OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Poland (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 12 May 2020 and prepared for publication by the OECD Secretariat.

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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 large MAP inventory, with a modest number of new cases submitted each year and 140 cases pending on 31 December 2018. Of these cases, 38% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Poland met most of the elements of the Action 14 Minimum Standard. In stage 2 of the process it has been monitored whether Poland worked to solve the identified deficiencies. In this respect, Poland solved one of them.

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. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 30% of its tax treaties does not contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence) or 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 does not contain a provision stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty (which is required under Article 25(3), second sentence)
- Approximately 10% of its tax treaties does not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention, 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.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Poland signed and ratified the Multilateral Instrument, through which a number of its tax treaties have been or will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties have not been or will not be modified by the 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, however, has not put a plan in place to that effect and no specific actions were taken to bring, where necessary, the relevant treaties in line with the requirements of this standard. Taking this into account, negotiations need to be initiated without further delay for a considerable number of treaties to ensure compliance with this part of the Action 14 Minimum Standard.

Poland does not meet the Action 14 Minimum Standard concerning the prevention of disputes, as it does not allow roll-backs of bilateral APAs even though it has in place a bilateral APA programme.

Poland meets almost all of the 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 applicable treaty does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Furthermore, Poland has in place 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. Poland also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice.

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

2016-18	Opening inventory	Cases started	Cases closed	End inventory	Average time to close cases (in months)*
Attribution/allocation cases	39	41	27	53	32.02
Other cases	70	94	77	97	23.05
Total	109	135	104	140	25.38

* 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 in 2016-18 is approximately 77% of the number of all cases started in those years. During these years, MAP cases were on average not closed 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 25.38 months. This in particular concerns attribution/allocation cases, as the average time to close these cases is considerably longer (32.02 months) than the average time to close other cases (23.05 months). This average also increased from 2016 to 2018, in particular for attribution/allocation case. Furthermore, Poland's MAP inventory as per 31 December 2018 increased with approximately 30% as compared to 1 January 2016. While Poland recently provided additional resources to its competent authority function, more resources or additional actions are needed to ensure a timely, efficient and effective resolution of MAP cases, in particular attribution/allocation cases. Such addition of resources should also enable Poland to timely submit position papers and to timely respond to position papers as well as to timely notify treaty partners of submitted MAP requests.

Furthermore, Poland meets all 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. However, its competent authority does not endeavour to resolve MAP cases where the underlying tax treaty does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention, as due to domestic legislation, Poland's competent authority cannot implement MAP agreements in that situation.

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), of which 83 are in force.[1] These 85 treaties apply to 86 jurisdictions.[2] 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, four treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[3]

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.[4] Furthermore, Poland adopted Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which has been implemented in its domestic legislation on 29 November 2019.[5]

Under the tax treaties Poland entered into, the competent authority function for handling MAP cases is assigned to the Minister of Finance and has been delegated to two separate units. The transfer pricing unit in the National Fiscal Administration handles attribution/allocation cases and consists of seven employees (six case officers and one supervisor). Other MAP cases are handled by a separate unit within the Ministry of Finance, which consists of four employees (three case officers and 1 supervisor).

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**"). This guidance is available in Polish at:

https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedury-rozstrzygania-sporow-dotyczacych-podwojnego-opodatkowania-w-sprawach-indywidualnych/

Developments in Poland since 1 August 2017

Developments relating to the tax treaty network

In the stage 1 peer review report of Poland it is reflected that it had signed new tax treaties with Ethiopia (2015), Malaysia (2013), Sri Lanka (2016) and the United States (2013), all of which had not yet entered into force. Poland has also signed an amending protocol with Belgium in 2014, which had then not yet entered into force. Since then the treaties with Ethiopia and Sri Lanka, as well as the amending protocol with Belgium, entered into force. Concerning the newly signed treaties with Malaysia and the United States, they will replace – upon entry into force – the 1977 and 1974 treaties respectively that are currently in force.

Furthermore, on 7 June 2017 Poland signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 23 January 2018, Poland deposited its instrument of ratification, following which the Multilateral Instrument has for Poland entered into force on 1 July 2018. With the depositing of the instrument of ratification, Poland also submitted its list of notifications and reservations to that instrument.[6] 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.[7] This reservation is in line with the requirements under the Action 14 Minimum Standard.

In addition, Poland reported that since 1 August 2017 it has conducted treaty negotiations on new agreements/amending protocols to existing treaties with some treaty partners. With two of the jurisdictions concerned, an agreement was reached on an amending protocol, which has not yet been signed until 28 February 2019. Some of these amending protocols also relate to an update to the MAP provision. Poland further reported that it was approached by one treaty partner with the request to enter into a memorandum of understanding to clarify that the protocol provision to the treaty that requires taxpayers to initiate remedies when submitting a MAP request will be made undone once domestic legislation at the level of the treaty partner has been amended.

For those treaties that were in the stage 1 peer review report considered not to be in line with one or more elements of the Action 14 Minimum Standard and will not be modified by the Multilateral Instrument, Poland reported that 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 it decides to begin negotiations. While Poland reported that it 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, it did not further specify which treaty partners it concerned nor did it further detail its plan. During stage 2, Poland also has not taken actions in line with this plan to bring the relevant treaties in line with the requirements under the Action 14 Minimum Standard.

Other developments

Poland reported that in 2018 it has introduced an internal tracking system for MAP cases, which also includes as an element the supervision of the competent authority over the implementation process. This tracking system enables the competent authority to identify possible problems or delays with the implementation of MAP agreements as well as to obtain detailed information on actions of the relevant local tax authorities related to the implementation process.

Poland further reported that since 1 August 2017 it has hired three new persons, two for handling attribution/allocation cases and one for handling other MAP cases. All three persons work on other issues besides handling MAP cases. A further hiring of personnel is foreseen for 2019 and 2020.

Basis for the peer review process

Outline of 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 Poland and its peers.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Poland's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 22 February 2018. This report identifies the strengths and shortcomings of Poland in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.[8] Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Poland. In this update report, Poland reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether 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 Poland continues to apply to Montenegro and Serbia. Although this concerns one treaty that is applicable to two jurisdictions, it 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.

Timing of the process and input received by peers and taxpayers

Stage 1 of the peer review process was for Poland launched on 7 July 2017, with the sending of questionnaires to Poland and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Poland in December 2017, with the subsequent approval by the BEPS Inclusive Framework on 22 February 2018. On 22 February 2019, Poland submitted its update report, which initiated stage 2 of the process.

While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Poland opted to provide information and requested peer input concerning the period starting as from 1 January 2015 (the "**look-back period**"). The period for evaluating Poland's implementation of this standard ranges from 1 January 2016 to 31 July 2017 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 August 2017 and depicts all developments as from that date until 28 February 2019.

In addition to its assessment on the compliance with the Action 14 Minimum Standard, Poland also addressed best practices and asked for peer input on best practices.

In total 13 peers provided input during stage 1: Belgium, Denmark, Germany, Greece, Italy, the Netherlands, Norway, Russia, Spain, Sweden, Switzerland, Turkey and the United States. In stage 1, these peers represent over 60% of the number of cases in Poland's MAP inventory as of 31 December 2016. During stage 2, the same peers provided input, apart from Greece and Russia. In addition, also Austria, Ireland, Japan, Portugal, the Slovak Republic and the United Kingdom provided input during stage 2. For this stage, these peers represent approximately 73% of post-2015 MAP cases in Poland's inventory that started in 2016, 2017 or 2018.[9] Broadly all peers indicated good cooperation with Poland's competent authority, although a few commented on the timeliness of the resolution of MAP cases. Specifically with respect to stage 2, almost all peers that provided input reported that the update report of Poland fully reflects the experiences these peers have had with Poland since 1 August 2017 and/or that there was no addition to previous input given. Eight peers, however, reflected additional input or new experiences, which are reflected throughout this document under the elements where they have relevance. One of these peers reported difficulties with having MAP cases being effectively dealt with in the MAP process, while another peer mentioned it sometimes is difficult to find an agreement for the cases under review.

Input by Poland and co-operation throughout the process

During stage 1, 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 timely and comprehensively to requests for additional information and provided further clarity where necessary. In addition, Poland provided the following information:

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

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

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 for stage 1 relates to the period starting on 1 January 2016 and ending on 31 December 2016. For stage 2 the period ranges from 1 January 2017 to 31 December 2018. Both periods are taken into account in this report for analysing the MAP statistics of Poland. The analysis of Poland's MAP caseload therefore relates to the period starting on 1 January 2016 and ending 31 December 2018 ("**Statistics Reporting Period**").

