three cases in 2016. All of these cases were reported to be pre-2016 cases closed in 2016 and Poland's competent authority did not apply its notification procedure to such cases, as such a procedure was only applied to post-2015 cases at that date. Poland further reported that its competent authority considered that the objection raised by a taxpayer in its MAP request

as being not justified in one case in 2017 and notified the other competent authority of this before informing the taxpayer of the outcome of its MAP case. The peer confirmed that it was notified of this case by Poland and that each competent authority exchanged its view of the case before it was closed and before the taxpayer was informed of the outcome.

36. Other peers indicated not being aware of or that they had been consulted/notified for a case where Poland's competent authority considered the objection raised in a MAP request as not justified since 1 January 2015. One peer reported that it was aware of one MAP request made in Poland in 2016 that was denied access to MAP and another request made in Poland in 2016 for which Poland also denied access to MAP in 2017. The peer further reported that in both cases access to MAP was denied based on the request not being filed within the treaty time limit for filing MAP requests, which was 3 years. It appeared to this peer that the rejections were in its view justified and that because these were not cases of objection not justified, notification and/or consultation was not required.

Anticipated modifications

37. As previously discussed under element B.1, Poland has recently signed the Multilateral Instrument. Specifically regarding element B.2, Poland reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[5] Where tax treaties will not be modified via the Multilateral Instrument, Poland declared it will continue to notify, or where appropriate, to consult its treaty partners when its competent authority considers the objection raised in a MAP request not to be justified.

Conclusion

	Areas for improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there has not been any documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered to be not justified, prior to the expiration of the Review Period (whereas such documented process was introduced thereafter).	As Poland has done thus far, it should continue to apply its bilateral consultation and notification process recently documented for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14.

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

39. Out of Poland's 85 tax treaties, 67[6] contain a provision that is the equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner. The other 18 treaties do not contain a provision on granting corresponding adjustments.

40. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Poland'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, Poland indicated that it will provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments except for MAP requests submitted under 13 treaties that do not contain the equivalent of Article 9(2), for which Poland reported that it would not grant access to MAP in transfer pricing cases. In this respect, Poland reported that Article 11, paragraph 8(b)[7] of its Corporate Income Tax Act prohibits it from making a corresponding adjustment in transfer pricing cases where a treaty does not explicitly provide for such adjustments. Poland further reported that because of this it would not accept a MAP request in relation to a transfer pricing case where the relevant tax treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This is outlined in Poland's MAP guidance relating to transfer pricing cases.[8]

Application of legal and administrative framework in practice

41. Poland reported that it has since 1 January 2015 not denied access to MAP on the basis that the case concerned a transfer pricing case.

42. Peers indicated not being aware of a denial of access to MAP by Poland since 1 January 2015 on the grounds that it was a transfer pricing case.

Anticipated modifications

43. Poland reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties. In that regard, Poland recently signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Furthermore, Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty reserved the right, pursuant to Article 17(3), not to apply Article 17(2) for those tax treaties that already include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), or not to apply Article 17(2) in the absence of such equivalent, on the basis that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such

a notification is made by both of them the Multilateral Instrument will modify this treaty to replace that provision. If not all treaty partners made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2015a]).

44. Poland has, pursuant to Article 17(3), reserved 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 (OECD, 2015a). In regard of the 18 treaties identified in paragraph 39 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), Poland listed 15 of them as a covered tax agreement under the Multilateral Instrument and included none of them in the list of treaties for which Poland has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Poland did not make a notification on the basis of Article 17(4) for these 15 treaties. Of the relevant 15 treaty partners, four are not a signatory to the Multilateral Instrument. Of the remaining 11 treaty partners, none have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Poland already contains the equivalent of Article 9(2). At this stage therefore, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede these 11 treaties only to the extent that the provisions included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

	Areas for improvement	Recommendations
[B.3]	Access to MAP in transfer pricing cases will not be granted for certain jurisdictions where Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is not contained in the tax treaty with such jurisdictions.	Poland should grant access to MAP for those cases where the treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) and for which Poland is currently not willing to grant access to MAP. In cases where Article 9(2) is contained in the applicable treaty, as it has done thus far, Poland should continue granting access to MAP in eligible transfer pricing cases.

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

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

45. 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

46. None of Poland's 85 tax treaties allow 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 a provision of a tax treaty. In addition, the domestic law and/or administrative processes of Poland do not contain a provision allowing its competent authority to limit access to the MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Practical application

47. Poland reported that it has since 1 January 2015 not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

48. Peers indicated not being aware of a denial of access to MAP in Poland since 1 January 2015 on the grounds that it was about an anti-abuse provision.

Anticipated modifications

49. Poland reported that it is in the process of finalising a procedure for an anti-abuse provision in Poland's domestic law and that it was crafting such a procedure so that it would be in line with element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	As Poland has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases. In addition, Poland should ensure that the to-be introduced domestic anti-abuse legislation does not prevent a taxpayer from accessing MAP in such cases.

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

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

50. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they

were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

51. Poland reported that audit settlements are not available in Poland. Additionally, Poland reported that it has no administrative or statutory dispute settlement or resolution process in place that allows Poland to deny access to MAP for issues closed through such a practice.

