OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Romania (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



OECD

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 80 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

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

which already has more than 120 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 19 October 2018 and prepared for publication by the OECD Secretariat.

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
EU	European Union
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
MEMAP	Manual on Effective Mutual Agreement Procedures
OECD	Organisation for Economic Co-operation and Development
TRNC	Turkish Republic of Northern Cyprus

Executive summary

Romania has an extensive tax treaty network with over 85 tax treaties and it has signed and ratified the EU Arbitration Convention. Further, Romania has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 35 cases pending on 31 December 2017. Of these cases, 74% concern attribution/allocation cases. Overall Romania meets less than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Romania is working to address some of them.

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

- More than one third of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments
- Approximately 25% of its tax treaties do not contain the equivalent of Article 25(1) to the OECD Model Tax Convention (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), second sentence, to provide for a filing period for MAP requests of three years
- Approximately ten percent of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Romania needs to amend and update a certain number of its tax treaties. In this respect, Romania signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Romania reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but has not yet put a plan in place.

Romania does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-backs of bilateral APAs.

Romania meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Romania's policy is to provide access to MAP in most

eligible cases, although it has since 1 January 2016 not received cases concerning the application of anti-abuse provisions. Notably it does not provide access to MAP in cases where a MAP request is submitted after the expiration of domestic time limits and where the treaty does not contain a filing period for MAP requests. Romania further has not 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. Romania has not introduced its guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. Furthermore, Romania's MAP profile contains limited information that is also not in line with its practice and policy.

Concerning the average time needed to close MAP cases, the MAP statistics for Romania for the period 2016-2017 are as follows:

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to close cases (in months)(*)
Attribution/allocation cases	17	11	2	26	38.73
Other cases	5	6	2	9	56.83
Total	22	17	4	35	47.78

(*) The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Romania used as a start date the date of receipt of the MAP request from the taxpayer and as the end date the date when the taxpayer is informed of the outcome of the MAP.

The number of cases Romania closed in 2016 or 2017 is significantly less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased by more than 50% as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, Romania's competent authority did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 47.78 months. This mainly concerns the resolution of other cases, as the average time to close these cases is thereby considerably longer (56.83 months) than the average time to close attribution / allocation cases, albeit that for these cases it on average also took Romania more than 24 months to close them (38.73 months). These statistics indicate that additional and dedicated resources for the MAP function are necessary to accelerate the resolution of MAP cases. Apart from this, while Romania has timely submitted its 2017 MAP statistics, it did not submit its 2016 MAP statistics within the given timeline, but only did so in the course of its peer review.

Furthermore, Romania meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Romania's competent authority operates fully independently from the audit function of the tax authorities. Romania does not use any performance indicators to evaluate staff in charge of MAP function. Apart from this, Romania has not provided for transparency on its position on MAP arbitration.

Lastly, as Romania did not enter into any agreements in 2016 or 2017, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. However, Romania has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention.

Introduction

Available mechanisms in Romania to resolve tax treaty-related disputes

Romania has entered into 87 tax treaties on income (and/or capital), all of which are in force.[1] These 87 treaties apply to 88 jurisdictions.[2] All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the 87 treaties provides for a voluntary arbitration procedure as a final stage to the mutual agreement procedure.[3]

Furthermore, Romania is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.[4] In addition, Romania also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Romania's domestic legislation as per 1 July 2019.

In Romania, the competent authority function to conduct MAP is delegated to the president of the National Tax Agency of Fiscal Administration under Article 282 of Law No.207/2015 on the Fiscal Procedural Code.[5] The competence is further delegated to the Transfer Pricing and Tax Ruling Directorate within the General Directorate for the Coordination of Tax Audits. The competent authority of Romania currently employs ten employees, who handle all MAP cases as well as requests for APAs.

Although the basic framework of the mutual agreement procedure in Romania is defined by the aforementioned legislation, Romania has not issued any guidance on the governance and administration of the mutual agreement procedure. Romania, however, intends to issue such guidance in the near future.

Recent developments in Romania

Romania is currently conducting tax treaty negotiations with several jurisdictions. Romania recently signed a new treaty with Bosnia and Herzegovina (2016), which has entered into force.

Furthermore, Romania signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Romania reported that it strives updating them through future bilateral negotiations, but it has not yet a plan in place to that effect. With the signing of the Multilateral Instrument, Romania also submitted its list of notifications

and reservations to that instrument.[6] In relation to the Action 14 Minimum Standard, Romania 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 of the Action 14 Minimum Standard.

Basis for the peer review process

The peer review process entails an evaluation of Romania's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance (if any) and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Romania and the peers on 10 April 2018.

The period for evaluating Romania's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 30 April 2018 ('**Review Period**'). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Romania's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Romania is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaty or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis takes into account the treaty with the former Federal Republic of Yugoslavia for the jurisdictions to which this treaty is still being or to be applied by Romania. Reference is made to Annex A for the overview of Romania's tax treaties regarding the mutual agreement procedure.

In total eleven peers provided input: Austria, Belgium, Canada, Denmark, Finland, Germany, Italy, Sweden, Switzerland, Turkey and the United States. Out of these eleven peers, seven had MAP cases with Romania that started on or after 1 January. These peers represent approximately 94% of post-2015 MAP cases in Romania's inventory that started in 2016 or 2017. Generally, most peers indicated they have limited experiences in handling cases with Romania. Apart from that, those peers reported a good working relationship with Romania's competent authority, thereby specifying the easiness to contact them, the fluency of communications and their timely and quick responses. A few peers, however, mentioned that communications via email and telephone could be improved.

Romania provided informative answers in its questionnaire, which was submitted on time. Romania was responsive in the course of the drafting of the peer review report by responding comprehensively to requests for additional information, and provided

further clarity where necessary. In addition, Romania provided the following information:

- MAP profile[8]; and
- MAP statistics[9] according to the MAP Statistics Reporting Framework (see below), albeit that for 2016 no MAP statistics were submitted until after its peer review commenced in April 2018.

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

Overview of MAP caseload in Romania

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2017
Attribution/allocation cases	17	11	2	26
Other cases	5	6	2	9
Total	22	17	4	35

General outline of the peer review report

This report includes an evaluation of Romania'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; and

D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[10] Apart from analysing Romania's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Romania. Furthermore, the report depicts the changes adopted and plans shared by Romania to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

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

Notes

[1.] The tax treaties Romania has entered into are available at: https://static.anaf.ro/static/10/Anaf/AsistentaContribuabili_r/Conventii/Conventii.htm. Reference is made to Annex A for the overview of Romania's tax treaties.

[2.] Romania continues to apply the treaty with the former Federal Republic of Yugoslavia (1996) to Serbia and Montenegro.

[3.] This concerns the treaty with Mexico.

[4.] Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

[5.] Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.pdf.

[6.] Available at: http://www.oecd.org/tax/treaties/beps-mli-position-romania.pdf.

[7.] *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: *"Pursuant to Article 16(5)(a) of the Convention, Romania 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: http://www.oecd.org/ctp/dispute/country-map-profiles.htm.

[9.] The MAP statistics of Romania are included in Annex B and C of this report.

[10.] Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, https://dx.doi.org/10.1787/tpg-2017-en. [2]

Part A: Preventing disputes

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

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

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015[1]) 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 Romania's tax treaties

2. Out of Romania's 87 tax treaties, 84 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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] Two of the remaining three treaties do not contain the term "interpretation". For the third remaining treaty, both the terms "doubts" and "interpretation" are missing. Therefore, these three treaties are considered not containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

3. Romania reported that where the applicable treaty does not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), there are no obstructions in its domestic legislation or administrative practices to enter into interpretative MAP agreements concerning the interpretation or the application of tax treaties in Romania.

Anticipated modifications

Multilateral Instrument

4. Romania signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as

both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

5. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), Romania listed all of them as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner, being a signatory to the Multilateral Instrument, also made such a notification. Therefore, at this stage, one of the three tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for this treaty, to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

Bilateral modifications

6. Romania reported that when the tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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. In that regard, Romania noted it is in the process of identifying the list of treaties that do not meet the Action 14 Minimum Standard and on that basis will take a decision regarding the timetable for the possible renegotiations of tax treaties. In addition, Romania reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) in all of its future tax treaties.

Peer input

7. Of the peers that provided input, four indicated that their treaty with Romania meets the requirements under this element, which is in line with the above analysis. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer's intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

8. For the three treaties identified that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), these three relevant peers did not provide input relating to this element.

Conclusion

	Areas for Improvement	Recommendations
[A.1]	Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), Romania should request the inclusion of the required provision via bilateral negotiations. To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.

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

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

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

Romania's APA programme

10. Romania reported that it has implemented an APA programme, which has been established by Article 52 of the Law No.207/2015 on the Fiscal Procedural Code[3] and Order No. 3735/2015 of 23 December 2015.[4] Under this law and the order, more specifically Article 52(15), Romania's National Agency for Fiscal Administration is allowed to enter into unilateral, bilateral or multilateral APAs. In this respect, Romania clarified that bilateral and multilateral APAs can only be issued for transactions with associated enterprises that are resident of a jurisdiction with which Romania has entered into a tax treaty and those treaties contain a MAP provision.

11. Further to the above, Article 52 of Law No. 207/2015 describes in more details the circumstances under which an APA can be entered into, the process to be followed and the requirements to be met by taxpayers when submitting a request for an APA. Article 52(12) sets a time limit for issuing an APA, which is 12 months in case of a

unilateral APA, and 18 months for a bilateral or a multilateral APA. Furthermore, Article 52(17) details the fees to be paid by taxpayers for obtaining an APA, which range from EUR 10 000 to EUR 20 000 and from EUR 6 000 to EUR 20 000 for a renewal of an existing APA, and is dependent on the size of the taxpayer and the amount of the transactions to be covered by the APA.

