

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD/G20 Base Erosion and Profit Shifting Project

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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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

Please cite this publication as:

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

<http://dx.doi.org/10.1787/9789264290761-en>

ISBN 978-92-64-29049-5 (print)

ISBN 978-92-64-29076-1 (PDF)

Series: OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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

Photo credits: Cover © ninog-Fotolia.com

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

© OECD 2018

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

Foreword

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

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

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

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and 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.

Table of contents

Abbreviations and acronyms	7
Executive summary	9
Introduction	11
Available mechanisms in Spain to resolve tax treaty-related disputes	11
Recent developments in Spain	11
Basis for the peer review process	12
Overview of MAP caseload in Spain	13
General outline of the peer review report	13
Bibliography	14
Part A. Preventing disputes	15
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties	15
[A.2] Provide roll-back of bilateral APAs in appropriate cases	17
Bibliography	19
Part B. Availability and access to MAP	21
[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties	21
[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process	26
[B.3] Provide access to MAP in transfer pricing cases	28
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions	30
[B.5] Provide access to MAP in cases of audit settlements	31
[B.6] Provide access to MAP if required information is submitted	33
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties	34
[B.8] Publish clear and comprehensive MAP guidance	36
[B.9] Make MAP guidance available and easily accessible and publish MAP profile	41
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP	42
Bibliography	45
Part C. Resolution of MAP cases	47
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties	47
[C.2] Seek to resolve MAP cases within a 24-month average timeframe	48
[C.3] Provide adequate resources to the MAP function	53
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty	59
[C.5] Use appropriate performance indicators for the MAP function	61
[C.6] Provide transparency with respect to the position on MAP arbitration	62
Bibliography	64

Part D. Implementation of MAP agreements	65
[D.1] Implement all MAP agreements	65
[D.2] Implement all MAP agreements on a timely basis	67
[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in tax treaties or alternative provisions in Article 9(1) and Article 7(2)	68
Bibliography	71
Summary	73
Annex A. Tax treaty network of Spain	77
Annex B. MAP Statistics: pre-2016 cases	83
Annex C. MAP statistics: post-2015 cases	84
Glossary	85
Figures	
Figure C.1 Spain’s MAP inventory	50
Figure C.2 End inventory on 31 December 2016 (287 cases)	50
Figure C.3 Cases closed during the Statistics Reporting Period (107 cases)	51
Figure C.4 Average time (in months)	55

Abbreviations and acronyms

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

Executive summary

Spain has an extensive tax treaty network with over 90 tax treaties and has signed and ratified the EU Arbitration Convention. Spain has an established MAP programme and has long-standing experience with resolving MAP cases. It has a large MAP inventory, with a substantial number of new cases submitted each year and almost 300 cases pending on 31 December 2016. Of these cases, 71% concern allocation/attribution cases. Overall Spain meets most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Spain is working to address them.

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

- 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.
- Approximately 10% of its tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015), whereby the majority of these treaties do not contain the equivalent of Article 25(1), first sentence, as it read prior to the adoption of the final report on Action 14, since they do not allow taxpayers to submit a MAP request to the state of which it is a national, where its case comes under the non-discrimination provision.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Spain needs to amend and update a portion of its tax treaties. In this respect, Spain 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 treaties will not be modified, upon entry into force and entry into effect of this Multilateral Instrument, Spain reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. It envisages approaching its treaty partners during the coming period. Furthermore, Spain opted for part VI of the Multilateral Instrument concerning the introduction of a mandatory and binding arbitration provision in tax treaties.

Spain meets the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme. It also enables taxpayers to request roll-backs of bilateral APAs and such roll-backs are granted in practice.

Spain also meets the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases. It further has in place a documented notification/consultation process for those situations in which its competent

authority considers the objection raised by taxpayers in a MAP request as not justified. Spain also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice, both under tax treaties and the EU Arbitration Convention. This guidance, however, does not include the contact details of Spain's competent authority. Furthermore, this guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to evade taxes. This possibility bears the risk that in cases where anti-abuse provisions are being applied access to MAP will not be granted, which is considered not in line with the Action 14 Minimum Standard. In addition, Spain does not address in its MAP guidance the relationship between audit settlements and MAP.

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

2016	Opening inventory	Cases started	Cases closed	End inventory	Average time to resolve cases (in months)*
Attribution/ allocation cases	222	59	78	203	41.09
Other cases	87	26	29	84	34.78
Total	309	85	107	287	39.38

* 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 closing pre-2016 MAP cases, Spain generally used as a start date the date its competent authority received a complete MAP request. It generally used as the end date the date when the taxpayer accepted the MAP agreement, or differently, the date of closure of the case in case no agreement was reached, or the date when the taxpayer withdrew its MAP request.

The number of cases Spain closed is approximately 25% higher as the number of all new cases started in 2016. Its MAP inventory as per 31 December 2016 decreased as compared to its inventory as per 1 January 2016. Spain's competent authority, however, did not close MAP cases on average within a timeframe of 24 months (which is the pursued average for closing MAP cases received on or after 1 January 2016), as the average time necessary was 39.38 months. This mainly concerns the resolution of attribution/allocation cases, as the average time to close these cases is significantly longer (41.09 months), although other MAP cases are also not closed within the 24-month average (34.78 months). These figures indicate that additional resources are necessary to accelerate the resolution of MAP cases, particularly concerning attribution allocation cases. In this respect, Spain reported that it is foreseen to hire additional staff to handle attribution/allocation cases and that its competent authority has scheduled an increasing number of face-to-face meetings with other competent authorities. Spain should closely monitor whether this will lead to the resolution of such cases in a more timely, effective and efficient manner.

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

Lastly, Spain also meets the Action 14 Minimum Standard as regards the implementation of MAP agreements and its competent authority monitors such implementation. Even though Spain has a domestic statute of limitation for implementation of MAP agreements, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), no problems have surfaced throughout the process.

Introduction

Available mechanisms in Spain to resolve tax treaty-related disputes

Spain has entered into 92 tax treaties on income (and/or capital), of which 87 are in force.¹ These 92 treaties apply to 96 jurisdictions.² All of these 92 treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, 3 of the 92 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³ Spain is also 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.⁴

After an internal reorganisation taking effect per 1 January 2016, the competent authority function in Spain performed by two departments. Attribution/allocation MAP cases are handled by the International Tax Office within the Spanish State Tax Administration. This office consists of 34 persons, of which approximately 18 are involved in handling MAP cases. Other MAP cases are handled by the Deputy General Directorate for International Tax Matters within the General Directorate for Taxation of the Spanish Ministry of Finance and Public Administration. This directorate consists of nine persons that devote part of their time to handle MAP cases, next to other work such as treaty negotiations.

Spain issued guidance on the governance and administration of the mutual agreement procedure in Royal Decree 1794/2008 of 3 November 2008, which is available at (in Spanish):

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>

Recent developments in Spain

Spain recently signed new treaties with Belarus (2017) and Cabo Verde (2017), which not yet have entered into force. Furthermore, Spain also recently signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”) to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. Where treaties will not be modified by the Multilateral Instrument, Spain reported that it strives updating them through future bilateral negotiations. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary and reported it is currently already conducting negotiations with a number of treaty partners. With the signing of the Multilateral Instrument, Spain also submitted its list of notifications and reservations to that instrument.⁵ In relation to the Action 14 Minimum Standard, Spain reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the

submission of a MAP request to the competent authorities of either contracting state.⁶ This reservation is in line with the requirements of the Action 14 Minimum Standard.

Further to the above, Spain also reported it has set an ambitious agenda for conducting competent authority meetings in 2017 with a view to resolve long pending MAP cases and improve the timely resolution of such cases, as also being in the process to hire additional staff to the department handling attribution/allocation MAP cases.

Basis for the peer review process

The peer review process entails an evaluation of Spain'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 Spain and the peers on 7 July 2017. The period for evaluating Spain's implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 July 2017 ("**Review Period**"). This report, however, may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Spain's implementation of this minimum standard. In the update of this report, being stage two 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 Spain 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, were taken into account, even if it concerns a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account the treaty with the former Czechoslovakia and the former USSR for those jurisdictions for which this treaty is still being applied by Spain (see above). As it concerns two tax treaties that are applicable to multiple jurisdictions, each of these treaties are only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Spain's tax treaties regarding the mutual agreement procedure.

In total 16 peers provided input: Argentina, Belgium, Denmark, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Russia, Slovenia, Sweden, Switzerland, Turkey and the United States. These peers represent approximately 45% of post-2015 MAP cases in Spain's inventory on 31 December 2016. Input was also received from taxpayers. Generally all peers indicated having good working relationships with the Spanish competent authority, appreciating the easiness of contacts and their intention to resolve MAP cases. Peers also raised some difficulties in resolving MAP cases in a timely manner, some of them referring to the interrelation with domestic remedies that may slow down or act obstructive in resolving such cases.

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

- MAP profile⁷
- MAP statistics according to the MAP Statistics Reporting Framework (see below).⁸

Finally, Spain is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process. Spain provided peer input, sometimes with suggestions on how to improve the process with the concerned assessed jurisdictions.

Overview of MAP caseload in Spain

The analysis of Spain’s MAP caseload relates to the period that started on 1 January 2016 and ended on 31 December 2016 (the “**Statistics Reporting Period**”). According to the statistics provided by Spain, on 31 December 2016 its MAP inventory was 287 cases, 203 of which concern attribution/allocation cases and 84 other cases. During the Statistics Reporting Period 85 cases were started and 107 cases were closed.

General outline of the peer review report

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

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

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁹ Apart from analysing Spain’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Spain. Furthermore, the report depicts the changes adopted and plans shared by Spain 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 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 Spain 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 Spain has entered into are available at: www.minhfp.gob.es/es-ES/Normativa%20y%20doctrina/Normativa/CDI/Paginas/CDI.aspx. The treaties that are signed but have not yet entered into force are with Azerbaijan (2014), Belarus (2017), Cabo Verde (2017), Finland (2015) and Peru (2006). The newly negotiated treaty with Finland will replace the current existing treaty of 1967, once it enters into force, the existing treaty of 1967. For that reason the newly negotiated treaty is already taken into account in the treaty analysis. Reference is made to Annex A for the overview of Spain’s tax treaties.

2. Spain continues to apply the 1980 treaty with former Czechoslovakia to the Czech Republic and the Slovak Republic; and the 1985 treaty with the former USSR to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
3. This concerns treaties with Switzerland, the United Kingdom and the United States. See for a discussion element C.6 of this report. Reference is made to Annex A for the overview of Spain’s tax treaties that include an arbitration provision.
4. Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (90/436/EEC) of July 23, 1990.
5. Available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.
6. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Kingdom of Spain reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.”
7. Available at: www.oecd.org/tax/dispute/Spain-Dispute-Resolution-Profile.pdf.
8. The MAP statistics of Spain are included in Annex B and C of this report.
9. 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.

Bibliography

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.

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 Spain's tax treaties

2. Out of Spain's 92 tax treaties, 90 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.¹ In the remaining two treaties the term "interpretation" is not included, by which both treaties are considered not having the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

3. Spain reported that under its domestic law there are no obstructions for entering into interpretative mutual agreements when a tax treaty does not include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015). More specifically, Spain reported that it interprets the MAP article according to Article 25 of the OECD Model Tax Convention (OECD, 2015), regardless of the fact whether the wording does not exactly conform to the text thereof. Specifically regarding the two treaties identified above, Spain reported that the absence of the term "interpretation" does not act impediment to enter into an interpretative mutual agreement under these treaties.

Anticipated modifications

Multilateral Instrument

4. Spain 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 both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

5. In regard of the two tax treaties identified above, Spain listed both as a covered tax agreement under the Multilateral Instrument, but only for one treaty did Spain make, pursuant to Article 16(6)(d)(i), a notification that it does not contain a provision described in Article 16(4)(c)(i). The relevant treaty partner, however, did not make such notification. At this stage therefore, the Multilateral Instrument will, upon entry into force, not modify the two treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).