Practical application

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

53. Peers indicated that they were not aware of a denial of access to MAP by Poland since 1 January 2015 where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

Anticipated modifications

54. Poland did not indicate that 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.

55. 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

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

57. Poland reported that when a taxpayer does not include in its MAP request the required information and documentation, its competent authority will inform the taxpayer and explain what information and/or documentation is still needed in order to properly

consider the MAP request. Poland reported that its competent authority will ask the taxpayer for the missing information and documentation as soon as possible, usually within 30 days but no longer than two months from the date of receipt of the taxpayer's application for MAP. Poland further reported that if the taxpayer still does not provide the requested missing information and/or documentation then a second request is sent after three months have elapsed from the first request for more information. Poland indicated that if the taxpayer still does not respond to this request he is asked again after three months and also informed that failure to provide the requested information and/or documentation will result in a denial of access to MAP. Poland reported that the taxpayer always has at least between nine and 12 months for the completion of his application. For attribution/allocation cases, Poland reported that its competent authority sends the request to the taxpayer with detailed information on which documents/information need to be provided.

Practical application

58. Poland indicated that it has limited access to MAP for five cases since 1 January 2015 on the grounds that information provided was insufficient. Two of these were attribution/allocation cases and three of these cases were other cases.

59. Poland reported that for the two attribution/allocation cases the required information that is on Poland's Ministry of Finance's website was not included. In particular, this information related to the circumstances causing taxation not in accordance with the tax treaty. Poland reported that its competent authority examined the documentation and information submitted by taxpayers and had a meeting with the taxpayer's representative where it was agreed that substantial information was missing.

60. Poland reported that for each of the three other cases that were denied access to MAP, the taxpayer in question was asked at least twice for additional information and had more than nine months to provide the missing information or documentation requested by Poland. The specific circumstances of these three cases are as follows:

- In one case, Poland reported that the taxpayer did not provide the information necessary to assess whether it had a permanent establishment in the other state. This taxpayer was asked for more information on four separate occasions during a timeframe of 20 months.
- In another similar case Poland's competent authority reported that it also denied access to MAP due to the fact that the taxpayer did not provide the requested information necessary to assess whether it had a permanent establishment in the other contracting state. This taxpayer was asked to provide the information on two separate occasions in November 2015 and May 2016. After Poland's competent authority did not receive any reply from the taxpayer the case was ended in September 2016.
- In another of these three cases that was denied access to MAP, Poland further reported that the taxpayer did not provide a requested translation of the relevant documentation. The taxpayer was asked twice for such information in July 2015 and September 2015. After Poland's competent authority did not receive a reply to both requests it denied access in November 2016.

61. Poland explained that the scope of required information in each of these five cases did not go beyond the information presented on its Ministry of Finance's website.

62. Peers indicated not being aware of a limitation of access to MAP by Poland since 1 January 2015 in situations where taxpayers complied with the information and documentation requirements.

Anticipated modifications

63. Poland did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

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

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

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

64. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties contain the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Poland's tax treaties

65. Out of Poland's 85 tax treaties, 71 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[9] For the 14 treaties that are not considered to have the equivalent provision, ten do not contain the second sentence of Article 25(3). For the remaining four treaties, the following analysis can be made:

66. One treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), but this provision refers to *consultation regarding cases not provided for in the convention*, whereas the second sentence of Article 25(3) refers to the consultation *for the elimination of double taxation in cases not provided for in the convention*. As the particular treaty provides for a broader scope of application, it is considered to be in line with element B.7.

67. One treaty sets a time limit for when competent authorities are allowed to consult together for the elimination of double taxation in cases not provided for in the treaty and therefore is also considered to not have the equivalent of the required provision.

68. Two treaties have wording that is not based on 25(3), second sentence and instead contain a provision that reads: "Any disputes connected with the application of the Convention should be settled via direct consultations." These treaties are therefore also considered to not have the equivalent of the required provision.

Anticipated modifications

Multilateral Instrument

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

70. In regard of the 13 tax treaties identified above, Poland listed all of them as a covered tax agreement under the Multilateral Instrument and only for 12 treaties did Poland make, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). Of these 12 treaty partners, five are not a signatory to the Multilateral Instrument. The remaining seven treaty partners also made the notification that their treaty with Poland does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify 7 of the 13 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

71. Poland further reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Poland, however, reported not having in place a specific plan for such negotiations. In addition, Poland reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

72. Almost all peers that provided input reported that its provisions of their tax treaty with Poland meet the requirements under element B.7.

73. For the 13 treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), only three provided input. The first two peers did not indicate whether its treaty contains the required provision, one of which also did not indicate whether it had contacted or was already in discussions with Poland to incorporate the required provision. The other peer mentioned that it had recently signed the Multilateral Instrument *inter alia* to incorporate the equivalent of Article 25(3), second sentence. This peer's treaty with Poland will indeed be modified by the Multilateral Instrument to incorporate such equivalent. The third peer made the same remark and this treaty will also be modified by the Multilateral Instrument to include the required provision.

Conclusion

	Areas for improvement	Recommendations
[B.7]	13 out of 85 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Poland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015a) in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

74. 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.

Poland's MAP guidance

75. Poland's rules, guidelines and procedures relating to the MAP function are included on the official website of the Ministry of Finance. There are two separate guidelines: one for general MAP cases and another specifically for transfer pricing cases.[10] These documents include information on how taxpayers can access MAP and the availability and practical application of the MAP under the tax treaties Poland has entered into. Poland's general MAP guidance can be found in Polish at:

www.finanse.mf.gov.pl/abc-podatkow/umowy-miedzynarodowe/procedura-wzajemnego-porozumiewania-sie

76. All information and guidance concerning access to MAP is available on the website of Poland's Ministry of Finance. More specific information on access to attribution/allocation cases can be found in section 25 of the Ordinance of the Minister of Finance of 10 September 2009 on the Mode and Procedure of Determining Legal Person's Income by Estimation and on the Mode and Procedure of Eliminating Legal Persons' Double Taxation in Connection with the Adjustment of Profits of Associated Entities, the text of which is also available on Poland's Ministry of Finance website in Polish.

