

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

This document, as well as any data and any map included herein, are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

Please cite this publication as:

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

<https://doi.org/10.1787/9789264304222-en>

ISBN 978-92-64-30421-5 (print)

ISBN 978-92-64-30422-2 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Photo credits: Cover © ninog-Fotolia.com

Corrigenda to OECD publications may be found on line at: www.oecd.org/about/publishing/corrigenda.htm.

© OECD 2018

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of the source and copyright owner(s) is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre francais d'exploitation du droit de copie (CFC) at contact@cfcopies.com.

Foreword

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

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

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

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

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

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

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

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

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	11
References	14
Part A. Preventing disputes	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases	17
References	19
Part B. Availability and access to MAP	21
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	26
[B.3] Provide access to MAP in transfer pricing cases	28
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	30
[B.5] Provide access to MAP in cases of audit settlements	31
[B.6] Provide access to MAP if required information is submitted	32
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	34
[B.8] Publish clear and comprehensive MAP guidance	35
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	38
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	39
References	41
Part C. Resolution of MAP cases	43
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	43
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	45
[C.3] Provide adequate resources to the MAP function	50
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	54
[C.5] Use appropriate performance indicators for the MAP function	55
[C.6] Provide transparency with respect to the position on MAP arbitration	56
References	58

Part D. Implementation of MAP agreements	59
[D.1] Implement all MAP agreements	59
[D.2] Implement all MAP agreements on a timely basis	60
[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)	61
References	64
Summary	65
Annex A. Tax treaty network of Portugal	69
Annex B. MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for pre-2016 cases	75
Annex C. MAP statistics reporting for the 2016 and 2017 Reporting Periods (1 January 2016 to 31 December 2017) for post-2015 cases	76
Glossary	79
Figures	
Figure C.1 Evolution of Portugal’s MAP caseload	46
Figure C.2 End inventory on 31 December 2017 (49 cases)	46
Figure C.3 Evolution of Portugal’s MAP inventory Pre-2016 cases	47
Figure C.4 Evolution of Portugal’s MAP inventory Post-2015 cases	47
Figure C.5 Cases closed during the Statistics Reporting Period (45 cases)	48
Figure C.6 Average time (in months) to close cases in 2016 or 2017	52

Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
CIRC	Corporate Income Tax Code
FTA	Forum on Tax Administration
EU	European Union
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Portugal has an extensive tax treaty network with around 80 tax treaties and has signed and ratified the EU Arbitration Convention. Portugal has an established MAP programme and has significant experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and almost 50 cases pending on 31 December 2017. Of these cases, approximately 60% concern allocation/attribution cases. Overall Portugal meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Portugal is working to address them.

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

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

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Portugal needs to amend and update a significant number of its tax treaties. In this respect, Portugal 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, Portugal 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. In this regard, Portugal reported that it will approach its treaty partners in 2018 to renegotiate treaties where necessary.

Portugal does not meet the Action 14 Minimum Standard concerning the prevention of disputes. Although it has in place a bilateral APA programme, Portugal does not allow rollbacks of bilateral APAs.

Portugal meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although

it has since 1 January 2016 not received any MAP request concerning the application of anti-abuse provisions or where taxpayers and the tax authorities have already entered into an audit settlement. It further has in place a documented notification process, which has been used in practice, for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Portugal also has clear, comprehensive and easily understandable guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. This guidance also contains the contact details of Portugal’s competent authority, and specifies the manner in which the taxpayer should submit its MAP request and the relationship between MAP and audit settlements.

Concerning the average time needed to close MAP cases, the MAP statistics for Portugal for the period 2016-17 are as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)*
Attribution/allocation cases	39	23	34	28	62.34
Other cases	13	19	11	21	11.61
Total	52	42	45	49	49.94

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, Portugal used as a start date the date of reception of the MAP request and for MAP cases submitted in the other state, the date that the other state communicated as such and as the end date the date of the notification to the taxpayer on the outcome of the MAP case.

The number of cases Portugal closed during the Statistics Reporting Period is higher than the number of all new cases started in 2016 and 2017. Its MAP inventory as per 31 December 2017 slightly decreased as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, Portugal’s competent authority did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 49.94 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is thereby considerably longer (62.34 months) than the average time to close other cases (11.61 months). These statistics indicate that additional resources are necessary to accelerate the resolution of MAP cases, particularly concerning attribution/allocation cases. In that regard, Portugal should closely monitor whether the envisaged addition of personnel, the creation of a dedicated transfer pricing team to resolve MAP cases, and the implementation of the monitoring system will lead to the resolution of MAP cases in a more timely, effective and efficient manner.

Furthermore, Portugal meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Portugal’s competent authority operates fully independently from the audit function of the tax authorities and resolves MAP cases in a co-operative atmosphere and in an effective manner. The performance indicators used are appropriate to perform the MAP function.

Lastly, Portugal also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. In addition, Portugal monitors the implementation of MAP agreements and is examining the possibility that its competent authority directly implements MAP agreements to enable timely implementation of such agreements.

Introduction

Available mechanisms in Portugal to resolve tax treaty-related disputes

Portugal has entered into 79 tax treaties on income (and/or capital), 76 of which are in force.¹ These 79 treaties apply to the same number of jurisdictions. All these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, one of the treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

Furthermore, Portugal 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.²

In Portugal, the competent authority function to conduct MAP is delegated to the Minister of Finance and the Director General of the Tax and Customs Authority. This is sub-delegated to the International Affairs Department within that authority and is in practice performed by the international co-operation team. This team currently employs nine employees. Five of them are involved in handling MAP cases, next to being engaged in other tasks, including the exchange of information.

In December 2017 Portugal issued guidance on the governance and administration of the mutual agreement procedure (“**MAP guidance**”), which is available at (in English):

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf

Recent developments in Portugal

Portugal recently signed new treaties with Barbados (2010), Finland (2016), Montenegro (2016) and Timor-Leste (2017), which have not yet entered into force.

Furthermore, Portugal signed on 7 June 2017 the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Portugal reported that it strives updating them through future bilateral negotiations. In this regard, Portugal reported that it will approach its treaty partners in 2018 to renegotiate treaties where necessary to make them in line with the Action 14 Minimum Standard. With the signing of the Multilateral Instrument, Portugal also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Portugal reserved, pursuant to Article 16(5)(a), the right not to apply

Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁴ This reservation is in line with the requirements of the Action 14 Minimum Standard.

Further to the above, Portugal indicated it is in the process of taking measures to improve the timely resolution of MAP cases by assigning dedicated staff of four persons to handle MAP cases, establishing a transfer pricing team and implementing administrative procedures to ensure a better monitoring of deadlines for resolving MAP cases.

Basis for the peer review process

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

The period for evaluating Portugal's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 December 2017 ("**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 Portugal's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether Portugal 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 the Portugal's tax treaties regarding the mutual agreement procedure.

In total 15 peers provided input: Belgium, Canada, Denmark, France, Germany, Ireland, Italy, the Netherlands, Norway, the Russian Federation, Spain, Sweden, Switzerland, Turkey and the United States. Out of these 15 peers, 11 had MAP cases with Portugal that started on or after 1 January 2016. These 11 peers represent approximately 85% of post-2015 MAP cases in Portugal's inventory that started in 2016 or 2017. Broadly, all peers indicated having a co-operative relationship with Portugal's competent authority, some of them emphasising its easiness of contact. Most peers also appreciated the good working relationship, although some noted that it may take time before receiving a position paper from Portugal's competent authority, which may delay the timely resolution of MAP cases.

Portugal provided extensive answers in its questionnaire, which was submitted on time. Portugal 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, Portugal provided the following information:

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

Finally, Portugal is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Portugal also provided peer input on other assessed jurisdictions.

Overview of MAP caseload in Portugal

The analysis of Portugal’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 Portugal, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017
Attribution/allocation cases	39	23	34	28
Other cases	13	19	11	21
Total	52	42	45	49

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁷ Apart from analysing Portugal’s legal framework and its administrative practice, the report also incorporates peer input. Furthermore, the report depicts the changes adopted and plans shared by Portugal to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Portugal 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 Portugal has entered into are available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/convencoes_evitar_dupla_tributacao/convencoes_tabelas_doclib/pages/english-version.aspx (accessed on 18 July 2018). The treaties that are signed but have not yet entered into force are with Barbados (2010), Finland (2016), Montenegro (2016) and Timor-Leste (2017). The newly signed treaty with Finland (2016) will replace the existing treaty (1970), once it enters into force. For that reason the new treaty is already taken into account in the treaty analysis. Reference is made to Annex A for the overview of the Portugal’s tax treaties.
2. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-portugal.pdf.
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Portuguese Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”.
5. Available at: www.oecd.org/tax/dispute/Portugal-Dispute-Resolution-Profile.pdf.
6. The MAP statistics of Portugal are included in Annexes 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: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

References

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

Part A

Preventing disputes

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

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

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

Current situation of Portugal's tax treaties

2. Out of Portugal's 79 tax treaties, 77 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. One of the remaining two treaties contains a provision that is based on the first sentence of Article 25(3), but omits the word "interpretation". The other treaty also contains such a provision, but does not contain the words "interpretation" and "doubts". For this reason, these two treaties are considered as not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Portugal reported that the absence of Article 25(3), first sentence, in its tax treaties does not obstruct its competent authority from entering into MAP agreements of a general nature. This, however, only applies if the relevant tax treaty contains in the MAP article a provision stipulating that the competent authorities shall endeavour to resolve by mutual agreement at least any *difficulties* concerning the application of the treaty.

Anticipated modifications

Multilateral Instrument

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

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

Bilateral modifications

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

Peer input

7. Almost all peers that provided input reported that their treaty with Portugal meets the requirements under element A.1. For the two treaties identified above that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015), one of the relevant peers reported that its treaty with Portugal meets the requirements under element A.1.

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 79 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Portugal 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.

8. 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.

