

OECD/G20 Base Erosion and Profit Shifting  
Project



# Making Dispute Resolution More Effective – MAP Peer Review Report, Czech Republic (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14





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## Foreword

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and via treaty provisions. With the negotiation for a multilateral instrument having been finalised in 2016 to facilitate the implementation of the treaty related measures, 67 countries signed the multilateral instrument on 7 June 2017, paving 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 an 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 100 members, will monitor and peer review the implementation of the minimum standards as well as complete 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.



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*Abbreviations and acronyms*

|             |  |
|-------------|--|
| <b>APA</b>  | Advance Pricing Agreement                              |
| <b>BEPS</b> | Base Erosion and Profit Shifting                       |
| <b>FTA</b>  | Forum on Tax Administration                            |
| <b>MAP</b>  | Mutual Agreement Procedure                             |
| <b>OECD</b> | Organisation for Economic Co-operation and Development |



## Executive summary

The Czech Republic has an extensive tax treaty network with over 85 tax treaties and has signed and ratified the EU Arbitration Convention. The Czech Republic has some experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and 46 cases pending on 31 December 2016. Of these cases, over 50% concern allocation/attribution cases. Overall the Czech Republic meets slightly more than half of the elements of the Action 14 Minimum Standard.

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

- One-fourth 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; and
- One-ninth of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, the Czech Republic needs to amend and update a portion of its tax treaties. In this respect, the Czech Republic signed the Multilateral Instrument, through which a number of its tax treaties will be potentially modified to fulfil the requirements under the Action 14 Minimum Standard. Where tax treaties will not be modified by the Multilateral Instrument, the Czech Republic reported that it does not intend to initiate bilateral treaty negotiations to fulfil those requirements.

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

The Czech Republic meets most of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. However, it has not introduced a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not being justified. Furthermore, the Czech Republic has no MAP guidance, which needs to be introduced and published in a clear and comprehensive manner without delay.

Concerning the average time needed to close MAP cases, the MAP statistics for the Czech Republic for the year 2016 are as follows:

| 2016                          | Opening inventory | Cases started | Cases closed | End inventory | Average time to close cases (in months)* |
|-------------------------------|-------------------|---------------|--------------|---------------|--|
| Attribution/ allocation cases | 19                | 8             | 2            | 25            | 35.00                                    |
| Other cases                   | 14                | 9             | 2            | 21            | 9.77                                     |
| <b>Total</b>                  | 33                | 17            | 4            | 46            | 22.38                                    |

\* The average time taken for closing MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. For computing the average time taken for resolving pre-2016 MAP cases, the Czech Republic used as a start date the taxpayer's request or the letter from the other competent authority (including minimum required information) and as the end date the agreement with the other competent authority on closing the case or the receipt of request for withdrawal by the taxpayer.

Four MAP cases were closed on average within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 22.38 months. However, three out of the four cases closed were withdrawn by the taxpayer while the fourth case was closed by agreeing that there was no taxation not in accordance with the tax treaty. Moreover, the number of cases the Czech Republic closed is significantly lower than the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 increased significantly as compared to its inventory as per 1 January 2016 and is more than ten times the number of cases resolved during the year. Although the current resources for the MAP function in the Czech Republic are in principle adequate to manage the influx of new MAP cases, more resources may be necessary to achieve a net reduction of its MAP inventory. In addition, the average time taken to close attribution/allocation cases was 35 months, which is above the 24-month pursued average. More resources have recently been assigned to the competent authority function in the Czech Republic. It will be monitored whether these additional resources will contribute to the resolution of MAP cases in a more timely, effective and efficient manner.

Furthermore, the Czech Republic in essence meets the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. The Czech Republic's competent authority operates fully independently from the audit function of the tax authorities.

Lastly, as regards to the implementation of MAP agreements, there is a domestic statute of limitation in the Czech Republic that restricts the implementation of such agreements, where the applicable tax treaty does not include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In addition, there is also a risk that not all MAP agreements will be implemented because of the requirement to file an amended tax return or a specific additional application for a refund by the taxpayer. As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether the Czech Republic has implemented all MAP agreements thus far.

## *Introduction*

### **Available mechanisms in the Czech Republic to resolve tax treaty-related disputes**

The Czech Republic has entered into 90 tax treaties on income (and/or capital), 87 of which are in force.<sup>1</sup> These 90 tax treaties apply to 91 jurisdictions.<sup>2</sup> All of these tax treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.

Furthermore, the Czech Republic 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>3</sup>

In the Czech Republic, the competent authority function to conduct MAP is performed by the Ministry of Finance for other MAP cases and the General Financial Directorate within the Czech Republic's tax administration for attribution/allocation cases. The competent authority of the Czech Republic currently employs 12 employees, thereof five working within the Ministry of Finance and seven within the General Financial Directorate. All of them also deal with other tasks apart from handling MAP cases.

### **Recent developments in the Czech Republic**

The Czech Republic finalised tax treaty negotiations with Ghana, Kosovo and Turkmenistan, but ratification procedures for these treaties have not yet been finalised and are therefore not in force. In addition, the Czech Republic also negotiated a new treaty with the Republic of Korea, which concerns the replacement of an existing tax treaty. The latter has, however, not yet been signed.

The Czech Republic signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“Multilateral Instrument”), inter alia with a view to make the necessary modifications to the MAP article under its tax treaties 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, the Czech Republic indicated that it does not anticipate taking any further action at this stage through bilateral negotiations. With the signing of the Multilateral Instrument, the Czech Republic also submitted its list of preliminary notifications and reservations to that instrument.<sup>4</sup> In relation to the Action 14 Minimum Standard, the Czech Republic has not made any reservation to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure).

## Basis for the peer review process

The peer review process entails an evaluation of the Czech Republic’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 the Czech Republic and the peers on 7 July 2017. The period for evaluating the Czech Republic’s implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 (“**Review Period**”). Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of the Czech Republic’s implementation of this Minimum Standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

For the purpose of this report and the statistics below, in assessing whether the Czech Republic 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 currently in force. This concerns the treaties with Ghana, Kosovo and Turkmenistan. This however does not apply to the treaty negotiated with the Republic of Korea as this treaty has not been signed, yet. Furthermore, the treaty analysis also takes into account the tax treaty with former Serbia and Montenegro for those jurisdictions to which this tax treaty is still being or to be applied by the Czech Republic. As it concerns a tax treaty that is applicable to multiple jurisdictions, this treaty is only counted as one tax treaty for this purpose. Reference is made to Annex A for the overview of the Czech Republic’s tax treaties regarding the mutual agreement procedure.

In total 12 peers provided input: Belgium, Denmark, Germany, Italy, Japan, Liechtenstein, Russia, Spain, Sweden, Switzerland, Turkey, the United States of America. These peers represent approximately 69% of post-2015 MAP cases in the Czech Republic’s inventory on 31 December 2016.

Broadly, all peers indicated having a good relationship with the Czech Republic’s competent authority with regard to MAP, most of them emphasising their limited numbers of MAP cases with the Czech Republic.

The Czech Republic provided informative answers in its questionnaire, which was submitted on time. The Czech Republic was responsive in the course of the drafting of the peer review report and provided further clarity where necessary. In addition, the Czech Republic provided the following information:

- MAP profile;<sup>5</sup> and
- MAP statistics<sup>6</sup> according to the MAP Statistics Reporting Framework (see below).

Finally, the Czech Republic is a member of the FTA MAP Forum and has shown good co-operation during the peer review process. The Czech Republic did not provide any peer input on the other assessed jurisdictions so far.

## Overview of MAP caseload in the Czech Republic

The analysis of the Czech Republic’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2016 (“**Statistics Reporting Period**”). According to the statistics provided by the Czech Republic, on 31 December 2016 its MAP inventory was 46 cases, 25 of which concern attribution/allocation cases and 21 other cases. During the Statistics Reporting Period 17 cases started and 4 cases were closed.

## General outline of the peer review report

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

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

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

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

## Notes

1. The tax treaties the Czech Republic has entered into are available at: [www.mfcr.cz/cs/legislativa/dvoji-zdaneni/prehled-platnych-smluv](http://www.mfcr.cz/cs/legislativa/dvoji-zdaneni/prehled-platnych-smluv) The treaties that are signed but have not yet entered into force are with Ghana (2017), Kosovo (2013) and Turkmenistan (2016). Reference is made to Annex A for the overview of the Czech Republic’s tax treaties.
2. The Czech Republic continues to apply the treaty with former Serbia and Montenegro to the successor states (i) Serbia and (ii) Montenegro.
3. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.

4. Available at: [www.oecd.org/tax/treaties/beps-mli-position-czech-republic.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-czech-republic.pdf).
5. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).
6. The MAP statistics of the Czech Republic are included in Annex B and C of this report.
7. The terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective can be found in the Peer Review Documents (OECD, 2016): [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).

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## *Part A*

### Preventing disputes

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

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

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

#### *Current situation of the Czech Republic’s tax treaties*

2. Out of the Czech Republic’s 90 tax treaties, 89<sup>1</sup> contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty. In the remaining tax treaty the term “interpretation” is not included by which the tax treaty is considered not including the full equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. The Czech Republic reported that in practice it endeavours to resolve with its treaty partners by mutual agreement any difficulties or doubts arising as to the interpretation or application of tax treaties, whether or not the applicable tax treaty contains a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

#### *Anticipated modifications*

##### *Multilateral Instrument*

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

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

5. In regard of the one tax treaty identified above, the Czech Republic listed this treaty as a covered tax agreement under the Multilateral Instrument and it made, pursuant to Article 16(6)(d)(i), a notification that this treaty does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner is a signatory to the Multilateral Instrument and also made such notification. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify this tax treaty identified above to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

#### *Bilateral modifications*

6. The Czech Republic reported it intends to include the required provision in all future tax treaties.

#### *Peer input*

7. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element A.1, including one peer for which the treaty with the Czech Republic actually does not include the equivalent to Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2015). This peer however reported that its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument, which is consistent with the above analysis.