Bilateral modifications

6. Spain reported that when tax treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element A.1. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary. In addition, Spain reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

Peer input

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

Conclusion

	Areas for improvement	Recommendations
[A.1]	Two out of 92 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Spain should request the inclusion of the required provision via bilateral negotiations. In addition, Spain should maintain its stated intention to include the required provision in all future 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.² 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.

Spain’s APA programme

9. By law 43/1995 of 27 December 1995 Spain established an APA programme. Article 18(9) of the Corporate Income Tax Act includes the legal basis for entering into bilateral APAs. Specific regulations relating to APAs are laid down in chapter VII of the Corporate Income Tax Regulations, as established by Royal Decree 63/2015. The authority competent to handle APA requests is the International Tax Office of the Spanish State Tax Administration.

10. Article 18(9) of the Corporate Income Tax Act stipulates that a bilateral APA entered into has effect for the transactions made after the date the agreement is entered into and is valid for all fiscal years expressly covered by the agreement with a maximum of four years. The same rule is laid down in Article 25(8) of the Corporate Income Tax Regulations. Articles 21-30 of the Corporate Income Tax Act include further rules on unilateral APAs and Articles 31-36 on bilateral APAs.

Roll-back of bilateral APAs

11. Spain reported it allows roll-back of bilateral APAs, for which the relevant rules are included Article 18(9) of the Corporate Income Tax Act and Article 25(8) of the Corporate Income Tax Regulations. In more detail, both provisions stipulate that when entering into an APA, it is possible for the Spanish competent authority to agree on a retroactive effect of the bilateral APA. Conditions for such roll-back are that: (i) the right to determine the taxpayer’s tax liability is not barred by a domestic statute of limitation and (ii) there is no final tax assessment for the fiscal years to be covered by the roll-back.

Practical application of roll-back of bilateral APAs

12. Spain publishes statistics on APAs on the website of the EU JTPF.³ Spain reported having received 72 requests for bilateral APAs during the Review Period (52 in 2016 and 20 in 2017). Concerning roll-backs of bilateral APAs, Spain reported that since 1 January 2016 it received 22 requests (19 in 2016 and three in 2017), of which one has been granted and the others under consideration.

13. Peers generally reported that they do negotiate and agree bilateral APAs with Spain, although not all have received requests for bilateral APAs recently. One peer reported that it only enters into APA negotiations with jurisdictions if there is a bilateral tax treaty in force

that contains the equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2015). As this peer has no longer a treaty in force with Spain, its competent authority was not able to negotiate a bilateral APA with Spain and for this reason the peer rejected one request for a bilateral APA.

14. Most of the peers that provided input reported not having experience with roll-back of bilateral APAs with Spain in general or during the Review Period. One peer reported that in 2017 it received a request for a roll-back of a bilateral APA. Although negotiations on the bilateral APA are still pending, the peer noted that there is a preliminary agreement that includes providing for a roll-back. Furthermore, another peer reported that a request for a bilateral APA with Spain was received in 2016, which concerned also a request for a roll-back to the year 2015, whereby discussions on this request still have to be initiated. Their experience point out that Spain is open to provide for roll-back of existing bilateral APAs in appropriate cases.

15. Furthermore, one peer also noted not having experiences with Spain on discussing granting roll-back of bilateral APAs, but that it received one request for a bilateral APA in 2016. In that regard, this peer reported a specific issue concerning the commencement of a tax audit by Spain with regard to a bilateral APA that relates to the same period as the audit. In that situation, Spain informed the peer that it will ask for a legal opinion on the implementation of the APA in relation to the pending tax audit, for which the peer is concerned that this could negatively affect the possibility of reaching an agreement and connected therewith undermining the aim to prevent disputes via bilateral APAs. This input, however, has no particular relation with element A.2 on providing roll-backs for bilateral APAs.

Anticipated modifications

16. Spain did not indicate that it anticipates any modifications in relation to element A.2. It, however, reported its competent authority is developing a co-operative relationship programme with the Large Business Forum in order to reach high levels of co-operation between taxpayers and the Spanish tax administration.

Conclusion

	Areas for improvement	Recommendations
[A.2]	-	As it has done thus far, Spain should continue to provide for roll-back of bilateral APAs in appropriate cases.

Notes

1. These 90 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.
3. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/jtpf0152016enapa.pdf. The most recent statistics published are up to 2015.

Bibliography

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

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.

17. 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 Spain's tax treaties

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

18. Out of Spain's 92 tax treaties, 76 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state.¹ None of its tax treaties contain the 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 state.

19. The 16 remaining tax treaties 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 only submit a MAP request to the competent authorities of the contracting state of which they are resident.	14 ²
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 and whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	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 cannot submit a MAP request irrespective of domestic available remedies whereby the taxpayer can only submit a MAP request to the competent authorities of the contracting state of which they are resident.	1

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

- The relevant tax treaty does not contain a non-discrimination provision (two treaties)
- The non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states, following which it is logical to only allow for the submission of MAP requests to the state of which the taxpayer is a resident (six treaties).³

21. For the remaining six of the 14 treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD Model Tax Convention (OECD, 2015a) and applies to both nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) is therefore not clarified by a limited scope of the non-discrimination article, following which these six treaties are considered not to be in line with this part of element B.1.

22. Furthermore, with respect to the one treaty included in the second row of the table above, the provision incorporated in the protocol to this treaty reads:

... the expression “irrespective of the remedies provided by the domestic law” means that the start of the mutual agreement procedure is not an alternative with respect to the national contentious procedure, which is the one having priority when the conflict refers to an application of the taxes not in accordance with this Convention.

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

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

24. Out of Spain’s 92 tax treaties, 79 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 three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.⁴

25. The remaining 13 treaties can be categorised as follows:

Provision	Number of treaties
No filing period for a MAP request ⁵	7
Filing period less than three years for a MAP request (two years)	4
Filing period less than three years and with a different commencement date for filing of MAP requests	1
Filing period longer than three years for a MAP request (five years)	1

26. Article 5 of Spain’s MAP guidance stipulates that a MAP request has to be submitted before the time limit included in a tax treaty expires. This timeline begins to run as from the day following the date of notification of the tax assessment or equivalent action notice that results, or may result, in taxation not in accordance with the provisions of the tax treaty. Where a tax treaty does not contain a time period for filing of MAP requests, Spain reported that its administrative practice is to apply the three-year limit as provided for in Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), but always in a flexible manner and on a case-by-case basis.

*Anticipated modifications**Multilateral Instrument*

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

27. Spain reported it has 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. 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 depository 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. Spain 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.⁶ In this reservation, Spain declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral

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

29. In view of the above, following the reservation made by Spain, those six treaties identified in paragraphs 21 and the two treaties in paragraph 23 above that are considered not including 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 will not be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.

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

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

31. In regard of the five tax treaties identified in paragraph 25 above that contain a filing period for MAP requests of less than three years, Spain listed four treaties as a covered tax agreement under the Multilateral Instrument, and for all of them did it make, pursuant to Article 16(6)(b)(i), a notification that they does not contain a provision described in Article 16(4)(a)(ii). Regarding the four relevant treaty partners, one is not a signatory to the Multilateral Instrument, whereas one did not list its treaty with Spain as a covered tax agreement under that instrument. The remaining two treaty partners listed their treaty with Spain as not having a time limit for filing of MAP requests of at least three years. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify two of the five treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

32. Spain further reported that when tax treaties that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015), as it read prior to the adoption of the final report on Action 14, will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary. In addition, Spain reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the final report on Action 14, in all of its future treaties.

Peer input

33. Almost all peers that provided input reported that their tax treaty with Spain meets the requirements under element B.1, including peers for which the treaty with Spain actually does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

34. One peer specifically mentioned that its treaty with Spain does not meet the requirements under element B.1, as the time limit to file a MAP request is under this treaty only two years as from the first notification of the action resulting in taxation not in accordance with the treaty. This peer also mentioned that there are no ongoing negotiations with Spain to amend the treaty with a view to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a), as it envisages that it will be modified via the Multilateral Instrument. The treaty between Spain and this peer will indeed be modified via the Multilateral Instrument to incorporate the equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Conclusion

	Areas for improvement	Recommendations
[B.1]	<p>11 out of 92 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 11 tax treaties:</p> <ul style="list-style-type: none"> • Two tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. • Six tax treaties do not contain the equivalent to Article 25(1), first sentence. • Three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	<p>Spain should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both:</p> <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ul style="list-style-type: none"> a. As amended in the final report of action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision. • a provision that allows taxpayers to submit a MAP request within a period of no less than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. <p>For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Spain should request the inclusion of the required provision via bilateral negotiations.</p> <p>In addition, Spain should maintain its stated intention to include the required provision in all future treaties.</p>

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

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

35. 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

36. Out of Spain's 92 tax treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as changed by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner.

37. Spain reported having introduced a handbook on MAP, in which the procedures with respect to handling MAP cases and the steps to be taken throughout this procedure by staff in charge of MAP within the Spanish competent authority is described. This handbook also sets forth what steps to follow when receiving a MAP request, the judgment on whether the MAP request is admissible and subsequently on whether the objection raised by the taxpayer is justified. In the situation the conclusion is that the objection is not justified, staff in charge of MAP is instructed to inform the other competent authority concerned hereof along with a reasoning why this decision was arrived at, such in line with the timelines set out in paragraph 9 of the MAP Statistics Reporting Framework.

38. In view of the above, Spain further reported that its competent authority will generally use the notification process. It, however, considers a flexible approach to use either a consultation or a notification process very useful. Where appropriate, Spain could thus also use the consultation process on a case-by-case basis and where some feedback from the other competent authority could be advisable. The Spanish competent authority will then strive at reaching a co-ordinated solution with this other competent authority.

Practical application

39. From Spain’s 2016 MAP statistics it follows that in four cases the outcome reported was an objection not justified (three pre-2016 cases and 1 post-2015 case). In this respect, Spain reported that as from 1 January 2016 its competent authority considered in three of these four cases that the objection raised by taxpayers in their MAP requests as being not justified, whereas in the remaining case this decision was taken by the other competent authority concerned. Spain further mentioned that in one of these three cases the Spanish competent authority notified the other competent authority concerned that the MAP request did not involve taxation not in accordance with the provisions of the relevant tax treaty and in another case it consulted the other competent authority during a face-to-face meeting, during which information was provided that proved the existence of taxation not in accordance with the provisions of the relevant tax treaty, following which the MAP request was accepted. In the third case, the other competent authority was not consulted or notified.

40. All but two peers that provided input indicated not being aware of any cases for which the Spanish competent authority denied access to MAP. Apart from the two peers, they also reported not having been consulted/notified of a case where the Spanish competent authority considered the objection raised in a MAP request as not justified. One of the two peers noted it had a case for which Spain denied access to MAP, as the taxpayer did not submit its MAP request in a timely manner. Furthermore, the second peer mentioned that for one case, which concerns the case mentioned in paragraph 39 above, it received in July 2017 a letter from the Spanish competent authority that the latter considered an objection raised by the taxpayer as not being justified. This letter included a summary of the case along with the statement that the case was closed with the outcome “Objection not justified” and the date of such closure.

Anticipated modifications

41. As previously discussed under element B.1, Spain has recently signed the Multilateral Instrument. Specifically regarding element B.2, Spain reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.⁷ Where tax treaties will not be modified via the Multilateral Instrument, Spain declared it will continue to notify, or where appropriate, to consult its treaty partners when the Spanish competent authority considers the objection raised in a MAP request not to be justified. Spain further reported that it currently has no intention to replace existing tax treaties that contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b) with Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read after adoption of that report.

42. One peer noted that its current treaty with Spain does not allow taxpayers to file a MAP request to the competent authority of either contracting state, but that its intention is to update the treaty with Spain via the Multilateral Instrument. Given Spain’s reservation on Article 16 of the Multilateral Instrument discussed above, the peer’s treaty with Spain will not be modified via this instrument.

Conclusion

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

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

Jurisdictions should provide access to MAP in transfer pricing cases.

