



EUROPEAN COMMISSION
DIRECTORATE-GENERAL TAXATION
AND CUSTOMS UNION
Direct taxation, Tax Coordination, Economic Analysis and Evaluation
Direct Tax Policy and Cooperation

Brussels, March 2018
Taxud/D2

DOC: JTPF/XXX/2018/EN

EU JOINT TRANSFER PRICING FORUM

**Overview on numbers submitted on
Statistics on Pending Mutual Agreement Procedures (MAPs)
under the Arbitration Convention at the End of 2016**

Note from the Secretariat:

The document shows the current state of play as regards the Statistics on cases pending under the AC by the end of 2016.

The numbers available indicate the following

- the number of cases initiated (481/2=240) appears to be higher than the number of cases completed (314/2=157) resulting in a rise of inventory
- a significant number of cases (134/2 = 67) is pending longer than 2 years for other reasons
- a significant number of cases (63/2=32) have still to be sent to Arbitration although pending for 2 years

TABLE 1: STATISTICS ON THE FUNCTIONING OF THE ARBITRATION CONVENTION FOR REFERENCE YEAR 2016

Summary

Member State	Opening inventory on 01/01/2016	Cases initiated in 2016	Cases completed in 2016	Ending inventory on 31/12/2016	Average cycle time for cases completed in 2016 (in months)
	B	C	D	E	F
BE	68	15	20	63	32
BG	2	0	0	2	
CZ	13	8	3	18	32
DK	42	20	9	53	21
DE 2)	356	133	91	398	
EE	0	0	0	0	
IE	4	2	-	6	
EL	0	0	0	0	0
ES 3)	183	44	74	153	42
FR 4)	204	56	35	225	
IT 5)	364	108	19	453	
CY	0	0	0	0	
LV	3	1	0	4	
LT	2	2	1	3	
LU	11	7	1	17	
HU	9	1	0	10	
MT	0	0	0	0	
NL	64	16	7	73	29
AT 1)	44	3	9	38	36
PL	15	0	4	11	
PT	33	6	10	29	
RO	1	0	0	1	
SI	2	5	1	6	
SK	7	2	1	8	
FI	54	16	11	59	31
SE	54	20	10	64	30
UK	82	36	8	110	
TOTAL	1617	481	314	1804	

1)

1) Remark by Austria: Differences between the opening inventory of 2016 and the closing inventory of 2015: in Table 1, the number of cases initiated in 2015 is recorded as 0 for Austria in the published statistics for 2015. However, according to our records, 15 cases were initiated during this time. Moreover, the number of cases completed is recorded as 8, however, there were 6 cases completed in 2015. This brings the ending inventory of 2015 (and therefore the opening inventory of 2016) to 44 cases. This is also the number we recorded for this year's opening inventory in table 1.

2) Remark by Germany: Please note that the German competent authority (CA) internal case database does not allow to record "initiated" and "completed" dates following JTPF definitions (which are based on pre-2016 OECD definitions). Therefore the German CA can currently only provide statistics based on the "initiated" and "completed" dates used for internal purposes (the same standards as used for the pre-2016 cases in the German OECD statistics for 2016). Consequently, the "initiated" standard used in the reported statistics differs from JTPF definitions. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it is a request that already contains the necessary minimum information or not, which is earlier than under the JTPF definition of "initiated"). The "completed" standard used is largely in line with JTPF guidance. The deviating "initiated" definition results in a larger MAP case inventory and makes cases appear older than under JTPF definitions. This should be born in mind when comparing the German 2012-2016 Arbitration Convention figures with statistics provided by other countries. Due to the same issue, reporting cycle times following JTPF definitions and thus suitable for direct comparison is currently not feasible.

3) Remark by Spain: Note for the Secretariat: there are various mismatches between 2015 and 2016 Statistics. There has been a major change in the Competent Authority in charge of Transfer Pricing MAPs in Spain. There has been a new inventory check and the counting of cases has followed the more accurate a precise counting recommendations contemplated in Annex A (Counting of MAP cases) of the OECD "Note on Guidance/decisions on common issues relating to peer review and monitoring to ensure consistency in the review of assessed jurisdiction". Many cases, which had been historically thought as one single case (due to lack of guidance in this respect), are to be considered two or more cases as the request concerns many subsidiaries, for example.

