

**OECD/G20 Base Erosion and Profit Shifting
Project**



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Please cite this publication as:

OECD (2018), *Making Dispute Resolution More Effective – MAP Peer Review Report, Malta (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<https://doi.org/10.1787/9789264304321-en>

ISBN 978-92-64-30431-4 (print)

ISBN 978-92-64-30432-1 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

has more than 115 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on BEPS on 14 August 2018 and prepared for publication by the OECD Secretariat.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	11
References	14
Part A. Preventing disputes	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases	17
References	18
Part B. Availability and access to MAP	19
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	19
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	24
[B.3] Provide access to MAP in transfer pricing cases	25
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	28
[B.5] Provide access to MAP in cases of audit settlements	29
[B.6] Provide access to MAP if required information is submitted	30
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	32
[B.8] Publish clear and comprehensive MAP guidance	33
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	37
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	38
References	40
Part C. Resolution of MAP cases	41
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	41
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	43
[C.3] Provide adequate resources to the MAP function	45
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	48
[C.5] Use appropriate performance indicators for the MAP function	49
[C.6] Provide transparency with respect to the position on MAP arbitration	50
References	52

Part D. Implementation of MAP agreements	53
[D.1] Implement all MAP agreements	53
[D.2] Implement all MAP agreements on a timely basis	54
[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)	55
Reference	57
Summary	59
Annex A. Tax treaty network of Malta	63
Annex B. MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases	69
Annex C. MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases	71
Glossary	73
Figures	
Figure C.1 Malta’s MAP caseload	44

Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Malta has an extensive tax treaty network with over 75 tax treaties and has signed and ratified the EU Arbitration Convention. Malta's competent authority function is performed by the Director General, Legal and International within Malta's tax administration. It has little experience with resolving MAP cases and has a small MAP inventory, with two cases pending on 31 December 2017. All of these cases concern other MAP cases. Malta meets almost all the elements of the Action 14 Minimum Standard, although several could not be assessed at this stage. Where it has deficiencies, Malta is working to address them.

All of Malta's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and on Capital 2014 (OECD Model Tax Convention, OECD, 2015)*. Its treaty network is nearly consistent with the requirements of the Action 14 Minimum Standard, except for the fact that approximately 10% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Malta needs to amend and update a small number of its tax treaties. In this respect, Malta 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, Malta 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. Malta has put in place a plan for such negotiations. Furthermore, Malta opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Malta in principle meets the Action 14 Minimum Standard concerning the prevention of disputes. While Malta is willing to enter into bilateral APAs, potentially also with a roll-back, no such cases have occurred during the period of review.

Malta meets almost all requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Malta's policy is to provide access to MAP in all eligible cases, although it has not yet received any MAP request concerning transfer pricing cases, cases where anti-abuse provisions are applied or cases where taxpayers and the tax authorities have already entered into an audit settlement. It further has in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not being justified, although no such cases have occurred since 1 January 2016. Malta also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention.

Concerning the resolution of MAP cases, the MAP statistics for Malta for the period 2016-17 are as follows:

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017	Average time to close cases (in months)
Attribution/allocation cases	0	0	0	0	N/A
Other cases	2	0	0	2	N/A
Total	2	0	0	2	N/A

As Malta did not close any MAP cases during 2016 or 2017, it was yet not possible to assess whether its competent authority is adequately resourced. However, as the two MAP cases pending were already in the MAP inventory before 1 January 2016, the average time to resolve them will be above 24 months.

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

Lastly, as Malta did not resolve any MAP cases 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, Malta 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 (OECD, 2015).

Introduction

Available mechanisms in Malta to resolve tax treaty-related disputes

Malta has entered into 76 tax treaties on income (and/or capital), 74 of which are in force.¹ These 76 treaties apply to 76 jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, five of the 76 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

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

In Malta the competent authority function is delegated to the Director General, Legal and International within Malta's Revenue and which is competent to handle both attribution/allocation cases as well as other cases.

Malta issued guidance on the governance and administration of the MAP process, which was updated in December 2017 and which is available at (in English):

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

Recent developments in Malta

Malta recently signed new tax treaties with Botswana and Curacao, which have not yet entered into force. Furthermore, Malta 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, Malta reported that it strives updating them through future bilateral negotiations. In that regard, Malta already received a notification with a proposed amendment from one treaty partner. With further six treaty partners Malta intends to start communications in 2018 with a view to commence and finalise necessary negotiations by the end of 2019. Initial informal discussions have been held with an additional treaty partner and negotiations may start in 2019. With the signing of the Multilateral Instrument, Malta also submitted its list of notifications and reservations to that instrument.⁴ In relation to the Action 14 Minimum Standard, Malta has not made any reservations to article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). It further opted for part VI of that instrument, which contains a mandatory and binding arbitration procedure as a final stage to the MAP process.

Basis for the peer review process

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

The period for evaluating Malta’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 (“**Review Period**”). While the commitment to the Action 14 Minimum Standard only starts from 1 January 2016, Malta opted to provide information and requested peer input on a period starting as from 1 January 2015. Even though this period is taken into account in the analysis in this report, the basis of conclusions only concerns the period starting on 1 January 2016. In addition to the assessment on its compliance with the Action 14 Minimum Standard, Malta also asked for peer input on best practices, which can be accessed on the OECD website.⁵ 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 Malta’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 Malta is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly signed treaties as described above were taken into account. Reference is made to Annex A for the overview of Malta’s tax treaties regarding the mutual agreement procedure.

In total five peers provided input: Germany, Italy, Switzerland, Sweden and Turkey. Out of these five peers one of them has a pre-2016 MAP case with Malta, which represents 50% of the MAP cases in Malta’s inventory on 1 January 2016.⁶ Furthermore, two of these peers reported having experience with Malta in handling MAP cases, which noted the ease of contact and cooperation in resolving disputes with Malta’s competent authority.

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

- MAP profile⁷
- MAP statistics⁸ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Malta

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

2016-17	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	0	0	0	0
Other cases	2	0	0	2
Total	2	0	0	2

General outline of the peer review report

This report includes an evaluation of Malta’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁹ Apart from analysing Malta’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Malta 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 Malta 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 Malta has entered into are available at: <http://justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=123> (accessed on 18 July 2018). The treaties that are signed but have not yet entered into force are with Botswana and Curacao. Reference is made to Annex A for the overview of Malta’s tax treaties.
2. This concerns treaties with Botswana, Curacao, Liechtenstein, Moldova and Switzerland.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
4. Available at: www.oecd.org/tax/treaties/beps-mli-position-Malta.pdf.
5. Available at: <http://oe.cd/bepsaction14>.

6. Malta only has pre-2016 MAP cases and did not receive any request for a post-2015 MAP case.
7. Available at www.oecd.org/tax/dispute/Malta-Dispute-Resolution-Profile.pdf.
8. The MAP statistics of the Malta are included in Annexes B and C of this report.
9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

Part A

Preventing disputes

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

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

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

Current situation of Malta's tax treaties

2. Out of Malta's 76 tax treaties, 74 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. The remaining two tax treaties are considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). In one of these treaties the term "interpretation" is not contained, whereas the other treaty misses the terms "doubts" as well as "interpretation".

