

OECD releases Slovenia peer review report on implementation of BEPS Action 14 minimum standard

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Executive summary

On 14 February 2019, the Organisation for Economic Co-operation and Development (OECD) released the fifth batch of peer review reports relating to the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under BEPS Action 14 (Action 14) on improving tax dispute resolution mechanisms.¹ Slovenia was among the assessed jurisdictions in the fifth batch.²

Overall the report concludes that Slovenia meets almost all the elements of the Action 14 minimum standard. In the next stage of the peer review process, Slovenia's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored.

Detailed discussion

Background

In October 2016, the OECD released the peer review documents (i.e., the Terms of Reference and Assessment Methodology) on Action 14 on *Making Dispute Resolution Mechanisms More Effective*.³ The Terms of Reference translated the Action 14 minimum standard into 21 elements and the best practices into 12 items. The Assessment Methodology provided procedures for undertaking a peer review and monitoring in two stages. In Stage 1, a review is conducted of how a member of the Inclusive Framework (IF) on BEPS implements the

minimum standard based on its legal framework for Mutual Agreement Procedure (MAP) and how it applies the framework in practice. In Stage 2, a review is conducted of the measures the member of the IF on BEPS takes to address any shortcomings identified in Stage 1 of the peer review.

Both of these stages are desk-based and are coordinated by the Secretariat of the Forum on Tax Administration's (FTA) MAP Forum.⁴ In summary, Stage 1 consist of three steps or phases:

- (i) Obtaining inputs for the Stage 1 peer review
- (ii) Drafting and approval of a Stage 1 peer review report
- (iii) Publication of Stage 1 peer review reports

Input is provided through questionnaires completed by the assessed jurisdiction, peers (i.e., other members of the FTA MAP Forum) and taxpayers. Once the input has been gathered, the Secretariat prepares a draft Stage 1 peer review report of the assessed jurisdiction and sends it to the assessed jurisdiction for its written comments on the draft report. When a peer review report is finalized, it is sent for approval of the FTA MAP Forum and later to the OECD Committee on Fiscal Affairs' to adopt the report for publication.

Minimum standards peer review reports

The report is divided into four parts, namely:

- (i) Preventing disputes
- (ii) Availability and access to MAP
- (iii) Resolution of MAP cases
- (iv) Implementation of MAP agreements

Each part addresses a different component of the minimum standard.

The report includes 21 recommendations relating to the minimum standard. In general, the performance of Slovenia with regard to MAP has proven to be satisfactory in their respective reports. Overall, Slovenia meets almost all of the elements of the Action 14 minimum standard.

Preventing disputes

Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties

According to the report, jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavor to

resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties (i.e., Article 25(3) of the OECD Model Tax Convention, 2015 (OECD MTC)).

The report concludes that all of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD MTC. Therefore, this requires their competent authority to endeavor to resolve, by mutual agreement, any difficulties or doubts arising as to the interpretation or application of the tax treaty. Five peers confirmed that their treaty with Slovenia meets the requirements described above.

Slovenia noted that it will continue to seek to include Article 25(3), first sentence in all future tax treaties, which was also recommended to Slovenia.

Roll-back of bilateral APAs in appropriate cases

An advance pricing arrangement (APA) is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g., method, comparables and appropriate adjustment thereto) for the determination of the transfer pricing for those transactions over a fixed period of time.

The report states that jurisdictions with bilateral APA programs should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (e.g., statutes of limitations 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. The roll-back of an APA may be of aid to prevent or resolve potential transfer pricing disputes.

Slovenia reported that it has an APA program, which has been established by Articles 14.a to 14.g of the *Tax Procedure Act* (TPA) and its regulations.

In addition, Slovenia reported that there are no specific timelines for filing an APA request. Bilateral APAs are applicable from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement.

Furthermore, it is possible to obtain a roll-back of bilateral APAs, even if specific information on a roll-back of APAs is not provided in the TPA and regulations.

Slovenia reported that it has not received any requests for a bilateral APA since 1 January 2016. All peers that provided input reported that they have not received any bilateral APA requests concerning Slovenia.

Slovenia indicated that it does not anticipate any modifications in relation to roll-backs of APAs. Moreover, the report states that even though Slovenia is in theory able to provide for roll-back of bilateral APAs, it was not possible at this stage to evaluate the effective implementation of this element in practice since Slovenia did not receive any request for roll-back of bilateral APAs during the Review Period.