12. Order No. 3735/2015, in particular Annex I, further defines the process to be followed for issuing and renewing APAs, the data/information or documents that taxpayers need to submit when requesting an APA and the list of the information to be reflected in an issued APA. In addition, paragraph 12 of Annex I stipulates that the maximum period to be covered by an APA is five years, which, however, can be longer in case of a long-term contract that underlies the transaction to be covered by the APA. An existing APA can also be renewed, such subject to a request by the taxpayer and provided the facts and circumstances underlying the APA have remained the same.

13. Romania publishes statistics on APAs on the website of the EU Joint Transfer Pricing Forum.[5] In this respect, Romania reported having received 11 requests for bilateral APAs since 1 January 2016, all of which are still under consideration.

Roll-back of bilateral APAs

14. Romania reported that its legislation does not allow a roll-back of bilateral APAs issued. In this respect, paragraph 13 of Annex I of Order No. 3735/2015 notes that an APA only takes effect for future years, whereby the first year covered is the fiscal year following the year in which the transaction under review was entered into. Under certain circumstances and by way of exception, the first year covered may also be the year of submission of the APA request.

Practical application of roll-back of bilateral APAs

15. Romania reported that since 1 January 2016 it has not received any requests for roll-backs.

16. All but one peer that provided input reported that since 1 January 2016 they do not have received any APA requests concerning Romania, nor any requests for roll-backs of such APAs. In addition, one peer reported that roll-backs are currently not possible under Romanian law.

Anticipated modifications

17. Romania indicated that it is currently analysing whether it should allow for the roll-back of bilateral APAs.

Conclusion

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

Notes

[1.] These 84 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

[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://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.pdf.

[4.] Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/ORDER3735_2015_11042018.pdf.

[5.] Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf. The most recent statistics published are up to 2016.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, https://dx.doi.org/10.1787/tpg-2017-en. [2]

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en. [1]

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.

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

Current situation of the Romania's tax treaties

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

19. Out of Romania's 87 tax treaties, 62 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, (OECD, 2015[2]), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.[1] None of Romania's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), as changed by the Action 14 final report (OECD, 2015[2]) and allowing taxpayers to submit a MAP request to the competent authority of either state.

20. The remaining 25 treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the Action 14 final report (OECD, 2015[2]), since taxpayers are not allowed to submit a MAP request in the state of which they are a non-resident national where the case comes under the non-discrimination article.

However, for the following reasons 14 of those 25 treaties are considered to be in line with this part of element B.1:

- The relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (one treaty); and
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (13 treaties).

21. For the remaining 11 treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015[1]) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, following which these 11 treaties are not in line with this part of element B.1.

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

22. Out of Romania's 87 tax treaties, 61 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.[2]

23. The remaining 26 tax treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	11
Filing period of four years, but with the requirement to submit a MAP request to both competent authorities	1
Filing period less than three years for a MAP request (two years)	12
Filing period more than three years for a MAP request (four / five years)	2

24. With respect to the treaty in the second row of the table above, the first sentence of paragraph 1 of the MAP provision in that treaty stipulates that a taxpayer should submit a MAP request in its state of residence. The second sentence, however, requires that taxpayers should submit the request within a period of four years from the first notification of action resulting in taxation not in accordance with the provisions of the particular tax treaty and to the other competent authority concerned. While the filing period for a MAP request is longer than three years, the requirement to file a MAP request to both competent authorities concerned puts a more restrictive obligation on taxpayers and for that reason the treaty is for this part not considered to be in line with element B.1.

Practical Application

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

25. As indicated in paragraphs 20 and 21 above, taxpayers can in all of Romania's tax treaties file a MAP request irrespective of domestic remedies. In this respect,

Romania reported that where a taxpayer seeks to resolve the case by simultaneously applying these remedies, access to MAP will be given. However, in practice, the MAP process will be suspended until the judicial bodies have made a final decision on the case under review. As its competent authority is bound to such a decision, Romania reported that where the decision of the court does not concern the annulment of a tax decision (and the audit report), the MAP case may continue to allow the other competent authority concerned to provide for relief of double taxation. Where the decision of the court, however, leads to an annulment of the tax decision, there is no longer a case of double taxation, following which the MAP process may be ended.

26. Romania further reported that access to MAP may be denied in situations where the taxation that is the subject of the mutual agreement procedure has already been settled through judicial proceedings before a MAP request was submitted. While this policy is not documented in Romania's legislation, it reported that it is in the process of a draft legislative proposal that would describe the instances in which access to MAP may be denied, which *inter alia* would also concern cases that have been settled via judicial procedures. The system used, however, bears the risk that taxpayers do not have access to MAP in all appropriate cases, which is not in line with the rights granted to them under Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]).

27. In this regard, one peer provided input and noted that it is for this peer unclear whether a judicial decision will limit access to MAP. This peer also noted that Romania's competent authority, in practice, generally is reluctant to consider a MAP request while the case under review is also pending before a domestic court. The peer therefore expressed its concern that the binding effect of a judicial decision and such reluctance by Romania's competent authority may effectively deny a taxpayer's access to MAP, or deprive the taxpayer of the possible correlative relief via the MAP process. This peer therefore urged that Romania reviews its policies and practices with respect to interaction between MAP and domestic judicial proceedings, such to ensure that taxpayers have equitable access to MAP. However as Romania has reported, access to MAP will be given as long as there is no court decision delivered yet, but it may not be possible to resolve the case as Romania cannot deviate from decisions by its domestic courts. This latter is not necessarily contrary to the requirement of element B.1.

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

28. For those tax treaties identified in paragraph 23 above that do not contain a filing period for MAP requests, Romania reported that it will not accept a MAP request if such a request is being filed after the domestic statute of limitation has expired. This statute of limitation is five years and generally starts to run as from 1 July of the fiscal year following the fiscal year in which the tax liability becomes due. These rules bear the risk that taxpayers can for these 11 treaties not file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

Anticipated modifications

Multilateral Instrument

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

29. Romania signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as amended by the final report on Action 14 (OECD, 2015[2]) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

30. Romania reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, 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.[3] In this reservation, Romania declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]). 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. The introduction and application of such process will be further discussed under element B.2.

31. In view of the above, following the reservation made by Romania, those 11 treaties identified in paragraph 21 above that are considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]), will not be modified via 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

32. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the

provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

33. In regard of the 12 tax treaties identified in paragraph 23 above that contain a filing period for MAP requests of less than three years and the one treaty that is considered not to be in line with element B.1, Romania listed all 13 as a covered tax agreement under the Multilateral Instrument and for 12 of them made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the 12 relevant treaty partners, five are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Romania as a covered tax agreement under that instrument. Of the remaining five tax treaties partners, four also made such notification. Therefore, at this stage, four of 12 treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

Bilateral modifications

34. Romania further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]), as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]) 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. In that regard, Romania noted it is in the process of identifying the list of treaties that do not meet the Action 14 Minimum Standard, and on that basis will take a decision regarding the timetable for the possible renegotiations of tax treaties. Furthermore, Romania also noted that it recently completed negotiations with one treaty partner on a new tax treaty, for which the current treaty in force does not meet the requirements under this element B.1, but will do so after entry into force of this new treaty. In addition, Romania reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]), as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]), in all of its future tax treaties.

Peer input

35. Of the peers that provided input, four peers indicated that the treaty with Romania meets the requirements of the Action 14 Minimum Standard or will meet them through the modifications by the Multilateral Instrument. Two peers, however, are a signatory to a tax treaty that does in fact not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]), and will not be modified by the Multilateral Instrument to meet the requirements under element B.1. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer's intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument. For one of these peers, this indeed is the case for the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]).

36. For the treaties identified above that do not meet the requirements under this element, other than the peers reflected above, the relevant peers did not provide input concerning the element.

Conclusion

	Areas for Improvement	Recommendations
[B.1]	20 out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]). Of those 20 tax treaties: • Three tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; • One tax treaty does not contain the equivalent to Article 25(1),first sentence, and obliges taxpayers to submit its MAP requests to both competent authorities; • Seven tax treaties do not contain the equivalent to Article 25(1), first sentence; and • Nine tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]) in those treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the treaties that will not be modified by the Multilateral Instrument to include such equivalent, Romania should request for these treaties – as also for the treaties that do not contain the equivalent of the first or second sentence or of both sentences of Article 25(1) – the inclusion of the required provision via bilateral negotiations. This concerns both: • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015[1]) either: a) As amended in the final report on Action 14 (OECD, 2015[2]); or b) As it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. To this end, Romania should put a plan in place on how it envisages updating these treaties, where it has not yet initiated or completed negotiations for, to include the required provision. In addition, Romania should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]) as it read prior to the adoption of the final report on Action 14 (OECD, 2015[2]) in all future tax treaties.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Romania should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
	There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Romania's domestic law.	Romania should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2015[1]) can access the MAP.