#### **Conclusion**

|       | Areas for Improvement   | Recommendations   |
|-------|---|---|
| [A.1] | One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). | The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the 1 treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.<br><br>In addition, the Czech Republic should maintain its stated intention to include the required provision in all future tax treaties. |

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

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

8. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto,

critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>2</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.

### ***The Czech Republic’s APA programme***

9. The Czech Republic reported that it is authorised to enter into bilateral APAs and has implemented an APA programme. The basis of the bilateral APA programme is to be found in the MAP clauses of the applicable tax treaty as clarified in Guidance D-333: *Communication by the Ministry of Finance in respect of Binding Ruling on transfer price in related parties’ transactions*.<sup>3</sup> The Guidance D-333 explicitly makes reference to the recommendations with regard to bilateral APAs described in the OECD Transfer Pricing Guidelines as well as the recommendations of the EU Joint Transfer Pricing Forum.

10. The Czech Republic reported that the taxpayer can apply for a bilateral APA applicable for related party transactions effective as of the current or future taxable periods.

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

11. The Czech Republic reported that it applies bilateral APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement. However, the Czech Republic reported that it does not provide for roll-back of bilateral APAs.

12. The Czech Republic reported that, in practice, if the taxpayer applied the same transfer pricing method in the past, a taxpayer may suppose that the principles of a concluded APA, despite the lack of valid binding roll-back for previous periods, will be applied during a tax audit and if the terms are equal, the tax audit will come to the same conclusions as the APA. In addition, the Czech Republic indicated that taxpayers are able to file amended tax returns based on the results of an APA for previous tax years respecting domestic time limits. This possibility, however, is not binding for the Czech tax administration and therefore not being considered as a roll-back of a bilateral APA.

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

13. Since 1 January 2016, three bilateral APA requests have been received by the Czech competent authority. All three requests do not include any request for roll-back and are still under examination.

14. Peers generally indicated not having received any request for a roll-back of a bilateral APA involving the Czech Republic.

### ***Anticipated modifications***

15. The Czech Republic indicated that it does not anticipate any modifications in relation to element A.2.

### *Conclusion*

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

### **Notes**

1. These 89 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
2. This description of an APA is based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Ref. no.: 39/86 838/2009-393, available at: [www.financnisprava.cz/assets/en/attachments/t-taxes/Guidance-D-333.pdf](http://www.financnisprava.cz/assets/en/attachments/t-taxes/Guidance-D-333.pdf).

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## *Part B*

### **Availability and access to MAP**

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

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

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

#### ***Current situation of the Czech Republic's tax treaties***

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

17. Out of the Czech Republic's 90 tax treaties, 76<sup>1</sup> contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Action 14 final report* (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. None of the Czech Republic's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as changed by the *Action 14 final report* (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state.

18. The 14 tax treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), either as changed by the

*Action 14 final report* (OECD, 2015b) or as it read prior to that report, can be categorised as follows:

| Provision  | Number of treaties |
|--|--------------------|
| A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can submit a MAP request irrespective of domestic available remedies, but whereby pursuant to a protocol provision the taxpayer is also required to initiate these remedies when submitting a MAP request (see below).   | 1                  |
| A variation to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident and whereby the taxpayer cannot submit such request irrespective of the remedies provided by the domestic laws of the contracting states (see below). | 1                  |
| A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authorities of the contracting state of which they are resident (see below).   | 12                 |

19. The one tax treaty mentioned in the first row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this tax treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. For this reason, this tax treaty does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

20. The one tax treaty mentioned in the second row of the table above does not allow a submission of a MAP request in the state of which the taxpayer is a national, where the case comes under the non-discrimination article, and does not provide that the taxpayer can submit a MAP request irrespective of the remedies provided by the domestic laws of the contracting states. Therefore, this tax treaty does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b).

21. The remaining 12 tax treaties mentioned above are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons nine of those 12 tax 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 (two tax treaties); 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 (seven tax treaties).

22. The remaining three tax treaties contain a non-discrimination provision that applies both to nationals that are resident of one of the contracting states as to nationals that are not. These three tax treaties do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as the limitation of the scope of the MAP provision is not clarified by the absence of or a limited scope of the non-discrimination provision.

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

23. Out of the Czech Republic’s 90 tax treaties, 74<sup>2</sup> contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.

24. The remaining 16 tax treaties that do not contain such provision can be categorised as follows:

| Provision  | Number of tax treaties |
|--|------------------------|
| No filing period for a MAP request   | 11                     |
| Filing period more than three years for a MAP request (four years)                                       | 2                      |
| Filing period less than three years for a MAP request (two years)  | 2                      |
| Different starting point and potential filing period less than three years for a MAP request (see below) | 1                      |

25. The last tax treaty mentioned above does not specify the starting point at all as it misses the language “from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention”. In addition, for the period of filing a MAP request, reference is made to the “domestic laws of the Contracting States”. As this time period could potentially be shorter than 3 years the tax treaty is considered not having the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

26. In case the tax treaty does not provide a filing period for a MAP request, the Czech Republic indicated that domestic time limits – three years (starting from the due date for filing the tax return or in withholding cases when the withholding tax is payable) will apply.

### ***Anticipated modifications***

#### *Multilateral Instrument*

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

27. The Czech Republic recently signed the Multilateral Instrument. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the *Action 14 final report* (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). This, however, only 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 both notified the depositary of the fact that this tax treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a). Such modification will for a specific treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a) of the Multilateral Instrument, reserved the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties.

28. With the signing of the Multilateral Instrument, the Czech Republic opted to introduce in all of its tax treaties, pursuant to Article 16(4)(a)(i) of that instrument, a provision that is



equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report on Action 14, allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In other words, where under the Czech Republic's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state in which it is a resident, the Czech Republic opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, the Czech Republic listed 86<sup>3</sup> of its 90 treaties under the Multilateral Instrument and made, pursuant to Article 16(6)(a) of the Multilateral Instrument, for 86 tax treaties the notification that they contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b).

29. In total, 34<sup>4</sup> of the relevant 86 treaty partners are not a signatory to the Multilateral Instrument, one did not list its treaty with the Czech Republic under the Multilateral Instrument and 20 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. The remaining 31 treaty partners listed their treaty with the Czech Republic as having a provision that is equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify these 31 treaties to incorporate the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read after the adoption of the final report on Action 14 (OECD, 2015b).

30. In view of the above and in relation to the five treaties identified in paragraphs 17-21 that are considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the final report on Action 14 (OECD, 2015b), two are part of the 31 treaties that will be modified via the Multilateral Instrument. Of the remaining 3 treaty partners, two are not a signatory to the Multilateral Instrument, and one is part of the 20 jurisdictions that made the reservation on the basis of Article 16(5)(a) of the Multilateral Instrument.

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

31. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. This, however, only 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 both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

32. With regard of the 2 tax treaties identified in paragraph 24 above that include a filing period for MAP requests of less than three years, the Czech Republic listed both tax treaties as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(b)(i), for all of them a notification that they do not contain a provision described in Article 16(4)(a)(ii). Both treaty partners also listed their treaty with the Czech Republic as not having a time limit for filing MAP requests of at least three years. At this stage therefore, the Multilateral



Instrument will, upon entry into force, modify these 2 treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

33. With regard to the tax treaty identified in paragraph 24 above that includes a provision that is considered not the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), as it refers to domestic laws of the contracting state for the filing period of for MAP requests, the Czech Republic listed this treaty as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii) nor did it make such a notification on the basis of Article 16(6)(b)(ii) that this treaty contains such a provision. The relevant treaty partner also listed its treaty with the Czech Republic under the Multilateral Instrument and also did not make a notification on the basis of either Article 16(6)(b)(i) or Article 16(6)(b)(ii). In this situation, Article 16(6)(b)(i) of the Multilateral Instrument stipulates that the second sentence of Article 16(1) – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a) – will supersede the provision of the covered tax agreement to the extent it is incompatible with that second sentence. Since the treaty refers to the domestic law of the contracting states to determine the filing period of a MAP request and given the fact that in the case of the Czech Republic such filing period is less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, the provision of the covered tax agreement is considered to be incompatible with the second sentence of Article 16(1). At this stage, the Multilateral Instrument will, upon entry into force, supersede the treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### *Bilateral modifications*

34. For those tax treaties that do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), and which will not be modified via the Multilateral Instrument the Czech Republic has neither conducted any actions to include this provision nor was it contacted by jurisdictions to enter into negotiations for the inclusion of such a provision. In addition, the Czech Republic reported that it does not intend to take any further actions at this stage.

35. In addition, the Czech Republic reported it will seek to include Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it reads after the adoption of the final report on Action 14 (OECD, 2015b), as well as seek to include Article 25(1), second sentence, in all of its future treaties.

#### *Peer input*

36. Almost all peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element B.1. One peer reported that its treaty with the Czech Republic does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) while it is in line with element B.1 according to the above analysis.

37. Three other peers reported that their tax treaty with the Czech Republic does not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) and that it will be modified via the Multilateral Instrument, which is partly consistent with the above analysis, as for one treaty the equivalent of Article 25(1), first sentence, will not be included.

38. For the other four treaties identified that do not include the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide input.