Availability and access to MAP

1) Article 25(1) of the OECD MTC in tax treaties

According to the report, jurisdictions should ensure that their tax treaties contain a MAP provision.

1.1) Article 25(1), first sentence of the OECD MTC

The report states that out of Slovenia's 61 tax treaties, 57 contain a provision equivalent to Article 25(1), first sentence, of the OECD MTC as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report*, allowing taxpayers to submit a MAP request to the competent authority.

In addition, none of Slovenia's tax treaties contains a provision equivalent to Article 25(1), first sentence, of the OECD MTC, as changed by the Action 14 final report and allowing taxpayers to submit a MAP request to the competent authority of either state.

The remaining four treaties are considered not to have the full equivalent of Article 25(1), first sentence, of the OECD MTC, as it read prior to the adoption of the Action 14 final report, since taxpayers are not allowed to submit a MAP request in the state of which they are a nonresident national where the case comes under the non-discrimination article.

Nevertheless, two of those four treaties are considered to be in line with this for the following reasons:

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

For the remaining two treaties, the non-discrimination provision is almost identical to Article 24(1) of the OECD MTC and applies both to nationals that are and are not resident of one of the Contracting States. The omission of

the full text of Article 25(1), first sentence, of the OECD MTC is therefore not clarified by the absence of or a limited scope of the non-discrimination provision.

Based on the report, Slovenia signed the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI), and on 22 March 2018 deposited its instrument of ratification, which among others, allows the submission of MAP requests to the competent authority of either Contracting State (Article 16(4)(a)(i)).

Moreover, Slovenia reserved 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. With this reservation, Slovenia declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the MLI, contain a provision equivalent to Article 25(1), first sentence, of the OECD MTC as it read prior to the adoption of the Action 14 final report.

The two treaties identified as not including the equivalent of Article 25(1), first sentence, of the OECD MTC as it read prior to the adoption of the Action 14 final report, will therefore not be modified via the MLI.

1.2) Article 25(1), second sentence of the OECD MTC

Based on the report, 56 of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(1), second sentence, of the OECD MTC, which allows 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.

The remaining five tax treaties that do not contain such a provision can be categorized as: (i) no filing period for a MAP request (two tax treaties); (ii) filing period less than three years for a MAP request (two years) (two tax treaties); and (iii) filing period more than three years for a MAP request (five years) (one tax treaty).

Slovenia's MAP guidance indicates that in the absence of a filing period in the tax treaty, a request must be submitted as soon as possible after the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty. The MAP guidance also specifies how to determine the start date for the purpose of computation of the statute of limitations. According to the report, when a tax audit is made in Slovenia, the MAP guidance clarifies that the start date is the date of the notice of the assessment. Where

the MAP request does not follow a tax assessment notice given by Slovenia's tax authority, the application of Slovenia's domestic time limit bears the risk that taxpayers cannot file a MAP request within a period of at least three years as from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty.

Regarding the two tax treaties mentioned above that contain a filing period for MAP requests of less than three years, Slovenia listed both treaties as a covered tax agreement under the MLI and made a notification that they do not contain a provision described in Article 16(4)(a)(ii).

In addition, Slovenia reported that it will seek to include the equivalent of Article 25(1) of the OECD MTC in all of its future treaties, as it read prior to the adoption of the Action 14 final report.

Based on the report, five peers reported that their treaty with Slovenia meets this element of the Action 14 minimum standard. One peer, whose treaty with Slovenia does not contain the equivalent of Article 25(1) of the OECD MTC as it read prior to the adoption of the Action 14 final report and will not be modified by the MLI, reported that its treaty with Slovenia does not fully adhere to the Action 14 minimum standard and bilateral solutions will be explored to the extent the deficiencies are not remedied through application of the MLI. The peer whose treaty contains a filing period of two years for a MAP request commented that the signing of the MLI confirms the actual intention of this peer and Slovenia to achieve the compliance of their treaty with the Action 14 minimum standard.

Slovenia received recommendations for the two treaties that will not be modified by the MLI that it should follow up on the bilateral discussions currently underway to replace one of these treaties and request the inclusion of the required provision via bilateral negotiations for the other treaty. Moreover, Slovenia should maintain its stated intention to include Article 25(1) of the OECD MTC as it read prior to the adoption of the Action 14 final report in all future tax treaties.