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

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

37. 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

38. As discussed under element B.1, out of Romania's 87 treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) as changed by the Action 14 final report (OECD, 2015[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

39. Romania reported that when it receives a MAP request, it will notify the other competent authority concerned hereof within 30 days as from the date of the receipt of the request. The information included in such notification will *inter alia* reflect the taxpayer involved, the legal grounds of the MAP request, domestic legislative provisions that may affect the MAP process, agreements on the language to be used during the process and the applicable data for statistical purposes. Apart from this notification process upon receipt of a MAP request, Romania has not introduced a bilateral consultation or notification process which allows the other competent authority concerned to provide its views on the case when Romania's competent authority considers the objection raised in the MAP request not to be justified. While such documented process is not in place, Romania also reported that the other competent authority concerned will in such a situation be informed in writing on the particularity of the case and the reasons for not considering the application eligible for MAP.

Practical application

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

41. All peers that provided input indicated not being aware of any cases for which Romania's competent authority denied access to MAP since 1 January 2016. They also reported not having been consulted / notified during the Review Period of a case where Romania's competent authority considered the objection raised in a MAP request as not justified, which is logical as no such instances have occurred in Romania during this period.

Anticipated modifications

42. As previously discussed under element B.1, Romania has signed the Multilateral Instrument. Specifically regarding element B.2, Romania reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. While in that reservation Romania declared to introduce a bilateral consultation or notification process, it indicated that it does not anticipate any modifications in relation to element B.2, as it will decide on a case-by-case basis whether a taxpayer's objection is justified.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	Out of the 87 tax treaties, none contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]) as changed by the Action 14 final report (OECD, 2015[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Romania should without further delay introduce a documented notification and/or consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015[1]) as amended by the final report of Action 14 (OECD, 2015[2]).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

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

Legal and administrative framework

44. Out of Romania's 87 tax treaties, 56 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015[1]) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.[4] Furthermore, 17 treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015[1]). The remaining 14 treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015[1]), but deviate from this provision for the following reasons:

- In six treaties the term "may" is used instead of "shall" when it concerns the granting of a corresponding adjustment
- In two treaties competent authorities need to consult each other in determining the granting of a corresponding adjustment
- In three treaties a corresponding adjustment can only be granted on the basis of a mutual agreement between the competent authorities
- In one treaty the part of the last sentence of Article 9(2), reading "competent authorities of the Contracting States shall if necessary consult each other", is missing
- In one treaty its provision only indicates that the competent authorities may consult together for granting a corresponding adjustment
- In one treaty a provision on granting corresponding adjustments is contained, but this provision contains different wording from and has a different structure as compared to Article 9(2) of the OECD Model Tax Convention (OECD, 2015[1])

45. Romania 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.

46. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Romania's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Romania indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. As Romania has not published MAP guidance, there is no publically available information on this subject.

Application of legal and administrative framework in practice

47. Romania reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

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

Anticipated modifications

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

50. Romania has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015[1]). In regard of the 31 treaties identified in paragraph 43 above that are considered not to contain such equivalent, Romania listed all of them as a covered tax agreement under the Multilateral Instrument and included 15 of them in the list of treaties for which Romania has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining 16 treaties Romania did not make, pursuant to Article 17(4), a notification that these treaties contain such equivalent. Of the relevant 16 treaty partners, five are not a signatory to the Multilateral Instrument and one has not listed its treaty with Romania under that instrument. Of the remaining ten treaty partners, none has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Romania already contains the equivalent of Article 9(2). Therefore, at this stage, the remaining ten treaties will be superseded by the Multilateral Instrument, upon entry into force for these treaties, only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

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

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

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

51. 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

52. None of Romania's 87 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Romania do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

53. Romania reported that its competent authority does not limit access to MAP for cases concerning the application of anti-abuse provisions. As Romania has not published MAP guidance, there is no publically available information on this subject. Furthermore, Romania's MAP profile indicates that issues relating to the application of treaty or domestic anti-abuse provisions are not covered within the scope of MAP, which is opposite to the previous reflected statement.

Practical application

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

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

Anticipated modifications

56. Romania indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

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

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

57. 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

58. Romania reported that under its domestic law it is not possible that taxpayers and the tax administration enter into an audit settlement during the course of or after the end of an audit. As Romania has not published MAP guidance, there is no publically available information on this subject. Furthermore, Romania's MAP profile states that issues where there is already an audit settlement between the tax authority and the taxpayer are not covered within the scope of MAP.

Administrative or statutory dispute settlement/resolution process

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

Practical application

60. In view of the fact that it is in Romania not possible that the taxpayer and the tax administration enter into audit settlements, Romania reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

61. All peers that provided input indicated not being aware of a denial of access to MAP in Romania since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration, which can be clarified by the fact that such settlements are not possible in Romania.

Anticipated modifications

62. Romania indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	-

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

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

63. 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

64. Romania reported that there are no specific domestic legislative provisions pertaining to the MAP process. Furthermore, it has not published MAP guidance. However, Romania indicated that there is a draft legislative proposal pending *inter alia* relating to the information and documentation taxpayers need to include in their MAP request.

65. Romania further reported that in practice, in cases where the taxpayer does not provide the information/documents required by its competent authority, he will be requested in writing to provide this information. The deadline for the submission of this information will be decided on a case-by-case basis, taking into account the volume and the complexity of the information to be submitted. Where the taxpayer does not submit the requested information within a reasonable time frame (for example, within two months), he will be notified of the fact that in the absence of

those information/documents the MAP cannot further proceed and there is the risk for the case not to continue.

Practical application

66. Romania reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that since 1 January 2016 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

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

Anticipated modifications

68. As discussed above, Romania reported that there is a draft legislative proposal pending, which *inter alia* contains a provision related to the information and documentation taxpayers need to include in their MAP requests.

Conclusion

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

[B.7] Include Article 25(3), second sentence, of the 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.

69. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015[1]), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Romania's tax treaties

70. Out of Romania's 87 tax treaties, 78 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.[5] Eight of the remaining nine treaties do not contain such provision at all. The remaining tax treaty contains a provision similar to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), but this provision refers to the 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 tax treaty provides for a scope of

application that is at least as broad as the second sentence of Article 25(3), it is considered to be in line with element B.7.

Anticipated modifications

Multilateral Instrument

71. Romania signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

72. In regard of the eight tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), Romania listed all of them as a covered tax agreement under the Multilateral Instrument, but only for seven of them, pursuant to Article 16(6)(d)(ii), made a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant seven treaty partners, one is not a signatory to the Multilateral Instrument. All remaining six treaty partners listed their treaty with Romania as a covered tax agreement and also made a notification pursuant to Article 16(6)(d)(ii). Therefore, at this stage, six of eight tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

Bilateral modifications

73. Romania reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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. Romania is in the process of identifying the list of treaties that do not meet the Action 14 Minimum Standard and on that basis will take a decision regarding the timetable for the possible renegotiations of tax treaties. In addition, Romania reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) in all of its future tax treaties.

Peer input

74. Of the peers that provided input, four peers indicated that their treaty with Romania meets the requirements under element B.7 which is in line with the above analysis. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum

Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

75. For the eight treaties identified above that are considered not containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), one peer noted that its treaty with Romania does not contain such a provision. Another peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but reported that it intends to update the treaty with Romania through the Multilateral Instrument.

Conclusion

	Areas for Improvement	Recommendations
[B.7]	Eight out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), Romania should request the inclusion of the required provision via bilateral negotiations. To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.

[B.8] Publish clear and comprehensive MAP guidance

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

76. 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.

Romania's MAP guidance

77. Romania reported that the basic framework of MAP is defined by the Law No. 207/2015 on the Fiscal Procedural Code. Furthermore, the website of its tax administration contains (both in English and Romanian) information on the domestic law provisions on MAP as well as several links to documents relating to MAP, such as the Manual on Effective Mutual Agreement Procedures ("**MEMAP**").[6] Romania,

however, has not yet published MAP guidance, but noted that in the absence of such guidance the recommendations in MEMAP are taken into account.

78. Since Romania does not have published MAP guidance, the information that the FTA MAP Forum agreed should be included in such guidance is not available. This 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.[7] Furthermore, due to the absence of any MAP guidance, information on various subjects is not specifically addressed. This concerns information on:

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

Information and documentation to be included in a MAP request

79. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.[8] This concerns:

- Identity of the taxpayer(s) covered in the MAP request;
- The basis for the request;
- Facts of the case;
- Analysis of the issue(s) requested to be resolved via MAP;
- Whether the MAP request was also submitted to the competent authority of the other treaty partner;
- Whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes;
- Whether the issue(s) involved were dealt with previously; and
- 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.

80. Due to the fact that Romania has not issued MAP guidance, there is also no guidance on this in Romania.

Anticipated modifications

81. Romania reported that it intends to issue MAP guidance in the near future and that draft legislation hereto is currently under discussion. This legislation would, among others, reflect the applicable rules concerning: (i) access to MAP, (ii) information and documentation taxpayers need to include in a MAP request, (iii) circumstances upon which access to MAP may be denied, and (iv) terms for submission of documents by taxpayers and timelines to be applied during the MAP process.

Conclusion

	Areas for Improvement	Recommendations
[B.8]	Published MAP guidance is not available.	Romania should introduce and publish, without further delay, guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request. Additionally, although not required by the Action 14 Minimum Standard, Romania could consider including information on: How the MAP operates in Romania, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers; Whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments; Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; The possibility of suspension of tax collection during the course of a MAP; The consideration of interest and penalties in the MAP; and The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

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

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

82. The public availability and accessibility of a jurisdiction's MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.[9]

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

83. As discussed under element B.8, Romania has not published MAP guidance.

MAP profile

84. The MAP profile of Romania has been published on the website of the OECD. While a response is given to all questions addressed in this MAP profile and it sometimes includes external links which provide extra information and guidance where appropriate, the information presented is not entirely clear or consistent with Romania's practice, and also lacks certain details. This concerns *inter alia* the responses to questions on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published.

