

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



# **Making Dispute Resolution More Effective – MAP Peer Review Report, Serbia (Stage 2)**

**INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**





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**Note by Turkey**

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**Note by all the European Union Member States of the OECD and the European Union**

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## *Foreword*

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

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

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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

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

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), 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 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 19 November 2021 and prepared for publication by the OECD Secretariat.

## *Table of contents*

<b>Abbreviations and acronyms</b> .....	7
<b>Executive summary</b> .....	9
Reference .....	10
<b>Introduction</b> .....	11
References .....	15
<b>Part A. Preventing disputes</b> .....	17
[A.1] Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties .....	17
[A.2] Provide roll-back of bilateral APAs in appropriate cases .....	19
References .....	20
<b>Part B. Availability and access to MAP</b> .....	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 .....	27
[B.3] Provide access to MAP in transfer pricing cases .....	29
[B.4] Provide access to MAP in relation to the application of anti-abuse provisions .....	31
[B.5] Provide access to MAP in cases of audit settlements .....	33
[B.6] Provide access to MAP if required information is submitted .....	34
[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties .....	35
[B.8] Publish clear and comprehensive MAP guidance .....	37
[B.9] Make MAP guidance available and easily accessible and publish MAP profile .....	40
[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP .....	41
References .....	43
<b>Part C. Resolution of MAP cases</b> .....	45
[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties .....	45
[C.2] Seek to resolve MAP cases within a 24-month average timeframe .....	46
[C.3] Provide adequate resources to the MAP function .....	51
[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty .....	54
[C.5] Use appropriate performance indicators for the MAP function .....	55
[C.6] Provide transparency with respect to the position on MAP arbitration .....	56
References .....	57

<b>Part D. Implementation of MAP agreements</b> .....	59
[D.1] Implement all MAP agreements .....	59
[D.2] Implement all MAP agreements on a timely basis .....	60
[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2) .....	61
Reference .....	64
<b>Summary</b> .....	65
<b>Annex A. Tax treaty network of Serbia</b> .....	69
<b>Annex B. MAP statistics reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for pre-2018 cases</b> .....	74
<b>Annex C. MAP statistics reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for post-2017 cases</b> .....	76
<b>Glossary</b> .....	79
<b>Figures</b>	
Figure C.1 Evolution of Serbia’s MAP caseload .....	47
Figure C.2 End inventory on 31 December 2020 (Five cases) .....	48
Figure C.3 Evolution of Serbia’s MAP inventory: Pre-2018 cases .....	48
Figure C.4 Evolution of Serbia’s MAP inventory: Post-2017 cases .....	49
Figure C.5 Cases closed in 2018, 2019 or 2020 (Three cases) .....	49
Figure C.6 Average time (in months) to close cases in 2018-20 .....	52



*Abbreviations and acronyms*

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



## Executive summary

Serbia has a relatively large tax treaty network with more than 60 tax treaties. It has a MAP programme with a small MAP inventory and a small number of new cases submitted each year and five MAP cases pending on 31 December 2020. Of these cases, 60% concern allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Serbia met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Serbia has worked to address them, which has been monitored in stage 2 of the process. In this respect, Serbia has solved most of the identified deficiencies.

All of Serbia's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that almost 15% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Serbia signed and ratified the Multilateral Instrument. Through this instrument a number of its tax treaties have been or will be 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 the Multilateral Instrument, Serbia 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. However, all of these treaties concern treaties signed by the former "Socialist Federal Republic of Yugoslavia" and the former "Serbia and Montenegro" that Serbia continues to apply to the concerned treaty partners and thus, bilateral renegotiations are not necessary.

As Serbia has no bilateral APA programme in place, there are no further elements to assess regarding the prevention of disputes.

Furthermore, Serbia meets almost all the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 April 2019 not received any MAP request concerning the application of anti-abuse provisions. However, where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. Furthermore, Serbia does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. However, Serbia has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under tax treaties.

Concerning the average time needed to close MAP cases, the MAP statistics for Serbia for the period 2018-20 are as follows:

2018-20	Opening inventory 1/1/2018	Cases started	Cases closed	End Inventory 31/12/2020	Average time to close cases (in months)*
Attribution/allocation cases	1	4	2	3	10.65
Other cases	1	2	1	2	9.00
Total	2	6	3	5	10.10

\*The average time taken for resolving MAP cases for both pre-2018 post-2017 cases follows the MAP Statistics Reporting Framework.

From 2018-20, MAP cases were on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2018), as the average time necessary was 10.10 months. However, there was an increase of three MAP cases and the number of closed cases is only half of the number of all cases started in this period. Further, Serbia was only able to close one of two of its pre-2018 MAP cases in this period. Finally, Serbia reported that it has not been able to issue position papers for some of its pending cases which has led to these cases remaining pending at the end of 2020. Therefore, Serbia should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner.

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

Lastly, Serbia almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Serbia monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), albeit that no problems have surfaced regarding implementation throughout the peer review process.

## *Reference*

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

## *Introduction*

### **Available mechanisms in Serbia to resolve tax treaty-related disputes**

Serbia has entered into 63 tax treaties on income (and/or capital), 61 of which are in force.<sup>1</sup> These 63 treaties apply to an equal number of jurisdictions.<sup>2</sup> All of these treaties provide for a mutual agreement procedure (“**MAP**”) for resolving disputes on the interpretation and application of the provisions of the tax treaty. None of these treaties contain an arbitration clause as a final stage to the mutual agreement procedure.

Under Serbia’s tax treaties, the competent authority function is assigned to the Ministry of Finance. This function has been delegated to the Tax Treaties Division within the Fiscal System Department of the Ministry of Finance. The Tax Treaties Division handles and resolves MAP cases with factual inputs where necessary from the Audit Department of the Tax Administration. The competent authority of Serbia currently employs one person, who works on MAP cases apart from other tasks in connection with international taxation in light of Serbia’s modest MAP inventory.

Serbia issued guidance on the governance and administration of the mutual agreement procedure titled “Explanation on the mutual agreement procedure under international treaties for the avoidance of double taxation” (“**MAP guidance**”) in April 2019, which is available at:

[www.mfin.gov.rs/upload/media/FevHJN\\_6012e00fe3415.pdf](http://www.mfin.gov.rs/upload/media/FevHJN_6012e00fe3415.pdf) (in Serbian)

[https://www.mfin.gov.rs/upload/media/mGITn9\\_618b93a089ecl.pdf](https://www.mfin.gov.rs/upload/media/mGITn9_618b93a089ecl.pdf) (in English)

### **Developments in Serbia since 1 April 2019**

#### ***Developments in relation to the tax treaty network***

The stage 1 peer review report of Serbia noted that Serbia had signed treaties with Israel (2018) and Morocco (2013) which had not yet entered into force. The treaty with Israel has now entered into force, whereas the treaty with Morocco has still not entered into force.

In addition, Serbia reported that since 1 April 2019 it has signed new tax treaties with Hong Kong, China (2020) and Japan (2020) which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Both treaties include Article 9(2) and Article 25(1-3) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). The treaty with Hong Kong, China has entered into force, whereas the treaty with Japan has not entered into force as yet.

Furthermore, on 7 June 2017, Serbia 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. On 5 June 2018, Serbia deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Serbia on 1 October 2018. With the deposit of the instrument of ratification of the Multilateral Instrument, Serbia also submitted its list of notifications and reservations to that instrument.<sup>3</sup> In relation to the Action 14 Minimum Standard, Serbia reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.<sup>4</sup> This reservation is in line with the requirements of the Action 14 Minimum Standard.

For the four treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Serbia reported that it intends to update them via bilateral negotiations. However, all of these treaties concern treaties signed by the former “Socialist Federal Republic of Yugoslavia” and the former “Serbia and Montenegro” that Serbia continues to apply to the concerned treaty partners and thus, bilateral renegotiations are not necessary. Irrespective, Serbia reported that negotiations are ongoing with one treaty partner.

### ***Other developments***

Further to the above, Serbia reported that it has published its MAP guidance in English, has updated the place of publication of its MAP guidance in both Serbian and English and has updated its MAP profile to inter alia, note these changes.

## **Basis for the peer review process**

The peer review process entails an evaluation of Serbia’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 Serbia, its peers and taxpayers. The questionnaires for the peer review process were sent to Serbia and the peers on 27 March 2019.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Serbia’s implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 11 December 2019. This report identifies the strengths and shortcomings of Serbia in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.<sup>5</sup> Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Serbia. In this update report, Serbia reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

### ***Outline of the treaty analysis***

For the purpose of this report and the statistics below, in assessing whether Serbia is compliant with the elements of the Action 14 Minimum Standard that relate to a specific

treaty provision, the newly negotiated treaties or the treaties as modified by a protocol, as described above, were taken into account, even if it concerned a modification or a replacement of an existing treaty. Furthermore, the treaty analysis also takes into account treaties signed by the former “Serbia and Montenegro”, “Federal Republic of Yugoslavia” and the “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to certain treaty partners. Each of these treaty partners is counted separately for purposes of this peer review report. Reference is made to Annex A for the overview of Serbia’s tax treaties regarding the mutual agreement procedure.

### *Timing of the process and input received from peers and taxpayers*

Stage 1 of the peer review process for Serbia was launched on 27 March 2019, with the sending of questionnaires to Serbia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Serbia in September 2019, with the subsequent approval by the BEPS Inclusive Framework on 11 December 2019. On 11 December 2020, Serbia submitted its update report, which initiated stage 2 of the process.

The period for evaluating Serbia’s implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2018 to 31 March 2019 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 April 2019 and depicts all developments as from that date until 31 December 2020.

