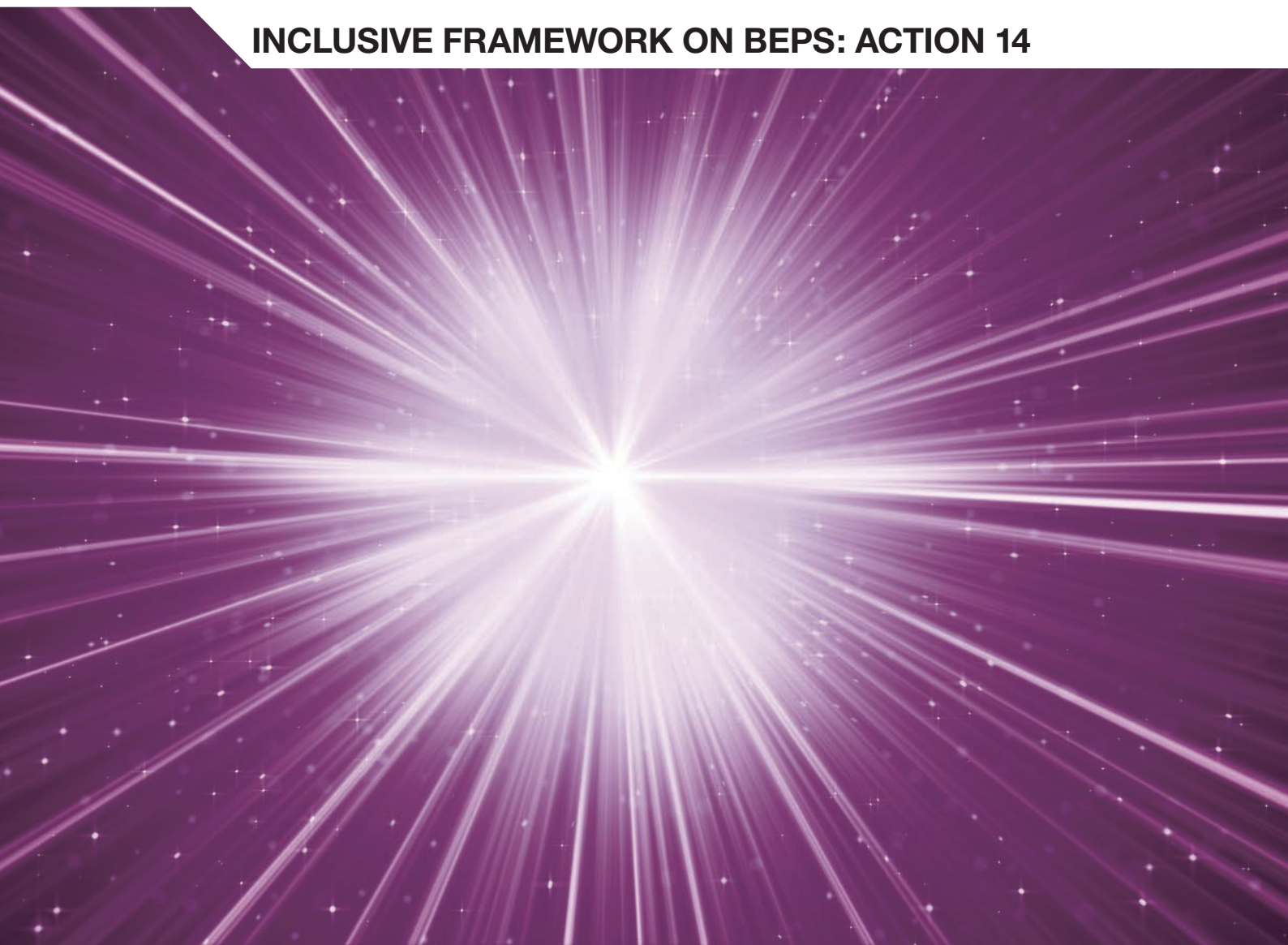


**OECD/G20 Base Erosion and Profit Shifting
Project**



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14



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Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

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

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

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

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Abbreviations and acronyms

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

Executive summary

1. Estonia has a relatively large tax treaty network with just over 60 tax treaties and it has signed and ratified the EU Arbitration Convention. Estonia has limited experience with handling and resolving MAP cases. It has a very small MAP inventory, with a very small number of new cases submitted each year and four cases pending on 31 December 2017. All these cases concern other MAP cases. Overall Estonia meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Estonia is working to address them.

2. All of Estonia'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_[1])*. Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Almost 10% of its tax treaties contain neither 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; and
- Almost 10% of its tax treaties do not contain the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015_[1]) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

3. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Estonia needs to amend and update a certain number of its tax treaties. In this respect, Estonia has very recently 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, Estonia reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations, but has not yet put a plan in place.

4. Estonia in principle meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. This APA programme also enables taxpayers to request rollbacks of bilateral APAs. However, no such cases have occurred during the period of review.

5. Estonia also meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Estonia's policy is to provide access to MAP in all eligible cases, although it has not received any MAP requests since 1 January 2016. It further does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the

objection raised by taxpayers in a MAP request as not justified. While Estonia has published clear guidance on the availability of MAP and how it applies this procedure in practice, its MAP profile needs further clarification in this respect.

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

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2017	Average time to close cases (in months)
Attribution/allocation cases	0	0	0	0	N/A
Other cases	0	5	1	4	6.00
Total	0	5	1	4	6.00

7. The number of cases Estonia closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased as compared to its inventory as per 1 January 2016, although it remains limited. During the Statistics Reporting Period, Estonia's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was six months, following which Estonia's competent authority is considered to be adequately resourced.

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

9. Lastly, as Estonia did not enter into any MAP agreements in 2016 or 2017, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

Introduction

Available mechanisms in Estonia to resolve tax treaty-related disputes

10. Estonia has entered into 61 tax treaties on income (and/or capital), 58 of which are in force.¹ These 61 treaties apply to 61 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, six of the 61 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

11. Furthermore, Estonia 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 addition, Estonia also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. This directive needs to be implemented in Estonia's domestic legislation as per 1 July 2019.⁴

12. In Estonia, the competent authority function to handle MAP cases is assigned to the Minister of Finance, who has delegated the function to Estonia's Tax and Customs Board. The Ministry of Finance remains competent to handle interpretative MAP cases of a general nature. Two people within the Tax Department and one person in the Legal Department of Estonia's Tax and Customs Board are responsible for handling MAP cases. In addition to handling MAP cases, these persons are also involved in other tasks, such as day-to-day assistance to taxpayers. Within the Ministry of Finance, one person is involved in handling MAP cases of a general nature.

13. Estonia issued guidance on the governance and administration of the mutual agreement procedure ("MAP") in May 2018, which is available in both English and Estonian:

<https://www.emta.ee/eng/business-client/income-expenses-supply-profit/international-agreements/resolution-disputes-resulting>

Recent developments in Estonia

14. Estonia reported it is currently conducting, or is in the process of finalising, tax treaty negotiations with Bosnia and Herzegovina, Oman, Pakistan and Tajikistan. Estonia has signed new treaties with Japan (2017) and Morocco (2013), which have not yet entered into force although Estonia has already ratified both treaties. Furthermore, on 29 June 2018 Estonia signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**Multilateral Instrument**"), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. As this signing was done after the end of the period of review (see below) it has not been taken into account in this peer review report.