Anticipated modifications

85. Romania indicated that it is in the process of preparing MAP guidance, which will be made public once it becomes available.

Conclusion

	Areas for Improvement	Recommendations
[B.9]	There is no MAP guidance publically available.	Romania should make MAP guidance publically available and easily accessible once it is being introduced.
	The MAP profile contains information not in line with Romania's practice and policy and responses given are limited.	Romania should update its MAP profile to reflect the correct information on its policy and practice on MAP. This concerns information on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published. Furthermore, Romania could consider providing more details in its MAP profile on its MAP process.

[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.

86. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between

administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

87. As previously discussed under B.5, it is under Romania's domestic law not possible that taxpayers and the tax administration enter into audit settlements. In that regard, there is no need for Romania to address in the MAP guidance under preparation whether taxpayers have access to MAP in such situations.

88. Peers raised no issues with respect to this element concerning audit settlements.

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

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

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

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

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

Anticipated modifications

92. Romania indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Notes

[1.] These 62 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

[2] These 61 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro, as well as the newly signed treaty with Spain that will replace the existing treaty with Spain once it enters into force.

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

[4] These 56 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro, as well as the newly signed treaties with Bosnia and Herzegovina that will replace the treaty with former Yugoslavia once it enters into force.

[5] These 78 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

[6] Available at: https://www.anaf.ro.

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

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

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

References

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241633-en. [2]

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en. [1]

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.

93. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015[1]), 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 Romania's tax treaties

94. Out of Romania's 87 tax treaties, 85 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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] In one of the remaining two treaties, the phrase "if the objection appears to it to be justified" is missing. The other treaty does not contain the phrase "if the objection appears to it to be justified and if it is itself not able to arrive at a satisfactory solution". Instead, it contains the words "should the resident's claim be considered to have merit by the competent authority". Therefore, the provisions in both treaties are considered not being the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015[1]).

Anticipated modifications

Multilateral Instrument

95. Romania signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]). In other

words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(c)(i), the depositary–that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

96. 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 (OECD, 2015[1]), Romania listed both of them as a covered tax agreement under the Multilateral Instrument, but for neither of them did it make, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Therefore, at this stage, none of the two tax treaties identified above will not modified by the Multilateral Instrument, to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

Bilateral modifications

97. Romania further reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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 C.1 and on that basis will take a decision regarding the timetable for the possible renegotiations of tax treaties. Romania is in the process of identifying the list of treaties that do not meet the Minimum Standard. In addition, Romania reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) in all of its future tax treaties.

Peer input

98. Of the peers that provided input, four peers indicated that their treaty with Romania meets the requirements under element C.1, which is in line with the above analysis. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer's intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

99. For the two treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]), both of the relevant peers did not provide input relating to this element.

Conclusion

	Areas for Improvement	Recommendations
[C.1]	Two out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]).	As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015[1]) will not be modified via the Multilateral Instrument, Romania should request the inclusion of the required provision via bilateral negotiations.
		To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision.
		In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.

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

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

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

Reporting of MAP statistics

101. Statistics regarding all tax treaty related disputes concerning Romania are not yet published on the website of the OECD.[2] Romania publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.[3]

102. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ('**MAP Statistics Reporting Framework**') for MAP requests submitted on or after 1 January 2016 ('**post-2015 cases**'). Also, for MAP requests submitted prior to that date ('**pre-2016 cases**'), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Romania provided its MAP statistics pursuant to the MAP Statistics Reporting Framework, albeit that for 2016 no MAP statistics were submitted until after its peer review commenced in April 2018. 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 and should be considered jointly for an understanding of the MAP caseload of Romania.[4] With respect to post-2015 cases, Romania reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Romania reported that it could match its statistics with all of its MAP partners.

Monitoring of MAP statistics

103. Romania reported it does not have a system in place that communicates, monitors and manages with its treaty partners the MAP caseload. It, however, noted

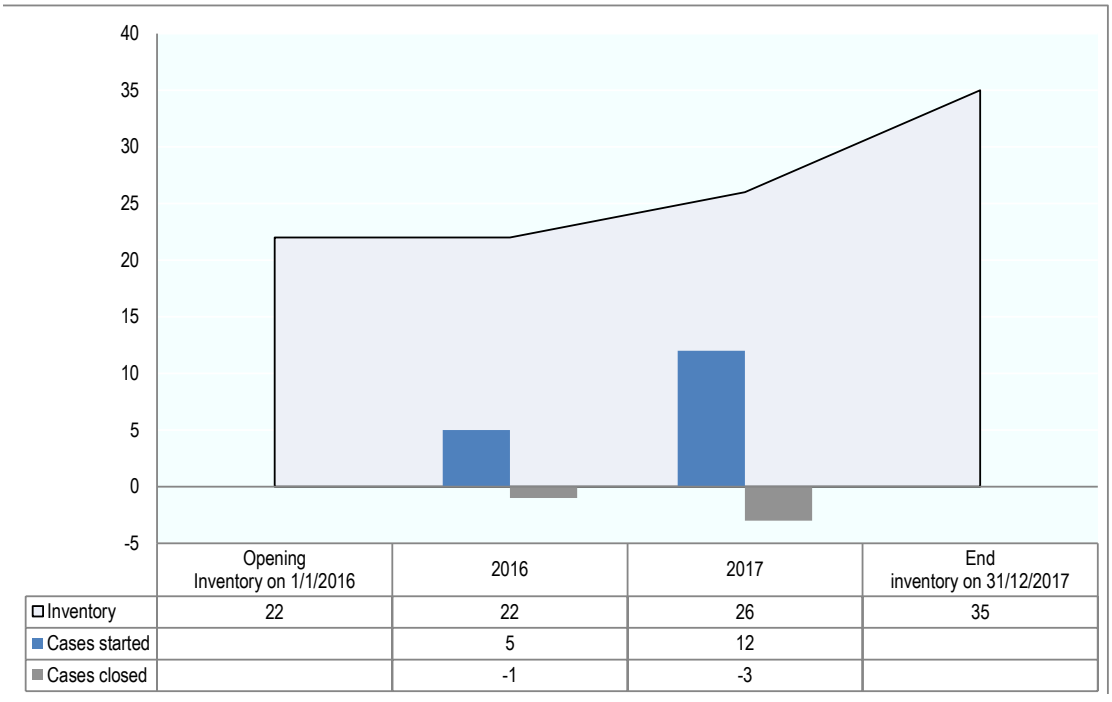
that the monitoring of MAP cases is performed in line with the MAP Statistics Reporting Framework and the rules in relation to the EU Arbitration Convention.

Analysis of Romania's MAP caseload

Global overview

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

Figure C.1. Evolution of Romania's MAP caseload

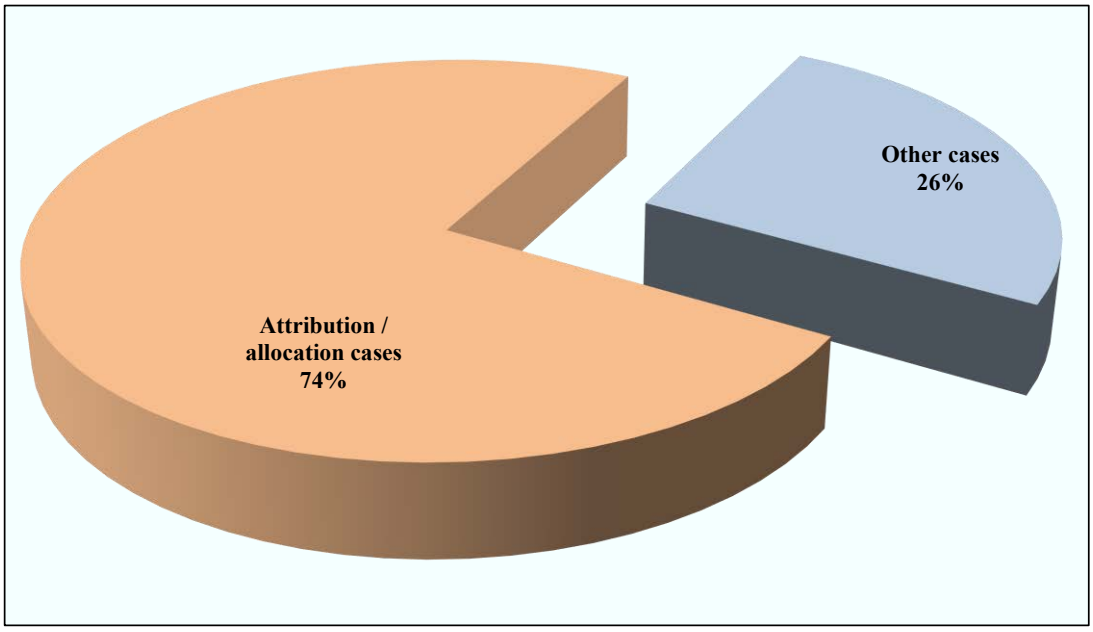


	Opening Inventory on 1/1/2016	2016	2017	End inventory on 31/12/2017
Inventory	22	22	26	35
Cases started		5	12	
Cases closed		-1	-3	

105. At the beginning of the Statistics Reporting Period Romania had 22 pending MAP cases, of which 17 were attribution/allocation cases and five other MAP cases.[5] At the end of the Statistics Reporting Period, Romania had 35 MAP cases in its inventory, of which 26 are attribution/allocation cases and nine are other MAP cases. Romania's MAP caseload has increased by 59% during the Statistics Reporting Period.