According to the statistics provided by Poland, its MAP caseload was as follows:

2016-18	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2018
Attribution/allocation cases	39	41	27	53
Other cases	70	94	77	87
Total	109	135	104	140

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

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

Notes

1. The tax treaties Poland has entered into are available at: https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedury-rozstrzygania-sporow-dotyczacych-podwojnego-opodatkowania-w-sprawach-indywidualnych/. The two treaties that are not yet in force concern treaties with Malaysia (2013) and the United States (2013). Poland ratified both treaties. With respect to these treaties a tax treaty signed in 1977 and 1974 respectively is currently in force. Both treaties will be replaced by the treaties signed in 2013, once the latter enter into force. Reference is made to Annex A for the overview of Poland's tax treaties regarding the mutual agreement procedure.
2. Poland continues to apply the treaty with former Yugoslavia to Montenegro and Serbia.
3. 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 will be included in the current version of this tax treaty. This protocol entered into force in 2018.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of 23 July 1990.
5. Available at: https://eur-lex.europa.eu/eli/dir/2017/1852/oj.
6. Available at: www.oecd.org/tax/treaties/beps-mli-position-poland-instrument-deposit.pdf.
7. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: "Pursuant to Article 16(5)(a) of the Convention, the Republic of 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".
8. Available at: www.oecd.org/tax/beps/making-dispute-resolution-more-effective-map-peer-review-report-poland-stage-1-9789264290457-en.htm.
9. The breakdown of treaty partners on a jurisdiction-by-jurisdiction basis is only available for post-2015 cases under the MAP Statistics Reporting Framework. All cases falling within the *de minimis* rule do not fall in this percentage.
10. Available at: www.oecd.org/tax/dispute/Poland-Dispute-Resolution-Profile.pdf.
11. The MAP statistics of Poland are included in Annex B and C of this report.
12. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Part A

Preventing disputes

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

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

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

Current situation of Poland's tax treaties

2. Out of Poland's 85 tax treaties, 81 contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.[1] Of the remaining four treaties, two do not contain the word "interpretation", while in one treaty the words "or doubts" and "interpretation" are missing. In the remaining treaty no provision that is based on Article 25(3), first sentence is included. Therefore, all four treaties are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

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

4. Almost all peers that provided input reported that the provisions of their tax treaty with Poland meet some or all of the requirements under the Action 14 Minimum Standard. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Bilateral modifications

5. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element A.1.

Multilateral Instrument

6. Poland signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

7. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable treaty has listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

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

9. Both relevant treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Poland and these treaty partners, and therefore has modified them to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention.

Peer input

10. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Poland. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

Anticipated modifications

11. Poland reported that when the tax treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and 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. While Poland reported having in place a plan for such negotiations, the details of the plan were not provided nor were any actions taken to bring the relevant treaties in line with the requirements under element A.1.

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	Four 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. Of these three treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. With respect to these treaties no actions have been taken nor are planned to be taken.	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 following its entry into force, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.

[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.

13. 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

14. Poland reported that it has introduced a APA programme since 2006, under which it is allowed to enter into unilateral, bilateral and multilateral APAs. Poland charges fees for APAs, which are 1% of the value of the transaction(s) constituting the object of the APA. Particular for the specific type of APAs this concerns:

- unilateral APA: between 5 000 PLN and 50 000 PLN for domestic transactions and between 20 000 PLN and 100 000 PLN for foreign transactions
- bilateral/multilateral APA: between 50 000 PLN and 200 000 PLN
- renewal of existing APAs: 50% of the fee for obtaining an APA.

15. Publicly available information and guidance on the APA programme could have been found in the Tax Ordinance Act ("**TOA**"), specifically articles 20a to 20r of that act. Currently, the APA programme is regulated by the Act of 16 October 2019 on tax dispute resolution and advance pricing agreements.

Roll-back of bilateral APAs

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

Recent developments

17. There are no recent developments with respect to element A.2. While in the stage 1 peer review report it was noted that Poland indicated that conceptual work on the possibility and feasibility of introducing roll-back of bilateral APAs has recently been launched, no outcome of such process was reported during stage 2.

Practical application of roll-back of bilateral APAs

18. Poland publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum.[3] Such statistics are also published on the website of the Ministry of Finance.[4]

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

19. Since Poland does allow for roll-back of bilateral APAs, no requests were received in relation hereto in the period 1 January 2015-31 July 2017.

20. All peers that provided input reported they had not received any requests for roll-backs of bilateral APAs in the period 1 January 2015-31 July 2017.

Period 1 August 2017-28 February 2019 (stage 2)

21. Poland reported that since 1 August 2017 it has not received a request for a roll-back of a bilateral APA.

22. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. This concerns a confirmation that they had also during stage 2 no experiences with Poland as to the roll-back of bilateral APAs.

Anticipated modifications

23. Poland did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	Poland should without further delay 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. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/apa-and-map-2019-3.pdf. These statistics are up to 2018.

4. Available at: https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedury-rozstrzygania-sporow-dotyczacych-podwojnego-opodatkowania-w-sprawach-indywidualnych/.

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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.

24. 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

25. Out of Poland's 85 tax treaties, 64 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, 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.[1] None of Poland's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report allowing taxpayers to submit a MAP request to the competent authority of either state.

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

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	20 *
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, whereby 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

* These 20 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.

27. The 20 treaties mentioned in the first row of the table above are considered not to contain the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 15 of these 20 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]

28. For the remaining five treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention 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 is therefore not clarified by a limited scope of the non-discrimination article, following which these five treaties are not in line with element B.1.

29. For the one treaty mentioned in the second row of the table above, the provision incorporated in the protocol to this tax treaty reads:

> … the expression "irrespective the remedies provided by the domestic law" means that that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initiated, when the claim is related with an assessment of the taxes not in accordance with this Convention.

30. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This tax treaty is therefore considered not in line with this part of element B.1.

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

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

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

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

Peer input

33. All peers that provided input reported that their tax treaty with Poland meets the requirements under element B.1. Furthermore, one peer provided input indicating that it intends to address this treaty via the Multilateral Instrument. For the other ten treaties identified that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Practical application

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

34. As noted in paragraphs 28-30 above, in all but one of Poland's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Poland reported that access to MAP is available regardless of whether taxpayers also have sought to resolve the dispute via domestically available administrative and judicial remedies. Access to MAP is also available in cases where domestic remedies already have been completed, but Poland noted that its competent authority is bound by decisions of the court and as such cannot deviate from that decision in MAP.

35. Section 1 of Poland's MAP guidance stipulates that the MAP process is independent from domestic remedies and the submission of a MAP request does not prevent taxpayers from initiating such remedies.

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

36. One peer provided input and referred to an attribution/allocation MAP request that was submitted to both competent authorities concerned relating to earlier fiscal years. With respect to one of these years, a dispute arose between the competent authorities as to whether the MAP request was filed within the three-year filing period specified in the treaty. The peer clarified that Poland considered that the request was not timely filed, as in their view the first notification of the action occurred in June 2014, the date of the first tax assessment. The peer, however, considered that the first notification was on the date of the second assessment, in May 2016. The reason hereof was that the first assessment was issued on the basis of Poland's domestic transfer pricing rules, but did not lead to taxation not in accordance with the provisions of the treaty. Furthermore, this first assessment was annulled and no additional tax was paid as a result thereof. Subsequently, a second tax assessment was issued in 2016 on the basis of the arm's length principle, which caused

taxation not in accordance with the provisions of the treaty. Based on these facts, the peer's competent authority arrived at the conclusion that the first tax assessment could not constitute the first notification, as there was not a materialisation of taxation not in accordance with the provisions of the treaty, thus also not triggering the three-year filing period for MAP requests. The peer stressed that while taxpayers are allowed to submit a MAP request at an early stage, the three-year period only commences when the risk has materialised. The peer further noted that Poland explained its position on the basis of paragraph 9 of the Commentary to Article 25 of the OECD Model Tax Convention and on that basis stated that what is decisive in determining what represents the action in view of the second sentence of Article 25(1) is the specific effect of the action and not the formal basis for the action. The peer concluded by stating that it has to date not been provided with sufficient evidence that demonstrates that the interaction between the Polish tax assessment and the provisions of the tax treaty justify the denial of access to the MAP process.

37. Poland responded to the input given and provided for a clarification on the specificities of the case referred to and the system in place in Poland, which has been explained to the peer in a letter dated April 2019. For the year for which the dispute arose on access to MAP, an audit was initiated in 2013 and finalised in 2014, such by delivery of a decision by the Director of the Tax Audit Office. Insofar not regulated by the Tax Audit Act, the provisions of the Tax Ordinance apply to tax audits.[4] Pursuant to this system, taxpayers have a right to appeal with the so-called appeal authority against a decision issued *inter alia* by the Director of the Tax Audit Office. The outcome of this appeal may be that the decision is approved or is remitted for re-examination (e.g. if the decision requires the evidence procedure to be taken in full or in a large part). The appeal authority will in its decision specify the facts that should be re-examined. For the case under review, the appeal was initiated and finalised in 2014, leading to a decision that the case should be re-examined. The case therefore had to be re-examined in terms of clarifying the findings of facts. In May 2016, after completion of procedures, the Director of the Tax Audit Office issued a revised decision. In view of this description, Poland stated that both the initial and revised decisions issued by the Director of the Tax Audit Office concerned the same action that focused on the non-arm's length nature of the transactions between the associated enterprises. It further stated that the fact that both decisions referred to different law provisions was irrelevant in this respect. That being said, Poland concluded that for these cases, the MAP request was not filed within the required three-year period due to the fact that this period commenced in 2014 when the first decision was issued. It also concluded that the input given by the peer has no practical relevance, as the taxpayer has withdrawn its MAP request in the meantime.