43. 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

44. Out of Spain's 92 tax treaties, 68 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the other treaty partner.⁸ Furthermore, 17 treaties do not contain Article 9(2) of the OECD Model Tax Convention (OECD, 2015a).⁹ The remaining seven treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), but deviate from this provision for the following reasons:

- Granting of corresponding adjustments is not obligatory, as it is under Article 9(2) in appropriate circumstances, but competent authorities *may* grant such adjustment (five treaties).
- Granting of corresponding adjustments is only allowed through the mutual agreement procedure (one treaty).
- The last sentence of Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) is not fully included, as the phrase "... and the competent authorities of the Contracting States shall if necessary consult each other" is missing (one treaty).

45. Spain 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.

46. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Spain'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, Spain reported that it will always provide access to MAP for transfer pricing cases, provided that the

general requirements under the MAP article of the applicable tax treaty are met. Although Spain's MAP guidance does not specifically address whether transfer pricing cases are eligible for MAP, this, however, can be derived from Article 1 of that guidance, which defines the scope of MAP under Spain's tax treaties and the EU Arbitration Convention.¹⁰ Furthermore, Article 6(2) of Spain's MAP guidance includes a list of information taxpayers have to submit with their MAP request, which specifically relates to transfer pricing cases.

Application of legal and administrative framework in practice

47. Spain reported that it has since 1 January 2016 not denied access to MAP on the basis that the case concerned a transfer pricing case.

48. Peers have indicated not being aware of a denial of access to MAP by Spain for transfer pricing cases since 1 January 2016. Also taxpayers reported not being aware of such denial.

Anticipated modifications

49. Spain reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties. In that regard, Spain recently 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 of Article 9(2) of the OECD Model Tax Convention (OECD, 2015). This, however, only if both contracting parties to the applicable treaty has listed this 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, pursuant to Article 17(3), 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]).

50. Spain has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a). In regard of the 24 treaties identified in paragraph 44 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2015a), Spain listed 19 of them as a covered tax agreement under the Multilateral Instrument and included four of them in the list of treaties for which Spain has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument.¹¹ Furthermore,

Spain did not make a notification on the basis of Article 17(4) for the remaining 15 treaties. Of the relevant 15 treaty partners, six are not a signatory to the Multilateral Instrument, whereas one has not listed its treaty with Spain under that instrument. Of the remaining eight treaty partners, one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as it considered that its treaty with Spain already contains the equivalent of Article 9(2). At this stage therefore, Article 17(1) of the Multilateral Instrument will, upon entry into force, supersede the remaining seven treaties only to the extent that the provisions included in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	As Spain 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.

51. 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

52. None of Spain's 92 tax treaties allows the 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 Spain do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

53. Article 8(2)(d) of Spain's MAP guidance stipulates that access to MAP may be denied for situations where there is proof that the taxpayer intended to avoid taxation in any of the states concerned. Spain reported that using this provision is not automatic, but subject to a reasoned consideration by the Spanish competent authority.

Practical application

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

55. Peers have indicated not being aware of a denial of access to MAP by Spain in relation to the application of treaty and/or domestic anti-abuse provisions since 1 January 2016. Also taxpayers reported not being aware of such denial.

56. With respect to Spain’s input to question ten of the MAP profile, one peer, however, expressed its concern that findings of tax avoidance by the Spanish tax administration would trigger the application of domestic/treaty anti-abuse provisions and subsequently may lead to a denial of access to MAP for those cases where there is a disagreement between the taxpayer and the tax authority as to whether the conditions for the application of such anti-abuse provision have been met, or whether such a provision is in conflict with the provisions of the applicable tax treaty.

Anticipated modifications

57. Spain reported that in light of the requirements under the Action 14 Minimum Standard, it considers modifying or deleting Article 8(2)(d) of its MAP guidance with the envisaged update of this guidance.

Conclusion

	Areas for improvement	Recommendations
[B.4]	MAP guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to avoid taxes, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	Spain should follow up its intention to amend Article 8(2) (d) of its MAP guidance to avoid the situation in which access to MAP will be denied in cases concerning the application of anti-abuse provisions, or should specify in this provision that access to MAP will not be denied for such cases. Nevertheless, as Spain 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.

58. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they

were already resolved via an administrative or statutory disputes settlement/resolution process that functions independent from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

59. Under Spain’s domestic law it is possible that taxpayers and the tax administration enter into an audit settlement. This concerns so-called “actas con acuerdo”, which allows the Spanish tax administration to perform a tax adjustment in certain situations established by law. The relevant rules relating hereto are laid down in Article 155 of the Spanish General Tax Law. Article 155(1) defines the circumstances in which taxpayers and the Spanish tax administration can enter into an agreement to establish certain facts or determine the pricing of transactions that are under review in an audit with a view to assess the amount of tax due. The agreement has, pursuant to Article 155(4), to be signed by the taxpayer (or its representative) and the Tax Audit Office. Article 155(3) further defines the conditions upon which the parties may enter into an audit settlement, which are that:

- a. The authority competent to enter into the settlement agreement authorises the draft agreement; and
- b. A deposit, guarantee, or a surety bond is made available in an amount that is sufficient to guarantee the recovery of the amounts that may result from the agreed settlement.

60. In regard of the above, entering into audit settlements is in Spain, however, not discretionary and it is mandatory to adhere to the OECD Transfer Pricing Guidelines in the resulting valuation of the transactions under review. Spain furthermore reported that entering into such settlement agreement does not affect or restrict the taxpayer’s right in relation to MAP.

Administrative or statutory dispute settlement/resolution process

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

Practical application

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

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

Anticipated modifications

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

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	As Spain has thus far granted access to MAP in eligible cases, even if there was an agreement between the taxpayer and the tax authority, it should continue granting access for these cases.

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

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

65. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided in the jurisdiction's guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publically available.

Legal framework on access to MAP and information to be submitted

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

67. Article 3 of Spain's MAP guidance stipulates that taxpayers, when submitting a MAP request, should provide the competent authority with any data, reports, records and underlying documentation that may be useful for the resolution for the case under review. Furthermore, such information must be faithful and complete, as also be submitted within the required time.

68. Article 7 in conjunction with Article 8(1) of Spain's MAP guidance details that within two months as from the date of receipt of a MAP request, the Spanish competent authority shall review the request and decide on whether the requested should be accepted. Taxpayers can thereby be requested to restore any error or to submit any missing documentation as specified in Article 6 of the MAP guidance (the list of information and documentation to be included in a MAP request). It can also be requested to provide clarity or further information to resolve any doubt that may arise in the analysis of the documentation provided. Taxpayers are thereby granted a one-month period to submit the requested additional information or restore an error. Where a taxpayer does not comply with this obligation in the said period, Article 7 stipulates that further proceedings will be cancelled and the MAP request will be considered as having not been filed. The latter is also mentioned in Article 8(2)(f) of Spain's MAP guidance, being one of the grounds to deny access to MAP.

Practical application

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

70. All peers that provided input indicated not being aware of a limitation of access to MAP by Spain since 1 January 2016 in situations where taxpayers complied with information and documentation requirements as set out in its MAP guidance. Also taxpayers reported not being aware of such a limitation of access.

Anticipated modifications

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

Conclusion

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

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

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

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

73. Out of Spain's 92 tax treaties, 86 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.¹² Of the remaining six treaties, one does contain a provision that is based on Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), but under this treaty consultation between competent authorities is made subject to the procedures provided for in the domestic laws of the contracting states.¹³ This provision therefore is considered not being equivalent to Article 25(3), second sentence. The other five treaties do not contain such provision at all.

74. In regard of the one treaty identified above, Spain reported that it interprets the MAP article according to Article 25 of the OECD Model Tax Convention (OECD, 2015a), regardless of the fact whether the wording does not exactly conform to the text thereof.

Anticipated modifications

Multilateral Instrument

75. Spain 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, 2015). 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 treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

76. In regard of the six tax treaties identified above, Spain listed all of them as a covered tax agreement under the Multilateral Instrument, but only for five treaties did Spain make, pursuant to Article 16(6)(d)(ii), a notification they do not contain a provision described in Article 16(4)(c)(ii).¹⁴ Of the relevant five treaty partners, one is not a signatory to the Multilateral Instrument. The remaining four treaty partners also made the notification that their treaty with Spain 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 four of the six tax treaties identified above to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

77. Spain further reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary. In addition, Spain reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

78. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element B.7. Some peers reported being in the process of renegotiating the treaty with Spain with a view to *inter alia* bring it in line with the requirements under the Action 14 Minimum Standard, which does not necessarily regard element B.7, as for these treaty partners the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) is already contained in their tax treaty with Spain.

79. For the six treaties identified above that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a), only one peer provide input and specified that it had not contacted Spain nor was it in discussion with Spain to amend their treaty with a view to incorporate the required provision.

Conclusion

	Areas for improvement	Recommendations
[B.7]	Six out of 92 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>Spain should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 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, Spain should request the inclusion of the required provision via bilateral negotiations.</p> <p>Specifically with respect to the treaty with the former USSR, Spain should, once it enters into negotiations with the jurisdictions for which it continues to apply that treaty, request the inclusion of the required provision.</p> <p>In addition, Spain should maintain its stated intention to include the required provision in all future 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.

80. 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.

Spain's MAP guidance

81. Spain issued specific guidance on MAP in Royal Decree 1974/2008 of 3 November 2008. This guidance can be found at:

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>

82. The decree sets out in detail how taxpayers can access the mutual agreement procedure and what rules apply during that procedure under both tax treaties Spain entered into and the EU Arbitration Convention, thereby making a distinction between the situation in which the MAP request is submitted with the Spanish competent authority or with the competent authority of the treaty partner. It further specifies the legal nature of the MAP along with the rights and role of the taxpayer. More specifically, Spain's MAP guidance contains information on:

Title I: common provisions for MAP under tax treaties and the EU Arbitration Convention

- Scope of MAP and persons eligible to request MAP
- Definition of the competent authority
- Taxpayer's rights and duties during MAP

Title II: MAP under tax treaties

Chapter I: MAP request submitted to the Spanish competent authority in relation to an action by the Spanish tax administration

- Legal basis for MAP
- Time limits for filing a MAP request
- Information and documentation to be included in a MAP request
- Consideration and acceptance of the request
- Conduct of MAP proceedings
- Termination of the MAP process (e.g. reaching a MAP agreement or upon the taxpayer's request)
- Implementation of MAP agreements

Chapter II: MAP request submitted to the competent authority of the treaty partner in relation to an action by the Spanish tax administration

Chapter III: MAP request submitted to the competent authority of the treaty partner in relation to an action by the treaty partner's tax administration

- Rules applicable to the initiation, conduct of proceedings and implementation
- Conduct of proceedings and implementation

Chapter IV: MAP request submitted to the Spanish competent authority in relation to an action by the treaty partner's tax administration

Title III: proceedings relating to the application of the EU Arbitration Convention

General rules

- Scope of application
- Exclusion of cases
- Relationship with domestic available remedies

Title III: proceedings relating to the application of the EU Arbitration Convention (continued)

Chapter I: MAP request submitted to the Spanish competent authority in relation to an action by the Spanish tax administration

- Persons eligible to request MAP under the EU Arbitration Convention
- Time limit for filing a MAP request
- Information and documentation to be included in a MAP request
- Acceptance and denial of MAP requests
- Commencement date of the two-year deadline for MAP
- Proceedings during MAP
- Proceedings during the arbitration procedure (establishment and opinion of the advisory commission, final decision by the competent authorities)

Chapter II: MAP request submitted to the competent authority of another EU Member State in relation to an action by the Spanish tax administration

Chapter III: MAP request submitted to the competent authority of another EU Member State in relation to an action by that Member State's tax administration

Chapter IV: MAP request submitted to the Spanish competent authority in relation to an action by the treaty partner's tax administration

Title IV: rules for the suspension of tax collection

- Possibility of suspension of tax collection
- Persons eligible to request for and competent bodies to grant a suspension
- Content of a request for suspension
- Guarantee for granting suspension
- Effects of granting or rejection of suspension

83. The FTA MAP Forum agreed on what information 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.¹⁵ Although Spain's MAP guidance provides information on the availability and the use of MAP and how its competent authority conducts the procedure in practice, it only includes item (ii) and not the contact information of the competent authority or the office in charge of MAP cases. Apart from this missing information, the information included in Spain's MAP guidance is detailed and comprehensive, particularly concerning the information taxpayers should include in their MAP request and the unilateral review process after submission of such request. However, some subjects are not specifically discussed in this MAP guidance. This concerns whether MAP is available in cases of: (i) audit settlements,

(ii) multilateral disputes and (iii) bona fide foreign-initiated self-adjustments; (iv) whether taxpayers can request for the multi-year resolution of recurring issues through MAP; and (v) the consideration of interest and penalties in MAP.