Portugal’s APA programme

9. Portugal reported that it has implemented an APA programme, which was established by the Budget Law for 2008 and which added Article 128-A to the Corporate Income Tax Code (CIRC). By Degree-Law 159/2009, the article was renumbered to Article 138 of the CIRC.² Under this law Portugal is allowed to enter into unilateral, bilateral and multilateral APAs. For bilateral and multilateral APAs it is required that there is a tax treaty in force, whereby for multilateral APAs also the equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2015) should be included.

10. Article 138(9) of the CIRC stipulates that the Minister of Finance shall regulate by ministerial order the requirements and conditions for filing of an APA-request, the information and documentation to be included in such request and the process for obtaining a bilateral APA. The relevant rules hereto are included in the Ministerial Order 620-A/2008 of 19 July 2008.³ This Ministerial Order contains information on Portugal’s APA programme, the scope of APAs, the process for obtaining APAs, filing procedures and information to be included in an APA request, the possibility to renew or revise an existing APA, fees to be paid for obtaining an APA and monitoring of implementation of the APA, once granted.

11. Portugal reported that an APA request should be sent to its tax administration’s Large Taxpayer Unit at least 180 days before the beginning of the fiscal year to be covered by the agreement, which is also reflected in Article 5(2) of the Ministerial Order. Where it concerns a request for a bilateral or multilateral APA, the request should also be provided to the International Affairs Department within the tax administration, the department responsible for handling MAP cases. Furthermore, Article 138(6) of the CIRC and Article 15(1) of the Ministerial Order note that an APA cannot exceed a three year period, however, it is possible to renew the APA afterwards.

12. Article 16(5) of the Ministerial Order notes that the conclusion of an APA is subject to the payment of fees by taxpayers, which are set in Ministerial Order 923/99 of 20 October 1999.⁴ The order includes a fee schedule ranging up to the maximum of EUR 7 000 per APA request, depending on the size of transactional values and turnover of the taxpayer concerned. The amount of the fee is subject to a 50% reduction when it concerns a renewal of an existing APA.

Roll-back of bilateral APAs

13. Portugal reported that its APA programme does not provide roll-back of APAs. According to Article 138 of the CIRC and Ministerial Order 620-A/2008, APAs can only be applied to taxable years that commence after the date on which the taxpayer submitted a request for an APA.

Practical application of roll-back of bilateral APAs

14. Portugal reported that it publishes statistics on APAs on the website of the EU JTPF.⁵ As from 1 January 2016, Portugal has received three new requests for bilateral APAs. Two have been granted and five are under review (including APA requests from prior to 1 January 2016).

15. Since Portugal's APA programme does not provide roll-back, Portugal has not received any requests for roll-backs since 1 January 2016.

16. None of the peers that provided input reported having received any request for a roll-back of bilateral APAs with Portugal.

Anticipated modifications

17. Portugal did not indicate that it anticipates any modifications in relation to element A.2.

Conclusion

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

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. The text of Article 138 of the CIRC is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/codigos_tributarios/CIRC_2R/Pages/irc138.aspx (accessed on 18 July 2018).
3. The text of Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_620-A-2008.pdf (accessed on 18 July 2018).
4. The text of Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_923-99_de_20_de_outubro.pdf (accessed on 18 July 2018).
5. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). The most recent statistics published are up to 2016.

References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en> (accessed on 18 July 2018).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en> (accessed on 18 July 2018).

Part B

Availability and access to MAP

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

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

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

Current situation of Portugal's tax treaties

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

19. Out of Portugal's 79 tax treaties, 69 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report (Action 14 final report, OECD, 2015b)*, allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of the Portugal's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

20. The remaining ten tax treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	8
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of that report, whereby (i) taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident, and (ii) MAP is only available in case of “double taxation not in accordance with the provision of the convention”.	1
A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of that report, whereby taxpayers can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayers are also required to initiate these remedies when submitting a MAP request.	1

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

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

22. The non-discrimination provision in the remaining treaty is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by a limited scope of the non-discrimination article, following which this treaty is considered not to be in line with this part of element B.1.¹

23. The treaty mentioned in the second row of the table above only provides for MAP in cases where it concerns “double taxation not in accordance with the provision of the Convention”. As Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) only requires “taxation not in accordance with the provision of the Convention”, this treaty is also not considered not to be in line with element B.1

24. Lastly, with respect to the treaty included in the third row of the table above, the provision incorporated in the protocol to this treaty reads:

the expression “irrespective of the remedies provided by the domestic law” shall mean that the start of the mutual agreement procedure is not an alternative with respect to the domestic legal procedure, which is the one having in any case priority, whenever the conflict to an application of the (contracting state’s) taxes not in accordance with the Convention.

25. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law, even though

the provision contained in the MAP article is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This treaty is therefore considered not in line with this part of element B.1.

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

26. Out of Portugal’s 79 tax treaties, 58 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

27. The remaining 21 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 (two years)	19 ²
Filing period more than three years for a MAP request (five years)	1

28. Portugal reported that in the absence of a filing period in the tax treaty, there is no timeframe applicable under Portugal’s domestic law, following which there is no time limit set for filing a MAP request. This, however, is not reflected in Portugal’s MAP guidance.

Anticipated modifications

Multilateral Instrument

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

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

30. Portugal reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.³ In this reservation, Portugal declared to ensure that all of its

tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

31. In view of the above, following the reservation made by Portugal, those three tax treaties identified in paragraphs 22-24 above that are considered not containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

33. In regard of the 19 tax treaties identified in paragraph 27 above that contain a filing period for MAP requests of less than three years, Portugal listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the 19 relevant treaty partners, three are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Portugal as a covered tax agreement under that instrument. All remaining 14 treaty partners also made a notification under Article 16(6)(b)(i). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, modify 14 of the 19 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

34. Portugal further reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this respect, Portugal reported it will approach its treaty partners in 2018 to renegotiate treaties where necessary to bring them in line with the Action 14 Minimum Standard.

35. With respect to the first sentence of Article 25(1), Portugal reported that it will in those bilateral negotiations propose to include the equivalent as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). For those treaties, which do not contain

a filing period for MAP requests or a period of less than three years, Portugal reported it will seek for renegotiation of treaties to make them in line with the Action 14 Minimum Standard. In addition, Portugal reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), in all of its future treaties.

Peer input

36. Some peers that provided input reported that their treaty with Portugal meets the requirements under element B.1. Four peers took note of the filing period for MAP requests of less than three years in their treaty with Portugal. Two of these peers noted that they expect their treaty to be modified via the Multilateral Instrument concerning this filing period, which indeed is the case. Additionally, another peer reported a revision of its existing treaty in line with the Action 14 Minimum Standard is being undertaken, but the current treaty is in line with element B.1.

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>20 out of 79 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 20 tax treaties:</p> <ul style="list-style-type: none"> • One tax treaty does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the Action 14 final report (OECD, 2015b), or as amended by that final report. • 17 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/ • Two tax treaties do not contain the equivalent to Article 25(1), first sentence and 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>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14; or b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Portugal should follow up its stated intention to request in 2018 the inclusion of the required provision via bilateral negotiations.</p>
	<p>One tax treaty that contains a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) is not yet in force, while there is an existing treaty in force with the same jurisdiction that does not contain such equivalent.</p>	<p>Portugal should as quickly as possible ratify the tax treaty that contains a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) to replace the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.</p>
		<p>In addition, Portugal 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).

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

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

Domestic bilateral consultation or notification process in place

38. As discussed under element B.1, none of Portugal's 79 treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

39. Section 5 of Portugal's MAP guidance prescribes that Portugal's competent authority shall, within four weeks after receipt of a MAP request, inform the other competent authority concerned of the case regardless of whether the case will be accepted by Portugal's competent authority. Such notification contains the following information: (i) identification of the person who submitted the MAP request, (ii) date of receipt of the request and the start date for statistical purposes and (iii) summary of the request. A copy of the taxpayer's request and its attachments are also sent to the other competent authority.

40. Portugal reported that where its competent authority considers that the objection raised in the MAP request is not justified, it will inform the taxpayer and the other competent authority concerned hereof within 30 days as from the receipt of the request, including a justification for such consideration.

41. Portugal reported that the process described above has been documented in the routines of the team responsible for handling MAP cases, including the steps to be followed by the team members when they consider that the objection raised in a MAP request is not justified.

Practical application

42. Portugal reported that as from 1 January 2016 in two cases its competent authority considered that the objections raised by taxpayers in their MAP requests were not justified, as taxpayers did not provide the required documentation. In this respect, Portugal’s competent authority sent notifications to the taxpayers concerned specifying the documents and/or information to be submitted, but received no response within the deadline. Portugal’s competent authority subsequently informed the taxpayers of its decision to close the case. Portugal noted that the MAP case could be reopened when the taxpayers concerned provide the required documentation within the time limit for MAP requests.

43. From Portugal 2016 and 2017 MAP statistics, it follows that in six cases the outcome was reported as “objection not justified”. In this respect, Portugal reported that for four of these six cases it was the other competent authority that decided the objection raised by the taxpayer in its MAP request was not justified.

44. Two peers provided input in relation to this element and reported having been notified of a decision by Portugal’s competent authority that the objection raised in a MAP is not justified. The first peer mentioned that it received in 2018 a notification with regard to fiscal year 2017 stating that Portugal did not accept a MAP request due to the taxpayer’s failure to submit required information and to respond to the request to provide such information. This peer was informed that Portugal had considered the objection raised in the MAP request as not justified and on that basis closed the case. The second peer reported that in November 2017, it received from Portugal’s competent authority a letter that it closed a case on the ground that the objection raised by the taxpayer in a MAP request is not justified.

Anticipated modifications

45. As previously discussed under element B.1, Portugal has signed the Multilateral Instrument. Specifically regarding element B.2, Portugal reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. Where tax treaties will not be modified via the Multilateral Instrument, Portugal declared it will continue to apply its bilateral notification and consultation process when its competent authority considers the objection raised in a MAP request not to be justified.