4) Remark by France: there is a difference between the 2015-12-31 AC MAPs inventory and the 2016-01-01 opening inventory, which comes from a correction of the 2015 ending inventory, which should have been increased from this difference

5) Remark by Italy: Please, note that the Italian Competent Authority internal AC MAPs database does currently not allow to record "initiated" date following JTPF present definition. The "initiated" date in the Italian database is: a) the date when the Italian Competent Authority receives a request submitted by the taxpayer (regardless of whether it is a request that already contains the necessary minimum information - as stated under point 5a of the code of conduct - or not) or b) the date when the Italian Competent Authority receives the letter by the other Competent Authority (this is in case the AC MAP request is presented to the other Competent Authority). This definition makes cases appear older than under JTPF definition

Explanatory note:

Column B / Opening inventory on 01/01/2016: Enter in this column the number of pending AC MAP cases as on the first day of the reference year for which data is being provided, i.e. 01/01/2016. (The figures in this column will duplicate the "ending inventory" figures included in the respective column for the previous reference year.) The total number of pending AC MAP cases should be broken down according to the year in which these pending cases were initiated and reported in the appropriate row of the template. (see Column A: Year MAP cases were initiated). The reference year cell is blacked out, as 2016 cases could have only been initiated during the actual reference year, not before. A Competent Authority's (CA's) inventory would include both cases arising from a request submitted directly to that CA and cases arising from a request submitted by the taxpayer to another CA and subsequently presented by the latter CA to the former CA. As this would otherwise lead to double counting of cases in the overall statistics (e.g. total number of cases) the actual number of cases for year 2016 will be calculated by way of dividing the resulting total number of cases by 2.

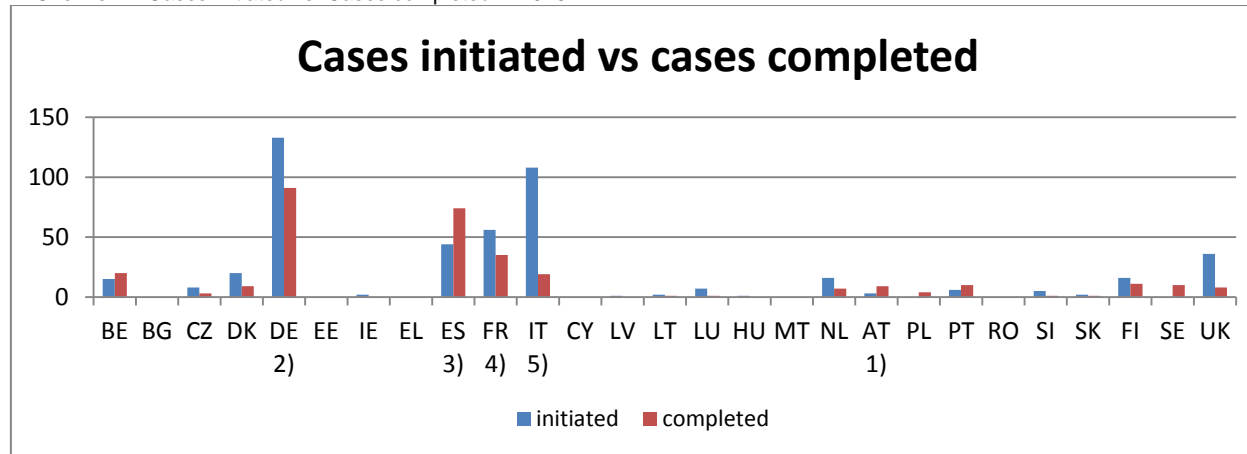
Column C / Cases initiated in 2016: Enter in this column the number of AC MAP cases initiated during the reference year. Note that it is only possible to enter data in this column in the row for the reference year for which statistics are being provided (the other rows in this column are blacked out), given that pending AC MAP cases initiated in earlier reference years should be reported in Column B. An "initiated" case is one that has been considered as well- founded by a competent authority on the basis of 6.3(g) of the CoC. By definition this column will include only cases initiated during the current reference year. A case initiated by the reporting CA, but rejected by the other CA has to be included in table 1. This column will include both cases arising from a request submitted directly to your CA and cases arising from a request submitted by the taxpayer to another CA and subsequently presented by the latter CA to the former CA.