Information and documentation to be included in a MAP request

84. Article 6(1) of Spain’s MAP guidance sets out in detail what information taxpayers should include in their MAP request, which concerns the following items:

- a. Full name, address and tax-identification-number of the taxpayer submitting the MAP request and of any other person involved in the transactions under review.
- b. Identification of the foreign competent authority
- c. Tax treaty provision that in the taxpayer’s view is incorrectly applied and its views thereof;
- d. Identification of the taxable years or assessment periods concerned.
- e. Detailed description of the facts and circumstances of the case (e.g. the amounts involved and any relation, situation or structure concerning transactions between the persons involved).
- f. Identification of any lodged administrative or judicial appeal by the taxpayer submitting the MAP request, or by any other party involved, as well as any decision or judgment given on the same issue.
- g. A statement by the taxpayer of any previous MAP requests submitted with the competent authorities involved concerning the same or a similar issue.
- h. A statement declaring whether the MAP request involves any issue that could be considered integrated in an Advance Price Agreement (APA) or similar procedure.
- i. A commitment by the person requesting the initiation of the MAP to reply as fully and promptly as possible to any request of the Spanish State Tax Administration and to make available any document related to the case.
- j. Date and signature of the taxpayer that submitted the MAP request or its representative.

85. Further to the above, in relation to transfer pricing cases, Article 6(2) list the additional information taxpayers should submit in their MAP request. This concerns:

- Documents and information required under the Regulation of the Corporation Tax approved by Royal Decree 1777/2004, of 30 July.
- A copy of the assessment notice, its notification and of any report issued by the tax auditing office or equivalent unit, in connection with the case (if any).
- A copy of any decision taken or agreement reached by the Administration of the other state in relation to the case.
- In case of representation, a documentary proof of representation.

86. 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.¹⁶ In light of this

list, the requirements in Spain on what information and documentation should be included in a MAP request are checked below:

- Identity of the taxpayer(s) covered in the MAP request
- The basis for the request (the nature of the action giving rise to, or expected to give rise to, taxation not in accordance with the convention).
- Facts of the case
- Analysis of the issue(s) requested to be resolved via MAP.
- 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 MAP request was also submitted to the competent authority of the other treaty partner.
- Whether the issue(s) involved were dealt with previously
- A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

87. Peers did not provide input in relation to element B.8. One taxpayer, however, provided input and mentioned that Spain's MAP guidance provides clarity on how to access and use the MAP process, including the documentation and information that should be included in a MAP request.

Anticipated modifications

88. Spain indicated that for the time being it does not envisage updating its MAP guidance. Such update will be performed when this peer review report is approved with a view to bring its MAP guidance in line with the conclusions of this report, if needed. Regardless hereof, Spain reported it has finished the English translation of its MAP guidance, which will be shortly published on the website of the Spanish Ministry of Finance.

Conclusion

	Areas for improvement	Recommendations
[B.8]	Contact details of Spain's competent authority are not included in the MAP guidance.	Spain should update its MAP guidance to include the contact information of its competent authority as soon as possible. Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Spain could consider including in its MAP guidance information on: <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments. • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP. • The consideration of interest and penalties in MAP. • The timing of the steps for implementing MAP agreements. Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

89. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.¹⁷

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

90. As discussed in the Introduction, Spain’s MAP guidance is published and can be found at:

<https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>

91. As regards its accessibility, Spain’s MAP guidance can easily be found on the website of the Spanish Ministry of Finance and Public Administration, by searching for the Spanish equivalent of the words “mutual agreement procedure”.

MAP profile

92. Spain’s MAP profile is published on the website of the OECD.¹⁸ This MAP profile is complete and very often with detailed information. This profile includes external links which provide extra information, guidance and references to domestic legislation.

Anticipated modifications

93. As indicated under element B.8, Spain reported it has finished the English translation of its MAP guidance, which will be shortly published on the website of the Spanish Ministry of Finance.

Conclusion

	Areas for improvement	Recommendations
[B.9]	-	Spain should ensure that future updates of its MAP guidance are made 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.

94. As explained under element B.5 an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the processes already mentioned.

MAP and audit settlements in the MAP guidance

95. As previously discussed under B.5, it is under Spain's domestic law possible that taxpayers and the tax administration enter into an audit settlement. This concerns so-called "actas con acuerdo", which allows to perform a tax adjustment in certain situations established by law. Although the relevant rules relating hereto are laid down in Article 155 of the Spanish General Tax Law, Spain's MAP guidance does not include information on access to MAP in case of audit settlements. Although this can be deduced from Article 8(2) of this guidance, since audit settlements are not listed as a situation for which the Spanish competent authority can deny access to MAP, there is no explicit confirmation that access to MAP will be granted in cases of audit settlements.

96. Peers raised no issues with respect to the availability of audit settlements and the inclusion of information hereon in Spain's MAP guidance.

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

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

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

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

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

Anticipated modifications

100. Apart from the envisaged update of Spain’s MAP guidance, Spain did not indicate it anticipates any modifications in relation to element B.10.

Conclusion

	Areas for improvement	Recommendations
[B.10]	There is no explicit guidance on the relation between audit settlements and MAP.	Spain should clarify in its MAP guidance that audit settlements do not preclude access to MAP.

Notes

1. These 76 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. These 14 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
3. These six treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
4. These 79 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
5. These seven treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
6. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, the Kingdom of Spain reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to

- be justified.” An overview of Spain’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.
7. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5) (a) of the Convention, the Kingdom of Spain reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.” An overview of Spain’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.
 8. These 68 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
 9. These 17 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
 10. Available at (in Spanish): <https://www.boe.es/buscar/act.php?id=BOE-A-2008-18544>.
 11. In the list of the 19 treaties, the treaty with the former USSR was listed with respect to Kyrgyzstan, Tajikistan, Turkmenistan, but not with respect to the Ukraine. As none of these four states is a signatory to the Multilateral Instrument, the instrument has no impact for these states in their relation with Spain concerning element B.3.
 12. These 86 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic.
 13. This concerns the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
 14. Spain listed with respect to the treaty with the former USSR only Kyrgyzstan, Tajikistan and Turkmenistan as treaty partners for purposes of the Multilateral Instrument. All three states, however, are not a signatory to that instrument.
 15. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
 16. Ibid.
 17. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.
 18. Available at: www.oecd.org/tax/dispute/Spain-Dispute-Resolution-Profile.pdf.

Bibliography

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.

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.

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

Current situation of Spain's tax treaties

102. Out of Spain's 92 tax treaties, 91 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.¹ The remaining treaty does contain a provision that is based on Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), but does not incorporate several of its elements, such as the part of the sentence reading "... and if it is not itself able to arrive at a satisfactory solution ...". This provision is therefore considered not being the equivalent of Article 25(2), first sentence.

Anticipated modifications

Multilateral Instrument

103. Spain 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, 2015). 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 treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

104. In regard of the one tax treaty identified above, Spain listed this treaty as a covered tax agreement under the Multilateral Instrument and made, pursuant to Article 16(6)(c)(i), a notification that it does not contain a provision described in Article 16(4)(b)(i). The relevant treaty partner, however, is not a signatory to the Multilateral Instrument, following which it will at this stage not modify this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).

Bilateral modifications

105. Spain reported that when the tax treaties that do not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element C.1. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary. In addition, Spain reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) in all of its future treaties.

Peer input

106. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element C.1. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a), the relevant peer did not provide input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 92 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will at this time not be modified via the Multilateral Instrument, Spain should request the inclusion of the required provision via bilateral negotiations. In addition, Spain should maintain its stated intention to include the required provision in all future treaties.

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

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

107. 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

108. Statistics regarding all tax treaty related disputes concerning Spain are published on the website of the OECD as of 2007.² Spain publishes MAP statistics regarding transfer pricing disputes with EU Member States also on the website of the EU Joint Transfer Pricing Forum³

109. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Spain provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Spain 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 and should be considered jointly for an understanding of Spain’s MAP caseload.⁴ With respect to post-2015 cases, Spain reported having reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard Spain reported it was able to match statistics with all of them.

Monitoring of MAP statistics

110. Spain reported that its competent authority has an internal management system in place that keeps track of completion of the set the milestones for each pending MAP case. These milestones are:

- Confirmation of receipt of the MAP request and (if applicable) the request of additional information within two months upon receipt of the request.
- Communication of receipt of the MAP request to the other competent authority concerned.
- Sending of a position paper within four months as from the date of receipt of the MAP request; and
- Submission of the finalised MAP case to the local tax administration within one month after an agreement is reached and accepted by the taxpayer.

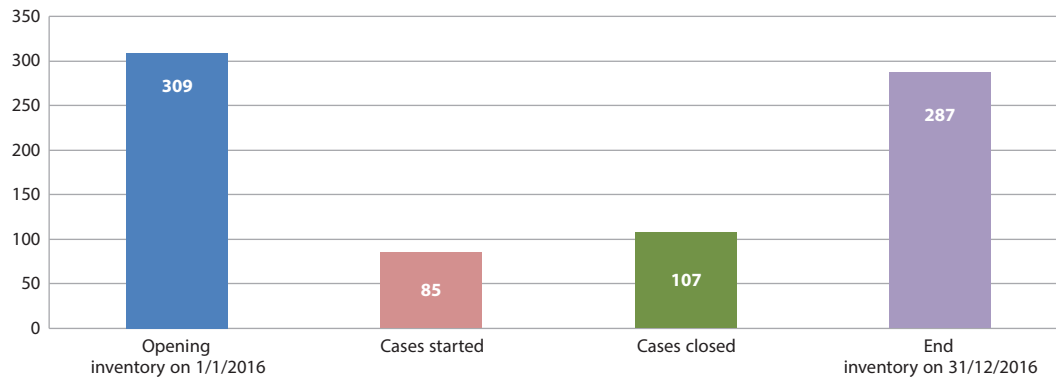
111. In addition, Spain reported that in case of a long delay incurred by the other competent authority concerned, the Spanish competent authority will send a reminder, or will send a list of pending cases with a specification of which competent authority has to take action in each individual case.