46. Portugal indicated that it does not anticipate any modifications in relation to element B.2.

Conclusion

	Areas for improvement	Recommendations
[B.2]	-	Portugal should continue to apply its documented notification process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14 (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

47. 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

48. Out of Portugal's 79 tax treaties, 67 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, eight treaties do not contain such a provision. The remaining four treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision as corresponding adjustments can only be granted on the basis of a mutual agreement between the competent authorities.

49. In addition to the above, Portugal 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.

50. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Portugal'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, Portugal reported that it will always provide access to MAP for transfer pricing cases and is able to make corresponding adjustments whenever appropriate.

51. Article 17-20 of the Ministerial Order No. 1446-C/2001 of 21 December 2001, concerning transfer pricing regulations, specifically prescribe the terms and conditions for providing corresponding adjustments.⁴ Article 17(2) of that Ministerial Order notes that Portugal's tax administration can provide for corresponding adjustments when they arise from tax treaties entered into by Portugal.

52. Section 2 of Portugal's MAP guidance gives examples of cases for which MAP can be requested, which covers transfer pricing adjustments on the application of the arm's length principle between associated enterprises and the attribution of profits to permanent establishments either under tax treaties or under the EU Arbitration Convention.

Application of legal and administrative framework in practice

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

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

Anticipated modifications

55. Portugal reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties, but with the deviating language as is described in paragraph 6 of the Commentary to Article 9 of the OECD Model Tax Convention (OECD, 2015a), namely that a corresponding adjustment only will be granted when the contracting state agrees that the primary adjustment is justified both in principle and as regards its amount.

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

57. Portugal has not, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 12 tax treaties identified in paragraph 48 above that are considered not to contain this equivalent, Portugal listed all of them as a covered tax agreement under the Multilateral Instrument, but only for five of them made, a notification on the basis of Article 17(4) that they do contain a provision described in Article 17(2).

58. With regard to those five treaties, one treaty partner is not a signatory to the Multilateral Instrument and one did not list its treaty with Portugal under that instrument. All remaining three treaty partners also made a notification on the basis of Article 17(4). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, replace the provisions in these three treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

59. Furthermore, for the remaining seven of the 12 tax treaties that Portugal listed as a covered tax agreement under the Multilateral Instrument and for which it did not make notification on the basis of Article 17(4), one treaty partner is not a signatory to the Multilateral Instrument and one has not listed its treaty with Portugal under that instrument. None of the remaining five treaty partners has, on the basis of Article 17(3), reserved

the right not to apply Article 17(2). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, supersede these remaining five treaties only to the extent that the provisions contained in those five treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1) of the Multilateral Instrument.

Conclusion

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

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

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

60. 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

61. None of Portugal's 79 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, Portugal's domestic law and/or administrative processes do not contain a provision allowing its competent authority to limit access to MAP for cases where a domestic anti-abuse rule was applied.

62. Section 2 of Portugal's MAP guidance gives examples of cases for which taxpayers can submit a MAP request, which includes cases concerning the application of treaty anti-abuse provisions or cases concerning whether the application of an anti-abuse rule provided for in the domestic law conflicts with the provisions of a tax treaty.

Practical application

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

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

Anticipated modifications

65. Portugal indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

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

66. 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

67. Portugal reported that its domestic law does not provide for a mechanism that allows taxpayers to enter into an audit settlement with the tax administration. Nevertheless, Portugal noted it will grant access to MAP for cases where taxpayers and a tax authority have already entered into an audit settlement. Section 7 of this guidance also confirms this.

68. Section 2 of Portugal's MAP guidance clarifies that MAP may be requested even if the taxpayer and the tax authorities entered into an audit settlement.

Administrative or statutory dispute settlement/resolution process

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

Practical application

70. Portugal reported that since 1 January 2016 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration.

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

Anticipated modifications

72. Portugal did not indicate that it anticipates any modifications in relation to element B.5.

Conclusion

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

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

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

73. 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

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

75. Portugal reported that in cases where a taxpayer does not include all the necessary information and documentation in its MAP request, Portugal's competent authority will notify this taxpayer and request to provide such information or documentation within 30 days. Such notification is sent by a registered letter with an acknowledgement of receipt on the basis of Article 38(1) of the Law regarding notifications concerning acts likely to change a taxpayer's situation.

76. If the taxpayer does not submit the requested information and/or documentation within the given deadline, Portugal's competent authority will inform the taxpayer of the decision to close the case. In this respect, Portugal specified that closed cases can be reopened if the taxpayer provides the requested information and/or documentation within the time limit for submission of a MAP request as specified in the applicable tax treaty.

77. Section 5 of Portugal’s MAP guidance includes information on how Portugal’s competent authority will follow up a MAP request. In this respect, it is noted that it will acknowledge receipt of a MAP request within ten days after submission and accordingly will inform the taxpayer of the process. Furthermore, it is stipulated that within a period of 30 days from the date of the receipt of a MAP request, Portugal’s competent authority will conduct an analysis to verify whether the MAP request was timely submitted, whether the objection raised is justified and whether the information and documentation submitted by the taxpayer is complete and complies with the document requirements. The result of this analysis will be notified to the taxpayer. Furthermore, where the MAP request does not contain all required information and documentation, section 5 also stipulates that Portugal’s competent authority will request such additional information.

Practical application

78. As discussed under element B.2, Portugal reported that its competent authority limited access to MAP in two cases during the Review Period on the grounds that the taxpayers concerned did not include all the necessary information and documentation in their MAP request. In that regard, Portugal noted that its competent authority notified the taxpayer to provide the missing information and documentation, but received no response within the given deadline. Accordingly, the taxpayer was informed of the decision to close the case.

79. Peers generally indicated that since 1 January 2016 they are not aware of a limitation of access to MAP by Portugal’s competent authority in situations where taxpayers have complied with the information and documentation requirements to be included in a MAP request. One peer indicated that it received a notification of denial of access to MAP in 2018, with regard to the case concerning fiscal year 2017. Another peer reported that in November 2017, it received from Portugal’s competent authority a letter that it closed a case on the ground that the objection raised by the taxpayer in a MAP request is not justified.

Anticipated modifications

80. Portugal indicated that it does not anticipate any modifications in relation to element B.6.

Conclusion

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

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

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

81. 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, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Portugal's tax treaties

82. Out of Portugal's 79 tax treaties, 37 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 42 treaties do not contain such provision at all.⁵

Anticipated modifications

Multilateral Instrument

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

84. In regard of the 42 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Portugal listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 42 treaty partners, 16 are not a signatory to the Multilateral Instrument and one did not list their treaty with Portugal as a covered tax agreement. All of the remaining 25 treaty partners also made a notification on the basis of Article 16(6)(d)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, modify 25 of 42 tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

85. Portugal further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Portugal reported it will approach its treaty partners in 2018 to renegotiate treaties where necessarily to make them in line with the Action 14 Minimum Standard. In addition, Portugal reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

86. Most of the peers that provided input reported that their treaty with Portugal meets the requirement under element B.7.

87. In regard of the 42 treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), seven peers provided input. One of these seven peers noted that its treaty with Portugal is not in line with element B.7. Furthermore, five peers also mentioned that the treaty with Portugal is not fully in line with the requirements under the Action 14 Minimum Standard, but that it is expected that it will be modified via the Multilateral Instrument, which is indeed the case.

Conclusion

	Areas for improvement	Recommendations
[B.7]	42 out of 79 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	<p>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those 25 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force (as well as in the tax treaty that does not contain such equivalent and is not yet in force and that will be modified by the Multilateral Instrument when both the tax treaty and the Multilateral Instrument enter into force).</p> <p>For the remaining 17 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, Portugal should follow up its stated intention to request in 2018 the inclusion of the required provision via bilateral negotiations.</p> <p>In addition, Portugal 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.

88. 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.

Portugal's MAP guidance

89. Portugal's rules, guidelines and procedures are prescribed in specific MAP guidelines ("**MAP guidance**"), which are available at:

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf

90. This MAP guidance was issued in December 2017 and relates to mutual agreement procedures under both tax treaties Portugal entered into and the EU Arbitration Convention. The guidance consists of the following seven sections:

1. Introduction
2. Scope of the MAP
3. Who can request the initiation of a MAP
4. How to initiate a MAP
5. Processing MAPs
6. Implementation of the agreement reached in the scope of a MAP
7. The MAP and the Portuguese legislation

91. These seven sections contain information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. examples of cases for which taxpayers can submit a MAP request, which *inter alia* include transfer pricing cases, anti-abuse provisions, audit settlements and bona fide taxpayer-initiated foreign adjustments
- c. the manner and form in which the taxpayer should submit its MAP request and on what legal basis (e.g. a tax treaty or the EU Arbitration Convention)
- d. the specific information and documentation that should be included in a MAP request (see also below)
- e. confidentiality of information that is used in the MAP process
- f. how the MAP functions in terms of timing and the role of the competent authorities and taxpayers
- g. information on availability of arbitration (including the EU Arbitration Convention)
- h. relationship with domestic available remedies
- i. the process of implementing MAP agreements, including steps to be taken and timing of such steps
- j. suspension of tax collection
- k. the (non) consideration of interest and penalties in MAP.

92. The MAP guidance of Portugal described on the previous page contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.⁶ Although the information included in Portugal's MAP guidance is detailed and comprehensive, two subjects are not specifically clarified therein. These concern (i) whether MAP is available in cases of multilateral disputes, and (ii) whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

Information and documentation to be included in a MAP request

93. As noted above, Portugal's MAP guidance defines the manner and form in which taxpayers should submit their MAP request. In this respect, section 4 of that guidance specifies that taxpayers should submit a MAP request in paper format and in the Portuguese language. Furthermore it is emphasised that there are no essential further formalities when submitting a MAP request in Portugal, other than that a taxpayer has to explicitly specify whether its MAP request concerns a protective MAP claim.

94. 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.⁷ This agreed guidance is shown below. Portugal's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in this 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.