In total, three peers provided input: Germany, Italy and Turkey. Out of these three peers, one reported having a MAP case with Serbia that started on or after 1 January 2018. This one peer represents 33% of post-2017 MAP cases in Serbia’s inventory that started in 2018. During stage 2, the same peers provided input. For this stage, these peers represent approximately 20% of post-2017 MAP cases in Serbia’s MAP inventory that started in 2018, 2019 or 2020. Generally, these peers reported only having very little experience with Serbia in handling and resolving MAP cases, and therefore their input was limited to answering whether their treaty with Serbia meets the requirements under the Action 14 Minimum Standard. Specifically with respect to stage 2, all peers that provided input reported that the update report of Serbia fully reflects the experiences these peers have had with Serbia since 1 April 2019 and/or that there was no addition to previous input given.

### *Input by Serbia and co-operation throughout the process*

Serbia provided answers in its questionnaire, which was submitted on time. Serbia was responsive in the course of the drafting of the peer review report by responding to requests for additional information, and provided further clarity where necessary, albeit that the information presented was insufficient to fully analyse Serbia’s implementation of the Action 14 Minimum Standard. In addition, Serbia provided the following information:

- MAP profile<sup>6</sup>
- MAP statistics<sup>7</sup> according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, Serbia submitted its update report on time and the information included therein was extensive. Serbia was very co-operative during stage 2 and the finalisation of the peer review process.

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

## Overview of MAP caseload in Serbia

The analysis of Serbia’s MAP caseload relates to the period starting on 1 January 2018 and ending on 31 December 2020 (“**Statistics Reporting Period**”). According to the statistics provided by Serbia, its MAP caseload during this period was as follows:

2018-20	Opening inventory 1/1/2018	Cases started	Cases Closed	End Inventory 31/12/2020
Attribution/allocation cases	1	4	2	3
Other cases	1	2	1	2
Total	2	6	3	5

## General outline of the peer review report

This report includes an evaluation of Serbia’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**”).<sup>8</sup> Apart from analysing Serbia’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Serbia during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Serbia 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 basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Serbia relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Serbia should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.



## Notes

1. The tax treaties Serbia has entered into are available in Serbian at: <https://www.mfin.gov.rs/propisi/ugovori-o-izbegavanju-dvostrukog-oporezivanja/>. The treaties that are signed but have not yet entered into force are with Japan (2020) and Morocco (2013). Reference is made to Annex A for the overview of Serbia’s tax treaties regarding the mutual agreement procedure.
2. The treaty analysis also takes into account the treaties signed by the former “Serbia and Montenegro”, “Federal Republic of Yugoslavia” and the “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to half of its treaty partners. Each of these treaty partners is counted separately for purposes of this peer review report.
3. [www.oecd.org/tax/treaties/beps-mli-position-serbia-instrument-deposit.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-serbia-instrument-deposit.pdf).
4. Ibid. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Republic of Serbia reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified.”
5. Available at: <https://www.oecd.org/fr/publications/making-dispute-resolution-more-effective-map-peer-review-report-serbia-stage-1-c65f36fb-en.htm>.
6. Available at: [www.oecd.org/tax/dispute/country-map-profiles.htm](http://www.oecd.org/tax/dispute/country-map-profiles.htm).
7. The MAP statistics of Serbia are included in Annexes B and C of this report.
8. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf)

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- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-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, 2017a) 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 Serbia's tax treaties*

2. Out of Serbia's 63 tax treaties, 61 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) 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.<sup>1</sup> Of the remaining two treaties, one does not contain the word "interpretation" and the other treaty does not contain the words "interpretation" and "doubts". As a result, both treaties do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

3. Serbia reported that for those treaties that do not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), there are under its domestic legislation and/or administrative practice no obstructions to enter into MAP agreements of a general nature.

4. One of the three peers that provided input during stage 1 indicated that its treaty with Serbia meets the requirement under the Action 14 Minimum Standard for this element, which is in line with the above analysis. Furthermore, another peer mentioned that it has ongoing negotiations with Serbia to enter into a new tax treaty, as the current treaty with the former Socialist Federal Republic of Yugoslavia is still being applied. The third peer did not provide input in relation to element A.1.

## ***Recent developments***

### *Bilateral modifications*

5. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

### *Multilateral Instrument*

6. Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018.

7. 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, 2017a) – 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, 2017a). In other words, in the absence of this equivalent, Article 16(4)(c)(i) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

8. With regard to the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Serbia listed both of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(i), a notification that they do not contain a provision described in Article 16(4)(c)(i). Of the relevant two treaty partners, both are signatories to the Multilateral Instrument, listed their treaty with Serbia as a covered tax agreement and also made a notification on the basis of Article 16(6)(d)(i).

9. Both of the two treaty partners mentioned above have already deposited their instruments of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Serbia and the treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

### *Peer input*

10. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Serbia.

### ***Anticipated modifications***

11. Serbia reported that it will continue to seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future tax treaties.

### **Conclusion**

	Areas for improvement	Recommendations
[A.1]	-	-

### **[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.

12. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.<sup>2</sup> The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

#### ***Serbia’s APA programme***

13. Serbia reported that under its domestic law it is not possible to enter into APAs and therefore it has not put in place an APA programme.

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

14. Since Serbia does not have an APA programme in place, there is no possibility to provide roll-back of bilateral APAs to previous years.

#### ***Recent developments***

15. There are no recent developments with respect to element A.2.

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

##### ***Period 1 January 2018-31 March 2019 (stage 1)***

16. Serbia reported not having received any requests for bilateral APAs in the period 1 January 2018-31 March 2019, which is logical given that Serbia does not have such a programme in place.

17. All peers that provided input indicated that they have not received a request for a roll-back of bilateral APAs concerning Serbia in the period 1 January 2018-31 March 2019.

##### ***Period 1 April 2019-31 December 2020 (stage 2)***

18. Serbia reported also not having received any requests for a bilateral APA since 1 April 2019, which is logical given that Serbia still does not have such a programme in place.

19. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

### *Anticipated modifications*

20. Serbia indicated that it does not anticipate any modifications in relation to element A.2.

### *Conclusion*

	Areas for improvement	Recommendations
[A.2]	-	-

## Notes

1. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
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 (OECD, 2017b).

## References

OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-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.

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

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

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

22. None of Serbia's 63 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state 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. Furthermore, 44 of these 63 treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.<sup>1</sup>

23. The remaining 19 treaties can be categorised as follows:

Provision	Number of tax treaties
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby taxpayers can only submit a MAP request to the competent authority of the contracting state of which they are resident.	18
A variation of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), whereby 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.	1

24. The 18 treaties mentioned in the first row of the table are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, for the following reasons 16 of those 18 treaties are considered to be in line with this part of element B.1:

- the relevant tax treaty does not contain a non-discrimination provision and only applies to residents of one of the states (three treaties)
- the non-discrimination provision of the relevant tax treaty only covers nationals that are resident of one of the contracting states. Therefore, it is logical to only allow the submission of MAP requests to the state of which the taxpayer is a resident (13 treaties).

25. The remaining two treaties contain a non-discrimination provision that applies both to nationals that are and are not resident of one of the contracting states. The omission of the full text of Article 25(1), first sentence, of the OECD Model Tax Convention is therefore not clarified by the absence of or a limited scope of the non-discrimination provision, by which these two treaties are considered not in line with this part of element B.1.

26. Furthermore, the treaty mentioned in the second row of the table above allows taxpayers to submit a MAP request irrespective of domestic available remedies. However, the protocol to this treaty limits such submission, as it requires that a domestic remedy should first be initiated before a case can be dealt with in MAP. The provision incorporated in the protocol to this treaty reads:

The expression “irrespective of the remedies provided by the domestic laws” shall not be understood to mean that the time limits prescribed by domestic laws shall not be observed; a claim under Article 25 shall not be entertained where the taxpayer has not taken the appropriate action under the domestic laws to prevent such time limits from expiring.

27. As pursuant to this provision a domestic procedure has to be initiated concomitantly to the initiation of the mutual agreement procedure, a MAP request can in practice thus not be submitted irrespective of the remedies provided by the domestic law. This tax treaty is therefore considered not to be in line with this part of element B.1.

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

28. Out of Serbia’s 63 tax treaties, 57 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to



submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty.<sup>2</sup>

29. The remaining six treaties that do not contain such provision can be categorised as follows:

Provision	Number of tax treaties
No filing period for a MAP request	3
Filing period less than 3 years for a MAP request (two-years)	2
Filing period more than 3 years for a MAP request (five-years)	1

### *Peer input*

30. All but one peer that provided input during stage 1 indicated that their treaty with Serbia meets the requirements under the Action 14 Minimum Standard for element B.1, which is in line with the above analysis. Furthermore, one peer mentioned that it has ongoing negotiations with Serbia to enter into a new tax treaty, since currently the treaty with the former Socialist Federal Republic of Yugoslavia is still being applied. The remaining peer, whose treaty with Serbia is not in line with element B.1, indicated that it has contacted Serbia in order to address the issue and noted that both countries have signed the Multilateral Instrument, which will partly modify the treaty for this element.

### *Practical application*

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

31. As noted in paragraphs 26-27 above, taxpayers can file a MAP request irrespective of domestic remedies under all but one of Serbia's tax treaties. In this respect, Serbia's MAP guidance stipulates that in Serbia a MAP request can be submitted irrespective of domestic remedies and that the invocation of such remedies is not considered as grounds to deny access to MAP. Where domestic courts already have used a ruling on the case for which a MAP case is also pending, Serbia reported that its competent authority is not bound by such a decision and can deviate from it in MAP. Such ruling would not be grounds to deny access to MAP. Serbia's MAP guidance does not provide specific information on this subject, except that section 2.2.4 states that the tax treaties signed by Serbia have direct application as part of Serbia's domestic law.