Slovenia should also ensure that where its domestic time limits apply for filing of MAP requests, 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.

2) Submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduction of a bilateral consultation or notification process

According to the report, jurisdictions should ensure that 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. 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).

Slovenia's MAP guidance contains the description of a notification and consultation process which allows the other competent authority concerned to provide its views on the case when Slovenia's competent authority considers the objection raised in the MAP request not to be justified.

Based on the report, Slovenia's 2016 and 2017 MAP statistics reflect that in two MAP cases the outcome reported was an objection not justified. In this respect, Slovenia reported that the other competent authorities concerned were notified and consulted.

In the report, one peer reported that its competent authority indeed received notification of a case where Slovenia's competent authority considered the objection raised in a MAP request as not justified. The other relevant peer also reported that its competent authority was notified by Slovenia's competent authority of the case closed with the outcome "objection not justified." This peer mentioned that even after receiving the notification from Slovenia specifying that the MAP request was incomplete and being requested to provide additional information more than once by Slovenia's competent authority, the taxpayer did not provide additional information.

Slovenia indicated that it does not anticipate any modifications in this sense. Based on the report, it follows that Slovenia should continue to apply its documented notification and/or consultation process for cases in which its competent authority considered the objection raised in a MAP request is considered not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD MTC as amended by the Action 14 final report.

3) Access to MAP in transfer pricing cases

According to the report, 47 of Slovenia's 61 tax treaties contain a provision equivalent to Article 9(2) of the OECD MTC requiring their state to make a correlative adjustment if a transfer pricing adjustment is imposed by the treaty partner. Furthermore, four do not contain the above-mentioned provision. The report states that the other 10 treaties contain a provision that is based on Article 9(2) of the OECD MTC but few deviations were found.

Regarding the provision at hand, Slovenia reserves the right to specify that a correlative adjustment will be made only if Slovenia considers that the primary adjustment is justified. This addition to the tax treaty would neither affect access to MAP nor is it in conflict with the Action 14 minimum standard.

Slovenia's MAP guidance clarifies that transfer pricing cases are covered by MAP and Slovenia indicated that it will always provide access to MAP for transfer pricing cases, regardless of whether Article 9(2) of the OECD MTC is contained in its tax treaties. This applies to all 61 of Slovenia's tax treaties, except for 1 which does not contain a provision on transfer pricing. Slovenia further reported that it is willing to grant corresponding adjustments through MAP if it considers that the primary adjustment is justified.

The report states that since 1 January 2016, Slovenia has received three MAP requests from taxpayers regarding transfer pricing cases. It has not denied access to MAP on the basis that the relevant cases were transfer pricing cases.

Based on the report, Slovenia is in favor of including Article 9(2) of the OECD MTC in its tax treaties where possible and it will seek to include this provision in all of its future tax treaties. Slovenia also signed the MLI, and on 22 March 2018 deposited the instrument of its ratification.

Article 17(1) 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 MTC. 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 MLI.

In summary, Slovenia has thus far granted access to MAP in eligible transfer pricing cases, and it is recommended that Slovenia continue granting access for these cases.

4) Access to MAP in relation to the application of anti-abuse provisions

In general, 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.

None of Slovenia's 61 tax treaties nor the domestic law and/or administrative processes of Slovenia include a provision allowing its competent authority to limit access to MAP for the above mentioned cases. However, in Slovenia's MAP guidance it is not specifically addressed whether taxpayers have access to MAP.

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

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

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

Slovenia indicated that it does not anticipate any modifications regarding this subject.

5) Access to MAP in cases of audit settlements

Taxpayers should have access to the MAP in cases where double taxation is not fully eliminated by agreeing on audit settlements (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).

According to the report, Slovenia's domestic law does not provide for a mechanism that allows taxpayers to enter into an audit settlement with the tax administration.

It follows from the report that Slovenia has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration since 1 January 2016. This can be explained by the fact that audit settlements are not available in Slovenia.

In the report, Slovenia indicated that it does not anticipate any modifications in relation to this subject.

6) Access to MAP if required information is submitted

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, in order to resolve cases where there is taxation not in accordance with the provisions of the tax treaty. Access to MAP will be facilitated when such required information and documentation is made available publicly.

According to the report, Slovenia's MAP guidance also indicates that if certain elements of the MAP request are lacking or additional information or documentation is required, the competent authority invites the applicant to complete it.