Analysis of Spain’s MAP caseload

Global overview

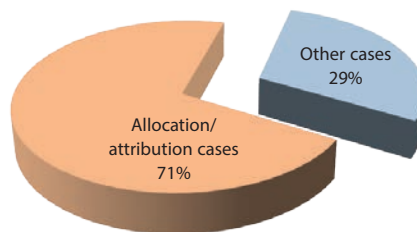
112. Figure C.1 shows the evolution of Spain’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Spain's MAP inventory



113. At the beginning of the Statistics Reporting Period, Spain had 309 pending MAP cases, of which 222 were attribution/allocation cases and 87 other MAP cases.⁵ At the end of the Statistics Reporting Period, Spain had 287 MAP cases in its inventory, of which 203 are attribution/allocation cases and 84 are other MAP cases. The number of cases closed is approximately 25% higher than new cases started. Additionally, Spain's MAP caseload was reduced with 7% during the Statistics Reporting Period, with a slightly higher reduction for attribution/allocation cases (8%) than for other MAP cases (4%). The breakdown of the end inventory can be illustrated as follows:

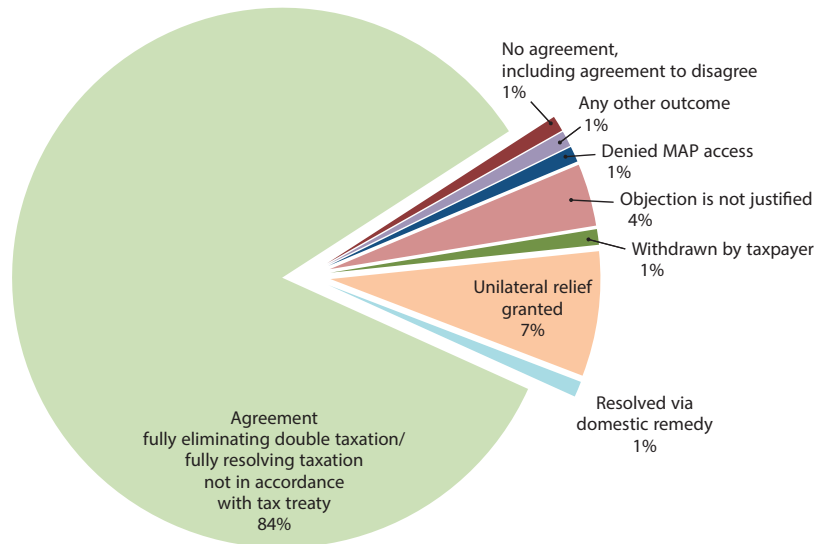
Figure C.2. End inventory on 31 December 2016 (287 cases)



114. During the Statistics Reporting Period Spain in total closed 107 MAP cases for which the outcomes shown in Figure C.3 were reported.

115. Figure C.3 shows that during the Statistics Reporting Period, 90 out of 107 cases were closed through an agreement that fully eliminated double taxation or fully resolved taxation not in accordance with the tax treaty.

Figure C.3. Cases closed during the Statistics Reporting Period (107 cases)



Pre-2016 cases

116. At the beginning of the Statistics Reporting Period, Spain's MAP inventory of pre-2016 consisted of 309 cases, of which were 222 attribution/allocation cases and 87 other cases. At the end of the Statistics Reporting Period the total inventory of pre-2016 cases had decreased to 208 cases, consisting of 148 attribution/allocation cases and 60 other cases. This decrease concerns 33% of the opening inventory of pre-2016 cases, which can be broken down in a decrease by 33% of the number of attribution/allocation cases and a decrease by 31% of the number of other cases. In total, 74 of the 101 closed cases concerned attribution/allocation cases and 27 concerned other MAP cases.

Post-2015 cases

117. In total 85 MAP cases were started on or after 1 January 2016, 59 of which are attribution/allocation cases and 26 other cases. At the end of the Statistics Reporting Period the total post-2015 inventory had decreased to 79 cases, consisting of 55 attribution/allocation cases and 24 other cases. Conclusively, Spain closed six cases, which reflects 7.06% of the total post-2015 cases. This outcome can be specified as follows:

- Objection not justified (one case)
- Withdrawn by taxpayers (one case)
- Unilateral relief granted (two cases)
- Agreement that fully eliminated double taxation/fully resolving taxation not in accordance with the convention and in one case it was resolved via domestic remedies (two cases).

Average timeframe needed to resolve MAP cases

Pre-2016 cases

118. For pre-2016 cases Spain reported that on average it needed 43 months to resolve 74 attribution/allocation cases and 37 months to resolve 27 other cases. This resulted in an average time needed of 41.40 months to close 101 pre-2016 cases. For the purpose of computing the average time needed to close pre-2016 cases, Spain followed the reporting rules as contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes. This generally concerns:

- *Start date*: the date the Spanish competent authority received a complete MAP request
- *End date*: the date when the taxpayer accepted the MAP agreement, or, differently, the date of closure of the case in case no agreement was reached, or the date when the taxpayer withdrew its MAP request.

Post-2015 cases

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

120. During the Statistics Reporting Period, Spain closed six cases, four of which concerned attribution/allocation cases and two other cases. These closed cases represent 7.06% of new received post-2015 cases during the Statistics Reporting Period. The four attribution/allocation cases were on average closed within 5.71 months, two of which lead to an agreement that fully eliminated double taxation or fully resolving the taxation not in accordance with the provisions of the applicable tax treaty, one for which unilateral relief was granted and in one case the taxpayer withdrew its MAP request. The two other MAP cases were on average closed within 4.83 months, one with the outcome that the objection raised by the taxpayer was not justified and one for which unilateral relief was granted. The total average for resolving post-2015 cases is 5.42 months.

All cases closed during Statistics Reporting Period

121. The average time needed to close MAP cases during the Statistics Reporting Period was 39.38 months, which can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	78	41.09
Other cases	29	34.78
All cases	107	39.38

Peer input

122. On an overall level, all peers that provided input to Spain's implementation of the Action 14 Minimum Standard reported a good working relationship with the Spanish's competent authority, which is further discussed under element C.3 below. This concerns both jurisdictions that have an extensive MAP relationship with Spain, as also jurisdictions with a relatively modest MAP caseload. Peers reported that contacts with the competent authority of Spain are easy and that generally on an annual basis face-to-face meetings

are organised. Concerning the resolution of MAP cases, peers generally considered the Spanish competent authority as being solution-orientated. Criticism, however, was also voiced as regards the long time it takes to resolve cases, the occurrence of delays due to the interrelationship between MAP and domestic court proceedings and the attitude towards resolving MAP cases. Concerning the interrelationship with domestic court proceedings, Spain responded, as will be further discussed under element D.1, that as from 12 October 2015 a rule is in place, which stipulates that when a case is dealt with in MAP, legal and/or administrative proceedings are suspended until the MAP has been finalised. In this respect, Spain noted that this rule was point in place in order to avoid delays in MAP, but also to avoid that cases cannot be dealt further in MAP due to a court ruling, to which the Spanish competent authority is bound.

Anticipated modifications

123. As will be further discussed under element C.6, Spain's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties to provide that treaty-related disputes will be resolved within a specified timeframe and which should globally improve the time needed to settle MAP cases. Apart from that Spain did not indicate that it anticipates any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	Spain submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Spain's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter.	Spain's MAP statistics point out that during the Statistics Reporting Period it closed 7.06% (six out of 85 cases) of its post-2015 cases in 5.42 months on average. In that regard, Spain is recommended to seek to resolve the remaining 92.94% of the post-2015 cases pending on 31 December 2016 (79 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.

124. 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 Spanish competent authority

Organisational structure

125. With effect of 1 January 2016, an internal reorganisation was completed, following which in Spain two government institutions are assigned competence to handle MAP cases. This concerns:

- a. *International Taxation Office (ONFI)*: a directorate within the Spanish State Tax Administration Authority (AEAT)
- b. *General Directorate for Taxation*: a directorate within the Spanish Ministry of Finance and Public Administration.

126. The International Tax Office is placed within the Tax Audit Department and is responsible for handling attribution/allocation MAP cases. The office consists of 34 persons, of which approximately 18 persons are responsible for handling MAP cases, among other responsibilities. Furthermore, two persons provide support functions in relation to handling MAP cases.

127. The General Directorate for Taxation has placed the competent authority function within the Deputy General Directorate for International Tax Matters, which is responsible for handling MAP cases relating to other taxation issues. The directorate employs nine persons that are partially engaged in handling this type of MAP cases. These persons also are engaged in policy-related work, such as tax treaty negotiating, law-making process and granting of rulings. All staff involved in handling MAP cases fall under the Deputy-Director of this directorate (who is one of the nine persons). In addition to these nine persons, two persons perform support functions and where necessary the staff can make use of a translator of the Deputy General Directorate.

128. Articles 9(1) and 19(1) of Spain's MAP guidance stipulates that when cases concern a joint competence of the General Directorate for Taxation and the International Tax Office, the first department will exercise co-ordination functions, whereby the Spanish position for the case under review shall be jointly determined. This concerns cases on whether there is a permanent establishment in existence and, if so, what profits need to be attributed to such establishment. The General Directorate for Taxation is responsible for the first question and the International Tax Office for the second question. The General Directorate for Taxation will first discuss with the other competent authority concerned the question on the existence of a permanent establishment. If agreement reached that this is the case, the International Tax Office will subsequently discuss the attribution of profits to such establishment with this other competent authority.

129. Furthermore, in terms of resources available to perform the MAP function, apart from staffing, Spain reported that its competent authority is paid travelling expenses to conduct face-to-face meetings with other competent authorities where necessary. The budget for such meetings comes from the general budget of the Spanish Ministry of Finance and the Spanish State Tax Administration. In that regard, Spain addressed there have never been budget constraints that limited conducting face-to-face meetings. During 2016 four competent authority meetings were held and for 2017 seven of such meetings are scheduled, some of which already have taken place. Furthermore, for 2018 several meetings have been scheduled, coming down to approximately one per month.

Training of staff

130. Spain reported that with respect to training of staff in charge of MAP, all staff assigned to both directorates that operate as the Spanish competent authority is given a high specialised training course on international taxation. This training comprises 124 hours, along with a four month in-person training by leading experts in international taxation.

131. Furthermore, Spain also reported that staff working in the International Taxation Office of the Spanish State Tax Administration Authority receive continuous training on current international tax issues.

Conducting mutual agreement procedures

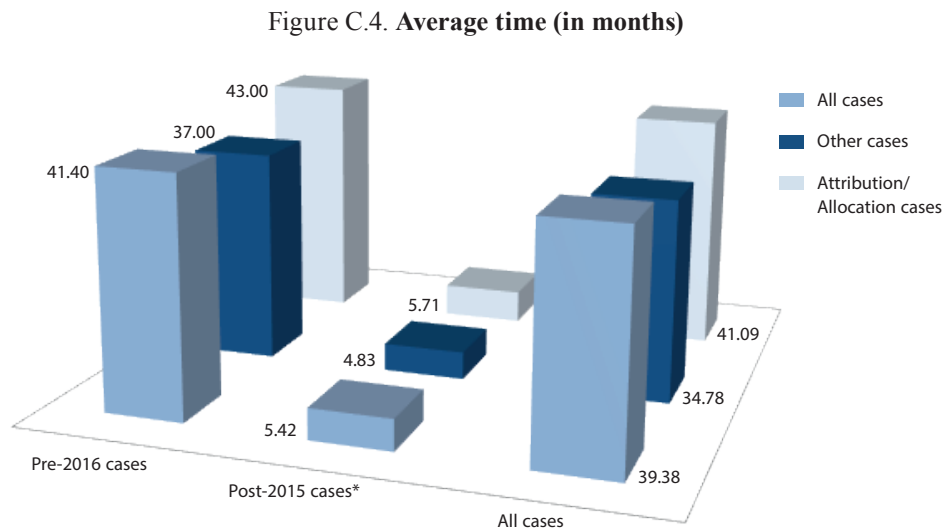
132. Spain reported that it regularly provides each of its treaty partners with the contact details of its competent authority, also when there are modifications within this competent authority. Furthermore, contact details of its competent authority are also made available in Spain’s MAP profile and on the website of the EU JTPF.⁶ In addition, the contact details of the person handling an individual case are in all correspondence shared with the other competent authority concerned.

133. Concerning targeted timeframes for resolving MAP cases, apart from the average of 24-months, Article 9(3) of Spain’s MAP guidance (Article 28 for the EU Arbitration Convention) stipulates that when a MAP request is submitted in Spain, the Spanish competent authority adheres to a four month period for issuing a position paper.⁷ In turn, when the other competent authority receives the MAP request and issues a position paper, Article 19(2) of Spain’s MAP guidance mentions that the Spanish competent authority has to submit a responding position paper within six months.

Practical application

MAP statistics

134. As discussed under element C.2, Spain has not closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average. The average time taken to close attribution/allocation cases is thereby significantly higher than the average time to resolve other cases. This can be illustrated by the following graph:



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

135. Based on these figures, it follows that on average it took Spain 39.38 months to close MAP cases. As both attribution/allocation cases and other cases are on average resolved above the 24 months, this may indicate that additional resources specifically dedicated to the departments involved in handling both types of MAP cases may be necessary to accelerate their resolution.