38. In view of the peer input and the response given by Poland, paragraph 25 of the Commentary to Article 25 has relevance, which stipulates that:

> The three year period continues to run during any domestic law (including administrative) proceedings (e.g. a domestic appeal process).

39. On the basis of the input given by the peer and the clarifications given by Poland, it can be concluded that the result of the action not in accordance with the tax treaty has materialised as from the date the initial decision was issued and not of the date of the revised decision, as the decision itself was not withdrawn.

40. Further to the above, Poland reported that for those six tax treaties above that do not contain a filing period for MAP requests, its competent authority accepts a MAP request irrespective of when it is filed. In that regard, no filing period is being applied.

Recent developments

Bilateral modifications

41. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.1.

Multilateral Instrument

42. Poland reported it signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

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

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

44. With the depositing of its instrument of ratification, Poland reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.[5] 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, as it read prior to the adoption of the Action 14 final report. It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified, which will be further discussed under element B.2.

45. In view of the above, following the reservation made by Poland, those six treaties identified in paragraphs 28-30 above that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of Action 14 final report 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

46. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention – will

apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depositary that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

47. In regard of the five tax treaties identified in paragraph 32 above that contain a filing period for MAP requests of less than three years, Poland listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the relevant five treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Poland as a covered tax agreement under that instrument. The remaining three partners all also made a notification on the basis of Article 16(6)(b)(i).

48. One of these three treaty partners also has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Poland and this treaty partner, and therefore has modified it to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention. The other two treaties will, upon entry into force for the treaty concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention.

Peer input

49. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Poland. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report and which will not be modified by the Multilateral Instrument.

Anticipated modifications

50. Poland reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report 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. While Poland reported having in place a plan for such negotiations, the details of the plan were not provided nor were any actions taken to bring the relevant treaty in line with the requirements under element B.1. For one of the treaties that does not contain the equivalent of Article 25(1), first sentence, Poland, however, reported being approached by one treaty partner with the request to enter into a memorandum of understanding to clarify that the protocol provision to the treaty that requires taxpayers to initiate remedies when submitting a MAP request will be made undone once the domestic legislation of this peer has been amended. This proposal is currently under discussion with the relevant treaty partner. As mentioned in the peer review report of this treaty partner, entering into a memorandum of understanding would not suffice, as an amendment of the treaty is necessary for that purpose.

51. Regardless, Poland reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Five out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). None of those five tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. With respect to these treaties, no actions have been taken nor are planned to be taken.	For those five treaties that will not be modified by the Multilateral Instrument to Article 25(1) of the OECD Model Tax Convention as amended by that report (OECD, 2015b), Poland should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the 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.
	Four out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, or, due to a protocol provision can be shorter than three years. Of these four treaties: • One has been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) • Two will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For these treaties no actions have been taken nor are planned to be taken.	For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.
	One out of 85 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report (OECD, 2015b), and also the timeline to submit a MAP request is 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor planned to be taken.	For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Poland should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.

[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).

52. 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

53. As discussed under element B.1, out of Poland's 85 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. In addition, as was also discussed under element B.1, none of these 85 tax treaties will, following Poland's reservation according to Article 16(5)(a) of the Multilateral Instrument, be modified by that instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

54. 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 the objection raised by the taxpayer in its MAP request not justified. Under this procedure, it will send a notification to the other competent authority.

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

Recent developments

56. Poland reported that it has recently internally documented its notification process.

Practical application

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

57. From the 2016 MAP statistics provided by Poland, it follows that there were three cases with the outcome "objection not justified". In this respect, Poland reported its competent authority considered that the objection raised by taxpayers in their MAP requests as being not justified in all three cases. All of these cases were 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 as of 1 January 2016.

58. 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 (before 31 July 2017) and notified the other competent authority of this before informing the taxpayer of the outcome of its MAP case. The relevant 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.

59. Other peers that provided 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's competent authority 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 three years as set forth in Article 25(1), second sentence, of the OECD Model Tax Convention. 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.

Period 1 August 2017-28 February 2019 (stage 2)

60. Poland reported that in the period 1 August 2017-28 February 2019 its competent authority has for three of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. For one case the decision hereto was made in 2017 and for the other two in 2018. For the relevant case in 2017, the relevant decision thereto was taken prior to 1 August and has been reflected in paragraph 58 above. The 2017 and 2018 MAP statistics submitted by Poland confirm that four of its MAP cases were closed with the outcome "objection not justified". For one of the cases in 2017, the decision was made by Poland's treaty partner.

61. Almost all of the peers that provided input during stage 1 also indicated that since 1 August 2017 they are not being aware of any cases for which Poland's competent authority considered the objection raised in a MAP request as not justified. Concerning the two cases for which Poland's competent authority in 2018 considered the objection raised by the taxpayer in its MAP request as not being justified, one of the relevant peers confirmed it has been notified and agreed between the competent authorities. The other peer did not provide any input on this issue.

Anticipated modifications

62. Poland did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]		

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

Jurisdictions should provide access to MAP in transfer pricing cases.

63. 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

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

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

66. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention 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 those 18 treaties referred to above that do not contain a provision that is based on or is the equivalent of Article 9(2).

67. In this respect, Poland clarified that the basis for this policy is to be found in Article 64.1 of the Act on Tax Dispute Resolution and Advance Pricing Agreements, which stipulates that:

> In order to eliminate double taxation of income of related entities, if the income of a domestic related entity is by the tax administration of a country other than the Republic of Poland included in the income of a foreign related entity and properly taxed in connection with defining by the administration the conditions that would have been agreed between unrelated entities, the Minister of Finance, upon request of the domestic related entity, may adjust the income of this entity, provided that the provisions of international agreements, provide for such an adjustment".[7]

68. Poland clarified that pursuant to this provision, a corresponding adjustment would only be given in those situations where the applicable tax treaty contains the equivalent of Article 9(2) of the OECD Model Tax Convention, even though its competent authority would

in substance agree with the primary adjustment made at the level of its treaty partner, both as regards the principle and the amount. Furthermore, Poland noted that this concerns both corresponding adjustments on a unilateral basis or if they would be agreed so in MAP. For this reason, Poland's policy is not to grant access to MAP in cases where the underlying treaty does not contain a provision that is based on or is the equivalent of Article 9(2). This policy is outlined in Poland's MAP guidance relating to transfer pricing cases.[8]

Recent developments

Bilateral modifications

69. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.3.

Multilateral Instrument

70. Poland signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

71. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable 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, 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. 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).

72. 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. In regard of the 18 treaties identified in paragraph 64 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, 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 any of these 15 treaties. Of the relevant 15 treaty partners, four are not a signatory to the Multilateral Instrument, whereas one

did not list its treaty with Poland as a covered tax agreement under that instrument. Of the remaining ten 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).

73. Of the last ten treaties referred to above, three treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Poland and these treaty partners, and therefore has superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The other seven treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Other developments

74. There are no other developments in relation to element B.3. Poland has not changed its domestic legislation and/or its policy to grant access to MAP in transfer pricing cases where the tax treaty does not contain Article 9(2) of the OECD Model Tax Convention.[9]

Application of legal and administrative framework in practice

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

75. Poland reported that it has in the period 1 January 2015-31 July 2017 not denied access to MAP on the basis that the case concerned was a transfer pricing case. None of the transfer pricing MAP requests its competent authority received in that period was under a tax treaty that does not contain Article 9(2) of the OECD Model Tax Convention.

76. All peers that provided input indicated not being aware of a denial of access to MAP by Poland in the period 1 January 2015-31 July 2017 on the grounds that it was a transfer pricing case.

Period 1 August 2017-28 February 2019 (stage 2)

77. Poland reported that since 1 August 2017 for none of the MAP requests it received relating to transfer pricing has it denied access to MAP on the basis that the case concerned was a transfer pricing case.

78. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. In addition, two peers mentioned they did not experience any issues with Poland regarding access to MAP.

Anticipated modifications

79. Poland reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties.

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 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 and for which Poland is currently not willing to grant access to MAP.

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

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

80. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

81. None of 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.

82. Poland reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty are within the scope of MAP. Poland's MAP guidance, however, does not specifically address whether taxpayers have access to MAP in such cases.

Recent developments

83. Poland reported that certain amendments to its domestic law were made in relation to anti-abuse provisions, but that these rules do not in any way limit access to the MAP process. Other than that, there are no recent developments with respect to element B.4.

Practical application

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

84. Poland reported that it has in the period 1 January 2015-31 July 2017 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. However, no such cases in relation hereto were received in that period.

85. All peers that provided input indicated not being aware of a denial of access to MAP by Poland in relation to the application of treaty and/or domestic anti-abuse provisions in the period 1 January 2015-31 July 2017.

Period 1 August 2017-28 February 2019 (stage 2)

86. Poland reported that since 1 August 2017 it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

87. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. In addition, two peers mentioned they did not experience any issues with Poland regarding access to MAP.

Anticipated modifications

88. Poland did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

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

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

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

Legal and administrative framework

Audit settlements

90. Poland reported that under its domestic legislation it is not possible that the tax administration and the taxpayer enter into a settlement agreement during the course of or after ending of an audit.