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

32. Concerning those three treaties that do not contain a filing period for MAP requests, section 2.1.3 of Serbia's MAP guidance stipulates that the competent authority will take into account the domestic statute of limitation as defined in Article 114a-114z of the Law on Tax Procedure and Tax Administration. This statute of limitation is five years as from the year in which the tax should have been determined. This policy bears the risk that under these treaties taxpayers cannot file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018. The same applies with respect to two of the three treaty partners for which the treaty with Serbia does not contain

a filing period for MAP requests. While the treaty itself is in line with element B.1, where both treaty partners listed their treaty with each other as a covered tax agreement under the Multilateral Instrument, but did not make, pursuant to Article 16(5)(b) a reservation nor, pursuant to Article 16(6)(b), a notification that their mutual treaty contains a filing period for MAP requests of less than three years or of at least three years, the effect of the instrument is that the treaty provision will be superseded to the extent of incompatibility. In this respect, two of these three treaties are covered tax agreement under the Multilateral Instrument, for which Serbia reported it considered that the relevant treaty provision has been superseded and therefore that it will apply a three-year filing period for MAP requests for this treaty as well. Nevertheless, there remains one treaty that does not contain a filing period for MAP request and that will not be superseded by the Multilateral Instrument to apply a three-year filing period for MAP requests due to the fact that it is not a covered tax agreement. For this treaty, Serbia’s domestic statute of limitation would thus apply and connected therewith the risk remains that taxpayers can under these treaties not file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

33. Further to the above, section 2.1.3 of Serbia’s MAP guidance stipulates how it interprets the start date of the three-year period for filing of MAP request under Serbia’s tax treaties that contain such a provision. In this respect, it is stated that the term “first notification” is interpreted in the most favourable way to taxpayers, which is:

- for withholding taxes: the day on which the withholding tax was calculated, deducted or paid
- for filing of a tax return: the day on which the tax return was submitted
- for a tax assessment: the day on which the notice of tax assessment was sent to the taxpayer.

### ***Recent developments***

#### *Bilateral modifications*

34. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include 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). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

#### *Multilateral Instrument*

35. Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018.

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

36. 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, 2017) as amended by 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 Action 14 final report (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

37. Serbia reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.<sup>3</sup> In this reservation, Serbia declared that it would 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 Action 14 final report (OECD, 2015b). It subsequently declared it would 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.

38. In view of the above, following the reservation made by Serbia, none of the three treaties identified in paragraphs 24-27 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 Action 14 final report (OECD, 2015b), will be modified by the Multilateral Instrument 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

39. 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, 2017) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

40. With regard to the two tax treaties identified in paragraph 29 above that contain a filing period for MAP requests of less than three years, Serbia listed both treaties as a covered tax agreement under the Multilateral Instrument and for all of them made, pursuant to Article 16(6)(b)(i), a notification that they do not contain a provision described in Article 16(4)(a)(ii). Of the two relevant treaty partners, both are signatories to the Multilateral Instrument, listed their treaty with Serbia as a covered tax agreement under that instrument and also made such notification.

41. One of these two treaty partners has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Serbia and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include this equivalent.

### *Other developments*

42. The three tax treaties that do not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), and that will not be modified by the Multilateral Instrument, concern treaties signed by the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the three relevant jurisdictions. Therefore, these treaties do not require bilateral negotiations.

### *Peer input*

43. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Serbia.

### *Anticipated modifications*

44. Serbia 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 Action 14 final report (OECD, 2015b), in all of its future tax treaties.

### *Conclusion*

	Areas for improvement	Recommendations
[B.1]	One out of 63 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report (OECD, 2015b), and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence.	As the treaty that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), is the treaty signed by the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to Italy, Serbia should ensure that, once it enters into negotiations with the treaty partner, it includes the required provision. This concerns a provision equivalent to Article 25(1) of the OECD Model Tax Convention either <ul style="list-style-type: none"> <li>a. as amended in the Action 14 final report (OECD, 2015b); or</li> <li>b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.</li> </ul>

	Areas for improvement	Recommendations
[B.1]	Two out of 63 tax treaties do not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). These treaties will not be modified by the Multilateral Instrument to include the required provision.	As the treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), are treaties signed by the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to France and Sweden, Serbia should ensure that, once it enters into negotiations with these treaty partners, it includes the required provision. This concerns a provision equivalent to Article 25(1) of the OECD Model Tax Convention either <ol style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.</li> </ol>
	Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.	Serbia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

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

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

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

- 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***

46. As discussed under element B.1, out of Serbia's 63 tax treaties, none currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b),

allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty.

47. Serbia reported that it has not introduced a bilateral consultation or notification process that allows the other competent authority concerned to provide its views on the case when Serbia's competent authority considers the objection raised in the MAP request not to be justified. While section 2.2.2 of Serbia's MAP guidance states that its competent authority would carry out a notification or consultation process with the other competent authority in future MAP cases, such process is not documented in Serbia's internal guidelines regarding the MAP process.

### ***Recent developments***

48. There are no recent developments with respect to element B.2.

### ***Practical application***

#### *Period 1 January 2018-31 March 2019 (stage 1)*

49. Serbia reported that in the period 1 January 2018-31 March 2019 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2018 MAP statistics submitted by Serbia show that none of its MAP cases was closed with the outcome "objection not justified".

50. All peers that provided input indicated not being aware of any cases for which Serbia's competent authority denied access to MAP in the period 1 January 2018-31 March 2019. They also reported not having been consulted/notified of a case where Serbia's competent authority considered the objection raised in a MAP request as not justified since that date, which can be clarified by the fact that no such instances have occurred in Serbia during this period.

#### *Period 1 April 2019-31 December 2020 (stage 2)*

51. Serbia reported that since 1 April 2019, its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2019 and 2020 MAP statistics submitted by Serbia also show that none of its MAP cases was closed with the outcome "objection not justified".

52. All peers that provided input during stage 1 also indicated in stage 2 that since 1 April 2019 they are not aware of any cases for which Serbia's competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases.

### ***Anticipated modifications***

53. Serbia indicated that it does not anticipate any modifications in relation to element B.2.



## Conclusion

	Areas for improvement	Recommendations
[B.2]	All 63 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Serbia should, without further delay, introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Serbia should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

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

Jurisdictions should provide access to MAP in transfer pricing cases.

54. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

#### *Legal and administrative framework*

55. Out of Serbia's 63 tax treaties, 48 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.<sup>4</sup> Furthermore, 14 do not contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017).<sup>5</sup> The remaining treaty contains a provision based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but does not require competent authorities to make a corresponding adjustment and only invites competent authorities to consult together regarding such adjustments. Furthermore, it also does not contain the entire second sentence of Article 9(2) and therefore is considered not being the equivalent thereof.<sup>6</sup>

56. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Serbia'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, Serbia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments.

57. Serbia's MAP guidance includes in section 2.1.4 examples of cases for which taxpayers can submit a MAP request, which includes transfer pricing cases.

## *Recent developments*

### *Bilateral modifications*

58. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

### *Multilateral Instrument*

59. Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018.

60. 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, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). 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, 2017)).

61. Serbia 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, 2017). With regard to the 15 treaties identified in paragraph 55 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017), Serbia listed all of them as covered tax agreements under the Multilateral Instrument and included one in the list of treaties for which Serbia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. Furthermore, Serbia did not make a notification on the basis of Article 17(4) for the remaining 14 treaties mentioned above.

62. Of the relevant 14 treaty partners, two are not a signatory to the Multilateral Instrument and three have not listed their treaties with Serbia under that instrument.

63. Of the nine remaining treaty partners, eight have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for these treaties between Serbia and the relevant treaty partners,



and therefore has superseded the relevant treaty provisions to include the equivalent of Article 9(2), of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). For the remaining treaty, the instrument will, upon entry into force for this treaty, be superseded by the Multilateral Instrument the equivalent of Article 9(2), of the OECD Model Tax Convention (OECD, 2017), but only to the extent that the provisions contained in this treaty relating to the granting of corresponding adjustments are incompatible with Article 17(1).

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

#### *Period 1 January 2018-31 March 2019 (stage 1)*

64. Serbia reported that in the period 1 January 2018-31 March 2019, it has not denied access to MAP on the basis that the case concerned a transfer pricing case.

65. All peers that provided input indicated that they are not aware of a denial of access to MAP by Serbia in the period 1 January 2018-31 March 2019 on the basis that the case concerned was a transfer pricing case.

#### *Period 1 April 2019-31 December 2020 (stage 2)*

66. Serbia reported that also since 1 April 2019, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case.

67. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

### *Anticipated modifications*

68. Serbia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) in all of its future tax treaties. Other than this, Serbia did not indicate that it anticipates any modifications in relation to element B.3.

### *Conclusion*

	Areas for improvement	Recommendations
[B.3]	-	-

## **[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.

69. 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***

70. None of Serbia's 63 tax treaties allow competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Serbia 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.

71. Serbia reported that it considers issues relating to the application of a treaty anti-abuse provision and the question whether the application of a domestic anti-abuse provision is in conflict with the provision of a tax treaty to be within the scope of MAP. Serbia's MAP guidance, however, does not contain information on whether access to MAP would be granted in such situations.

### ***Recent developments***

72. There are no recent developments with respect to element B.4.

### ***Practical application***

#### *Period 1 January 2018-31 March 2019 (stage 1)*

73. Serbia reported that in the period 1 January 2018-31 March 2019, Serbia's competent authority has 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 in conflict with the provisions of a tax treaty. However, no such cases were received during this period.