95. Further to this list, Portugal's MAP guidance also stipulates that a MAP request should specify: (i) the other states concerned, (ii) the tax periods concerned, (iii) whether the request concerns issues for which legal or administrative procedures were initiated by the taxpayer or related parties, or whether such procedures have been finalised. In addition, the MAP guidance notes that taxpayers should, where applicable, include all relevant documents issued by the other state concerned (e.g. tax assessments), a copy of the MAP request if it is submitted with the competent authority of the other state concerned, other

agreements relevant for the MAP case (e.g. a bilateral APA) and judicial/administrative decisions on those issues for which a MAP request is submitted.

Anticipated modifications

96. Portugal reported it envisages revising its MAP guidance when changing its legal framework, including arbitration provisions introduced by the Multilateral Instrument and at a European level.

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, Portugal could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of multilateral disputes • whether taxpayers can request for the multi-year resolution of recurring issues through MAP.

[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.

97. 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.⁸

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

98. Portugal's MAP guidance is published and can be found at (in English):

http://info.portaldasfinancas.gov.pt/pt/docs/Conteudos_1pagina/Documents/Mutual_Agreement_Procedure.pdf

99. This guidance was introduced in December 2017. As regards its accessibility, both the Portuguese and English versions of Portugal's MAP guidance can easily be found on the website of Portugal's Ministry of Finance, such by searching for MAP or mutual agreement procedure (or the Portuguese equivalent).

MAP profile

100. The MAP profile of Portugal is also published on the website of the OECD.⁹ This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Anticipated modifications

101. Portugal indicated that it does not anticipate any modifications in relation to element B.9.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	As it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Portugal should ensure that its future updates to the MAP Guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

[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.

102. 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

103. As previously discussed under element B.5, under Portugal's domestic law it is not possible that taxpayers and the tax administration enter into audit settlements. As such Portugal's MAP guidance does not describe the relationship between MAP and audit settlements. Nevertheless, section 2 of this guidance contains a statement that MAP may be requested even if the taxpayer and the tax authorities entered into an audit settlement.

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

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

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

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

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

107. As Portugal does not have an internal administrative or statutory dispute settlement/resolution process available, there is no need for notifying treaty partners of such process.

Anticipated modifications

108. Portugal indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. The treaty with Finland that is currently in force has the same of content in regard to the MAP article as the treaty mentioned in paragraph 22. Portugal recently signed a new treaty with Finland, which is in line with the requirements under the Action 14 Minimum Standard. This treaty, however, is not yet ratified by Portugal, but is already taken into account in the treaty analysis.
2. The current treaty with Finland (1970) also contains a two-year period for filing a MAP request. However, the newly signed treaty with Finland (2016) contains the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015).
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Portuguese Republic reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting

Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified". An overview of Portugal's positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-portugal.pdf.

4. The text of the Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/portaria_1446-c-2001_de_21_de_dezembro_i_serie_b.pdf (accessed on 18 July 2018).
5. The treaty with Finland that is currently in force contains the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015). Portugal recently signed a new treaty with Finland that does not contain such equivalent, and this treaty, however, is not yet ratified by Portugal.
6. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
7. www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
8. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
9. Available at: www.oecd.org/tax/dispute/Portugal-Dispute-Resolution-Profile.pdf.

References

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

Part 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.

109. 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, 2015a), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Portugal's tax treaties

110. Out of Portugal's 79 tax treaties, 78 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty. With respect to the remaining treaty, although it contains a provision that is based on the first sentence of Article 25(2), its scope is limited to cases of “double taxation”, and not applies to cases concerning “taxation that is not in accordance with the provision of the treaty”. This provision therefore is considered not being the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Anticipated modifications

Multilateral Instrument

111. Portugal recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply

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

112. In regard of the tax treaty identified above that is considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a), Portugal listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner, being a signatory of the Multilateral Instrument, also made such a notification. Therefore, at this stage, the Multilateral Instrument, upon entry into force, will modify the tax treaty identified above to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

113. As the treaty that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will be modified via the Multilateral Instrument, there is no need for a bilateral modification of this treaty. Regardless, Portugal reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

114. Some peers that provided input indicated that their treaty provision meets the requirements under element C.1.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 79 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Portugal should maintain its stated intention to include the required provision in all future tax treaties.

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

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

115. 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

116. Statistics regarding all tax treaty related disputes concerning Portugal are published on the website of the OECD as of 2007.¹ Portugal also publishes its MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.²

117. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Portugal provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Portugal and of which its competent authority was aware.³ The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annexes B and C respectively⁴ and should be considered jointly for an understanding of the MAP caseload of Portugal. With respect to post-2015 cases, Portugal reported having reached out to 13 of its 17 MAP partners with whom it had a post-2015 MAP cases, with a view to have their MAP statistics matching. Of these 13 Portugal has matched its MAP statistics with ten of them. Of the remaining four of the 17 treaty partners, it already has matched its MAP statistics with three treaty partners beforehand. The remaining treaty partner did not report its MAP statistics under the MAP Statistics Reporting Framework and therefore was not contacted by Portugal to match its statistics.

Monitoring of MAP statistics

118. Portugal reported it has a system in place to record and monitor its MAP caseload. This system enables Portugal’s competent authority to monitor the whole MAP process from the initial registration of a MAP request until the completion of a case. It further allows to register all exchanged correspondence, monitor the time spent during each phase of the MAP process and to produce statistical information.

119. On a managerial level, the system enables officials who handle MAP cases, as also the head of the international co-operation team to check the process and the timelines for each individual MAP case.

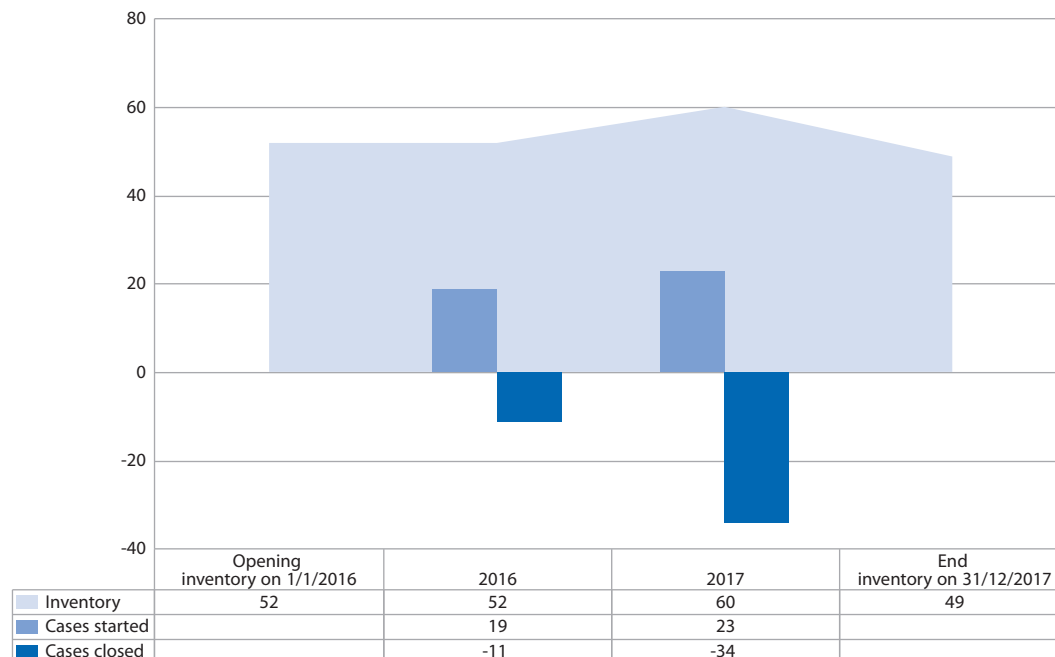
120. Further to the above, section 5 of Portugal’s MAP guidance clearly stipulates that Portugal’s competent authority will make every effort to reach an agreement within two years with the competent authority of the relevant treaty partner in order to avoid a situation of taxation that is not in accordance with the provisions of the applicable treaty.

Analysis of Portugal's MAP caseload

Global overview

121. Figure C.1 shows the evolution of Portugal's MAP caseload over the Statistics Reporting Period.

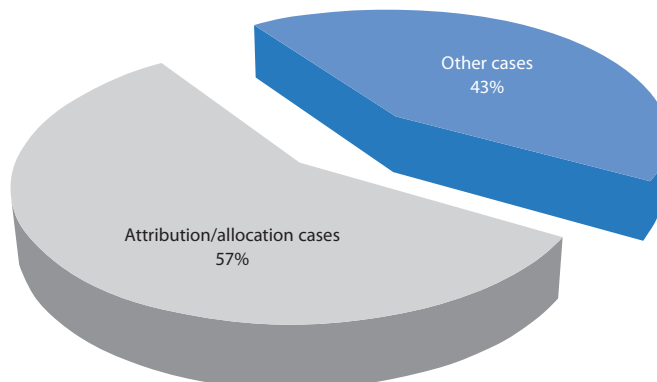
Figure C.1. Evolution of Portugal's MAP caseload



122. At the beginning of the Statistics Reporting Period Portugal had 52 pending MAP cases, of which 39 were attribution/allocation cases and 13 other MAP cases.⁵ At the end of the Statistics Reporting Period, Portugal had 49 MAP cases in its inventory, of which 28 are attribution/allocation cases and 21 are other MAP cases. Portugal's MAP caseload was reduced by 6% during the Statistics Reporting Period, which consists of a reduction of 28% for attribution/allocation cases and an increase of 62% for other MAP cases.

