

OECD releases 2019 mutual agreement procedure statistics and 2019 mutual agreement procedure awards

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Executive summary

On 18 November 2020, the Organisation for Economic Co-operation and Development (OECD) held its second OECD Tax Certainty Day as a virtual event (the event). During the event, the OECD published the 2019 statistics on Mutual Agreement Procedures (MAP),¹ the 2019 MAP awards,² and also announced a public consultation on the review of the minimum standard on dispute resolution under Action 14.³

For 2019, the statistics include information from all OECD and G20 members and from those members of the OECD/G20 Inclusive Framework on base erosion and profit shifting (BEPS) that joined the Inclusive Framework prior to 2020 - for a total of 105 jurisdictions,⁴ an increase from the 89 jurisdictions covered in 2018 data. The 2019 data covers almost all MAP cases worldwide. Separate statistics are provided for transfer pricing cases and for "other cases" (i.e., non-transfer pricing) for 2019 with respect to the:

- ▶ Opening inventory and ending inventory of MAP cases
- ▶ Number of new MAP cases started
- ▶ Number of MAP cases completed
- ▶ Cases closed or withdrawn
- ▶ Average cycle time for cases completed, closed or withdrawn

The 2019 MAP statistics include the number of MAP cases that each jurisdiction has with each of its treaty partners and each reporting jurisdiction's performance with respect to key indicators for each type of case can be compared through an [interactive tool](#).

In addition, at the event, the OECD announced the 2019 MAP awards recognizing the particular efforts of competent authorities across a range of metrics.

Detailed discussion

Background

In October 2015, the OECD released final reports on all 15 focus areas in its BEPS Action Plan. Among the various BEPS reports was the final report on Action 14: *Making Dispute Resolution Mechanisms More Effective* (the Action 14 Report).⁵ Improving dispute resolution mechanisms is an integral part of the work on BEPS. The measures developed under BEPS Action 14 and contained in the Action 14 Report are designed to reduce the risks of uncertainty and unintended double taxation by ensuring the consistent and appropriate application of tax treaties, including the effective and timely resolution of MAP disputes.

The Action 14 Report reflects agreement by jurisdictions to a minimum standard with respect to the resolution of treaty-related disputes. One element of the minimum standard requires jurisdictions to seek to resolve MAP cases within an average timeframe of 24 months.

Since 2006, the OECD has been compiling annual statistics on the MAP caseloads of all member countries and of partner economies that agreed to provide such statistics. Beginning with reporting period 2016, members of the Inclusive Framework have been reporting their MAP statistics pursuant to an [agreed reporting framework](#).⁶

In November 2017, the OECD released the 2016 MAP statistics, following the agreed reporting framework and covering 65 jurisdictions.⁷ In October 2018, it released the 2017 MAP statistics, covering 87 jurisdictions,⁸ and in September 2019, it released the 2018 MAP statistics, covering 89 jurisdictions.⁹

The 2019 MAP statistics

The 2019 MAP statistics include 21 additional jurisdictions that were not included in 2018: Andorra, Angola, Aruba, Bahamas, Barbados, Belize, Bermuda, Bosnia and Herzegovina, British Virgin Islands, Cook Islands, Faroe

Islands, Gibraltar, Greenland, Jordan, Liberia, Mongolia, Morocco, Nigeria, Ukraine, United Arab Emirates, and Vietnam. Further, the 2019 MAP statistics note the members of the Inclusive Framework that have not submitted their 2019 MAP statistics yet.¹⁰

The agreed reporting framework makes a distinction between transfer pricing and "other" cases. A transfer pricing MAP case relates to either the attribution of profits to a permanent establishment or the determination of profits between associated enterprises. Any MAP case that is not a transfer pricing MAP case is considered an "other" MAP case. In the MAP statistics reporting framework, a further distinction is made between cases received before 1 January 2016 and cases received on or after such date. For the jurisdictions that joined the Inclusive Framework after 31 December 2016, the distinction is made between the cases received before 1 January of the year the jurisdiction joined the Inclusive Framework and cases received on or after such date.

The OECD has also updated its interactive tool that allows users to make a comparison of the covered jurisdictions' performance in 2019 for each type of case (i.e., transfer pricing or "other" cases). The comparison is based on seven key indicators: starting inventory, cases started, cases closed, ending inventory, time (in months), closing ratio¹¹ and, for the first time, the portion of pre-2016 (or pre-Inclusive Framework membership) cases in ending inventory. Users may customize their search by filtering among the indicators and selecting groups of jurisdictions.

MAP inventories and cases closed

Looking at the statistics for all MAP cases (both transfer pricing and "other" cases, as well as both cases received prior to 1 January 2016 or 1 January of the year of joining the Inclusive Framework and cases received on or after such date, there have been increases in the starting inventory, ending inventory and cases closed:

- ▶ The starting inventory of all MAP cases increased by nearly 2% between 2018 and 2019, from 6,924 to 7,086 cases.
- ▶ The ending inventory of all cases also increased 5% during this period, from 6,605 to 6,955.
- ▶ The number of all cases closed increased 4% between 2018 and 2019, from 2,704 to 2,821.