136. Spain reported there being a variety of reasons why on average it took the Spanish competent authority on average longer than 24 months to close MAP cases. This mainly

concerned a late notification/position paper by either the competent authority of the treaty partner or the Spanish competent authority, as also delays due to late providing of additional information/documentation by the taxpayer, or not accepting the MAP agreement in a timely manner.

Peer input

General

137. In total 14 of the 16 peers that provided input in relation to their contacts with the Spanish competent authority and their experiences in resolving MAP cases. This concerns six peers that have an extensive MAP relationship with Spain and eight peers that have a relative moderate MAP caseload with Spain. One of these eight peer does not have a tax treaty with Spain, but has MAP cases with Spain under the EU Arbitration Convention. On an overall level, input given by peers is positive regarding the resolution of MAP cases by and contacts with the Spanish competent authority, although some points of criticism were also put forward.

Contacts and correspondence with the Spanish competent authority

138. Those peers for whom Spain is an important MAP partner reported having good contacts with the Spanish competent authority. In particular they noted that contacts are easy and also frequent, thereby using a mix of correspondence, such as letters, e-mails, conference calls and face-to-face meetings. They reported that their competent authorities schedule face-to-face meetings at regular occasions, and at least once or twice a year. One peer particularly noted that in June 2017 a face-to-face meeting was organised, during which eight cases were discussed, resulting in two cases being resolved with fully eliminating double taxation. Another peer noted that face-to-face meetings were not scheduled, as all cases are handled via written procedure, which can be explained because of this peer's MAP caseload with Spain most consist of non-attribution/non-allocation cases. This peer did not consider the absence of such meetings to act as an impediment in resolving MAP cases. A third peer reported that the last competent authority meeting with Spain was held in October 2016 and that both competent authorities agreed to hold meetings with more frequency in the future.

139. The peers with a more moderate caseload with Spain generally also reported a good and positive working relation with the Spanish competent authority, whereby contacts are considered as easy. Similar as for the peers mentioned above, they reported to communicate via the exchange of position papers and e-mails. One peer in particular noted that there are ongoing communications with the Spanish competent authority concerning attribution/allocation cases, whereby the latter is considered responsive in their communications. This peer further mentioned that with respect to other MAP cases, the communication with the Spanish competent authority is also positive. Concerning the organisation of face-to-face meetings with the Spanish competent authority, one peer reported that occasionally face-to-face meetings are held to discuss MAP cases. Another peer mentioned that although during 2016 no such face-to-face meetings were held, it generally meets with the Spanish competent authority once a year.

Resolving MAP cases – major MAP partners

140. The peers with an extensive MAP relationship with Spain provided mixed input on their experience with Spain in the resolution of MAP cases, although most input is positive. One peer in particular pointed out that during its most recent competent authority meeting

with Spain, the attitude of the Spanish competent authority was very positive towards finding a final solution in the case that conciliates in the best way the interest of both competent authorities. Another peer noted that discussions with the Spanish competent authority are frequent and positive, as they provide a good working atmosphere to resolve complex cases.

141. Of the peers mentioned above, some also voiced criticism. One peer, for example, mentioned that for one MAP request, which was submitted in Spain, it was only notified of the existence of the case more than a year after the date of submission of the request. In the peer's view, such behaviour obstructed the peer to properly evaluate the case. Another issue brought forward by this peer was that in one case the relevant documentation was only provided in the Spanish language.

142. Two peers also criticised the relationship between MAP and domestic remedies in Spain. In Spain a MAP case is suspended if simultaneously domestic appeals procedures are pending for the same case. One peer considers this to constitute a hindrance in the timely resolution of MAP cases within the pursued average of 24 months. This peer, as also another peer, also referred to the fact that the Spanish competent authority is under its domestic legislation not allowed to derogate from decisions of its judicial bodies, following which it is not possible to resolve a MAP case other than that the agreement validates the ruling by the Spanish court (e.g. a one-sided adjustment). This peer gave the example of a MAP case that was closed by Spain in 2016 and which was pending for ten years, for which the Spanish competent authority gave as reasons: (i) it could not derogate from the decision of its domestic court and (ii) the resolution of the MAP case was suspended until the outcome of the pending court procedure in Spain.

143. Another peer noted that in its relation with Spain meeting targeted timeframes for resolving MAP cases is often challenging, thereby referring to the indicative timetable as set out in the Code of Conduct to the EU Arbitration Convention. This peer, however, acknowledged that both Spain and itself do not always meet these timeframes. Lastly, one peer noted that MAP cases with Spain tend to take a rather long time, but did not further specify any reasons hereof or of the average time to resolve these cases.

Resolving MAP cases – other MAP partners

144. The peers with a more moderate MAP caseload with Spain generally reported no impediments in their relationship with the Spanish competent authority in resolving MAP cases. One peer in particular noted having good experiences with Spain in discussing MAP cases during the Review Period. Another peer noted that the Spanish competent authority is responsive and co-operative to deal with in resolving MAP cases. More specifically, this peer noted that the relationship with the Spanish competent authority is professional and efficient, whereby cases are processed and responses to letters are done quickly. This peer, however, also noted that it awaits a response to a position paper for a non-attribution/allocation case, which was submitted to the Spanish competent authority in May 2017.

145. One peer provided mixed input on its experience with the Spanish competent authority in resolving MAP cases. This peer noted that a number of complex MAP cases are currently stalled, but also mentioned it is being aware of the recent restructuring of the competent authority function in Spain. The peer reported not having a competent authority meeting since then. Furthermore, another peer reported that although it not being aware of any impediments in resolving MAP cases, it experienced in one attribution/allocation case a lack of response by the Spanish competent authority until the moment the taxpayer's local representative made inquiries to that authority.

146. Another peer noted that in 2016 its competent authority contacted the Spanish competent authority on behalf of a taxpayer resident in the peer's state with respect to a MAP request. The Spanish competent authority replied that such request must be submitted to the competent authority of the state in which the taxpayer is a resident, which in the case under review was the peer's state. The peer reported not being informed by Spain about the wrongly submitted MAP request in Spain, but also mentioned that the taxpayer eventually submitted the MAP request with the correct competent authority. In February 2017 this peer presented the case to the Spanish competent authority, which confirmed receipt in April 2017. The case under review concerns three fiscal years. Due to the Spanish statute of limitation, the case could not be discussed for two years and for the last year the peer is awaiting a position paper by the Spanish competent authority.

147. Furthermore, one peer reported that during the Review Period it only resolved one pre-2016 case, which was resolved quickly with no specificities. With respect to attribution/allocation cases, this peer reported its experience in that the Spanish competent authority is not very easy in negotiating an agreement to resolve cases, especially when it concerns older cases. More specifically, this peer noted that all adjustments made by the Spanish tax administration are strongly defended, whereby there is less flexibility in resolving cases, especially when high amounts are at stake. This peer further noted that the Spanish competent authority tend to be quite formal in their contacts. Apart from this input, this peer also mentioned that in its experience the Spanish competent authority closes cases, even though the other competent authority wants to further discuss the case and whereby the latter sent a response to the interpretation and explanation given by the Spanish competent authority. Like the peer mentioned in paragraph 146 above, in this peer's view it appears that the Spanish competent authority is not willing, or able, to discuss cases for which its domestic statute of limitation would obstruct implementation of a MAP agreement reached when a treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015a).

Suggestions for improvement

148. Several peers made suggestions for improvement in relation to resolving MAP cases by the Spanish competent authority. One peer mentioned looking forward to improve communications and specifically suggested to increase the frequency of communication with a view to encourage consistent dialogue concerning pending MAP cases. Furthermore, three peers suggested organising more frequently face-to-face meetings, possibly once a year. In that regard, another peer considered that as face-to-face meetings imply a significant burden for competent authorities in terms of costs and human resources, it would be desirable for both jurisdictions to strive to resolve as many cases as is possible in future meetings. As indicated above in paragraph 129, Spain reported that it already scheduled more face-to-face meetings for 2017 and for 2018.

149. Another peer reported that during the last competent authority meeting with the Spanish competent authority it was agreed to streamline proceedings, such via use of e-mail for sending of communication or any required clarification to speed-up progress in resolving cases. This peer did not make further suggestions.

150. Lastly, one peer suggested that more resources could be added to the staff in charge of MAP.

Anticipated modifications

151. Spain indicated that its competent authority has set an ambitious agenda for conducting competent authority meetings for the months to come with a view to resolve long pending cases and to improve the timely resolution of MAP cases. Furthermore, Spain reported that it is foreseen to hire two additional persons in the General Directorate for Taxation with a view to better staff the directorate in handling attribution/allocation MAP cases.

Conclusion

	Areas for improvement	Recommendations
[C.3]	As Spain closed MAP cases in 39.38 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, and which indicates that the Spanish competent authority is not adequately resourced.	Spain should closely monitor whether the current resources provided to the MAP function, as well as the additional resources envisaged to be provided in the near future, and the scheduled increase of face-to-face meetings will contribute to the resolution of MAP cases in a timely, efficient and effective manner.

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

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

152. 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 consideration, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

153. As discussed under element C.3, in Spain two departments are as of 1 January 2016 responsible for handling MAP cases: the International Tax Office within the Spanish State Tax Administration and the General Directorate for International Tax Matters within the Spanish Ministry of Finance and Public Administration. The first department handles attribution/allocation cases and the latter other MAP cases.

154. With respect to handling and resolving attribution/allocation MAP cases, the Director of the Audit Department is officially assigned the competent authority function and formally entrusted with competence to enter into MAP agreements. Based on a delegation of functions, Spain reported that this function is autonomously performed within the International Tax Office, as also that the personnel handling MAP cases have autonomy to negotiate cases and enter into MAP agreements. In this respect, the decision to enter into a MAP agreement is taken independently from the approval of the personnel that made the adjustments, if only because staff in charge of MAP and staff in charge of audits report to different authorities within the Spanish State Tax Administration. From a formal perspective, the Head of the International Tax Office is the person that signs the formal exchange of letters with other competent authorities. After a MAP agreement has been reached, the Head of the International Tax Office seeks approval by the Director

of the Audit Department. Spain reported that this, however, is only a pure formality and is required by administrative and hierarchy reasons for the implementation of MAP agreements. Spain additionally reported that audits are conducted at the level of the regional and local tax offices, which operate fully independent from the Director of the Audit Department and the latter is not involved in the approval process of audits nor is he directly involved in the adjustment that is subject to the MAP proceedings.

155. With respect to handling other MAP cases, the Director General for Taxes officially has to sign off on a tentative MAP agreement reached. In practice, however, the competence to handle cases and negotiate MAP agreements is at the level of the Deputy Director General for International Tax Matters, who is assessed by persons working in the Deputy General Directorate for International Tax Matters. In this respect, Spain reported that in exercising their functions, staff in charge MAP does not need any approval of MAP agreements other than the Deputy Director General and also that it is not bound by any criteria other than applicable domestic law provisions and provisions of the applicable tax treaty.

156. In regard of the above, Spain reported that staff in charge of MAP in practices operates independently and has the authority to resolve MAP cases without being dependent on the approval/direction of the tax administration personnel directly involved in the adjustment nor is the process for negotiating MAP agreements influenced by policy considerations.

Practical application

157. Peers generally reported no impediments in Spain to perform its MAP function absent from approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy. Two peers specifically mentioned that they are not being aware that staff in charge of the MAP in Spain is dependent on the approval of MAP agreements by the personnel within the tax administration that made the adjustment under review.

Anticipated modifications

158. Spain 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, Spain 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 adjustments at issue and absent of any policy considerations that Spain 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.

159. 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 Spain

160. Spain reported that in its internal MAP reporting system, it measures the number of MAP cases resolved, the time taken to resolve these cases and the internally set milestones (e.g. the sending of a position paper within a certain period). These variables are taken into account when evaluating staff in charge of MAP, but the staff's remuneration is not contingent to their performance. Apart from that Spain does not use specific criteria to evaluate staff in charge of MAP.