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

Anticipated modifications

Multilateral Instrument

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

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

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

Bilateral modifications

6. As the two tax treaties that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will be modified via the Multilateral Instrument, there is no need for bilateral modification of these treaties. In addition, Malta reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future tax treaties.

Peer input

7. Of the peers that provided input, four indicated that their tax treaty with Malta is in line with the requirements under element A.1, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element A.1, the relevant tax treaty already meets the requirements under this element.

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Malta should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.
		In addition, Malta 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.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Malta’s APA programme

10. Malta reported that it does not have established a formal bilateral APA programme, but its competent authority is authorised to enter into bilateral and multilateral APAs. Malta reported further that it considers Article 25(3) of the OECD Model Tax Convention (OECD, 2015) as the legal basis for entering into a bilateral/multilateral APA. In that regard, Malta specified that the provisions of Article 52 of the Income Tax Act, providing for unilateral advance revenue rulings, are interpreted broadly to allow its competent authority to enter into bilateral and multilateral APAs.

11. Malta further reported that there are no fees involved with APA requests and there are no specific timelines for filing such requests. However, it also noted that the application should ideally be made before the start of the first fiscal year to be covered by the APA. In that regard, Malta reported that a unilateral advanced ruling takes effect as of the date of issuing the ruling, which rules also applies to bilateral APAs (e.g. the date of signing the agreement). Typically, in Malta bilateral APAs run for a period of no more than five years. Malta reported that they can be renewed upon request by the taxpayer if no material changes to the facts and circumstances have occurred and insofar the treaty partner agrees therewith.

Roll-back of bilateral APAs

12. Malta reported that it is possible to grant a roll-back of bilateral APAs when the competent authority of the other jurisdiction agrees herewith. The number of tax years for which the bilateral APA will be applied retroactively depends on the domestic laws of the involved jurisdictions as well as on the agreement reached between their involved competent authorities. In general, Malta specified that any year prior to the conclusion of the bilateral APA is considered to be a roll-back year and that due to its domestic statute of limitation roll-backs are limited to five years starting at the end of the year following the fiscal year in which the tax has been arisen. Malta, however, noted that in practice it is unlikely that it would consider more than two to three years as eligible for a roll-back.

Practical application of roll-back of bilateral APAs

13. Malta reported it publishes statistics on APAs on the website of the EU JTPF, but that it has not yet concluded a bilateral APA.² Malta further reported having received one request for a bilateral APA during the Review Period, which included a request for roll-back. The APA request as well as the request for roll-back are both still under consideration due to awaiting confirmation by the treaty partner. Overall, Malta mentioned having limited experience with bilateral APAs, including roll-backs.

14. All but one peer that provided input indicated that they have not received a request for a roll-back of a bilateral APAs concerning Malta during the Review Period. The remaining peer confirmed the receipt of the aforementioned roll-back request of an APA and stated that according to its understanding a roll-back is possible in Malta.

Anticipated modifications

15. Malta indicated that it anticipates introducing a formal APA bilateral programme in the future, but Malta has not taken any specific action or set a timeline, yet.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Malta is in theory able to extend bilateral APAs to previous fiscal years. Even though Malta received a request for roll-back of a bilateral APA during the Review Period, this request is still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	

Notes

1. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). The most recent statistics published are up to 2016.

References

OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en> (accessed on 18 July 2018).

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

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.

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

Current situation of Malta's tax treaties

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

17. Out of Malta's 76 tax treaties, 67 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report (Action 14 final report, OECD, 2015b)*, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, one of Malta's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

18. The remaining eight tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	7
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1

19. The seven tax treaties mentioned in the first row of the table are considered not to have the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons five of those seven 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 (two tax treaties).
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (three tax treaties).

20. The above, however, does not apply to two tax treaties. Under these treaties the non-discrimination article is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence is then not clarified by a limited scope of application of the non-discrimination article. These tax treaties therefore are considered not to be in line with this part of element B.1.

21. Furthermore, the remaining tax treaty mentioned in the second row of the table incorporates a provision in the protocol to this tax treaty, which reads:

With reference to paragraph 1 of Article 24, the expression “notwithstanding the remedies provided by the national laws” means that the mutual agreement procedure is not alternative to the national contestation proceedings which should, in any case, be initiated within the time limits of the national law.

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

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

23. Out of Malta’s 76 tax treaties, 70 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

24. The remaining six 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	4
Filing period less than three years for a MAP request (two years)	2

25. Malta reported that it applies a three year time period for filing of MAP requests on the basis of the second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in case a tax treaty does not specify a filing period. This is explicitly stated in Malta’s MAP Guidance in the chapter “Making a request for MAP”. In this respect, Malta reported that this guidance has been issued on the basis of Article 96(2) of the Income Tax Act and as such is legally binding on Malta’s competent authority.

Anticipated modifications

Multilateral Instrument

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

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

27. With the signing of the Multilateral Instrument, Malta opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under Malta’s tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Malta opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of

either contracting state. In this respect, Malta listed 71 of its 76 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).

28. In total, 15 of the 71 relevant treaty partners are not a signatory to the Multilateral Instrument, whereas two have not listed their treaty with the assessed jurisdiction as a covered tax agreement under that instrument and 20 reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining 34 treaty partners listed their treaty with Malta as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify 34 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14 (OECD, 2015b).

29. In view of the above and in relation to the three treaties identified in paragraphs 20 and 22 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), one is part of the 34 treaties that will be modified via the Multilateral Instrument.

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

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

31. In regard of the two tax treaties identified in paragraph 24 above that contain a filing period for MAP requests of less than three years, Malta listed both of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Both treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Malta as a covered tax agreement and also made such notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify both treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

32. Malta further reported that for the three tax treaties that do not contain the equivalent of either the first or second sentence of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this regard,

Malta reported that it intends to initiate communications with two of these three treaty partners in 2018 with a view to commence and finalise necessary treaty negotiations by the end of 2019. The tax treaty with the third jurisdiction requires significant amendments to be in line with several elements of the Action 14 Minimum Standard, including element B.1. In that regard, Malta reported having had informal discussions with this treaty partner in the past and treaty negotiations may take place in 2019.

33. With respect to the first sentence of Article 25(1), Malta further reported that it will in those bilateral negotiations and in all of its future tax treaties seek to include the equivalent as amended by the final report on Action 14 (OECD, 2015b).

Peer input

34. Of the peers that provided input, four indicated that their tax treaty with Malta is in line with the requirements under element B.1, which is consistent with the above analysis for this element.

35. For the five tax treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), only one of the relevant treaty partners provided peer input. This peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. However, the tax treaty with this peer will not be modified with respect to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as the peer made a reservation on the basis of Article 16(5)(a) of the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those five tax treaties:</p> <p>Three tax treaties do not contain the equivalent to Article 25(1), first sentence.</p> <p>Two 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.</p>	<p>Malta 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. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Malta should follow up on its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>

[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).