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

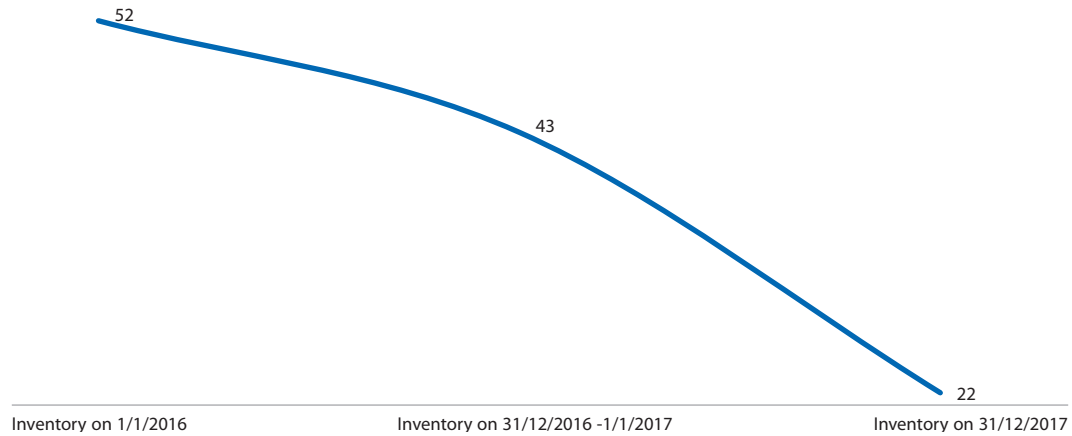
Figure C.2. End inventory on 31 December 2017 (49 cases)



Pre-2016 cases

124. Figure C.3 shows the evolution of Portugal’s pre-2016 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Portugal’s MAP inventory Pre-2016 cases



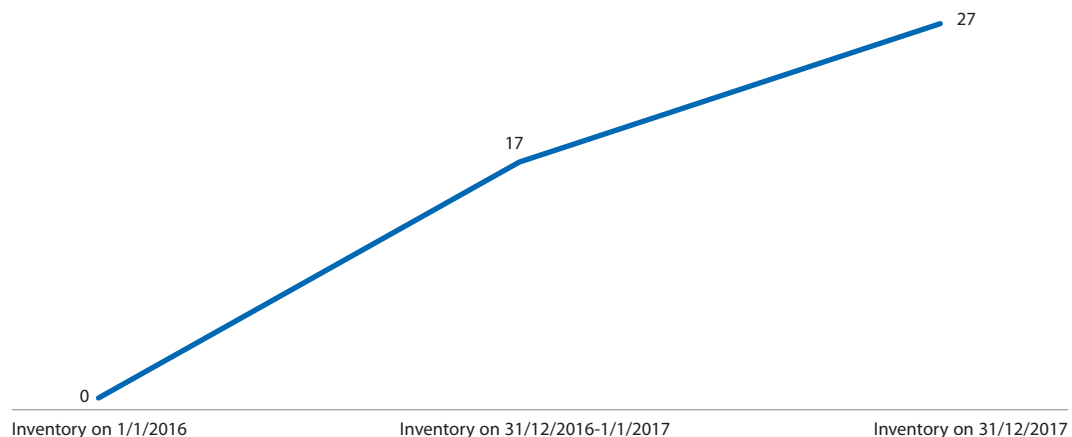
125. At the beginning of the Statistics Reporting Period, Portugal’s MAP inventory of pre-2016 MAP cases consisted of 52 cases, of which were 39 attribution/allocation cases and 13 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 22 cases, consisting of 11 attribution/allocation cases and 11 other cases. The decrease in the number of pre-2016 MAP cases is shown in the table below.

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution/allocation cases	-21%	-65%	-72%
Other cases	-8%	-8%	-15%

Post-2015 cases

126. Figure C.4 shows the evolution of Portugal’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.4. Evolution of Portugal’s MAP inventory Post-2015 cases



127. In total, 42 MAP cases started during the Statistics Reporting Period, 23 of which concerned attribution/allocation cases and 19 other cases. At the end of this period the total number of post-2015 cases in the inventory was 27 cases, consisting of 17 attribution/allocation cases and 10 other cases. Conclusively, Portugal closed 15 post-2015 cases during the Statistics Reporting Period, six of them being attribution/allocation cases and nine of them of them being other cases. The total number of closed cases represents 36% of the total number of post-2015 cases that started during the Statistics Reporting Period.

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

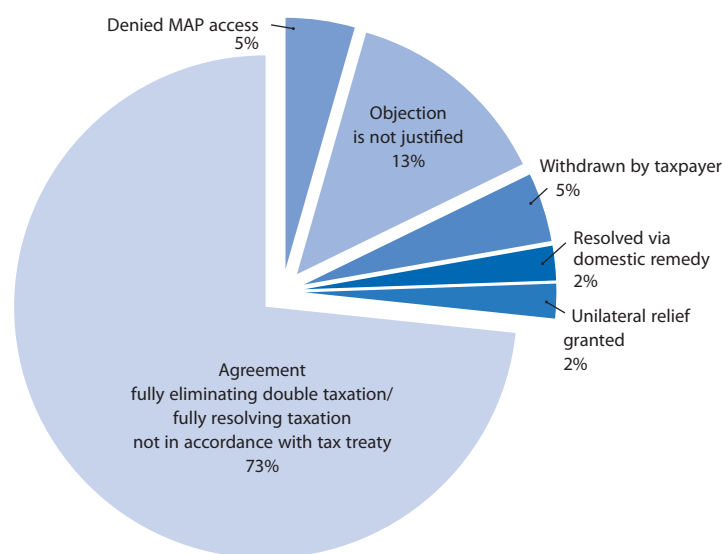
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution/allocation cases	17%	36%	26%
Other cases	0%	75%	47%

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

129. During the Statistics Reporting Period Portugal in total closed 45 MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed during the Statistics Reporting Period (45 cases)



130. Figure C.5 shows that three-quarters of the cases (33) that were closed during the Statistics Reporting Period were reported with the outcome of “agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty”.

Reported outcomes for attribution/allocation case

131. In total, 34 attribution/allocation cases were closed during the Statistics Reporting Period. For 30 out of these 34 cases [88%], the reported outcome is agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty.

Reported outcomes for other cases

132. In total, 11 other cases were closed during the Statistics Reporting Period. The main reported outcomes for these cases are:

- objection is not justified [55%]
- agreement fully eliminating double taxation/fully resolving taxation not in accordance with tax treaty [27%].

*Average timeframe needed to resolve MAP cases**All cases closed during the Statistics Reporting Period*

133. The average time needed to close MAP cases during the Statistics Reporting Period was 49.94 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/allocation cases	34	62.34
Other cases	11	11.61
All cases	45	49.94

Pre-2016 cases

134. For pre-2016 cases Portugal reported that on average it needed 74.14 months to close attribution/allocation cases and 42.39 months to close other cases. This resulted in an average time needed of 72.03 months to close 30 pre-2016 cases. For the purpose of computing the average time needed to resolve pre-2016 cases, Portugal reported that it uses the following dates:

- *Start date*: the date of reception of the MAP request, and for MAP cases submitted in other state, the date that the other state communicated as “start date”
- *End date*: the date of the notification of the taxpayer on the outcome of the MAP case.

Post-2015 cases

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

136. For post-2015 cases Portugal reported that on average it needed 7.24 months to close attribution/allocation cases and 4.77 months to close other cases. This resulted in an average time needed of 5.76 months to close 15 post-2015 cases.

Peer input

137. As will be discussed in more detail under element C.3, peers that provided input reported having a good working relationship with Portugal's competent authority and that no issues have surfaced in the (timely) resolution of MAP cases. One of these peers, however, noted that meeting target timeframes for resolving MAP cases, for example, to timely issue position paper, is often challenging and that Portugal's competent authority and its own competent authority are not always able to meet these targets. Furthermore, another peer reported that in some long-pending MAP cases position papers are still to be provided by Portugal's competent authority, which may delay their resolution in a timely manner.

Anticipated modifications

138. As will be further discussed under element C.6, Portugal recently changed its tax treaty policy and now intends to include a mandatory and binding arbitration provision in its bilateral tax treaties with some modifications, to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Portugal submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Portugal's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	Portugal's MAP statistics show that during the Statistics Reporting Period it closed 36% (15 out of 42 cases) of its post-2015 cases in 5.76 months on average. In that regard, Portugal is recommended to seek to resolve the remaining 64% of its post-2015 cases that were pending on 31 December 2017 (27 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.

139. 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 Portugal's competent authority

140. The competent authority function is under Portugal's tax treaties assigned to the Minister of Finance and the Director General of the Tax and Customs Authority. Ministerial Order No. 320-/2011 of 29 December 2011 established the structure of the Tax and Customs Authority.⁶ The Director General delegated the competences related to income taxes and related international affairs in the Deputy Director General for Income Taxes, who is responsible for various departments, including the International Affairs Department. Article 5 of the Ministerial Order defines the responsibilities of this department, one of which is to handle MAP cases. The competence to handle MAP cases is further delegated to the international co-operation team within the department.

141. Currently, the team consists of nine staff members, five of which are involved in handling MAP cases and also have other tasks like working on the exchange of information. The team is supported by two translators.

142. Further to the above, Portugal reported that staff in charge of MAP is highly educated. In addition, they receive general trainings on an annual basis by way of training on the job and e-learning courses. Funding necessary to carry out the competent authority function is furnished from the general budget of the Tax and Customs Authority, which is allocated on the basis of the needs identified. In that regard, Portugal stated that it has sufficient budget available to perform the competent authority functioning and that it does not anticipate budget constraints that may hinder the resolution of MAP cases.

143. Concerning the handling and resolving of MAP cases, Portugal reported that its competent authority prepares a position on the case by taking into account all information that it can obtain by whichever means available. To this end, or to acquire information on the specific case, Portugal's competent authority can request the assistance of other departments, such as auditors in regional tax departments or at the Large Taxpayer Unit within Portugal's Tax and Customs Authority. Furthermore, staff involved in handling MAP cases has autonomy to prepare a position, but prior to the submission of the position paper to the other competent authority concerned the head of the international co-operation team and the Director of the International Affairs Department need to approve such position paper. It subsequently needs approval from the Deputy Director General for income taxes.

