

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



# **Making Dispute Resolution More Effective - MAP Peer Review Report, Slovenia (Stage 1)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**



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**Please cite this publication as:**

OECD (2019), *Making Dispute Resolution More Effective - MAP Peer Review Report, Slovenia (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris.

<https://doi.org/10.1787/9789264309944-en>

ISBN 978-92-64-30993-7 (print)

ISBN 978-92-64-30994-4 (pdf)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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## *Foreword*

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

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

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

As a result, the OECD established the Inclusive Framework on BEPS, bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The Inclusive Framework, which already has more than 120 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive

Framework, which also consults business and the civil society on its different work streams.

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

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## *Abbreviations and Acronyms*

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



## *Executive summary*

Slovenia has a relatively large tax treaty network with over 60 tax treaties and signed and ratified the EU Arbitration Convention. Slovenia has an established MAP programme and has modest experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 20 cases pending on 31 December 2017. Of these cases, 40% concern attribution/allocation cases. Overall Slovenia meets almost all the elements of the Action 14 Minimum Standard. Where it has deficiencies, Slovenia is working to address them.

All of Slovenia'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<sup>[1]</sup>). Its treaty network is nearly consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that approximately 10% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments. In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Slovenia needs to amend and update a certain number of its tax treaties. In this respect, Slovenia signed and deposited its instrument of ratification of the Multilateral Instrument, through which some of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Slovenia reported that it is already negotiating the replacement of an existing treaty and intends to update all of its tax treaties via bilateral negotiations in order to be compliant with the requirements under the Action 14 Minimum Standard, thereby prioritising the mentioned negotiations depending on the extent of deficiencies with respect to that standard. Furthermore, Slovenia opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

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

Slovenia meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. Slovenia's policy is to provide access to MAP in all eligible cases. It further has in place a documented bilateral consultation and notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Slovenia also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention.

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

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2017	Average time to close cases (in months)(*)
Attribution/allocation cases	0	8	0	8	N/A
Other cases	13	10	11	12	16.22
<b>Total</b>	13	18	11	20	16.22

(\*) 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, Slovenia used as a start date the date when the MAP request was received or the date when missing information was received by the taxpayer to supplement the request, and as the end date (a) the date when the taxpayer was informed of the outcome of the MAP, (b) the date when the notification from the other competent authority was received that the taxpayer was notified of or accepted the MAP outcome or (c) the date when the competent authority formally closed the MAP case.

The number of cases Slovenia closed in 2016 or 2017 is less than the number of all new cases started in those years. Its MAP inventory as per 31 December 2017 increased by more than 50% as compared to its inventory as per 1 January 2016. During the Statistics Reporting Period, Slovenia's competent authority closed MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 16.22 months. This concerns the resolution of other cases, as no attribution/allocation cases were closed during the Statistics Reporting Period.

Furthermore, Slovenia meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Slovenia's competent authority operates fully independently from the audit function of the tax authorities and adopts a co-operative approach to resolve MAP cases in a professional and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Slovenia almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. In addition, Slovenia monitors the implementation of MAP agreements. Even though Slovenia has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), no problems have surfaced throughout the process.

## Introduction

### Available mechanisms in Slovenia to resolve tax treaty-related disputes

1. Slovenia has entered into 61 tax treaties on income (and/or capital), 59 of which are in force.<sup>1</sup> These 61 treaties apply to 62 jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, four of the 61 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.<sup>3</sup>

2. Furthermore, Slovenia 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.<sup>4</sup> In addition, Slovenia also adopted the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.<sup>5</sup> This directive needs to be implemented in Slovenia's domestic legislation as per 1 July 2019.

3. In Slovenia, the competent authority function to conduct MAP is delegated to the Department for the System of Income and Property Taxation of the Ministry of Finance, and the Department of the General Financial Office within the Financial Administration in case of MAP related to APA. The competent authority of Slovenia currently employs four employees.

4. Slovenia issued guidance on the governance and administration of the mutual agreement procedure (“**MAP Guidance**”), which is available at (in Slovene language): [www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki\\_in\\_carine/Dokumenti/MAP-navodilo-koncno.pdf](http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Dokumenti/MAP-navodilo-koncno.pdf) (accessed 17 January 2019).

### Recent developments in Slovenia

5. Slovenia signed new treaties with Egypt (2009) and Morocco (2016), which have not yet entered into force.

6. Furthermore, Slovenia signed the Multilateral Convention, to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), and on 22 March 2018 deposited the instrument of its ratification, 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, Slovenia reported that it strives updating them through future bilateral negotiations. In this regard, Slovenia reported that it intends to enter into bilateral negotiations in order to meet the Action 14 Minimum Standard, prioritising the mentioned negotiations depending on the extent of deficiencies with respect to that standard. With the deposit of the instrument of ratification of the Multilateral Instrument, Slovenia submitted its list of notifications and reservations to that instrument.<sup>6</sup> In relation to the Action 14 Minimum Standard, Slovenia

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.<sup>7</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard.

### Basis for the peer review process

7. The peer review process entails an evaluation of Slovenia'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 Slovenia and the peers on 10 April 2018.

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

9. For the purpose of this report and the statistics below, in assessing whether Slovenia 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. Furthermore, the treaty analysis also takes into account the treaty with the former Serbia and Montenegro (2003) for both (i) Serbia and (ii) Montenegro to which this treaty is still being applied by Slovenia. Reference is made to Annex A for the overview of Slovenia's tax treaties regarding the mutual agreement procedure.

10. In total nine peers provided input: Austria, Canada, Denmark, Finland, Germany, Italy, Spain, Switzerland and Turkey. Out of these nine peers, seven had MAP cases with Slovenia that started on or after 1 January 2016. These seven peers represent approximately 83% of post-2015 MAP cases in Slovenia's inventory that started in 2016 or 2017. Generally, most peers indicated their limited experiences in handling cases with Slovenia, and some noted their good working relationship and fluid communication with Slovenia.

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

- MAP profile<sup>8</sup>; and
- MAP statistics<sup>9</sup> according to the MAP Statistics Reporting Framework (see below).

12. Finally, Slovenia is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process.

### Overview of MAP caseload in Slovenia

2016-2017	Opening Inventory 1/1/2016	Cases started	Cases Closed	End Inventory 31/12/2017
Attribution/allocation cases	0	8	0	8
Other cases	13	10	11	12
<b>Total</b>	13	18	11	20

### General outline of the peer review report

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

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

14. 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**").<sup>10</sup> Apart from analysing Slovenia's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Slovenia. Furthermore, the report depicts the changes adopted and plans shared by Slovenia 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.

15. 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 Slovenia 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

<sup>1</sup> The tax treaties Slovenia has entered into are available at: [www.mf.gov.si/en/areas\\_of\\_work/taxes\\_and\\_customs/documents/list\\_of\\_double\\_taxation\\_conventions/#c2429](http://www.mf.gov.si/en/areas_of_work/taxes_and_customs/documents/list_of_double_taxation_conventions/#c2429) (accessed 17 January 2019). The treaties that are signed but have not yet entered into force are with Egypt (2009) and Morocco (2016). Those treaties are taken into account in the treaty analysis. Reference is made to Annex A for the overview of Slovenia's tax treaties.

<sup>2</sup> Slovenia continues to apply the treaty with former Serbia and Montenegro to both Serbia and Montenegro.

<sup>3</sup> It concerns the treaties with Italy, Japan, Netherlands and Switzerland. Reference is made to Annex A for the overview of Slovenia's tax treaties.

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

<sup>5</sup> Available at <https://eur-lex.europa.eu/eli/dir/2017/1852/oj> (accessed 19 January 2019).

<sup>6</sup> Available at: [www.oecd.org/tax/treaties/beps-mli-position-slovenia-instrument-deposit.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-slovenia-instrument-deposit.pdf) (accessed 17 January 2019).

<sup>7</sup> *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Slovenia 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”.

<sup>8</sup> Available at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm) (accessed 19 January 2019).

<sup>9</sup> The MAP statistics of Slovenia are included in Annexes B and C of this report.

<sup>10</sup> 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](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed 19 January 2019).



## 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.*

16. 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<sup>[1]</sup>) 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 Slovenia's tax treaties*

17. All of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) 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.

18. Five peers indicated that their treaty with Slovenia meets the requirements under element A.1, which is in line with the above statement.

#### *Anticipated modifications*

19. Slovenia reported that it will continue to seek to include Article 25(3), first sentence in all of its future tax treaties.

#### *Conclusion*

	Areas for Improvement	Recommendations
[A.1]	-	Slovenia 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.*

20. 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.<sup>1</sup> 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.

***Slovenia’s APA programme***

21. Slovenia reported that it has an APA programme, which has been established by Articles 14.a to 14.g of the Tax Procedure Act and its regulations. Article 14.a prescribes that a taxpayer may apply for a unilateral, bilateral or multilateral APA and that both bilateral and multilateral APAs need to be based on international treaties for the avoidance of double taxation which allows for such an agreement procedure.