## Conclusion

|       | Areas for Improvement   | Recommendations  |
|-------|---|--|
| [B.1] | <p>Seven out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that report. Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>• four tax treaties do not contain the equivalent of Article 25(1), first sentence;</li> <li>• two tax treaties provides that the timeline to file a MAP request may be shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and</li> <li>• one tax treaty does not contain the equivalent of Article 25(1), first sentence and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> | <p>Where tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating these treaties to include such equivalent. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention(OECD, 2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the final report of Action 14 (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, the Czech Republic should maintain its stated intention to request the inclusion of the required provision in all future tax treaties.</p> |
|       | <p>Where tax treaties do not contain 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.</p>   | <p>The Czech Republic 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 being granted 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.</p>   |

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

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

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

- i. of either treaty partner; or in the absence of such provision;
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process

where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

### ***Domestic bilateral consultation or notification process in place***

40. None of the Czech Republic's 90 tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. However, as was also discussed under element B.1, 31 of these 90 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

41. The Czech Republic reported that it has not introduced a formal bilateral consultation or notification process, which allows the other competent authority concerned to provide its views on the case when the Czech Republic's competent authority considers the objection raised in the MAP request not to be justified. However, the Czech Republic reported that in practice it would notify its treaty partner in case its competent authority considers the objection raised in the MAP request not to be justified.

### ***Practical application***

42. From the MAP statistics provided by the Czech Republic it follows that during the Statistics Reporting Period it has not denied access in any MAP cases and for none of the MAP cases the objection raised by the taxpayer was considered not to be justified. The Czech Republic indicated that if it will consider an objection as not justified, it will informally notify the other competent authority involved.

43. No peer indicated that it was aware of or that it had been consulted/notified of a case where the competent authority of the Czech Republic considered the objection raised in a MAP request as not justified since 1 January 2016. This can be explained by the fact that the Czech Republic since this date did not consider that an objection raised in a MAP request was not justified.

### ***Anticipated modifications***

44. As previously discussed under element B.1, the Czech Republic signed the Multilateral Instrument and indicated that it will introduce Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the *Action 14 final report* (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner via the Multilateral Instrument or via bilateral negotiations.

### ***Conclusion***

|       | <b>Areas for Improvement</b>  | <b>Recommendations</b>  |
|-------|---|---|
| [B.2] | For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified. | The Czech Republic should introduce a documented bilateral consultation or notification process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14. |

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

Jurisdictions should provide access to MAP in transfer pricing cases.

45. 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. Countries should thus provide access to MAP in transfer pricing cases.

***Legal and administrative framework***

46. Out of the Czech Republic's 90 tax treaties, 45 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) requiring their competent authorities to make a corresponding adjustment in case a transfer pricing adjustment is made by the treaty partner. 41<sup>5</sup> treaties do not include such a provision on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

47. The remaining four treaties contain a provision based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). However, the granting of a corresponding adjustment is only referred to as a hypothetical option ("may") under the appropriate circumstances of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

48. With regard to its tax treaty policy, the Czech Republic made a reservation on Article 9 of the OECD Model Tax Convention (OECD, 2015a), which reads as follows:

"The Czech Republic reserves the right not to insert paragraph 2 in its conventions but is prepared in the course of negotiations to accept this paragraph and at the same time to add a third paragraph limiting the potential corresponding adjustment to bona fide cases."

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

50. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is included in the Czech Republic's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, the Czech Republic indicated that it will always provide access to MAP for transfer pricing cases.

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

51. Since 1 January 2016 the Czech Republic has not denied access to MAP on the basis that the case concerned was a transfer pricing case.

52. Peers indicated not being aware of a denial of access to MAP in the Czech Republic on the grounds that it was a transfer pricing case since 1 January 2016.

## *Anticipated modifications*

### *Multilateral Instrument*

53. The Czech Republic reported that it is not in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties. In this respect, the Czech Republic, as discussed above, reserved the right in paragraph 16 of the commentary to the OECD Model Tax Convention (OECD, 2015a) not to include Article 9(2) in its tax treaties. The Czech Republic signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). This, however, only if both contracting parties to the applicable treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty 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, 2015a), or not to apply Article 17(2) in the absence of such equivalent, on the basis 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 of whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). Where such a notification is made by both of them the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention [OECD, 2015a]).

54. The Czech Republic has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) to all of its covered tax agreements on the basis that in the absence of a provision referred to in Article 17(2) in its covered tax agreement: (i) it shall make the appropriate adjustment referred to in Article 17(1); or (ii) its competent authority shall endeavour to resolve the case under the provisions of a covered tax agreement relating to mutual agreement procedure. At this stage therefore the Multilateral Instrument will, upon entry into force, not modify any of the Czech Republic's tax treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).

### *Conclusion*

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [B.3] | -                     | As the Czech Republic 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.

55. 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***

56. None of the Czech Republic's 90 tax treaties allow competent authorities to restrict access to MAP for cases when a treaty anti-abuse provision applies or when there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, also the domestic law and/or administrative processes of the Czech Republic 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 application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

***Practical application***

57. The Czech Republic reported that since 1 January 2016 it did not deny access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the application of a treaty anti-abuse provision has 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.

58. No peer indicated that it was aware of cases that have been denied access to MAP in the Czech Republic since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

***Anticipated modifications***

59. The Czech Republic did not indicate that it anticipates any modifications in relation to element B.4.

***Conclusion***

|       | Areas for Improvement | Recommendations   |
|-------|-----------------------|---|
| [B.4] | -                     | As the Czech Republic 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.

60. 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***

61. The Czech Republic reported that audit settlements are not available in the Czech Republic.

62. The Czech Republic reported that it has no administrative or statutory dispute settlement or resolution process(es) in place that allows the Czech Republic to deny access to MAP for issues resolved through such a process.

***Practical application***

63. Due to fact that audit settlements are not available in the Czech Republic, there are no cases where the Czech Republic has denied access to MAP in cases where a transaction would have been concluded following a tax audit.

64. Peers indicated not being aware of denial of access to MAP by the Czech Republic where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities since 1 January 2016.

***Anticipated modifications***

65. The Czech Republic did not indicate that it anticipates 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.

66. 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***

67. The Czech Republic reported that it has no publicly available guidance outlining specific information requirements for a MAP request, but that it assesses the necessary information based on common sense. It stated that in the vast majority of cases taxpayers present all necessary documents and information with their MAP request.

### ***Practical application***

68. The Czech Republic reported it has not limited access to MAP since 1 January 2016 in any case on the grounds that insufficient information was provided. It further reported that access to MAP will not be denied if taxpayers did not initially include all the required information and documentation in the MAP request. The Czech Republic pointed out that it is in the taxpayer's own interest to provide as much information as possible.

69. If the Czech competent authority concludes that necessary information is missing based on the applicable tax treaty, it will ask the taxpayer once for additional information. In case the taxpayer does not provide the requested information within a reasonable timeframe, the Czech competent authority will deny access and will close the case. However, the taxpayer is able to file a new MAP request regarding the same issue within the applicable time limits.

70. Peers indicated not being aware of a limitation of access to MAP by the Czech Republic since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

### ***Anticipated modifications***

71. The Czech Republic indicated that the required information and documents for a MAP request will be clearly outlined in the future published MAP guidance.

### ***Conclusion***

|       | Areas for Improvement | Recommendations   |
|-------|-----------------------|---|
| [B.6] | -                     | As the Czech Republic has thus far not limited access to MAP in eligible cases when taxpayers have complied with the Czech Republic's information and documentation requirements for MAP requests, it should continue this practice.<br><br>Recommendations on guidance in relation to information and documentation requirements are discussed in element B.8. |

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

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

72. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include



the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2015a), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

### ***Current situation of Czech Republic's tax treaties***

73. Out of the Czech Republic's 90 tax treaties, 80<sup>6</sup> contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. All of the ten remaining tax treaties do not contain Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

### ***Anticipated modifications***

#### ***Multilateral Instrument***

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

75. With regard to the ten tax treaties identified above, the Czech Republic listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant ten treaty partners, two are not a signatory to the Multilateral Instrument. All remaining eight treaty partners did also make a notification that their treaty with the Czech Republic does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify eight of the ten treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

#### ***Bilateral modifications***

76. For those tax treaties that do not contain a provision equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015a), and which will not be modified via the Multilateral Instrument the Czech Republic has neither conducted any actions to include this provision, nor was it contacted by jurisdictions to enter into negotiations for the inclusion of such a provision. In addition, the Czech Republic reported that it does not intend to take any further actions at this stage. However, the Czech Republic reported it intends to include the required provision in all future tax treaties.

*Peer input*

77. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element B.7, including one peer for which the treaty with the Czech Republic actually does not include the equivalent to Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015a). This peer however reported that its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument, which is consistent with the above analysis.

78. For the other 9 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peers did not provide any input except for one peer that specified that it has not contacted the Czech Republic nor is it in discussion with the Czech Republic to amend their treaty with a view to incorporate the required provision. However, this treaty will be modified via the Multilateral Instrument according to the above analysis.

**Conclusion**

|       | Areas for Improvement   | Recommendations   |
|-------|---|---|
| [B.7] | Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a). | <p>The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those eight treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating these two treaties to include such equivalent.</p> <p>In addition, the Czech Republic should maintain its stated intention to request the inclusion of the required provision in all future tax treaties.</p> |

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

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

79. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

### ***The Czech Republic’s MAP guidance***

80. Apart from the information available in the Czech Republic’s MAP profile the rules, guidelines and procedures are not publically available. In particular, 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, is not publically available.

81. One peer provided input and commented that it seems that MAP guidance is still in preparation based on the MAP profile.

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

82. The Czech Republic reported that it determines the necessary information based on common sense as discussed under element B.6. Given that the Czech Republic has currently no published MAP guidance, the required information and documentation to submit a MAP request is not publicly available, either.

83. 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 a request for MAP assistance. This agreed guidance, even though not formally applied by the Czech Republic, is shown below for information purposes:

- 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.

### ***Anticipated modifications***

84. The Czech Republic indicated that MAP guidance is currently being drafted and will be published once the draft MAP guidance has been aligned to the implementation of the Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union<sup>7</sup> into Czech law. The Czech Republic indicated that it anticipates that the future MAP guidance will address all items agreed within the FTA MAP Forum.