77. Poland's MAP guidance contains basic 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

f. relationship with domestic available remedies

g. access to MAP in transfer pricing cases.

78. The above-described MAP guidance of Poland includes information on the availability and the use of the MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.[11] Although this information is available, various subjects are not specifically discussed in Poland's MAP guidance. This concerns whether MAP is available in cases of: (i) anti-abuse provisions, (ii) multilateral disputes and (iii) bona-fide foreign initiated self-adjustments; (iv) whether taxpayers can request for the multi-year resolution of recurring issues through MAP; (v) the possibility of suspension of tax collection during the course of a MAP; (vi) the consideration of interest and penalties in MAP (vii) the possibility of suspension of tax collection during the course of a MAP, and (viii) the process regarding how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including actions to be taken by taxpayers (if any).

Information and documentation to be included in a MAP request

79. Section 2 of Poland's MAP guidance enumerates the information taxpayers should include in their MAP request.

80. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in a request for MAP assistance. In light of this list, the requirements in Poland regarding what information and documentation should be included in a MAP request are checked below:

- ☑ Identity of the taxpayer(s) covered in the MAP request;
- ☑ The basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention).
- ☑ Facts of the case
- ☑ Analysis of the issue(s) requested to be resolved via MAP
- ☑ 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 MAP request was also submitted to the competent authority of the other treaty partner.

- ☐ 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.

Anticipated modifications

81. Poland indicated that it is currently considering modifying its MAP guidance in order to include information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request the multi-year resolution of recurring issues through MAP
- the possibility of suspension of tax collection during the course of a MAP
- the consideration of interest and penalties in the MAP
- the process how MAP agreements are implemented in terms of steps to be taken and timing of these steps, including actions to be taken by taxpayers (if any).

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	Although not required by the Action 14 Minimum Standard, Poland could follow its stated intention to include the additional information in its MAP guidance specified above.

[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.

82. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.[12]

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

83. As discussed in the Introduction, Poland's MAP guidance is published and can be found in Polish at:

www.finanse.mf.gov.pl/abc-podatkow/umowy-miedzynarodowe/procedura-wzajemnego-porozumiewania-sie

84. As regards its accessibility, Poland's MAP guidance is easily found on the website of Poland's Ministry of Finance. It can also be easily found by searching for "MAP" on Poland's Ministry of Finance homepage as well as by using the keywords "*procedura wzajemnego porozumiewania*", which is the Polish translation for mutual agreement procedure.

MAP profile

85. Poland's MAP profile is published on the website of the OECD.[13] This MAP profile is complete and includes external links which provide extra information and guidance.

Anticipated modifications

86. Poland did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	Poland should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

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

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

87. 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 already mentioned.

MAP and audit settlements in the MAP guidance

88. As previously discussed under B.5, Poland reported that it has no system in place that allows audit settlements between local tax administrations and taxpayers.

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

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

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

90. It is not necessary to notify treaty partners since Poland reported that it has no system in place such as audit settlements or internal statutory dispute settlement resolution processes that limits access to MAP. In that regard, peers indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Poland.

Anticipated modifications

91. Poland did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. These 22 treaties include the treaty with the former Yugoslavia that Poland continues to apply to both Montenegro and Serbia.
2. These 14 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.
3. These 74 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.
4. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, the Republic of Poland reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified."

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

6. These 67 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.

7. Poland provided the following unofficial translation of Article 11, paragraph 8(b): "In the event that income of a taxpayer who is a domestic entity is considered by the tax administration of another state to be income of a foreign entity related to the taxpayer and included in taxable income of that foreign entity, in order to eliminate double taxation, an adjustment of income of the taxpayer who is a domestic entity shall be made, if the provisions of relevant international treaties, to which the Republic of Poland is a party, provide for such an adjustment."

8. Guidance on MAP in transfer pricing is available in Polish at: www.finanse.mf.gov.pl/cit/ceny-transferowe1/procedura-wzajemnego-porozumiewania-sie-map.

9. These 71 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.

10. General information on transfer pricing MAP cases is available in Polish at: www.finanse.mf.gov.pl/cit/ceny-transferowe1.

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

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

13. Available at: www.oecd.org/tax/dispute/Poland-Dispute-Resolution-Profile.pdf.

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Part C

Resolution of MAP cases

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

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

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

Current situation of Poland's tax treaties

93. Out of Poland's 85 tax treaties, 83 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.[1]

94. Of the remaining two treaties, one does not include the words "if the objection appears to it to be justified", and the other treaty requires that for entering into MAP discussions the competent authority of the other contracting state is notified within four and a half years from the due date or the date of filing the return in that other contracting state, whichever is the latter. For this reason, both treaties are considered not having the full equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

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

96. In regard of the two tax treaties identified above, Poland listed both treaties as a covered tax agreement under the Multilateral Instrument, but only for one treaty made, pursuant to Article 16(6)(c)(i), a notification that it does not include a provision described in Article 16(4)(b)(i). The relevant treaty partner also made the notification that its treaty with Poland does not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

97. Poland further reported that when the tax treaties that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. Poland, however, reported not having in place a specific plan for such negotiations. In addition, Poland reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

98. Almost all peers that provided input reported that their treaty with Poland meets the requirements under element C.1.

99. For the two treaties identified that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide input.

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 (OECD, 2015a).	Poland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not include such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.