74. All peers that provided input indicated not being aware of cases where Serbia has denied access to MAP in the period 1 January 2018-31 March 2019 in relation to the application of treaty and/or domestic anti-abuse provisions.

#### *Period 1 April 2019-31 December 2020 (stage 2)*

75. Serbia reported that since 1 April 2019, it has also 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 in conflict with the provisions of a tax treaty. However, no such cases were received since that date.

76. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

*Anticipated modifications*

77. Serbia indicated that it does not anticipate any modifications in relation to element B.4.

*Conclusion*

	Areas for improvement	Recommendations
[B.4]	-	-

**[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.

78. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

*Legal and administrative framework**Audit settlements*

79. Serbia reported that under its domestic law domestic law it is not possible for taxpayers and the tax administration to enter into a settlement agreement during the course of or after an audit has been conducted.

*Administrative or statutory dispute settlement/resolution process*

80. Serbia reported it does not have an administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer.

*Recent developments*

81. There are no recent developments with respect to element B.5.

*Practical application**Period 1 January 2018-31 March 2019 (stage 1)*

82. Serbia reported that in the period 1 January 2018-31 March 2019 it has not denied access to MAP in any case where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, which is explained by the fact that such settlements are not possible in Serbia.

83. All peers indicated not being aware of a denial of access to MAP in Serbia in the period 1 January 2018-31 March 2019 in cases where there was an audit settlement between the taxpayer and the tax administration.

*Period 1 April 2019-31 December 2020 (stage 2)*

84. Serbia reported that since 1 April 2019 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in Serbia.

85. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

***Anticipated modifications***

86. Serbia indicated that it does not anticipate any modifications in relation to element B.5.

***Conclusion***

	Areas for improvement	Recommendations
[B.5]	-	-

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

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

87. 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 publicly available.

***Legal framework on access to MAP and information to be submitted***

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

89. Serbia's MAP guidance in section 2.2.1 states that when a MAP request is submitted, the competent authority verifies that the formal conditions for initiating the procedure are met, in particular whether a request has been submitted within the prescribed time limit and whether it has been submitted by an eligible person. It is further stated that its competent authority verifies whether a MAP request contains all the elements of the request required in section 2.1.6 of its MAP guidance. If the taxpayer's request is missing some of the required information, the competent authority will request the taxpayer to provide such missing information within three months from the receipt of the original request. If the taxpayer who submitted the request to initiate MAP cannot submit additional information or documentation within the time limit specified in the follow up request for substantive

reasons, the taxpayer may notify the competent authority of the reasons thereof and ask for an extension of the three-month time limit.

90. Section 2.2.1 of Serbia’s MAP guidance also states that if the taxpayer does not submit the requested documentation even after the additional time limit has been granted, Serbia’s competent authority may reject the request for MAP, as it is then not in a position to determine whether the objection raised by the taxpayer was justified.

### ***Recent developments***

91. There are no recent developments with respect to element B.6.

### ***Practical application***

#### *Period 1 January 2018-31 March 2019 (stage 1)*

92. Serbia reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its MAP guidance. It further reported that in the period 1 January 2018-31 March 2019 its competent authority has not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

93. All peers that provided input indicated not being aware of a limitation of access to MAP by Serbia in the period 1 January 2018-31 March 2019 in situations where taxpayers complied with information and documentation requirements.

#### *Period 1 April 2019-31 December 2020 (stage 2)*

94. Serbia reported that since 1 April 2019 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

95. All peers that provided input during stage 1 stated during stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

### ***Anticipated modifications***

96. Serbia indicated that it does not anticipate any modifications in relation to element B.6.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.6]	-	-

## **[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.

97. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

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

98. Out of Serbia's 63 tax treaties, 60 contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.<sup>7</sup> The three remaining treaties do not contain a provision that is based on, or equivalent to, Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

99. One of the three peers that provided input during stage 1 indicated that its treaty with Serbia meets the requirement under the Action 14 Minimum Standard for element B.7. For one treaty identified above that does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer indicated that the relevant treaty provision will be modified by the Multilateral Instrument to be in line with this element, which is in line with the above analysis. Furthermore, the third peer mentioned that it has ongoing negotiations with Serbia to enter into a new tax treaty, since currently the treaty with the former Socialist Federal Republic of Yugoslavia is still being applied.

### ***Recent developments***

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

100. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

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

101. Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018.

102. 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, 2017) – 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, 2017). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).



103. With regard to the three tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Serbia listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). All three treaty partners are a signatory to the Multilateral Instrument, listed their treaty with Serbia as a covered tax agreement, and also made such notification.

104. Of the three treaty partners mentioned above, two have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Serbia and these treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include this equivalent.

#### *Peer input*

105. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Serbia.

#### *Anticipated modifications*

106. Serbia reported that it will continue to seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

#### *Conclusion*

	Areas for improvement	Recommendations
[B.7]	-	-

### **[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.

107. 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.

#### *Serbia's MAP guidance*

108. Serbia has published rules, guidelines and procedures on the mutual agreement procedure, which are included in the document "Explanation on the mutual agreement procedure under international treaties for the avoidance of double taxation." This guidance

was issued in April 2019 on the basis of Article 23(2) of the Law on State Administration, and is available at:

[www.mfin.gov.rs/upload/media/FeVHJN\\_6012e00fe3415.pdf](http://www.mfin.gov.rs/upload/media/FeVHJN_6012e00fe3415.pdf) (in Serbian)

[https://www.mfin.gov.rs/upload/media/mGITn9\\_618b93a089ec1.pdf](https://www.mfin.gov.rs/upload/media/mGITn9_618b93a089ec1.pdf) (in English)

109. Serbia’s MAP guidance contains a description of the MAP process and how Serbia conducts that process in practice. It also presents examples of cases for which a MAP request can be submitted, such as transfer pricing cases or dual residency cases. Furthermore, the MAP guidance contains information on:

- a. contact information of the competent authority or the office in charge of MAP cases
- b. the manner and form in which the taxpayer should submit its MAP request
- c. the specific information and documentation that should be included in a MAP request (see also below)
- d. how the MAP functions in terms of timing and the role of the competent authorities
- e. information on availability of arbitration
- f. implementation of MAP agreements
- g. rights and role of taxpayers in the process
- h. suspension of tax collection during the period a MAP case is pending
- i. confidentiality of information throughout the MAP process.

110. The above-described MAP guidance of Serbia contains detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes the information that the FTA MAP Forum agreed should be included in a jurisdiction’s MAP guidance, which concerns: (i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request.<sup>8</sup>

111. Although the information included in Serbia’s MAP guidance is detailed and comprehensive, various subjects are not specifically discussed. This concerns information on:

- whether MAP is available in cases of: (i) the application of anti-abuse provisions, (ii) multilateral disputes and (iii) 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 steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any)
- the availability of MAP under treaties signed by the former Serbia and Montenegro, former Federal Republic of Yugoslavia and the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to certain jurisdictions.



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

112. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.<sup>9</sup> This agreed guidance is shown below. Serbia's MAP guidance enumerating which items must be included in a request for MAP assistance (if available) are checked in the following list:

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

113. In addition to the above, Serbia's MAP guidance also requires that taxpayers specify (i) the tax periods concerned, (ii) copies of the final notice of tax assessment, a report of a tax audit or another equivalent document and other documentation, (iii) contact details of the taxpayer, (iv) whether the taxpayer is represented by an authorised representative and (v) information on the other competent authority concerned.

### ***Recent developments***

114. There are no recent developments with respect to element B.8.

### ***Anticipated modifications***

115. Serbia indicated that it does not anticipate any modifications in relation to element B.8.

### ***Conclusion***

	Areas for improvement	Recommendations
[B.8]	-	-

**[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.

116. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.<sup>10</sup>

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

117. The MAP guidance of Serbia is published and can be found at:

[www.mfin.gov.rs/upload/media/FeVHJN\\_6012e00fe3415.pdf](http://www.mfin.gov.rs/upload/media/FeVHJN_6012e00fe3415.pdf) (in Serbian)

[https://www.mfin.gov.rs/upload/media/mGITn9\\_618b93a089ecl.pdf](https://www.mfin.gov.rs/upload/media/mGITn9_618b93a089ecl.pdf) (in English)

118. As regards its accessibility, Serbia’s MAP guidance can easily be found on the website of the Ministry of Finance (<https://mfin.gov.rs/>) under the section “Propisi” (Regulations) in the sub-section “Ugovori o izbegavanju dvostrukog oporezivanja” (Double Taxation Agreements). It can also be easily found by searching on a search engine for “Serbia MAP Guidance” in English.

***MAP profile***

119. The MAP profile of Serbia has been available on the website of the OECD since April 2019 and was last updated in May 2021. This MAP profile contains detailed information on the MAP process in Serbia. This profile contains external links that provide extra information and guidance where appropriate.

***Recent developments***

120. As mentioned above, Serbia has translated its MAP guidance into English and has made it publicly available on the website of its Ministry of Finance in December 2020. In addition, Serbia has made the MAP guidance easily accessible on this website. Further, Serbia has updated its MAP profile in December 2020 to provide more detailed information, including links to such guidance where appropriate. Therefore, the recommendations made in stage 1 have been addressed.

***Anticipated modifications***

121. Serbia indicated that it does not anticipate any modifications in relation to element B.9.

***Conclusion***

	Areas for improvement	Recommendations
[B.9]	-	-

## [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.

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

### *MAP and audit settlements in the MAP guidance*

123. As previously discussed under B.5, in Serbia it is not possible that taxpayers and the tax administration enter into a settlement agreement during the course of or after an audit has been conducted.