22. Article 14.a of the Tax Procedure Act also defines the process of the APA application. It stipulates that the tax authority shall conduct an interview about the possibility of concluding an APA, which will be followed by a written application by the taxpayer. The Rules on the Implementation of the Tax Procedure Act further describes each step and procedure to be taken by the taxpayer. It contains information on a) pre-preparation, b) submission of the application for the conclusion of the APA, c) process of concluding and signature of the APA and d) monitoring the implementation of the APA.

23. With regard to the years covered by an APA, Article 6.d of the Rules on the Implementation of the Tax Procedure Act stipulate that the APA shall be concluded for a maximum period of five years with a possibility of an extension. Slovenia also reported that there is no specific timelines for filing an APA request, and bilateral APAs are applicable from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement.

24. Article 6.h of the Rules on the Implementation of the Tax Procedure Act establishes a fee schedule of the APA programme, which is set as EUR 15 000 per request. For the extension of the APA, the amount of the fee is EUR 7 500.

***Roll-back of bilateral APAs***

25. Although the Tax Procedure Act and regulations do not contain specific information on a roll-back of APAs, Slovenia reported that it is possible to obtain a roll-back of bilateral APAs. Slovenia’s MAP profile provides that a roll-back of APAs can be applied, subject to the consent of the taxpayer and the competent authority, to tax years ending prior to the first year of the APA, having due regard to Slovenia’s general rules on the amendment of tax returns. In this respect, Slovenia reported that its statute of limitation expires five years after the date on which the tax assessment shall be submitted

to the tax authority. Slovenia further reported, however, that this statute of limitation can be interrupted and extended up to ten years, for instance in case of a tax audit.

### *Practical application of roll-back of bilateral APAs*

26. Slovenia reported that it has not received any requests for bilateral APA since 1 January 2016. Slovenia publishes statistics on APAs on the website of the EU Joint Transfer Pricing Forum.<sup>2</sup>

27. All peers that provided input reported that they have not received any bilateral APA requests concerning Slovenia.

### *Anticipated modifications*

28. Slovenia indicated that it does not anticipate any modifications in relation to element A.2.

### *Conclusion*

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

## Notes

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

<sup>2</sup> Available at:

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_apa\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_apa_statistics_en.pdf) (accessed 19 January 2019). The most recent statistics published are up to 2016.

## References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>. [3]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

## Part B: Availability and access to MAP

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

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

29. 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 Slovenia's tax treaties*

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

30. Out of Slovenia's 61 tax treaties, 57 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report* (Action 14 final report, (OECD, 2015<sup>[2]</sup>), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. In addition, none of Slovenia's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as changed by the Action 14 final report (OECD, 2015<sup>[2]</sup>) and allowing taxpayers to submit a MAP request to the competent authority of either state.

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

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

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

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

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

34. Out of Slovenia's 61 tax treaties, 56 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) 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.

35. The remaining five tax treaties that do not contain such a provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	2
Filing period less than three years for a MAP request (two years)	2
Filing period more than three years for a MAP request (five years)	1

#### ***Practical application***

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

36. Slovenia's MAP guidance indicates that in the absence of a filing period in the tax treaty, a request must be submitted as soon as possible after the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. Slovenia's MAP guidance further clarifies that its domestic statute of limitation applies to the submission of MAP requests. In this respect, Articles 125, 126 and 126a of the Tax Procedure Act stipulate a statute of limitation of five years as from the date when the tax assessment shall be submitted by the taxpayer to the tax authority, which can be extended for five more years (within an absolute limit of ten years) if it is interrupted, for instance in the case of a tax audit in Slovenia. The MAP guidance also specifies how to determine the start date for the purpose of computation of the statute of limitation. In particular, when a tax audit is made in Slovenia, the MAP guidance clarifies that the start date is the date of the notice of the assessment. In other situations where the MAP request does not follow a tax assessment notice given by Slovenia's tax authority, the application of Slovenia's domestic time limit bears the risk that taxpayers cannot file a MAP request

within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

### *Anticipated modifications*

#### *Multilateral Instrument*

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

37. Slovenia signed the Multilateral Instrument, and on 22 March 2018 deposited its instrument of ratification. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as amended by the final report on Action 14 (OECD, 2015<sub>[2]</sub>) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[2]</sub>). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[2]</sub>). Article 16(4)(a)(i) will not take effect for a tax treaty 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.

38. Slovenia 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.<sup>1</sup> In this reservation, Slovenia declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>), as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[2]</sub>). 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.

39. In view of the above, following the reservation made by Slovenia, those two treaties identified in paragraphs 18 above that are considered not including the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[1]</sub>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sub>[2]</sub>), 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

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

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

41. In regard of the two tax treaties identified in paragraph 20 above that contain a filing period for MAP requests of less than three years, Slovenia listed both treaties as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Both of the relevant treaty partners, being signatories to the Multilateral Instrument, listed its treaty with Slovenia as a covered tax agreement under that instrument, and also made such notification. Therefore, at this stage, both of these two treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

#### *Bilateral modifications*

42. Slovenia reported that when the tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>) 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. For those two treaties, Slovenia reported that it is already negotiating the replacement of an existing treaty with one of the relevant treaty partners and that it intends to enter into bilateral negotiations with the remaining treaty partner in order to meet the Action 14 Minimum Standard, prioritising the mentioned negotiations depending on the extent of deficiencies with respect to that standard.

43. With respect to Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), Slovenia reported that it will seek to include the equivalent as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>) in all of its future treaties.

#### *Peer input*

44. Five peers reported that their treaty with Slovenia meets this element of the Action 14 Minimum Standard, which is in line with the above analysis. One peer, whose treaty with Slovenia does not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as it read prior to the adoption of the final report on Action 14 (OECD, 2015<sup>[2]</sup>) and will not be modified by the Multilateral Instrument, reported that its treaty with Slovenia does not fully adhere to the Action 14 Minimum Standard and bilateral solutions will be explored to the extent the deficiencies are not remedied through application of the Multilateral Instrument. Another peer whose treaty contains a filing period of two years for a MAP request commented that the signing of the Multilateral Instrument confirms the actual intention of this peer and Slovenia to achieve the compliance of their treaty with the Action 14 Minimum Standard.



## Conclusion

	Areas for Improvement	Recommendations
[B.1]	Two out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ), and will not be modified by the Multilateral Instrument.	For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) in those treaties that currently do not contain such equivalent, Slovenia should follow up on the bilateral discussions currently underway to replace one of these treaties and request the inclusion of the required provision via bilateral negotiations for the other treaty. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) either: As amended in the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ); or As it read prior to the adoption of the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ), thereby including the full sentence of such provision.  In addition, Slovenia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as it read prior to the adoption of the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ) in all future tax treaties.
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty in situations where the MAP request does not follow a tax assessment notice given by Slovenia's tax authority.	Slovenia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

### [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).*

45. 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:

1. of either treaty partner; or, in the absence of such provision,

2. 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*

46. As discussed under element B.1, out of Slovenia's 61 tax treaties, none currently contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) as changed by the Action 14 final report (OECD, 2015<sup>[2]</sup>), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

47. Section 2.2.2 of Slovenia's MAP guidance contains the description of a notification and consultation process which allows the other competent authority concerned to provide its views on the case when Slovenia's competent authority considers the objection raised in the MAP request not to be justified. Slovenia also reported that in practice, such notifications contain, besides the general description of the taxpayer and the case concerned, specific information on:

- reasons why objections raised are considered as not justified, consisting of either (i) a brief explanation on why there is no taxation not in accordance with the tax treaty based on the facts and circumstances presented or (ii) a presentation of what information was received by the taxpayer, what information was additionally requested and the dates on which it was requested with a brief conclusion why based on the information received and the facts and circumstances of the case the competent authority could not come to a conclusion whether the objection was justified;
- information on domestic remedies available to the taxpayer with regard to the rejection of the MAP request based on the conclusion that objections raised were not justified; and
- relevant data for the MAP statistics.

### *Practical application*

48. From Slovenia's 2016 and 2017 MAP statistics provided it follows that in two MAP cases the outcome reported was an objection not justified.

49. In this respect, Slovenia reported that in both cases its competent authority considered that the objection raised by taxpayers in their MAP request was not justified. Slovenia reported that the other competent authorities concerned were notified and consulted.

50. One peer reported that its competent authority indeed received a notification of a case where Slovenia's competent authority considered the objection raised in a MAP request as not justified. The other relevant peer also reported that its competent authority was notified by Slovenia's competent authority of the case closed with the outcome "objection not justified". This peer mentioned that the notification it received from Slovenia specified that the MAP request was incomplete and that the taxpayer did not

provide additional information after being requested to do so more than once by Slovenia's competent authority.