Basis for the peer review process

15. The peer review process entails an evaluation of Estonia'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 and its peers. The questionnaires for the peer review process were sent to Estonia and the peers on 10 April 2018.

16. The period for evaluating Estonia's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 30 April 2018 ('**Review Period**'). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Estonia'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.

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

18. In total five peers provided input: Canada, Finland, Germany Switzerland and Turkey. These peers represent approximately 100% of post-2015 MAP cases in Estonia's inventory on 31 December 2017, albeit that only with two of these peers Estonia has MAP cases in its inventory. Some of these peers reported not having experience with Estonia in resolving MAP cases. For the peers that did have such experience, they indicated having a positive, albeit limited, experience in resolving MAP cases with Estonia.

19. Estonia provided informative answers in its questionnaire, which was submitted on time. Estonia 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, Estonia provided the following information:

- MAP profile⁵; and
- MAP statistics⁶ according to the MAP Statistics Reporting Framework (see below).

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

Overview of MAP caseload in Estonia

21. The analysis of Estonia'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 Estonia, its MAP caseload during this period was as follows:

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases closed	End Inventory 31/12/2017
Attribution/allocation cases	0	0	0	0
Other cases	0	5	1	4
Total	0	5	1	4

General outline of the peer review report

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

- A. Preventing Disputes;
- B. Availability and Access to MAP;
- C. Resolution of MAP cases; and
- D. Implementation of MAP agreements.

23. 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**”).⁷ Apart from analysing Estonia’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Estonia 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.

24. 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 Estonia 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 Estonia has entered into are available at: <https://www.emta.ee/eng/business-client/income-expenses-supply-profits/external-agreements/conventions-avoidance-double>. The treaties that are signed but have not yet entered into force are with Japan, Morocco and Russia. Reference is made to Annex A for the overview of Estonia’s tax treaties.

² This concerns treaties with Bahrain, Japan, Kyrgyzstan, Luxembourg, the Netherlands and Switzerland. Reference is made to Annex A for the overview of Estonia’s tax treaties that contain an arbitration provision.

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: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.

⁵ Available at: <http://www.oecd.org/tax/dispute/country-map-profiles.htm>.

⁶. The MAP statistics of Estonia are included in Annex B and C of this report.

⁷. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

Part A: Preventing disputes

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

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

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

Current situation of Estonia's tax treaties

2. All of Estonia's 61 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

Anticipated modifications

Bilateral modifications

3. As all of Estonia's tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), there is no need for modifications. In this respect, Estonia reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) in all of its future tax treaties.

Peer input

4. Several peers that provided input indicated that their tax treaty with Estonia is in line with the Action 14 Minimum Standard. Another peer mentioned that its treaty does not fully adhere to this standard, but that it has an intention to amend the treaty where needed via bilateral negotiations. As all of Estonia's treaties are in line with element A.1, the input does not regard this element.

Conclusion

Areas for Improvement	Recommendations
[A.1] -	Estonia 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.

5. 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.

Estonia’s APA programme

6. Estonia reported it is authorised to enter into bilateral APAs, for which the legal basis is the second sentence of Article 25(3), of the OECD Model Tax Convention (OECD, 2015^[1]) where it is included in Estonia’s tax treaties. In a more general sense, Estonia noted that it applies the rules set forth by the EU Joint Transfer Pricing Forum on APAs.² Furthermore, it reported that under its domestic law there are no specific rules concerning the allowance of bilateral APAs *inter alia* pertaining to timelines for taxpayers to file an APA request or to the years to be covered by such APAs, although bilateral APAs typically run for a period of between two to three years.

Roll-back of bilateral APAs

7. Although there is no specific rule in its domestic law, Estonia reported that upon request it is possible for taxpayers to obtain a roll-back of bilateral APAs. In that regard, a roll-back request should cover those fiscal years that are not earlier than those years that are normally available under the MAP process and the facts and circumstances underlying those years should be similar to the years that will be covered in a bilateral APA.

Practical application of roll-back of bilateral APAs

8. Estonia reported that since 1 January 2016 it has not received any requests for bilateral APAs nor has it received any requests for roll-back of such APAs.

9. Peers indicated not having received any request for bilateral APAs nor for roll-back of such APAs involving Estonia.

Anticipated modifications

10. Estonia indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for Improvement	Recommendations
[A.2]	Estonia is in theory able to provide for roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Estonia did not receive any request for roll-back of bilateral APAs during the Review Period.	

Notes

¹ This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

² Available at:

http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/sec%282007%29246_en.pdf.

Reference

- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

Part 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.

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

Current situation of Estonia's tax treaties

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

12. Out of Estonia's 61 tax treaties, 56 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report (OECD, 2015_[2]), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, two of Estonia's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), as changed by the Action 14 final report (OECD, 2015_[2]) and allowing taxpayers to submit a MAP request to the competent authority of either state.

13. The remaining three 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, 2015 ^[1]) as it read prior to the adoption of the Action 14 final report (OECD, 2015 ^[2]), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request.	1
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[1]) as it read prior to the adoption of the Action 14 final report (OECD, 2015 ^[2]), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	2

14. The treaty mentioned in the first row of the table above contains a provision in the protocol to this tax treaty, which reads

“With reference to paragraph 1 of Article 25, the expression ‘irrespective of the remedies provided by the domestic law’ means that the mutual agreement procedure is not alternative with the national contentious proceedings which shall be, in any case, preventively initialled, when the claim is related with an assessment of the taxes not in accordance with this Convention”

15. Pursuant to this provision, a domestic procedure has to be initiated concomitantly with 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, 2015^[1]) as it read prior to the adoption of the final report on Action (OECD, 2015^[2]). This tax treaty is therefore considered not to be in line with this part of element B.1.

16. Furthermore, the two treaties mentioned in the second row of the table above are considered to not have a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) as it read prior to the adoption of the Action 14 final report (OECD, 2015^[2]), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, the non-discrimination provision of both treaties only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident, both treaties are considered to be in line with element B.1.

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

17. Out of Estonia’s 61 tax treaties, 58 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

18. The remaining three 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	1
Filing period less than three years for a MAP request (2-years)	2

Practical application

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

19. As noted in paragraphs 13 and 14 above, in all but one of Estonia's tax treaties taxpayers can file a MAP request irrespective of domestic remedies. In this respect, Estonia reported that where a taxpayer seeks to resolve the case first by applying these domestic remedies, access to MAP will be given, even though its competent authority is bound by decisions of its courts. This position is, however, not clarified in Estonia's MAP guidance, which states generally that it would usually be wise to suspend domestic remedies if the MAP process has already commenced and that it is not possible to demand that MAP is prioritised relative to domestic remedies.

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

20. With respect to the one treaty identified in paragraph 18 above that does not contain a filing period for MAP requests, Estonia reported that its domestic law does not specifically set a filing period for MAP requests in the absence of such period in a tax treaty. In a general sense, Estonia clarified that the ordinary period for assessing a taxpayer's tax position is, pursuant to Article 98(1) of Estonia's Taxation Act, three years as from the date for the submission of the tax return. In the event of an intentional failure to pay or withhold a tax, this period is five years. Where a MAP request would under this treaty be filed after this timeframe, Estonia reported that it would still take the case into account to allow the other competent authority concerned to eliminate the taxation not in accordance with the provisions of the tax treaty.