144. As regards the resolution of MAP cases, section 5 of Portugal's MAP guidance sets forth that Portugal's competent authority will interpret and apply the provisions of tax treaties in good faith, such in accordance with the terms of these treaties and in light of their objective and purpose. Furthermore, it is stipulated that Portugal's competent authority will take into consideration the updates of the Commentary to the OECD Model Tax Convention (OECD, 2015a) (including any observations/reservations by Portugal) when resolving cases on the application of tax treaty provisions. For transfer pricing cases the OECD Transfer Pricing Guidelines are taken into consideration as well.

Monitoring mechanism

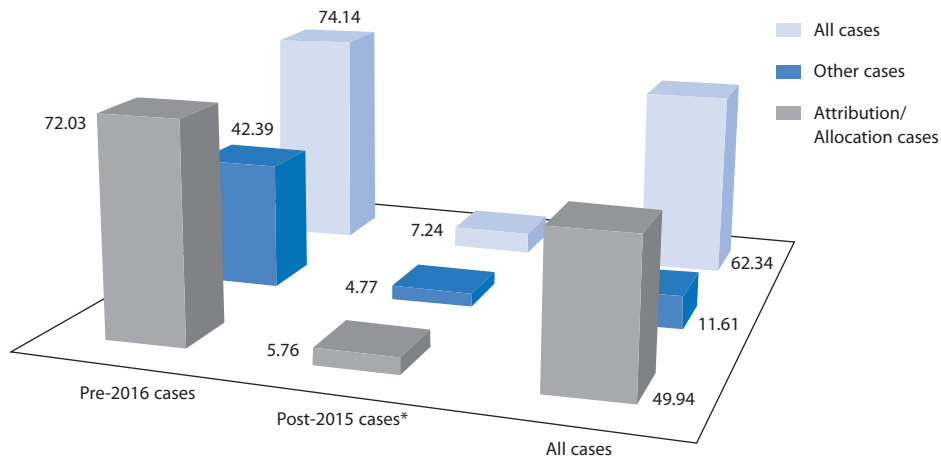
145. Portugal regularly monitors whether the resources available for the MAP function are sufficient to resolve MAP cases. When the situation occurs that such resources are insufficient, a proposal for additional resources is submitted to the Director General of the Tax and Customs Authority. As will be discussed under anticipated modifications, a further increase in the staff in charge of MAP is planned in 2018.

Practical application

MAP statistics

146. As discussed under element C.2 Portugal did not close its MAP cases during the Statistics Reporting Period within the pursued 24-month average. In addition, the average time taken to close attribution/allocation cases is higher than the average time needed for other cases. This can be illustrated by Figure C.6.

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



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

147. Based on these figures, it follows that on average it took Portugal 49.94 months to close MAP cases during the Statistics Reporting Period, by which Portugal is considered not to be adequately resourced. In particular, this concerns attribution/allocation cases, as the average time needed was 62.34 months. Portugal reported that the reason overstepping this 24-month average time period was primary due to a shortage of human resources within its competent authority.

148. Portugal further reported that 14 cases were resolved in 2016 and 2017 in more than 24 months on average. In this respect, it mentioned that for the four oldest cases that were closed in 2017 all related to a single treaty partner and were resolved at the same time. For these cases more than one meeting was needed to discuss the case, exchange positions and find an agreement. At some point Portugal's competent authority came close to proposing to close the case, but after a subsequent face-to-face meeting, an agreement could be reached. For other cases Portugal mentioned that there were translation difficulties (e.g. because Portugal's competent authority does not always receive information on the case in English) or communication difficulties that caused delays in resolving the cases. Furthermore, Portugal reported that in some cases the information provided by the other competent authority was not sufficient to fully analyse the case, which caused that information needed to be collected internally first or to be requested with that other competent authority.

Peer input

149. In total, 13 provided input on their contacts with Portugal's competent authority in general and their experience as regards the resolution of MAP cases.

150. Almost all peers that provided input noted that their MAP caseload with Portugal is relatively low. Two peers reported having a MAP inventory of more than five cases with Portugal. Regardless hereof, all peers reported having a good working relationship with Portugal. They noted that contacts with Portugal's competent authority are easy, one of them emphasising that the communication was fluent and effective.

151. Given the relative modest MAP caseload of the peers with Portugal, most peers noted that face-to-face meetings are not scheduled on a regular basis. In that regard, they reported that communication mainly takes place via letters and e-mail.

152. Further to the above, all peers that provided input reported that their experience with Portugal in resolving MAP cases have been positive. One peer noted that Portugal's competent authority is available and open to discussions of pending cases, which take place in a cordial atmosphere. This was also echoed by a second peer, who noted that during the last face-to-face meeting fruitful and principle discussions took place in a very friendly environment, following which most cases could be resolved, including two very old cases. Two other peers mentioned that although it had a limited number of MAP cases with Portugal, its competent authority has responded to any communication in a timely manner. Nevertheless, one of these peers also noted that in some long-pending MAP cases position papers are still to be provided by Portugal's competent authority, which may delay their resolution.

153. A number of peers provided for suggestions to improve the (timely) resolution of MAP cases with Portugal. In this respect and with regard to communications between competent authorities, one peer reported that it agreed with Portugal's competent authority to streamline the procedures through using e-mails for correspondence and to provide required clarifications in cases, such with a view to make progress in resolving MAP cases. Two other peers also believed more frequent use of emails would enhance the timely resolution of MAP cases. Furthermore, another peer, in respect of MAP meetings, observed the necessity to schedule regular face-to-face meetings and that both Portugal and the peer should keep in mind that they schedule such meetings when it would be necessary or adequate for resolving pending cases. Such meetings could in this peer's view take place at alternative venues, e.g. in the course of OECD meetings. Lastly, one peer suggested that more frequent communications between the CAs could improve the timelines for resolving MAP cases. This peer also suggested that additional use of translation services by Portugal's competent authority to improve the efficiency of resolving pending MAP cases. This peer further recommended that Portugal's competent authority responds or provides status updates on requests for information or position papers by this peer in more timely manner, which in this peer's view would help to build a better working relationship and also would reduce uncertainties that can delay the resolution of MAP cases.

Anticipated modifications

154. Portugal reported that it observed that the current available resources allocated to the MAP function are insufficient for a timely resolution of pending MAP cases. In that regard it noted that measures are foreseen in 2018 to improve the timely resolution of MAP cases. These include: (i) a specialisation of staff within the international co-operation team, following which there will be four persons exclusively handling MAP cases, (ii) the establishment of a transfer pricing team that will support the resolution of MAP cases and (iii) the implementation of administrative procedures to ensure a better monitoring of deadlines for resolving MAP cases. Concerning the first aspect, Portugal enumerated that in 2017 it started an internal recruitment so as to increase the number of staff involved in MAP, whereby special attention was given to the enrolment of staff that had training in the area of dispute resolution.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Portugal closed MAP cases in 49.94 months on average, there may be a risk that post-2015 cases are not closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), which indicates that Portugal's competent authority is not adequately resourced.	Portugal should follow-up its stated intention to add staff to its competent authority specifically dedicated to handle MAP cases, the creation of a specific transfer pricing team and the implementation of administrative procedures for monitoring MAP cases, with a view to ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. In addition, Portugal should closely monitor whether the above measures will indeed contribute to the resolution of MAP cases 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.

155. 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

156. As discussed under element C.3, Portugal reported that staff handling MAP cases has the autonomy to negotiate cases and enter into MAP agreements, which are subject to approval by the head of the international co-operation team. As a matter of formality, the Director of the International Relations directorate signs the letters to be exchanged with other competent authorities, which *inter alia* concerns the sending of positions papers. When Portugal's competent authority has entered into a (tentative) MAP agreement, it is sent to the Deputy Director General of the Tax and Customs Authority responsible for income taxes for signing if the case under review concerns a value over EUR 250 000 (for individuals) or EUR 500 000 (for companies). In all other cases the MAP agreement is only signed by the Director of the International Affairs Department.

157. In regard of the above, Portugal reported that in practice the competence to handle cases and conclude MAP agreements is solely at the level of the International Affairs Department without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations. While other departments within the Tax and Customs Authority, such as auditors, may be requested to provide information or assistance, Portugal specified that a position in a MAP case is only prepared by its competent authority, such taking into account all relevant information. In this respect, section 7 of Portugal's MAP guidance explicitly indicates that the MAP process is totally independent from procedures of control and tax audit.

Practical application

158. All peers that provided input reported not being aware of any impediments in Portugal to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned that it is not being aware that staff in charge of the MAP in Portugal is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

159. Portugal did not indicate that it anticipates any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Portugal 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 Portugal would like to see reflected in future amendments to the tax 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.

160. 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 Portugal

161. Portugal reported that by Law No. 66-B/2007 of 28 December 2007 the performance/management indicators were established for each sector within Portugal's public administration in the so-called "Integrated System for the Evaluation of Public Administration Performance (SIADAP)". Under this system, for each department a performance evaluation is made, which are based on an assessment and accountability framework that specifies: (a) the mission of the department, (b) multi-annual strategic objectives, (c) annual operational objectives and targets to be achieved, (d) performance indicators and respective sources of verification, (e) available financial and human resources, and (f) the degree to which the objectives have been achieved, including any deviations and their causes, and the final evaluation process.

162. In view of the above, Portugal reported that the International Affairs Department is subject to this assessment methodology on an annual basis, following which each staff member, including those involved in handling MAP cases, is evaluated.

163. The Final Report on Action 14 (OECD, 2015b) includes examples of performance indicators that are considered appropriate. These indicators are:

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

164. While none of these examples are used in Portugal, it reported that within the international co-operation team an internal indicator is set for the staff responsible for handling MAP cases. This indicator concerns the average time taken to complete a report on the MAP case. In practice, this comes down to the time needed to prepare a position paper to the other competent authority concerned, for which the average timeframe should be less than six months.