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

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

100. 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

101. Statistics regarding all tax treaty related disputes concerning Poland are published on the website of the OECD as of 2007.[2] Poland publishes MAP statistics regarding transfer pricing disputes with EU Member States which can be found on the website of the EU Joint Transfer Pricing Forum.[3]

102. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ("**MAP Statistics Reporting Framework**") for MAP requests submitted on or after 1 January 2016 ("**post-2015 cases**"). Also, for MAP requests submitted prior to that date ("**pre-2016 cases**"), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Poland provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Poland and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively[4] and should be considered jointly for an understanding of Poland's MAP caseload. With respect to post-2015 cases, Poland reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. Poland indicated that it could match its statistics with all its MAP partners.

Monitoring of MAP statistics

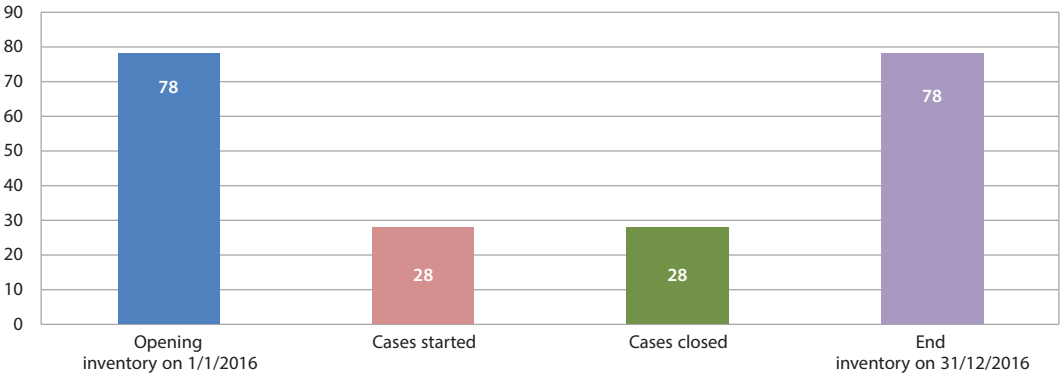
103. Poland has a system in place that communicates, monitors and manages the MAP caseload with its treaty partners. Poland reported that every six months it follows-up with other competent authorities with whom it is awaiting an answer regarding a MAP case. Poland reported that it endeavours to notify its treaty partners within four weeks, extra questions to the taxpayers within two months, and tries to send position papers as soon as possible depending on the case.

Analysis of Poland's MAP caseload

Global overview of the MAP caseload

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

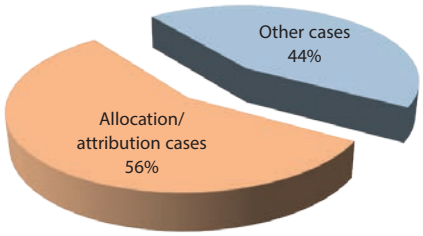
Figure C.1. **Poland's MAP inventory**



105. At the beginning of the Statistics Reporting Period, Poland had 78 pending MAP cases, of which 39 were attribution/allocation cases and 39 other MAP cases.[5] At the end of the Statistics Reporting Period, Poland had 78 MAP cases in its inventory, of which 44 were attribution/allocation cases and 34 other cases. Of the 28 cases that were closed during the Statistics Reporting Period, four were attribution/allocation cases and 24 were other cases.

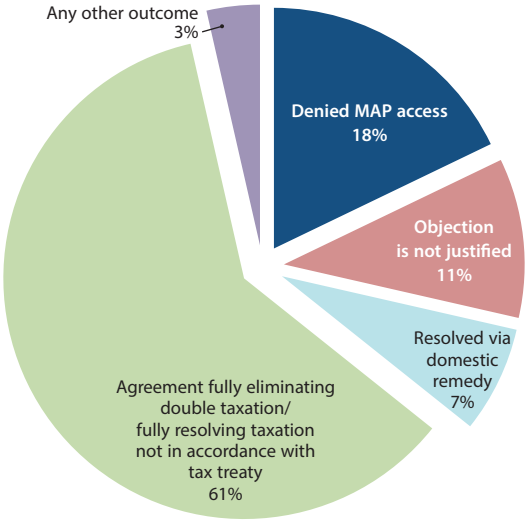
106. The breakdown of the end inventory can be illustrated as follows:

Figure C.2. **End inventory on 31 December 2016 (78 cases)**



107. During the Statistics Reporting Period, Poland closed 28 MAP cases and the following outcomes were reported:

Figure C.3. **Cases closed during the Statistics Reporting Period (28 cases)**



108. This chart shows that the during the Statistics Reporting Period, 17 out of 28 cases were resolved through agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty.

Pre-2016 cases

109. At the beginning of the Statistics Reporting Period, Poland's MAP inventory of pre-2016 MAP cases consisted of 78 cases, of which 39 were attribution/allocation cases and 39 were other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 55 cases, consisting of 35 attribution/allocation cases and 20 other cases. Thus pre-2016 MAP cases decreased by just fewer than 30% of the total opening inventory of pre-2016 MAP cases. Of this number, attribution/allocation cases decreased by 10% while the number of other cases decreased by 50%.

Post-2015 cases

110. As mentioned previously, 28 cases were started on or after 1 January 2016, of which 9 were attribution/allocation cases and 19 were other cases. Poland closed five post-2015 cases in total during the Statistics Reporting Period, all of which were other cases representing 26% of the number of such cases that started during the Statistics Reporting Period and 18% of the total number of post-2015 cases started during the Statistics Reporting Period.