### Conclusion

|       | Areas for Improvement               | Recommendations  |
|-------|-------------------------------------|--|
| [B.8] | There is no published MAP guidance. | <p>The Czech Republic should introduce guidance 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 and publish such guidance without delay.</p> <p>Although not required by the Action 14 Minimum Standard, the Czech Republic could consider publishing information on:</p> <ul style="list-style-type: none"> <li>• Whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments;</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP;</li> <li>• The possibility of suspension of tax collection during the course of a MAP;</li> <li>• The consideration of interest and penalties in the MAP; and</li> <li>• The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul> |

### [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.

85. 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>8</sup>.

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

86. The Czech Republic currently does not have a published MAP guidance.

#### *MAP profile*

87. The MAP profile of the Czech Republic is published on the website of the OECD.<sup>9</sup> This MAP profile is complete and includes additional information where necessary.

#### *Anticipated modifications*

88. The Czech Republic indicated that MAP guidance is currently being drafted and will be published once the draft MAP guidance has been aligned to the implementation of the Council Directive on Double Taxation Dispute Resolution Mechanisms in the European Union<sup>10</sup> into Czech law.

### *Conclusion*

|       | Areas for Improvement                     | Recommendations   |
|-------|---|---|
| [B.9] | MAP guidance is not publically available. | After preparing its MAP guidance the Czech Republic should make it publically available and easily accessible. Its MAP profile, published on the shared public platform, should be 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.

89. 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 an 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***

90. As previously mentioned in B.5, the Czech Republic reported that audit settlements are not available. Peers indicated no issues regarding element B.10 in relation to audit settlements.

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

91. The Czech Republic reported that there is no other administrative or statutory dispute settlement/resolution process in the Czech Republic that impacts the access to MAP.

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

92. It is not necessary to notify treaty partners since the Czech Republic reported that it has no system in place such as audit settlements or internal statutory dispute settlement resolution processes that limit access to MAP. In that regard, peers indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in the Czech Republic.

*Anticipated modifications*

93. The Czech Republic did not indicate that it anticipates any modifications relating to element B.10.

*Conclusion*

|        | Areas for Improvement | Recommendations |
|--------|-----------------------|-----------------|
| [B.10] | -                     | -               |

**Notes**

1. These 76 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
2. These 74 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
3. These 86 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
4. These 34 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro. Serbia is a signatory to the Multilateral Instrument, Montenegro is not. However, as Serbia reserved, pursuant to Article 16(5)(b), the right not to modify its treaty with the Czech Republic regarding Article 25(1), first sentence, it is for purposes of simplification counted as one of the 34 treaties.
5. These 41 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
6. These 80 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
7. Council of the European Union, 13732/16 FISC 172 IA 100 + ADD 1 + ADD 2 + ADD 3, available at <http://data.consilium.europa.eu/doc/document/ST-9420-2017-INIT/en/pdf>.
8. 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).
9. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).
10. Council of the European Union, 13732/16 FISC 172 IA 100 + ADD 1 + ADD 2 + ADD 3, available at <http://data.consilium.europa.eu/doc/document/ST-9420-2017-INIT/en/pdf>.

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## *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.

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

#### ***Current situation of the Czech Republic’s tax treaties***

95. Out of the Czech Republic’s 90 tax treaties, 88<sup>1</sup> contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

96. The first of the remaining tax treaties imposes an additional requirement of a notification period for the application of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and may therefore limit its application. The second tax treaty only applies, if the claim can be upheld, and additionally the competent authorities are not obliged to “endeavour”, if the objection appears to it to be justified and if it can resolve the case unilaterally, but “may come to an agreement with the competent authority of the other Contracting State”. As this language potentially limits the application of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) and does not impose a requirement to “endeavour” to resolve the case, the provision is considered to be not equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

## *Anticipated modifications*

### *Multilateral Instrument*

97. The Czech Republic recently signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). In other words, in the absence of this equivalent, Article 16(4)(b)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only 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 both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

98. With regard to the two tax treaties identified above, the Czech Republic listed all of them as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that they do not contain a provision described in Article 16(4)(b)(i). Of the relevant treaty partners, one is not a signatory to the Multilateral Instrument. The remaining treaty partner also made a notification that their treaty with the Czech Republic does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). At this stage therefore, the Multilateral Instrument will, upon entry into force, modify one tax treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

### *Bilateral modifications*

99. For those tax treaties that do not contain a provision equivalent to Article 25(2), first sentence of the OECD Model Tax Convention (OECD, 2015a), and which will not be modified via the Multilateral Instrument the Czech Republic has neither conducted any actions to include this provision nor was it contacted by jurisdictions to enter into negotiations for the inclusion of such a provision. In addition, the Czech Republic reported that it does not intend to take any further actions at this stage. However, the Czech Republic reported it intends to include the required provision in all future tax treaties.

### *Peer input*

100. All peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element C.1. For the two treaties identified above the relevant peers did not provide input.

## Conclusion

|       | Areas for Improvement  | Recommendations   |
|-------|--|---|
| [C.1] | Two out of 90 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a). | <p>The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating the remaining treaty to include such equivalent.</p> <p>In addition, the Czech Republic should maintain its stated intention to include the required provision in all future tax treaties.</p> |

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

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

101. 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*

102. Statistics regarding all tax treaty related disputes concerning the Czech Republic are published on the website of the OECD as of 2007.<sup>2</sup> The Czech Republic also publishes MAP statistics regarding transfer pricing disputes with EU Member States on the website of the EU Joint Transfer Pricing Forum.<sup>3</sup>

103. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after January 1, 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. The Czech Republic provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving the Czech Republic and of which its competent authority was aware. 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 the Czech Republic. With respect to post-2015 cases, the Czech Republic indicated that it matched its statistics with all of its MAP partners.

### *Monitoring of MAP statistics*

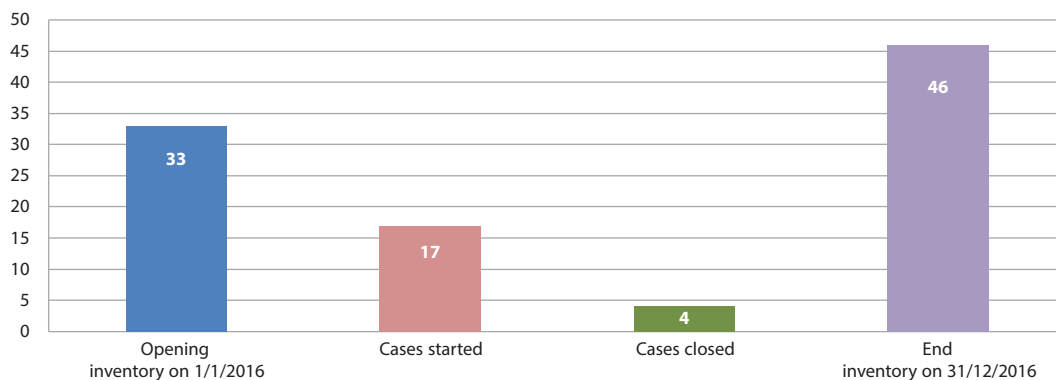
104. The Czech Republic reported that it monitors on a continuous basis (i) the number of cases in its MAP inventory, (ii) the number of new MAP requests and (iii) the time taken to resolve MAP cases.

### *Analysis of the Czech Republic's MAP caseload*

#### *Global overview of the MAP caseload*

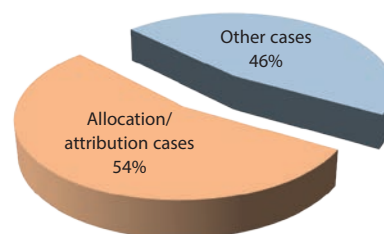
105. The following graph shows the evolution of the Czech Republic's MAP caseload over the Statistics Reporting Period.

Figure C.1. The Czech Republic's MAP inventory



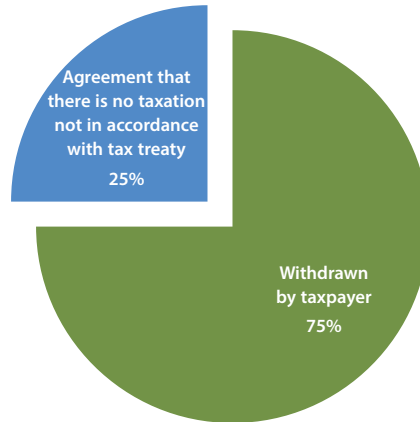
106. At the beginning of the Statistics Reporting Period the Czech Republic had 33 pending MAP cases, of which 19 are attribution/allocation cases and 14 other MAP cases.<sup>5</sup> At the end of the Statistics Reporting Period, the Czech Republic had 46 MAP cases in inventory, of which 25 are attribution/allocation cases and 21 other MAP cases. This end inventory can be illustrated as follows:

Figure C.2. End inventory on 31 December 2016 (46 cases)



107. During the Statistics Reporting Period the Czech Republic closed 4 MAP cases and the following outcomes were reported:

Figure C.3. **Cases closed during the Statistics Reporting Period (4 cases)**



108. This chart shows that during the Statistics Reporting Period for one out of four cases the competent authorities agreed that there was no taxation not in accordance with the tax treaty and three of these cases were withdrawn by taxpayers.

#### *Pre-2016 cases*

109. At the beginning of the Statistics Reporting Period, the Czech Republic's MAP inventory of pre-2016 MAP cases consisted of 33 cases, of which were 19 attribution/allocation cases and 14 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 30 cases, consisting of 17 attribution/allocation cases and 13 other cases. This decrease concerns around 9% of the total opening inventory, which can be broken down in a decrease by around 11% of the number of attribution allocation cases and a decrease by around 7% of the number of other cases.

#### *Post-2015 cases*

110. As mentioned previously, 17 MAP cases were started on or after 1 January 2016, 8 of which concerned attribution/allocation cases and 9 other cases. At the end of the Statistics Reporting Period the total post-2015 cases inventory had decreased to 16 cases, consisting of 8 attribution/allocation cases and 8 other cases. The Czech Republic in total closed one post-2015 case during the Statistics Reporting Period, which was an other case. The total number of closed cases represents 6 % of the total number of post-2015 cases that started during the Statistics Reporting Period.