Looking exclusively at pre-2016 (or the period prior to 1 January of the year of joining the Inclusive Framework) cases, there have been reductions in both the starting inventory and cases closed:

- ▶ The starting inventory of both transfer pricing and other MAP cases fell by around 27% between 2018 and 2019, from 4,586 to 3,365.
- ▶ The number of cases closed fell by more than 24% between 2018 and 2019, from 1,231 to 934.

Looking just at post-2016 (or the period on or after 1 January of the year of joining the Inclusive Framework) cases, there have been increases in both the starting inventory and cases closed:

- ▶ The starting inventory increased almost 60% between 2018 and 2019, from 2,338 to 3,721 cases.
- ▶ The cases closed has also increased, by around 28% between 2018 and 2019, from 1,473 to 1,887.

The annex of this Alert includes summary tables with an overview of the 2016, 2017 and 2018 MAP statistics.

MAP cases started during 2019

The statistics shows that 2,690 MAP cases were started on or after 1 January 2019. This number increased almost 13% in comparison to 2018 data, from 2,385 to 2,690 cases. This trend is likely to continue, with no significant reduction in MAP activity expected, despite the COVID-2019 pandemic. According to the OECD, it is driven by a number of factors, including increased globalization, the continued focus of tax authorities on cross-border tax issues and growing confidence in and knowledge of the MAP process.

The three tables below present the five reporting jurisdictions with the highest number of MAP cases started in 2019, on an overall basis and for each category of cases, transfer pricing and "other":

All cases		Transfer pricing cases		Other cases	
Jurisdiction	Cases	Jurisdiction	Cases	Jurisdiction	Cases
Germany	659	Italy	283	Belgium	442
Belgium	493	Germany	241	Germany	418
United Kingdom	409	United States	188	United Kingdom	288
France	381	India	184	France	217
Italy	361	France	164	Luxembourg	196

In contrast, the three tables below present the five G20 jurisdictions with the lowest number of MAP cases started in 2019, on an overall basis and for each of the categories of cases:

All cases		Transfer pricing cases		Other cases	
Jurisdiction	Cases	Jurisdiction	Cases	Jurisdiction	Cases
Saudi Arabia	3	Saudi Arabia	0	Brazil	0
Brazil	5	Turkey	2	Turkey	3
Turkey	5	Argentina	3	Russia	3
Argentina	6	South Africa	4	Saudi Arabia	3
Russia	9	Brazil	5	Argentina	3

MAP cases closed in 2019

The number of cases reported as closed in 2019 is 2,821, an approximately 4% increase relative to the 2018 figures, from 2,704 to 2,821, which were reported under the same methodology.

The three tables below present the five reporting jurisdictions closing the highest number of cases in 2019, on an overall basis and for each of the categories of cases:

All cases		Transfer pricing cases		Other cases	
Jurisdiction	Cases	Jurisdiction	Cases	Jurisdiction	Cases
Belgium	630	Germany	218	Belgium	593
Germany	615	France	210	Germany	397
France	448	United States	142	France	238
United States	303	Italy	141	United Kingdom	227
United Kingdom	299	India	115	Luxembourg	178

According to the statistics, of the MAP cases closed in 2019, 73% successfully resolved the issue under dispute. Of that 73%:

- ▶ 52% of cases closed were concluded with an agreement fully resolving the taxation not in accordance with the tax treaty.
- ▶ 1% were resolved with an agreement partially resolving the taxation not in accordance with the tax treaty.
- ▶ 15% were resolved with a grant of unilateral relief.
- ▶ 5% were resolved via domestic remedy.

For 1% of the MAP cases closed, the parties agreed that there was no taxation not in accordance with the tax treaty. Of the 26% of cases closed that did not resolve the issue, 6% were withdrawn by taxpayers while 20% were not resolved for various reasons (including because there was no agreement between the competent authorities).

Average cycle time for cases completed, closed or withdrawn

For transfer pricing cases only, the average cycle time decreased by 2.5 months between 2018 and 2019, from 33 months to 30.5 months. For other cases, the average cycle time increased by 8 months between 2018 and 2019, from 14 months to 22 months.

Average times for resolution of MAP cases (both transfer pricing and other cases) varied significantly by jurisdiction, ranging from 2 months (Estonia) to 69 months (Slovak Republic). For transfer pricing cases, the average time for resolution ranged from 2 months (Estonia) to 48 months (Romania). For other cases, the average time for resolution ranged from less than one month (Argentina) to 86 months (Slovak Republic).