Administrative or statutory dispute settlement/resolution process

91. Poland reported that it has no administrative or statutory dispute settlement or resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

Recent developments

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

Practical application

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

93. Due to the fact that audit settlements are not available in Poland, there are in the period 1 January 2015-31 July 2017 no cases where its competent authority has denied access to MAP in cases where a transaction would have been concluded following a tax audit.

94. All peers that provided input indicated that they were not aware of a denial of access to MAP by Poland in the period 1 January 2015-31 July 2017 where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

Period 1 August 2017-28 February 2019 (stage 2)

95. Poland reported that since 1 August 2017 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and tax administration.

96. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. In addition, two peers mentioned they did not experience any issues with Poland regarding access to MAP.

Anticipated modifications

97. 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.

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

Legal framework on access to MAP and information to be submitted

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

100. 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. 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.

101. Poland further reported that if the taxpayer 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 then 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.

Recent developments

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

Practical application

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

103. Poland reported that it has limited access to MAP in five cases in the period 1 January 2015-31 July 2017 on the grounds that information provided was insufficient. Two of these were attribution/allocation cases.

104. For the two attribution/allocation cases, Poland clarified that the required information that is on its Ministry of Finance's website was not included in the MAP request. In particular, this information related to the circumstances causing taxation not in accordance with the applicable tax treaty. Poland clarified 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.

105. For each of the three other cases that were denied access to MAP, Poland clarified the taxpayer in question was asked at least twice for additional information and they 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, 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 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, access to MAP was denied, as 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.

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

107. All peers that provided input indicated not being aware of a limitation of access to MAP by Poland in the period 1 January 2015-31 July 2017 in situations where taxpayers complied with the information and documentation requirements.

Period 1 August 2017-28 February 2019 (stage 2)

108. Poland reported that since 1 August 2017 it has not limited access to MAP on the grounds that information in the MAP request was not the information or documentation required by its competent authority.

109. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. In addition, two peers mentioned they did not experience any issues with Poland regarding access to MAP.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

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

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

111. 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, 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

112. Out of Poland's 85 tax treaties, 71 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[10] Furthermore, one treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention, 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.

113. Of the remaining 13 treaties, ten do not contain the second sentence of Article 25(3). For the other three treaties the following analysis is made:

- 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 considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.
- Two treaties have wording that is not based on Article 25(3), second sentence, of the OECD Model Tax Convention 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 not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

114. Almost all peers that provided input reported that their tax treaty with Poland meets the requirements under element B.7. For the 13 treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, 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.

Recent developments

Bilateral modifications

115. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element B.7.

Multilateral Instrument

116. Poland signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

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

118. In regard of the 13 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention, Poland listed all of them as a covered tax agreement under the Multilateral Instrument, but only for 12 treaties did it make, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 12 treaty partners, three are not a signatory to the Multilateral Instrument. All remaining nine treaty partners listed their tax treaty with Poland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(d)(ii).

119. Of the nine treaty partners mentioned above, six have deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Poland and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified six treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. For the remaining three treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention.

Peer input

120. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Poland. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(3), second sentence, of the OECD Model Tax Convention. This peer confirmed that its treaty with Poland will be modified by the Multilateral Instrument to include this second sentence.

Anticipated modifications

121. Poland reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and 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. While Poland reported having in place a plan for such negotiations, the details of the plan were not provided nor were any actions taken to bring the relevant treaties in line with the requirements under element B.7.

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	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. Of these 13 treaties: • Six have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Four will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these treaties no actions have been taken nor are planned to be taken.	For the remaining four 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, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.

[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.

123. 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

124. Poland has issued rules, guidelines and procedures relating to the MAP process. There are two separate guidelines: one for general MAP cases and another specifically for attribution/allocation cases. These documents include basic information on how taxpayers can access MAP and the availability and practical application of the MAP under the tax

treaties Poland has entered into. All information and guidance concerning access to MAP is available on the website of Poland's Ministry of Finance, which can be found at (in Polish) at:

https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedury-rozstrzygania-sporow-dotyczacych-podwojnego-opodatkowania-w-sprawach-indywidualnych/

125. 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

126. The above-described MAP 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) the application of 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 period a MAP case is pending; (vi) the consideration of interest and penalties in MAP and (vii) 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

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

128. 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.

Recent developments

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

Anticipated modifications

130. As discussed under element B.3, Poland has updated is guidance to delete the sentence stating that access to MAP is not available in transfer pricing cases where the applicable tax treaty does not contain Article 9(2) of the OECD Model Tax Convention. In this respect, Poland indicated that it currently is in the process of preparing a comprehensive update of its MAP guidance upon implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This update is expected to be published in the beginning of 2020, whereby *inter alia* the following items will be addressed:

- 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 period a MAP case is pending
- 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]	-	-

[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.

131. 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

132. Poland's MAP guidance is published and can be found in Polish at:

https://www.podatki.gov.pl/podatkowa-wspolpraca-miedzynarodowa/procedury-rozstrzygania-sporow-dotyczacych-podwojnego-opodatkowania-w-sprawach-indywidualnych/

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

MAP profile

134. Poland's MAP profile is published on the website of the OECD, which was last updated in February 2019.[13] This MAP profile is complete and includes external links which provide extra information and guidance.

Recent developments

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	-

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

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

137. 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 previous mentioned processes.

MAP and audit settlements in the MAP guidance

138. As previously discussed under element B.5, in Poland it is not possible that the tax administrations and taxpayers enter into audit settlements during the course of or after an audit has been completed. In that regard, there is no need to address in its MAP guidance that such settlements do not preclude access to MAP.

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

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

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

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

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

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

Recent developments

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. In the stage 1 peer review report of Poland reference was made to 62 tax treaties. Based on a further analysis, this should be 64 treaties as two treaties were identified actually containing such equivalent. This change in numbers has been reflected in the analysis throughout this section.
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. The Tax Audit Act has in 2017 been replaced by the Act on the National Tax Administration, but still has relevance to the fiscal year for which the audit was initiated.
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".
6. These 67 treaties include the treaty with the former Yugoslavia that Poland continues to apply to Montenegro and Serbia.
7. Until 31 December 2018, Article 11.8b of the Corporate Income Tax Act include the relevant provision. Poland provided an unofficial translation of this provision, which read: "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". This provision was replaced as per 1 January 2019 by Article 11h.1 of the Corporate Income Tax Act and was in force until 28 November 2019. As per 29 November 2019, the relevant provision is included in Article 64.1 of the Act on Tax Dispute Resolution and Advanced Pricing Agreements.

8. Guidance on MAP in transfer pricing is available in Polish at: https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/.

9. Poland reported that it has changed in January 2020 its policy, by allowing access to MAP in transfer pricing cases, also in those cases where the applicable tax treaty does not contain Article 9(2) of the OECD Model Tax Convention. In that regard, Poland updated its MAP guidance in February 2020 deleting the sentence stating that access to MAP would not be available in such cases. Available at: https://www.podatki.gov.pl/ceny-transferowe/procedury-map-i-apa-statystyki/procedura-wzajemnego-porozumiewania-sie-map/. As these events occurred after the ending of the peer review process, they were not taken into account in this report.

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

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.

145. 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, 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

146. Out of Poland's 85 tax treaties, 83 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention requiring its competent authority to endeavour – when the objection raised is 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]

147. Of the remaining two treaties, one contains a provision that is based on Article 25(2), first sentence, but does not include the part of the sentence reading "if the objection appears to it to be justified'. The other treaty also contains a provision that is based on Article 25(2), first sentence, but includes additional wording that requires for entering into MAP discussions that 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 later". Such an obligation may prevent that cases are effectively dealt with in MAP. For this reason, both treaties are considered not containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

148. Almost all peers that provided input reported that their treaty with Poland meets the requirements under element C.1. For the two treaties identified above that do not include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Recent developments

Bilateral modifications

149. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element C.1.

Multilateral Instrument

150. Poland signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

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

152. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Poland listed both treaties as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, 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 is a signatory to the Multilateral Instrument, listed its tax treaty with Poland as a covered tax agreement under that instrument and also made a notification on the basis of Article 16(6)(c)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force for this treaty, modify it to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Peer input

153. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Poland. None of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument.

Other developments

154. For the remaining tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, Poland reported that negotiations have been conducted, which lead to an agreement on an amending protocol. This protocol, however, contains the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.1]	Two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For this treaty negotiations have been conducted with a view to include the required provision	For the remaining treaty that will not be modified by the Multilateral Instrument and for which negotiations have been conducted to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Poland should as quickly as possible sign the amending protocol to have in place the required provision.

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

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

156. 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

157. Statistics regarding all tax treaty related disputes concerning Poland are published on the website of the OECD as of 2007.[2] Poland also 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]

158. 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.

159. With respect to post-2015 cases, Poland reported that for the years 2016-18 it has 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.

160. Three peers provided input on the matching of MAP statistics with Poland. One of these peers confirmed that it was able to match its statistics with Poland for the years 2016-18 or for any individual year. Another peer mentioned that for the years 2016-17 it has not matched its MAP statistics with Poland, but did so for the year 2018. The third peer mentioned it had no pending MAP cases with Poland and therefore did not need to match its statistics.