Average timeframe needed to close MAP cases

Pre-2016 cases

111. Poland reported that on average it needed 38.00 months to close attribution/allocation cases and 19.00 months to close other cases. This resulted in an average time needed of 22.30 months to close pre-2016 cases. For the purposes of computing the time to close pre-2016 cases, Poland used:

- As the start date, the date when the request was submitted to Poland's competent authority
- As the end date, the date of closing letter to the other competent authority or the agreed minutes for attribution/allocation cases.

Post-2015 cases

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

113. Poland closed 18% of post-2015 cases during the Statistics Reporting Period. During these 12 months, Poland did not close any post-2015 attribution/allocation cases and the average time needed to close other cases was reported as 3.16 months.

All cases closed during the Statistics Reporting Period

114. The average time needed to close MAP cases during the Statistics Reporting Period was 18.89 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	4	38.00
Other cases	24	15.70
All cases	**28**	**18.89**

Peer input

115. One peer noted that in their experience with Poland, the resolution of MAP cases tends to be lengthy. Two other peers noted that it takes a long time for Poland's competent authority to respond to position papers.

Anticipated modifications

116. As mentioned under element C.6, Poland has committed to provide for mandatory and binding MAP arbitration in its bilateral tax treaties as a mechanism to provide that treaty-related disputes will be resolved within a specified timeframe. Other than this commitment, Poland did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Poland submitted timely comprehensive MAP statistics on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Poland's treaty partners, its post-2015 MAP statistics actually match those of its treaty partners. Poland's MAP statistics point out that during the Statistics Reporting Period it closed 17.86% (five out of 28 cases) of its post-2015 cases in 3.16 months on average. In that regard, Poland is recommended to seek to resolve the remaining 82.14% of the post-2015 cases pending on 31 December 2016 (23 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

117. 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 Poland's competent authority

118. In Poland, the Minister of Economic Development and Finance acts as the competent authority. Poland reported that the MAP function is allocated between two separate units: a separate transfer pricing MAP unit, which is part of Poland's National Fiscal Administration, and a non-transfer pricing MAP unit which is part of the Ministry of Finance. The transfer pricing MAP unit is responsible for handling all attribution and allocation cases while the other MAP unit is responsible for handling all "other" MAP cases.

119. Within the transfer pricing MAP unit, Poland reported that there are four persons, of which there is a head of unit who has ten years' experience in transfer pricing MAP cases. Another member of this unit is an expert with three years' experience in transfer pricing cases and two other experts with no experience in MAP but more than ten years' experience in the transfer pricing unit. In addition, Poland reported that it has hired two new employees in June and July of 2017.

120. Within the team that handles non-transfer pricing MAP cases there are three people, one of which is the head of unit and two supporting employees. Poland reported that only two of these employees are directly responsible for conducting MAP cases. Poland further reported that staff is also assigned other tasks related to international taxation such as the interpretation of double tax treaties, the negotiation of tax treaties and day-to-day assistance to taxpayers. Poland indicated that it is open to meeting with the taxpayer to discuss his pending MAP case in detail. Poland also reported that the average professional experience of this staff is seven years.

121. Poland reported that the average MAP caseload per staff member for other cases is about 30 cases. Poland reported that it monitors the caseload for both other and attribution/allocation cases that it would consider increasing the number of staff dedicated to handling MAP cases if needed. Poland further reported that the Ministry of Finance is enabled to ask for help from other governmental departments if they observe a substantial increase in the workload of its competent authority.

122. Staff members in Poland's transfer pricing MAP unit participate in an annual training with an external transfer pricing expert and there are also a few in-house trainings

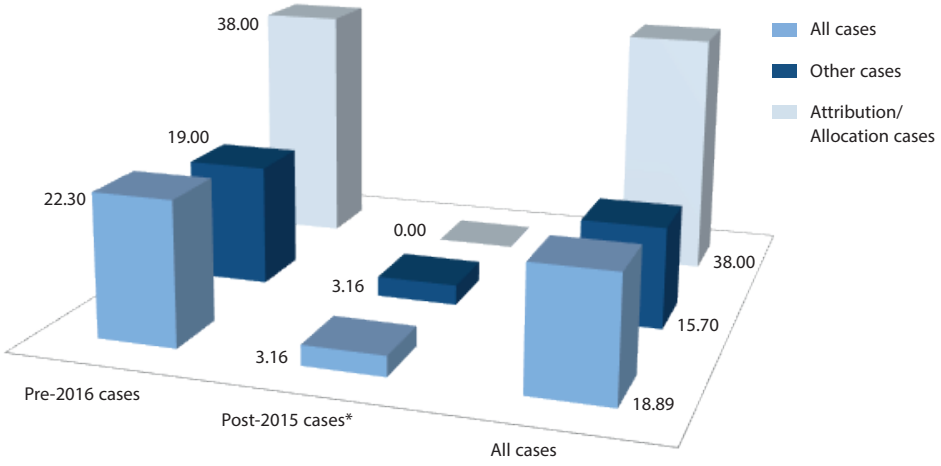
with transfer pricing experts from audit offices and the APA team. There are no special in-house trainings for employees in the non-transfer pricing MAP unit.

Practical application

MAP statistics

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

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



124. Based on these figures, it follows that on average it took Poland 18.89 months to close MAP cases. However, the average time needed to close attribution/allocation cases is 38.00 months, while the average time required to close other cases is 15.70 months. In practice, these results 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. Poland explained that attribution/allocation cases needed more time to be resolved since those were particularly complex cases.