36. 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

37. As discussed under element B.1, out of Malta's 76 treaties, one currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 34 of these 76 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

38. Malta reported that it has introduced a bilateral consultation process which allows the other competent authority concerned to provide its views on the case when Malta's competent authority considers the objection raised in the MAP request not being justified, or any other instances where access to MAP will not be granted. This process is described in Malta's internal instruction for staff in charge of MAP. In this respect, Malta reported that in considering a MAP request its competent authority will take the following steps:

- Notify, where possible, in writing the taxpayer of receipt of the MAP request within 30 days from the date of receipt of the request (or from receipt of additional information, if requested, or from the date the consultation with the other competent authority concerned have been concluded – see below) alongside a statement whether the request is accepted or declined, the latter including a specification of the reasons for such decline.
- Notify in writing the other competent authority concerned of the MAP request within 30 days from the date of receipt of the request (or receipt of additional

information, if requested), including: (i) the identification of the taxpayer, (ii) a description of the case put forward by the taxpayer.

39. Where Malta’s competent authority intends to deny access to MAP on the basis that the objection raised in the MAP request is not justified, Malta reported that its competent authority is instructed to inform the other competent authority concerned of the reason(s) leading to the consideration of rejecting the MAP request, thereby inviting the latter to give his opinion on the specific MAP request.

40. In view of the above, Malta’s MAP Guidance, in the chapter “Considerations by the Competent Authority upon receiving a MAP request”, also describes the above process. Furthermore, this chapter also includes a description of the requirements that need to be fulfilled for an objection to be considered as being justified. This concerns: (i) reasonable grounds upon which a taxpayer wishes to seek assistance from Malta’s competent authority, (ii) a timely filed MAP request and, in case of double taxation, (iii) a probability of occurrence of such taxation rather than a mere possibility.

Practical application

41. Malta reported that since 1 January 2015 there has been no decision by its competent authority for any of the MAP requests it received that the objection raised by taxpayers in such request as being not justified. The 2016 and 2017 MAP statistics submitted by Malta also show that none of its MAP cases was closed with the outcome “objection not justified”.

42. All peers that provided input indicated not being aware of any cases for which Malta’s competent authority denied access to MAP.

Anticipated modifications

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

Conclusion

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

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

Jurisdictions should provide access to MAP in transfer pricing cases.

44. Where two or more tax administrations take different positions on what constitutes arm’s length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner’s transfer pricing adjustment, with a view to eliminating the economic double taxation that

may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

45. Out of Malta's 76 tax treaties, 66 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, six tax treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). For the remaining four treaties the following analysis is made:

- One tax treaty does not contain in its entirety a provision that is based on Article 9 of the OECD Model Tax Convention (OECD, 2015a) with regard to associated enterprises.
- One tax treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but which does not contain the last part of the second sentence that allows competent authorities to consult each other where necessary.
- Two tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but whereby a corresponding adjustment is only optional, as the phrase "... shall make an appropriate adjustment" is replaced by "may make an appropriate adjustment".

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

47. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Malta's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Malta indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. In addition, Malta's MAP Guidance explicitly states in the chapter "MAP: How does it work" that access to MAP is granted among others for matters related to (a) transfer pricing adjustments and (b) attribution of profits to a permanent establishment. Furthermore, Malta's internal instructions for staff in charge of MAP also explain that MAP officers have to grant access to MAP in cases of economic double taxation, even if Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is not included in a specific tax treaty. In that regard, Malta reported that it will also grant access in transfer pricing cases related to the one tax treaty identified above that does neither contain Article 9 of the OECD Model Tax Convention (OECD, 2015a), such based on the MAP provision in Article 25 of that tax treaty.

Application of legal and administrative framework in practice

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

49. All peers that provided input indicated not being aware of a denial of access to MAP by Malta since 1 January 2015 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

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

51. Malta has, pursuant to Article 17(3), not reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the ten tax treaties identified in paragraph 45 above that are considered not to contain this equivalent, Malta listed nine treaties as a covered tax agreement under the Multilateral Instrument and for one did it make a notification on the basis of Article 17(4) that it does contain a provision described in Article 17(2). With regard to this treaty, the treaty partner has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that their treaty with Malta already contains the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, not replace the provisions in this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). With regard to the remaining eight treaties, one treaty partner is not a signatory to the Multilateral Instrument, and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that its treaty with Malta already contains the equivalent of Article 9(2). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede the remaining six 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]	Malta reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Malta is therefore recommended to follow its policy and grant access to MAP in such 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.

52. 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

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

54. Malta reported that it will provide access to MAP in cases relating to the application of a treaty anti-abuse provision or for cases concerning the question whether the application of the domestic anti-abuse provision comes into conflict with the provision of a tax treaty. In this respect, Malta’s MAP Guidance specifically addresses in the chapter “MAP: How does it work?” that access to MAP has to be granted 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 treaty anti-abuse have been met or whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

Practical application

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

56. All peers that provided input indicated not being aware of cases that have been denied access to MAP in Malta since 1 January 2015 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

57. Malta did not indicate that it anticipates any modifications in relation to element B.4.

Conclusion

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

58. 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

59. Malta reported that under its domestic law it is possible that taxpayers and the tax administration enter into settlement agreements. In this respect, Malta specified that it operates a self-assessment taxation system, whereby the Commissioner for Revenue can challenge the taxpayer's self-assessment by launching an investigation. In case the Commissioner disagrees with the initial self-assessment, it will issue a formal assessment on the basis of Article 33(4) of the Income Tax Management Act. If the taxpayer agrees to this formal assessment, it will become final. If the taxpayer disagrees with the assessment, it has the right to object to this formal assessment within 30 days. In such a situation discussions between the Commissioner and the taxpayer may continue, possibly resulting in a settlement agreement. If a settlement could be reached the Commissioner will issue a revised formal assessment, which then becomes final.

60. While the above system allows taxpayers and Malta's tax administration to enter into settlements agreements, these agreements may reflect a settlement after an audit has been conducted, but do not per se entail an audit settlement in the meaning of element B.5.

Regardless hereof, Malta reported that it grants access to MAP in cases where a (audit) settlement was entered into between the taxpayer and the tax administration. However, Malta further indicated that its competent authority is not able to deviate from a final and conclusive tax assessment, which results from a settlement agreement. In these cases the possible resulting taxation not in accordance with the convention can only be fully eliminated if the competent authority of the treaty partner adopts Malta's position.

Administrative or statutory dispute settlement/resolution process

61. Malta 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

62. Malta reported that it has not denied access to MAP since 1 January 2015 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.

63. All peers that provided input indicated not being aware of a denial of access to MAP in the assessed jurisdiction since 1 January 2015 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

64. Malta did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

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

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

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

65. 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

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

67. Malta reported that where taxpayers do not include all the required information and/or documentation in their MAP request, its competent authority, as a matter of administrative practice, will request outstanding information from the taxpayer. The taxpayer is given a timeframe of at least 30 days as from the date of the request to provide this information. If the taxpayer does not provide the requested information within this 30 day period, a reminder will be sent allowing the taxpayer a further ten days to submit the information. The taxpayer is allowed to request an extension of both deadlines, if adequate justification is given. In cases where the information is not provided even after the taxpayer has been reminded, Malta’s competent authority will consider the MAP request as not being timely submitted and will inform the taxpayer about its decision.

68. In view of the above, Malta’s MAP guidance, in chapter “Considerations by the Competent Authority upon receiving a MAP request”, explicitly notes that where a taxpayer has complied with the information requirements in its MAP request, Malta’s competent authority will not deny access to MAP on the basis that insufficient information was provided.