Anticipated modifications

Bilateral modifications

21. Estonia reported that it intends to sign the Multilateral Instrument, which it has done in June 2018, and that it will list all of its tax treaties under that instrument that are not in line with the BEPS minimum standards. In that regard, Estonia expects that a significant number of treaties will be modified with a view to be in line with the Action 14 Minimum Standard. When those tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]) will not be modified via that instrument, Estonia intends to update them via bilateral negotiations with a view to be compliant with element B.1. Estonia noted that it will approach its treaty partners in due time to give effect to this intention, but does not, however, have a plan in place for such negotiations.

22. With respect to the first sentence of Article 25(1), Estonia reported that it will propose to include the equivalent as it read after the adoption of the final report on Action 14 (OECD, 2015^[2]) during such bilateral negotiations.

Peer input

23. Several peers indicated that their tax treaties with Estonia are in line with this element.

24. For the two treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]), the relevant peer did not provide specific input.

Conclusion

Areas for Improvement	Recommendations
<p>[B.1] Three out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]). Of those three tax treaties:</p> <ul style="list-style-type: none"> ○ One tax treaty does 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>Where treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. 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, 2015^[1]) either: <ol style="list-style-type: none"> a) as amended in the final report on Action 14 (OECD, 2015^[2]); and, b) 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>To this end, Estonia should put a plan in place on how it envisages updating these three treaties to include the required provision, insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia 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).

25. 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

26. As discussed under element B.1, out of Estonia's 61 treaties, two currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) as changed by the Action 14 final report (OECD, 2015^[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

27. For the remaining treaties that do not contain such equivalent, Estonia reported that it has not introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Estonia's competent authority considers the objection in the MAP request to not be justified.

Practical application

28. Estonia reported that since 1 January 2016 it did not receive any MAP requests from taxpayers and therefore there were no such cases where its competent authority considered the objection raised by the taxpayer as not being justified. The 2016 and 2017 MAP statistics submitted by Estonia also show that none of its MAP cases were closed with the outcome "objection not justified".

29. All peers that provided input indicated not being aware of any cases for which Estonia's competent authority denied access to MAP. They also reported not having been consulted / notified of a case where Estonia's competent authority considered the objection raised in a MAP request as not justified. This can be explained by the fact that Estonia did not receive a MAP request since 1 January 2016.

Anticipated modifications

30. Estonia indicated that it will consider introducing a bilateral notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified. As will be discussed under element B.8, this process will be reflected in Estonia's updated MAP guidance for which an update is envisaged by September 2018.

Conclusion

	Areas for Improvement	Recommendations
[B.2]	59 of the 61 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) as changed by the Action 14 final report (OECD, 2015 _[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties, no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Estonia should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) as amended by the final report on Action 14 (OECD, 2015 _[2]).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

31. 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

32. Out of Estonia's 61 tax treaties, 56 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015_[1]) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, two tax treaties do not contain such equivalent. The remaining three tax treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015_[1]), but deviate from this provision for the following reasons:

- In one treaty the last sentence of Article 9(2) is missing and also does not require the competent authorities to make a corresponding adjustment, but only allows them to consult with each other with a view to reach an agreement on the adjustment of profits
- In one treaty the granting of corresponding adjustments can only be made via a mutual agreement procedure
- In one treaty the granting of a corresponding adjustment is only optional as the term "shall" is replaced by "may".

33. Furthermore, Estonia 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.

34. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Estonia's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B3, as translated from the Action 14 Minimum Standard, Estonia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments. While Estonia's MAP guidance clarifies for which cases taxpayers can submit a MAP request and includes examples hereof, it does not explicitly state that access to MAP will be given in transfer pricing cases.

35. Further to the above, Estonia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015^[11]) in all of its future tax treaties.

Application of legal and administrative framework in practice

36. Estonia reported that since 1 January 2016, it has not denied access to MAP on the basis that the case concerned is a transfer pricing case.

37. All peers that provided input indicated not being aware of a denial of access to MAP by Estonia since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

38. Estonia indicated that it does not anticipate any modifications in relation to element B.3.

Conclusion

Areas for Improvement	Recommendations
[B.3]	Estonia 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. Estonia 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.

39. 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

40. None of Estonia's 61 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Estonia do not contain 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.

41. Estonia reported that it will give access to MAP for cases concerning the application of anti-abuse provisions. Estonia's MAP guidance, however, does not clarify that access to MAP will be given in such cases.

Practical application

42. Estonia reported that since 1 January 2016 it did not deny access to MAP in any 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.

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

Anticipated modifications

44. Estonia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

Areas for Improvement	Recommendations
[B.4]	Estonia 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. Estonia is therefore recommended to follow its policy and grant access to MAP when such cases surface.

[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.

45. 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

46. Estonia reported that under its domestic law there is no process available allowing taxpayers and the tax administration to enter into a settlement agreement during the course of an audit or after the audit ends.

Administrative or statutory dispute settlement/resolution process

47. Estonia reported it does not have an 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

48. Estonia reported that since 1 January 2016 it has not denied access to MAP in any cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, which is logical given that audit settlements are not possible in Estonia.

49. All peers that provided input indicated not being aware of a denial of access to MAP in Estonia since 1 January 2016 in cases where there was an audit settlement between the taxpayer and the tax administration.

Anticipated modifications

50. Estonia indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for Improvement	Recommendations
[B.5]	-	-

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

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

51. 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

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

53. Estonia reported that when a taxpayer does not include all of the required information for its competent authority to process a MAP request, it will notify the taxpayer in writing to inform him which information or documentation is missing and that the MAP request cannot be handled without the submission of this information or documentation. Estonia further reported that the general timeline for the submission of additional information is 30 calendar days, with a 60-day period for transfer pricing cases. Upon request taxpayers can be given an additional period for submitting the requested information or documentation, which generally is 30 calendar days but can be for a longer period if so requested.

54. Estonia further reported that it will notify the taxpayer that its MAP request will not be dealt with further and that the case will be closed if its competent authority ultimately does not receive the required information or documentation from the taxpayer.

Practical application

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

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

Anticipated modifications

57. Estonia indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

Areas for Improvement	Recommendations
[B.6]	Estonia reported it will give access to MAP in cases where taxpayers have complied with its information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Estonia is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.

[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.

58. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015_[11]), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Estonia's tax treaties

59. Out of Estonia's 61 tax treaties, 56 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) 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 a provision that is based on, or equivalent to, Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015_[11]).

Anticipated modifications

Bilateral modifications

60. Estonia reported that it intends to sign the Multilateral Instrument, which it has done in June 2018, and that it will list all of its tax treaties under that instrument that are not in line with the BEPS minimum standards. In that regard, Estonia expects that a significant number of treaties will be modified with a view to be in line with the Action 14 Minimum Standard. When those tax treaties that do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015_[11]) will not be modified via that instrument, Estonia intends to update

them via bilateral negotiations with a view to be compliant with element B.7. Estonia noted that it will approach its treaty partners in due time to give effect to this intention but does not, however, have a plan in place for such negotiations. In addition, Estonia reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]) in all of its future tax treaties.

Peer input

61. Several peers indicated that their tax treaties with Estonia are in line with the Action 14 Minimum Standard. Another peer mentioned that its treaty does not fully adhere to this standard, but that it has an intention to amend the treaty where needed via bilateral negotiations. The relevant treaty, however, does not concern this element.