Peer input

125. Peers generally remarked that they were unaware of any impediments to resolving MAP cases and that they had a good experience discussing MAP cases with Poland. Two peers indicated they did not have any MAP cases during the Review period or that they did not have the necessary information to give reliable input on Poland's competent authority. One peer noted that contacts between its competent authority and Poland's had to date only been in writing.

126. Several peers commented on the amount of time it took to receive position papers from Poland. One noted that with respect to attribution/allocation cases it takes Poland a very long time to react to position papers that were sent to them. Another peer also wrote that it often takes a long time for the Polish competent authority to respond to its position papers. One other peer stated that meeting target timeframes such as those in the Code of Conduct for the EU Arbitration Convention is often challenging and that Poland does not always meet the targets.

127. One peer mentioned that, notwithstanding the fact that email communication already happens from time to time, it would be useful to communicate even more via email. Another peer suggested that Poland should allocate more resources to its competent authority for the resolution of MAP cases and that there should be more frequent communication between its competent authority and Poland's competent authority. One peer noted that face-to-face meetings could perhaps improve the timeliness of resolving MAP cases. It also suggested that an increased willingness to make concessions within the written part of the competent authority process might also improve the timeliness of the resolution of MAP cases. Another peer noted that it considers regular competent authority meetings to discuss MAP cases and possible bilateral APAs as an efficient manner to make the progress in the resolution of MAP cases but that it to date had not yet had a competent authority meeting with Poland.

Anticipated modifications

128. Poland did not indicate that it anticipates any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	Poland should continue to closely monitor whether it has adequate resources to ensure that future MAP cases are resolved in a timely, efficient and effective manner. Furthermore, as Poland closed attribution/allocation cases in 38.00 months on average, it could consider, as indicated by peers, monitoring whether the additional personnel that was provided to the MAP function will contribute to accelerate the issuance of position papers and to increase communication to ultimately accelerate the resolution of these cases.

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

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

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

Functioning of staff in charge of MAP

130. Poland reported that it seeks to resolve MAP cases on the merits of the case and that there is no other formal or informal criterion. Poland further indicated that its competent authority resolves MAP cases in accordance with the applicable tax treaty and that it is not dependent on the approval or the direction of the tax administration personnel who made

the adjustment at issue. Poland indicated that it sometimes asks the local audit tax offices information regarding the taxpayer but that the audit department is not involved in any way in the decisions made by the competent authority. In addition, Poland also indicated that the resolution of MAP cases by its competent authority is not influenced by policy considerations that Poland would like to see reflected in future amendments to the treaty.

Practical application

131. Peers indicated not being aware of any difficulty encountered in Poland in relation to element C.4.

Anticipated modifications

132. Poland did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

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

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

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

133. 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 Poland

134. Poland reported the general criteria of assessment applicable to all staff in charge of the Ministry of Finance are used such as effective team management, ability to remain calm under pressure to meet deadlines, negotiation skills, change orientation with flexible approach, professional qualifications and other skills. Furthermore, Poland reported that number of the MAP cases resolved and the time taken to resolve a MAP case are also taken into account to assess specifically the staff in charge of MAP.

135. The Final Report on Action 14 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 Poland'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).

Practical application

136. Peers indicated not being aware of the fact that Poland would use performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue for its competent authority functions and staff in charge of MAP processes.

Anticipated modifications

137. Poland did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

138. 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

139. In Poland there are no domestic law limitations for including MAP arbitration in its tax treaties. Poland was a participant in the sub-group on arbitration as part of the Multilateral Instrument of Action 15 of the BEPS project but finally reserved the right not to opt for arbitration in the Multilateral Instrument itself. Furthermore, the Polish model tax convention does not include an arbitration provision. For this reason, in the course of negotiating a tax treaty Poland's competent authority does not propose to include a MAP arbitration clause but is open to including the provision in the treaty if it is one of the objectives of the other state with which it is negotiating. Poland's position on MAP arbitration is available in the MAP guidance which is published on the website of Poland's Ministry of Finance, and can also be found in the MAP profile published on the OECD's website. In addition, Poland is a signatory to the EU Arbitration Convention.

Practical application

140. Poland has incorporated an arbitration clause in four tax treaties as a final stage to the MAP. These clauses can be specified as follows:

- In one treaty the arbitration clause is based on Article 25(5) of the OECD Model Tax Convention (OECD, 2015a).
- In one treaty the arbitration clause is also based on Article 25(5) of the OECD Model Tax Convention (OECD, 2015a) but the protocol containing the arbitration clause has not yet entered into force.
- In two treaties the arbitration clause provides for a voluntary and binding arbitration procedure.

Anticipated modifications

141. Poland reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 83 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.
2. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2015.
3. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in Poland's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five for any treaty partner, Poland reported its MAP caseload for such a treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Poland reported that for pre-2016 cases and post-2015 cases it followed the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation case. Annex D of the MAP Statistics Reporting Framework defines such case as: "a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case".

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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.