Column D / Cases completed in 2016: Enter in this column the number of cases: (1) that have been resolved by mutual agreement (including arbitration) or by unilateral action on the part of the competent authority, where taxation not in accordance with Article 4 of the AC has been eliminated in line with Article 14 of the AC; (2) that have been withdrawn by the taxpayer; (3) that have been closed otherwise (e.g. final Court decision). A case shall be considered completed on the date the closing letters relating to the MAP have been exchanged or, in absence of closing letters, at the date the CAs closed the case during a bilateral meeting where there has been an agreement that the signed minutes close the case and no further closing letters will be exchanged. At this point, the only remaining action by the tax administration should be the processing of the result of the resolution, which should be accomplished fairly promptly (e.g. within 30 days).

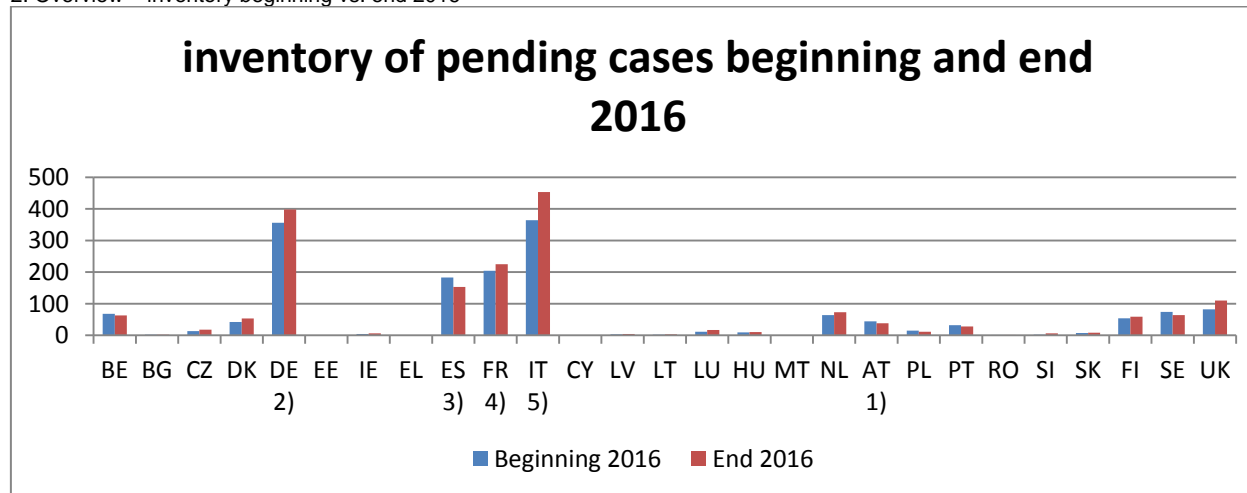
Column E / Ending inventory on 31/12/2016: Enter in this column the number of pending AC MAP cases as on 31/12/2016. The total number of pending MAP cases should be broken down according to the year in which these pending cases were initiated and reported in the appropriate row of the template. The figures presented here will be reported in the "opening inventory" column of the questionnaire for the next reference year. The figures in this column are obtained by adding the figures in columns B and C and by subtracting the figures in column D.