62. For the five treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]), the relevant peers did not provide input.

Conclusion

Areas for Improvement	Recommendations
[B.7] Five out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]).	<p>Where the five treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015^[11]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Estonia should put a plan in place on how it envisages updating these treaties to include the required provision insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia 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.

63. 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.

Estonia's MAP guidance

64. Estonia has included information on its MAP process under tax treaties and the EU Arbitration Convention on the webpage of the Tax and Customs Board, under the heading “Resolutions of Disputes Resulting From Tax Treaties” (“MAP Guidance”). This MAP guidance is available in Estonian and in English at:

<https://www.emta.ee/eng/business-client/income-expenses-supply-profit/international-agreements/resolution-disputes-resulting>

65. This MAP guidance touches upon (i) the taxation of income derived from foreign states, (ii) the application of tax treaties by Estonia, (iii) the resolution of tax treaty related disputes and (iv) how to file a MAP request, the time limits for making such a request and what information should be included. The guidance also contains information regarding the process of accepting the MAP request and on negotiations between competent authorities, as well as on the process of refunds of taxes following the outcome of the MAP process. More specifically, Estonia's MAP guidance contains information on:

- (a) Contact information of the competent authority or the office in charge of MAP cases
- (b) The manner and form in which the taxpayer should submit its MAP request
- (c) The specific information and documentation that should be included in a MAP request (see also below)
- (d) How the MAP functions in terms of timing and the role of the competent authorities
- (e) Information on availability of arbitration (including the EU Arbitration Convention)
- (f) Relationship with domestic available remedies
- (g) Rights and role of taxpayers in the process.

66. Estonia's MAP guidance described above contains descriptive information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance contains 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 Estonia's MAP guidance is detailed, various subjects are not specifically discussed. This concerns information on:

- Whether MAP is available in cases of: (i) transfer pricing disputes, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- The possibility of suspension of tax collection during the course of a MAP
- The consideration of interest and penalties in MAP

- The timing of the steps for the implementation of MAP agreements after a taxpayer has been notified of the agreement.

Information and documentation to be included in a MAP request

67. Estonia has detailed in its MAP guidance what information taxpayers need to include in their submission of a MAP request. In this respect, Estonia's MAP guidance states that there is no required format for the presentation of the MAP request, but that taxpayers are required to submit sufficient information and explanations in the MAP request in order to enable Estonia's competent authority to fully assess the request.

68. 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.¹ This agreed guidance is shown below. Estonia'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.

69. Further to the above, Estonia's MAP guidance also defines that the taxpayer should specify in its MAP request: (i) the other related taxpayer involved in the case (if applicable) and the treaty partner involved, (ii) a description of what has been done so far to apply the tax treaty and the arguments of the treaty partner on not applying the tax treaty and (iii) the opinion of the taxpayer on the case and its view on how it should be resolved.

Anticipated modifications

70. Estonia reported that it is in the process of updating its MAP guidance and that it expects this updated guidance to be published by September 2018. This update is intended to provide more clarity and useful information regarding its MAP process, such as the interaction between MAP and domestic available remedies, how implementation of a MAP agreement is conducted, as well as how the notification

process applies for those situations where its competent authority considers the objection raised in a MAP request as not being justified.

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, Estonia could – when updating its MAP guidance – consider including information on:</p> <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP • The consideration of interest and penalties in the MAP • The timing of the steps for the implementation of MAP agreements, after the taxpayer has been notified of the agreement.

[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.

71. 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.²

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

72. The MAP guidance of Estonia is published in both Estonian and in English and can be found at:

<https://www.emta.ee/eng/business-client/income-expenses-supply-profit/international-agreements/resolution-disputes-resulting>

73. This guidance was last updated in May 2018. As regards its accessibility, Estonia’s MAP guidance can easily be found by searching for “dispute resolution” in the search box on the website of Estonia’s Tax and Customs Board. It can also be found by navigating from the homepage of Estonia’s Tax and Customs Board by clicking on the international taxation section, where it is listed alongside the overview of Estonia’s tax treaties.

MAP profile

74. The MAP profile of Estonia is published on the website of the OECD. This MAP profile is complete but is not fully clear on all elements or contains information that does not pertain to the relevant questions. This concerns: (i) whether MAP is available where taxpayers have also initiated domestic available remedies or where these remedies have been finalised, (ii) whether it is possible to suspend collection procedures during the period a MAP case is pending, and (iii) an explanation of the interrelationship between MAP and domestic available remedies. Apart from this, Estonia's MAP profile contains external links that provide extra information and guidance where appropriate.

Anticipated modifications

75. As discussed under element B.8, Estonia indicated that it is in the process of updating its MAP guidance, which it expects to be published by September 2018. Furthermore, Estonia also indicated it would update its MAP profile.

Conclusion

Areas for Improvement	Recommendations
[B.9] The MAP profile requires clarification.	Estonia should update its MAP profile to clarify (i) whether MAP is available where taxpayers have also initiated domestic available remedies or where these remedies have been finalised, (ii) whether it is possible to suspend collection procedures during the period a MAP case is pending and (iii) an explanation of the interrelationship between MAP and domestic available remedies. In addition, Estonia should ensure that the envisaged update of its MAP guidance will be made publically available and easily accessible.

[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.

76. 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

77. As previously discussed under B.5, under Estonia's domestic law it is not possible for taxpayers and the tax administration to enter into audit settlements. In that regard, there is no need to address in Estonia's MAP guidance that audit settlements do not preclude access to MAP.

78. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Estonia's MAP guidance, which is logical given that such settlements are not possible in Estonia.

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

79. As previously mentioned under element B.5, Estonia 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. Estonia's MAP guidance, however, specifies that such a process is not in place for which access to MAP may be limited by its competent authority.

80. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/ resolution process in Estonia, which can be clarified by the fact that no such process is in place in Estonia.

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

81. As Estonia 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

82. Estonia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for Improvement	Recommendations
[B.10]	-	-

Note

¹ Available at: <http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf>.

²The shared public platform can be found at: <http://www.oecd.org/ctp/dispute/country-map-profiles.htm>.

Reference

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

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

Part C: Resolution of MAP cases

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

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

83. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015^[1]), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Estonia's tax treaties

84. Out of Estonia's 61 tax treaties, 60 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

85. The remaining treaty does contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015^[1]), but also contains additional language that reads: “(...) provided that the competent authority of the other Contracting State is notified of the case within three years from the due date or the date of filing the return in that other state, whichever is later”. As this additional language requires the competent authority that receives a MAP request to notify the other competent authority concerned within a certain time limit, this requirement may limit the possibility to discuss cases bilaterally. This provision is therefore considered not being the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015^[1]).

Anticipated modifications

86. Estonia reported that it intends to sign the Multilateral Instrument, which it has done in June 2018, and that it will list all of its tax treaties under that instrument that

are not in line with the BEPS minimum standards. In that regard, Estonia expects that a significant number of treaties will be modified with a view to be in line with the Action 14 Minimum Standard. When those tax treaties that do not contain the equivalent of Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2015_[11]) will not be modified via that instrument, Estonia intends to update them via bilateral negotiations with a view to be compliant with element C.1. Estonia noted that it will approach its treaty partners in due time to give effect to this intention but does not, however, have a plan in place for such negotiations. In addition, Estonia reported that it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) in all of its future tax treaties.