The applicant may notify the competent authority of the reasons if it is unable to submit additional information or documentation within the time limit specified in the invitation for substantive reasons and can ask for an extension of the time limit. If the applicant fails to submit the additional information or documentation even after such an additional time limit, the MAP request may be rejected.

The report states that Slovenia limited access to MAP in one case during the review period on the grounds that insufficient information was provided. In this regard, Slovenia reported that its competent authority specifically requested certain information and documentation from the taxpayer, who did not respond to the request.

In relation to this, all peers that provided input indicated they were not aware of a limitation of access to MAP by Slovenia since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

In the report is indicated that Slovenia does not anticipate any modifications in relation to this subject. Since Slovenia has thus far not limited access to MAP in eligible cases

when taxpayers have complied with Slovenia's information and documentation requirements for MAP requests, it is recommended it continues this practice.

7) Article 25(3), second sentence, of the OECD MTC 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 (i.e., the second sentence of Article 25(3) of the OECD MTC).

Out of Slovenia's 61 tax treaties, 59 contain a provision equivalent to Article 25(3), second sentence, of the OECD MTC. The remaining two treaties do not contain any provision based on this article.

As mentioned before, Slovenia signed the MLI, and on 22 March 2018 deposited its instrument of ratification. Article 16(3), second sentence will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD MTC. The report states that in the absence of this equivalent, Article 16(4)(c)(ii) of the MLI 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 MLI and insofar as both notified, the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD MTC.

Slovenia listed one of the two tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD MTC, as a covered tax agreement under the MLI and made a notification that it does not contain a provision described in Article 16(4)(c)(ii). The report states that the relevant treaty partner, being a signatory to the MLI, listed its treaty with Slovenia, and also made such notification. Therefore, at this stage, one of the two tax treaties identified above will be modified by the MLI.

According to the report, the other tax treaty will not be modified by the MLI, as this treaty has a limited scope and including Article 25(3), second sentence, in such treaty would contradict the treaty's purpose. According to Slovenia, when jurisdictions agree on a comprehensive treaty, the intention is to cover all or close to all cases.

In the report it is stated that Slovenia will seek to include Article 25(3), second sentence, of the OECD MTC in all of its future comprehensive tax treaties.

Five peers provided input that their treaty with Slovenia meets this element of the Action 14 minimum standard. The peers relevant to the two treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD MTC did not provide input.

Since the one treaty that does not contain the equivalent of Article 25(3), second sentence, of the OECD MTC will not be modified by the MLI, it is recommended that Slovenia requests the inclusion of the required provision via a bilateral negotiation.

8) Clear and comprehensive MAP guidance

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

Slovenia's rules, guidelines and procedures are included in specific MAP guidelines (MAP guidance), which are available at: www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Dokumenti/MAPnavodilo-koncno.pdf (accessed 19 January 2019).

The above MAP guidance was published in April 2018 and relates to MAP under both Slovenia's tax treaties and the European Union (EU) Arbitration Convention.

Slovenia's MAP guidance, among other, contains information on contact information of the competent authority or the office in charge of MAP cases, the manner and form in which the taxpayer should submit its MAP request, the specific information and documentation that should be included in a MAP request, non-suspension of tax collection and such.

Based on the report, MAP guidance of Slovenia also includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice.

On the other hand, some subjects are not specifically discussed in Slovenia's MAP guidance. This concerns information on the applicability of anti-abuse provisions and bona fide foreign-initiated self-adjustments, whether taxpayers can request for the multi-year resolution of recurring issues through MAP and the consideration of interest and penalties in the MAP.

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

Based on the report, Slovenia should consider including information on the following:

- Whether MAP is available in cases of the application of anti-abuse provisions, and 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 the MAP

9) MAP guidance available and easily accessible and publication of MAP profile

According to the report, 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.

The MAP guidance of Slovenia is published and can be found at: www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Davki_in_carine/Dokumenti/MAPnavodilo-koncno.pdf (accessed 19 January 2019).

As mentioned before, this guidance was published in April 2018 and can be easily found on the website of Slovenia's Ministry of Finance by searching the term, "mutual agreement."

Meanwhile, the MAP profile of Slovenia is published on the website of the OECD. According to the report, the MAP profile is complete and often with detailed information. It also includes external links which provide extra information and guidance where appropriate.

It is recommended that Slovenia ensures that its future updates to the MAP guidance continue to be publicly available and easily accessible and that its MAP profile published on the shared public platform is updated if needed.