165. Further to the above, Portugal 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. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Practical application

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

Anticipated modifications

167. Portugal did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

168. 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

169. Portugal reported that it has no general impediments under its domestic law for including MAP arbitration in its tax treaties, but there may be some legal limitations on the scope of issues that can be dealt with by arbitration. While Portugal’s tax treaty policy was to neither propose nor accept a mandatory and binding arbitration provision in its bilateral tax treaties, it recently changed its policy, which now is to include such a provision, subject to the reservations formulated under the related provisions of the Multilateral Instrument.

170. In view of the above, Portugal is a signatory to the EU Arbitration Convention. Furthermore, Portugal was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, Portugal reported that it opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁷ Portugal’s MAP guidance includes in section 5 information on the scope and arbitration process provided by a bilateral tax treaty as well as under the EU Arbitration Convention.

Practical application

171. Up to date, Portugal has incorporated an arbitration clause in one of its 79 treaties as a final stage to the MAP. The clause is equivalent to Article 25(5) of the OECD Model Tax Convention (OECD, 2015a), except for its scope which is limited to transfer pricing cases by the protocol of the treaty. Furthermore, Portugal included a most-favoured nation clause in another treaty, entailing that where Portugal in the future agrees on an arbitration provision in a treaty with a third state, the treaty partner will consult on the inclusion of such a provision in their bilateral treaty as well.

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

Anticipated modifications

173. Portugal did not indicate that it anticipates any modifications in relation to element C.6.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2016.
2. Available at: http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en (accessed on 18 July 2018). These statistics are up to and include fiscal year 2016.
3. Portugal’s 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See Annex C for a further explanation.
4. For post-2015 cases, if the number of MAP cases in Portugal’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, Portugal reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 Portugal classified as attribution/allocation cases all cases referring to transfer pricing or attribution of profits to a permanent establishment, and for post-2015 Portugal follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention (OECD, 2015)); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention (OECD, 2015)), which is also known as a transfer pricing MAP case”.
6. The text of the Ministerial Order is available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_320-A_2011.pdf (accessed on 18 July 2018).
7. An overview of the Portugal’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-portugal.pdf.

References

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

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

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

174. 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

175. Where a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Portugal reported that any MAP agreement shall be implemented notwithstanding any time limits foreseen in the domestic law. In addition, the same applies to cases for which an agreement has been reached under the EU Arbitration Convention. Where a tax treaty does not contain a provision on the implementation of MAP agreements, Portugal reported its domestic time limits shall be applied. Article 45(1) of the General Tax Law stipulates that this concerns a limit of four years generally from the date of the end of the fiscal year, which can be subject to suspension or extension under certain conditions (e.g. in case of initiated audits, pending court procedures). The time limit only applies to upward adjustments. In this respect, Portugal reported there is no time limit for making downward adjustments.

176. Concerning the process of entering into MAP agreements, Portugal reported that before entering into a definitive MAP agreement, Portugal's competent authority notifies the terms and conditions of the tentative agreement to the taxpayer and requests it to provide a response within 30 days as to whether it accepts the agreement reached. If so, it is obliged to withdraw any pending administrative or judicial procedures. Upon receiving acceptance from the taxpayer, Portugal's competent authority will formalise the MAP agreement with the other competent authority concerned. If the taxpayer does not accept the agreement, or does not respond within the 30 day-period, Portugal reported its competent authority will propose to the other competent authority concerned to close the case without an agreement.

177. After the MAP agreement is formalised with the other competent authority concerned, Portugal's competent authority will send the agreement to the competent department within the Tax and Customs Authority, which will arrange for implementation. In that regard, Portugal noted that feedback is requested from the competent department and that a MAP case is closed only after the receipt of confirmation of the implementation by that department.

178. Further to the above, Portugal reported that where a MAP agreement is implemented, the taxpayer will be informed hereof.

Practical application

179. Portugal reported that since 1 January 2016 it has reached the following number of MAP agreements:

Year	MAP agreements
2016	11
2017	22

180. In view of these closed MAP cases, 30 required an implementation by Portugal. In this respect, Portugal reported that 18 of them, once accepted by taxpayers, have been implemented. For the remaining 12 MAP agreements, implementation is pending.

181. 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 Portugal.

Anticipated modifications

182. Portugal indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	-	As it has done thus far, Portugal should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.

[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.

183. 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

184. Portugal reported that in respect of the timing for implementing MAP agreements, Article 20(2) of the Ministerial Order No. 1446-C/2001 prescribes that in transfer pricing cases an adjustment has to be implemented within 120 days after the date Portugal's competent authority entered into a MAP agreement with the competent authority of the treaty partner concerned.¹ While such rule is not applicable to other MAP cases, Portugal reported that in practice the same timeline is applied for these cases.

Practical application

185. As discussed under element D.1, since 1 January 2016, Portugal entered into 30 MAP agreements that required implementation by Portugal. In this respect, Portugal reported that 18 MAP agreements have already been implemented and that no cases of noticeable delays have occurred. For the remaining 12 MAP agreements, implementation is pending.

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

Anticipated modifications

187. Portugal reported that it is currently examining the possibility of assigning Portugal's competent authority the necessary legal competence to implement MAP agreements directly to enable a timely implementation of such agreements, as assigning such competence to another department within the Tax and Customs Authority may cause delays.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	As it has done thus far, Portugal should continue to implement all MAP agreements reached on a timely basis if the conditions for such implementation are fulfilled.

[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.

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

Legal framework and current situation of Portugal's tax treaties

189. As discussed under element D.1, Portugal's domestic legislation contains a statute of limitations of four years for upward adjustment, unless overridden by tax treaties that contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or, if applicable, a MAP agreement is reached under the EU Arbitration Convention. There are no time limits for downward adjustments.

190. Out of the Portugal's 79 tax treaties, 55 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.² Furthermore, 22 treaties do not contain such equivalent or the alternative provisions.

191. The remaining two treaties can be categorised as follows:

- One treaty does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015), but contains the alternative provisions in Article 9(1), setting a time limit for making transfer pricing adjustments.
- One treaty does also not contain the second sentence, but contains a protocol provision requiring that Portugal implements any MAP agreement notwithstanding domestic time limits. This provision, however, is considered as not being equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), as it is only one-sided formulated and does not put any obligation on the side of the treaty partner.

192. Further to the above, until 2017 Portugal made a reservation to the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2015) not to include the second sentence in its tax treaties. With the 2017 update of the OECD Model Tax Convention (OECD, 2015) Portugal has withdrawn this reservation.

Anticipated modifications

Multilateral Instrument

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

194. In regard of the 24 tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Portugal listed all of them as covered tax agreements under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant 24 treaty partners, four are not a signatory to the Multilateral Instrument, whereas two did not list their treaty with Portugal as a covered tax agreement and three made a reservation on the basis of Article 16(5)(c). All remaining 15 treaty partners also made a notification on the basis of Article 16(6)(c)(ii). Therefore, at this stage, the Multilateral Instrument will, upon entry into force, modify 15 of 24 tax treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

195. Portugal further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives provided for in Articles 9(1) and 7(2) and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, Portugal reported it will approach its treaty partners in 2018 to renegotiate treaties where necessary to make them in line with the Action 14 Minimum Standard. In addition, Portugal reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or both alternatives in all of its future treaties.

Peer input

196. Five peers that provided input commented that their treaty with Portugal contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

197. For the 24 treaties identified above that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), three relevant peers provided input and reported that their treaty with Portugal does not contain this equivalent. Two of these peers expected that their treaty with Portugal will be modified via the Multilateral Instrument, whereas the third peer specifically mentioned that it is willing to accept the alternative provisions in Articles 9(1) and 7(2) in the context of bilateral negotiations. Four other peers noted in general that their treaty with Portugal does not meet all the requirements under the Action 14 Minimum Standard, but also expected that their treaty with Portugal will be modified via the Multilateral Instrument.

Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>24 out of 79 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of this number:</p> <ul style="list-style-type: none"> • 23 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor any of the alternative provisions. • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and only contains the alternative provision in Article 9(1). <p>One tax treaty that contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is not yet in force, while there is an existing treaty in force with the same jurisdiction that does not contain such equivalent.</p>	<p>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 15 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, Portugal should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, Portugal 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> <p>Portugal should as quickly as possible ratify the tax treaty that contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) to replace the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.</p>

Notes

1. Available at: http://info.portaldasfinancas.gov.pt/pt/informacao_fiscal/legislacao/diplomas_legislativos/Documents/Portaria_320-A_2011.pdf (accessed on 18 July 2018).
2. The treaty with Finland that is currently in force does not contain the provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Portugal recently signed a new treaty with Finland, which is in line with the requirements under the Action 14 Minimum Standard. This treaty, however, is not yet ratified by Portugal, but is already taken into account in the treaty analysis.

References

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

Summary

	Areas for improvement	Recommendations
Part A. Preventing disputes		
[A.1]	Two out of 79 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention.	Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention in those two treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Portugal should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not available.	Portugal should introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B. Availability and access to MAP		
[B.1]	<p>20 out of 79 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention. Of those 20 tax treaties:</p> <ul style="list-style-type: none"> • One tax treaty does not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention, either as it read prior to the adoption of the Action 14 final report, or as amended by that final report. • 17 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. • Two tax treaties do not contain the equivalent to Article 25(1), first sentence and 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>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention either: <ul style="list-style-type: none"> a. As amended in the final report of Action 14; or b. As it read prior to the adoption of final report of Action 14, thereby including the full sentence of such provision; and • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Portugal should follow up its stated intention to request in 2018 the inclusion of the required provision via bilateral negotiations.</p>
	One tax treaty that contains a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention is not yet in force, while there is an existing treaty in force with the same jurisdiction that does not contain such equivalent.	Portugal should as quickly as possible ratify the tax treaty that contains a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention to replace the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.
[B.1] <i>cont.</i>		In addition, Portugal should maintain its stated intention to include the required provision in all future tax treaties.