Peer input

87. Several peers indicated that their tax treaties with Estonia are in line with the Action 14 Minimum Standard. Another peer mentioned that its treaty does not fully adhere to this standard, but that it has an intention to amend the treaty where needed via bilateral negotiations. The relevant treaty, however, does not concern this element.

88. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[11]), the relevant peer did not provide input.

Conclusion

Areas for Improvement	Recommendations
[C.1] One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 _[11]).	<p>Where the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015_[11]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations.</p> <p>To this end, Estonia should put a plan in place on how it envisages updating this one treaty to include the required provision insofar as it will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia 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).

89. 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

90. Statistics regarding all tax treaty related disputes concerning Estonia are published on the website of the OECD as of 2011.¹ Estonia also publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.²

91. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (**'MAP Statistics Reporting Framework'**) for MAP requests submitted on or after 1 January 2016 (**'post-2015 cases'**). Also, for MAP requests submitted prior to that date (**'pre-2016 cases'**), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Estonia provided MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline. These statistics included all cases involving Estonia and of which its competent authority was aware. The statistics discussed below only include post-2015 cases, as Estonia has no pre-2016 MAP cases in its inventory.³ The statistics are attached in the annexes to this report. With respect to these post-2015 cases, Estonia reported having reached out to all of its MAP partners with a view to match all of their MAP statistics. In that regard, Estonia reported that it could match its statistics with all of its MAP partners.

Monitoring of MAP statistics

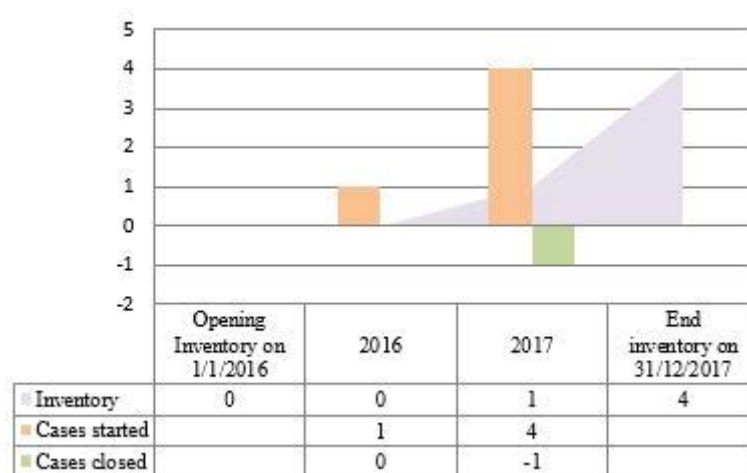
92. Estonia reported that it has a system in place to monitor MAP statistics, which includes information on new MAP requests, as well as the start and end dates for each case.

Analysis of Estonia's MAP caseload

Global overview

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

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



94. During the Statistics Reporting Period, five MAP cases started of which one was closed. At the end of that period, Estonia had four MAP cases in its inventory, which all concerned other cases.

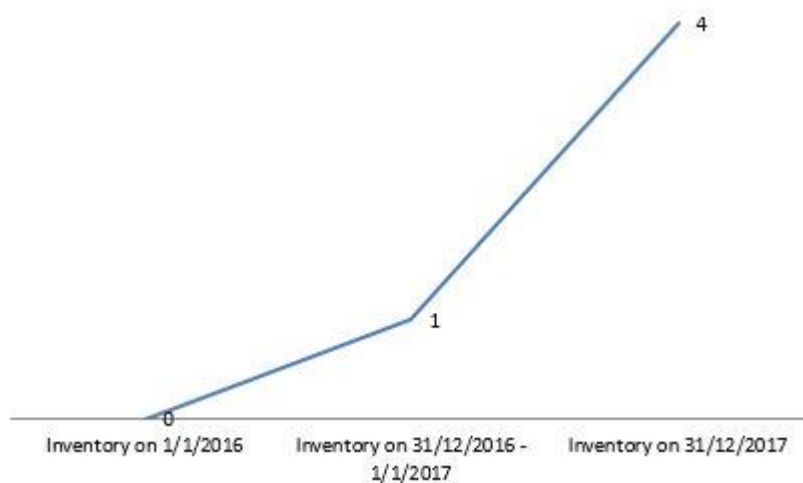
Pre-2016 cases

95. As mentioned previously, Estonia did not have any pre-2016 cases in its inventory.

Post-2015 cases

96. The following graph shows the evolution of Estonia's post-2015 MAP cases over the Statistics Reporting Period:

Figure C.2. Evolution of Estonia's MAP inventory Post-2015 cases



97. In total, five MAP cases started during the Statistics Reporting Period, all of which concerned other cases. At the end of this period the total number of post-2015 other cases in the inventory was four cases. Estonia closed one post-2015 other case during the Statistics Reporting Period. The total number of closed cases represents 20% of the total number of post-2015 cases that started during the Statistics Reporting Period.

98. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the below table:

Post-2015 cases only	% of cases closed compared to cases started in 2016	% of cases closed compared to cases started in 2017	Evolution of total MAP caseload over the two years (2016+2017)
Attribution / allocation cases	no cases started	no cases started	no cases started
Other cases	0%	25%	20%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

99. During the Statistics Reporting Period, Estonia closed one MAP case with the outcome unilateral relief granted.

Average timeframe needed to resolve MAP cases

100. The only case closed during the MAP Statistics Reporting Period was a post-2015 case. It should be noted that the period of assessing post-2015 MAP statistics only comprises 24 months. The time needed to close this MAP case was six months.

Peer input

101. The peer input in relation to the resolution of MAP cases will be discussed under element C.3.

Anticipated modifications

102. Estonia indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

Areas for Improvement	Recommendations
[C.2]	Estonia submitted comprehensive MAP statistics on time and on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Estonia contacted all its treaty partners to match its post-2015 statistics with them, and its post-2015 MAP statistics almost fully match those submitted by its treaty partners. Estonia's MAP statistics show that during the Statistics Reporting Period it closed 20% (one out of five cases) of its post-2015 cases in 6.00 months on average. In that regard, Estonia is recommended to seek to resolve the remaining 80% of the post-2015 cases pending on 31 December 2017 (four cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

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

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

103. 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 Estonia's competent authority

104. Under Estonia's tax treaties, the competent authority function is assigned to the Minister of Finance, who mandated this competence to Estonia's Tax and Customs Board. Within the Tax and Customs Board, the competent authority function is performed by staff in the Tax Department and the Legal Department. This staff handles all MAP cases, apart from interpretative MAP cases of a general nature, which are handled by the Ministry of Finance.

105. In total two people within the Tax Department and one person in the Legal Department are responsible for handling MAP cases. Handling MAP cases, however, is only one of the tasks of these personnel, as they are *inter alia* also involved in the day-to-day assistance to taxpayers in Estonia. Estonia reported that the average professional experience of its competent authority staff is over 15 years. These staff members take part in international trainings on tax treaties, transfer pricing and on MAP. Within the Ministry of Finance, one person is responsible for handling MAP cases, and assists in resolving difficulties that may arise from the general application of Estonia's tax treaties.