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

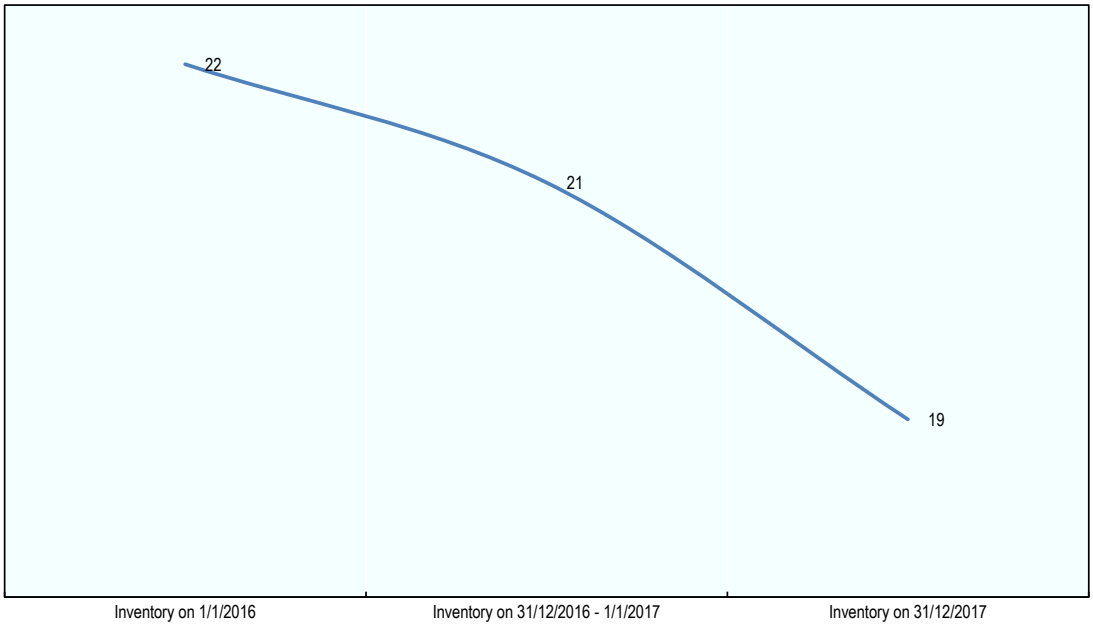
Figure C.2. End inventory on 31 December 2017 (35 cases)



Pre-2016 cases

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

Figure C.3. Evolution of Romania's MAP inventoryPre-2016 cases



108. At the beginning of the Statistics Reporting Period, Romania's MAP inventory of pre-2016 MAP cases consisted of 22 cases, of which were 17 attribution/allocation

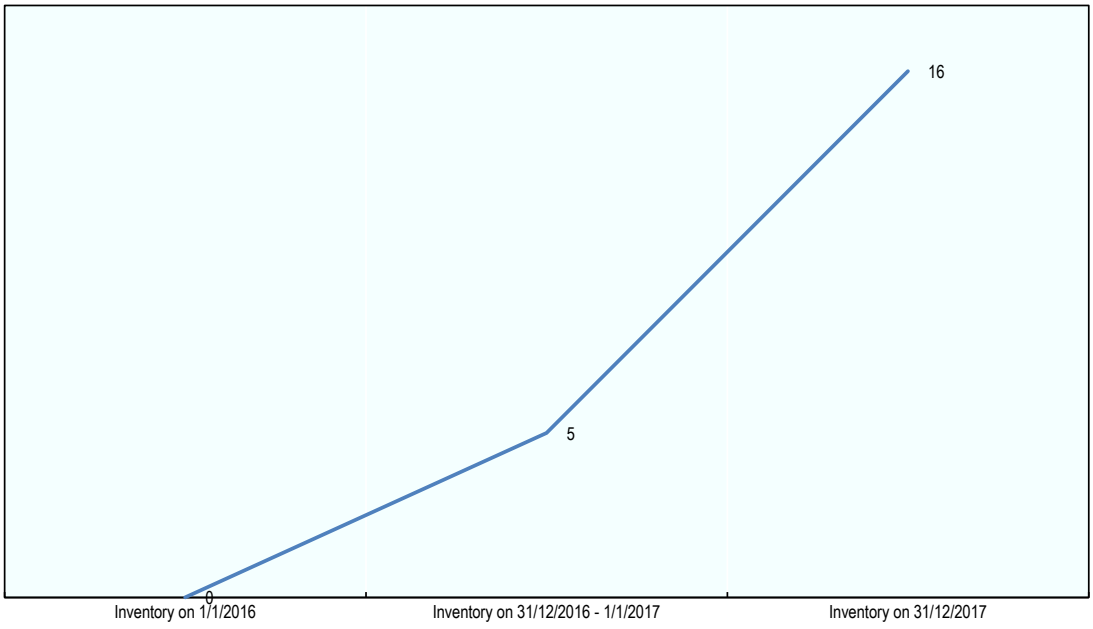
cases and five other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 19 cases, consisting of 16 attribution/allocation cases and three other cases. The decrease in the number of pre-2016 MAP cases is shown in the below table:

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution / allocation cases	0%	-6%	-6%
Other cases	-20%	-25%	-40%

Post-2015 cases

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

Figure C.4. Evolution of Romania's MAP inventoryPost-2015 cases



110. In total, 17 MAP cases started during the Statistics Reporting Period, 11 of which concerned attribution/allocation cases and six other cases. At the end of this period the total number of post-2015 cases in the inventory was 16 cases, consisting of ten attribution/allocation cases and six other cases. Conclusively, Romania closed one attribution/allocation case during the Statistics Reporting Period. This closed case represents approximately 6% of the total number of post-2015 cases that started during the Statistics Reporting Period.

111. 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 below table:

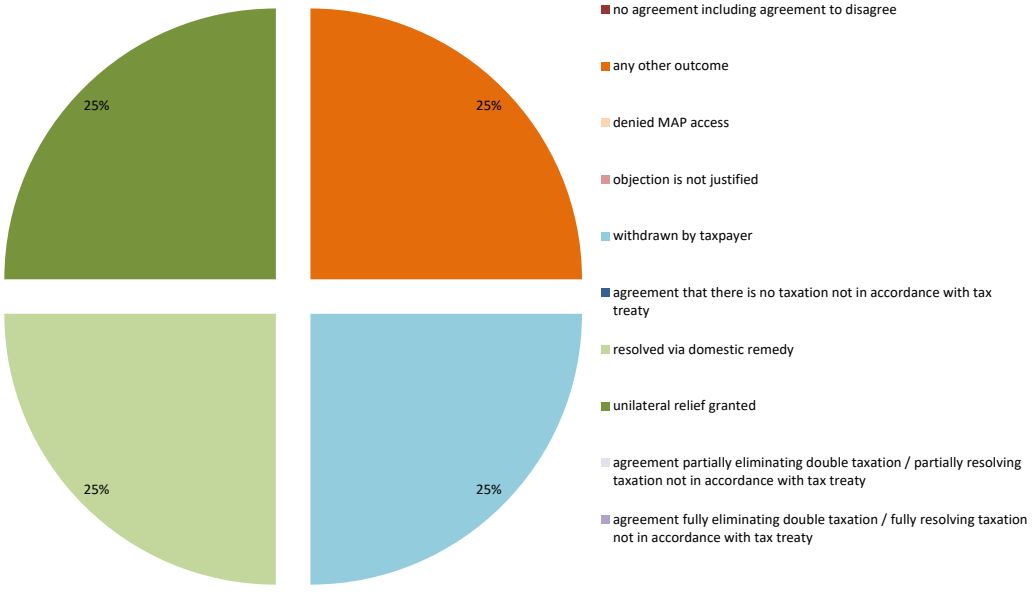
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution / allocation cases	0% (no case closed)	11%	9%
Other cases	0% (no case closed)	0% (no case closed)	0% (no case closed)

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

112. During the Statistics Reporting Period Romania in total closed four MAP cases for which the following outcomes were reported:

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



Reported outcomes for attribution / allocation cases

113. In total, two attribution / allocation cases were closed during the Statistics Reporting Period with the following outcomes:

- unilateral relief granted [50%]; and
- resolved via domestic remedy [50%].

Reported outcomes for other cases

114. In total, two other cases were closed during the Statistics Reporting Period with the following outcomes:

- any other outcome [50%]; and
- withdrawn by taxpayer [50%].

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

115. The average time needed to close MAP cases during the Statistics Reporting Period was 47.78 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	2	38.73
Other cases	2	56.83
All cases	4	47.78

Pre-2016 cases

116. For pre-2016 cases Romania reported that on average it needed 74.86 months to close attribution/allocation cases and 56.83 months to close other cases. This resulted in an average time needed of 62.84 months to close three pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Romania reported that it uses the following:

- *Start date*: the date of receipt of the MAP request from the taxpayer; and
- *End date*: the date when the taxpayer is informed of the outcome of the MAP.

Post-2015 cases

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

118. For post-2015 cases Romania reported that it needed 2.60 months to close one attribution/allocation case. Romania did not close any other post-2015 cases.

Peer input

119. Several peers provided input concerning the timely resolution of MAP cases, which will be further discussed under element C.3. In relation to element C.2, two peers in particular appreciated the timeliness of the response by Romania's competent authority to communications by these peers. Another peer noted that Romania's competent authority endeavours to resolve MAP cases in a reasonable timeframe.