### *Anticipated modifications*

51. Slovenia indicated that it does not anticipate any modifications in relation to element B.2.

### *Conclusion*

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

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

*Jurisdictions should provide access to MAP in transfer pricing cases.*

52. 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*

53. Out of Slovenia's 61 tax treaties, 47 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, four do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). The remaining ten treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), but deviate from this provision for the following reasons:

- in six treaties, the term "may" is used instead of "shall" when it concerns the granting of a corresponding adjustment,
- in three treaties, its provision only indicates that the competent authorities may consult together with a view to reach an agreement on the adjustment of profits without any reference to the obligation of granting a corresponding adjustment, and
- in one treaty, corresponding adjustments can be only granted on the basis of a mutual agreement between the competent authorities.

54. With respect to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), Slovenia reserves the right to specify in paragraph 2 that a correlative adjustment

will be made only if Slovenia considers that the primary adjustment is justified. This addition to the tax treaty would neither affect access to MAP nor is it in conflict with the Action 14 Minimum Standard.

55. Slovenia 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.

56. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) is contained in Slovenia'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, Slovenia indicated that it will always provide access to MAP for transfer pricing cases, regardless of whether Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) is contained in its tax treaties. This applies to all 61 of Slovenia's tax treaties, except one treaty that does not contain a provision on transfer pricing. Slovenia further reported that Slovenia is willing to grant corresponding adjustments through MAP if it considers that the primary adjustment is justified.

57. Slovenia's MAP guidance clarifies in its paragraph 2.1.4 that transfer pricing cases are covered by MAP. The guidance also refers to cases of corresponding adjustments of transfer pricing adjustments and of the attribution of profit to a permanent establishment.

### *Application of legal and administrative framework in practice*

58. Slovenia reported that since 1 January 2016, it has received three MAP requests from taxpayers regarding transfer pricing cases, and it has not denied access to MAP on the basis that the relevant cases were transfer pricing cases.

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

### *Anticipated modifications*

60. Slovenia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Slovenia signed the Multilateral Instrument, and on 22 March 2018 deposited the instrument of its ratification. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the

case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>)).

61. Slovenia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). In regard of 14 tax treaties identified in paragraph 38 above that are considered not to contain this equivalent, Slovenia listed 12 treaties as a covered tax agreement under the Multilateral Instrument and included one of them in the list of treaties for which Slovenia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Slovenia did not make a notification for any of the remaining 11 treaties on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).

62. With regard to the remaining 11 treaties, four treaty partners are not a signatory to the Multilateral Instrument, and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Slovenia already contains the equivalent of Article 9(2), whereas another reserved on the basis of Article 17(3) the right not to apply Article 17(2) to all its covered tax agreements. Therefore, at this stage, the remaining five treaties will be superseded by the Multilateral Instrument, upon entry into force for these treaties, only to the extent that the provisions contained in those 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 Slovenia 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.*

63. 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*

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

65. Slovenia's MAP guidance does not specifically address whether taxpayers have access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse have been met or whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

66. In this regard, Slovenia reported that access to MAP will not be denied on such basis. Slovenia's MAP profile further clarifies that while taxpayers may present a case relating to the application of domestic anti-abuse provision, the case will not move to the second, bilateral stage, if the application of domestic anti-abuse provision is in line with the relevant tax treaty.

### *Practical application*

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

68. Peers indicated not being aware of cases that have been denied access to MAP in Slovenia since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

### *Anticipated modifications*

69. Slovenia indicated that it does not anticipate any modifications in relation to element B.4.

## Conclusion

	Areas for Improvement	Recommendations
[B.4]	-	As Slovenia has thus far granted access to MAP in eligible 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, it should continue granting access for these cases.

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

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

70. 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*

71. Slovenia reported that its domestic law does not provide for a mechanism that allows taxpayers to enter into an audit settlement with the tax administration.

##### *Administrative or statutory dispute settlement/resolution process*

72. Slovenia 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*

73. Slovenia 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, which can be explained by the fact that audit settlements are not available in Slovenia.

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

#### *Anticipated modifications*

75. Slovenia indicated that it does not anticipate any modifications in relation to element B.5.

**Conclusion**

	Areas for Improvement	Recommendations
[B.5]	-	-

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

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

76. 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***

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

78. Section 2.2.1 of Slovenia's MAP guidance indicates that if certain elements of the MAP request are lacking or additional information or documentation is required, the competent authority invites the applicant to complete it, generally:

- within three months (when the request is submitted on the basis of an international treaty for the avoidance of double taxation) or
- within two months (when the request is submitted on the basis of the Arbitration Convention) from the receipt of the request.

79. The guidance further prescribes that if the applicant cannot submit additional information or documentation within the time limit specified in the invitation for substantive reasons, the person may notify the competent authority of the reasons and ask for an extension of the time limit. Slovenia further reported that a MAP request may be rejected when the applicant fails to submit the additional information or documentation even after such an additional time limit.

***Practical application***

80. Slovenia reported that it limited access to MAP in one case during the Review Period on the grounds that insufficient information was provided. In this regard, Slovenia reported that its competent authority specifically requested certain information and documentation to the taxpayer, who did not respond to the request at all.

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

***Anticipated modifications***

82. Slovenia indicated that it does not anticipate any modifications in relation to element B.6.



## Conclusion

	Areas for Improvement	Recommendations
[B.6]	-	As Slovenia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Slovenia'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.*

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

#### *Current situation of Slovenia's tax treaties*

84. Out of Slovenia's 61 tax treaties, 59 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining two treaties do not contain any provision based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

#### *Anticipated modifications*

##### *Multilateral Instrument*

85. Slovenia signed the Multilateral Instrument, and on 22 March 2018 deposited the instrument of its ratification. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

86. In regard of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), Slovenia listed one of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that it does not contain a provision described in Article 16(4)(c)(ii). The relevant treaty partner, being a signatory to the Multilateral Instrument, listed its treaty with Slovenia, and also

made such notification. Therefore, at this stage, one of the two tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for this treaty, to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>).

### *Bilateral modifications*

87. Slovenia reported that it does not intend to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) in the one tax treaty that will not be modified by the Multilateral Instrument. Slovenia reported that this treaty has a limited scope and including Article 25(3), second sentence, in such treaty would contradict the purpose of that treaty. According to Slovenia, when jurisdictions agree on a comprehensive treaty, the intention is to cover all or close to all cases. Against this background, it is Slovenia's understanding that Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) should be analysed in a context of the entire tax treaty. If such a tax treaty is only limited to certain items of income and does not contain a provision regarding other items of income, it would in Slovenia's view not be logical to extend the scope of MAP article to cases not covered by such a treaty. In addition, Slovenia believes that the inclusion of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>), to treaties with a limited scope would give the competent authorities the possibility to consult in cases that have intentionally been excluded from the scope of the treaty.

88. Slovenia also reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>) in all of its future comprehensive tax treaties.

### *Peer input*

89. Five peers provided input that their treaty with Slovenia meets this element of Action 14 Minimum Standards, which is in line with the above analysis.

90. For the two treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015<sub>[11]</sub>), the relevant peers did not provide input.

### *Conclusion*

	Areas for Improvement	Recommendations
[B.7]	One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[11]</sub> ) and will not be modified by the Multilateral Instrument to include such equivalent.	As the one treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[11]</sub> ) will not be modified by the Multilateral Instrument to include such equivalent following its entry into force for the treaty concerned, Slovenia should request the inclusion of the required provision via a bilateral negotiation.  In addition, Slovenia should maintain its stated intention to include the required provision in all future tax treaties.

**[B.8] Publish clear and comprehensive MAP guidance**

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

91. 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.

***Slovenia's MAP guidance***

92. Slovenia's rules, guidelines and procedures are included in specific MAP guidelines ("**MAP guidance**"), which are available at: [www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki\\_in\\_carine/Dokumenti/MAP-navodilo-koncno.pdf](http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Dokumenti/MAP-navodilo-koncno.pdf) (accessed 19 January 2019).

93. This MAP guidance was published in April 2018 and relates to mutual agreement procedures under both Slovenia's tax treaties and the EU Arbitration Convention.

94. Slovenia's MAP guidance contains information on:

- a. Contact information of the competent authority or the office in charge of MAP cases;
- b. The manner and form in which the taxpayer should submit its MAP request;
- c. The specific information and documentation that should be included in a MAP request (see also below);
- d. How the MAP functions in terms of timing and the role of the competent authorities;
- e. Information on availability of arbitration (including the EU Arbitration Convention);
- f. Relationship with domestic available remedies;
- g. Access to MAP in transfer pricing cases;
- h. The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers; and
- i. Non-suspension of tax collection.

95. The above-described MAP guidance of Slovenia includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance also 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.<sup>2</sup>

96. Although the information included in Slovenia's MAP guidance is detailed and comprehensive, some subjects are not specifically discussed in Slovenia's MAP guidance. This concerns information on:

- Whether MAP is available in cases of: (i) the application of anti-abuse provisions and (ii) bona fide foreign-initiated self-adjustments;
- Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and
- The consideration of interest and penalties in the MAP.

#### *Information and documentation to be included in a MAP request*

97. 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.<sup>3</sup> This agreed guidance is shown below. Slovenia's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

98. In addition, according to Slovenia's MAP guidance, a request must include

- details of any appeals and legal proceedings initiated by the taxpayer in relation to the transactions in question; and
- copies of documents issued by the tax authorities on the question in dispute, when applicable.