106. Estonia further reported that it generally notifies its treaty partners of the contact details of its competent authority once a tax treaty enters into force. Estonia also reported that emails are the preferred mode of communication of its competent authority. To this end, Estonia provides the relevant email address both to the competent authority of the treaty partners as well as to taxpayers, which taxpayers can utilise to request information on their status of a pending MAP case.

107. While the number of MAP cases handled in Estonia is relatively low, it reported that taxpayers are allowed to consult with its competent authority on the interpretation and application of tax treaties. Estonia clarified that this practice has prevented the need for a MAP request in some instances. This is also reflected in Estonia's MAP guidance, under the heading "Application of a tax treaty", where it is noted that taxpayers can request the explanation of a tax treaty from Estonia's Tax and Customs Board. Furthermore, to have a view on how its tax administration is operating, including handling MAP cases, Estonia reported it solicits input twice a year from taxpayers who have submitted tax returns. Estonia further reported that it also solicits such feedback on its tax administration's webpage.⁴

108. Concerning the process of handling MAP cases, Estonia reported that it does not have in place a list of steps to be followed in resolving MAP cases, but rather uses in practice the following criteria to determine whether a MAP request can be accepted:

- Whether a tax treaty is in place for the case for which a MAP request has been submitted;
- Whether the MAP request was timely submitted; and
- Whether the objection raised by the taxpayer is justified.

109. Estonia further reported that when a decision is made on whether or not to accept the MAP request, its competent authority will inform the taxpayer hereof within 30 days as from the date of the decision.

Monitoring mechanism

110. Estonia reported that it determines whether the available resources are adequate by monitoring the time period taken to resolve MAP requests. Estonia further reported that it aims to keep this time period as short as possible. In its MAP guidance, under the heading “Negotiation between competent authorities” it is further specified that Estonia is committed to resolve MAP cases within the average time frame of 24 months.

Practical application

MAP statistics

111. As discussed under element C.2, Estonia closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. In this respect, Estonia closed only one case, which was one other MAP case and it needed six months to close this MAP case.

Peer input

112. Of the five peers that provided input, two noted that they either did not deal with Estonia’s competent authority or they did not have any MAP cases with Estonia during the Review period. The three other peers generally reported that their experience dealing with Estonia’s competent authority, although limited, has been positive. In more detail, one peer noted that it has a well-functioning relationship with Estonia’s competent authority, which has promptly replied to all of its requests and inquiries. This peer also noted that of the two cases it had with Estonia, one is still pending and the other was resolved very quickly. Another peer remarked that its experience in resolving MAP cases with Estonia has been limited, but that contact has been generally easy and has taken place via traditional letters and additionally that face-to-face meetings have not been necessary thus far. The third peer noted that while Estonia is not a major MAP partner, it has not observed any impediments that led to unnecessary delays in finding a resolution to MAP cases.

Anticipated modifications

113. Estonia reported that given the fact that its MAP caseload is low, it does not have significant experience in handling and resolving MAP cases. It, however, considers the resources available as adequate, also because it does not foresee a considerable increase in the number of MAP cases in the coming years. Estonia therefore does not anticipate any modifications in relation to element C.3.

Conclusion

Areas for Improvement	Recommendations
[C.3] -	Estonia should continue to monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

[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.

114. 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

115. As discussed under element C.3, MAP cases in Estonia are handled by the Tax Department and the Legal Department that are both situated within Estonia's Tax and Customs Board. In this respect, Estonia noted that all MAP agreements are authorised by the Head of the Tax Department and staff in charge of MAP only report to that head. While Estonia reported that staff in charge of MAP keeps the Tax Audit Department (which is a separate department within the Tax and Customs Board) informed of MAP cases, Estonia reported that this department is not involved in the MAP process.

116. In regard of the above, Estonia reported that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment, and that the process for negotiating MAP agreements is not influenced by policy considerations.

Practical application

117. Peers reported no impediments in Estonia 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 Estonia is dependent on the approval of MAP agreements by the personnel within the tax administration who made the adjustment under review.

Anticipated modifications

118. Estonia indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

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

119. 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 Estonia

120. Estonia reported that staff in charge of MAP is required to timely manage the MAP request, the resolution of the case and the implementation of MAP agreements. The set average timeframe of 24 months for resolving MAP cases should thereby be followed as much as is possible. To monitor these requirements, Estonia mentioned it has a process in place that tracks the time management of staff in charge of MAP with respect to the progress on MAP cases.

121. Estonia further reported that staff is evaluated once a year, when each staff member is reviewed by a Head of Department to go over his or her results for the year. Estonia indicated that the general aim of its competent authority staff is to assist taxpayers by resolving the taxation not in accordance with the convention, as well as to conduct the process without unreasonable administrative burden and delay. Estonia reported that no other specific indicators are set to evaluate staff in charge of MAP.

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

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

- ☑ Time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

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

Practical application

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

Anticipated modifications

125. Estonia indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

Areas for Improvement	Recommendations
[C.5] -	As it has done thus far, Estonia 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.

126. 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

127. Estonia reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. In addition, as follows from its MAP profile, its tax treaty policy allows for the inclusion of an arbitration provision in its tax treaties. Furthermore, Estonia is a signatory to the EU Arbitration Convention.

Practical application

128. Estonia has incorporated an arbitration clause in six of its 61 tax treaties as a final stage to the MAP. In five of these six treaties the arbitration clause is equivalent

to Article 25(5) of the OECD Model Tax Convention (OECD, 2015^[1]), although in one of these five treaties disputes on corporate tie-breaker cases is excluded. In one other treaty the two-year period for MAP is replaced with a three-year period whereby competent authorities are allowed to negotiate a deviating agreement after the arbitration commission rendered its decision. Furthermore, in a⁵ protocol to one treaty Estonia agreed on additional rules to be applied during the arbitration procedure. The sixth treaty contains a voluntary and binding arbitration procedure.

Anticipated modifications

129. Estonia indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

	Areas for Improvement	Recommendations
[C.6]	-	-

Notes

¹. Available at: <http://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/sites/taxation/files/2016_jptf_ac_statistics_en.pdf. These statistics are up to and include fiscal year 2016.

³. For post-2015 cases, if the number of MAP cases in Estonia's inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Estonia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).

⁴. Available at: <https://www.emta.ee/et/tagasiside>. Furthermore, at the end of Estonia's MAP guidance, for example, one can find the question "Was this page helpful?" allowing a taxpayer to reply and send an email with any questions he may have. Estonia noted that it also has a dedicated page in Estonian with a form for general feedback.

Reference

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

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

Part 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.

130. 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

131. Estonia reported that, pursuant to Article 98(1) of Estonia's Taxation Act, a statute of limitation applies for amending a taxpayer's position by the tax administration, which is three years as from the date of the submission of the tax return. In the event of an intentional failure to pay or withhold a tax, this period is five years. As will be discussed below, Estonia operates a self-assessment system, for which this statute of limitation does not apply. In that regard, Estonia reported that it will implement all MAP agreements irrespective of whether the treaty under which the MAP request was submitted contains the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015^[1]). In other words, the domestic statute of limitation does not affect the implementation of MAP agreements.