Column F / Average cycle time for cases completed during the reference year (in months): Enter in this column the average time for AC MAP cases to be completed. This average is computed with reference to the year in which AC MAP cases were initiated (i.e. the cycle time is for AC MAP cases initiated in a particular year) and reported in the appropriate row of the template. The average is computed by aggregating the number of months it took to complete each AC MAP case during the reference year. The second step is to divide this aggregated number of months by the total number of such completed AC MAP cases. The result is the average cycle time of a MAP case in months - that is, the average number of months to complete an AC MAP case.

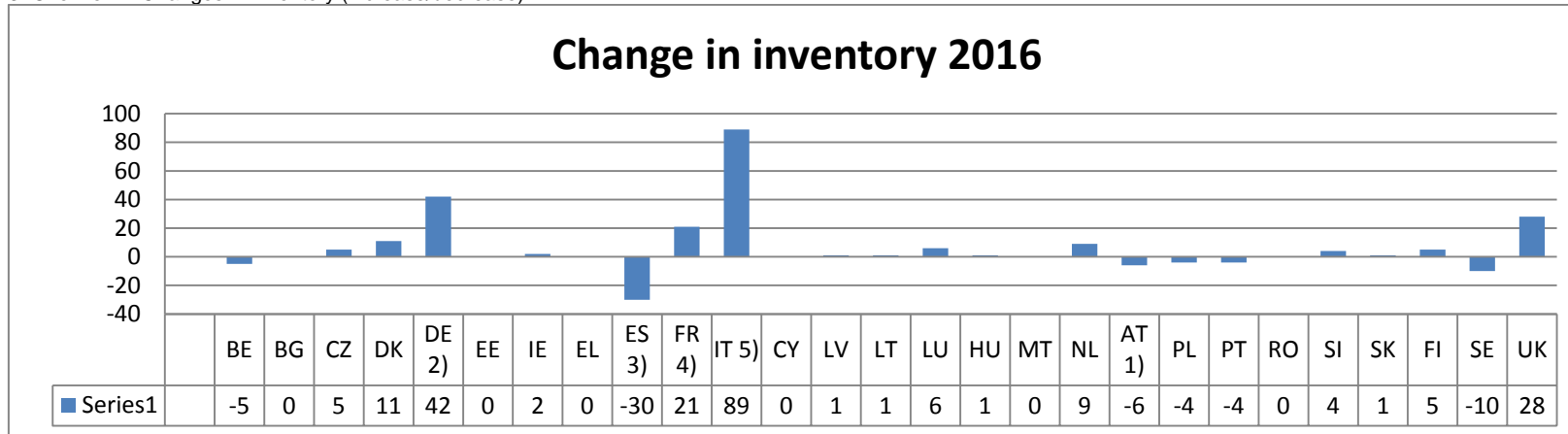
1. Overview – Cases initiated vs. Cases completed in 2016



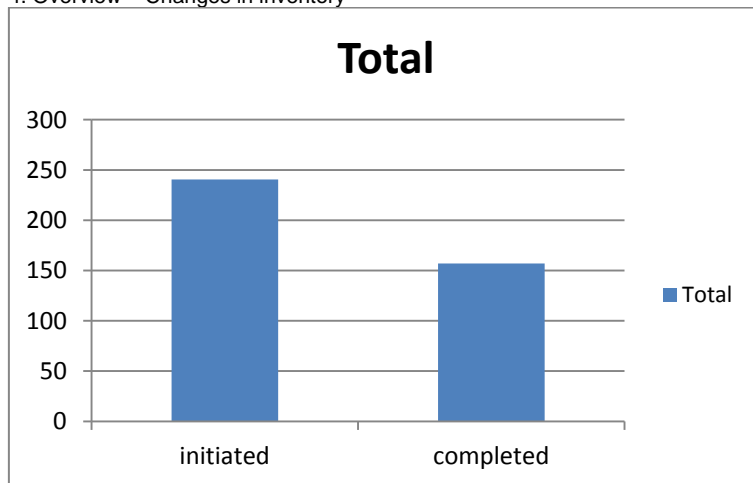
2. Overview – inventory beginning vs. end 2016