124. Peers did not provide input with respect to element B.10.

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

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

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

126. As Serbia 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.

### *Recent developments*

127. There are no recent developments with respect to element B.10.

*Anticipated modifications*

128. Serbia indicated that it does not anticipate any modifications in relation to element B.10.

*Conclusion*

	Areas for improvement	Recommendations
[B.10]	-	-

**Notes**

1. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
2. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, Republic of Serbia 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 Serbia’s positions on the Multilateral Instrument is available at: [www.oecd.org/tax/treaties/beps-mli-position-serbia-instrument-deposit.pdf](http://www.oecd.org/tax/treaties/beps-mli-position-serbia-instrument-deposit.pdf).
4. These 48 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
5. These 14 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
6. This treaty is a treaty signed by the former “Serbia and Montenegro” that Serbia continues to apply to the relevant treaty partner.

7. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
8. Available at: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).
9. Ibid.
10. The shared public platform can be found at: [www.oecd.org/ctp/dispute/country-map-profiles.htm](http://www.oecd.org/ctp/dispute/country-map-profiles.htm).

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## *Part C*

### **Resolution of MAP cases**

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

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

129. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), 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 Serbia's tax treaties***

130. All of Serbia's 63 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) 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.<sup>1</sup>

131. One of the three peers that provided input in stage 1 indicated that its treaty with Serbia meets the requirement under the Action 14 Minimum Standard for this element, which is line with the above analysis. Furthermore, another peer mentioned that it has ongoing negotiations with Serbia to enter into a new tax treaty, since currently the treaty with former Socialist Federal Republic of Yugoslavia is still being applied. The third peer did not provide input in relation to element C.1.



## *Recent developments*

### *Bilateral modifications*

132. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

### *Peer input*

133. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Serbia.

### *Anticipated modifications*

134. Serbia reported that it will continue to seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

## *Conclusion*

	Areas for improvement	Recommendations
[C.1]	-	-

## **[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).

135. 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*

136. 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.

137. Serbia joined the Inclusive Framework in 2018 and provided its MAP statistics for 2018-20 pursuant to the MAP Statistics Reporting Framework within the given deadline. For this reason the statistics referred to are pre-2018 cases for cases that were pending on 31 December 2017, and post-2017 cases for cases that started on or after 1 January 2018. The statistics discussed below include both pre-2018 and post-2017 cases and the full

statistics are attached to this report as Annex B and Annex C respectively and should be considered jointly to understand the MAP caseload of Serbia.<sup>2</sup>

138. With respect to post-2017 cases, Serbia reported that for the years 2018-20, it has reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Serbia reported that it could match its statistics with all of its MAP partners for 2019 and 2020.

139. No peer input was received regarding the matching of statistics with Serbia.

140. Based on the information provided by Serbia’s MAP partners, its post-2017 MAP statistics for 2019 and 2020 actually match those of its treaty partners as reported by the latter.

### *Monitoring of MAP statistics*

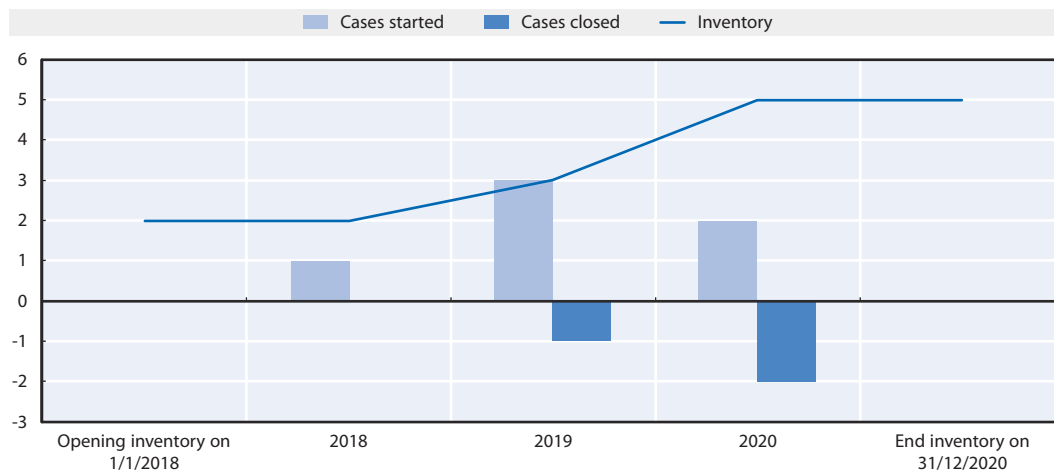
141. Serbia reported that its Ministry of Finance’s Fiscal System Department monitors MAP statistics. However, Serbia did not provide any further details regarding how it conducts such monitoring.

### *Analysis of Serbia’s caseload*

#### *Global overview*

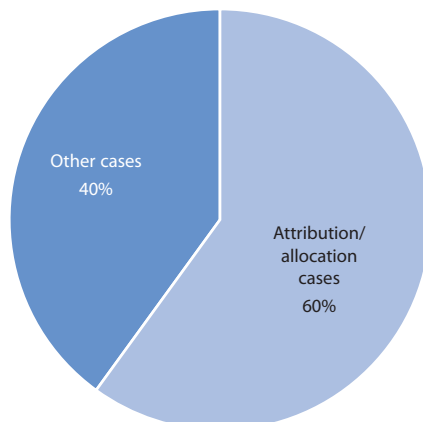
142. Figure C.1 shows the evolution of Serbia’s MAP caseload over the Statistics Reporting Period.<sup>3</sup>

Figure C.1. Evolution of Serbia’s MAP caseload



143. At the beginning of the Statistics Reporting Period Serbia had two pending MAP cases, one being an attribution/allocation case and the remaining case being an other MAP case.<sup>4</sup> At the end of the Statistics Reporting Period, Serbia had five MAP cases in its inventory, of which three are attribution/allocation cases and two are other MAP cases. Serbia’s MAP caseload has increased from two to five cases during the Statistics Reporting Period. This concerns an increase of one case in the number of other cases and an increase of two cases for attribution/allocation cases. The breakdown of the end inventory can be shown as in Figure C.2.

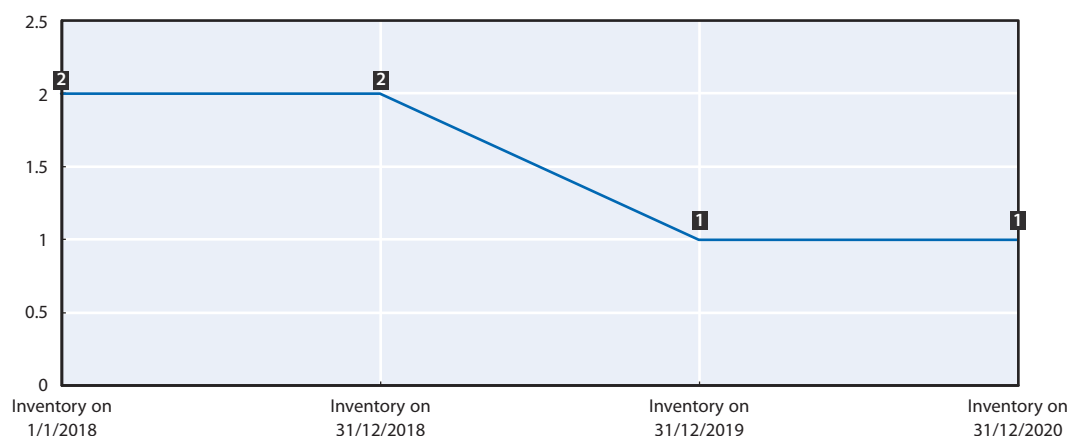
Figure C.2. End inventory on 31 December 2020 (Five cases)



### *Pre-2018 cases*

144. Figure C.3 shows the evolution of Serbia's pre-2018 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Serbia's MAP inventory: Pre-2018 cases



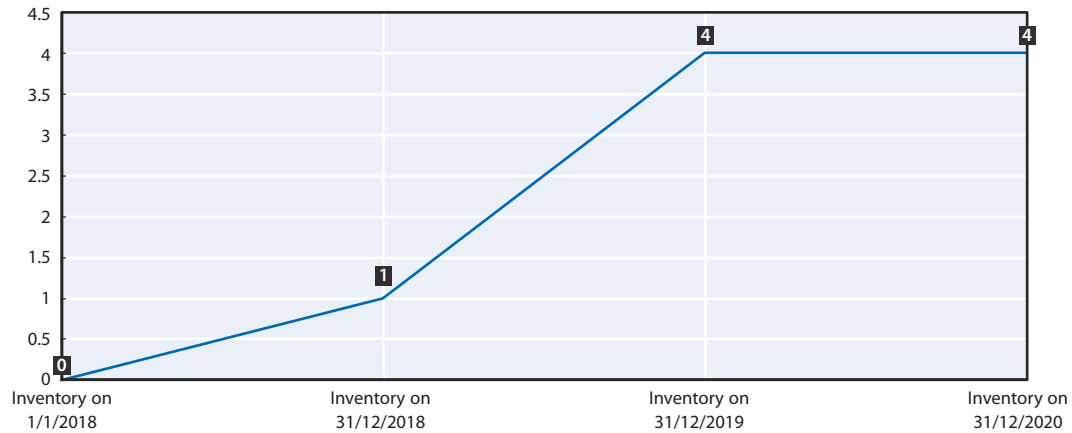
145. At the beginning of the Statistics Reporting Period, Serbia's MAP inventory of pre-2018 MAP cases consisted of two cases, one being an attribution/allocation case and the remaining case being an other MAP case. At the end of the Statistics Reporting Period the total inventory of pre-2018 cases had decreased to one other case. Therefore, Serbia decreased its pre-2018 MAP caseload from two cases to one case.