161. Based on the information provided by Poland's MAP partners, its post-2015 MAP statistics for the years 2016-18 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

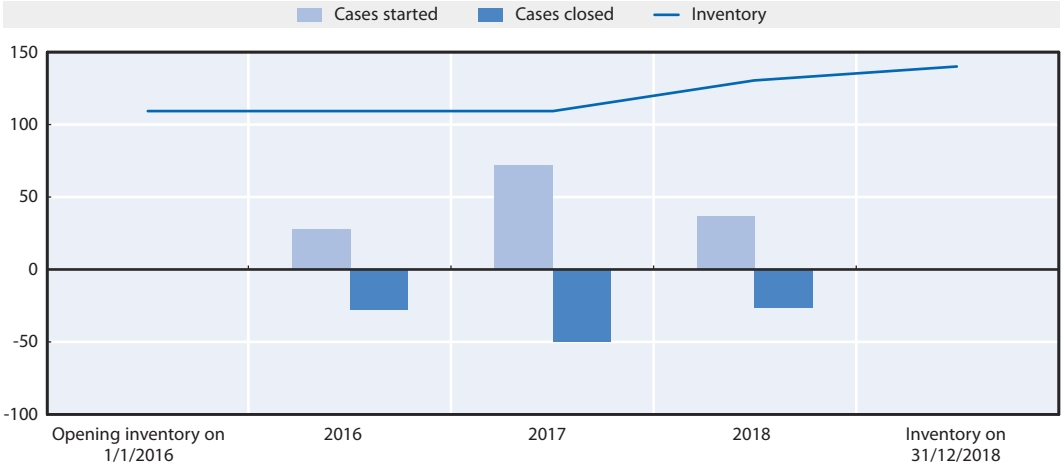
162. Poland reported that it has a system in place that monitors and manages the MAP caseload with its treaty partners. Based on this system, every six months its competent authority follows-up with other competent authorities with whom it is awaiting an answer regarding a pending MAP case. Poland further 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

163. The analysis of Poland's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2018.

164. Figure C.1 shows the evolution of Poland's MAP caseload over the Statistics Reporting Period:[5]

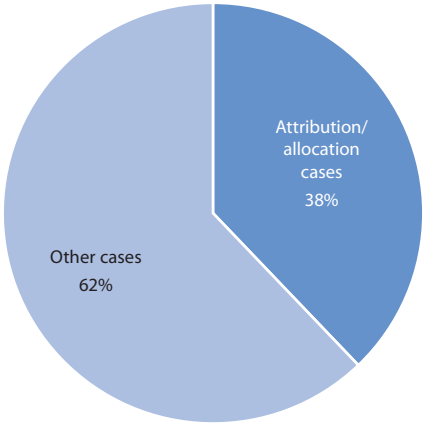
Figure C.1. **Evolution of Poland's MAP caseload**



165. At the beginning of the Statistics Reporting Period, Poland had 109 pending MAP cases, of which 39 were attribution/allocation cases and 70 other MAP cases.[6] At the end of the Statistics Reporting Period, Poland had 140 MAP cases in its inventory, of which 53 were attribution/allocation cases and 87 other cases. Consequently, Poland's pending MAP cases have increased by 28% during the Statistics Reporting Period. This increase can be broken down into an increase of 36% for attribution/allocation cases and an increase of 24% for other cases.

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

Figure C.2. **End inventory on 31 December 2018 (140 cases)**

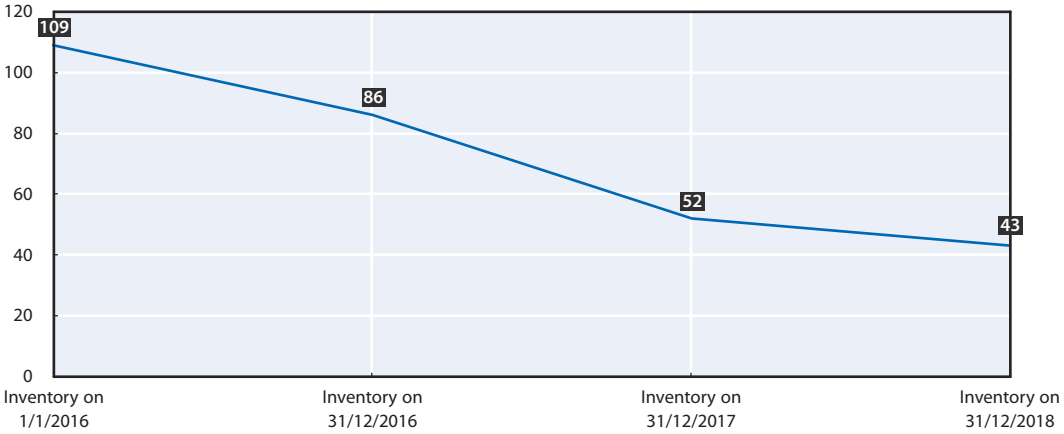


Pre-2016 cases

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

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

Pre-2016 cases



168. At the beginning of the Statistics Reporting Period, Poland's MAP inventory of pre-2016 MAP cases consisted of 109 cases, 39 of which were attribution/allocation cases and 70 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 43 cases, consisting of 23 attribution/allocation cases and 20 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

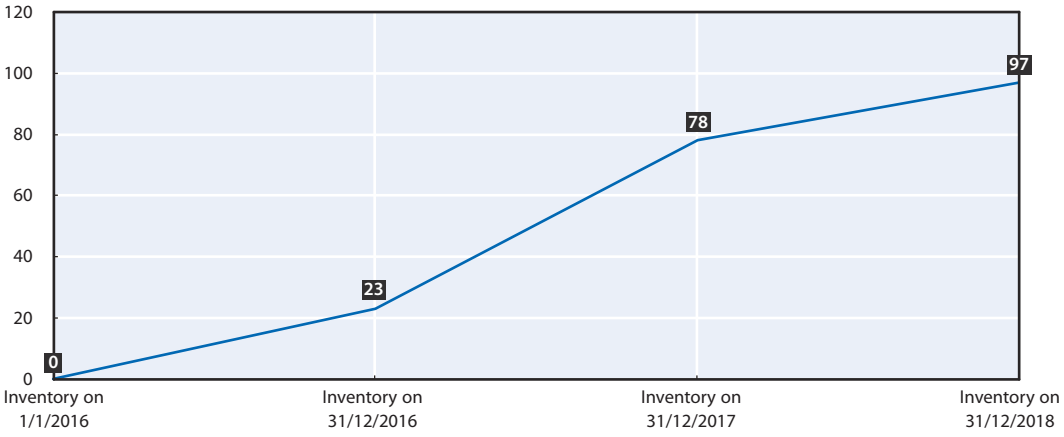
	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Evolution of total MAP caseload in 2018	Cumulative evolution of total MAP caseload over the two years (2016-18)
Attribution/allocation cases	-10%	-26%	-12%	-41%
Other cases	-27%	-49%	-23%	-71%

Post-2015 cases

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

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

Post-2015 cases



170. In total, 135 MAP cases started during the Statistics Reporting Period, 41 of which concerned attribution/allocation cases and 94 other cases. At the end of this period, the total number of post-2015 cases in the inventory was 97 cases, consisting of 30 attribution/allocation cases and 67 other cases. Conclusively, Poland closed 38 post-2015 cases during the Statistics Reporting Period, 11 of them being attribution/allocation cases and 27 other cases. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

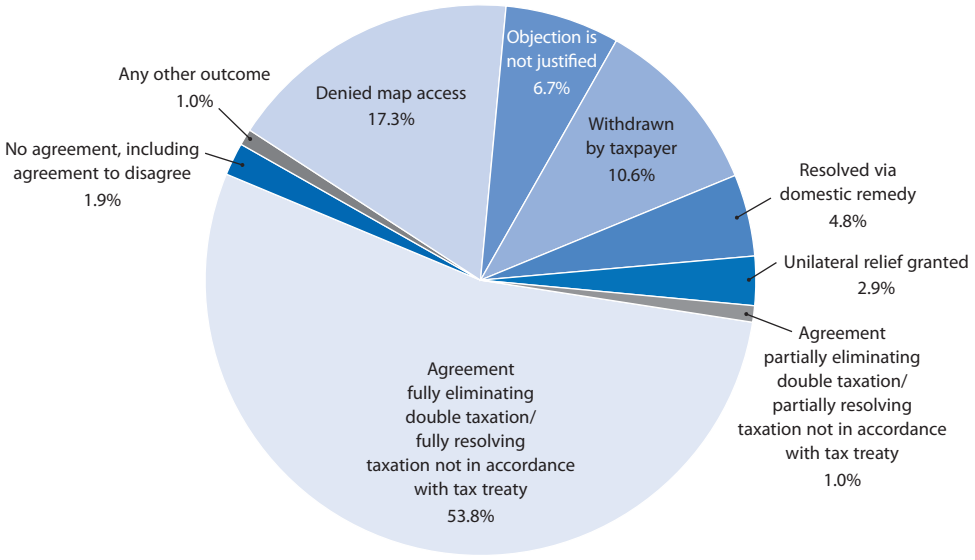
	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	Cumulative % of cases closed compared to cases started over the three years (2016-18)
Attribution/allocation cases	No cases closed	25%	50%	27%
Other cases	26%	22%	46%	29%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

171. During the Statistics Reporting Period, Poland closed 104 MAP cases, for which the outcomes shown in Figure C.5 were reported.