142. 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

143. Poland reported that implementation of MAP agreements is made in accordance with its general domestic tax provisions, which is covered by Article 70d of the TOA.[1] Poland further reported that implementation of MAP agreements by way of refund is also covered by the TOA. Poland indicated that on the basis of the general domestic rules, tax obligations expire after five years have lapsed from the end of the calendar year in which the tax payment deadline expired, as stipulated in Article 70, paragraph 1 of the TOA. It further indicated that if a treaty does not include the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015), the statute of limitation does not limit the downward adjustment because in the case of a MAP agreement the taxpayer is still entitled to request the tax reimbursement on the basis of domestic tax law provisions as stipulated in Article 79(4) of the TOA.[2] In the case of an upward adjustment, the limitation period shall be suspended up to three years if a MAP procedure is initiated, as stipulated in Article 70a(1a) of the TOA.[3] Furthermore, according to Article 240, section 1 of the TOA, the outcome of a MAP agreement is also the legal basis for reopening a case that was closed by a final tax decision by the local tax office.[4]

144. Poland reported that under its domestic law, corresponding adjustments cannot be made if the relevant treaty does not include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015). In this respect, Poland reported that Article 11, paragraph 8(b) its Corporate Income Tax Act states: "In the event that income of a taxpayer who is a domestic entity is considered by the tax administration of another state to be income of a foreign entity related to the taxpayer and included in taxable income of that foreign entity, in order to eliminate double taxation, an adjustment of income of the taxpayer who is a domestic entity shall be made, if the provisions of relevant international treaties, to which the Republic of Poland is a party, provide for such an adjustment". In practice, and as explained previously, Poland reported that it would not give access to MAP in transfer pricing cases where the relevant tax treaty does not include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015). Nevertheless, there

is a risk that this domestic provision limits the reaching of a mutual agreement and may obstruct the implementation of such an agreement that would require Poland to make a corresponding adjustment when a primary adjustment is made by its treaty partner.

145. Poland reported that generally, after concluding MAP agreements, information about arrangements is provided to the competent local office in writing without delay. Poland's competent authority informs the competent local tax authorities about the conditions of the MAP agreement. The local tax office in Poland then issues a decision implementing the agreement or undertakes any other steps required in order to implement the MAP agreement. Feedback regarding implementation is sometimes requested from the local tax office by Poland's competent authority.

146. Taxpayer consent is not required by law to implement a MAP agreement. However, in some particular cases Poland's competent authority asks the taxpayer for his acceptance of the outcome if required by the other competent authority with which Poland concluded the MAP.

Practical application

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

148. Peers generally reported that they were not aware of any MAP agreement reached on or after 1 January 2015 that were not implemented by Poland. One peer noted that it is its impression that all MAP agreements both before and during the look-back period have been implemented both in a timely manner and correctly.

Anticipated modifications

149. Poland did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, Poland should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. In addition, to keep a record of whether all future MAP agreements are implemented, Poland could introduce a tracking system.

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

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

150. 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

151. Poland reported that it does not have in place a timeframe for implementation of mutual agreements reached under its domestic law. As described in D.1 Poland does however, endeavour to implement MAP agreements as quickly as possible. In addition, as also discussed under element D.1, 0nce an agreement is concluded, the competent authority informs the competent local tax authorities about the conditions of such agreement and asks for implementation and feedback.

Practical application

152. Poland reported that all MAP agreements that were reached on or after 1 January 2015 have been (or will be) implemented on a timely basis.

153. Peers have not indicated experiencing any problems with Poland regarding the implementation of MAP agreements reached on or after 1 January 2015 in general or not on a timely basis. One peer noted that it is its impression that all MAP agreements both before and during the look-back period have been implemented both in a timely manner and correctly.

Anticipated modifications

154. Poland did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Poland should continue to implement MAP agreements on a timely basis.

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) 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.

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

Legal framework and current situation of Poland's tax treaties

156. As discussed under element D.1, on the basis of the general domestic rules in Poland, tax obligations expire after five years have lapsed from the end of the calendar year in which the tax payment deadline expired, as stipulated in Article 70, paragraph 1 of the TOA. However, for downward adjustments Poland reported that there is no time limitation.

157. Out of Poland's 85 tax treaties, 60 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. [5] In 23 tax treaties no equivalent provision to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included. Further, none of these 23 tax treaties include the equivalent to Article 9(1) and Article 7(2), setting a time limit for making adjustments. The remaining 2 tax treaties do not include a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but include the equivalent to Article 9(1) setting a time limit for making adjustments.

Anticipated modifications

Multilateral Instrument

158. Poland recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary of the fact that this treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, under the conditions 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.

159. In regard of the 25 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Poland listed 24 as covered tax agreements under the Multilateral Instrument and for all of them made, pursuant to Article 16(6)(c)(ii), the notification that these treaties do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Of these 24 treaties, however, ten treaty partners are not a signatory to the Multilateral Instrument. For the remaining 14 treaties, 12 treaty partners also made, pursuant to Article 16(6)(c)(ii), a notification that its treaty with Poland does not include such provision. At this stage therefore, the Multilateral Instrument will, upon its entry into force, modify 12 treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

160. Poland further reported that when the tax treaties that do not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. Poland, however, reported not having in place a specific plan for such negotiations. In addition, Poland reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

Peer input

161. Almost all peers that provided input reported that their treaty with Poland meets the requirements under element D.3.

162. For the 25 treaties identified that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), the relevant peers provided the following input. One peer reported that it would meet the requirements of this element by entering into and ratifying the Multilateral Instrument. Two other peers also reported they intended to address this element via the Multilateral Instrument. Finally, one peer indicated it is willing to accept the alternative provisions provided for in Article 9(1) and Article 7(2).

Conclusion

	Areas for improvement	Recommendations
[D.3]	25 out of 85 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015) nor include the alternative provisions in both Article 9(1) and Article 7(2). Out of the 25 tax treaties: • 23 out of 85 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor include the alternative provisions provided for in Article 9(1) and Article 7(2). • Two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only include the alternative provision provided in Article 9(1).	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 12 treaties that currently do not include such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 13 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force to include such equivalent, Poland should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. In addition, Poland should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.