Practical application

69. Malta reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation required requirements as set out in its MAP guidance. It further reported that since 1 January 2015 its competent authority has not denied access to MAP for cases where the taxpayer had not provided the required information or documentation.

70. All peers that provided input indicated not being aware of a limitation of access to MAP by Malta since 1 January 2015 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

71. Malta did not indicate that it anticipates any modifications in relation to element B.6.

Conclusion

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

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

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

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

Current situation of the Malta's tax treaties

73. Out of Malta's 76 tax treaties, 71 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining five tax treaties do not contain such a provision at all.

Anticipated modifications

Multilateral Instrument

74. Malta signed the Multilateral Instrument. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to 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, 2015a).

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

Bilateral modifications

76. Malta further reported that for the one tax treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update it via

bilateral negotiations with a view to be compliant with element B.7. In this regard, Malta reported that it intends to initiate communications with that treaty partner in 2018 with a view to commence and finalise necessary treaty negotiations by the end of 2019. In addition, Malta reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future tax treaties.

Peer input

77. Of the peers that provided input, four indicated that their tax treaty with Malta is in line with the requirements under element B.7, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element B.7, the relevant tax treaty is already in line with the requirements under this element.

78. For the five tax treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant treaty partners did not provide peer input.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Malta 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 four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Malta should follow up on its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>

[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.

79. 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.

Malta's MAP guidance

80. In December 2017 Malta has issued guidelines for the mutual agreement procedure (“MAP Guidance”) on the basis of Article 96(2) of the Income Tax Act, which is legally binding on Malta’s competent authority. This guidance is available at:

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

81. This guidance applies to tax treaties it entered into as well as the EU Arbitration Convention. The MAP Guidance further notes that Malta also applies the rules included in the Code of Conduct to the EU Arbitration Convention.¹ In more detail, the guidance contains information on:

- a. description of Malta’s competent authority and its function, and a link to the contact information of this competent authority
- b. explanation of the MAP process
- c. examples of cases for which taxpayers can request MAP, which *inter alia* concern: transfer pricing cases, application of anti-abuse provisions and audit settlements
- d. the manner and form in which the taxpayer should submit its MAP request
- e. the specific information and documentation that should be included in a MAP request (see further below)
- f. how the MAP functions in terms of timing, process and the role of the competent authorities
- g. relationship with domestic available remedies
- h. implementation of MAP agreements
- i. rights and role of taxpayers in the process
- j. suspension of tax collection
- k. consideration of interest during the period a MAP case is pending
- l. confidentiality of information during the MAP process.

82. The MAP guidance of Malta described above includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request. Although the information included in Malta’s MAP guidance is detailed and comprehensive, some subjects are not specifically addressed. This concerns information on:

- whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments
- whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- the consideration of penalties in MAP
- the timing of the 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

83. Malta has included in its MAP guidance information on how taxpayers should submit a MAP request and in what form and manner it should submit this request. In section “Making a request for MAP” is stated that taxpayers have to formally and in writing request for a MAP to be initiated. Where it concerns multiple taxpayers, or multiple cases, the MAP Guidance notes that for each taxpayer or case a separate MAP request has to be submitted. Furthermore, the guidance in that chapter also addresses that taxpayers are encouraged to promptly and simultaneously submit all supporting material to both competent authorities concerned, such to enable the expeditious resolution of their MAP cases.

84. 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.² This agreed guidance is shown below. Malta’s MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

85. Further to the above, Malta’s MAP Guidance divides the minimum information requirements for a MAP request into general information to be provided (Section A) and additional information to be provided for transfer pricing cases (Section B).

86. Concerning section A, Malta requires that the minimum information shown above as agreed by the FTA MAP Forum be submitted and in addition also requires the following minimum information:

- date of the taxpayer’s MAP request
- a signed statement from the taxpayer that a representative is authorised to act for the taxpayer in submitting the MAP request (if applicable)
- in the case of withholding taxes:
 - a. full names, surname, address and contact details of the person levying the withholding tax
 - b. the taxpayer reference number of the person levying the withholding tax or was instructed to levy the withholding tax in the other jurisdiction concerned

- contact details of the foreign tax administration and/or branch office involved
- an identification of time limits in the relevant jurisdiction(s) and the applicable tax treaty in respect of the years for which relief is sought
- any copies of correspondence from the other tax administration, copies of letters, objections, etc., submitted in response to the action or proposed action by the other tax administration
- any other facts that the taxpayer may consider relevant
- supporting documentation:
 - a. schedule of the related amounts
 - b. all receipts of tax withheld
 - c. all relevant correspondence or dates, name(s) of person(s) with whom correspondence with the revenue authority took place.

87. Concerning section B, Malta's MAP Guidance s requires the following information to be provided in addition to the required general minimum information requirements listed above:

- details of the associated enterprises:
 - a. full names of the person
 - b. physical address of the person
 - c. contact details
 - d. if known, reference number of the person
- details regarding the (proposed) adjustment
 - a. calculations setting out the (proposed) adjustment
 - b. an indication of any specific issues raised by the foreign competent authority, other than those listed under the general section
- statements indicating whether:
 - a. the taxpayer has (i) filed for a refund claim, or (ii) entered into a settlement agreement in either of the jurisdictions concerned that is related to the relief sought
 - b. the taxpayer has made a prior request to the competent authority of either contracting state/party on the same or a similar matter
 - c. the MAP request involves issues that are currently or were previously considered by the tax authorities of either contracting state as part of: (i) an advance pricing arrangement, (ii) a ruling, or (ii) a similar mechanism
- a copy of any other relevant request by the competent authority of the other contracting state and the associated documents filed, or to be filed
- supporting documentation:
 - a. copies of the relevant related party agreements
 - b. copies of the transfer pricing policies or documentation of the related parties resident in Malta and in the treaty partner's state, whether at a group level or

at a company level and including copies of: (i) the financial statements of both related parties and (ii) the tax return of the party resident in Malta.

Anticipated modifications

88. Malta indicated that it currently has no intention update its MAP Guidance, but that depending on the outcome of its peer review, the guidance will be revised as soon as is practically possible.

Conclusion

	Areas for improvement	Recommendations
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Malta could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the consideration of penalties in MAP • the timing of the 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.

89. 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.³

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

90. The MAP Guidance of Malta is published on the specific website of Malta’s tax administration and can be found at:

<https://cfr.gov.mt/en/inlandrevenue/itu/Documents/MAP%20Guidelines.pdf>

91. This guidance was last updated in December 2017. As regards its accessibility, the information on MAP is logically grouped within the Section for “International Taxation” on the website of the Malta Commissioner for Revenue (<https://cfr.gov.mt/en/Pages/Home.aspx>) and as such is easily accessible. It can also be easily found by searching on that website for “double taxation” or “mutual agreement procedure”.

MAP profile

92. The MAP profile of Malta is published on the website of the OECD. Its MAP Guidance also includes a link to this MAP profile. This MAP profile is almost complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate. It, however, requires several minor amendments. Specifically, as Malta reported to grant access to MAP in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law, the response to question 12 of the MAP profile should be changed, as it currently stipulates that access will not be granted in such cases. Furthermore, as Malta reported that penalties are not dealt with as part of a MAP, the response to question 21 of the MAP profile should be changed, as it currently stipulates that they are part of MAP proceedings.