### *Post-2017 cases*

146. Figure C.4 shows the evolution of Serbia's post-2017 MAP cases over the Statistics Reporting Period.

147. In total, six MAP cases started during the Statistics Reporting Period, four of which concerned attribution/allocation cases and two concerned other cases. At the end of this period the total number of post-2017 cases in the inventory was four cases, consisting of three attribution/allocation cases and one other case. Accordingly, Serbia closed two post-2017

Figure C.4. Evolution of Serbia's MAP inventory: Post-2017 cases



cases during the Statistics Reporting Period, one of them being an attribution/allocation case and the other being an other case. The total number of closed cases represents 33% of the total number of post-2017 cases that started during the Statistics Reporting Period.

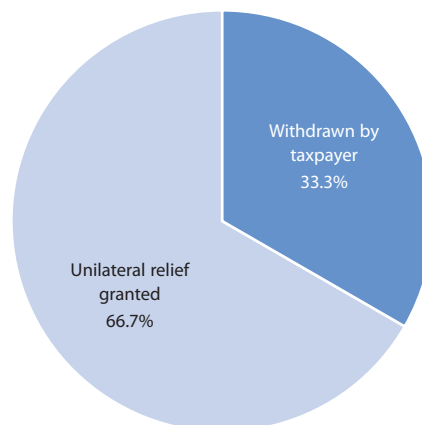
148. The number of post-2017 cases closed as compared to the number of post-2017 cases started during the Statistics Reporting Period is shown in the table below.

Post-2017 cases	% of cases closed in 2018 compared to cases started in 2018	% of cases closed in 2019 compared to cases started in 2019	% of cases closed in 2020 compared to cases started in 2020	Cumulative evolution of total MAP caseload over the three years (2018-20)
Attribution/allocation cases	0%	0%	100%	25%
Other cases	(no case started)	0%	100%	50%

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

149. During the Statistics Reporting Period, Serbia in total closed three MAP cases for which the outcomes shown in Figure C.5 were reported.

Figure C.5. Cases closed in 2018, 2019 or 2020 (Three cases)



150. Figure C.5 shows that during the Statistics Reporting Period, two out of three cases were closed with the outcome “unilateral relief granted” while the other case was closed with the outcome “withdrawn by taxpayer”.

*Reported outcomes for attribution/allocation cases*

151. In total, two attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases were “unilateral relief granted” and “withdrawn by taxpayer”.

*Reported outcomes for other cases*

152. In total, one other case was closed during the Statistics Reporting Period. The reported outcome for this case was “unilateral relief granted”.

*Average timeframe needed to resolve MAP cases*

*All cases closed during the Statistics Reporting Period*

153. The average time needed to close MAP cases during the Statistics Reporting Period was 10.10 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	2	10.65
Other cases	1	9.00
All cases	3	10.10

*Pre-2018 cases*

154. For pre-2018 cases, Serbia reported that it needed 20.68 months to close one other case. For the purpose of computing the average time needed to resolve pre-2018 cases, Serbia reported that it uses the same rules as the MAP Statistics Reporting Framework.

*Post-2017 cases*

155. For post-2017 cases, Serbia reported that on average it needed 0.62 months to close one attribution/allocation case and 9.00 months to close one other case. This resulted in an average time needed of 4.81 months to close two post-2017 cases.

*Peer input*

156. Peers did not provide input in relation to element C.2.

*Recent developments*

157. As there were no post-2017 MAP cases resolved, it was not possible to evaluate whether Serbia’s competent authority seeks to resolve MAP cases within an average time frame of 24 months in stage 1. Serbia noted that there are no recent developments to report with respect to element C.2.

158. In view of the statistics discussed above, it follows that Serbia’s MAP inventory has increased during the Statistics Reporting Period. However, the statistics also show that Serbia has in the period 2018-20 closed its MAP cases within the pursued average of 24 months. However, for these years, the number of post-2017 cases closed as compared to the cases that started in these years was only 33%. Element C.3 will further consider these numbers in light of the adequacy of resources.

159. No peer input was received under element C.2 for the period starting on 1 April 2019 as well.

### *Anticipated modifications*

160. Serbia did not indicate that it anticipates any modifications in relation to element C.2.

### *Conclusion*

	Areas for improvement	Recommendations
[C.2]	-	-

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

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

161. 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 Serbia’s competent authority*

162. Under Serbia’s tax treaties, the competent authority function is assigned to the Ministry of Finance. In this respect, Serbia reported that the Fiscal System Department acts as the competent authority and which is responsible for all tax treaty related matters. This is also reflected in sections 1.5 and 2.1.2 of Serbia’s MAP guidance. Serbia noted that the Tax Treaties Division within the department undertakes this responsibility in practice.

163. Serbia’s competent authority consists of one staff member, who deals partly with handling and resolving MAP cases in addition to other tasks involving tax treaties. Given the small number of MAP cases that Serbia is involved in, Serbia noted that it does not have any staff who work exclusively on MAP. Serbia further reported that the staff member in its competent authority has an academic background and several years of practical experience in the field of taxation as well as knowledge of foreign languages such as English and French.

164. There is no further information available on how Serbia would handle and resolve MAP cases. In section 2.3 of its MAP guidance it is noted that Serbia’s competent authority will generally inform the taxpayer about the status and progress of the case, if possible by phone. Likewise it is stated that if the competent authorities fail to reach an agreement, the taxpayer concerned will be informed of this.

### *Monitoring mechanism*

165. Serbia did not report having in place a framework for the monitoring/assessment of whether such resources are adequate.

### Recent developments

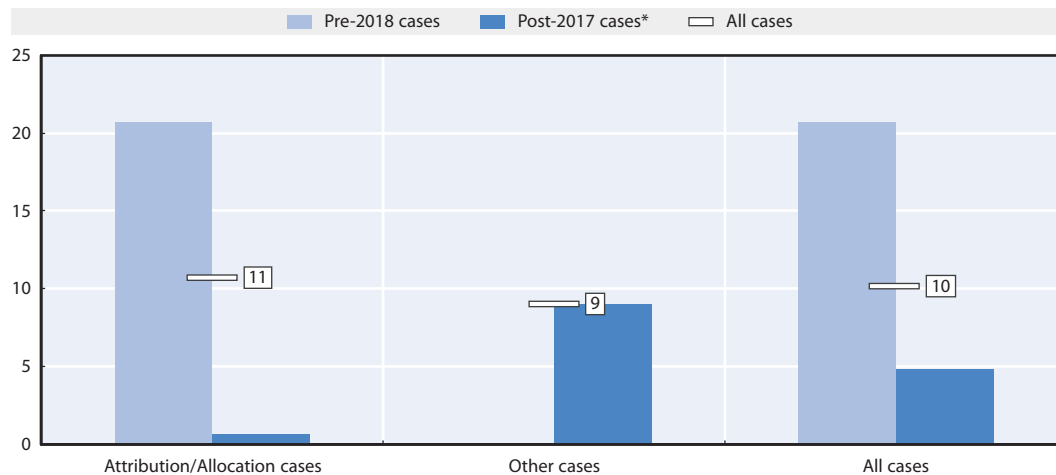
166. There are no recent developments with respect to element C.3.

### Practical application

#### MAP statistics

167. As discussed under element C.2, Serbia has closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 10.10 months to close MAP cases. This is owing to an average time of 10.56 months for attribution/allocation cases and an average time of 9.00 months for other MAP cases. The average time to resolve MAP cases in the period 2018-20 can be illustrated by Figure C.6.

Figure C.6. Average time (in months) to close cases in 2018-20



\*Note that post-2017 cases only concern cases started and closed during 2018, 2019 or 2020.

168. The stage 1 peer review report of Serbia analysed the 2018 MAP statistics and showed that Serbia had not resolved any MAP cases in 2018. For stage 2, the 2019 and 2020 MAP statistics are also taken into account. The average time to close MAP cases for these years are as follows:

	2019	2020
Attribution/Allocation cases	20.68	0.62
Other cases	n.a.	9.00
All cases	20.68	4.81

169. However, as discussed in element C.2, the MAP inventory of Serbia has increased from two cases to five cases since 1 January 2018. This can be shown as follows:



	Opening inventory on 1/1/2018	Cases started	Cases closed	End inventory on 31/12/2020	Increase in %
Attribution/allocation cases	1	4	2	3	(2 new cases)
Other cases	1	2	1	2	(1 new case)
Total	2	6	3	5	(3 new cases)

170. These numbers show that there was an increase of three MAP cases during this period. Further, the figures in the above table also show that the number of closed cases is only half of the number of all cases started in the period 2018-20. Further, Serbia was only able to close one of two of its pre-2018 MAP cases in this period. Finally, Serbia reported that it has not been able to issue position papers for some of its pending cases which has led to these cases remaining pending at the end of 2020.

### *Peer input*

#### Period 1 January 2018-31 March 2019 (stage 1)

171. Peers did not provide input in relation to element C.3, but one peer noted that one MAP case concerning Serbia was submitted during the period under review.

#### Period 1 April 2019-31 December 2020 (stage 2)

172. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

### *Anticipated modifications*

173. Serbia reported that it expects to add two new staff members to its competent authority in due course.

### *Conclusion*

	Areas for improvement	Recommendations
[C.3]	While Serbia closed MAP cases on an average of 10.10 months (which is within the pursued average for resolving MAP cases received on or after 1 January 2018), its MAP inventory increased since 1 January 2018 and not many cases have been resolved during this period. Further, Serbia's competent authority has been unable to provide position papers for some of its pending MAP cases.	Serbia should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner.