#### *Anticipated modifications*

99. Slovenia reported that with the implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union,<sup>4</sup> it expects its MAP Guidance to be updated to include changes to the legal and administrative aspects of Slovenia's MAP regime as required by the directive.

## 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 Slovenia could consider including information on:</p> <p>Whether MAP is available in cases of: (i) the application of anti-abuse provisions, and (ii) bona fide foreign-initiated self-adjustments;</p> <p>Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and</p> <p>The consideration of interest and penalties in the MAP.</p>

### [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.*

100. 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.<sup>5</sup>

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

101. The MAP guidance of Slovenia is published and can be found at:

102. [www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki\\_in\\_carine/Dokumenti/MAP-navodilo-koncno.pdf](http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Dokumenti/MAP-navodilo-koncno.pdf) (accessed 19 January 2019).

103. This guidance was published in April 2018. As regards its accessibility, Slovenia's MAP guidance can easily be found on the website of Slovenia's Ministry of Finance by searching the term, "mutual agreement".

#### *MAP profile*

104. The MAP profile of Slovenia is published on the website of the OECD. 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*

105. Slovenia indicated that it does not anticipate any modifications in relation to element B.9.

### Conclusion

	Areas for Improvement	Recommendations
[B.9]	-	As it published its MAP profile and has as from April 2018 made its MAP guidance available and easily accessible, Slovenia 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.*

106. 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***

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

108. Peers that provided input raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Slovenia's MAP guidance.

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

109. As previously mentioned under element B.5, Slovenia 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 Slovenia's MAP guidance the effects of such process with respect to MAP.

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

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

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

### ***Anticipated modifications***

112. Slovenia indicated that it does not anticipate any modifications in relation to element B.10.

### ***Conclusion***

	Areas for Improvement	Recommendations
[B.10]	-	-

## Notes

<sup>1</sup> This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Slovenia 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 Slovenia's positions on the Multilateral Instrument is available at: <http://www.oecd.org/tax/treaties/beps-mli-position-slovenia-instrument-deposit.pdf>.

<sup>2</sup> Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed 19 January 2019).

<sup>3</sup> Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf) (accessed 19 January 2019).

<sup>4</sup> Available at <https://eur-lex.europa.eu/eli/dir/2017/1852/oj> (accessed 19 January 2019).

<sup>5</sup>. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm) (accessed 19 January 2019).

## Reference

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>. [3]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]



## Part C: Resolution of MAP cases

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

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

113. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), which obliges competent authorities, in situations where the objections 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 Slovenia's tax treaties*

114. All of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) 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.

115. Five peers indicated that their treaty with Slovenia meets the requirements under this element, which is in line with the above statement.

#### *Anticipated modifications*

116. Slovenia reported that it will continue to seek to include Article 25(2), first sentence in all of its future tax treaties.

### Conclusion

	Areas for Improvement	Recommendations
[C.1]	-	Slovenia 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).*

117. 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**

118. Statistics regarding all tax treaty related disputes concerning Slovenia are published on the website of the OECD as of 2008.<sup>1</sup> Slovenia publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum.<sup>2</sup>

119. The FTA MAP Forum has agreed on rules for reporting of MAP statistics ('**MAP Statistics Reporting Framework**') for MAP requests submitted on or after 1 January 2016 ('**post-2015 cases**'). Also, for MAP requests submitted prior to that date ('**pre-2016 cases**'), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Slovenia provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Slovenia and of which its competent authority was aware.<sup>3</sup> The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively<sup>4</sup> and should be considered jointly for an understanding of the MAP caseload of Slovenia. With respect to post-2015 cases, Slovenia reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Slovenia reported that it could match its statistics with all its MAP partners.

#### **Monitoring of MAP statistics**

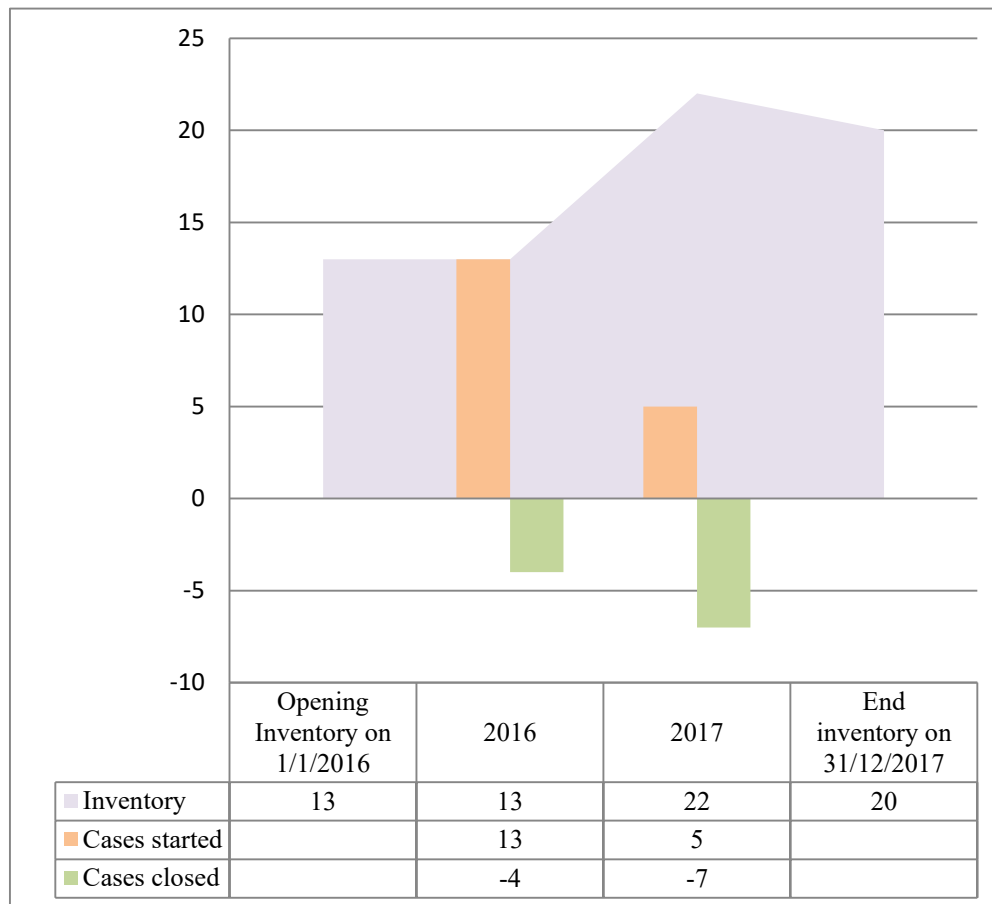
120. Slovenia reported that it has an internal monitoring system in place. Under the system, every MAP request is recorded and followed by the competent authority that closely monitors targeted deadlines as provided for in Slovenia's MAP guidance. Slovenia reported that it is making continuous efforts to close especially its remaining attribution/allocation cases as quickly as possible. In this respect, Slovenia reported that data reported for statistical purposes is used to monitor if internal deadlines are followed in communicating with the taxpayer and the other competent authority and in issuing position papers.

## Analysis of Slovenia's MAP caseload

### Global overview

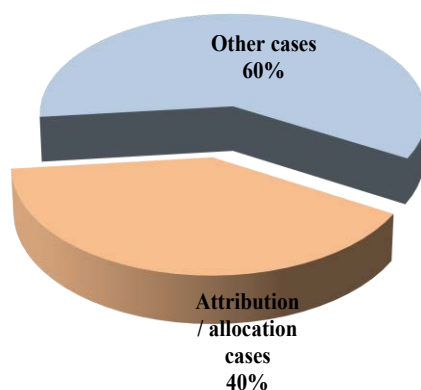
121. The following graph shows the evolution of Slovenia's MAP caseload over the Statistics Reporting Period.