Anticipated modifications

93. Malta did not indicate that it anticipates any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	The MAP profile requires clarification.	<p>Malta should clarify in its MAP profile:</p> <ul style="list-style-type: none"> • that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law • that penalties are not dealt with in MAP. <p>In addition, as it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Malta should ensure that its future updates to the MAP Guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>

[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.

94. 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

95. As previously discussed under B.5, it is under Malta’s domestic law possible that taxpayers and the tax administration enter into an agreement in the course of the finalisation of an assessment procedure, which can be after an audit has been finalised in Malta. The relationship between access to MAP and audit settlements is described in Malta’s MAP guidance in the chapters “MAP: How does it work?” and “Appeals Rights”, which clarifies that access to MAP will be granted in cases of an audit settlement.

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

96. As previously mentioned under element B.5, Malta 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 to address in the Malta’s MAP Guidance the effects of such process with respect to MAP.

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

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

98. As Malta 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

99. Malta did not indicate that it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. Revised Code of Conduct for the effective implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01). Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF> (accessed on 18 July 2018).

2. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
3. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

Part C

Resolution of MAP cases

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

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

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

Current situation of Malta’s tax treaties

101. Out of Malta’s 76 tax treaties, 71 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

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

- Three tax treaties omit the unilateral assessment of a MAP request by the competent authority of receipt (if “the objection appears to it to be justified”) and are therefore considered as being not equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).
- One tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “... provided that the competent authority of the other Contracting State is notified of the case within 4 (four) and a half years from the due date or the date of filing of the return in that other State, whichever is later”. Therefore, this tax treaty is considered not

being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

- One tax treaty contains the text of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but also contains additional language that limits the possibility to discuss cases bilaterally, as this additional language reads: “The mutual agreement procedure shall expire by the end of the third year following that in which the case was presented by the taxpayer”. Therefore, this tax treaty is considered not being equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

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

104. In regard of the five tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Malta listed four treaties as a covered tax agreement under the Multilateral Instrument, but only for one treaty did it make, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with Malta as a covered tax agreement and also made such a notification. Therefore, at this stage the Multilateral Instrument will, upon entry into force, modify one out of five tax treaties identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

105. Malta further reported that for the four tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this regard, Malta reported that it intends to initiate communications with one treaty partner in 2018 with a view to commence and finalise necessary treaty negotiations by the end of 2019. The tax treaty with a second jurisdiction requires significant amendments to be in line with several elements of the Action 14 Minimum Standard, including C.1. Malta reported having had informal discussions with this jurisdiction in the past and treaty negotiations may take place in 2019.

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

Peer input

107. Of the peers that provided input, three indicated that their tax treaty with Malta is in line with the Action 14 Minimum Standard, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element C.1. the relevant tax treaty already meets the requirements under this element

108. For the five tax treaties identified that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), none of the relevant treaty partners provided peer input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Malta should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Malta should follow up its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>

[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).

109. 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

110. Statistics regarding all tax treaty related disputes concerning Malta are published on the website of the OECD as of 2016.¹ Malta also publishes statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.²

111. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 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. Malta provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Malta and of which its competent authority was aware.³ The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively and should be considered jointly for an understanding of the MAP caseload of Malta – considering that Malta did not receive any post-2015 cases.

Monitoring of MAP statistics

112. Malta reported that it has an internal system in place to monitor progress of MAP cases. Given the small number of cases in Malta, an excel file is used to record and monitor pending MAP cases.

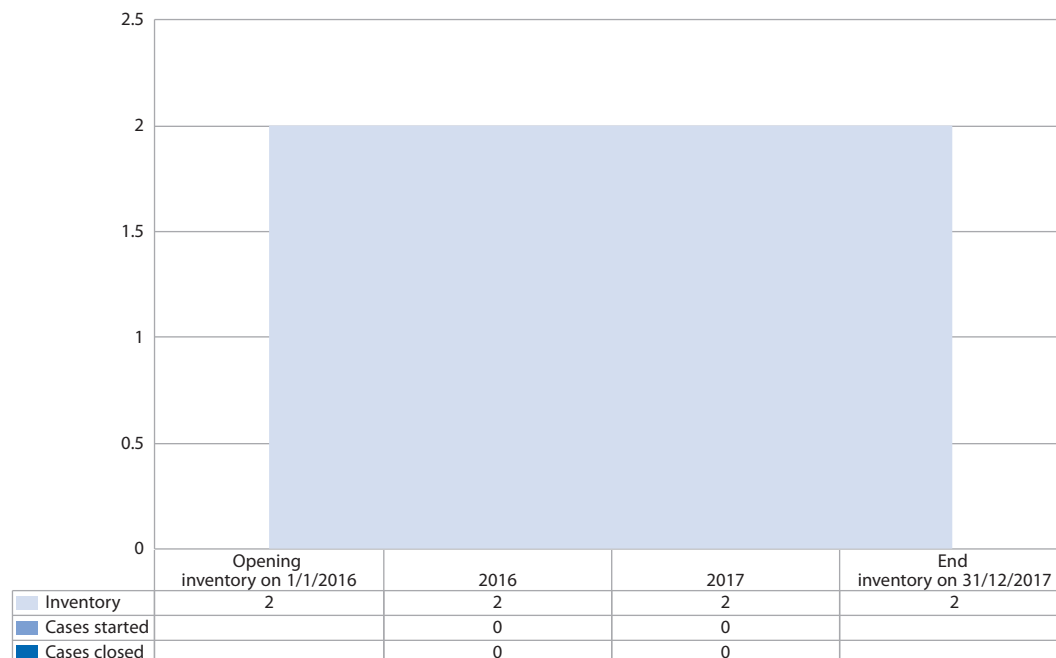
Analysis of Malta’s MAP caseload

Global overview

113. Malta’s MAP inventory did not change over the Statistics Reporting Period. Figure C.1 shows its MAP caseload.

114. At the beginning of the Statistics Reporting Period Malta had two pending MAP cases, which all concerned other MAP cases.⁴ Since 1 January 2016 no MAP cases were received, and as no MAP cases were resolved the end inventory as of 31 December 2017 remained the same.

Figure C.1. Malta’s MAP caseload



All cases closed during the Statistics Reporting Period

115. There were no MAP cases closed during the Statistics Reporting Period. For the purpose of computing the average time needed to resolve pre-2016 cases, Malta reported that it will use the following dates:

- *Start date*: either the date of filing the MAP request by the taxpayer or the date of notification from the other competent authority
- *End date*: date of the last of the letters exchanged between the competent authorities concerning the resolution of the case.

Peer input

116. The peer input in relation to resolving MAP cases will be discussed under element C.3.

Anticipated modifications

117. Malta did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Malta submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Malta's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

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

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

118. 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 Malta's competent authority**Organisational structure*

119. Under Malta's tax treaties the competent authority is the Minister responsible for finance or his authorised representative. Regulation 8 of the Cooperation with Other Jurisdictions on Tax Matters Regulations (Legal Notice 295 of 2011) specifies that an authorised representative shall be the competent official that is identified as such and whose name and designation are published on the website of the Inland Revenue Department. In practice, the authorised representative is the Director General, Legal and International within Malta's Revenue, which acts as the delegated competent authority in handling MAP cases. Malta reported that this person has extensive experience in international tax and transfer pricing matters and is responsible for handling all MAP cases (allocation/attribution cases as well as other cases).