The 2019 MAP awards

The OECD gave recognition to the particular efforts of competent authorities in different areas:

- ▶ Category 1: Average time to close MAP cases (eligible for the award for transfer pricing cases were jurisdictions that closed more than 50 transfer pricing cases in 2019 and for other cases, jurisdictions that closed more than 20 other cases in 2019)
- ▶ Category 2: Age of Inventory (eligible for award were jurisdictions with more than 100 cases left in 2019 ending inventory)
- ▶ Category 3: Caseload Management (eligible for the large inventory award were jurisdictions with more than 100 cases left in 2019 ending inventory and for the medium inventory award jurisdictions with more than 20 cases but fewer than 100 cases left in 2019 ending inventory)
- ▶ Category 4: Cooperation (for transfer pricing cases, eligible for award were pairs of jurisdictions with more than 20 transfer pricing cases to resolve in 2019 and for other cases, pairs of jurisdictions with more than 20 other MAP cases to resolve in 2019)

In Category 1, Japan and United Kingdom won for the shortest time in closing transfer pricing cases and United Kingdom also won for other cases. In Category 2, Belgium won for the smallest proportion of pre-2016 cases in ending inventory. In Category 3, Belgium and Norway won for the most effective caseload management. In Category 4, India-Japan won the collaborative award for the pairings of jurisdictions that dealt most effectively with their joint caseload for transfer pricing cases and Norway-United States for “other” cases.

Implications

It is expected that the importance of MAP will increase for the foreseeable future as a result of a convergence of trends that include the ongoing focus of tax authorities on cross-border transactions, the weakness of national fiscal conditions as a result of the COVID-19 pandemic and the government spend on relief and stimulus measures, and the increasingly multilateral approach being taken by many tax authorities.

The OECD’s MAP statistics show a trend of starting and ending inventories of MAP cases continue to increase in the majority of jurisdictions tracked. While MAP can be an effective tool to reduce double taxation, multinational businesses may want to also consider alternative tools available, such as the use of bilateral and multilateral Advance Pricing Agreements, joint or simultaneous tax audits, or processes such as the OECD’s International Compliance Assurance Programme.

Where multinational businesses experience issues with MAP in a specific jurisdiction - including, in particular, the lack of access to MAP - they should consider making these issues known to the OECD as part of its review process.

Endnotes

1. <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm>.
2. <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-2019-awards.htm>.
3. See EY Global Tax Alert, [*OECD releases Consultation Document on 2020 review of BEPS Action 14*](#), dated 23 November 2020.
4. Andorra, Angola, Argentina, Aruba, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brazil, British Virgin Islands, Brunei Darussalam, Bulgaria, Canada, Cayman Islands, Chile, China, Colombia, Cook Islands, Costa Rica, Cote d’Ivoire, Croatia, Curacao, Czech Republic, Denmark, Dominican Republic, Estonia, Faroe Islands, Finland, France, Georgia, Germany, Gibraltar, Greece, Greenland, Guernsey, Hong Kong (China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Latvia, Liberia, Liechtenstein, Lithuania, Luxembourg, Macau (China), Malaysia, Malta, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Trinidad and Tobago, Tunisia, Turkey, Turks and Caicos Islands, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Vietnam and Zambia.
5. See EY Global Tax Alert, [*OECD releases final report on improving the effectiveness of dispute resolution mechanisms under Action 14*](#), dated 8 October 2015.
6. Ibid.
7. See EY Global Tax Alert, [*OECD releases mutual agreement procedure statistics for 2016*](#), dated 1 December 2017.
8. See EY Global Tax Alert, [*OECD releases 2017 Mutual Agreement Procedure statistics*](#), dated 23 October 2018.

9. See EY Global Tax Alert, [*OECD holds first Tax Certainty Day and releases 2018 Mutual Agreement Procedure statistics*](#), dated 20 September 2019.
10. Albania, Anguilla, Antigua and Barbuda, Armenia, Benin, Botswana, Burkina Faso, Cabo Verde, Cameroon, Congo, Democratic Republic of the Congo, Djibouti, Dominica, Egypt, Eswatini, Gabon, Grenada Haiti, Honduras, Jamaica, Jersey, Maldives, Montenegro, Montserrat, Namibia, North Macedonia, Paraguay, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra Leone and Sri Lanka.
11. The closing ratio is the ratio of MAP cases closed by the jurisdiction over its total MAP caseload, where the total MAP caseload is the sum of: (i) the number of MAP cases in inventory at the beginning of the year; and (ii) the number of MAP cases that started during the year. To take into consideration the fact that the MAP cases started during the year did not start on the exact same date and may have started during the first or the second semester, the latter number is divided by 2. This also explains that the closing ratio may be higher than 100% for some jurisdictions.

ANNEX - MAP statistics 2017, 2018 and 2019 combined

Pre-2016 (or pre-1 January of the year of joining the Inclusive Framework)			
	2017	2018	2019
Starting inventory	6,313	4,586	3,365
Ending inventory	4,549	3,355	2,431
Cases closed	1,764	1,231	934
New cases	0	0	0

Post-2016 (or on or after 1 January of the year of joining the Inclusive Framework)			
	2017	2018	2019
Starting inventory	1,187	2,338	3,721
Ending inventory	2,282	3,250	4,524
Cases closed	981	1,473	1,887
New cases	2,076	2,385	2,690

Combined pre- and post-2016 (or the period prior to or on or after 1 January of the year of joining the Inclusive Framework)			
	2017	2018	2019
Starting inventory	7,500	6,924	7,086
Ending inventory	6,831	6,605	6,955
Cases closed	2,745	2,704	2,821
New cases	2,076	2,385	2,690

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EYG no. 008029-20GbI

1508-1600216 NY
ED None

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