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

162. The Final Report on Action 14 includes examples of performance indicators that are considered appropriate. From the above analysis it follows that Spain uses the following indicators:

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

Practical application

163. Peers generally provided no specific input relating to this element of the Action 14 Minimum Standard. Two peers particularly noted that they are not aware of the use of performance indicators by Spain that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Anticipated modifications

164. Spain did not indicate that it anticipates any modifications in relation to element C.5.

Conclusion

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

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

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

165. 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

166. In Spain there are no domestic law limitations for including MAP arbitration in its tax treaties and the inclusion of MAP arbitration is part of Spain's tax treaty policy. For all treaty negotiations conducted over the last years, Spain reported it proposed the inclusion of a mandatory and binding arbitration provision modelled after Article 25(5) of the OECD Model Tax Convention (OECD, 2015a). In addition, Spain is a signatory to the EU Arbitration Convention.

167. Spain has been a participant in the sub-group on arbitration as part of the group which negotiated the Multilateral Instrument. In that regard, Spain reported that it has opted for part VI of the Multilateral Instrument, which includes a mandatory and binding arbitration provision.⁸ Pursuant to Article 26(4) Spain reserved the right not to apply part VI to the two treaties mentioned below that already provide for a mandatory and binding arbitration procedure.

168. Its MAP guidance includes in title III information on the availability of the EU Arbitration Convention and how Spain applies that convention in practice.

Practical application

169. Spain has incorporated an arbitration clause in three tax treaties as a final stage to the MAP. These clauses can be specified as follows:

- In two treaties the arbitration clause is based on Article 25(5) of the OECD Model Tax Convention (OECD, 2015a), whereby in both treaties deviations from this provision were agreed on (i.e. a three-year period for the MAP instead of a two-year period, the addition that cases are not eligible for arbitration if the taxpayer is still entitled to domestic available remedies for the case under review, or that arbitration is not open for those cases that are also dealt with under the EU Arbitration Convention).
- In one treaty the arbitration clause provides for a mandatory and binding arbitration procedure and which also include detailed procedural rules on how to conduct the arbitration. This arbitration clause is included in a protocol, which has not yet entered into force.

Anticipated modifications

170. Spain is currently in the process of analysing which of its tax treaties, and to what extent, will be modified to incorporate the arbitration provision of part VI of the Multilateral Instrument upon its entry into force.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. These 91 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
2. Available at: 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. These statistics are up to and include fiscal year 2015.
4. For post-2015 cases, if the number of MAP cases in Spain’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five for any treaty partner, Spain reported its MAP caseload for such a treaty partner on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
5. Spain reported that for pre-2016 cases for determining whether a case is considered an attribution/allocation MAP case cases it followed the rules contained in the 2007 report of the OECD on improving the resolution of tax treaty disputes (available at: <https://www.oecd.org/ctp/dispute/38055311.pdf>). This in general comes down to the definition of an attribution/allocation case pursuant to Annex D of the MAP Statistics Reporting Framework. Annex D of MAP Statistics Reporting Framework defines such a case as: “a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention [OECD, 2015]); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention [OECD, 2015]), which is also known as a transfer pricing MAP case”.
6. Available at: https://ec.europa.eu/taxation_customs/sites/taxation/files/spaintpprofile2017.pdf.
7. The same term applies, pursuant to Article 28 of Spain’s MAP guidance, for preparing a position paper under the EU Arbitration Convention.
8. An overview of Spain’s position on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-spain.pdf.

Bibliography

- OECD (2017), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/tpg-2017-en>.
- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, OECD, Paris, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2007) *Manual on Effective Mutual Agreement Procedures*, OECD, Paris, www.oecd.org/ctp/38061910.pdf.

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.

171. 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

172. Taxpayers are in Spain allowed to submit a MAP request irrespective of whether it for the same case also has invoked domestic available remedies. As from 12 October 2015 a rule is in place, which stipulates that where these remedies are activated simultaneously with a MAP, legal and/or administrative proceedings will be suspended until the MAP has been finalised.¹ This to avoid that cases cannot be further dealt with in MAP, as the Spanish competent authority is bound by decisions of its domestic courts (not by decision of the Spanish administrative tribunals).

173. Articles 14 and 15 of Spain's MAP guidance include the procedural steps to be followed when the Spanish competent authority enters into a MAP agreement with the other competent authority concerned. Article 14(1) stipulates that the Spanish competent authority has to substantiate a MAP agreement into an exchange of letters, which is subject to acceptance by taxpayers and waiver of any pending domestic appeals procedure. The taxpayer has, pursuant to Article 14(2) and (3), to notify the Spanish competent authority by letter of its acceptance or rejection of the agreement reached. In accordance with general administrative practice in Spain, the taxpayer is granted a three-month period (with a certain degree of flexibility) for such notification. In case of acceptance, the tentative MAP agreement becomes final.

174. The Spanish competent authority is, pursuant to Article 15(1), obliged to inform the local tax administration competent to implement the agreement within one month as from the date when the said agreement becomes final. The local tax administration then has to implement the agreement, although there is no specific time for such agreement. Concerning the implementation process, Article 15(2) of Spain's MAP guidance mentions that a MAP agreement will be implemented via an ex-officio tax assessment or upon application by the taxpayer. For each year covered by the MAP, a separate tax assessment will, pursuant to Article 15(3), be issued, whereby Article 15(4) allows for an exception where the final taxable amount is that of the addition of said assessments. Where a MAP agreement requires that Spain has to make a corresponding adjustment or refund taxes,

Article 15(5) of Spain's MAP guidance stipulates that the relevant tax assessment can be corrected or annulled.

175. Spain has a domestic statute of limitation for implementing MAP agreements of four years after ending of the taxable year, which is laid down in Article 66(a) of the General Tax Act. This statute of limitation is overridden where tax treaties include the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) (see element D.3) or where a MAP agreement is reached under the EU Arbitration Convention.

176. Further to the above, Spain reported that its competent authority monitors the actual implementation of MAP agreements, such by requesting feedback by the local tax administration. The actual act of implementation is saved in the database of the Spanish State Tax Administration.

Practical application

177. Spain reported that all MAP agreements that were reached on or after 1 January 2016, once accepted by taxpayers, have been implemented.

178. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Spain, whereby one peer noted that it has not reached any agreements after 1 January 2016 that needed to be implemented by the Spanish competent authority. Furthermore, another peer noted that it is its impression that Spain implements MAP agreements both in a timely manner and correctly. Also taxpayers reported no difficulties in relation to implementation of MAP agreements.

179. Further to the above, and as discussed under element C.3, two peers mentioned that for some of the MAP agreements reached, it faces difficulties in relation to the implementation of MAP agreements due to the Spanish domestic statute of limitation. In that regard the peer reported that Spain informed it that this statute of limitation is from itself a reason to end MAP discussions.

Anticipated modifications

180. Spain did not indicate that it anticipates any modifications in relation to element D.1.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Spain'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 four-year time limits in Spain's domestic law.	Even though Spain has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.

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

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

181. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

182. As discussed under element D.1, taxpayers are informed by the Spanish competent authority within one month as from the date of the MAP agreement, whereby they are given a three-month period within which they should declare whether they agree with the content of the MAP agreement. Once the taxpayer has declared its consent to the agreement, local tax administrations should initiate the implementation process. There, however, is no specific timeframe for implementation of said agreements.

Practical application

183. Spain reported that all MAP agreements that were reached on or after 1 January 2016, once accepted by taxpayers, have been implemented in a timely manner and that no cases of noticeable delays have occurred.

184. Apart from the input discussed under element D.1, all peers that provided input have not indicated experiencing any problems with Spain regarding the implementation of MAP agreements reached on a timely basis. One peer specifically mentioned that it considered that MAP agreements with Spain have been implemented both in a timely manner and correctly.

Anticipated modifications

185. Spain did not indicate that it anticipates any modifications in relation to element D.2.

Conclusion

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

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) 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.

186. 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 Spain's tax treaties

187. As discussed under element D.1, Spain's domestic legislation includes a statute of limitations of four years for implementing MAP agreements, unless overridden by tax treaties or unless a MAP agreement is reached under the EU Arbitration Convention.

188. Out of Spain's 92 tax treaties, 65 contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.² Furthermore, 1 treaty contains such equivalent and also the alternative provisions in Article 9(1) and Article 7(2), setting a time limit for making adjustments. Additionally, 24 do not contain such equivalent or the alternative provisions.³

189. For the remaining two treaties the following analysis is made:

- In one treaty a provision that is based on Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is contained, but this provision also contains wording that a MAP agreement must be implemented within seven years after the date of the first notification of taxation not in accordance with the provisions of the convention. As this bears the risk that MAP agreements cannot be implemented due to time constraints in the treaty, it is therefore considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).
- In one treaty a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is contained, but this provision is supplemented with wording that may limit the implementation of MAP agreements due to constraints in the domestic legislation of the contracting states (e.g. "except such limitations as apply for the purposes of giving effect to such an agreement"). As Spain uses a statute of limitation for implementing MAP agreements, there is a risk that under these treaties MAP agreements cannot be implemented under this treaty. It is therefore also considered not containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

Anticipated modifications

Multilateral Instrument

190. Spain recently signed the Multilateral Instrument. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. 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 both notified the depository of the fact that this 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) concerning the introduction of a time limit for making transfer pricing profit adjustments.

191. In regard of the 26 tax treaties above that are considered not having the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), Spain listed 23 as covered tax agreements under the Multilateral Instrument and made for 22, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii) of the Multilateral Instrument.⁴ Of the relevant 22 treaty partners, eight are not a signatory to the Multilateral Instrument and one did not list its tax treaty with Spain as a covered tax agreements. Of the remaining 13 treaty partners, 12 also made a notification that their treaty with Spain does not contain such provision, whereas one made a reservation on the basis of Article 16(5)(c).⁵ At this stage therefore, 12 of the 26 treaties will, upon entry into force, be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015)

Bilateral modifications

192. Spain further reported that when the tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. In this respect, Spain envisages approaching its treaty partners in the forthcoming months to renegotiate treaties where necessary. In addition, Spain reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) in all of its future treaties.

Peer input

193. Almost all peers that provided input reported that their treaty with Spain meets the requirements under element D.3. Some peers reported being in the process of renegotiating the treaty with Spain with a view to *inter alia* bring it in line with the requirements under the Action 14 Minimum Standard. For one of these peers the treaty with Spain indeed does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015).

194. Furthermore, three peers specifically mentioned that their treaty with Spain does not meet the requirements under element D.3. Two of these peers reported that there are no ongoing negotiations with Spain to amend the treaty with a view to incorporate the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015), as it is envisaged it will be modified via the Multilateral Instrument. Both treaties will indeed be modified via the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015). The third peer mentioned that it is willing to accept the alternative provisions in Articles 9(1) and 7(2) and that discussions hereon should be held in the near future.

195. For 12 of 26 of the treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and which will be modified by the Multilateral Instrument to include such equivalent, the relevant peers did not provide input in general or in relation to element D.3. The same applies for the remaining 14 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and which will not be modified by the Multilateral Instrument to include such equivalent.

Conclusion

	Areas for improvement	Recommendations
[D.3]	26 out of 92 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), nor the alternatives provisions in Article 9(1) and Article 7(2).	<p>Spain 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 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 13 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 to include such equivalent, Spain should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with former Czechoslovakia and the former USSR, Spain should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p> <p>In addition, Spain should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>
	One of the 65 tax treaties that contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is not yet in force, while there is another treaty in force with the same jurisdiction that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).	Spain should as quickly as possible ratify the tax treaty that includes a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and replaces an existing treaty that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).

Notes

1. Reference is made to the 21st additional disposition of Act 58/2003 of 17 December 2003 (General Tax Law) and 9th additional disposition of Action 29/1998 of 13 July 1998, both being modified by Act 34/2015.
2. These 65 treaties include the new treaty that Spain signed with Finland in 2015, but that has not yet entered into force and that once it enters into force, replace the existing treaty of 1967.
3. These 24 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic; and the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine.
4. These 23 treaties include the treaty with the former USSR that Spain continues to apply to Kyrgyzstan, Tajikistan, Turkmenistan and the Ukraine, and the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic. Spain, however, did not make a notification for the Ukraine.
5. These 12 treaties include the treaty with former Czechoslovakia that Spain continues to apply to the Czech Republic and the Slovak Republic. The Multilateral Instrument will modify this treaty with respect to element D.3 for both the Czech Republic and the Slovak Republic.