132. With respect to the process for implementing MAP agreements, Estonia reported that a taxpayer will be notified of the agreement via a letter from Estonia's Tax and Customs Board within 30 calendar days after the agreement has been reached. This letter contains information on the result of the MAP discussions and the content of the MAP agreement, as also instructions for the taxpayer to be followed for having the MAP agreement implemented. Estonia clarified that it runs a self-assessment system for taxpayers, following which a change to the tax assessment should be done via a filing of an amended tax return and in that regard there is no need to separately file a tax return. In other words, in order to have a MAP agreement implemented, taxpayers need to file an amended tax return reflecting the content of that agreement. The period for such filing is 30 calendar days after the date of notification of the MAP agreement. Based on this amended return, the taxpayer may, when applicable, receive a refund of overpaid taxes. Section 106(2) of Estonia's Taxation Act stipulates that overpaid amounts eligible for refund will take effect within 60 calendar days.

133. Further to the above, Estonia noted that it monitors whether or not the taxpayer has submitted the requested amended tax return and that it will contact the taxpayer if he does not submit such return within 30 calendar days after the date of notification to him of the MAP agreement

134. Estonia’s MAP guidance, under the heading “Negotiations between competent authorities”, contains brief information on the process for implementing MAP agreements in Estonia, including the notification of taxpayers of such agreements.

Practical application

135. Estonia reported that since 1 January 2016 its competent authority did not enter into any MAP agreements that required implementation by Estonia.

136. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Estonia.

Anticipated modifications

137. Estonia indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for Improvement	Recommendations
[D.1]	As there were no MAP agreements reached during the Review period, it was not yet possible to assess whether Estonia would have implemented all MAP agreements.	

[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.

138. 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

139. As discussed under element D.1, Estonia reported that its Tax and Customs Board will inform the taxpayer via a notification letter within 30 calendar days as from the date of entering into the MAP agreement. The taxpayer is then required to submit an amended tax return in order to have the agreement implemented. Where the MAP agreement leads to a refund in Estonia, it reported that the decision regarding the refund has, pursuant to Article 46(7) of Estonia’s Taxation Act, to be made within 30 calendar days as from the date of filing of the amended tax return. Estonia clarified that while there is no specific domestic legislation that governs the timeframe of the implementation of MAP agreements in Estonia, the rules of Article 46(7) also apply when such agreement leads to a refund of taxes.

Practical application

140. Estonia reported that there were no MAP agreements reached with another competent authority on or after 1 January 2016.

141. All peers that provided input have not indicated experiencing any problems with Estonia regarding the implementation of MAP agreements reached on a timely basis.

1.1.2. Anticipated modifications

142. Estonia indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

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

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

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

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

Legal framework and current situation of Estonia's tax treaties

144. As discussed under element D.1, Estonia's domestic legislation contains a statute of limitations of three/five years for both upward and downward adjustments, unless overridden by tax treaties or if a MAP agreement is reached under the EU Arbitration Convention.

145. Out of Estonia's 61 tax treaties, 56 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Of these 56 treaties, two contain the alternative provision to Article 9(1) that sets a time limit for making transfer pricing adjustments. Furthermore, ten of Estonia's tax treaties contain the second sentence, whereby the provision is supplemented with additional wording that sets a two-year deadline for competent authorities to reach a MAP agreement. Estonia reported that this additional

wording was added in these ten treaties to set a reasonable deadline to reach a MAP agreement to help avoid that cases are prolonged indefinitely and to give a strong signal to competent authorities to reach an agreement within this timeframe. The wording used thereby reflects a compromise between incorporating an arbitration provision and having no provision at all on the timing to negotiate a MAP agreement. As this wording does not obstruct or limit the implementation of MAP agreements, these ten treaties are considered to contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]).

146. For the remaining five treaties, the following analysis is made:

- Three treaties do not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) or the alternative provisions in Article 9(1) and Article 7(2)
- One tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), but contains the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments
- One treaty contains a variation of the second sentence whereby the actual implementation of a MAP agreement is dependent on the notification of a MAP request to the other competent authority involved within a certain time period. This treaty is therefore considered not to be equivalent to the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015_[1]).

Anticipated modifications

147. Estonia reported that it intends to sign the Multilateral Instrument in June 2018 and that it will list all of its tax treaties under that instrument that are not in line with the BEPS minimum standards. In that regard, Estonia expects that a significant number of treaties will be modified with a view to be in line with the Action 14 Minimum Standard. When those tax treaties that do not contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015_[1]) will not be modified via that instrument, Estonia intends to update them via bilateral negotiations with a view to be compliant with element D.3. Estonia noted that it will approach its treaty partners in due time to give effect to this intention and with one treaty partner there are already ongoing discussions in this respect. It, however, does not have a plan to renegotiate the other treaties in place. In addition, Estonia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]) or both alternatives in all of its future tax treaties.

Peer input

148. For the four treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015_[1]), or both alternatives, one of the relevant peers acknowledged that its tax treaty with Estonia does not formally meet the requirement of this element but that it was willing to accept the alternative provisions.

Conclusion

	Areas for Improvement	Recommendations
[D.3]	Four out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 ^[1]) nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Where the four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) or the alternative provisions will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Estonia should finalise current pending negotiations with the one treaty partner and put a plan in place on how it envisages updating the other three treaties to include the required provision or its alternatives insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia 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), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

Summary

Areas for Improvement	Recommendations
Part A: Preventing disputes	
[A.1] -	Estonia should maintain its stated intention to include the required provision in all future tax treaties.
[A.2] Estonia is in theory able to provide for roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Estonia did not receive any request for roll-back of bilateral APAs during the Review Period.	
Part B: Availability and access to MAP	
[B.1] Three out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]). Of those three tax treaties: <ul style="list-style-type: none"> ○ One tax treaty does 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. 	Where treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. This concerns both: <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015_[1]) either: <ol style="list-style-type: none"> a) as amended in the final report on Action 14 (OECD, 2015_[2]); and, b) 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>To this end, Estonia should put a plan in place on how it envisages updating these three treaties to include the required provision, insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.2] 59 of the 61 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015 _[1]) as changed by the Action 14 final report (OECD, 2015 _[2]), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties, no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Estonia should without further delay introduce a documented notification and/or consultation process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the final report on Action 14 (OECD, 2015 _[2]).
[B.3] Estonia 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. Estonia is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.4] Estonia 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. Estonia is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.5] -	-
[B.6] Estonia reported it will give access to MAP in cases where taxpayers have complied with its information and documentation requirements for MAP requests. Its competent authority, however, did not receive any MAP requests from taxpayers during the Review Period. Estonia is therefore recommended to follow its policy and grant access to MAP when it receives a request that includes the required information and documentation.	
[B.7] Five out of 61 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence,	Where the five treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 _[1]) will

	of the OECD Model Tax Convention.	not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. To this end, Estonia should put a plan in place on how it envisages updating these treaties to include the required provision insofar as they will not be modified by the Multilateral Instrument. In addition, Estonia should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Estonia could – when updating its MAP guidance – consider including information on: <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) transfer pricing, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The possibility of suspension of tax collection during the course of a MAP • The consideration of interest and penalties in the MAP • The timing of the steps for the implementation of MAP agreements, after the taxpayer has been notified of the agreement.
[B.9]	The MAP profile requires clarification.	Estonia should update its MAP profile to clarify (i) whether MAP is available where taxpayers have also initiated domestic available remedies or where these remedies have been finalised, (ii) whether it is possible to suspend collection procedures during the period a MAP case is pending and (iii) an explanation of the interrelationship between MAP and domestic available remedies. In addition, Estonia should ensure that the envisaged update of its MAP guidance will be made publically available and easily accessible.
[B.10]	-	-
		Part C: Resolution of MAP cases
[C.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]).	Where the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. To this end, Estonia should put a plan in place on how it envisages updating this one treaty to include the required provision insofar as it will not be modified by the Multilateral Instrument. In addition, Estonia should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Estonia submitted comprehensive MAP statistics on time and on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Estonia contacted all its treaty partners to match its post-2015 statistics with them, and its post-2015 MAP statistics almost fully match those submitted by its treaty partners. Estonia's MAP statistics show that during the Statistics Reporting Period it closed 20% (one out of five cases) of its post-2015 cases in 6.00 months on average. In that regard, Estonia is recommended to seek to resolve the remaining 80% of the post-2015 cases pending on 31 December 2017 (four cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Estonia should continue to monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Estonia 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 Estonia would like to see reflected in future amendments to the treaty.