### *Average timeframe needed to close MAP cases*

#### *Pre-2016 cases*

111. The Czech Republic reported that on average it needed 35.00 months to close attribution/allocation cases and that on average it needed 17.00 months to close other cases. This resulted in an average time needed of 29.00 months to close pre-2016 cases. For the purpose of computing the average time needed to close pre-2016 cases, the Czech Republic used as:

- *Start date:* The taxpayer's request or the letter from the other competent authority (including minimum required information)
- *End date:* The agreement with the other competent authority on closing the case or the receipt of request for withdrawal by the taxpayer

#### *Post-2015 cases*

112. As a preliminary remark, it should be noted that the period for assessing post-2015 MAP statistics only comprises 12 months.

113. The Czech Republic closed 6% of post-2015 cases during the Statistics Reporting Period. During these 12 months, the Czech Republic reported that it did not close any attribution/allocation cases and that on average it needed 2.53 months to resolve other cases.

#### *All cases closed during the Statistics Reporting Period*

114. The average time needed to close MAP cases during the Statistics Reporting Period was 22.38 months. This average can be broken down as follows:

|                              | Number of cases | Start date to End date (in months) |
|------------------------------|-----------------|------------------------------------|
| Attribution/Allocation cases | 2               | 35.00                              |
| Other cases                  | 2               | 9.77                               |
| All cases                    | 4               | 22.38                              |

#### *Peer input*

115. On an overall level, all peers that provided input to the Czech Republic's implementation of the Action 14 Minimum Standard reported a good working relationship with the Czech Republic's competent authority, which is further discussed under element C.3 below. Concerning the resolution of MAP cases, peers provided mixed input. Generally, the Czech Republic competent authority is considered solution-oriented. However, criticism was raised with regard to the occurrence of delayed responses by the Czech competent authority.

#### *Anticipated modifications*

116. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

|       | Areas for Improvement   | Recommendations   |
|-------|---|---|
| [C.2] | The Czech Republic submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by the Czech Republic's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. | The Czech Republic's MAP statistics point out that during the Statistics Reporting Period it closed 6% (one out of 17 cases) of its post-2015 cases in 2.53 months on average. In that regard, the Czech Republic is recommended to seek to resolve the remaining 94% of the post-2015 cases pending on 31 December 2016 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases. |

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

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

117. 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 the Czech Republic's competent authority*

118. In the Czech Republic the taxpayer can apply to the following competent authorities for a MAP:

- Ministry of Finance – for other MAP cases; and
- General Financial Directorate within the Czech Republic's tax administration – for attribution/allocation cases and APAs.

119. The Czech Republic's competent authority consists of 12 people, who deal partly with MAP cases along with other tasks on the agenda of international taxation. Five employees are working at the Ministry of Finance and seven employees are working for the General Financial Directorate.

#### *Monitoring mechanism*

120. The Czech Republic indicated assessing on a continuous basis whether the resources allocated to the competent authority are adequate. In addition, the heads of division would inform their director in case of need of additional resources (staff, budget or training) as required. This assessment is made with regard to (i) the number of MAP cases in inventory, (ii) the number of new MAP cases, (iii) the current time needed to resolve MAP cases and (iv) any circumstance that would have an impact on the means needed to perform the required tasks.

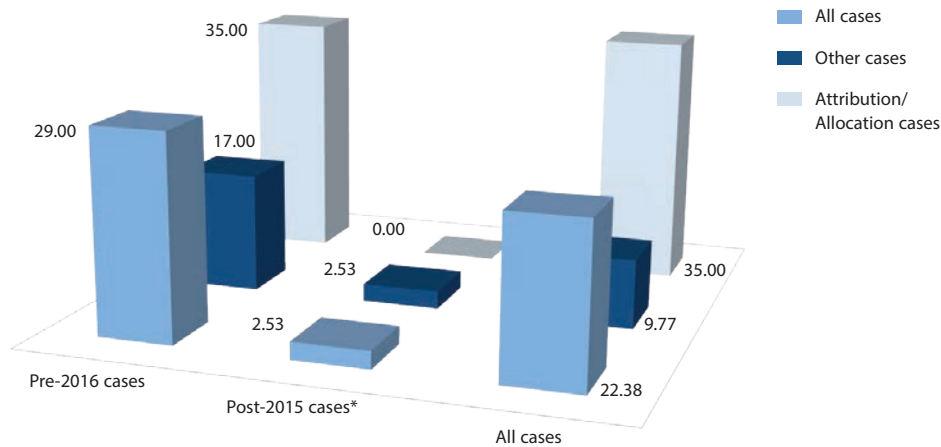
121. In this respect, the Czech Republic reported that, the Czech MAP function recently hired 2 more employees. However, as the employees within the competent authority are partly dedicated to MAP the reason for hiring them was also just partly due to the work related to MAP.

## Practical application

### MAP statistics

122. As discussed under element C.2, the Czech Republic has resolved its MAP cases during the Statistics Reporting Period within the pursued 24-month average. A discrepancy can, however, be noted between the average time taken to resolve other cases and attribution/allocation cases. This can be illustrated by the following graph:

Figure C.4. Average time (in months)



\* Note that post-2015 cases only concern cases opened and closed during 2016.

123. Based on these figures, it follows that on average it took the Czech Republic 22.38 months to resolve MAP cases. However, the average time needed to resolve attribution/allocation cases is 35.00 months, while the average time required to resolve other cases is 9.77 months. In practice, these results seem to indicate that additional resources dedicated to the resolution of attribution/allocation cases may be necessary in order to accelerate the resolution of such cases. The Czech Republic indicated that it identified two main reasons why certain cases needed more than 24 months to be resolved, which are (i) lengthy communication with the other competent authority and (ii) the complexity of some cases.

124. Based on the statistics provided by the Czech Republic, it follows that the Czech Republic closed around 25% of the number of new attribution/allocation cases and around 22% of other MAP cases started during the Statistics Reporting period (both pre-2016 and post-2015 cases). This led to an increase of the Czech Republic's MAP inventory by approximately 40% overall.

### Peer input

#### General

125. In total 6 of the 12 peers that provided input, provided details in relation to their contacts with the Czech competent authority and their experiences in resolving MAP cases during the Review Period. The other 6 peers had no MAP cases during the Review Period and for that reason did not provide specific input. Most of the peers that provided input considered their MAP relationship with the Czech Republic of relative low importance given their insignificant MAP caseload with the Czech Republic compared to their total MAP inventory.



### Contacts and correspondence with the Czech competent authority

126. Most peers reported having good contacts with the Czech competent authority. One peer reported that it has a long and well-established relationship with the Czech competent authority on the resolution of MAP cases, whereby contacts are generally easy and frequent via letters, e-mail, conference calls and face-to-face meetings. The ease of liaising has been echoed by other peers, thereby pointing out that there were no difficulties encountered.

### Organisation of face-to-face meetings

127. Given the overall Czech MAP caseload, only one of the peers pointed out that they hold at regular intervals face-to-face meetings with the Czech competent authority for attribution/allocation cases, but not for other MAP cases. This peer suggested also establishing face-to-face meetings for other MAP cases.

### Resolving MAP cases

128. Some peers considered the Czech competent authority as being solution-oriented. Two peers however, reported a significant delay in the response of the Czech competent authority. Another peer experienced that the Czech competent authority lacks willingness to find an agreement when the initial positions of the competent authorities differ. One peer also experienced a delay in resolving an attribution/allocation case and assumes that the Czech Republic does not have adequate resources.

### Suggestions for improvement

129. Two out of the 12 peers provided input for suggestions and improvements. One peer suggested to also hold face-to-face meeting for other MAP cases. The other peer suggested to allocate more resources to the resolution of MAP cases and to establish more frequent communications between the two competent authorities.

### *Anticipated modifications*

130. By the recent hire of two more employees, the Czech Republic reported that it anticipates a further reduction of its MAP caseload.

### *Conclusion*

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [C.3] | -                     | <p>The Czech Republic 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.</p> <p>In addition, as also suggested by one peer, the Czech Republic could closely monitor whether the recent addition of resources provided to handle attribution/allocation cases will ensure that its competent authority can handle the recent increase of new cases with a view to resolve such MAP cases in a timely, efficient and effective manner.</p> |

#### **[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.

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

##### ***Functioning of staff in charge of MAP***

132. The Czech Republic reported that when a MAP request is received by the Czech competent authority the following actions will be taken: The executive officer of the competent authority decides who will be the responsible case handler. This person studies all the relevant materials and asks the taxpayer for additional information, if necessary. If the case concerns a Czech tax adjustment, the case handler liaises with the local tax administration to receive the full background on the reasoning for the adjustment and all relevant underlying documents. All the position papers prepared by the responsible case handler have to be approved by the Head of the division (Ministry of Finance – Division of International Taxation or General Financial Directorate – International Taxation Unit – Direct Taxes) and the Director of the department (Ministry of Finance – Income Tax Department or General Financial Directorate – Direct Taxes Department).

133. The Czech Republic reported that there is neither a (formal) system in place requiring the competent authority to ask other government institutions (i.e. the audit department of tax administration) for approval of any MAP agreements nor is the process for resolving MAP cases influenced by policy considerations that the Czech Republic would like to see reflected in future amendments to the treaty.

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

134. Peers indicated not being aware of the fact that the Czech competent authority would be formally dependent on the approval or the direction of the tax administration personnel or influenced by policy considerations that the Czech Republic would like to see reflected in future amendments to the treaty.

##### ***Anticipated modifications***

135. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.4.

### *Conclusion*

|       | Areas for Improvement | Recommendations   |
|-------|-----------------------|---|
| [C.4] | -                     | As it has done thus far, the Czech Republic 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 of any policy considerations that the Czech Republic 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.

136. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

#### *Performance indicators used by the Czech Republic*

137. The Czech Republic indicated that it does not use performance indicators to assess the staff in charge of MAPs. In particular, the Czech Republic indicated that it does not apply any performance indicators for the competent authority function and for the staff in charge of MAP processes that would be based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue. In addition, the Czech Republic reiterated that the staff in charge of MAP cases is also involved in other tasks related to international taxation and that the resolution of MAP cases has no specific influence on the evaluation of staff members.

138. The Final Report on Action 14 includes examples of performance indicators that are considered appropriate. These indicators, even though not applied by the Czech Republic, are shown below for information purposes:

- 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).

#### *Practical application*

139. Peers generally indicated that they were not aware of any difficulty in the Czech Republic in relation to element C.5.

*Anticipated modifications*

140. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.5.

*Conclusion*

|       | Areas for Improvement | Recommendations  |
|-------|-----------------------|--|
| [C.5] | -                     | The Czech Republic could consider using the examples of performance indicators mentioned in the Final Report on Action 14 to evaluate staff in charge of the MAP function. |

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

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

141. 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*

142. The Czech Republic has no domestic law limitations for including MAP arbitration in its tax treaties and is a signatory to the EU Arbitration Convention. However, the treaty policy of the Czech Republic is generally not to include a MAP arbitration clause in a tax treaty, which is specified in the Czech Republic's MAP profile.

*Practical application*

143. None of the Czech Republic's tax treaty includes a mandatory binding arbitration. Two treaties include a most-favoured nation clause that concerns entering into negotiations for the inclusion of an arbitration provision should the Czech Republic's treaty partner include an arbitration provision with a third state.

*Anticipated modifications*

144. The Czech Republic did not indicate that it anticipates any modifications in relation to element C.6.

*Conclusion*

|       | Areas for Improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.6] | -                     | -               |

## Notes

1. These 88 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.
2. Available at: [www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm](http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm). These statistics are up to and include fiscal year 2015.
3. Available at: [http://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en). These statistics are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in the Czech Republic’s inventory at the beginning of the Reporting Period plus the number of MAP cases started during the Reporting Period was more than five for any treaty partner, the Czech Republic reports its MAP caseload for such treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. For pre-2016 and post-2015 the Czech Republic 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); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

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## *Part D*

### **Implementation of MAP agreements**

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

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

145. 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***

146. Subject to limitations described below, the Czech Republic reported it will implement all agreements reached in MAP discussions both for upward and downward adjustments. In this respect, the Czech Republic reported that there is no automatic reassessment of the tax after reaching a MAP agreement. The Czech Republic reported that the taxpayer has either to file an amended tax return or apply for a refund of withholding taxes.

147. Implementation of MAP agreements for which the underlying tax treaty does not include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), is limited by the Czech statute of limitation, which is generally three years starting from the due date for filing the tax return or in withholding cases when the withholding tax is payable.

148. There is currently no public guidance available in relation to the process of implementation of MAP agreements, such in terms of steps to be taken and timing of these steps.

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

149. The Czech Republic reported that there were no MAP agreements reached with another competent authority on or after 1 January 2016, so that no implementation of a MAP agreement became necessary.

150. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in the Czech Republic.

#### ***Anticipated modifications***

151. The Czech Republic did not indicate that it anticipates any modifications in relation to element D.1.

### Conclusion

|       | Areas for Improvement  | Recommendations  |
|-------|--|--|
|       | As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether the Czech Republic has implemented all MAP agreements thus far.  |  |
| [D.1] | As will be discussed under element D.3 not all of the Czech Republic's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three year time limit in its domestic law. | The Czech Republic should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.<br><br>To ensure that all MAP agreements will be implemented, the Czech Republic could introduce a tracking system. |

### [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.

152. 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*

153. In its domestic legislation and/or administrative framework, the Czech Republic reported that it has not in place a timeframe for implementation of MAP agreements reached. In practice, the Czech competent authority is not itself responsible for the implementation of MAPs, but the local tax administration. Furthermore as stated above, the Czech Republic does not monitor and verify the implementation of MAP agreements.

#### *Practical application*

154. The Czech Republic reported that there were no MAP agreements reached on or after 1 January 2016, which needed to be implemented.

155. Peers generally reported not being aware of MAP agreements that were reached on or after 1 January 2016 that were not implemented in the Czech Republic. However, the Czech Republic does not have a timeframe in place for implementation of MAP agreements and statistics are not available on the average time taken for such implementation.

#### *Anticipated modifications*

156. The Czech Republic did not indicate that it anticipates any modifications in relation to element D.2.

### Conclusion

|       | Areas for Improvement   | Recommendations |
|-------|---|-----------------|
| [D.2] | As there were no MAP agreements reached during the Review Period, it was not yet possible to assess whether the Czech Republic has implemented MAP agreements on a timely basis thus far. |                 |



**[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.

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

***Legal framework and current situation of the Czech Republic's tax treaties***

158. In cases for which the applicable tax treaty does not contain Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) the Czech Republic is bound to its domestic tax legislation and not allowed to implement mutual agreements if the domestic statute of limitations of generally three years (starting from the due date for filing the tax return or in withholding cases when the withholding tax is payable) has lapsed.

159. Out of the Czech Republic's 90 tax treaties, 65<sup>1</sup> contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. In addition, two tax treaties contain a provision (within the MAP clause) setting a time limit for making primary adjustments, which is considered to be equivalent to such a provision in both Article 9(1) and Article 7(2). 21 treaties do not include such equivalent or the alternative provisions in Article 9(1) or Article 7(2), setting a time limit for making primary adjustments.

160. For the remaining two treaties the following analysis can be made:

- In one tax treaty a provision based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included, but the implementation of MAP agreements is made subject to time limits as included in the domestic laws of the contracting states. As this treaty actually puts a time limit on the implementation of MAP agreements, the tax treaty is considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015); and
- In the other tax treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is included, but this provision also includes wording that a MAP agreement must be implemented within ten years from the due date or the date of filing of the return in that other state. As this bears the risk that MAP agreements cannot be implemented due to time constraints in domestic law of the treaty partners, this tax treaty therefore is considered as not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

## *Anticipated modifications*

### *Multilateral Instrument*

161. The Czech Republic recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. This, however, only 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 both notified the depositary of the fact that this tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). Furthermore, Article 16(4)(b)(ii) of the Multilateral Instrument does not take effect, if one or both of the signatory states to the tax treaty has, pursuant to Article 16(5)(c) reserved the right not to apply Article 16(2), second sentence, 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) of the OECD Model Tax Convention (OECD, 2015) concerning the introduction of a time limit for making transfer pricing profit adjustments.

162. With regard to the 25 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), the Czech Republic listed 24 tax treaties as covered tax agreements under the Multilateral Instrument and made for all of them, pursuant to Article 16(6)(c)(ii), a notification that it does not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument. Of the relevant 24 treaty partners, 5 are not a signatory to the Multilateral Instrument and 1 did not list its tax treaty with the Czech Republic as a covered tax agreement under that instrument. Of the remaining 18 treaty partners, 15 also made a notification that their tax treaty with the Czech Republic does not contain such a provision and 3 made a reservation on the basis of Article 16(5)(c) of the Multilateral Instrument not to include Article 16(2) second sentence, but to apply the alternative provisions to Article 9(1) and 7(2) of the OECD Model Tax Convention (OECD, 2015) instead. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify 15 of the 25 tax treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

### *Bilateral modifications*

163. For those tax treaties that do not contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), and (OECD, 2015) which will not be modified via the Multilateral Instrument the Czech Republic has neither conducted any actions to include this provision nor was it contacted by jurisdictions to enter into negotiations for the inclusion of such a provision. In addition, the Czech Republic reported that it does not intend to take any further actions at this stage. However, the Czech Republic reported it intends to include the required provision in all future tax treaties.

*Peer input*

164. Some peers that provided input reported that their tax treaty with the Czech Republic meets the requirements under element D.3, including one peer for which the treaty with the Czech Republic actually does not include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). This peer however reported that its treaty with the Czech Republic will be modified where necessary via the Multilateral Instrument, which is consistent with the above analysis.

165. For the other 22 treaties identified that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or the alternative provisions, five peers reported that their treaty with the Czech Republic will be modified via the Multilateral Instrument, which is consistent with the above analysis. Two peers specified that they have not contacted the Czech Republic nor are they in discussions with the Czech Republic to amend their treaty with a view to incorporate the required provision, but for one of these peers the treaty will be modified via the Multilateral Instrument according to the above analysis. The other peer indicated that it is willing to accept the alternative provisions. For the remaining 14 tax treaties identified that do not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) or the alternative provisions, the relevant peers did not provide input.

*Conclusion*

|       | Areas for Improvement  | Recommendations  |
|-------|--|--|
| [D.3] | 23 out of 90 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor include the alternative provisions provided for in Article 9(1) and Article 7(2). | <p>The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 14 treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2), as also the one treaty that currently contains these alternative provisions, and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, the Czech Republic should put a plan in place on how it envisages updating these nine treaties to include such equivalent.</p> <p>In addition, the Czech Republic 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> |

## Note

1. These 65 treaties include the treaty with former Serbia and Montenegro which the Czech Republic continues to apply to the successor states (i) Serbia and (ii) Montenegro.