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

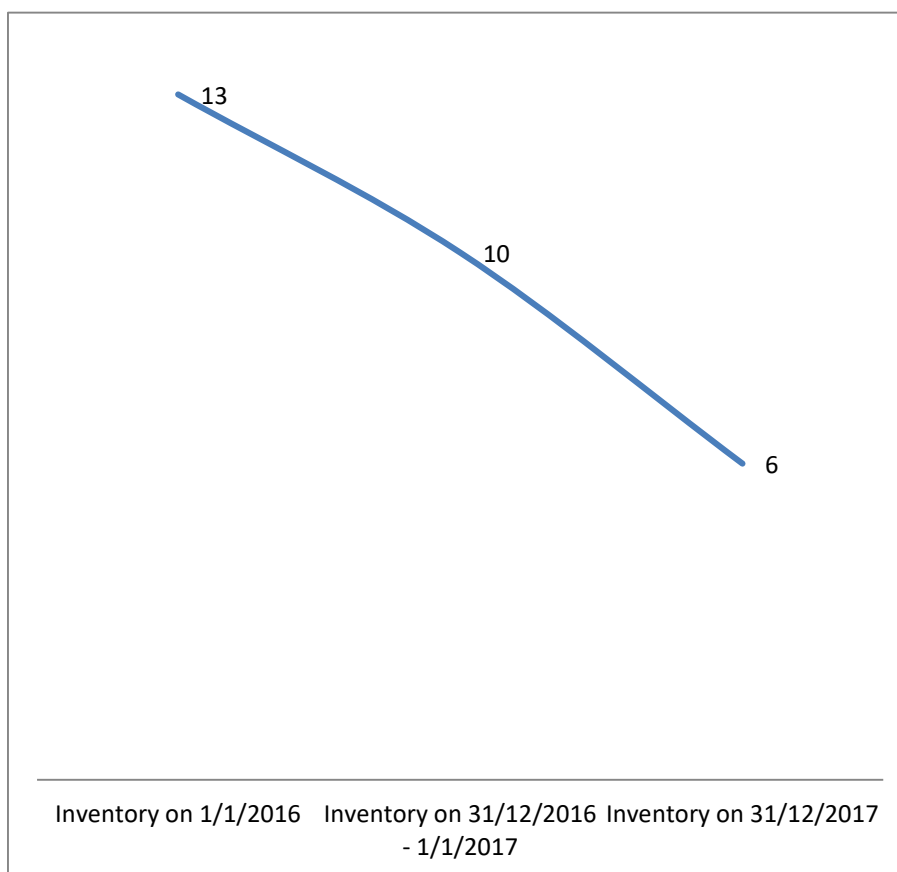


122. At the beginning of the Statistics Reporting Period Slovenia had 13 pending MAP cases, all of which were other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, Slovenia had 20 MAP cases in its inventory, eight of which are attribution/allocation cases and 12 are other MAP cases. Slovenia's MAP caseload has increased by over 50% during the Statistics Reporting Period. Eight attribution/allocation cases started during the Statistics Reporting Period and all of them remain unclosed.

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

**Figure C.2. End inventory on 31 December 2017 (20 cases)***Pre-2016 cases*

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

**Figure C.3. Evolution of Slovenia's MAP inventory Pre-2016 cases**

125. At the beginning of the Statistics Reporting Period, Slovenia's MAP inventory of pre-2016 MAP cases consisted of 13 cases, all of which were other cases. At the end of

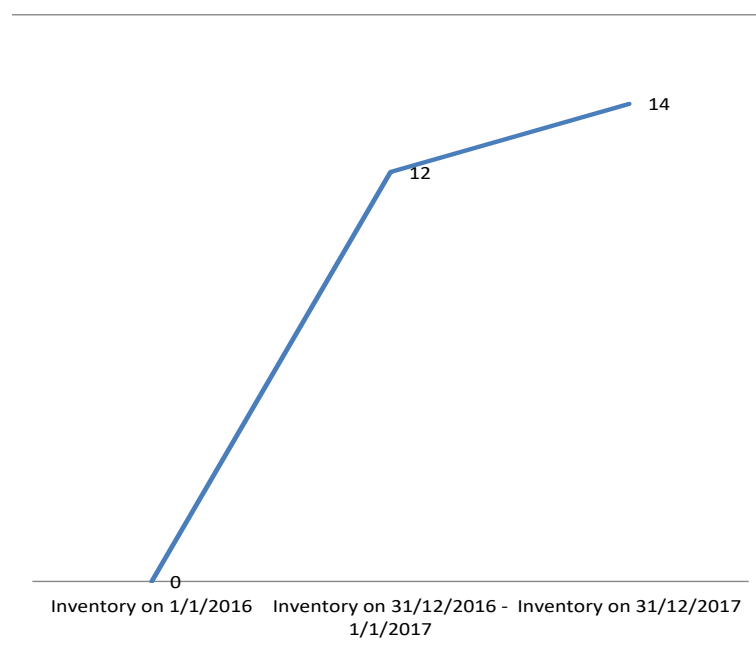
the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to six cases. The decrease in the number of pre-2016 MAP cases is shown in the below table:

Pre-2016 cases only	Evolution of total MAP caseload in 2016	Evolution of total MAP caseload in 2017	Cumulative evolution of total MAP caseload over the two years (2016+2017)
Attribution / allocation cases	No cases in start inventory	No cases in start inventory	No cases in start inventory
Other cases	-23%	-40%	-54%

### Post-2015 cases

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

**Figure C.4. Evolution of Slovenia's MAP inventory Post-2015 cases**



127. In total, 18 MAP cases started during the Statistics Reporting Period, eight of which concerned attribution/allocation cases and ten other cases. At the end of this period the total number of post-2015 cases in the inventory was 14 cases, consisting of eight attribution/allocation cases and six other cases. Conclusively, Slovenia closed four post-2015 cases during the Statistics Reporting Period, all of them being other cases. The total number of closed cases represents approximately 22% of the total number of post-2015 cases that started during the Statistics Reporting Period. No attribution/allocation cases were closed.

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 below table:

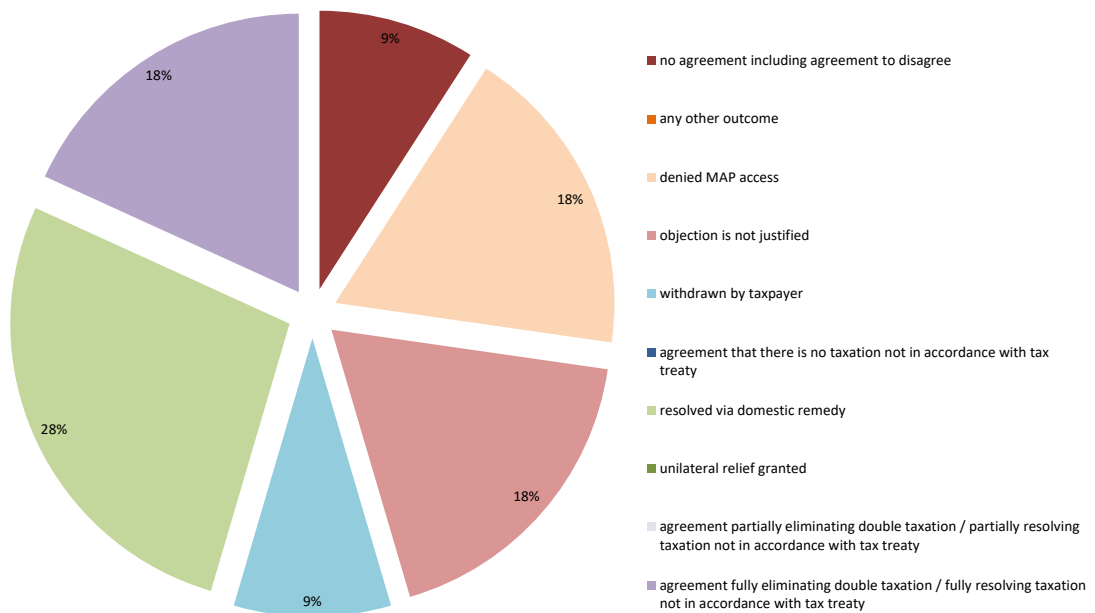
Post-2015 cases only	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	Cumulative % of cases closed compared to cases started over the two years (2016+2017)
Attribution / allocation cases	0% (no case closed)	0% (no case closed)	0% (no case closed)
Other cases	14%	100%	40%

### Overview of cases closed during the Statistics Reporting Period

#### Reported outcomes

129. During the Statistics Reporting Period Slovenia closed 11 MAP cases in total for which the following outcomes were reported:

**Figure C.5. Cases closed during the Statistics Reporting Period (11 cases)**



130. This chart shows that during the Statistics Reporting Period, two cases were closed with the outcome “agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty. Those closed cases only relate to other cases.

#### Reported outcomes for attribution / allocation cases

131. As explained above, none of Slovenia’s attribution / allocation cases were closed during the Statistics Reporting Period.

*Reported outcomes for other cases*

132. The above 11 closed cases concern other cases. The main outcomes were:

- resolved via domestic remedy [28%],
- denied MAP access [18%],
- objection is not justified [18%], and
- agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty [18%].

*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 16.22 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution / Allocation cases	0	N/A
Other cases	11	16.22
All cases	11	16.22

*Pre-2016 cases*

134. For pre-2016 cases Slovenia reported that on average it needed 21.6 months to close MAP cases, which only concerns other cases. Slovenia reported that it uses the following dates:

- *Start date*: the date when the MAP request was received or the date when missing information was received by the taxpayer to supplement the request; and
- *End date*: (a) the date when the taxpayer was informed of the outcome of the MAP, (b) the date when the notification from the other competent authority was received that the taxpayer was notified of or accepted the MAP outcome or (c) the date when the competent authority formally closed 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 Slovenia reported that on average it needed 6.81 months to close MAP cases, which only concerns other cases.