3. Overview – Changes in inventory (increase/decrease)



4. Overview – Changes in inventory



5. Development initiated vs. completed cases

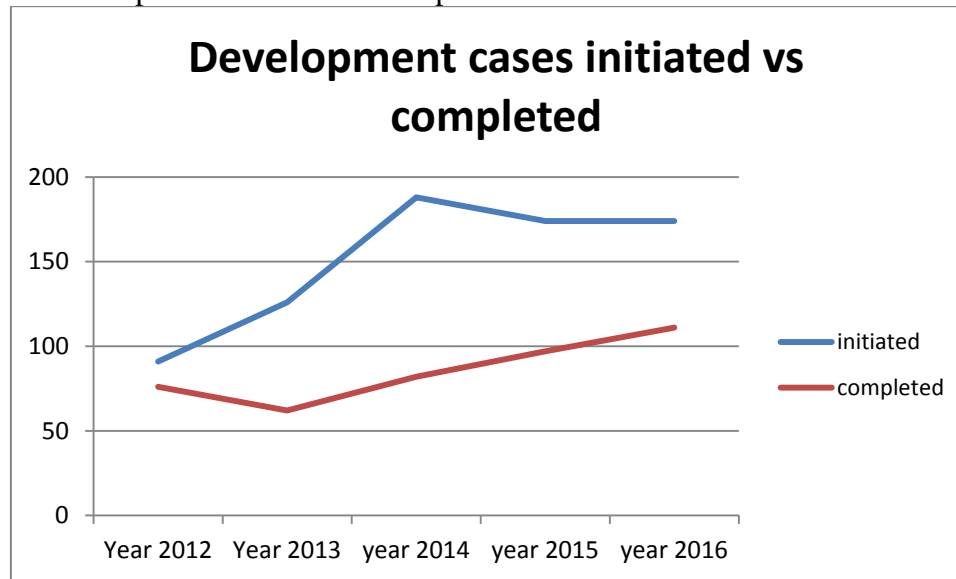


TABLE 2: ANALYSIS OF PENDING CASES 2 YEARS AFTER THE DATE A CASE WAS INITIATED AS AT 31/12/2016

Summary

Member State	Number of cases	Reasons why cases are pending 2 years after initiation						
		2-year point not reached due to Coc 5 (b) (i)	cases pending before court	Time limit waived with taxpayer's agreement	To be sent to Arbitration	In Arbitration	Settlement agreed in principle, awaiting exchange of closing letters for MAP	Other reasons
		B	C	D	E	F	G	H
BE	26		8	18				
BG	2			1			1	
CZ								
DK	20			20				
DE 1)	195	37	34	33	1		7	83
EE	0	0	0	0	0	0	0	0
IE	1							1
EL	0	0	0	0	0	0	0	0
ES	73	0	24	0	0	0	7	42
FR	133	0	4	101	1	1	26	0
IT	240	6	134		59		17	24
CY	0	0	0	0	0	0	0	0
LV	0	0	0	0	0	0	0	0
LT	0	0	0	0	0	0	0	0
LU	9	5	3	0	0	0	1	0
HU	8	1	3	0	0	0	0	4
MT	0	0	0	0	0	0	0	0
NL	42		1	1	2			38
AT	22	1	6	1	-	-	1	13
PL	11							
PT	13	2	1				8	
RO	1		1					
SI	0	0	0	0	0	0	0	0
SK		1	1	3				
FI			31					6
SE	33		7	26				
UK	41	26	8	-	1	0	0	6
TOTAL	870	79	266	204	64	1	68	217