Figure C.5. **Cases closed during 2016, 2017 or 2018 (104 cases)**



172. Figure C.5 shows that the during the Statistics Reporting Period, 56 out of 104 cases were resolved through agreement fully eliminating double taxation or fully resolving taxation not in accordance with the tax treaty.

Reported outcomes for attribution/allocation cases

173. In total, 27 attribution/allocation cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (48%)
- withdrawn by taxpayers (22%)
- Unilateral relief granted (11%).

Reported outcomes for other cases

174. In total, 77 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- agreement fully eliminating double taxation/fully resolving taxation not in accordance with the tax treaty (56%)
- denied MAP access (21%)
- withdrawn by taxpayers (18%)
- Objection not justified (9%).

Average timeframe needed to close MAP cases

All cases closed during the Statistics Reporting Period

175. The average time needed to close MAP cases during the Statistics Reporting Period was 25.38 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	27	32.02
Other cases	77	23.05
All cases	**104**	**25.38**

Pre-2016 cases

176. For pre-2016 cases, Poland reported that on average it needed 47.75 months to close 16 attribution/allocation cases and 32.05 months to close 50 other cases. This resulted in an average time needed of 35.86 months to close 66 pre-2016 cases. For the purposes of computing the time to close pre-2016 cases, Poland used:

- *Start date*: the date when the request was submitted to Poland's competent authority
- *End date*: the date of closing letter to the other competent authority or the agreed minutes for attribution/allocation cases.

Post-2015 cases

177. For post-2015 cases, Poland reported it needed 9.40 months to close 11 attribution/allocation cases and 6.37 months to close 27 other cases. This resulted in an average time needed of 7.17 months to close 38 post-2015 cases.

Peer input

178. 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. This will be further discussed under element C.3.

Recent developments

179. In the stage 1 peer review report Poland was under element C.2 recommended to seek to resolve the remaining 82% of its post-2015 MAP cases that were pending on 31 December 2016 (23 cases), such within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

180. With respect to this recommendation, Poland reported that it has hired three new persons, two for handling attribution/allocation cases and one for handling other MAP cases. All three persons work on other issues besides handling MAP cases. A further hiring of personnel is foreseen for 2019 and 2020. Other than these, there are no other developments.

181. From the statistics discussed above, it follows that Poland has in the period 2016-18 not closed its MAP cases within the pursued average of 24 months. For these years, the number of post-2015 cases closed as compared to the cases that started in these years was 28%. Furthermore, its MAP inventory has increased by 28% since 1 January 2016. Element C.3 will further consider these numbers in light of the adequacy of resources.

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

Anticipated modifications

183. Poland did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

184. 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

185. Under the tax treaties Poland entered into, the competent authority function is assigned to the Minister of Finance. Poland reported that this function is delegated to two separate units: a 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.

- *Transfer pricing MAP unit*: this unit is responsible for handling all attribution/allocation cases and consists of seven 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 five other experts with limited experience in MAP, but more than ten years' experience in the transfer pricing unit

- *Other MAP unit*: this unit is responsible for handling all other MAP cases and employs four persons, one of which is the head of unit and three supporting employees. Poland reported that only three of these employees are directly responsible for handling 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 providing 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.

186. Further to the above, 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 attribution/allocation cases and other MAP cases, and 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.

187. In addition, 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.

Recent developments

188. Poland reported that it noted an increase in the number of new MAP requests and as a result an increase in its MAP inventory. In that regard, as noted in paragraph 179 above, Poland has hired three new officials for the competent authority function, two of which will handle attribution/allocation cases and one will handle other cases, such besides other tasks. The addition of these officials has been reflected above in the description of the competent authority.

Practical application

MAP statistics

189. As discussed under element C.2, Poland did not close its MAP cases during the Statistics Reporting Period 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 shown by Figure C.6.

190. Based on these figures, it follows that on average it took Poland 25.38 months to close MAP cases. However, the average time needed to close attribution/allocation cases is 32.02 months and thus above the pursued average of 24-months, while the average time required to close other cases is 23.05 months and thus within this average. In this respect, Poland explained that attribution/allocation cases needed more time to be resolved since those were particularly complex cases.

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



* Note that post-2015 cases only concern cases opened and closed during 2016, 2017 and 2018.

191. The stage 1 peer review report of Poland analysed the 2016 statistics and showed an average of 18.88 months, which concerns an average of 3.00 months for attribution/allocation cases and 15.70 months for other cases. It was on that basis concluded that the overall average was within the pursued average of 24 months and therefore no specific recommendation was made other than 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, specifically for attribution/allocation cases the suggestion was made to consider monitoring whether the additions of resources to be provided will contribute to an acceleration of the issuance of position papers and an increased communication to ultimately accelerate the resolution of these cases.

192. For stage 2, the 2017 and 2018 MAP statistics are also taken into account. The average time to close MAP cases can for these years be split as follows:

	2017	2018
Attribution/Allocation cases	25.26	39.89
Other cases	27.58	23.83
All cases	**26.93**	**29.38**

193. The 2017 statistics of Poland show that the average completion time of MAP cases increased from 18.88 to 26.93 months, whereby the average for attribution/allocation cases increased significantly. However, the average for 2018 significantly lead to an increase of the average for attribution/allocation cases, while for other cases the average was reduced again to be below the pursued average of 24 months.

194. Furthermore – as analysed in element C.2 – the MAP inventory of Poland significantly increased since 1 January 2016. This can be shown as follows:

	Opening inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2018	Increase in %
Attribution/allocation cases	39	41	27	53	36%
Other cases	70	94	77	87	24%
Total	**109**	**135**	**104**	**140**	**28%**

Peer input

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

195. 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 pending with Poland in the period 1 January 2015-31 July 2017 or that they did not have the necessary information to give reliable input on the functioning of Poland's competent authority. One peer noted that contacts between its competent authority and Poland's had to date only been in writing.

196. 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 Poland's 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.

197. Further to the above, 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 communications 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.

Period 1 August 2017-28 February 2019 (stage 2)

198. Most peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. Five peers provided specific input on their experiences with Poland concerning the resolution of MAP cases since that date. Of these five peers, two provided general input, while the other three peers provided more detailed input.

199. Of the first two peers, one only mentioned the number of pending MAP cases with Poland and the number of MAP cases closed. The other peer mentioned that in February 2019 it received a notification of an initiated MAP case and because of that there is insufficient experience in handling MAP cases by Poland's competent authority.

200. With respect to the other three peers, one mentioned that the cooperation and contacts between their competent authorities have improved since 1 August 2017. Since that date two face-to-face meetings were held, resulting in three cases being closed. Another peer mentioned that while on an overall basis it has a good working relationship with Poland, it experienced that sometimes it is difficult to come to an agreement, which resulted in a few cases being closed without an agreement reached.

201. Lastly, one peer provided more detailed input. Part of this input relates to access to an attribution/allocation MAP in a case relating to the application of the three-year filing period for MAP requests. This input was already discussed under element B.1. This MAP case regarded two fiscal years (2008 and 2009), for which the request was submitted in 2017. Regarding fiscal year 2009, the peer specified that Poland's competent authority has not provided a formal conformation that they would accept this year into the MAP process. Such confirmation was therefore already pending for 17 months at the moment the peer provided input (February 2019). While the peer understood that Poland's competent authority is requesting additional information from the taxpayer in order to assess whether the MAP request should be accepted into the MAP process, it still constitutes a material delay in resolving MAP cases. The peer therefore suggested that Poland's competent authority engages substantively at an early stage in the MAP process, in particular where there is a difference of opinion on whether a MAP request should be accepted, such to avoid that where the request is accepted there is no time left to resolve the case within the 24-month average. The peer also referred to another MAP case, for which it had limited interaction with Poland's competent authority, but which was handled and resolved quickly.

Anticipated modifications

202. Poland reported that it envisages hiring additional staff in 2019 or 2020.

Conclusion

	Areas for improvement	Recommendations
[C.3]	MAP cases were resolved in 25.38 months on average. The average completion time thereby has increased in 2017-18 as compared to 2016 and is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 are not resolved within the average of 24 months. This regards attribution/allocation cases, for which the average completion time is 32.02 months, which may indicate that the competent authority is not adequately resourced. In this respect, peers have experienced difficulties in resolving MAP cases in a timely efficient and effective manner, which in particular concerns: • timely submission of position papers to treaty partners • quicker responding to position papers issued by treaty partners • absence of timely notifications of submitted MAP requests. Furthermore, the MAP caseload has increased with 28% since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicated that the competent authority is not adequately resourced to cope with this increase, although additional staff has been assigned to the competent authority function.	While Poland has recently added more resources to its competent authority function, further actions should be taken to ensure a timely resolution of MAP cases, which regards attribution/allocation cases. In that regard, Poland should devote additional resources to its competent authority to handle these cases and to be able to cope with the increase in the number of MAP cases (both attribution/allocation and other MAP cases), such to be able to resolve MAP cases in a timely, efficient and effective manner. The addition of resources should also enable Poland to: • timely submit position papers to treaty partners • quicker respond to position papers issued by treaty partners • to timely notify treaty partners of submitted map request.

[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.