Bibliography

- OECD (2016), *BEPS Action 14 on More Effective Dispute Resolution Mechanisms*, Peer Review Documents, www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf (accessed on 22 August 2017).
- OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264239081-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	Two out of 92 tax treaties do not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015).	As the two treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2015) will at this time not be modified via the Multilateral Instrument, Spain should request the inclusion of the required provision via bilateral negotiations. In addition, Spain should maintain its stated intention to include the required provision in all future treaties.
[A.2]	-	As it has done thus far, Spain should continue to provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	11 out of 92 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a). Of those 11 tax treaties: <ul style="list-style-type: none"> • two tax treaties do not contain the equivalent to Article 25(1), first sentence and the timeline to file such request is shorter than three years as from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty; • six tax treaties do not contain the equivalent to Article 25(1), first sentence; and • three tax treaties provide that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. 	Spain should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) in those treaties that currently do not contain such equivalent. This concerns both: <ul style="list-style-type: none"> • a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either: <ol style="list-style-type: none"> a. As amended in the final report of action 14 (OECD, 2015b); or b. As it read prior to the adoption of final report of action 14 (OECD, 2015b), thereby including the full sentence of such provision. • 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. For the remaining treaties that will not be modified by the Multilateral Instrument following its entry into force to include such equivalent, Spain should request the inclusion of the required provision via bilateral negotiations. In addition, Spain should maintain its stated intention to include the required provision in all future treaties.
[B.2]	-	Spain should continue to apply its documented notification and consultation process for cases in which its competent authority considered the objection raised in a MAP request not to be justified, 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 Spain has thus far granted access to MAP in eligible transfer pricing cases, it should continue granting access for these cases.

	Areas for improvement	Recommendations
[B.4]	MAP guidance includes the possibility for the competent authority to deny access to MAP where there is proof that the taxpayer intended to avoid taxes, which bears the risk that in cases where anti-abuse provisions are being applied, access to MAP will not be granted.	Spain should follow up its intention to amend Article 8(2)(d) of its MAP guidance to avoid the situation in which access to MAP will be denied in cases concerning the application of anti-abuse provisions, or should specify in this provision that access to MAP will not be denied for such cases. Nevertheless, as Spain 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]	-	As Spain has thus far granted access to MAP in eligible cases, even if there was an agreement between the taxpayer and the tax authority, it should continue granting access for these cases.
[B.6]	-	As Spain has thus far not limited access to MAP in eligible cases when taxpayers have complied with Spain's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Six out of 92 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a).	Spain should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2015a) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force. For the remaining 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, Spain should request the inclusion of the required provision via bilateral negotiations. Specifically with respect to the treaty with the former USSR, Spain should, once it enters into negotiations with the jurisdictions for which it continues to apply that treaty, request the inclusion of the required provision. In addition, Spain should maintain its stated intention to include the required provision in all future treaties.
[B.8]	Contact details of Spain's competent authority are not included in the MAP guidance.	Spain should update its MAP guidance to include the contact information of its competent authority as soon as possible. Additionally, although not part of the Action 14 Minimum Standard, in order to further improve the level of clarity, Spain could consider including in its MAP guidance information on: <ul style="list-style-type: none"> • Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments • Whether taxpayers can request for the multi-year resolution of recurring issues through MAP • The consideration of interest and penalties in MAP • The timing of the steps for implementing MAP agreements. Recommendations on guidance in relation to audit settlements and access to MAP are discussed in element B.10.

	Areas for improvement	Recommendations
[B.9]	-	Spain should ensure that future updates of its MAP guidance are made publically available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	There is no explicit guidance on the relation between audit settlements and MAP.	Spain should clarify in its MAP guidance that audit settlements do not preclude access to MAP.
Part C: Resolution of MAP cases		
[C.1]	One out of 92 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a).	As the treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2015a) will at this time not be modified via the Multilateral Instrument, Spain should request the inclusion of the required provision via bilateral negotiations. In addition, Spain should maintain its stated intention to include the required provision in all future treaties.
[C.2]	Spain submitted comprehensive MAP statistics on time on the basis of the MAP Statistics Reporting Framework. Based on the information provided by Spain's MAP partners, its post-2015 MAP statistics actually match those of its treaty partners as reported by the latter. Spain's MAP statistics point out that during the Statistics Reporting Period it closed 7.06% (6 out of 85 cases) of its post-2015 cases in 5.42 months on average. In that regard, Spain is recommended to seek to resolve the remaining 92.94% of the post-2015 cases pending on 31 December 2016 (79 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.	
[C.3]	As Spain closed MAP cases in 39.38 months on average, there may be a risk that post-2015 cases are not resolved within the average of 24 months, which is the pursued average for resolving MAP cases received on or after 1 January 2016, and which indicates that the Spanish competent authority is not adequately resourced.	Spain should closely monitor whether the current resources provided to the MAP function, as well as the additional resources envisaged to be provided in the near future, and the scheduled increase of face-to-face meetings will contribute to the resolution of MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Spain 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 adjustments at issue and absent of any policy considerations that Spain would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Spain should continue to use appropriate performance indicators.
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Spain'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 four-year time limits in Spain's domestic law.	Even though Spain has implemented all MAP agreements thus far, it should ensure that in the absence of the required provisions discussed under element D.3 implementation of MAP agreements is not obstructed by time limits in its domestic law.
[D.2]	-	As it has done thus far, Spain should continue to implement all MAP agreements on a timely basis if the conditions for such implementation are fulfilled.

	Areas for improvement	Recommendations
[D.3]	26 out of 92 tax treaties do contain neither a provision that is equivalent to Article 25(2), second sentence of the OECD Model Tax Convention (OECD, 2015), nor the alternatives provisions in Article 9(1) and Article 7(2).	<p>Spain 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 12 treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force.</p> <p>For the remaining 13 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 to include such equivalent, Spain should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.</p> <p>Specifically with respect to the treaty with former Czechoslovakia and the former USSR, Spain should, once it enters into negotiations with the jurisdictions for which it applies those treaties, request the inclusion of the required provision or its alternatives.</p> <p>In addition, Spain should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future treaties.</p>
	One of the 65 tax treaties that contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) is not yet in force, while there is another treaty in force with the same jurisdiction that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).	Spain should as quickly as possible ratify the tax treaty that includes a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) and replaces an existing treaty that does neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2015) nor contains the alternative provisions provided for in Article 9(1) or Article 7(2).

Annex A

Tax treaty network of Spain

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

		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	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? 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) 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 arbitration provision?	
Australia	Y	O	Y	N/A	Y	i	Y	Y	N	N**	N	N/A
Austria	Y	O	i	N/A	i***	i	Y	N**	Y	Y	N	N/A
Azerbaijan	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Barbados	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belarus	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Belgium	Y	O	Y	N/A	Y	i	Y	N**	Y	N**	N	N/A
Bolivia	Y	O	Y	N/A	Y	i	Y	N	Y	Y	N	N/A
Bosnia and Herzegovina	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Brazil	Y	O	i	N/A	i	i	Y	N	Y	Y	N	N/A
Bulgaria	Y	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Cabo Verde	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Canada	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Chile	Y	O	Y	N/A	Y	i	Y	N**	Y	N**	N	N/A
China	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Colombia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Costa Rica	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Croatia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cuba	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Cyprus*	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Czech Republic	Y	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Domenican Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		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	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? 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) 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 arbitration provision?	
Ecuador	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Egypt	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
El Salvador	Y	N	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Estonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Finland ****	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
France	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Georgia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Germany	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Greece	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hong Kong, China	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Hungary	Y	O	Y	N/A	i***	i	Y	N**	Y	Y	N	N/A
Iceland	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
India	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Indonesia	Y	O	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Iran	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Ireland	Y	O	Y	N/A	Y	i	Y	N**	Y	Y	N	N/A
Israel	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Italy	Y	N	iv**	2-years	i***	i	Y	N**	Y	Y	N	N/A
Jamaica	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Japan	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Kazakhstan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		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	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? 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) 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 arbitration provision?	
Korea	Y	O	Y	N/A	i ***	i	Y	N **	Y	Y	N	N/A
Kuwait	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Kyrgyzstan	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Latvia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Lithuania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Luxembourg	Y	O	Y	N/A	i ***	i	Y	Y	Y	Y	N	N/A
Macedonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malaysia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Malta	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Mexico	Y	O	Y	N/A	Y	i	Y	N	Y	N **	N	N/A
Moldova	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Morocco	Y	N	i	N/A	i	i	N	N	Y	Y	N	N/A
Netherlands	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
New Zealand	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Nigeria	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Norway	Y	O	Y	N/A	i	i	Y	Y	Y	Y	N	N/A
Oman	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Pakistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Panama	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Peru	N	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Philippines	Y	O	ii	2-years	Y	i	Y	N	Y	Y	N	N/A
Poland	Y	O	Y	N/A	Y	i	Y	N **	Y	Y	N	N/A

		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	
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1) If no, please state reasons		Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? 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) 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 arbitration provision?	
Portugal	Y	O	ii**	2-years	Y	i	Y	N**	Y	Y	N	N/A
Qatar	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Romania	Y	N	ii	2-years	i	i	Y	N	Y	Y	N	N/A
Russia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Saudi Arabia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Senegal	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Serbia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Singapore	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Slovak Republic	Y	O	i	N/A	Y	i	Y	N**	Y	Y	N	N/A
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
South Africa	Y	O	Y	N/A	i***	i	Y	Y	Y	Y	N	N/A
Sweden	Y	N	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Switzerland	Y	O	Y	N/A	Y	i	Y	N	Y	Y	Y	i
Tajikistan	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Thailand	Y	O	Y	N/A	i	i	Y	N	Y	Y	N	N/A
Trinidad and Tobago	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Tunisia	Y	N	i	N/A	i	i	Y	N	Y	Y	N	N/A
Turkey	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Turkmenistan	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
Ukraine	Y	O	Y	N/A	i	i	Y	N	Y	N	N	N/A
United Arab Emirates	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A

		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		
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence)	Inclusion Art. 25(1) second sentence? (Note 1)	If no, please state reasons	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law? 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) 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 arbitration provision?	
United Kingdom	Y	O	Y	N/A	Y	i	Y	N**	Y	Y	Y	i
United States	Y	O	ii	5-years	Y	i	Y	Y	Y	Y	Y	ii
Uruguay	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Uzbekistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Venezuela	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N	N/A
Viet-Nam	Y	O	Y	N/A	i	i	Y	Y	N	Y	N	N/A

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

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

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

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

**** A tax treaty between Finland and Spain, signed in 1967, is currently in force. This treaty will be replaced by the treaty signed in 2015, once it enters into force. For purposes of the treaty analysis, the newly negotiated treaty is taken into account.

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										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome		
Column 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	222	0	0	0	3	0	71	0	0	0	0	148	43.00
Others	87	1	3	0	3	1	17	0	0	1	1	60	37.00
Total	309	1	3	0	6	1	88	0	0	1	1	208	41.40

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	59	0	0	1	1	0	2	0	0	0	0	55	5.71
Others	0	26	0	0	0	0	0	0	0	0	0	0	24	4.83
Total	0	85	0	0	1	1	0	2	0	0	0	0	79	5.42

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
MAP guidance	Royal Decree 1794/2008 of 3 November 2008
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
Pre-2016 cases	MAP cases in a competent authority's inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 July 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2016
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

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

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

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

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Spain (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, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The minimum standard is complemented by a set of best practices.

The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 1 peer review of the implementation of the Action 14 Minimum Standard by Spain.

Consult this publication on line at <http://dx.doi.org/10.1787/9789264290761-en>.

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