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## Summary

|   | Areas for Improvement   | Recommendations  |
|---|---|--|
| <b>Part A: Preventing disputes</b>            |   |  |
| [A.1]   | One out of 90 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).   | The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.<br><br>In addition, the Czech Republic should maintain its stated intention to include the required provision in all future tax treaties.  |
| [A.2]   | Roll-back of bilateral APAs is not provided in appropriate cases.   | The Czech Republic should introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.   |
| <b>Part B: Availability and access to MAP</b> |   |  |
| [B.1]   | <p>Seven out of 90 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), either as it read prior to the adoption of the final report on Action 14 (OECD, 2015b) or as amended by that report. Of those seven tax treaties:</p> <ul style="list-style-type: none"> <li>• four tax treaties do not contain the equivalent of Article 25(1), first sentence;</li> <li>• two tax treaties provides that the timeline to file a MAP request may be shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; and</li> <li>• one tax treaty does not contain the equivalent of Article 25(1), first sentence and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>Where tax treaties do not contain 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.</p> | <p>Where tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) and will not be amended by the Multilateral Instrument following its entry into force to include such equivalent, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating these treaties to include such equivalent. This concerns both:</p> <ul style="list-style-type: none"> <li>• a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> <li>a. As amended in the final report of Action 14 (OECD, 2015b); or</li> <li>b. As it read prior to the adoption of final report of Action 14 (OECD, 2015b), thereby including the full sentence of such provision; and</li> </ul> </li> <li>• a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty.</li> </ul> <p>In addition, the Czech Republic should maintain its stated intention to request the inclusion of the required provision in all future tax treaties.</p> <p>The Czech Republic 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 being granted 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.</p> |

|       | Areas for Improvement   | Recommendations  |
|-------|---|--|
| [B.2] | For those treaties that do not contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner, there is no documented bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified. | The Czech Republic should introduce a documented bilateral consultation or notification process and apply that process in practice for cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as amended by the final report of Action 14 (OECD, 2015b).  |
| [B.3] | -   | As the Czech Republic has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.   |
| [B.4] | -   | As the Czech Republic 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 the Czech Republic has thus far not limited access to MAP in eligible cases when taxpayers have complied with the Czech Republic's information and documentation requirements for MAP requests, it should continue this practice.<br><br>Recommendations on guidance in relation to information and documentation requirements are discussed in element B.8.  |
| [B.7] | Ten out of 90 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).   | The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those eight treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.<br><br>For the two treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating these two treaties to include such equivalent.<br><br>In addition, the Czech Republic should maintain its stated intention to request the inclusion of the required provision in all future tax treaties. |

|  | Areas for Improvement   | Recommendations  |
|--|---|--|
| [B.8]                                  | There is no published MAP guidance.   | <p>The Czech Republic should introduce guidance 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 and publish such guidance without delay.</p> <p>Although not required by the Action 14 Minimum Standard, the Czech Republic could consider publishing information on:</p> <ul style="list-style-type: none"> <li>• Whether MAP is available in cases of: (i) transfer pricing cases, (ii) the application of anti-abuse provisions, (iii) multilateral disputes and (iv) bona fide foreign-initiated self-adjustments;</li> <li>• Whether taxpayers can request for the multi-year resolution of recurring issues through MAP;</li> <li>• The possibility of suspension of tax collection during the course of a MAP;</li> <li>• The consideration of interest and penalties in the MAP; and</li> <li>• The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).</li> </ul> |
| [B.9]                                  | MAP guidance is not publically available.   | After preparing its MAP guidance the Czech Republic should make it publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.  |
| [B.10]                                 | -   | -  |
| <b>Part C: Resolution of MAP cases</b> |   |  |
| [C.1]                                  | Two out of 90 tax treaties do not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).  | <p>The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in the treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining treaty that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations. To this end, the Czech Republic should put a plan in place on how it envisages updating the remaining treaty to include such equivalent.</p> <p>In addition, the Czech Republic should maintain its stated intention to include the required provision in all future tax treaties.</p>   |
| [C.2]                                  | <p>The Czech Republic submitted timely comprehensive MAP statistics on the basis of the MAP Statistics Reporting Framework and based on the information provided by the Czech Republic's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.</p> <p>The Czech Republic's MAP statistics point out that during the Statistics Reporting Period it closed 6% (1 out of 17 cases) of its post-2015 cases in 2.53 months on average. In that regard, the Czech Republic is recommended to seek to resolve the remaining 94% of the post-2015 cases pending on 31 December 2016 (16 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.</p> |  |



|   | Areas for Improvement  | Recommendations   |
|---|--|---|
| [C.3]   | -  | <p>The Czech Republic 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.</p> <p>In addition, as also suggested by one peer, the Czech Republic could closely monitor whether the recent addition of resources provided to handle attribution/allocation cases will ensure that its competent authority can handle the recent increase of new cases with a view to resolve such MAP cases in a timely, efficient and effective manner.</p>  |
| [C.4]   | -  | <p>As it has done thus far, the Czech Republic 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 of any policy considerations that the Czech Republic would like to see reflected in future amendments to the treaty.</p>  |
| [C.5]   | -  | <p>The Czech Republic could consider using the examples of performance indicators mentioned in the Final Report on Action 14 (OECD, 2015b) to evaluate staff in charge of the MAP function.</p>   |
| [C.6]   | -  | -   |
| <b>Part D: Implementation of MAP agreements</b> |  |   |
|   | As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether the Czech Republic has implemented all MAP agreements thus far.  |   |
| [D.1]   | <p>As will be discussed under element D.3 not all of the Czech Republic's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a). 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 three year time limit in its domestic law.</p> | <p>The Czech Republic should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.</p> <p>To ensure that all MAP agreements will be implemented, the Czech Republic could introduce a tracking system.</p>   |
| [D.2]   | As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether the Czech Republic has implemented MAP agreements on a timely basis thus far.  |   |
| [D.3]   | <p>23 out of 90 tax treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor include the alternative provisions provided for in Article 9(1) and Article 7(2).</p>  | <p>The Czech Republic should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in those 14 treaties, that currently do not contain such equivalent, or the alternative provisions provided in Article 9(1) and Article 7(2), as also the one treaty that currently contains these alternative provisions, and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining nine treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention following its entry into force, the Czech Republic should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions. To this end, the Czech Republic should put a plan in place on how it envisages updating these nine treaties to include such equivalent.</p> <p>In addition, the Czech Republic 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> |



## Annex A

## Tax treaty network of the Czech Republic

| Treaty partner | Column 2                                   |  | Column 3   |  | Column 4                                   |                   | Column 5                             |   | Column 6  |  | Column 7                                      |   | Column 8   |  | Column 9                             |                                      | Column 10          |  | Column 11 |  |
|----------------|--|--|--|--|--|-------------------|--------------------------------------|---|---|--|---|---|--|--|--------------------------------------|--------------------------------------|--------------------|--|-----------|--|
|                | Y = yes<br>N = signed pending ratification | Action 25(1) of the OECD Model Tax Convention ("MTC")<br>B.1 | Inclusion Art. 25(1) first sentence?<br>If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) | Inclusion Art. 9(2) of the OECD MTC<br>B.3 | Anti-abuse<br>B.4 | Article 25(2) of the OECD MTC<br>C.1 | Inclusion Art. 25(2) first sentence? (Note 3) | Y = yes<br>i = no, but access will be given to TP cases<br>ii = no and access will not be given to TP cases | Y = yes<br>i = no and such cases will be accepted for MAP<br>ii = no but such cases will not be accepted for MAP | Inclusion Art. 25(2) first sentence? (Note 4) | Inclusion Art. 25(2) first sentence? (Note 5) | Y = yes<br>i = no, but have Art 7 equivalent<br>ii = no, but have Art 9 equivalent<br>iii = no, but have both Art 7 & 9 equivalent<br>N = no and no equivalent of Art. 7 and 9 | Y = yes<br>i = no, but have Art 7 equivalent<br>ii = no, but have Art 9 equivalent<br>iii = no, but have both Art 7 & 9 equivalent<br>N = no and no equivalent of Art. 7 and 9 | Article 25(3) of the OECD MTC<br>A.1 | Article 25(3) of the OECD MTC<br>B.7 | Arbitration<br>C.6 |  |           |  |
| Albania        | Y  | O  |  |  | Y  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | Y                                    | N                                    | N/A                |  |           |  |
| Armenia        | Y  | O  |  |  | i  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | Y                                    | N                                    | N/A                |  |           |  |
| Australia      | Y  | O**  |  | 4 years  | Y  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | N**  | Y  | N                                    | N/A                                  |                    |  |           |  |
| Austria        | Y  | O  |  | N/A  | i  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | N                                    | N/A                                  |                    |  |           |  |
| Azerbaijan     | Y  | O  |  | N/A  | Y  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | N                                    | N/A                                  |                    |  |           |  |
| Bahrain        | Y  | O  |  | N/A  | i  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | N                                    | N/A                                  |                    |  |           |  |
| Barbados       | Y  | O  |  | N/A  | Y  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | N                                    | N/A                                  |                    |  |           |  |
| Belarus        | Y  | O  |  | N/A  | i  | i                 | Y                                    | Y   | Y   |  | Y   | Y   | Y  | Y  | N                                    | N/A                                  |                    |  |           |  |



| Treaty partner      | Column 2      |  | Column 3                                       |   | Column 4   |   | Column 5  |   | Column 6                                       |                                      | Column 7    |   | Column 8 |     | Column 9 |  | Column 10 |  | Column 11 |  |
|---------------------|---------------|--|--|---|--|---|---|---|--|--------------------------------------|-------------|---|----------|-----|----------|--|-----------|--|-----------|--|
|                     | DTC in force? | Inclusion Art. 25(1) first sentence?<br>If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1) | Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?<br>If no, will your CA accept a taxpayer's request for MAP in relation to such cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4)<br>If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion Art. 25(3) of the OECD MTC | Arbitration |   |          |     |          |  |           |  |           |  |
|                     | B.1           | B.3  | B.4  | C.1   | D.3  | A.1   | B.7   | C.6   |  |                                      |             |   |          |     |          |  |           |  |           |  |
| Hong Kong           | Y             | O**  | Y  | Y   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| China               |               |  |  | N/A   |  |   |   |   |  |                                      |             |   |          |     |          |  |           |  |           |  |
| Hungary             | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Iceland             | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| India               | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Indonesia           | Y             | O  | i  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Iran                | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Ireland             | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Israel              | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Italy               | Y             | N  | i***   | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Japan               | Y             | N**  | i  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Jordan              | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Kazakhstan          | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Korea (Republic of) | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Kosovo              | N             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Kuwait              | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Latvia              | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Lebanon             | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Liechtenstein       | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Lithuania           | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Luxembourg          | Y             | O**  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Macedonia           | Y             | O  | Y  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |
| Malaysia            | Y             | O  | i  | N/A   | i  | Y   | Y   | Y   | Y  | Y                                    | Y           | Y | N        | N/A |          |  |           |  |           |  |