120. Malta reported that given its limited number of MAP cases (zero to three per year), it has not established a dedicated MAP office that functions as competent authority. The actual case handlers are usually personnel within the International Tax Unit of Malta's tax administration that deal with international tax matters in their day-to-day business, including personnel involved in the interpretation of tax treaties, the negotiations of such treaties and the administration thereof (e.g. for exchange of information purposes). Overall, this involves a pool of five to six persons that are involved in handling MAP cases. However, due to the limited number of MAP cases, Malta reported the case handlers have little experience in handling such cases as well.

121. Concerning of the funding of its competent authority, Malta reported that this is provided as part of the budget of the Ministry of Finance, which includes funding for training and travel abroad for MAP negotiations, if required.

Handling MAP cases

122. Malta reported it has issued an internal instruction note for staff handling MAP cases, which contains basic information on the legal basis of MAP cases, Malta's policy in relation to MAP and a general outline of the MAP process and related subjects (e.g. relationship with domestic available remedies). It further includes specific instructions for staff on: (i) what steps they need to follow in reviewing a submitted MAP requests and any subsequent actions, (ii) the preparation of a position paper and (iii) what steps they need to follow when a MAP agreement is reached or where the MAP case is closed in the absence of an agreement.

123. In handling MAP cases, Malta reported that after submission of a MAP request to Malta's competent authority, the case will be assigned to a case handler by the Director General, Legal and International. This case handler is then the main responsible person and will work closely with the Director General to resolve the case. As a first step the case handler acknowledges receipt of the MAP request to the taxpayer in writing and, where possible, within 30 days of receipt of the MAP request. This notification will include a statement whether the request has been accepted or rejected, including the reasons for such a decision. If further information is required, this will be requested within 30 days of receipt of the MAP request. Upon receipt of all minimum information the case handler will decide in close co-operation with the Director General whether the MAP request will be accepted or rejected. Also the other competent authority will be informed in writing about the submission of a MAP request.

124. Malta further reported that its competent authority first aims at resolving the case unilaterally. Where this is not possible, the subsequent aim is to send a position paper to the other competent authority involved within 180 days after the receipt of a (complete) MAP request. In that regard, Malta noted it endeavours to resolve the case within an average of 24 months as from the date of the acceptance of the MAP request. Furthermore, it mentioned that each 90 days a status update will be made to the other competent authority concerned. This process is also reflected in its MAP Guidance, in the chapter "Commencing and Conducting the MAP". Concerning the issuing of a position paper, the MAP guidance noted that where such a paper cannot be issued within the targeted 180 days, Malta's competent authority will inform the other competent authority concerned hereof in writing, including a specification of the reasons and an indication of the likely timeframe when the paper is expected to be issued.

125. In the process of resolving MAP cases, Malta reported that the case handler may consult with other personnel within Malta's tax administration, particularly when the

MAP case arises from an audit initiated by the Commissioner for Revenue. This to receive the reasons for the adjustment and copies of all relevant underlying documents. Also if it concerns a question of interpreting tax treaties, the International Tax Unit within Malta's Revenue may be requested to give guidance. Malta emphasised that such consultation is only for purposes to obtain the relevant information for the case under review and that Malta's position in a MAP case is always prepared by the case handler and authorised by the Director General. In relation hereto, Malta's MAP Guidance, in the chapter "The Functions of the Malta Competent Authority" explains Malta's position in handling and resolving MAP cases.

126. Where in a case a tentative MAP agreement is reached with the other competent authority concerned, Malta reported that the Director General, Legal and International decides on the approval of such tentative agreement.

Monitoring mechanism

127. Malta reported it monitors whether the current available resources for the competent authority function are adequate by analysing the amount of MAP requests, the time required for resolving MAP cases and the workload of MAP officers. In that regard, Malta noted that it considers that given the small number of MAP cases pending, the current available resources are considered adequate. If the workload related to MAP cases increase significantly in a permanent manner, Malta reported that the Commissioner for Revenue would request the addition of personnel and their training in MAP from the Ministry for Finance.

Practical application

MAP statistics

128. As discussed under element C.2 Malta did not close any MAP cases during the Statistics Reporting Period while it has two pre-2016 MAP cases pending.

Peer input

129. Given the very small number of MAP cases, only five peers provided input, two of which mentioned having experiences with Malta in handling MAP cases. Those two peers reported that contacts with Malta's competent authority are easy and with timely responses. One of the aforementioned peers indicated that it received promptly a notification letter and a position paper with regard to the pending case. Upon request, Malta also provided the actual application at a short notice to this peer.

130. In view of the above, none of the five peers that provided input made any suggestions for improvement of the resolution MAP cases in Malta.

Anticipated modifications

131. Malta indicated that it currently does not provide specific training to staff handling MAP cases, but that it intends to ensure that the relevant personnel will receive MAP training in 2018/2019 to gain knowledge on the MAP process. Such training will in Malta's view ensure that staff in charge of MAP is in a better position to be able to resolve issues in a more timely and principled manner.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Malta did not receive any post-2015 MAP case during the Review Period it was therefore at this stage not appropriate to evaluate whether Malta's competent authority is adequately resourced.	

[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.

132. 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

133. As discussed under element C.3, Malta reported that after receipt of a MAP request, the Director General, Legal and International, who acts as Malta's competent authority, attributes the MAP request to a specific case handler. This case handler is in charge of all steps of the MAP process under the supervision of this Director General. Where position papers are issued, the Director General, Legal and International has to approve it before it can be shared with the other competent authority concerned. The same applies when entering into MAP agreements.

134. In view of the above, Malta indicated that staff in charge of MAP in practices 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 nor is the process for negotiating MAP agreements influenced by policy considerations. The audit department is placed in the Directorate General, Compliance and Investigations, which is separated from the Directorate General, Legal and International. Furthermore, Malta reported that tax treaty policy falls within the competence of the Ministry of Finance, but that the Director General (Legal and International) is responsible for the negotiation of tax treaties. While the Ministry for Finance may ask for feedback in relation to tax treaty policy issues, Malta reported that final decisions concerning tax treaty policy remain with the Ministry for Finance and that MAP negotiations are not influenced by policy considerations.

135. Malta's MAP Guidance, in the chapter "The Functions of the Malta Competent Authority", explicitly clarifies that its competent authority 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.

Practical application

136. Peers generally reported no impediments in Malta 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 not being aware that staff in charge of the MAP in Malta is dependent on the approval of MAP agreements by the personnel within the tax administration that makes the adjustment under review.

Anticipated modifications

137. Malta did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

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

138. 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 the assessed jurisdiction

139. Malta reported that all staff members handling MAP cases are, like all government personnel, generally subject to an annual assessment of their performance, which will take into account the work on handling MAP cases. In this respect, staff members handling MAP cases are informed of the content of Malta's MAP Guidance and the targets set for resolving MAP cases that are assigned to them, which concern the timelines for the case. Furthermore, it will be evaluated whether the staff followed effectively and efficiently Malta's MAP Guidance as well as the quality, consistency, timeliness and confidentiality of the work. Malta further reported that the performance review is carried out by the direct superior of the staff, which is the Director International Taxation and subject to review by the Director General, Legal and International.

140. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are shown below and are for Malta presented in the form of a checklist:

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

141. Further to the above performance indicators, Malta reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Practical application

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

Anticipated modifications

143. Malta did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

144. 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

145. Malta reported that it has no domestic law limitations for including MAP arbitration in its tax treaties and that its tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties. In that regard, Malta reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁵

Pursuant to Article 26(4) Malta reserved the right not to apply part VI to two of the five tax treaties mentioned below that already provide for a mandatory and binding arbitration procedure. In addition, Malta is a signatory to the EU Arbitration Convention.

Practical application

146. Up to date, Malta has incorporated an arbitration clause in five of its 76 tax treaties as a final stage to the MAP. The arbitration clause in four of these five treaties is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2015a). The fifth tax treaty contains in a protocol a most-favoured nation clause with regard to arbitration. It stipulates that an arbitration procedure equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2015a) will be added to the tax treaty on the moment an arbitration provision between Malta and a third state is concluded after the date of signature of the protocol to this specific tax treaty. Malta indicated that the requirements under this most-favoured nation clause are fulfilled, following which an arbitration procedure is in effect under this treaty. Malta further reported that it has entered into negotiations with the respective treaty partner and agreed to include an arbitration clause that is based on the provision in the Multilateral Instrument into this tax treaty.

Anticipated modifications

147. Malta did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). These statistics are up to and include fiscal year 2016.
3. Malta's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B.
4. For pre-2016 and post-2015 Malta 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)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015)), which is also known as a transfer pricing MAP case".
5. An overview of the assessed jurisdiction's position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-malta.pdf.

References

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review Documents*, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 18 July 2018).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en> (accessed on 18 July 2018).

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

148. 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

149. Malta reported that where the underlying tax treaty does contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), it will implement all MAP agreements notwithstanding its domestic time limits. Where such equivalent is not contained, the implementation of MAP agreements, entailing a downward adjustment to be made in Malta is limited by its domestic statute of limitation. In this respect, Article 13(4) of Malta’s Income Tax Management Act stipulates that taxpayer can only amend their self-assessed tax return within five years as from the end of the year following the fiscal year in which the tax became due. There is no domestic statute of limitation when the MAP agreement entails an upward adjustment.

150. Concerning the process of implementing MAP agreements, Malta reported that when competent authorities reach a MAP agreement, the taxpayer will be notified hereof within 30 days and is asked to give its consent. While this is not explicitly established in Malta’s domestic law, it reported that it will in practice adhere to a 30-day period for given such consent. Once the taxpayer has accepted the resolution and the competent authorities concerned have exchanged closing letters, Malta reported that the Commissioner for Revenue shall implement the MAP agreement. Where the MAP request was submitted following an investigation initiated by this Commissioner and which led to the issuance of a tax assessment, Malta reported that the MAP agreement will be implemented via a revision of that assessment. In other cases, Malta requests the taxpayer to submit a revision of the filed tax return to have the MAP agreement implemented.

151. In view of the above, the chapter “Concluding the MAP” of Malta’s MAP Guidance explains the process of implementing MAP agreements.

Practical application

152. Malta reported that there were no MAP agreements reached with another competent authority on or after 1 January 2015. Malta further indicated that it would monitor the implementation of MAP agreements, although so far it has no experience in this regard due to fact that no MAP agreements have yet been entered into.

153. Peers reported not being aware of MAP agreements that were reached on or after 1 January 2015 that were not implemented in Malta, which can be explained as no MAP agreement has been reached as of that date.

Anticipated modifications

154. Malta did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Malta implements all MAP agreements.	
[D.1]	As will be discussed under element D.3 not all of Malta'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 downwards adjustments in domestic law.	For future MAP agreements Malta should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.

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

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

155. 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

156. As discussed under element D.1, the actual implementation of MAP agreements in Malta is dependent on whether the MAP case was initiated following the issuing of a tax assessment by Malta's Commissioner for Revenue. Where this is the case, Malta reported the Commissioner will issue a revised tax assessment, for which Malta estimates that this process will take about three months. In other cases, the taxpayer is requested to file an amended tax return in order to alter the previous filed tax return. Malta reported that there is no specific timeline to file this amended tax return, but it should be done within its domestic statute of limitation of five years for downward adjustments. To enable MAP agreements to be implemented in such a situation, Malta reported that it informs taxpayers immediately about the requirement to file an amended tax return.

157. As explained under element B.8, Malta’s MAP Guidance does not specifically address the timing of the steps for the implementation of MAP agreements, including the requirement for taxpayers to file an amended tax return for MAP’s related to foreign initiated adjustments.

Practical application

158. Malta reported that there were no MAP agreements reached with another competent authority on or after 1 January 2015.

159. All peers that provided input have not indicated experiencing any problems with Malta regarding the implementation of MAP agreements reached on a timely basis, which can be explained as no MAP agreement was reached as of 1 January 2015.

Anticipated modifications

160. Malta did not indicate that it anticipates 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 Malta implements 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.

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

Legal framework and current situation of the assessed jurisdiction’s tax treaties

162. Out of Malta’s 76 tax treaties, 69 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. In addition, one tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but contains a provision in the MAP article setting a time limit for making primary adjustments, which is considered having both alternative provisions in Article 9(1) and Article 7(2). Furthermore, five tax treaties do not contain such equivalent or the alternative provisions in Article 9(1) and Article 7(2).

163. For the remaining tax treaty the following analysis is made:

- The tax treaty contains a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this tax treaty therefore is considered not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Anticipated modifications

Multilateral Instrument

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

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

Bilateral modifications

166. Malta further reported that the three tax treaties identified above that do neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this

regard, Malta reported that it has already received a notification with a proposal for a tax treaty amendment from one treaty partner, for which Malta expects to begin official treaty negotiations within the next six months. Malta additionally intends to initiate communications with the other three treaty partners in 2018 with a view to commence and finalise necessary treaty negotiations by the end of 2019. In addition, Malta reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future tax treaties.

Peer input

167. Of the peers that provided input, two indicated that their tax treaty with Malta is in line with the requirements under element D.3, which is consistent with the above analysis for this element. An additional peer stated in a general manner that both Malta and itself are signatories to the Multilateral Instrument and thus the tax treaty will be in line with the Action 14 Minimum Standard as soon as that instrument enters into force. With respect to element D.3. the relevant tax treaty already meets the requirements under this element.

168. For the six tax treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or the alternatives in Articles 9(1) and 7(2), one of the relevant treaty partners provided peer input and noted that its tax treaty with Malta is not in line element D.3.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Seven out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), but one treaty contains both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Malta 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 three treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining three treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Malta should follow up on its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, Malta 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.</p>

Reference

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

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	Two out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	<p>Malta should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>
[A.2]	<p>Malta is in theory able to extend bilateral APAs to previous fiscal years.</p> <p>Even though Malta received a request for roll-back of a bilateral APA during the Review Period, this request is still under consideration. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.</p>	
Part B. Availability and access to MAP		
[B.1]	<p>Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those five tax treaties:</p> <ul style="list-style-type: none"> • Three tax treaties do not contain the equivalent to Article 25(1), first sentence. • Two 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. 	<p>Malta 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. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. as amended in the final report of Action 14 (OECD, 2015b); or b. as it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Malta should follow up on its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.2]	There is a documented process in place to consult the other competent authority in cases where the objection raised in the MAP request was considered as being not justified. However, it was not possible to assess whether the consultation process is applied in practice because during the Review Period no such cases have occurred in Malta.	