10) Clarify in MAP guidance that audit settlements do not preclude access to MAP

Based on the report, jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP.

As already mentioned, according to the Slovenia's domestic law, taxpayers and the tax administration cannot enter into audit settlements. Therefore, there is no need to address in Slovenia's MAP guidance that audit settlements do not preclude access to MAP.

Slovenia does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer. Consequently, there is no need to address in Slovenia's MAP guidance the effects of such process with respect to MAP.

All peers that provided input indicated that they were not aware of the existence of an administrative or statutory dispute settlement/resolution process in Slovenia, which is understandable as such process is not in place in Slovenia. Since Slovenia does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need to notify treaty partners of such process.

In the report it is indicated that Slovenia does not anticipate any modifications in relation to this matter.

Resolution of MAP cases

1) Article 25(2), first sentence, of the OECD MTC in tax treaties

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

All of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD MTC which requires its competent authority 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, when the objection raised is considered justified and no unilateral solution is possible.

Five peers indicated that their treaty with Slovenia meets the requirements under this element.

According to the report, Slovenia will continue to seek to include Article 25(2), first sentence in all of its future tax treaties.

2) Seek to resolve MAP cases within a 24-month average timeframe

According to the report, it is important that MAP cases are resolved swiftly, as double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions. Also, the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers. On average, a period of 24 months is considered as an appropriate time period to resolve MAP cases.

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

As for pre-2016 cases Slovenia reported that on average it needed 21.6 months to close MAP cases, which only concerns other cases.

For post-2015 cases Slovenia reported that on average it needed 6.81 months to close MAP cases, which only concerns other cases. It should be noted that the period for assessing post-2015 MAP statistics only comprises 24 months.

Based on the report, two peers noted that there were no impediments observed which led to unnecessary delays in finding a resolution to a MAP case. Another peer considered that Slovenia's competent authority replied relatively quickly to its position paper, and reported that the relevant case was closed without any further discussions. Finally, one peer reported that one attribution/allocation case has been initiated and not yet closed. This peer however added that the relationship has been professional and efficient, with cases being progressed and letters responded to quickly.

Going forward, Slovenia's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, to provide that treaty-related disputes will be resolved within a specified timeframe.

3) Provide adequate resources to the MAP function

Based on the report, to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner, adequate resources including personnel, funding and training, are necessary.

In Slovenia, the competent authority function for handling MAP cases is performed by the Ministry of Finance, specifically by the Directorate for the System of Tax, Customs and Other Public Finance Revenues. The competent authority function within the Ministry of Finance consists of four people. One of them, being the case handler, works predominantly for MAP, while others deal partly with MAP cases along with other tasks such as treaty negotiations and drafting of taxation regulations. The other three people assist or act as a second case handler for the relevant case.

From the report it follows that the main case handler has both transfer pricing and other skills. Moreover, among the three other people involved, two of them primarily work on other cases and one person with transfer pricing skills primarily works on those cases. Three members of the staff have several years of experience in the field of international taxation, including handling MAP cases. One person who had worked in the field in the tax authority for several years joined the competent authority in September 2016 and has less experience.

On the other hand, APA cases are handled by a separate unit, within the department of the General Financial Office within the Financial Administration and consists of five people, who all have previous experiences in transfer pricing audits.

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

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

As already mentioned, Slovenia closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average time. Nevertheless, none of eight attribution/allocation cases were closed during the Statistical Reporting Period.

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

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

Based on the report, most peers that provided input noted that they have very limited experiences in handling MAP cases with Slovenia.

Also based on the report, Slovenia indicated that it does not anticipate any modifications in relation to this subject.

It is recommended that Slovenia continues to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

4) Ensure the staff in charge of MAP have the authority to resolve cases in accordance with the applicable tax treaty

Based on the report, 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.

According to the report, members of the competent authority team are independent in preparing and issuing position papers. Slovenia's competent authority collects the necessary information from the tax authority in order to be able to discuss the case, but further specified that auditors

who made the adjustment at issue are not further involved in the MAP process and do not attend competent authority meetings.

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

From the report it follows that Slovenia does not anticipate any modifications in relation to this matter. It is recommended that Slovenia continues to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Slovenia would like to see reflected in future amendments to the treaty.

5) Use appropriate performance indicators for the MAP function

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. Each case should be considered on its individual merits and resolved in a principled and consistent manner.