203. 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

204. 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 to be applied when handling such cases. 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 directly involved in the adjustment at issue. Poland indicated that it sometimes asks the local audit tax offices information regarding the taxpayer, but 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.

Recent developments

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

Practical application

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

206. All peers that provided input did not report any impediment by Poland to perform its MAP function absent from approval or the direction of the tax administration personnel directly involved in the adjustments at issue or being influenced by considerations of the policy.

Period 1 August 2017-28 February 2019 (stage 2)

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

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

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

209. 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

210. Poland reported the general criteria of assessment that are applicable to all staff within the Ministry of Finance are: (a) effective team management, (b) ability to remain calm under pressure to meet deadlines, (c) negotiation skills, (d) change orientation with flexible approach, (e) professional qualifications and (f) 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.

211. The Action 14 final report includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist. For Poland this concerns:

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

Recent developments

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

Practical application

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

213. All peers that provided input indicated not being aware that Poland uses 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.

Period 1 August 2017-28 February 2019 (stage 2)

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

216. 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

217. Poland reported that there are no domestic law limitations for including MAP arbitration in its tax treaties. In that regard, 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, Poland's 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.

218. Poland is a signatory to the EU Arbitration Convention and has adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive has been implemented in Poland's domestic legislation on 29 November 2019.

219. Poland's position on MAP arbitration is clarified in its MAP guidance and can also be found in the MAP profile published on the OECD's website.

Recent developments

220. There are no recent developments with respect to element C.6.

Practical application

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

- In two treaties the arbitration clause is based on Article 25(5) of the OECD Model Tax Convention.
- In two treaties the arbitration clause provides for a voluntary and binding arbitration procedure.

Anticipated modifications

222. Poland did not indicate that it anticipates any modifications in relation to element C.6.

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 2018.
3. Available at https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en These statistics are up to 2018.
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's 2016 and 2017 MAP statistics were corrected in the course of the peer review process and deviate from the 2016 and 2017 published MAP statistics. See for a further explanation Annex B and Annex C.
6. 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".

References

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

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

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.

223. 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

224. 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 Tax Ordinance Act ("**TOA**"). Poland reported that implementation of MAP agreements by way of refund, is made in accordance with its general domestic tax provisions, which is covered by Article 70d of the TOA.[1]

225. Poland further indicated that if a tax treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention, the domestic statute of limitation does not limit downward adjustments 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 the MAP process is initiated, as stipulated in Article 70a(1a) of the TOA.[3] Furthermore, according to Article 240, section 1, of the TOA, the 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]

226. Concerning the process for implementing MAP agreements, Poland reported that generally, after concluding a MAP agreement, its competent authority informs the competent local tax office 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 it. Feedback regarding implementation is sometimes requested from the local tax office by Poland's competent authority. 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 agreement.

Recent developments

227. Poland reported that in 2018 it has introduced an internal tracking system for MAP cases, which also includes as an element the supervision of the competent authority over the

implementation process. This tracking system enables the competent authority to identify possible problems with the implementation of MAP agreements as well as to obtain detailed information on actions of the relevant local tax authorities related to the implementation process. In more detail, the system obliges the local tax authorities that are responsible for the implementation of a MAP agreement, to report the implementation within three months. In the absence of such notification, the system obliges the local tax authorities to inform the competent authority about the act of implementation and the reasons for delay. A MAP case can only be finally and formally closed at the level of the competent authority once the MAP agreement is implemented or once it receives information that duly justifies the failure to implement such agreement.

Practical application

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

228. Poland reported that all MAP agreements that were reached in the period 1 January 2015-31 July 2017 have been (or will be) implemented.

229. All peers that provided input generally reported that they were not aware of any MAP agreement reached in the period 1 January 2015-31 July 2017 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 timely and correctly.

Period 1 August 2017-28 February 2019 (stage 2)

230. Poland reported that all MAP agreements that were reached on or after 1 August 2017 have been (or will be) implemented.

231. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. One peer specified that it has not closed any MAP case with Poland since 1 August 2017 and therefore has no experience to share as to the implementation of such agreements.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	-

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

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

233. 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

234. 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, once 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.

Recent developments

235. As discussed under element D.1, Poland has in 2018 introduced an internal tracking system for MAP cases, which *inter alia* keeps track of the implementation of MAP agreements and the timeliness of such implementation. In that regard, it is expected that the local tax authorities notify the competent authority about the implementation within a three-month reporting period.

Practical application

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

236. Poland reported that all MAP agreements that were reached in the period 1 January 2015-31 July 2017 have been (or will be) implemented on a timely basis.

237. All peers that provided input have not indicated experiencing any problems with Poland regarding the implementation of MAP agreements reached on or in the period 1 January 2015-31 July 2017 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 timely and correctly.

Period 1 August 2017-28 February 2019 (stage 2)

238. Poland reported that generally all MAP agreements reached in the period 1 August 2017-28 February 2019 were implemented on a timely basis. It, however, also reported that with respect to some (non attribution/allocation) MAP cases it experienced a delay in the implementation process. For one of these cases, the delay was caused by a temporary failure of the data transmission system used by the competent authority, while in another case the implementation process was obstructed by taxpayers, due to not providing the correct information needed for the local tax authorities to implement the agreement. In this respect, Poland specified that it aims at implementing MAP agreements within a period of 3-4 months, but for the cases mentioned the average time to implement the agreements was over six months.

239. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Poland fully reflects their experience with Poland since 1 August 2017 and/or there are no additions to the previous input given. One peer specified that it has not closed any MAP case with Poland since 1 August 2017 and therefore has no experience to share as to the implementation of such agreements. Another peer specifically mentioned it is not aware of any delays in relation to the implementation of MAP agreements reached.

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

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

Legal framework and current situation of Poland's tax treaties

242. 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 no domestic statute of limitation applies.

243. 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 that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. [5] The remaining 25 tax treaties do not contain such equivalent nor both alternatives for Article 9(1) and Article 7(2), setting a time limit for making adjustments. Of these 25, two treaties only contain the alternative provision for Article 9(1).

244. Almost all peers that provided input reported that their treaty with Poland meets the requirements under element D.3. For the 25 treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, four of the relevant peers provided input. One of these peers 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).

Recent developments

Bilateral modifications

245. There are no recent developments as to new treaties or amendments to existing treaties being signed in relation to element D.3.

Multilateral Instrument

246. Poland signed the Multilateral Instrument and has deposited its instrument of ratification on 23 January 2018. The Multilateral Instrument has for Poland entered into force on 1 July 2018.

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

248. In regard of the 25 tax treaties above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2), Poland listed 24 as a covered tax agreement under the Multilateral Instrument and for all of them did it make, pursuant to Article 16(6)(c)(ii), a notification that these treaties do contain a provision described in Article 16(4)(b)(ii). Of the relevant 24 treaty partners, five are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with Poland as a covered tax agreement and one made a reservation on the basis of Article 16(5)(c). The remaining 17 treaty partners also made a notification on the basis of Article 16(6)(c)(ii).

249. Of the 17 last treaty partners mentioned above, five have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Poland and these treaty partners, and therefore has modified them to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. The other 12 treaties will, upon entry into force for the treaty concerned, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Other developments

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

Peer input

251. Of the peers that provided input during stage 2, four provided input in relation to their tax treaty with Poland. One of these peers concerns a treaty partner to one of the treaties identified above that does not contain Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument. This peer – which input for stage 1 is reflected above – mentioned it is willing to accept the alternative provisions for Article 9(1) and Article 7(2), but that so far no actions have been taken to amend the treaty in relation hereto.

Anticipated modifications

252. Poland further reported that when the tax treaties that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. While Poland reported having in place a plan for such negotiations, the details of the plan were not provided nor were any actions taken to bring the relevant treaties in line with the requirements under element D.3. Nevertheless, Poland reported that negotiations are planned with one treaty partner to bring the treaty in line with these requirements.

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

Conclusion

	Areas for improvement	Recommendations
[D.3]	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 nor contain the alternative provisions in Article 9(1) and Article 7(2). Of these 25 treaties: • Five have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • 12 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. With respect to these seven treaties: - For six treaties no actions have been taken nor are any actions planned to be taken. - For one negotiations on the amendment of the treaty is planned.	For six of the remaining seven 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 to include such equivalent, Poland should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. For the remaining treaty for which negotiations are planned, Poland should continue with initiating the negotiation process to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the inclusion of both alternative provisions.

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.

Reference

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

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Four 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. Of these three treaties: • Two have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. • Two will not be modified by the Multilateral Instrument to include equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention. With respect to these treaties no actions have been taken nor are planned to be taken.	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 following its entry into force, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.
[A.2]	Roll-back of bilateral APAs is not provided in appropriate cases.	Poland should without further delay 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]	Five out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention either as it read prior to the adoption of the Action 14 final report or as amended by that report (OECD, 2015b). None of those five tax treaties are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as amended by the Action 14 final report. With respect to these treaties, no actions have been taken nor are planned to be taken.	For those five treaties that will not be modified by the Multilateral Instrument to Article 25(1) of the OECD Model Tax Convention as amended by that report (OECD, 2015b), Poland should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the 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.