	Areas for improvement	Recommendations
[B.3]	Malta reported it will give access to MAP in transfer pricing cases. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Malta is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4]	Malta 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. Malta is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Malta reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Malta is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.6]	-	As Malta has thus far not limited access to MAP in eligible cases when taxpayers have complied with Malta's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Malta 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 four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Malta should follow up on its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Malta could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments • whether taxpayers can request for the multi-year resolution of recurring issues through MAP • the consideration of penalties in MAP. <p>The timing of the steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</p>
[B.9]	The MAP profile requires clarification.	<p>Malta should clarify in its MAP profile:</p> <ul style="list-style-type: none"> • that it grants access to MAP where the issue under dispute has already been decided via the judicial and administrative remedies provided by its domestic law • that penalties are not dealt with in MAP. <p>In addition, as it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Malta should ensure that its future updates to the MAP Guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.</p>
[B.10]	-	-

	Areas for improvement	Recommendations
Part C. Resolution of MAP cases		
[C.1]	Five out of 76 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Malta should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Malta should follow up its stated intention to request the inclusion of the required provision in the envisaged bilateral negotiations.</p> <p>In addition, Malta should maintain its stated intention to include the required provision in all future tax treaties.</p>
[C.2]	Malta submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Malta's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	As Malta did not receive any post-2015 MAP case during the Review Period it was therefore at this stage not appropriate to evaluate whether Malta's competent authority is adequately resourced.	
[C.4]	-	As it has done thus far, Malta 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 Malta would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Malta should continue to use appropriate performance indicators.
[C.6]	-	-
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 Malta implements all MAP agreements.	
	As will be discussed under element D.3 not all of Malta'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 downwards adjustments in domestic law.	For future MAP agreements Malta should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Malta implements all MAP agreements on a timely basis	

Annex A

Tax treaty network of Malta

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

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Art. 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.3	B.4	Art. 25(2) of the OECD MTC	Art. 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	Arbitration								
Austria	Y	N/A	O	Y	N/A	i***	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							
Bahrain	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Barbados	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Belgium	Y	N/A	N**	Y	N/A	i***	i	Y	N**	N**	N**	N	N/A							
Botswana	N	02-10-2017	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i							
Bulgaria	Y	N/A	N	i	N/A	i	i	N	Y	Y	Y	N	N/A							
Canada	Y	N/A	O	ii**	2 years	i	i	Y	iii	Y	Y	N	N/A							
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Croatia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A							
Curacao	N	18-11-2015	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i							
Cyprus*	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Czech Republic	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Denmark	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Egypt	Y	N/A	O**	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A							

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.3	B.4	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	Arbitration									
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) of the OECD MTC	Anti-abuse	Article 25(2) of the OECD MTC	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)										
Finland	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
France	Y	O**	Y	N/A	i	i***	Y	Y	N**	Y	N	N/A								
Georgia	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Germany	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Greece	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Guernsey	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Hong Kong (China)	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Hungary	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Iceland	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
India	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Ireland	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Isle of Man	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Israel	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Italy	Y	N	Y	N/A	i	i***	Y	Y	Y	Y	N	N/A								
Jersey	Y	O**	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								
Jordan	Y	O	Y	N/A	i	Y	Y	Y	Y	Y	N	N/A								

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.3	B.4	Article 25(2) of the OECD MTC	Article 25(2) of the OECD MTC	C.1	D.3	A.1	B.7	Arbitration								
Korea	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Kuwait	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Latvia	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Lebanon	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Libya	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Liechtenstein	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	i	
Lithuania	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Luxembourg	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Malaysia	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Mauritius	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Mexico	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	N**	N	N	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Moldova	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	Y	i	
Montenegro	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Morocco	Y	N/A	O	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Netherlands	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	
Norway	Y	N/A	O**	Y	N/A	Y	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion Art. 25(2) first sentence? (Note 3)	Y	Y	Y	Inclusion Art. 25(3) first sentence? (Note 5)	Y	Y	Y	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N	N/A	

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Y	N/A	O**	i	N/A	i***	i	Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(2) first sentence? (Note 5)	Inclusion Art. 25(2) second sentence? (Note 6)	Y	N**	Y	N**	Y	N
Pakistan	Y	N/A	O**	i	N/A	i***	i	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Y	N**	Y	N**	Y	N	N/A
Poland	Y	N/A	O	Y	N/A	Y	Y			N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Qatar	Y	N/A	O	Y	N/A	i	Y			Y	N	Y	Y	Y	Y	Y	Y	Y	N	N/A
Romania	Y	N/A	O	Y	N/A	Y	Y			N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Russia	Y	N/A	O**	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
San Marino	Y	N/A	O	il**	2 years	Y	Y			N	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Slovenia	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
South Africa	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	O	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Sweden	Y	N/A	O**	Y	N/A	Y	Y			Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Switzerland	Y	N/A	O	Y	N/A	Y	Y			Y	N	Y	Y	Y	Y	Y	Y	Y	Y	i

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6												
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) if no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Inclusion arbitration provision?										
Syrian Arab Republic	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A									
Tunisia	Y	O**	Y	Y	i	Y	Y	Y	Y	N	N/A									
Turkey	Y	O**	Y	Y	i	Y	Y	Y	Y	N	N/A									
Ukraine	Y	O	Y	Y	i	Y	Y	Y	N	N	N/A									
United Arab Emirates	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A									
United Kingdom	Y	O**	i	Y	i	Y	N**	Y	N**	N	N/A									
United States	Y	E	i	Y	i	Y	Y	Y	Y	N	N/A									
Uruguay	Y	O**	Y	Y	i	Y	Y	Y	Y	N	N/A									
Viet Nam	Y	O	Y	Y	i	Y	Y	Y	Y	N	N/A									

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

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

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

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

Annex B

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

2016 MAP Statistics														
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 12
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	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	2	0	0	0	0	0	0	0	0	0	0	2	0.00	
Total	2	0	0	0	0	0	0	0	0	0	0	2	0.00	

Note: Malta reported in the published MAP statistics for 2016 two attribution/allocation cases. However, these MAP cases were incorrectly classified and are in fact two other cases. This peer review report reflects the correct classification of these MAP cases.

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		
		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12
		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				
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	2	0	0	0	0	0	0	0	0	0	0	0	2	0.00	
Total	2	0	0	0	0	0	0	0	0	0	0	0	2	0.00	

Annex C

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

Malta does not have any post-2015 MAP cases as it did not receive any MAP requests on or after 1 January 2016.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP Guidance	Mutual Agreement Procedure – Guidelines issued under the provision of Article 96(2) of the Income Tax Act
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 2015 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Malta (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 Malta, which is accompanied by a document addressing the implementation of best practices which can be accessed on the OECD website: <http://oe.cd/bepsaction14>.

Consult this publication on line at <https://doi.org/10.1787/9789264304321-en>.

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