From the report it follows that Slovenia's competent authority does not have formally established performance indicators. There are also no predetermined targets on the number of MAP cases handled and closed or on the amount of tax sustained. Slovenia however clarified that its competent authority strives to resolve more (or at least as many) MAP cases per year than the number of cases that started during that year and although no formally established performance indicators exist, Slovenia uses them in practice through the annual evaluation of the performance of the staff applicable to all public servants. MAP staff can be evaluated using information on the number of ongoing and resolved MAP cases/requests and their duration. Moreover, consistency is checked as the position paper is always

reviewed by another staff member before it is finalized, therefore providing that the MAP cases can be resolved correctly, consistently and in a timely manner.

Based on the report, staff in charge of MAP are not evaluated on the basis of the material outcome of MAP discussions.

Peers generally provided no specific input on this element of the Action 14 minimum standard. One peer particularly noted that it is not aware of the use of performance indicators by Slovenia that are based on the amount of sustained audit adjustments or maintaining a certain amount of tax revenue.

Slovenia indicated that it does not anticipate any modifications in relation to this subject. It is recommended for Slovenia to continue with the use of appropriate performance indicators.

6) Provide transparency with respect to the position on MAP arbitration

Based on the report, it is important that jurisdictions are transparent on their position on MAP arbitration in order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions. Thus, 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.

Slovenia reported that it has no domestic law limitations for including MAP arbitration in its tax treaties. The report states that Slovenia's tax treaty policy is to include a mandatory and binding arbitration provision in its bilateral tax treaties, if so agreed with another Contracting State.

Slovenia is also a signatory to the EU Arbitration Convention and was a participant in the sub-group on arbitration as part of the group which negotiated the MLI. Regarding this, Slovenia also opted for part VI of the MLI, which includes a mandatory and binding arbitration provision. According to the Report, Slovenia's MAP guidance contains references to the EU Arbitration Convention and also clarifies that arbitration is also permissible under some international treaties for the avoidance of double taxation, if a MAP agreement is not reached.

Slovenia has incorporated an arbitration clause in 4 of its 61 treaties as a final stage to the MAP.

Addressing this element of the Action 14 minimum standard, peers provided no specific input.

Based on the Report, Slovenia does not anticipate any modifications in relation to this subject.

Implementation of MAP agreements

1) Implement all MAP agreements

From the report it follows that all MAP agreements should be implemented by the competent authorities concerned, in order to provide full certainty to taxpayers and the jurisdictions.

Based on the report, if a tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD MTC, Slovenia's domestic statute of limitations is overridden by the sentence and any MAP agreement shall be implemented notwithstanding any time limits under the domestic law of Slovenia. In the absence of such provision in the tax treaty, Slovenia reported that the implementation of the MAP agreement is subject to its domestic statute of limitations. In Slovenia, Articles 125, 126 and 126a of the *Tax Procedure Act* stipulate 5 years relative statute of limitations and 10 years absolute statute of limitations.

Implementation of MAP agreements is closely monitored by Slovenia's competent authority, which has a tracking system in place whereby it demands the tax authority to provide follow-up information on every agreement that has to be implemented.

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

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

The above three cases are pending as of the end of the Review Period and require implementation in Slovenia. According to the report, Slovenia's competent authority has already invited the taxpayers to submit amended tax returns to implement two of the agreements.

All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Slovenia.

Slovenia expressed that it mainly intends to address the issue of domestic statute of limitations by modifying its treaties. It is recommended that Slovenia implements all MAP agreements reached if the conditions for such implementation are fulfilled. Slovenia should also ensure that in the absence of the required provisions discussed above implementation of MAP agreements is not obstructed by time limits in its domestic law.

2) Implement all MAP agreements on a timely basis

To avoid delay in implementing MAP agreements, which may lead to adverse financial consequences for both taxpayers and competent authorities 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.

As discussed under the point above, Slovenia's MAP guidance contains references to the implementation of MAP agreements. Section 2.4 of the guidance states that once a MAP agreement is reached, the competent authority that initiated MAP informs the person submitting a MAP request of the content of the agreement, generally within one month after the agreement is concluded. If the case is related to transfer pricing, Slovenia's competent authority makes such a notification to the resident of Slovenia regardless of which state initiated the MAP.

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

Slovenia indicated that it does not anticipate any modifications in relation to this. It is recommended that Slovenia implements all MAP agreements reached on a timely basis if the conditions for such implementation are fulfilled.