	Areas for improvement	Recommendations
[B.2]	-	Portugal should continue to apply its documented notification process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the final report of Action 14.
[B.3]	-	As Portugal has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4]	Portugal 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. Portugal is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.5]	Portugal reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Portugal is therefore recommended to follow its policy and grant access to MAP in such cases.	
[B.6]	-	As Portugal has thus far not limited access to MAP in eligible cases when taxpayers have complied with Portugal's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	42 out of 79 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.	<p>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention in those 25 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force (as well as in the tax treaty that does not contain such equivalent and is not yet in force and that will be modified by the Multilateral Instrument when both the tax treaty and the Multilateral Instrument enter into force).</p> <p>For the remaining 17 treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should follow up its stated intention to request in 2018 the inclusion of the required provision via bilateral negotiations.</p> <p>In addition, Portugal should maintain its stated intention to include the required provision in all future tax treaties.</p>
[B.8]	-	<p>Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance, Portugal could consider including information on:</p> <ul style="list-style-type: none"> • whether MAP is available in cases of multilateral disputes • whether taxpayers can request for the multi-year resolution of recurring issues through MAP.
[B.9]	-	As it has thus far made its MAP Guidance available and easily accessible and published its MAP profile, Portugal should ensure that its future updates to the MAP Guidance continue to be publically available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

	Areas for improvement	Recommendations
[B.10]	-	-
Part C. Resolution of MAP cases		
[C.1]	One out of 79 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention.	Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention in this treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. In addition, Portugal should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Portugal submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework for the years 2016 and 2017. Based on the information provided by Portugal's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Portugal's MAP statistics show that during the Statistics Reporting Period it closed 36% (15 out of 42 cases) of its post-2015 cases in 5.76 months on average. In that regard, Portugal is recommended to seek to resolve the remaining 64% of its post-2015 cases that were pending on 31 December 2017 (27 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Portugal closed MAP cases in 49.94 months on average, there may be a risk that post-2015 cases are not closed within the average of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), which indicates that Portugal's competent authority is not adequately resourced.	Portugal should follow-up its stated intention to add staff to its competent authority specifically dedicated to handle MAP cases, the creation of specific transfer pricing team and the implementation of administrative procedures for monitoring MAP cases, with a view to ensure that the resources available for the competent authority function are adequate in order to resolve MAP cases in a timely, efficient and effective manner. In addition, Portugal should closely monitor whether the above measures will indeed contribute to the resolution of MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Portugal 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 Portugal would like to see reflected in future amendments to the tax treaty.
[C.5]	-	As it has done thus far, Portugal should continue to use appropriate performance indicators.
[C.6]	-	-
Part D. Implementation of MAP agreements		
[D.1]	-	As it has done thus far, Portugal should continue to implement all MAP agreements reached if the conditions for such implementation are fulfilled.
[D.2]	-	As it has done thus far, Portugal should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.3]	<p>24 out of 79 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor both alternative provisions provided for in Article 9(1) and Article 7(2). Out of this number:</p> <ul style="list-style-type: none"> • 23 contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions. • One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention and only contains the alternative provision in Article 9(1). 	<p>Portugal should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention in those 15 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, Portugal should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>In addition, Portugal 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>
	<p>One tax treaty that contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention is not yet in force, while there is an existing treaty in force with the same jurisdiction that does not contain such equivalent.</p>	<p>Portugal should as quickly as possible ratify the tax treaty that contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention to replace the existing treaty currently in force with the same jurisdiction that does not contain such equivalent.</p>

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11			
	DTC in force?		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7		
Barbados	N	22-10-2010	O	Y	N/A	Y	i	Y	Y	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 9(2) of the OECD MTC	Inclusion Art. 25(2) second sentence?	Y	Y	Y	Y	Y	Y	N	N	N/A
Belgium	Y	N/A	N	i**	2-years	i****	i	Y	N**	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 9(2) of the OECD MTC	Inclusion Art. 25(2) second sentence?	N*	N**	N**	N**	N**	N**	N	N	N/A
Brazil	Y	N/A	O	ii	2-years	i	i	Y	Y					Y	Y	Y	Y	Y	Y	N	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	O	ii**	2-years	Y	i	Y	Y					Y	ii	ii	Y	Y	Y	N**	N	N/A
Cape Verde	Y	N/A	O	ii	2-years	Y	i	Y	Y					Y	N	N	Y	Y	Y	N	N	N/A
Chile	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	N**	N**	Y	Y	Y	N**	N	N/A
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Colombia	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	N**	N	N/A
Côte d'Ivoire	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	N**	N	N/A
Cuba	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	N**	N	N/A
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	N**	N	N/A
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A
Ethiopia	Y	N/A	O	Y	N/A	Y	i	Y	Y					Y	Y	Y	Y	Y	Y	Y	N	N/A

Treaty partner	DTC in force?	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
		B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1	B.1
Finland	N	07-11-2016	O	Y	N/A	Y	Y	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	N**	N	N/A	
France	Y	N/A	O	i**	2-years	i****	i	i	i	i	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?	Y	N**	N**	N**	N**	N**	N**	Y	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	i	Inclusion Art. 25(1) second sentence?	Y	Y	Y	Y	Y	Y	Y	N**	N	N/A	
Germany	Y	N/A	O	ii	2-years	i	i	Y	Y	i	Inclusion Art. 9(2) of the OECD MTC	Y	N	N	N	N	N	N	N	N	N	N/A
Greece	Y	N/A	O	ii**	2-years	Y	i	Y	Y	i	Inclusion Art. 25(1) second sentence?	Y	N**	N**	N**	N**	N**	N**	Y	Y	N	N/A
Guinea-Bissau	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	If no, will your CA accept a taxpayer's request for MAP in relation to such cases?	Y	Y	Y	Y	Y	Y	Y	N	N	N	N/A
Hong Kong (China)	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Hungary	Y	N/A	O	i**	2-years	Y	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	N**	N**	N**	N**	N**	N**	Y	Y	N	N/A
Iceland	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	If no, alternative provision in Art. 7 & 9 OECD MTC?	Y	N**	N**	N**	N**	N**	N**	Y	N**	N	N/A
India	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Indonesia	Y	N/A	O	ii	2-years	i	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	N	N	N	N	N	N	Y	Y	N	N/A
Ireland	Y	N/A	O	ii**	2-years	Y	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	N**	N**	N**	N**	N**	N**	Y	N**	N	N/A
Israel	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	Y	N**	N	N/A
Italy	Y	N/A	N	ii**	2-years	i****	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	N**	N**	N**	N**	N**	N**	Y	N**	N	N/A
Japan	Y	N/A	O	Y	N/A	i**	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	i
Korea	Y	N/A	O	ii**	2-years	i****	i	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	N**	N**	N**	N**	N**	N**	Y	Y	Y	N/A
Kuwait	Y	N/A	O	Y	N/A	Y	Y	Y	Y	i	Inclusion Art. 25(2) first sentence?	Y	Y	Y	Y	Y	Y	Y	Y	N**	N	N/A

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	A.1	B.7	
Latvia	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	ii**	2-years	Y	Y	Y	i	Y	N**	Y	N**	Y	N**	Y	N**	Y	N**	N	N/A
Macao (China)	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Mexico	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	N	Y	N	Y	N**	Y	N**	Y	N**	N	N/A
Moldova	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Montenegro	N	12-07-2016	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Morocco	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Mozambique	Y	N/A	O	ii	2-years	Y	Y	Y	i	Y	N	Y	N	Y	N	Y	N	Y	N	N	N/A
Netherlands	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Norway	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Oman	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Pakistan	Y	N/A	N	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Panama	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Peru	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Poland	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A
Qatar	Y	N/A	O	Y	N/A	Y	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N/A

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Action 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2)	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?											
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons	If no, will your CA provide access to MAP in TP cases?	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?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?											
United Arab Emirates	Y	O	Y	N/A	i	Y	Y	N	N	N/A										
United Kingdom	Y	O	i	N/A	i	N**	Y	N**	N	N/A										
United States	Y	O	ii	5-years	i	Y	Y	Y	N	N/A										
Uruguay	Y	O	Y	N/A	i	Y	Y	N**	N	N/A										
Venezuela	Y	O	Y	N/A	i	N	Y	Y	N	N/A										
Viet Nam	Y	O	Y	N/A	i	Y	Y	Y	N	N/A										

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

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

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

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

Annex B

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

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	39	0	0	0	0	0	8	0	0	0	0	31	51.53
Others	13	0	0	0	0	0	1	0	0	0	0	12	18.70
Total	52	0	0	0	0	0	9	0	0	0	0	43	47.88

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	31	0	0	0	0	0	20	0	0	0	0	11	83.19
Others	12	0	0	0	0	0	1	0	0	0	0	11	66.08
Total	43	0	0	0	0	0	21	0	0	0	0	22	82.38

Annex C

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

2016 MAP Statistics															
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome										No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period	
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome			Column 10
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	12	0	0	0	0	0	2	0	0	0	0	0	10	11.21
Others	0	7	0	0	0	0	0	0	0	0	0	0	0	7	0.00
Total	0	19	0	0	0	0	0	2	0	0	0	0	0	17	11.21

Note: The number of post-2015 cases in the inventory on 31 December 2016 is different from the number of post-2015 cases in Portugal's published MAP statistics. This results from the fact that Portugal took a case into account in 2016, which, however, has not yet started.

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty			Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/ Allocation	10	10	1	0	1	1	0	0	0	0	0	0	17	2.97
Others	7	12	0	6	1	0	1	1	0	0	0	0	10	4.77
Total	17	22	1	6	2	1	1	1	0	0	0	0	27	4.32

Glossary

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

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

OECD Publishing disseminates widely the results of the Organisation's statistics gathering and research on economic, social and environmental issues, as well as the conventions, guidelines and standards agreed by its members.

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Portugal (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 Portugal.

Consult this publication on line at <https://doi.org/10.1787/9789264304222-en>.

This work is published on the OECD iLibrary, which gathers all OECD books, periodicals and statistical databases. Visit www.oecd-ilibrary.org for more information.