Remark by Germany

1) Please note that the German competent authority (CA) internal case database does not allow to record "initiated" and "completed" dates following JTPF definitions (which are based on pre-2016 OECD definitions). Therefore the German CA can currently only provide statistics based on the "initiated" and "completed" dates used for internal purposes (the same standards as used for the pre-2016 cases in the German OECD statistics for 2016). Consequently, the "initiated" standard used in the reported statistics differs from JTPF definitions. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it is a request that already contains the necessary minimum information or not, which is earlier than under the JTPF definition of "initiated"). The "completed" standard used is largely in line with JTPF guidance. The deviating "initiated" definition results in a larger MAP case inventory and makes cases appear older than under JTPF definitions. This should be born in mind when comparing the German 2012-2016 Arbitration Convention figures with statistics provided by other countries. Due to the same issue, reporting cycle times following JTPF definitions and thus suitable for direct comparison is currently not feasible. The 37 cases reported under "C" include cases for which the application was received in 2014 and for which the 2-year-period had not started yet in 2014 because the German CA requested additional information (2009 Code of Conduct point 5 (b) (ii)). In the 83 cases reported under "other reasons", the 2-year-period had expired on 31/12/2016. In 20 of the cases, settlement appeared imminent at the end of the year and was in fact reached before end of June 2017. In most of the other 63 cases, sending them to arbitration did not appear meaningful because there had not been an exchange of position papers yet. In roughly half of these cases, the German CA was either still waiting for the first position paper of the CA of the country where the primary adjustment had been made, or had received such first position paper only very recently. In other cases the German side (the CA and/or the local or regional office from which a statement was expected) appeared mainly or partly responsible for the delay, generally due to resources issues.

Explanatory note:

Column B / Number of cases: please note that years 2015 and 2016 are blacked out because the 2-year period cannot have expired on 31/12/2016.

Column C / Two year point not reached due to CoC 5(b)(i): the 2-year period starts on the latest of the following dates: (i) the date of the tax assessment notice, i.e. a final decision of the tax administration on the additional income or equivalent; (ii) the date on which the competent authority receives the request and the minimum information as stated under point 5(a). Thus, if the tax assessment notice (as defined in 5(b)(i)) was not yet issued when the case was initiated, the 2-year period starts some time after initiation, at the day of the tax assessment notice.

Column D / Cases pending before Court: this column covers cases where 2-year period has not yet expired because of Article 7(1) (2nd sentence) of AC and Article 7(3) of AC.

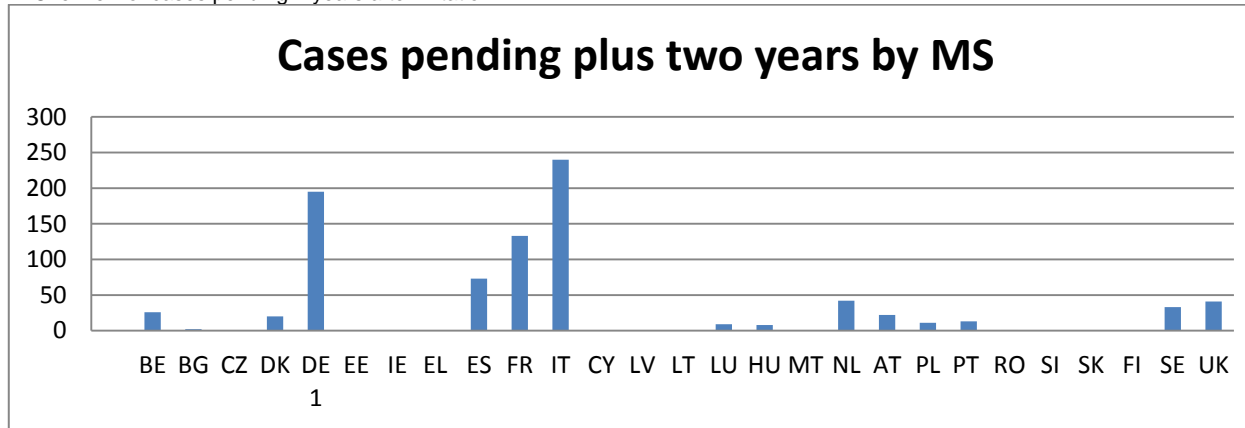
Column E / Time limit waived with agreement of the taxpayer: see Article 7(4) of AC.

Column F / To be sent to arbitration: to include cases for which the 2-year period has expired, but which have not been referred to an advisory commission.