| Treaty partner  | Column 2      |  | Column 3  |   | Column 4   |   | Column 5  |   | Column 6                                       |                               | Column 7                      |  | Column 8                     |            | Column 9                      |                               | Column 10   |      | Column 11 |      |
|-----------------|---------------|--|---|---|--|---|---|---|--|-------------------------------|-------------------------------|--|------------------------------|------------|-------------------------------|-------------------------------|-------------|------|-----------|------|
|                 | DTC in force? | Inclusion Art. 25(1) first sentence?<br>If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 1)<br>If no, please state reasons | Inclusion Art. 9(2) of the OECD MTC (Note 2) if no, will your CA provide access to MAP in TP cases? | Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the abuse of the DTC or of the domestic tax law?<br>If no, will your CA accept a taxpayer's request for MAP in relation to such cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4)<br>If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Article 25(3) of the OECD MTC | Article 25(2) of the OECD MTC | 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.3  | B.4   | B.5   | B.6  | B.7   | B.8   | B.9   | B.10   | B.11                          | B.12                          | B.13   | B.14                         | B.15       | B.16                          | B.17                          | B.18        | B.19 | B.20      | B.21 |
| Malta           | Y             | O**  | Y   | Y   | i  | Y   | Y   | i   | i  | Y                             | Y                             | Y  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Mexico          | Y             | O**  | ii  | 4 years   | i  | N**   | N   | N   | N  | N                             | N                             | N  | N                            | N          | N                             | N                             | N           | N    | N         | N/A  |
| Moldavia        | Y             | O  | Y   | N/A   | i  | Y   | Y   | i   | i  | Y                             | Y                             | Y  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Mongolia        | Y             | O  | Y   | N/A   | i  | Y   | Y   | i   | i  | Y                             | Y                             | Y  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Montenegro      | Y             | O  | Y   | N/A   | i  | Y   | Y   | i   | i  | Y                             | Y                             | Y  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Morocco         | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Netherlands     | Y             | N**  | i   | N/A   | i  | Y   | N**   | i   | i  | Y                             | N**                           | N  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| New Zealand     | Y             | O**  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Nigeria         | Y             | O**  | i   | N/A   | i  | Y   | N**   | i   | i  | Y                             | N**                           | N  | i                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Norway          | Y             | O**  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Pakistan        | Y             | O**  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Panama          | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Philippines     | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Poland          | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Portugal        | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Romania         | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Russia          | Y             | O**  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | N**                           | N  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Saudi Arabia    | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Serbia          | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Singapore       | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Slovak Republic | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | N**                           | N  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Slovenia        | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| South Africa    | Y             | O  | Y   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | Y                             | Y  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |
| Spain           | Y             | O  | i   | N/A   | Y  | Y   | Y   | Y   | Y  | Y                             | N**                           | N  | Y                            | Y          | Y                             | Y                             | Y           | Y    | N         | N/A  |

| Treaty partner       | Column 2  |     | Column 3                     |     | Column 4   |     | Column 5                      |     | Column 6                      |   | Column 7    |     | Column 8 |     | Column 9 |  | Column 10 |  | Column 11 |  |
|----------------------|---|-----|------------------------------|-----|------------|-----|-------------------------------|-----|-------------------------------|---|-------------|-----|----------|-----|----------|--|-----------|--|-----------|--|
|                      | Action 25(1) of the OECD Model Tax Convention ("MTC") |     | Article 9(2) of the OECD MTC |     | Anti-abuse |     | Article 25(2) of the OECD MTC |     | Article 25(3) of the OECD MTC |   | Arbitration |     |          |     |          |  |           |  |           |  |
|                      | B.1   | B.3 | B.4                          | C.1 | D.3        | A.1 | B.7                           | C.6 |                               |   |             |     |          |     |          |  |           |  |           |  |
| Sri Lanka            | Y   | N   | i                            | N/A | i          | i   | N                             | N   | Y                             | Y | Y           | N   | N        | N/A |          |  |           |  |           |  |
| Sweden               | Y   | O** | i                            | N/A | i          | i   | Y                             | N** | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Switzerland          | Y   | O** | Y                            | N/A | i          | i   | Y                             | N   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Syria                | Y   | O   | Y                            | N/A | Y          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Tadjikistan          | Y   | O   | Y                            | N/A | i          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Thailand             | Y   | O   | Y                            | N/A | i          | i   | Y                             | N   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Tunisia              | Y   | O   | Y                            | N/A | Y          | i   | Y                             | Y   | Y                             | Y | Y           | N   | N        | N/A |          |  |           |  |           |  |
| Turkey               | Y   | O** | iv**                         | N/A | Y          | i   | Y                             | N** | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Turkmenistan         | N   | O   | Y                            | N/A | Y          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Ukraine              | Y   | O   | Y                            | N/A | i          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| United Arab Emirates | Y   | N   | Y                            | N/A | i          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| United Kingdom       | Y   | O** | i                            | N/A | i          | i   | Y                             | N** | Y                             | Y | Y           | N** | Y        | N/A |          |  |           |  |           |  |
| United States        | Y   | O   | Y                            | N/A | Y          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Uzbekistan           | Y   | O   | Y                            | N/A | Y          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Venezuela            | Y   | O   | Y                            | N/A | i          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |
| Viet-Nam             | Y   | O   | Y                            | N/A | i          | i   | Y                             | Y   | Y                             | Y | Y           | Y   | Y        | N/A |          |  |           |  |           |  |

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

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

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

## Annex B

## MAP Statistics: pre-2016 cases

| Category of cases       | No. of pre-2016 cases in MAP inventory on 1 January 2016 | Number of pre-2016 cases closed during the reporting period by outcome: |  |                                   |                                       |  |   |  |  |   |                                | Average time taken (in months) for closing pre-2016 cases during the reporting period |  |
|-------------------------|--|---|--|-----------------------------------|---------------------------------------|--|---|--|--|---|--------------------------------|---|--|
|                         |  | Column 3<br>Denied MAP access   | Column 4<br>Objection is not justified | Column 5<br>Withdrawn by taxpayer | Column 6<br>Unilateral relief granted | Column 7<br>Resolved via domestic remedy | Column 8<br>Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Column 9<br>Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | Column 10<br>Agreement that there is no taxation not in accordance with tax treaty | Column 11<br>No agreement including agreement to disagree | Column 12<br>Any other outcome |   | Column 13<br>No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016 |
| 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 | 19   | 0   | 0                                      | 2                                 | 0                                     | 0  | 0   | 0  | 0  | 0   | 0                              | 17  | 35.00  |
| Others                  | 14   | 0   | 0                                      | 0                                 | 0                                     | 0  | 0   | 0  | 1  | 0   | 0                              | 13  | 17.00  |
| Total                   | 33   | 0   | 0                                      | 2                                 | 0                                     | 0  | 0   | 0  | 1  | 0   | 0                              | 30  | 29.00  |

## Annex C

## MAP statistics: post-2015 cases

| 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   | 8  | 0   | 0                          | 0                     | 0                         | 0                            | 0   | 0  | 0   | 0  | 0  | 8  | -                 |
| Others                  | 0   | 9  | 0   | 0                          | 1                     | 0                         | 0                            | 0   | 0  | 0   | 0  | 0  | 8  | 2.53              |
| Total                   | 0   | 17   | 0   | 0                          | 1                     | 0                         | 0                            | 0   | 0  | 0   | 0  | 0  | 16   | 2.53              |



## *Glossary*

|   |   |
|---|---|
| <b>Action 14 Minimum Standard</b>         | The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective                             |
| <b>MAP Statistics Reporting Framework</b> | Rules for reporting of MAP statistics as agreed by the FTA MAP Forum  |
| <b>Multilateral Instrument</b>            | Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting  |
| <b>OECD Model Tax Convention</b>          | OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014   |
| <b>OECD Transfer Pricing Guidelines</b>   | OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations  |
| <b>Pre-2016 cases</b>                     | MAP cases in a competent authority's inventory pending resolution on 31 December 2015   |
| <b>Post-2015 cases</b>                    | MAP cases received by a competent authority from the taxpayer on or after 1 January 2016  |
| <b>Review Period</b>                      | Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017   |
| <b>Statistics Reporting Period</b>        | Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016  |
| <b>Terms of Reference</b>                 | Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective |

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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

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## OECD/G20 Base Erosion and Profit Shifting Project

# Making Dispute Resolution More Effective – MAP Peer Review Report, Czech Republic (Stage 1)

## INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Addressing base erosion and profit shifting is a key priority of governments around the globe. In 2013, OECD and G20 countries, working together on an equal footing, adopted a 15-point Action Plan to address BEPS. Beyond securing revenues by realigning taxation with economic activities and value creation, the OECD/G20 BEPS Project aims to create a single set of consensus-based international tax rules to address BEPS, and hence to protect tax bases while offering increased certainty and predictability to taxpayers. In 2016, the OECD and G20 established an Inclusive Framework on BEPS to allow interested countries and jurisdictions to work with OECD and G20 members to develop standards on BEPS related issues and reviewing and monitoring the implementation of the whole BEPS Package. Over 100 countries and jurisdictions have joined the Inclusive Framework.

Under Action 14, jurisdictions 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 peer review process is conducted in two stages. Stage 1 assesses jurisdictions 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 the Czech Republic.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264290334-en>.

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