[C.5]	-	As it has done thus far, Estonia should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As there were no MAP agreements reached during the Review period, it was not yet possible to assess whether Estonia would have implemented all MAP agreements.	
[D.2]	As there were no MAP agreements reached during the Review period, it was not yet possible to assess whether Estonia would have implemented all MAP agreements on a timely basis.	
[D.3]	Four out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 ^[1]) nor both alternative provisions provided for in Article 9(1) and Article 7(2).	<p>Where the four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015^[1]) or the alternative provisions will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>To this end, Estonia should finalise current pending negotiations with the one treaty partner and put a plan in place on how it envisages updating the other three treaties to include the required provision or its alternatives insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia 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>
Areas for Improvement		Recommendations
Part A: Preventing disputes		
[A.1]	-	Estonia should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	<p>Estonia is in theory able to provide for roll-back of bilateral APAs.</p> <p>However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Estonia did not receive any request for roll-back of bilateral APAs during the Review Period.</p>	
Part B: Availability and access to MAP		
[B.1]	<p>Three out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]). Of those three tax treaties:</p> <ul style="list-style-type: none"> ○ One tax treaty does 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>Where treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015^[1]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. 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 either: <ul style="list-style-type: none"> a) as amended in the final report on Action 14 (OECD, 2015^[2]); and, b) 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>To this end, Estonia should put a plan in place on how it envisages updating these three treaties to include the required provision, insofar as they will not be modified by the Multilateral Instrument.</p> <p>In addition, Estonia should maintain its stated intention to include the required provision in all future tax treaties.</p>
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	requests of this kind from taxpayers during the Review Period. Estonia is therefore recommended to follow its policy and grant access to MAP in such cases.	
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[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]).	Where the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015 ^[11]) will not be modified by the Multilateral Instrument upon Estonia's signing and entry into force of that instrument for the treaties concerned, Estonia should request the inclusion of the required provision via bilateral negotiations. To this end, Estonia should put a plan in place on how it envisages updating this one treaty to include the required provision insofar as it will not be modified by the Multilateral Instrument. In addition, Estonia should maintain its stated intention to include the required provision in all future tax treaties.
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	Estonia's MAP statistics show that during the Statistics Reporting Period it closed 20% (one out of five cases) of its post-2015 cases in 6.00 months on average. In that regard, Estonia is recommended to seek to resolve the remaining 80% of the post-2015 cases pending on 31 December 2017 (four cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
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[C.4]	-	As it has done thus far, Estonia 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 Estonia would like to see reflected in future amendments to the treaty.
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Annex A: Tax treaty network of Estonia

Column 1	Column 2	Article 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?	
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)				
	Y = yes	E = yes, either CAs O = yes, only one CA	Y = yes i = no, no such provision ii = no, different period	if ii, specify period Y = yes	Y = yes i = no, but access will be given to TP cases i = no and such cases will be accepted for MAP	Y = yes	Y = yes i = no, but have Art 7 equivalent ii = no, but have Art 9 equivalent	Y = yes	Y = yes	Y = yes	Y = yes if yes: N = no N = no N = no
	N = signed pending	N = No	iii = no, starting point for computing	ii = no and access will not be	ii = no but such cases will not be accepted for MAP	N = no	iii = no, but have both Art 7 & 9				iii - voluntary

Column 1	Column 2 ratification	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
			the 3 year period is different		given to TP cases				equivalent				
			iv = no, others reasons						N = no and no equivalent of Art 7 and 9				
Albania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Armenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Austria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Azerbaijan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Bahrain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	i
Belarus	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Belgium	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N	N/A
Bulgaria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Canada	Y	O	ii	2-years	Y	i	Y	Y	iii	Y	Y	N	N/A
China (People's Republic of)	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Cyprus*	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Denmark	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Finland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Former Yugoslav Republic of	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Macedonia													
France	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Georgia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Germany	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Greece	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Hungary	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Iceland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
India	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Ireland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N	N/A
Isle of Man	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Italy	Y	N	Y	N/A	i	i	Y	N	Y	N	N	N	N/A
Japan	N	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	i
Jersey	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Kazakhstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Korea	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Kyrgyzstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	i
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Lithuania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Luxembourg	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	i
Malta	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Mexico	Y	O	Y	N/A	Y	i	N	N	Y	Y	Y	N	N/A
Moldova	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Morocco	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Netherlands	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	iii

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration		
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15	
Norway	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Romania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Russian Federation	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Singapore	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Slovenia	Y	O	Y	N/A	i	i	Y	Y	Y	Y	Y	N	N/A
Spain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Sweden	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Switzerland	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	Y	i
Thailand	Y	O	ii	2-years	Y	i	Y	Y	Y	Y	Y	N	N/A
Turkey	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Turkmenistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Ukraine	Y	O	Y	N/A	Y	i	Y	Y	Y	N	N	N	N/A
United Arab Emirates	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
United Kingdom	Y	O	i	N/A	Y	i	Y	N	Y	N	N	N	N/A
United States	Y	E	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	N	N/A

Annex B: MAP Statistics Reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for Pre-2016 Cases

number of pre-2016 cases closed during the reporting period by outcome:

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Total	0	0	0	0	0	0	0	0	0	0	0	0	0.00

Notes:

number of pre-2016 cases closed during the reporting period by outcome:													
category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2017	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Total	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Notes:													

Annex C: MAP Statistics Reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for Post-2015 Cases

number of post-2015 cases closed during the reporting period by outcome:														
category of cases	no. of post-2015 cases in MAP inventory on 1 January 2016	no. of post-2015 cases started during the reporting period	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of post-2015 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	0	1	0	0	0	0	0	0	0	0	0	0	1	0.00
Total	0	1	0	0	0	0	0	0	0	0	0	0	1	0.00
<u>Notes:</u>														

number of post-2015 cases closed during the reporting period by outcome:														
category of cases	no. of post-2015 cases in MAP inventory on 1 January 2017	no. of post-2015 cases started during the reporting period	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of post-2015 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing post-2015 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution / Allocation	0	0	0	0	0	0	0	0	0	0	0	0	0	0.00
Others	1	4	0	0	0	1	0	0	0	0	0	0	4	6.00
Total	1	4	0	0	0	1	0	0	0	0	0	0	4	6.00
<u>Notes:</u>														

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

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OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective - MAP Peer Review Report, Estonia (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 Estonia.

Consult this publication on line at <https://doi.org/10.1787/9789264310742-en>.

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