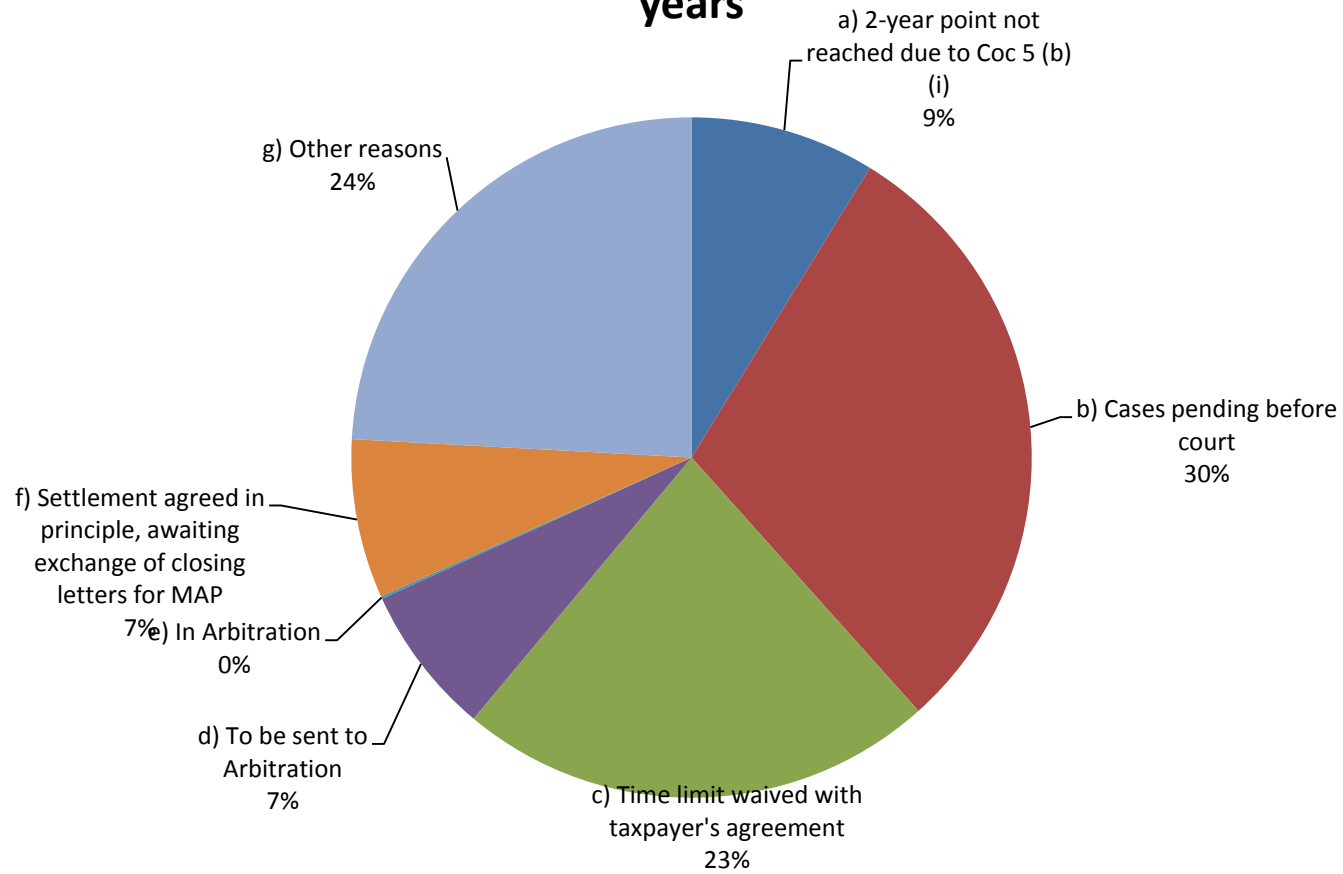
Column G / In arbitration: to include cases referred to an advisory commission and awaiting its opinion.