Notes

1. An unofficial translation of 70(d) of the TOA provided by Poland reads: "If the ratified double taxation agreement to which the Republic of Poland is party provides the possibility of implementing the agreement reached in the course of the mutual agreement procedure regardless of the limitation period, the agreement shall be taken into account despite the limitation period."
2. An unofficial translation of 79(4) of the TOA provided by Poland reads: "An application for overpayment can be filed after the expiration of the limitation period if the existence of the overpayment results from an agreement concluded under the mutual agreement procedure on the basis of ratified double taxation treaties or other ratified international agreements to which the Republic of Poland is a party."
3. An unofficial translation of 70a(1a) of the TOA provided by Poland reads: "If The limitation period referred to in Article 68(1), 68(3) and 70(1) shall be suspended if the mutual agreement procedure is initiated under the ratified double taxation agreement to which the Republic of Poland is a party if that agreement does not provide the possibility of implementing the concluded agreement irrespective of the limitation period. The suspension of the limitation period begin on the date of the initiation of the mutual agreement procedure and it lasts no longer than 3 years."
4. An unofficial translation of 240(1) of the TOA provided by Poland reads: "In case closed by a final tax decision, the proceedings shall be reopened if the outcome of MAP proceedings has an impact on this final tax decision."
5. These 60 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.

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Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Three out of 85 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	Poland should introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	11 out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 11 tax treaties: • two tax treaties do not incorporate the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; • six tax treaties do not contain the equivalent to Article 25(1), first sentence; and • three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a. As amended in the final report of action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.

	Areas for improvement	Recommendations
[B.2]	For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there has not been any documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered to be not justified, prior to the expiration of the Review Period (whereas such documented process was introduced thereafter).	As Poland has done thus far, it should continue to apply its bilateral consultation and notification process recently documented for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14.
[B.3]	Access to MAP in transfer pricing cases will not be granted for certain jurisdictions where Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is not contained in the tax treaty with such jurisdictions.	Poland should grant access to MAP for those cases where the treaty does not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) and for which Poland is currently not willing to grant access to MAP. In cases where Article 9(2) is contained in the applicable treaty, as it has done thus far, Poland should continue granting access to MAP in eligible transfer pricing cases.
[B.4]	-	As Poland has thus far granted access to the MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases. In addition, Poland should ensure that the to-be introduced domestic anti-abuse legislation does not prevent a taxpayer from accessing MAP in such cases.
[B.5]	-	-
[B.6]	-	As Poland has thus far not limited access to the MAP in eligible cases when taxpayers have complied with Poland's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	13 out of 85 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Poland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015a) in those seven treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, Poland could follow its stated intention to include the additional information in its MAP guidance specified above.

	Areas for improvement	Recommendations
[B.9]	-	Poland should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[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 (OECD, 2015a).	Poland should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the 1 treaty that currently does not include such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Poland should request the inclusion of the required provision via bilateral negotiations. In addition, Poland should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Poland submitted timely comprehensive MAP statistics on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Poland's treaty partners, its post-2015 MAP statistics actually match those of its treaty partners. Poland's MAP statistics point out that during the Statistics Reporting Period it closed 17.86% (5 out of 28 cases) of its post-2015 cases in 3.16 months on average. In that regard, Poland is recommended to seek to resolve the remaining 82.14% of the post-2015 cases pending on 31 December 2016 (23 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Poland should continue to closely monitor whether it has adequate resources to ensure that future MAP cases are resolved in a timely, efficient and effective manner. Furthermore, as Poland closed attribution/allocation cases in 38.00 months on average, it could consider, as indicated by peers, monitoring whether the additional personnel that was provided to the MAP function will contribute to accelerate the issuance of position papers and to increase communication to ultimately accelerate the resolution of these cases.
[C.4]	-	As it has done thus far, Poland should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent of any policy considerations that Poland would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Poland should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]		As it has done thus far, Poland should continue to implement all MAP agreements if the conditions for such implementation are fulfilled. In addition, to keep a record of whether all future MAP agreements are implemented, Poland could introduce a tracking system.
[D.2]	-	As it has done thus far, Poland should continue to implement MAP agreements on a timely basis.
[D.3]	25 out of 85 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), OECD (2015), nor include the alternative provisions in both Article 9(1) and Article 7(2). Out of the 25 tax treaties: • 23 out of 85 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor include the alternative provisions provided for in Article 9(1) and Article 7(2). • two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only include the alternative provision provided in Article 9(1).	Poland should as quickly as is possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 12 treaties that currently do not include such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 13 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force to include such equivalent, Poland should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. In addition, Poland should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.

Annex A

Tax treaty network of Poland

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

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

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

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

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

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

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

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is 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.

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

*** A tax treaty between Poland and Malaysia, signed in 1977, is currently in force. This treaty will be replaced by the treaty signed in 2013, once it enters into force. For purposes of the treaty analysis, the newly negotiated treaty is taken into account.

Annex B

MAP Statistics: pre-2016 cases

		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	39	0	0	0	0	0	4	0	0	0	0	35	38.00
Others	39	3	3	0	0	0	12	0	0	0	1	20	19.00
Total	78	3	3	0	0	0	16	0	0	0	1	55	22.30

Annex C

MAP statistics: post-2015 cases

			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	9	0	0	0	0	0	0	0	0	0	0	9	0.00
Others	0	19	2	0	0	0	2	1	0	0	0	0	14	3.16
Total	0	28	2	0	0	0	2	1	0	0	0	0	23	3.16

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	The Mutual Agreement Procedure In Individual Cases
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Poland, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: ***http://oe.cd/bepsaction14***.

Consult this publication on line at ***http://dx.doi.org/10.1787/9789264290457-en***.

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