Anticipated modifications

120. Romania indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for Improvement	Recommendations
[C.2]	Romania submitted comprehensive MAP statistics on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Romania's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. However, Romania did not submit 2016 MAP statistics within the required timeline, but only during the course of its peer review. In that regard, Romania is recommended to submit its MAP statistics on time in the future. Romania's MAP statistics show that during the Statistics Reporting Period it closed approximately 6% (one out of 17 cases) of its post-2015 cases in 2.60 months on average. In that regard, Romania is recommended to seek to resolve the remaining 94% of the post-2015 cases pending on 31 December 2017 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	

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

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

121. 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 Romania's competent authority

122. Romania reported that, pursuant to Article 282 of Law No.207/2015 on the Fiscal Procedural Code, the competent authority function to handle MAP cases under its tax treaties and the EU Arbitration Convention is delegated to the president of the National Tax Agency for Fiscal Administration.[6] This competence is since 2011 further delegated to the Transfer Pricing and Tax Ruling Directorate of the General Directorate for the Coordination of Tax Audits within the National Tax Agency for Fiscal Administration.

123. The Transfer Pricing and Tax Ruling Directorate currently consists of ten persons, who handle MAP cases, as well as requests for APAs. Next to handling MAP cases, this directorate also provides assistance to tax auditors in complex transfer pricing cases, organises transfer pricing trainings and is responsible for issuing domestic transfer pricing guidelines. Romania further reported that training on MAP is given internally and for complex cases its policy is to have complex cases being dealt with by a mix of experienced personnel and less experienced people, such to share experiences and knowledge.

124. Concerning the steps to be taken when a MAP request is received by Romania's competent authority, Romania reported that the main steps to be taken are:

- Analysis of the request in terms of eligibility for MAP under the applicable tax treaty or the Arbitration Convention
- Notifying the treaty partner of the MAP request received within one month
- Requesting the taxpayer on whether it has initiated or intends to initiate any domestic judicial procedures, if not specified in the MAP request
- Requesting additional information/documents from the taxpayer, if needed
- Requesting the local tax office to present a written opinion on the issues that are the subject of a MAP, where the double taxation is the result of an action performed by Romania's tax authority, or where double taxation is not the

result of an action performed in Romania, requesting the treaty partner to provide the position paper

- Informing the taxpayer on whether the MAP will be initiated

125. Further to the above, where a MAP agreement has been reached, Romania reported that its competent authority will inform the taxpayer and the local tax office on that outcome and the steps to follow for implementing the MAP agreement.

Monitoring mechanism

126. Concerning the available resources for the MAP function, Romania indicated that funding is received from public funds and there are no special funding programmes for the competent authority. Regardless, given the relatively low number of pending MAP cases, Romania considered that the available resources for the MAP function are sufficient. However, given the fact that recently the number of MAP cases has increased, it indicated that a further evaluation of the available resources is necessary. The evaluation hereof will be performed as per year-end, such depending on the number of MAP requests received.

Practical application

MAP statistics

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

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

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

128. Based on these figures, it follows that on average it took Romania 47.78 months to close MAP cases during the Statistics Reporting Period, by which Romania is considered not to be adequately resourced.

Peer input

129. The peers that provided input reported that in general they had limited experience with Romania concerning the resolution of MAP cases, primarily due to the limited number of such cases. In that regard, only one peer reported having initiated several MAP cases with Romania since 1 January 2016, which all concern attribution / allocation cases.

130. Concerning the working relationship of the peers with Romania, several peers noted that they had good experiences with Romania's competent authority in communicating with them. One peer reported that the relationship and communication with Romania's competent authority is good and that contact is fairly easy to establish. On an overall basis, this peer noted having positive experiences. This input was echoed by other peers, who also noted that there was no need for organising face-to-face meetings to resolve their pending MAP cases and that Romania's competent authority

responded timely to communications. One peer, however, reported that due to the limited number of pending MAP cases, there is no robust working relationship between their competent authorities. Concerning its communication, this peer noted that the effectiveness of (informal) communication, which was done via email, varied. Due to language differences and the need for translation, telephone conferences can be ineffective and efficient. Furthermore, one peer noted that, although it has very limited experiences in resolving MAP cases with Romania, in its experience it was rather difficult to communicate via e-mail.

131. Furthermore, concerning the resolution of MAP cases, most peers that provided input reported that there has not been a substantial experience with Romania in this regard. Nevertheless, these peers generally reported positive experiences. Two peers in particular appreciated the response to position papers within a short notice. Another peer noted that Romania's competent authority endeavours to resolve MAP cases in a reasonable timeframe and that Romania's competent authority provides written position papers to clarify its position. Lastly, two other peers reported that they are not aware of any impediments in Romania that lead to delays to resolve a MAP case, which is particularly due to the very limited number of MAP cases with Romania. One of these peers mentioned it looked forward to working with Romania's competent authority to ensure that taxpayers with pending MAP cases and future MAP cases can obtain effective and efficient access to the MAP process.

132. Two peers provided suggestions for improving the resolution of MAP cases in Romania. Both of them mentioned that a more frequent and better use of email would even more enhance the timeliness for resolving MAP cases.

Anticipated modifications

133. Romania indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for Improvement	Recommendations
[C.3]	As Romania closed MAP cases in 47.78 months on average, there may be a risk that post-2015 cases are not closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), which indicates that the Romania's competent authority is not adequately resourced.	Romania should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. This, for example, by devoting additional resources or having resources specifically dedicated to handling MAP cases.

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

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

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

Functioning of staff in charge of MAP

135. Romania reported that its staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations. It also clarified that all position papers on MAP cases are prepared and finalised at the level of the competent authority and there is no involvement from any other department in this regard. While local tax offices may be requested to provide an opinion as regards the questions that are the subject of the MAP case, there is no involvement in the decision making process on a position paper or whether or not to enter into a MAP agreement.

136. Romania further reported that where its competent authority handles a MAP request, all documents and correspondence are prepared by this competent authority and accordingly to be approved by the head of the Transfer Pricing and Advanced Transfer Pricing Agreement Unit, the Director of the Transfer Pricing and Tax Ruling Directorate, and ultimately the General Director of the General Directorate for the Coordination of Tax Audits. While the title of the directorate is "General Directorate for the Coordination of Tax Audits," this directorate has no involvement in conducting audits, which is solely performed at the level of the local tax offices. As discussed under element C.3, the Transfer Pricing and Tax Ruling Directorate of the General Directorate for the Coordination of Tax Audits, performs a coordinating role in audits that concern complex transfer pricing cases. This involvement, however, is only from a methodological and procedural perspective and *inter alia* relates to providing interpretations of the OECD Transfer Pricing Guidelines, providing trainings or providing guidelines for fiscal risk assessment. In this regard, Romania reported that the General Directorate for the Coordination of Tax Audits is not involved in the audit process or any decisions taken by tax audit teams.

Practical application

137. Peers generally reported no impediments in Romania to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Romania is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

138. Romania indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

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

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

139. 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 Romania

140. Romania reported that there are currently neither performance indicators used nor targets set for staff in charge of MAP. The evaluation of the staff in charge of MAP is annually performed and the criteria used depend on the cases under review. These criteria generally rely on whether deadlines within the process are met and whether staff acted in compliance with legal provisions.

141. The final report on Action 14 (OECD, 2015[2]) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

- ☐ Number of MAP cases resolved;
- ☐ Consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers); and
- ☐ 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).

142. As discussed, none of these examples are specifically used by Romania. Romania further reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. Therefore, staff in

charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Practical application

143. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. One peer noted that it is not aware of the use of performance indicators by Romania that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

144. Romania indicated that as soon as the envisaged legislative proposal on MAP is approved, it will introduce some performance indicators in order to examine the consistency and the time of resolving MAP cases.

Conclusion

	Areas for Improvement	Recommendations
[C.5]	-	Romania could, in line with its stated intention, consider using the examples of performance indicators mentioned in the final report on Action 14 (OECD, 2015[2]) to evaluate staff in charge of the MAP process.

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

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

145. 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

146. Romania reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. While Romania's tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties, it is a signatory to the EU Arbitration Convention. Apart from the basic response included in the MAP profile, Romania has not made information on its position on MAP arbitration publicly available, for example, in its MAP profile.

Practical application

147. Romania has incorporated a voluntary arbitration clause in one of its tax treaties as a final stage to the MAP. Romania, however, reported that the arbitration procedure does not have any practical effect yet, as it is not supplemented with a diplomatic note to establish procedures. Furthermore, Romania also has included a most-favoured nation clause on arbitration in one of its tax treaties. This provision stipulates that when an arbitration provision in the treaty between that state and a third state becomes effective, the arbitration provision with Romania also becomes

effective. In this respect, Romania reported that this condition has not yet been fulfilled.

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

Anticipated modifications

149. Romania indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	Position on using arbitration as a supplement to the mutual agreement procedure is not transparent.	Romania should provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile. In addition, Romania could consider including such information in its to-be-published MAP guidance.

Notes

1. These 85 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

2. Available at: http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are generally up to and include fiscal year 2016.

3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_ac_statistics_en.pdf. These statistics are up to and include fiscal year 2016.

4. For post-2015 cases, if the number of MAP cases in Romania'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, Romania reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).

5. For pre-2016 and post-2015 cases, Romania follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that "*an attribution/allocation MAP* case *is a MAP case where the taxpayer's MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention* (OECD, 2015[1])*; or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention* (OECD, 2015[1])*, which is also known as a transfer pricing MAP case*".