Column H / Settlement agreed in principle, awaiting exchange of closing letters for MAP (or, in absence of closing letters - signed minutes following a bilateral meeting between CAs where there has been an agreement that the signed minutes close the case and no further closing letters will be exchanged): to include cases (i) where CA have agreed MAP; (ii) where the advisory commission has delivered its opinion and the 6-month period where CA can deviate has not yet expired.

1. Overview of cases pending 2 years after initiation



Distribution of reasons for cases pending longer than 2 years



Statistics on Pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention at 31/12/2016

Member State	Reasons for rejection				TOTAL
	Cases not presented within 3-year period	Cases not within AC scope	Cases with serious penalty	Other reasons	
BE	0	0	0	0	0
BG	0	0	0	0	0
CZ	0	0	0	0	0
DK	0	0	0	0	0
DE	1	1	0	0	2
EE	0	0	0	0	0
IE	0	0	0	0	0
EL	0	0	0	0	0
ES	0	0	0	0	0
FR	0	0	0	0	0
IT	0	1	0	2	3
CY	0	0	0	0	0
LV	0	0	0	0	0
LT	0	0	0	0	0
LU	0	0	0	0	0
HU	0	0	0	0	0
MT	0	0	0	0	0
NL	0	0	0	0	0
AT	0	0	0	0	0
PL	0	0	0	0	0
PT	0	0	0	0	0
RO	0	0	0	0	0
SI	0	0	0	0	0
SK	0	0	0	0	0
FI	0	0	0	0	0
SE	0	0	0	0	0
UK	0	0	0	0	0
TOTAL	1	2	0	2	5

Statistics on Pending Mutual Agreement Procedures (MAPs) under the Arbitration Convention at 31/12/2016

Member State	Number of cases	Time from the date of AC MAP submission to the date on which a case is initiated		
		0-6 months	6-12 months	>12 months
	B	C	D	E
BE	9	6	1	2
BG	0	0	0	0
CZ	8	6	2	0
DK	20	8	4	8
DE 1)	0	0	0	0
EE	0	0	0	0
IE	2	1	0	1
EL	0	0	0	0
ES 2)	20	20	0	0
FR	56	36	17	3
IT	95	95	0	0
CY	2	1	1	0
LV	1	1	0	0
LT	0	0	0	0
LU	7	6	1	0
HU	0	0	0	0
MT	0	0	0	0
NL	16	16	0	0
AT	2	1	1	0
PL	0	0	0	0
PT	0	0	0	0
RO	0	0	0	0
SI	4	2	2	0
SK	0	0	0	0
FI	16	8	7	1
SE	20	18	2	0
UK	36	36	0	0
TOTAL	314	261	38	15

Remark from Germany: As explained in the footnote under Table 1, the German competent authority (CA) internal case database does currently not allow to record "initiated" and "completed" dates following JTPF definitions. Therefore the German CA can currently only provide statistics based on the "initiated" and "completed" dates used for internal purposes. Under the definition applied by the German CA, a case is treated as open as soon as the German CA receives a request (regardless of whether it is a request that already contains the necessary minimum information or not, which is earlier than under the OECD and JTPF definition of "initiated"). Consequently, currently, the submission date is identical with the date used as "initiated" date, so that the time between submission and initiation would always be zero.

Explanatory notes:

Columns C to E / Time from the date of AC MAP submission to the date on which a case is initiated (in months): the purpose is to collect data for the period between the date of submission by a taxpayer of a request for AC MAP and the date on which the case is initiated (i.e. the case has been considered as well-founded by a CA on the basis of 6.3(g) of CoC). The date of submission is the date the request is received by the tax administration. Cases are divided in three categories: period between 0 and 6 months; period between 6 and 12 months; period beyond 12 months. Only cases submitted in the reporting MS should be included. "Date of AC MAP submission" should be understood as the date on which the request was received by the tax administration regardless of whether it already contained the necessary minimum information. If the request did indeed contain the necessary minimum information, the case could be considered as well-founded and could be initiated immediately. Such cases would fall under column C ("0-6 months").