*Peer input*

137. Two peers noted that there were no impediments observed which led to unnecessary delays in finding a resolution to a MAP case. Another peer considered that Slovenia's competent authority replied relatively quickly to its position paper, and reported that the relevant case was closed without any further discussions. Finally, one peer reported that one attribution/allocation case has been initiated and not yet closed.

This peer however added that the relationship has been professional and efficient, with cases being progressed and letters responded to quickly.

### *Anticipated modifications*

138. As will be further discussed under element C.6, Slovenia's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, to provide that treaty-related disputes will be resolved within a specified timeframe, which should globally improve the time needed to settle MAP cases.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.2]		<p>Slovenia 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 Slovenia's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>Slovenia's MAP statistics show that during the Statistics Reporting Period it closed approximately 22% (four out of 18 cases) of its post-2015 cases in 6.81 months on average. In that regard, Slovenia is recommended to seek to resolve the remaining 78% of the post-2015 cases pending on 31 December 2017 (14 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases</p>

### [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 Slovenia's competent authority*

140. The competent authority function for handling MAP cases in Slovenia is performed by the Ministry of Finance, and more specifically by the Directorate for the System of Tax, Customs and Other Public Finance Revenues.

141. Slovenia's competent authority function within the Ministry of Finance consists of four people, one of them working predominantly for MAP, being the case handler, while others deal partly with MAP cases along with other tasks such as treaty negotiations and drafting of taxation regulations. Slovenia reported that the other three people assist or act as a second case handler for the relevant case. In terms of skills, Slovenia reported that the main case handler has both transfer pricing and other skills while among the three other people involved, two of them primarily work on other cases and one person that has transfer pricing skills primarily works on those cases. In terms of experiences of its staff, Slovenia reported that three of the staff in charge of MAP in the Ministry of Finance have several years of experience in the field of international taxation, including handling MAP cases. One person who had worked in the field in the tax authority for several years joined the competent authority in September 2016 and has less experience.



142. Slovenia reported that APA cases are handled by a separate unit, within the department of the General Financial Office within the Financial Administration and consists of five people. Slovenia reported that all the persons dealing with or assisting such APA requests have previous experiences in transfer pricing audits.

143. With regard to training, all the personnel in charge of MAP have access to internal training regularly provided at the Ministry of Finance and the Financial Administration. Also, they can participate in seminars and workshops provided externally by external providers and international organisations.

144. Slovenia reported that funding to have face-to-face meetings with other competent authorities is provided and financed as necessary, considering the number of cases to be handled. In 2017, one such competent authority meeting took place.

### ***Monitoring mechanism***

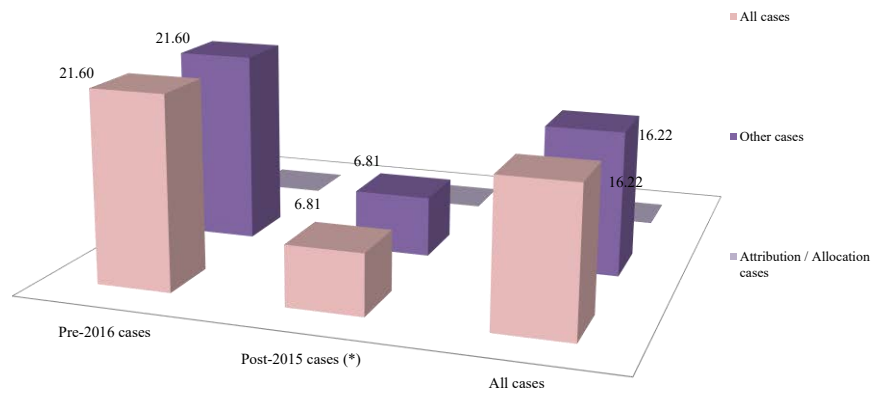
145. For the purpose of monitoring whether resources are adequate, Slovenia reported that it assesses on a continuous basis the number of MAP cases in its inventory, the number of new requests, the number of MAP cases started and the time needed to close them. If the analysis shows that any delays could be due to the shortage of resources (in terms of staff or budget for face-to-face meetings or for trainings), the head of the department informs the Director-General. The necessary processes to address this issue could then be set in motion. In this respect, Slovenia reported that one additional staff was hired in September 2016.

### ***Practical application***

#### ***MAP statistics***

146. As discussed under element C.2, Slovenia closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average time. However, none of eight attribution / allocation cases were closed during the Statistical Reporting Period. This can be illustrated by the following graph:

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



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

147. Based on these figures, it follows that on average it took Slovenia 16.22 months to close MAP cases during the Statistics Reporting Period. Slovenia commented that in two cases, the time to close the cases took 46.98 and 36.16 months respectively, and the reasons for such delay were related to long response time from both involved jurisdictions due to differing positions among the competent authorities on the facts and circumstances of the case.

148. During the Statistics Reporting Period Slovenia did not close any attribution/allocation cases, while eight cases started. However, Slovenia reported that it is working closely with its MAP partners with whom it currently has attribution/allocation cases open and expects to make additional progress after the Review Period. Since the eight cases started are the only attribution/allocation cases in Slovenia's inventory and since they only started recently (after 1 January 2016), it is too early to analyse at this stage whether the available resources are adequate for the resolution of such cases.

149. As referred to under element C.2, Slovenia also reported that it is making continuous efforts to close especially its remaining attribution/allocation cases as speedily as possible.

### *Peer input*

150. Most peers that provided input noted that they have very limited experiences in handling MAP cases with Slovenia.

151. With respect to the working relationship with Slovenia's competent authority, one peer having a significant number of MAP cases and being in regular contact with

Slovenia reported its positive experiences, particularly referring to its good relationship, fluid communication and fairly quick responses. This peer added that its communication with Slovenia's competent authority worked very well and that it would like to continue with the face-to-face meetings and conference calls in the future. Two other peers also reported the easiness to contact and frequent exchange of emails with Slovenia's competent authority.

152. In relation to the resolution of MAP cases, one peer reported that its good working relationship with Slovenia's competent authority was well functioning when resolving cases. As mentioned under element C.2, one peer considered that Slovenia's competent authority replied relatively quickly to its position paper, and the case was closed without any further discussions. Another peer also reported that Slovenia provided position papers and personal meetings have not been considered necessary so far.

153. Another peer reported that Slovenia's competent authority actively co-operated in order to resolve the pending cases and informed the competent authority of this peer of its intention to make a correlative adjustment to solve a MAP case submitted under the EU Arbitration Convention. This peer further reported that Slovenia's competent authority asked its competent authority whether it agreed with the outcome contemplated by Slovenia, and this was agreed.

### *Anticipated modifications*

154. Slovenia indicated that it does not anticipate any modifications in relation to element C.3.

### *Conclusion*

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

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

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

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. Slovenia indicated that staff in charge of MAP in practice operates independently and has the authority to resolve MAP cases without being dependent on the

approval/direction of the tax administration personnel directly involved in the adjustment and the process for negotiating MAP agreements is not influenced by policy considerations.

157. Slovenia reported that MAP cases in Slovenia are handled independently by its competent authority, whereby each MAP request is assigned to a particular case handler who is primarily responsible for it. Slovenia further specified that the case handler of its competent authority drafts a position paper for the other competent authority concerned if the attribution/allocation case is initiated by Slovenia's tax authority or if a MAP request for other case is submitted to Slovenia's competent authority.

158. Slovenia emphasised that members of the competent authority team are independent in preparing and issuing position papers. Slovenia also reported that there is no (formal) system in place requiring the competent authority to ask other government institutions (i.e. particular financial offices at the Financial Administration) for approval of any MAP agreements and that the decision-making process for MAP cases is solely performed within the competent authority. In this respect, Slovenia reported that its competent authority collects the necessary information from the tax authority in order to be able to discuss the case, but further specified that auditors who made adjustment at issue are not further involved in the MAP process and do not attend competent authority meetings.

159. Finally, Slovenia specified that the persons in charge of MAP cases are involved in treaty negotiations. However, Slovenia stated that the staff in its competent authority function is committed not to be influenced, in the process of MAP, by policy considerations that Slovenia would like to see reflected in future amendments to the treaty.

### *Practical application*

160. Peers reported no impediments in Slovenia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. One peer specifically mentioned not being aware of the fact that Slovenia's competent authority staff would be formally dependent on the approval or direction of the tax administration personnel who made the adjustments at issue.

### *Anticipated modifications*

161. Slovenia indicated that it does not anticipate any modifications in relation to element C.4.

## Conclusion

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

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

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

162. 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 Slovenia*

163. Slovenia reported that its competent authority does not have formally established performance indicators and that there are no predetermined targets on the number of MAP cases handled and closed or on the amount of tax sustained. While there are no individual targets set for staff in charge of MAP cases, Slovenia however clarified that its competent authority strives to resolve more (or at least as many) MAP cases per year than the number of cases that started during that year. It was also clarified that, although no formally established performance indicators exist, Slovenia uses them in practice through the yearly evaluation of the performance of the staff applicable to all public servants. In this evaluation information on the number of ongoing and resolved MAP cases/requests and their duration (based on the data collected for purposes of statistics reporting) can be used to assess MAP staff. Additionally, consistency is checked through the method of work for preparing position papers, whereby a position paper is always reviewed by another staff member before it is finalised, therefore providing that the MAP cases can be resolved correctly, consistently and in a timely manner.