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

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

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

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

175. Serbia reported that its staff in charge of MAP has to take into account the applicable tax treaty and Serbia's MAP guidance as well as Serbia's domestic legislation when resolving MAP cases. After an initial consideration of a MAP request, the requests are forwarded to the tax administration, which in Serbia form part of the Ministry of Finance. Within the tax administration, it is the audit department that is responsible for audits concerning both domestic and international issues, which is different and independent from the tax treaties division that handles MAP cases.

176. Serbia clarified that MAP cases are dealt with exclusively by the staff member in its competent authority and that the audit department would only provide factual inputs and documentation where necessary. Accordingly, Serbia reported that staff in charge of MAP in practice, in all cases, 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.

177. Serbia reported that currently the process for negotiating MAP agreements is not influenced by policy considerations that Serbia would like to see reflected in future amendments to the treaty.

##### ***Recent developments***

178. There are no recent developments with respect to element C.4.

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

###### *Period 1 January 2018-31 March 2019 (stage 1)*

179. Peers generally reported no impediments in Serbia to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2018-31 March 2019.

###### *Period 1 April 2019-31 December 2020 (stage 2)*

180. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

*Anticipated modifications*

181. Serbia reported that it does not anticipate any modifications with respect to element C.4.

*Conclusion*

	Areas for improvement	Recommendations
[C.4]	-	-

**[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.

182. 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 Serbia*

183. Serbia reported that there are no specific rules for evaluating staff involved in handling and resolving MAP cases but that other rules are applicable for the evaluation of all public civil servants in Serbia.

184. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below:

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

185. Serbia did not report that it uses any of the above indicators to evaluate staff in charge of MAP. Further to the above, Serbia 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.

*Recent developments*

186. There are no recent developments with respect to element C.5.

***Practical application******Period 1 January 2018-31 March 2019 (stage 1)***

187. All peers that provided input indicated not being aware that Serbia used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2018-31 March 2019.

***Period 1 April 2019-31 December 2020 (stage 2)***

188. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

***Anticipated modifications***

189. Serbia indicated that it does not anticipate any modifications in relation to element C.5.

***Conclusion***

	Areas for improvement	Recommendations
[C.5]	-	-

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

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

190. 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***

191. Serbia reported that its position is to not include arbitration in its tax treaties. In this respect, Serbia made a reservation to the Commentary of Article 25 of the OECD Model Tax Convention (OECD, 2017) in that it reserves the right not to include paragraph 5 of Article 25 in its tax treaties. This position is clarified in Serbia's MAP profile as well.

***Recent developments***

192. There are no recent developments with respect to element C.6.

***Practical application***

193. As a result of Serbia's position, it has not incorporated an arbitration clause in any of its tax treaties as a final stage to the MAP.

### *Anticipated modifications*

194. Serbia indicated that it does not anticipate any modifications in relation to element C.6.

### *Conclusion*

	Areas for improvement	Recommendations
[C.6]	-	-

## Notes

1. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.
2. For post-2017 cases, if the number of MAP cases in Serbia 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, Serbia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. Serbia’s 2018 MAP statistics were corrected in 2019 and deviate from the published MAP statistics for this year. See further explanations in Annex B and Annex C.
4. For pre-2018 and post-2017 cases, Serbia follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

## References

- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.



## *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.

195. 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***

196. Serbia reported that for the implementation of MAP agreements its domestic statute of limitation applies, which is, pursuant to Article 114 of Serbia’s Law on Tax Procedure and Tax Administration, five years following the year in which the tax should have been determined. This term of five years can in some cases be extended to ten years. This statute of limitation, however, does not apply if the applicable treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) stating that any MAP agreement shall be implemented notwithstanding domestic time limits. This policy and practice is reflected in sections 2.1.3 and 2.4 of Serbia’s MAP guidance.

197. Concerning the process for implementing MAP agreements, section 2.4 of Serbia’s MAP guidance states that as soon as the competent authorities reach a MAP agreement, the competent authority which initiated the procedure will inform the taxpayer who submitted the request of the outcome within two months of the agreement’s conclusion. In this respect, Serbia noted that taxpayers do not need to give their consent in order for a MAP agreement to be implemented. Serbia did not provide any further information regarding how a MAP agreement would be implemented.

#### ***Recent developments***

198. There are no recent developments with respect to element D.1.

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

##### *Period 1 January 2018-31 March 2019 (stage 1)*

199. Serbia reported that no MAP agreements requiring implementation were reached in the period 1 January 2018-31 March 2019.



200. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2018-31 March 2019.

*Period 1 April 2019-31 December 2020 (stage 2)*

201. Serbia reported that no MAP agreements requiring implementation were reached since 1 April 2019 as well.

202. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

***Anticipated modifications***

203. Serbia indicated that it does not anticipate 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 Serbia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 time limits of five/ten years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Serbia's relevant tax treaty, prevent the implementation of a MAP agreement, Serbia should follow its stated intention to put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Serbia should for clarity and transparency purposes notify the treaty partner thereof without delay.

**[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.

204. 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***

205. As discussed under element D.1, Serbia's competent authority notifies taxpayers of a MAP agreement within two months of the conclusion of such agreement. Serbia did not report any other timelines that it follows when implementing MAP agreements.

***Recent developments***

206. There are no recent developments with respect to element D.2.

***Practical application****Period 1 January 2018-31 March 2019 (stage 1)*

207. Serbia reported that no MAP agreements requiring implementation were reached in the period 1 January 2018-31 March 2019.

208. All peers that provided input reported that they were not aware of any delays concerning MAP agreements reached in the period 1 January 2018-31 March 2019.

*Period 1 April 2019-31 December 2020 (stage 2)*

209. Serbia reported that no MAP agreements requiring implementation were reached since 1 April 2019 as well.

210. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Serbia fully reflects their experience with Serbia since 1 April 2019 and/or there are no additions to the previous input given.

***Anticipated modifications***

211. Serbia indicated that it does not anticipate any modifications in relation to element D.2.

***Conclusion***

	Areas for improvement	Recommendations
[D.2]	-	-

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

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

212. 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, 2017) 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 Serbia's tax treaties***

213. As discussed under element D.1, Serbia's domestic legislation contains a statute of limitations of five/ten years for implementing MAP agreements, unless overridden by tax treaties that contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

214. Out of Serbia's 63 tax treaties, 54 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law.<sup>1</sup> For the remaining nine treaties, the following analysis is made:

- One treaty does not contain such equivalent, but includes the alternative provision in Article 9(1) setting a time limit for making adjustments.
- Eight treaties neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor any of the alternative provisions providing for in Article 9(1) or Article 7(2) setting a time limit for making adjustments.

215. One of the three peers that provided input during stage 1 indicated that its treaty with Serbia meets the requirement under the Action 14 Minimum Standard for element D.3, which is line with the above analysis. For one treaty identified above that does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer indicated that the relevant treaty provision will be modified by the Multilateral Instrument to be in line with this element, which is line with the above analysis. Furthermore, the third peer mentioned that it has ongoing negotiations with Serbia to enter into a new tax treaty, since currently the treaty with the former Socialist Federal Republic of Yugoslavia is still being applied. The third peer did not provide input in relation to element D.3.

### ***Recent developments***

#### *Bilateral modifications*

216. Serbia signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Only one of these treaties has entered into force. Both treaties include a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

#### *Multilateral Instrument*

217. Serbia signed the Multilateral Instrument, for which it deposited its instrument of ratification on 5 June 2018. The Multilateral Instrument has for Serbia entered into force on 1 October 2018.

218. 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, 2017) – 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, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c),

reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

219. With regard to the nine tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions for Articles 9(1) and 7(2), Serbia listed all of them as covered tax agreements under the Multilateral Instrument and for all of them made, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). All of the relevant nine treaty partners are signatories to the Multilateral Instrument but two did not list their treaty with Serbia as a covered tax agreement. All of the remaining seven treaty partners made a notification under Article 16(6)(c)(ii) as well.

220. Of the seven treaty partners mentioned above, six have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for these treaties between Serbia and the relevant treaty partners, and therefore has modified these treaties to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining treaty, the instrument will, upon entry into force for this treaty, modify it to include this equivalent.

#### *Other developments*

221. The two remaining tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and that will not be modified by the Multilateral Instrument, concern treaties signed by either former “Serbia and Montenegro” or the former “Socialist Federal Republic of Yugoslavia,” which Serbia continues to apply to the relevant two jurisdictions, there is no need for bilateral negotiations. However, Serbia reported that negotiations are pending with one of these treaty partners.

#### *Peer input*

222. Of the peers that provided input during stage 2, none provided input in relation to their tax treaty with Serbia.

#### *Anticipated modifications*

223. Serbia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives in all of its future tax treaties.

## Conclusion

	Areas for improvement	Recommendations
[D.3]	<p>Nine out of 63 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Six have been modified by the Multilateral Instrument to include the required provision.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaty concerned.</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are ongoing with one treaty partner whereas no actions have been taken nor are planned to be taken as regards the other treaty.</li> </ul>	<p>As the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions and that will not be modified via the Multilateral Instrument are treaties signed by the former “Serbia and Montenegro” or the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to Sweden and Switzerland, Serbia should ensure that, once it enters into negotiations with the jurisdiction for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions. Negotiations are ongoing with one of the concerned treaty partners. In that regard, Serbia should, in such negotiations, ensure the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>

## Note

1. These 63 treaties include the treaties signed by the former “Serbia and Montenegro,” former “Federal Republic of Yugoslavia” or the former “Socialist Federal Republic of Yugoslavia” that Serbia continues to apply to the relevant treaty partners.