6. Available at: https://static.anaf.ro/static/10/Anaf/Prezentare_R/Law207_11042018.pdf.

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Part D: Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

150. 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

151. Romania reported that where a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), a MAP agreement shall be implemented notwithstanding any time limits under its domestic law. The same applies to cases for which an agreement has been reached under the EU Arbitration Convention. Where a tax treaty does not contain a provision on the implementation of MAP agreements, Romania reported that its domestic statute of limitation applies to both upward and downward adjustments. This statute of limitation is five years and generally starts to run as from 1 July of the fiscal year following the fiscal year in which the tax liability becomes due. Where it concerns an infringement of the criminal law in Romania, the statute of limitations is ten years.

152. Romania further reported that it operates a self-assessment system for determining the amount of tax due. Where a MAP agreement is entered into by its competent authority, this competent authority will inform taxpayers in writing alongside with an explanation of the process to be followed by them in order to have the agreement implemented. In other words, it is the taxpayer that has to implement the MAP agreement through the self-assessment process, including appropriate adjustments to the tax assessed in transfer pricing cases. Under this system thus no upfront consent from the taxpayer is required as a prerequisite for implementation, but such consent follows indirectly from the self-assessment system used.

153. In addition to the above, Romania reported that its competent authority will also inform the local tax administration in charge of the taxpayer on the MAP agreement reached and the instructions given to taxpayers for the implementation thereof. It is therefore this local tax administration that monitors the actual implementation of a MAP agreement, which is not further monitored at the level of Romania's competent authority.

Practical application

154. Romania reported that since 1 January 2016 it has not reached any MAP agreement. Its competent authority closed three MAP cases as from that date, but none of them concerned a MAP agreement.

155. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Romania, some of them noting that this is due to the fact that they have not reached a MAP agreement since that date.

Anticipated modifications

156. Romania indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Romania would have implemented all MAP agreements.	
	As will be discussed under element D.3 not all of Romania's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to a five year time limit for making upward and downward adjustments in domestic law.	For future MAP agreements Romania should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. In addition, to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Romania could introduce a tracking system at the level of its competent authority.

[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.

157. 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

158. As discussed under element D.1, taxpayers are required to implement a MAP agreement and are informed of the tentative agreement and of the procedure to be followed in writing prior to the MAP agreement. In relation hereto, Romania reported that it neither has any timeframe for notifying taxpayers of the MAP agreement reached, nor for taxpayers for implementing MAP agreements.

Practical application

159. As discussed under element D.1, Romania has not reached any MAP agreements since 1 January 2016.

160. All peers that provided input indicated not experiencing any problems with Romania regarding the implementation of MAP agreements, which can be explained by the fact that there was no MAP agreement to be implemented during the Review Period.

Anticipated modifications

161. Romania indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for Improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Romania would have implemented all MAP agreements on a timely basis.	

[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.

162. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) 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 Romania's tax treaties

163. As discussed under element D.1, Romania's domestic legislation contains a statute of limitations of five years for implementing MAP agreements, unless overridden by tax treaties or when a MAP agreement is reached under the EU Arbitration Convention.

164. Out of Romania's 87 tax treaties, 55 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.[1] Furthermore, two tax treaties that do not contain this equivalent have a provision in the MAP article, setting a time limit for making adjustments. Both provisions are considered to be the alternative provisions to Article 9(1) and Article 7(2). The remaining 30 tax treaties neither contain the equivalent to Article 25(2), second sentence, nor the alternative provisions. Of these 30 treaties, two contain a provision in Article 9 setting a time limit for making transfer pricing adjustments.

Anticipated modifications

Multilateral Instrument

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

166. In regard of the 30 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), nor both alternative provisions for Article 9(1) and 7(2), Romania listed all of them as covered tax agreements under the Multilateral Instrument, but only for 28 of them, did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 28 treaty partners, six are not a signatory to the Multilateral Instrument, whereas three did not list their treaty with Romania as a covered tax agreement, and one made a reservation on the basis of Article 16(5)(c). All remaining 18 treaty partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, 18 of the 30 tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]).

Bilateral modifications

167. Romania further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) or both alternatives provided for in Articles 9(1) and 7(2) 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. Romania is in the process of identifying the list of treaties that do not meet the Action 14 Minimum Standard and on that basis will take a decision regarding the timetable for the possible renegotiations of tax treaties. In addition, Romania reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) or both alternatives in all of its future tax treaties.

Peer input

168. Of the peers that provided input, three peers indicated that their treaty with Romania meets the requirements under element D.3. Furthermore, one peer did not provide specific input on whether its treaty with Romania meets the Action 14 Minimum Standard, but noted that it is the peer's intention to update the treaty with Romania via the Multilateral Instrument. Two other peers also provided input, but only noted in general that their treaties with Romania do not meet all the requirements under the Action 14 Minimum Standard and that they expect that these treaties will be modified via the Multilateral Instrument.

169. For the 30 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), or both alternatives, one peer reported that either its treaty with Romania meets the Action 14 Minimum Standard or will be modified via the Multilateral Instrument, which indeed is the case. Another peer reported that its treaty with Romania does formally not meet the requirements under element D.3, but that it is willing to accept the alternative provisions. This peer further specified that it has submitted a draft amending protocol to adapt the treaty to the Action 14 Minimum Standard. Lastly, one peer noted that the language in its treaty with Romania deviates from the requirement under element D.3.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	30 out of 87 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 30 treaties, 28 neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) nor any of the alternative provisions. two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]) and only contain the alternative provision provided in Article 9(1).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 18 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For 11 of the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015[1]), and which also do not contain both alternative provisions, Romania should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.
		To this end, Romania should put a plan in place on how it envisages updating these 11 treaties to include the required provision or its alternative. For the remaining treaty, where Romania is already in negotiation with the treaty partner, it should complete this negotiation as quickly as possible to incorporate the required provision or both alternative provisions.
		In addition, Romania should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Notes

1. These 55 treaties include the treaty with the former Federal Republic of Yugoslavia that Romania continues to apply to Serbia and Montenegro.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, https://dx.doi.org/10.1787/tpg-2017-en. [2]

OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264241633-en. [3]

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-en. [1]

Summary

	Areas for Improvement	Recommendations
	Part A: Preventing disputes	
[A.1]	Three out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaty concerned. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), Romania should request the inclusion of the required provision via bilateral negotiations. To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not possible.	Romania should introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
	Part B: Availability and access to MAP	
[B.1]	20 out of 87 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 20 tax treaties: ● Three tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; ● One tax treaty does not contain the equivalent to Article 25(1),first sentence, and obliges taxpayers to submit its MAP requests to both competent authorities; ● Seven tax treaties do not contain the equivalent to Article 25(1), first sentence; and ● Nine tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the treaties that will not be modified by the Multilateral Instrument to include such equivalent, Romania should request for these treaties – as also for the treaties that do not contain the equivalent of the first or second sentence or of both sentences of Article 25(1) – the inclusion of the required provision via bilateral negotiations. This concerns both: ● a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: a) As amended in the final report on Action 14; or b) As it read prior to the adoption of the final report on Action 14, thereby including the full sentence of such provision; and ● a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. To this end, Romania should put a plan in place on how it envisages updating these treaties, where it has not yet initiated or completed negotiations for, to include the required provision. In addition, Romania should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a)s as it read prior to the adoption of the final report on Action 14 in all future tax treaties. Romania should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

	the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. There is a risk that access to MAP is denied in eligible cases where the issue under dispute has already been decided via the judicial remedies provided by Romania's domestic law.	Romania should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention (OECD, 2015a) can access the MAP.
[B.2]	Out of the 87 tax treaties, none contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Romania should without further delay introduce a documented notification and/or consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015) as amended by the final report of Action 14.
[B.3]	-	As Romania has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Romania reported it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Romania is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	-	-
[B.6]	-	As Romania has thus far not limited access to MAP in eligible cases when taxpayers have complied with Romania's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Eight out of 87 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those six treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For the remaining two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Romania should request the inclusion of the required provision via bilateral negotiations. To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	Published MAP guidance is not available.	Romania should introduce and publish, without further delay, guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request. Additionally, although not required by the Action 14 Minimum Standard, Romania could consider including information on: ● How the MAP operates in Romania, the rules for accessing MAP, how its competent authority applies the process in practice and the rights and role of taxpayers; ● Whether MAP is available in cases of: (i) transfer

		pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments; ● Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; ● The possibility of suspension of tax collection during the course of a MAP; ● The consideration of interest and penalties in the MAP; and ● The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).
[B.9]	There is no MAP guidance publically available. The MAP profile contains information not in line with Romania's practice and policy and responses given are limited.	Romania should make MAP guidance publically available and easily accessible once it is being introduced. Romania should update its MAP profile to reflect the correct information on its policy and practice on MAP. This concerns information on whether: (i) MAP is available relating to the application of treaty and domestic anti-abuse provisions, or when an audit settlement has been entered into, (ii) taxpayers have access to MAP when a domestic court case is pending or has already been finalised for the same case as for which a MAP request has been submitted, (iii) MAP statistics are published. Furthermore, Romania could consider providing more details in its MAP profile on its MAP process.
[B.10]	-	-
	Part C: Resolution of MAP cases	
[C.1]	Two out of 87 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the two treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified via the Multilateral Instrument, Romania should request the inclusion of the required provision via bilateral negotiations. To this end, Romania should put a plan in place on how it envisages updating these two treaties to include the required provision. In addition, Romania should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Romania submitted comprehensive MAP statistics on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Romania's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. However, Romania did not submit 2016 MAP statistics within the given timeline, but only during the course of its peer review. In that regard, Romania is recommended to submit its MAP statistics on time in the future. Romania's MAP statistics show that during the Statistics Reporting Period it closed approximately 6% (one out of 17 cases) of its post-2015 cases in 2.60 months on average. In that regard, Romania is recommended to seek to resolve the remaining 94% of the post-2015 cases pending on 31 December 2017 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Romania closed MAP cases in 47.78 months on average, there may be a risk that post-2015 cases are not closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), which indicates that the Romania's competent authority is not adequately resourced.	Romania should ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. This, for example, by devoting additional resources or having resources specifically dedicated to handling MAP cases.
[C.4]	-	As it has done thus far, Romania should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Romania would like to see reflected in future amendments to the treaty.
[C.5]	-	Romania could, in line with its stated intention, consider using the examples of performance indicators mentioned in the final report

		on Action 14 to evaluate staff in charge of the MAP process.
[C.6]	Position on using arbitration as a supplement to the mutual agreement procedure is not transparent.	Romania should provide transparency on its position on using arbitration in the framework of the mutual agreement procedure, such by including information hereon in the MAP profile. In addition, Romania could consider including such information in its to-be-published MAP guidance.
	Part D: Implementation of MAP agreements	
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Romania would have implemented all MAP agreements.	
	As will be discussed under element D.3 not all of Romania's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to a five year time limit for making upward and downward adjustments in domestic law.	For future MAP agreements Romania should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law. In addition, to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled, Romania could introduce a tracking system at the level of its competent authority.
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Romania would have implemented all MAP agreements on a timely basis.	
[D.3]	30 out of 87 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of these 30 treaties, ● 28 neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. ● two do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only contain the alternative provision provided in Article 9(1).	Romania should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 18 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. For 11 of the remaining 12 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), and which also do not contain both alternative provisions, Romania should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, Romania should put a plan in place on how it envisages updating these 11 treaties to include the required provision or its alternative. For the remaining treaty, where Romania is already in negotiation with the treaty partner, it should complete this negotiation as quickly as possible to incorporate the required provision or both alternative provisions. In addition, Romania should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A: Tax treaty network of Romania

			Article 25(1) of the ("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?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?	
			If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?				
	Y = yes	If N, date of signing	E = yes, either CAs	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	if yes:
			O = yes, only one CA	i = no, no such provision	i = no, but access will be given to TP cases	i = no and such cases will be accepted for MAP		i = no, but have Art 7 equivalent	N = no	N = no	N = no	i-Art. 25(5)
				ii = no, different period if ii, specify period				ii = no, but have Art 9 equivalent				ii-mandatory other

			Article 25(1) of the ("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	
	N = signed pending ratification		N = No	iii = no, starting point for computing the 3 year period is different		ii = no and access will not be given to TP cases	ii = no but such cases will not be accepted for MAP	N = no	iii = no, but have both Art 7 & 9 equivalent				iii - voluntary
				iv = no, others reasons					N = no and no equivalent of Art 7 and 9				
Albania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Algeria	Y	N/A	O	i	N/A	Y	i	Y	Y	Y	Y	N	N/A
Armenia	Y	N/A	O	ii**	2 years	Y	i	Y	Y	Y	Y	N	N/A
Australia	Y	N/A	O	Y	N/A	Y	i	Y	Y	N	N**	N	N/A
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bangladesh	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	N**	N	N/A
Bosnia and Herzegovina	N	06-12-2016	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	ii**	2 years	Y	i	Y	iii	Y	Y	N	N/A
China	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Article 25(1) of the ("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	
(People's Republic of)													
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Czech Republic	Y	N/A	O	Y	N/A	i	i	Y	N**	Y	Y	N	N/A
Denmark	Y	N/A	N	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Ecuador	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	N	N	N/A
Egypt	Y	N/A	O	i	N/A	i	i	Y	N**	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ethiopia	Y	N/A	O	ii	2 years	Y	i	Y	Y	Y	Y	N	N/A
Finland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Former Yugoslav Republic of Macedonia	Y	N/A	O	ii	2 years	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	N	i	N/A	i***	i	Y	Y	N**	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	N/A	O	ii	2	i	i	Y	N	Y	Y	N	N/A

			Article 25(1) of the ("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	
					years								
Iran	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	N**	N	N/A
Israel	Y	N/A	N	ii**	2 years	i***	i	Y	Y	Y	Y	N	N/A
Italy	Y	N/A	O	Y	N/A	i	i	Y	N**	Y	Y	N	N/A
Japan	Y	N/A	N	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Jordan	Y	N/A	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Kazakhstan	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Korea (Democratic People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	Y	N/A	i	i	Y	N**	Y	Y	N	N/A
Kuwait	Y	N/A	O	ii	2 years	Y	i	Y	Y	Y	Y	N	N/A
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Lebanon	Y	N/A	O	ii	2 years	Y	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	N/A	O	i	N/A	i***	i	Y	N**	Y	N**	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	i	N	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	Y	iii
Moldova	Y	N/A	N	ii	2 years	Y	i	Y	Y	Y	Y	N	N/A
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

			Article 25(1) of the ("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	
Morocco	Y	N/A	N	ii	4 years	Y	i	Y	Y	Y	Y	N	N/A
Namibia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Nigeria	Y	N/A	O	ii	5 years	Y	i	Y	N**	Y	N**	N	N/A
Norway	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Pakistan	Y	N/A	O	ii**	2 years	Y	i	Y	Y	Y	Y	N	N/A
Philippines	Y	N/A	O	Y	N/A	Y	i	Y	ii	Y	Y	N	N/A
Poland	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Qatar	Y	N/A	O	ii	2 years	i	i	Y	Y	Y	Y	N	N/A
Russia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
San Marino	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	O	Y	N/A	i	i	Y	N**	Y	Y	N	N/A
Slovenia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Spain	Y	N/A	N	ii	2 years	i	i	Y	N	Y	Y	N	N/A
Sri Lanka	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A

			Article 25(1) of the ("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	
Sudan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Sweden	Y	N/A	N	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	N/A	O	Y	N/A	i	i	Y	ii	Y	Y	N	N/A
Syrian Arab Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tajikistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Thailand	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Tunisia	Y	N/A	N	iv	N/A	i***	i	Y	N**	Y	Y	N	N/A
Turkey	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Turkmenistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
United Arab Emirates	Y	N/A	N	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Kingdom	Y	N/A	O	i	N/A	i***	i	Y	N**	Y	N**	N	N/A
United States	Y	N/A	O	i	N/A	i	i	N	N	N	N	N	N/A
Uruguay	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet Nam	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Zambia	Y	N/A	O	i	N/A	i	i	Y	iii	Y	Y	N	N/A

* Footnote by Turkey:
The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognizes the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the "Cyprus" issue.
Footnote by all the European Union Member States of the OECD and the European Union:
The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

		Article 25(1) of the ("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

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

*** Treaties will be modified upon entry into force of the Multilateral Instrument for the treaties concerned, but only to the extent that existing treaty provisions are incompatible with the relevant provision of Article 17 of the Multilateral Instrument.

Annex B - MAP statistics reporting for the 2016 and 2017 reporting periods (1 January 2016 to 31 December 2017) for pre-2016 cases

2016 MAP Statistics

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	number of pre-2016 cases closed during the reporting period by outcome:										no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period
		denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	17	0	0	0	0	0	0	0	0	0	0	17	N/A
Others	5	0	0	1	0	0	0	0	0	0	0	4	14.40
Total	22	0	0	1	0	0	0	0	0	0	0	21	14.40
Notes:													

2017 MAP Statistics

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2017	number of pre-2016 cases closed during the reporting period by outcome:										no. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing pre-2016 cases during the reporting period
		denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	17	0	0	0	0	1	0	0	0	0	0	16	74.86
Others	4	0	0	0	0	0	0	0	0	0	1	3	99.25
Total	21	0	0	0	0	1	0	0	0	0	1	19	87.06
Notes:													

Annex C - MAP statistics reporting for the 2016 and 2017 reporting periods (1 January 2016 to 31 December 2017) for post-2015 cases

2016 MAP Statistics

category of cases	no. of post-2015 cases in MAP inventory on 1 January 2016	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing post-2015 cases during the reporting period
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution / Allocation	0	2	0	0	0	0	0	0	0	0	0	0	2	N/A
Others	0	3	0	0	0	0	0	0	0	0	0	0	3	N/A
Total	0	5	0	0	0	0	0	0	0	0	0	0	5	N/A
Notes:														

2017 MAP Statistics

category of cases	no. of post-2015 cases in MAP inventory on 1 January 2017	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing post-2015 cases during the reporting period
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution / Allocation	2	9	0	0	0	1	0	0	0	0	0	0	10	2.60
Others	3	3	0	0	0	0	0	0	0	0	0	0	6	N/A
Total	5	12	0	0	0	1	0	0	0	0	0	0	16	2.60
Notes:														

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 Statistics Reporting Framework:	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument:	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases:	MAP cases in a competent authority's inventory pending resolution on 31 December 2015
Post-2015 cases:	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period:	Period for the peer review process that started on 1 January 2016 and ended on 30 April 2018
Statistics Reporting Period:	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference:	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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Making Dispute Resolution More Effective - MAP Peer Review Report, Romania (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

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

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