	Areas for improvement	Recommendations
[B.1]	Four out of 85 tax treaties do not contain a provision that is equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention, as the timeline to file a MAP request is in these treaties either shorter than three years, from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty, or, due to a protocol provision can be shorter than three years. Of these four treaties: • One has been modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • One is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by that instrument to include the Article 25(1), second sentence, of the OECD Model Tax Convention. For these treaties no actions have been taken nor are planned to be taken.	For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.
	One out of 85 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the Action 14 final report, or as amended by that final report (OECD, 2015b), and also the timeline to submit a MAP request is 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. This treaty is expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(1), second sentence, but not as regards the first sentence of that article. For the first sentence, no actions have been taken nor planned to be taken.	For the treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention, as amended by the Action 14 final report, Poland should without further delay request the inclusion of the required provision via bilateral negotiations. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: a. as amended in the Action 14 final report; or b. as it read prior to the adoption of the Action 14 final report, thereby including the full sentence of such provision.
[B.2]	-	-
[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 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 and for which Poland is currently not willing to grant access to MAP.
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[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. Of these 13 treaties: • Six have been modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Three are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. • Four will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention. With respect to these treaties no actions have been taken nor are planned to be taken.	For the remaining four 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, Poland should without further delay request the inclusion of the required provision via bilateral negotiations.
[B.8]	-	-

	Areas for improvement	Recommendations
[B.9]	-	-
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	Two out of 85 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. Of these two treaties: • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. • One will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. For this treaty negotiations have been conducted with a view to include the required provision	For the remaining treaty that will not be modified by the Multilateral Instrument and for which negotiations have been conducted to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, Poland should as quickly as possible sign the amending protocol to have in place the required provision.
[C.2]	-	-
[C.3]	MAP cases were resolved in 25.38 months on average. The average completion time thereby has increased in 2017-18 as compared to 2016 and is above the 24-month average (which is the pursued average for resolving MAP cases received on or after 1 January 2016). There is therefore a risk that post-2015 are not resolved within the average of 24 months. This regards attribution/allocation cases, for which the average completion time is 32.02 months, which may indicate that the competent authority is not adequately resourced. In this respect, peers have experienced difficulties in resolving MAP cases in a timely efficient and effective manner, which in particular concerns: • timely submission of position papers to treaty partners • quicker responding to position papers issued by treaty partners • absence of timely notifications of submitted MAP requests. Furthermore, the MAP caseload has increased with 28% since 1 January 2016, which regards both attribution/allocation and other MAP cases. This may also indicated that the competent authority is not adequately resourced to cope with this increase, although additional staff has been assigned to the competent authority function.	While Poland has recently added more resources to its competent authority function, further actions should be taken to ensure a timely resolution of MAP cases, which regards attribution/allocation cases. In that regard, Poland should devote additional resources to its competent authority to handle these cases and to be able to cope with the increase in the number of MAP cases (both attribution/allocation and other MAP cases), such to be able to resolve MAP cases in a timely, efficient and effective manner. The addition of resources should also enable Poland to: • timely submit position papers to treaty partners • quicker respond to position papers issued by treaty partners • to timely notify treaty partners of submitted MAP request.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	-	-
[D.2]	-	-

	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 nor contain the alternative provisions in Article 9(1) and Article 7(2). Of these 25 treaties: • Five have been modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. • 12 are expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention • One is expected to be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention once the treaty partner has amended its notifications. • Seven will not be modified by the Multilateral Instrument to include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention. With respect to these seven treaties: - For six treaties no actions have been taken nor are any actions planned to be taken. - For one negotiations on the amendment of the treaty is planned.	For six of the remaining seven 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 to include such equivalent, Poland should without further delay request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. For the remaining treaty for which negotiations are planned, Poland should continue with initiating the negotiation process to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or be willing to accept the inclusion of both alternative provisions.

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

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

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Indonesia	Y	N/A	O	ii*	2-years	Y	i	Y	N*	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y*	N
Isle of Man	Y	N/A	N	Y	N/A	ii	i	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	ii***	i	Y	Y	Y	Y	N
Italy	Y	N/A	N	ii*	2-years	ii**	i	Y	N*	Y	N*	N
Japan	Y	N/A	O	Y	N/A	ii***	i	Y	Y	Y	Y	N
Jersey	Y	N/A	O	Y	N/A	ii	i	Y	Y	Y	Y	N
Jordan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	N	N*	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Kuwait	Y	N/A	N	ii	2 years	Y	i	Y	Y	Y	Y	N
Kyrgyzstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Lebanon	Y	N/A	O	ii	2 years	Y	i	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malaysia (2)	N	8-Jul-13	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	N	Y	Y	Y	N
Mexico	Y	N/A	O	i	N/A	i**	i	N*	N	Y	Y	N
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	N	N
Mongolia	Y	N/A	O	Y	N/A	ii	i	Y	Y	Y	Y	N

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

			Action 25(1) of the OECD Model Tax Convention ("MTC")			Article 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
			B.1	B.1		B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	**Column 2**		**Column 3**	**Column 4**		**Column 5**	**Column 6**	**Column 7**	**Column 8**	**Column 9**	**Column 10**	**Column 11**
			Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)			Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?		Inclusion Art. 25(2) second sentence? (Note 4)			
Treaty partner	DTC in force?		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence? (Note 3)	If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	ii	Y	Y	Y
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Chinese Taipei	Y	NA	O	Y	N/A	Y	i	Y	N	Y	Y	N
Tajikistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N	N
Thailand	Y	N/A	O	i	N/A	ii	i	Y	N	Y	Y	N
Tunisia	Y	N/A	O	Y	N/A	Y	i	Y	N*	Y	N	N
Turkey	Y	N/A	O	i	N/A	Y	i	Y	N*	Y	Y	N
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	Y*	Y	Y*	N
United Arab Emirates	Y	N/A	O	Y	N/A	Y	i	Y	Y*	Y	Y	N
United Kingdom	Y	N/A	O	Y	N/A	Y	i	Y	Y*	Y	Y*	N
United States	N	13-Feb-13	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Uzebkistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Viet Nam	Y	N/A	O	Y	N/A	ii	i	Y	Y	N	Y	N
Zimbabwe	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N

Notes: 1. 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.

2. 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.

Legend

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

Annex B

MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for pre-2016 cases

2016 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	39	0	0	0	0	0	4	0	0	0	0	35	38.00
Others	70	3	3	0	0	0	12	0	0	0	1	51	19.00
Total	109	3	3	0	0	0	16	0	0	0	1	86	22.30

2017 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	35	2	0	1	0	0	6	0	0	0	0	26	36.00
Others	51	4	0	1	0	0	20	0	0	0	0	26	38.00
Total	86	6	0	2	0	0	26	0	0	0	0	52	37.47

Notes: There is a discrepancy between the number of pre-2016 MAP cases in Poland's inventory as per 31 December 2016 and 1 January 2017, which followed from a change in the method of counting MAP cases. Poland also started to follow the rules in the MAP Statistics Reporting Framework for pre-2016 cases, which led to a rise in the number of cases in 2017 as compared to 2016. This is as follows:

- The reported number of MAP cases pending on 31 December 2016 was 55, which consists of 35 attribution/allocation cases and 20 other cases.
- The reported number of MAP cases pending on 1 January 2017 was 86, which consists of 35 attribution/allocation cases and 51 other cases.

In order to have matching numbers for 31 December 2016 and 1 January 2017, the number of pre-2016 cases pending on per 1 January 2016 was corrected.

2018 MAP Statistics													
		Number of pre-2016 cases closed during the reporting period by outcome											
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	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 2018	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	26	0	0	0	0	1	1	1	0	0	0	23	96.00
Others	26	0	1	0	0	0	3	0	0	2	0	20	48.59
Total	52	0	1	0	0	1	4	1	0	2	0	43	64.39

Annex C

MAP statistics reporting for the 2016, 2017 and 2018 Reporting Periods (1 January 2016 to 31 December 2018) for post-2015 cases

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

2017 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	9	20	0	0	2	2	1	0	0	0	0	0	24	5.92
Others	14	51	4	2	2	0	1	2	0	0	0	0	54	3.89
Total	23	71	4	2	4	2	2	2	0	0	0	0	78	4.52

2018 MAP Statistics														
			Number of post-2015 cases closed during the reporting period by outcome											
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	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 2018	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	24	12	0	0	3	1	0	2	0	0	0	0	30	11.83
Others	54	24	3	1	2	0	0	5	0	0	0	0	67	10.32
Total	78	36	3	1	5	1	0	7	0	0	0	0	97	10.85

Notes: There is a discrepancy between the number of post-2015 MAP cases in Poland's inventory as per 31 December 2017 and 1 January 2018.

- The reported number of MAP cases pending on 31 December 2017 was 77, which consists of 23 attribution/allocation cases and 54 other cases.
- The reported number of MAP cases pending on 1 January 2018 was 78, which consists of 24 attribution/allocation cases and 54 other cases.

In order to have matching numbers for 31 December 2017 and 1 January 2018, the number of post-2015 cases received in 2017 was corrected.

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 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority's inventory that are pending resolution on 31 December 2015
Post-2015 cases	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and that ended on 31 December 2018
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Poland (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' Stage 1 peer review report. This report reflects the outcome of the Stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Poland.

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