164. The final report on Action 14 (OECD, 2015<sup>[2]</sup>) includes examples of performance indicators that are considered appropriate, which are shown below:

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

165. Further to the above, Slovenia 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 particularly noted that it is not aware of the use of performance indicators by Slovenia that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

### *Anticipated modifications*

167. Slovenia indicated that it does not anticipate any modifications in relation to element C.5.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.5]	-	As it has done thus far, Slovenia 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. Slovenia reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. Slovenia's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, if so agreed with another Contracting State.

170. In addition, Slovenia is a signatory to the EU Arbitration Convention. Slovenia was a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, Slovenia also opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.<sup>6</sup> Slovenia's MAP guidance contains references to the EU Arbitration Convention and also clarifies that arbitration is also permissible under some international treaties for the avoidance of double taxation, if a MAP agreement is not reached.

### *Practical application*

171. Up to date, Slovenia has incorporated an arbitration clause in four of its 61 treaties as a final stage to the MAP. These clauses can be specified as follows:

- Equivalent of Article 25(5) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>): one treaty,
- Provision based upon Article 25(5) of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), providing an arbitration procedure when no agreement by competent authorities is made within three-years: one treaty, and
- Voluntary and binding arbitration: two treaties.

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

### *Anticipated modifications*

173. Slovenia indicated that it does not anticipate any modifications in relation to element C.6.

### *Conclusion*

	Areas for Improvement	Recommendations
[C.6]	-	-

## Notes

- <sup>1</sup> Available at: <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm> (accessed 19 January 2019). These statistics are up to and include fiscal year 2016.
- <sup>2</sup> Available at: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/2016\\_jptf\\_ac\\_statistics\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/2016_jptf_ac_statistics_en.pdf) (accessed 19 January 2019). The most recent statistics published are up to 2016.
- <sup>3</sup> Slovenia's 2016 MAP statistics were corrected in the course of its peer review and deviate from the published MAP statistics for 2016. See further explanations in Annex B.
- <sup>4</sup> For post-2015 cases, if the number of MAP cases in Slovenia'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, Slovenia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution / allocation cases and other cases).
- <sup>5</sup> For pre-2016 and post-2015 cases, Slovenia 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”.
- <sup>6</sup> An overview of Slovenia's position on the Multilateral Instrument is available at: [www.oecd.org/tax/treaties/beps-mli-position-slovenia-instrument-deposit.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-slovenia-instrument-deposit.pdf) (accessed 19 January 2019).

## References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>. [3]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]



## Part D: Implementation of MAP agreements

### [D.1] Implement all MAP agreements

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

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. If a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), Slovenia reported that its domestic statute of limitation is overridden by the sentence and that any MAP agreement shall be implemented notwithstanding any time limits under the domestic law of Slovenia. In the absence of such provision in the tax treaty, Slovenia reported that the implementation of MAP agreement is subject to its domestic statute of limitation. In Slovenia, Article 125, 126 and 126a of the Tax Procedure Act stipulate five years relative statute of limitation and ten years absolute statute of limitation. Article 126 prescribes that the relative statute of limitation of five years are interrupted by any official act undertaken by the tax authority in order to assess the tax or by the person liable for tax with the tax authority in order to obtain a tax refund. The start date of the limitation is the date on which the tax assessment shall be submitted to the tax authority or the date on which the person paid tax, or the date of the acquisition of a legal title establishing that the person was not obliged to pay it. The limitation applies to both upward and downward adjustments. Section 2.4 of Slovenia's MAP guidance refers to the implementation of MAP including to the application of the domestic statute of limitation.

176. With respect to the implementation process, Articles 257 and 258 of the Tax Procedure Act provide that taxpayers may, within 12 months, request from the tax authority the implementation of the relevant MAP agreement, respectively in cases where the MAP request was submitted in Slovenia or in the other contracting state. Slovenia reported that implementation of MAP agreements is closely monitored by the competent authority, which has a tracking system in place whereby it demands the tax authority to provide follow-up information on every agreement that has to be implemented.

#### *Practical application*

177. Slovenia reported that since 1 January 2016 it has reached the following MAP agreements:

Year	MAP agreements
2016	0
2017	2
2018 (until 30 April 2018)	1

178. The above three cases require implementation in Slovenia, which are pending as of the end of the Review Period. Slovenia reported that its competent authority has already invited the taxpayers to submit amended tax returns to implement two of the agreements.

179. 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 Slovenia.

### *Anticipated modifications*

180. Slovenia expressed that it mainly intends to address the issue of domestic statute of limitation by modifying its treaties. This will be further discussed under element D.3.

### *Conclusion*

Areas for Improvement	Recommendations
<p>[D.1]</p> <p>As will be discussed under element D.3 not all of Slovenia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[11]</sup>). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the time limits of five to ten years in its domestic law.</p>	<p>- In accordance with its policy, Slovenia should implement all MAP agreements reached if the conditions for such implementation are fulfilled.</p> <p>Slovenia should also ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.</p>

## **[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.*

181. 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*

182. As discussed under element D.1., Slovenia's MAP guidance contains references to the implementation of MAP agreements.

183. Section 2.4 of the guidance states that once a MAP agreement is reached, the competent authority that initiated MAP informs the person submitting a MAP request of the content of the agreement, generally within one month after the agreement is concluded. If the case relates to transfer prices, Slovenia's competent authority makes such a notification to the resident of Slovenia regardless of which state initiated the MAP.

184. As referred to under element D.1, according to Articles 257 and 258 of the Tax Procedure Act, taxpayers may, within 12 months, request from the tax authority that the MAP agreement be implemented.

### *Practical application*

185. As described in paragraph 151, in Slovenia, implementation of MAP agreements is pending for three cases as of the end of the Review Period. For two of the three cases, Slovenia has already invited taxpayers to submit amended tax returns and reminded them of the timeframe set under Article 257 mentioned above. The remaining pending case was closed in March 2018.

186. As discussed under element D.1, Slovenia reported that timely implementation of MAP agreements is closely monitored by the competent authority, which has a tracking system in place whereby it demands the tax authority to provide follow-up information on every agreement that has to be implemented.

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

### *Anticipated modifications*

188. Slovenia indicated that it does not anticipate any modifications in relation to element D.2.

### *Conclusion*

	Areas for Improvement	Recommendations
[D.2]	-	In accordance with its policy, Slovenia should 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.*

189. 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<sup>[1]</sup>) 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 Slovenia's tax treaties*

190. As discussed under element D.1, Slovenia's domestic legislation includes a statute of limitations of five to ten years for implementing MAP agreements, unless overridden by tax treaties or, if applicable, a MAP agreement is reached under the EU Arbitration Convention.

191. Out of Slovenia's 61 tax treaties, 55 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Of the remaining six treaties, five treaties do not contain such equivalent or any of the alternative provisions, while one contains the alternative provision only in Article 9, setting a time limit for making transfer pricing adjustments.

#### *Anticipated modifications*

##### *Multilateral Instrument*

192. Slovenia signed the Multilateral Instrument, and on 22 March 2018 deposited the instrument of its ratification. 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<sup>[1]</sup>) – 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<sup>[1]</sup>). 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<sup>[1]</sup>). 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.

193. In regard of the six 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<sup>[1]</sup>), Slovenia listed five of them as covered tax agreements under the Multilateral Instrument and for all did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Of the relevant five treaty partners, one is not a signatory to the Multilateral Instrument, and one did not list its treaty with Slovenia as a covered tax agreement. Two of the remaining three treaty partners made such notification. Therefore, at this stage, two of the six tax treaties identified above will be modified by the Multilateral Instrument, upon entry into force for these treaties, to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>).

#### *Bilateral modifications*

194. Slovenia further reported that for the four tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) or both alternatives provided for in Articles 9(1) and 7(2) 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 D.3. Slovenia reported that it is already negotiating the replacement of an existing treaty with one of the relevant treaty partners that it has received a draft of an amending protocol to modify the treaty to be in line with the Action 14 Minimum Standard from another treaty partner and that it intends to enter into bilateral negotiations with the third relevant treaty partner in order to meet the Action 14 Minimum Standard, prioritising the mentioned negotiations depending on the extent of deficiencies with respect to that standard. With regard to the fourth relevant treaty partner Slovenia reported that it will encourage it to use the Multilateral Instrument to ensure that its tax treaty with Slovenia complies with the Action 14 Minimum Standard, before considering bilateral negotiations. In addition, Slovenia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) or both alternatives in all of its future tax treaties.

#### *Peer input*

195. Five peers indicated that their treaty with Slovenia meets the requirements under element D.3, which is in line with the above analysis.