3) Article 25(2), second sentence, of the OECD MTC in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

According to the report, it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned, in order to provide full certainty to taxpayers. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD MTC 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 the granting of MAP relief.

As discussed, Slovenia's domestic legislation includes a statute of limitations of 5 to 10 years for implementing MAP agreements, unless overridden by tax treaties or, if applicable, a MAP agreement is reached under the EU Arbitration Convention.

Currently, 55 out of Slovenia's 61 tax treaties contain a provision equivalent to Article 25(2), second sentence, of the OECD MTC that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in

their domestic law. Of the remaining six treaties, five treaties do not contain such equivalent or any of the alternative provisions, while one contains the alternative provision only in Article 9, setting a time limit for making transfer pricing adjustments.

Slovenia signed the MLI, and on 22 March 2018 deposited its instrument of ratification. Essentially, in the absence of equivalent of Article 25(2), second sentence, of the OECD MTC, Article 16(4)(b)(ii) of the MLI 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 MLI 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 MTC.

With respect to the six tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD MTC, Slovenia listed five of them as covered tax agreements under the MLI and for all, pursuant to Article 16(6)(c)(ii), it made a notification that they do not contain a provision described in Article 16(4)(b)(ii). Therefore, at this stage, two of the six tax treaties identified above will be modified by the MLI, upon entry into force for these treaties, to include the equivalent of Article 25(2), second sentence, of the OECD MTC.

According to the report, Slovenia intends to update the four tax treaties that will not be modified by the MLI via bilateral negotiations and it is already negotiating the replacement of an existing treaty with one of the relevant treaty partners. In addition, Slovenia reported it will seek to include Article 25(2), second sentence, of the OECD MTC or both alternatives in all of its future tax treaties.

Five peers indicated that their treaty with Slovenia meets the requirements under this subject.

Based on the report, for the six treaties identified that neither contain the equivalent of Article 25(2), second sentence, of the OECD MTC nor both alternatives, two relevant peers provided input. One reported that its treaty with Slovenia does not formally meet the requirements, but this peer is willing to accept the alternative provisions and it has submitted a draft of an amending protocol. The other relevant peer reported that its treaty with Slovenia does not fully adhere to the Action 14 minimum standard and that bilateral solutions will be explored.

It is recommended that Slovenia follows up on the bilateral discussions currently underway for two of the treaties and request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions for the remaining two treaties.

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

Next steps

Slovenia is already working to address deficiencies identified in its peer review and will now move on to Stage 2 of the process, where Slovenia's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored. Under the peer review program methodology, Slovenia will submit an update report to the Forum on Tax Administration's MAP Forum within one year of the OECD Committee on Fiscal Affairs' adoption of the Stage 1 peer review report.

Implications

In a post-BEPS world, where multinational enterprises (MNEs) face tremendous pressures and scrutiny from tax authorities, the release of Slovenia's peer review report represents the continued recognition and importance of the need to achieve tax certainty for cross-border transactions for MNEs. While increased scrutiny is expected to significantly increase the risk of double taxation, the fact that tax authorities may be subject to review by their peers should be seen by MNEs as a positive step to best ensure access to an effective and timely mutual agreement process.

Furthermore, the peer review for Slovenia provides insights to taxpayers on the availability and efficacy of MAP. With additional countries continuing to be reviewed, the OECD has made it known that taxpayer input continues to be welcomed on an ongoing basis.

With stakeholder feedback in mind, businesses are encouraged to share their views with the OECD on the peer review for Slovenia and any other jurisdictions, and to perhaps comment on whether the next iteration of the OECD's assessment of tax administration's MAP performance warrants greater feedback from taxpayers as the primary source. Feedback from the international tax community is the logical next step after peer review, which may help to further validate the current favorable result.

Endnotes

1. See EY Global Tax Alert, [*OECD releases fifth batch of peer review reports on Action 14*](#), dated 18 February 2019.
2. https://www.oecd-ilibrary.org/taxation/making-dispute-resolution-more-effective-map-peer-review-report-slovenia-stage-1_9789264309944-en;jsessionid=71nKno9q-N4D2aMQLGk4weJR.ip-10-240-5-107.
3. See EY Global Tax Alert, [*OECD releases BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review*](#), dated 31 October 2016.
4. <http://www.oecd.org/tax/forum-on-tax-administration/about/>.

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