## Reference

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

## Summary

	Areas for improvement	Recommendations
<b>Part A: Preventing disputes</b>		
[A.1]	-	-
[A.2]	-	-
<b>Part B: Availability and access to MAP</b>		
	<p>One out of 63 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to or as amended by the Action 14 final report (OECD, 2015b), and provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty is expected to be modified by the Multilateral Instrument to include Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) but not as regards the first sentence.</p>	<p>As the treaty that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), is the treaty signed by the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to Italy, Serbia should ensure that, once it enters into negotiations with the treaty partner, it includes the required provision. This concerns a provision equivalent to Article 25(1) of the OECD Model Tax Convention either</p> <ul style="list-style-type: none"> <li>a. as amended in the Action 14 final report (OECD, 2015b); or</li> <li>b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision.</li> </ul>
[B.1]	<p>Two out of 63 tax treaties do not contain the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017). These treaties will not be modified by the Multilateral Instrument to include the required provision.</p>	<p>As the treaties that will not be modified by the Multilateral Instrument to include the equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), are treaties signed by the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to France and Sweden, Serbia should ensure that, once it enters into negotiations with these treaty partners, it includes the required provision. This concerns a provision equivalent to Article 25(1) of the OECD Model Tax Convention either</p> <ul style="list-style-type: none"> <li>a. as amended in the Action 14 final report; or</li> <li>b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.</li> </ul>
	<p>Where tax treaties do not include a time limit for submission of a MAP request, applicable rules under domestic legislation may lead to a filing period of less than three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>	<p>Serbia should ensure that where its domestic time limits apply for filing of MAP requests, in the absence of a provision hereon in its tax treaties, such time limits do not prevent taxpayers from having access to MAP if a request thereto is made within a period of three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.</p>

	Areas for improvement	Recommendations
[B.2]	All 63 tax treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Serbia should, without further delay, introduce a documented notification and/or consultation process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Serbia should apply that process in practice for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-
[B.7]	-	-
[B.8]	-	-
[B.9]	-	-
[B.10]	-	-
<b>Part C: Resolution of MAP cases</b>		
[C.1]	-	-
[C.2]	-	-
[C.3]	While Serbia closed MAP cases on an average of 10.10 months (which is within the pursued average for resolving MAP cases received on or after 1 January 2018), its MAP inventory increased since 1 January 2018 and not many cases have been resolved during this period. Further, Serbia's competent authority has been unable to provide position papers for some of its pending MAP cases.	Serbia should closely monitor whether the available resources for its competent authority function are adequate to ensure that current pending and future MAP cases are resolved in a timely, efficient and effective manner.
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
<b>Part D: Implementation of MAP agreements</b>		
[D.1]	As will be discussed under element D.3 not all of Serbia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). 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 time limits of five/ten years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Serbia's relevant tax treaty, prevent the implementation of a MAP agreement, Serbia should follow its stated intention to put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Serbia should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	<p>Nine out of 63 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both alternative provisions provided for in Article 9(1) and Article 7(2). Of these nine treaties:</p> <ul style="list-style-type: none"> <li>• Six have been modified by the Multilateral Instrument to include the required provision.</li> <li>• One is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaty concerned.</li> <li>• Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are ongoing with one treaty partner whereas no actions have been taken nor are planned to be taken as regards the other treaty.</li> </ul>	<p>As the two treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or the alternative provisions and that will not be modified via the Multilateral Instrument are treaties signed by the former “Serbia and Montenegro” or the former Socialist Federal Republic of Yugoslavia that Serbia continues to apply to Sweden and Switzerland, Serbia should ensure that, once it enters into negotiations with the jurisdiction for which it applies that treaty, it includes the required provision or be willing to accept the inclusion of both alternative provisions. Negotiations are ongoing with one of the concerned treaty partners. In that regard, Serbia should, in such negotiations, ensure the inclusion of the required provision or be willing to accept the inclusion of both alternative provisions.</p>







Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Article 25(3) of the OECD MTC	Arbitration									
	B.1	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6										
Belgium	Y	N/A	Y	N/A	i	Y	Y*	Y*	Y*	Y*	N									
Bosnia and Herzegovina	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Bulgaria	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Canada	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
China (People's Republic of)	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Croatia	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Cyprus	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Czech Republic	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Denmark	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Egypt	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Estonia	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Finland	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
France	Y	N/A	Y	N/A	i	Y	Y*	Y*	Y*	Y*	N									
Georgia	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Germany	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Greece	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Hong Kong, China	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
Hungary	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									
India	Y	N/A	Y	N/A	i	Y	Y	Y	Y	Y	N									

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Arbitration
	Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence?	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	
Indonesia	Y	N/A	O	Y*	N/A	Y	i	Y	Y*	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Iran	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Israel	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Italy	Y	N/A	N	ii*	2-years	i**	i	i**	N*	Y	Y	N*	Y	Y	Y	Y	N*	Y	N
Japan	N	21-Jul-20	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kazakhstan	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea (Democratic People's Republic of)	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Korea	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Kuwait	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Latvia	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Libya	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Lithuania	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Luxembourg	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Malta	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Moldova	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Montenegro	Y	N/A	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Morocco	N	6-Jun-13	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Netherlands	Y	N/A	O	ii	5-years	i***	i	Y	Y*	Y	Y	Y*	Y	Y	Y	Y	Y	Y	N

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6	Article 25(2) of the OECD MTC	Article 25(3) of the OECD MTC	Arbitration						
		Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)													
North Macedonia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Norway	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Pakistan	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Poland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Qatar	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Romania	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Russia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
San Marino	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovak Republic	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Slovenia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Spain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sri Lanka	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Sweden	Y	N	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Switzerland	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Tunisia	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Turkey	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ukraine	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Arab Emirates	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
United Kingdom	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Viet Nam	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N

*Legend*

E*	The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
E**	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
O*	The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
Y*	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
Y**	The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.
Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
I*/II*/IV*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
I**/IV**/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
I***	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

## Annex B

### MAP statistics reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for pre-2018 cases

2018 MAP Statistics													
Category of cases	No. of pre-2018 cases in MAP inventory on 1 January 2018	Number of pre-2018 cases closed during the reporting period by outcome										No. of pre-2018 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2018 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	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	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	2	0	0	0	0	0	0	0	0	0	0	2	n.a.

Notes: Serbia's inventory of pre-2018 attribution/allocation cases and other cases have both been increased by one case as Serbia was informed in 2019 by its treaty partner that a case recorded as a post-2017 case was received prior to 1 January 2018. The 2019 and 2020 statistics were submitted accordingly.

2019 MAP Statistics													
Category of cases	No. of pre-2018 cases in MAP inventory on 1 January 2019	Number of pre-2018 cases closed during the reporting period by outcome										No. of pre-2018 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2018 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	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	1	0	0	0	1	0	0	0	0	0	0	0	20.68
Others	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	2	0	0	0	1	0	0	0	0	0	0	1	20.68

2020 MAP Statistics													
Category of cases	No. of pre-2018 cases in MAP inventory on 1 January 2020	Number of pre-2018 cases closed during the reporting period by outcome										No. of pre-2018 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing pre-2018 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	1	0	0	0	0	0	0	0	0	0	0	1	n.a.



## Annex C

### MAP statistics reporting for the 2018, 2019 and 2020 Reporting Periods (1 January 2018 to 31 December 2020) for post-2017 cases

2018 MAP Statistics														
Category of cases	No. of post-2017 cases in MAP inventory on 1 January 2018	No. of post-2017 cases started during the reporting period	Number of post-2017 cases closed during the reporting period by outcome							No. of post-2017 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2017 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	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	1	0	0	0	0	0	0	0	0	0	0	1	n.a.

Notes: Serbia's inventory of post-2017 attribution/allocation cases and other cases have both been decreased by one case as Serbia was informed in 2019 by its treaty partner that a case recorded as a post-2017 case was received prior to 1 January 2018. The 2019 and 2020 statistics were submitted accordingly.

2019 MAP Statistics														
Category of cases	No. of post-2017 cases in MAP inventory on 1 January 2019	No. of post-2017 cases started during the reporting period	Number of post-2017 cases closed during the reporting period by outcome							No. of post-2017 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2017 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	1	2	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	1	3	0	0	0	0	0	0	0	0	0	0	4	n.a.

2020 MAP Statistics														
Category of cases	No. of post-2017 cases in MAP inventory on 1 January 2020	No. of post-2017 cases started during the reporting period	Number of post-2017 cases closed during the reporting period by outcome								No. of post-2017 cases remaining in on MAP inventory on 31 December 2020	Average time taken (in months) for closing post-2017 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	3	1	0	0	1	0	0	0	0	0	0	0	3	0.62
Others	1	1	0	0	0	1	0	0	0	0	0	0	1	9.00
Total	4	2	0	0	1	1	0	0	0	0	0	0	4	4.81



## *Glossary*

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
<b>MAP Guidance</b>	Explanation on the mutual agreement procedure under international treaties for the avoidance of double taxation
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Pre-2018 cases</b>	MAP cases in a competent authority’s inventory that are pending resolution on 31 December 2017
<b>Post-2017 cases</b>	MAP cases that are received by a competent authority from the taxpayer on or after 1 January 2018
<b>Statistics Reporting Period</b>	Period for reporting MAP statistics that started on 1 January 2018 and that ended on 31 December 2020
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

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

# **Making Dispute Resolution More Effective – MAP Peer Review Report, Serbia (Stage 2)**

### **INCLUSIVE FRAMEWORK ON BEPS: ACTION 14**

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The 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 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Serbia.



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