196. For the six treaties identified that neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>), nor both alternatives, two relevant peers provided input. One reported that its treaty with Slovenia does not formally meet the requirement under D.3, but this peer is willing to accept the alternative provisions and it has submitted a draft of an amending protocol to adapt the treaty to the Action 14 Minimum Standard. The other relevant peer

reported that its treaty with Slovenia does not fully adhere to the Action 14 Minimum Standard and that bilateral solutions will be explored to the extent the deficiencies are not remedied through application of the Multilateral Instrument.

### Conclusion

	Areas for Improvement	Recommendations
[D.3]	<p>Four out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) nor both alternative provisions provided for in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument to include such equivalent.</p> <p>Out of these four:</p> <p>Three neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) nor any of the alternative provisions.</p> <p>One does not contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) and contains only the alternative provision provided in Article 9(1).</p>	<p>As the four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) will not be modified by the Multilateral Instrument to include such equivalent following its entry into force for the treaties concerned, Slovenia should follow up on the bilateral discussions currently underway for two of these treaties and request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions for the remaining two treaties.</p> <p>In addition, Slovenia 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>

### References

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/tpg-2017-en>. [3]
- OECD (2015), *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>. [2]
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>. [1]

## Summary

Areas for Improvement	Recommendations
Part A: Preventing disputes	
[A.1] -	Slovenia should maintain its stated intention to include the required provision in all future tax treaties.
[A.2] Slovenia is in theory able to provide for roll-back of bilateral APAs. However, it was not possible at this stage to evaluate the effective implementation of this element in practice since Slovenia did not receive any request for roll-back of bilateral APAs during the Review Period.	
Part B: Availability and access to MAP	
[B.1] Two out of 61 tax treaties do not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ), and will not be modified by the Multilateral Instrument.	For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) in those treaties that currently do not contain such equivalent, Slovenia should follow up on the bilateral discussions currently underway to replace one of these treaties and request the inclusion of the required provision via bilateral negotiations for the other treaty. This concerns a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) either: As amended in the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ); or As it read prior to the adoption of the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ), thereby including the full sentence of such provision. In addition, Slovenia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as it read prior to the adoption of the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ) in all future tax treaties. Slovenia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.
Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty in situations where the MAP request does not follow a tax assessment notice given by Slovenia's tax authority.	
[B.2] -	Slovenia should continue to apply its documented notification and/or consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) as amended by the final report on Action 14 (OECD, 2015 <sub>[2]</sub> ).
[B.3] -	As Slovenia has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.
[B.4] -	As Slovenia has thus far granted access to MAP in eligible 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, it should continue granting access for these cases.
[B.5] -	-
[B.6] -	As Slovenia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Slovenia's information and documentation requirements for MAP requests, it should continue this practice.
[B.7] One out of 61 tax treaties does not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) and	As the one treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>[1]</sub> ) will not be modified by the Multilateral Instrument to include such equivalent following its

	will not be modified by the Multilateral Instrument to include such equivalent.	entry into force for the treaty concerned, Slovenia should request the inclusion of the required provision via a bilateral negotiation. In addition, Slovenia should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	-	Although not required by the Action 14 Minimum Standard, in order to further improve the level of details of its MAP guidance Slovenia could consider including information on: Whether MAP is available in cases of: (i) the application of anti-abuse provisions, and (ii) bona fide foreign-initiated self-adjustments; Whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and The consideration of interest and penalties in the MAP.
[B.9]	-	As it published its MAP profile and has as from April 2018 made its MAP guidance available and easily accessible, Slovenia 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]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	-	Slovenia should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	Slovenia 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 Slovenia's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Slovenia's MAP statistics show that during the Statistics Reporting Period it closed approximately 22% (four out of 18 cases) of its post-2015 cases in 6.81 months on average. In that regard, Slovenia is recommended to seek to resolve the remaining 78% of the post-2015 cases pending on 31 December 2017 (14 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	-	Slovenia should continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Slovenia 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 Slovenia would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Slovenia should continue to use appropriate performance indicators.
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	-	In accordance with its policy, Slovenia should implement all MAP agreements reached if the conditions for such implementation are fulfilled.  Slovenia should also ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.
[D.2]	-	In accordance with its policy, Slovenia should implement all MAP agreements reached on a timely basis if the conditions for such implementation are fulfilled.
[D.3]	Four out of 61 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>(11)</sub> ) nor both alternative provisions provided for in Article 9(1) and Article 7(2), and will not be modified by the Multilateral Instrument to include such equivalent.  Out of these four:	As the four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015 <sub>(11)</sub> ) will not be modified by the Multilateral Instrument to include such equivalent following its entry into force for the treaties concerned, Slovenia should follow up on the bilateral discussions currently underway for two of these treaties and request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions for the remaining two



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Three neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015<sup>[1]</sup>) 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<sup>[1]</sup>) and contains only the alternative provision provided in Article 9(1).

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treaties.

In addition, Slovenia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.



## Annex A: Tax treaty network of Slovenia

		Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence?	Inclusion Art. 9(2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence ?	Inclusion Art. 25(2) second sentence?	Inclusion Art. 25(3) first sentence?	Inclusion Art. 25(3) second sentence?	Inclusion arbitration provision?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons		If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC?			
Y = yes	If N, date of signing	E = yes, either CAs	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes	Y = yes
		O = yes, only one CA	i = no, no such provision ii = no, if ii, specify	i = no, but access will be given to TP cases	i = no and such cases will be accepted for MAP		i = no, but have Art 7 equivalent ii = no, but	N = no	N = no	N = no
										if yes: i-Art. 25(5) ii-

		Article 25(1) of the OECD Model Tax Convention ("MTC")				Article 9(2) of the OECD MTC	anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration	
		B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
	N = signed pending ratification	N = No	different period iii = no, starting point for computing the 3 year period is different iv = no, others reasons		ii = no and access will not be given to TP cases	ii = no but such cases will not be accepted for MAP	N = no	have Art 9 equivalent iii = no, but have both Art 7 & 9 equivalent			mandatory other iii - voluntary		
								N = no and no equivalent of Art 7 and 9					
Albania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Armenia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Austria	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Azerbaijan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	N/A	O	Y	N/A	i***	i	Y	N**	Y	N**	N	N/A
Bosnia and Herzegovina	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Bulgaria	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Canada	Y	N/A	N	ii**	2 years	Y	i	Y	ii	Y	Y	N	N/A
China (People's Republic of)	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Croatia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
Czech Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Denmark	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Egypt	N	15-12-2009	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Estonia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Finland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Former Yugoslav Republic of Macedonia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Georgia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Iceland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
India	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Iran	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Isle of Man	Y	N/A	O	Y	N/A	N/A	i	Y	Y	Y	N	N	N/A
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Italy	Y	N/A	O	ii**	2 years	i	i	Y	Y	Y	Y	Y	iii
Japan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	i
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kosovo	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
Latvia	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Morocco	N	05-04-2016	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Netherlands	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	iii
Norway	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Poland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Portugal	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Qatar	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Romania	Y	N/A	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Russia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Spain	Y	N/A	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Sweden	Y	N/A	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Switzerland	Y	N/A	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Thailand	Y	N/A	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Turkey	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Ukraine	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United Arab Emirates	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
United	Y	N/A	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A

Column 1	Column 2	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC	anti-abuse	Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration			
		B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6			
Kingdom		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			
United States	Y	N/A	O ii	5 years	Y	i	Y	Y	Y	Y	N	N/A	
Uzbekistan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

\* Footnote by Turkey:

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

Footnote by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognized by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

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

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





## 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

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

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2016	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	13	0	0	1	0	2	0	0	0	0	0	10	8.59
Total	13	0	0	1	0	2	0	0	0	0	0	10	8.59
<u>Notes:</u>													

## 2017 MAP Statistics

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

category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2017	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	no. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	average time taken (in months) for closing pre-2016 cases during the reporting period
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/ Allocation	0	0	0	0	0	0	0	0	0	0	0	0	N/A
Others	10	0	1	0	0	0	2	0	0	1	0	6	31.35
Total	10	0	1	0	0	0	2	0	0	1	0	6	31.35

Notes:

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

### 2016 MAP Statistics

category of cases	no. of post-2015 cases in MAP inventory on 1 January 2016	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in on MAP inventory on 31 December 2016	average time taken (in months) for closing post-2015 cases during the reporting period
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	6	0	0	0	0	0	0	0	0	0	0	6	N/A
Others	0	7	0	0	0	0	1	0	0	0	0	0	6	2.04
Total	0	13	0	0	0	0	1	0	0	0	0	0	12	2.04
<u>Notes:</u>														
-														

## 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	6	2	0	0	0	0	0	0	0	0	0	0	8	N/A
Others	6	3	2	1	0	0	0	0	0	0	0	0	6	8.40
Total	12	5	2	1	0	0	0	0	0	0	0	0	14	8.40
<u>Notes:</u>														

## Glossary

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



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## OECD/G20 Base Erosion and Profit Shifting Project

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

Consult this publication on line at <https://doi.org/10.1787/9789264309944-en>.

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