

## OECD releases mutual agreement procedure statistics for 2016

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### Executive summary

On 27 November 2017, the Organisation for Economic Co-operation and Development (OECD) released its annual statistical publication on the Mutual Agreement Procedure (MAP) caseloads of more than 65 jurisdictions (all members of the OECD's Inclusive Framework that joined prior to 2017) for the 2016 reporting period.<sup>1</sup> The report covers opening and ending inventory of MAP cases for 2016, the number of new MAP cases initiated, the number of MAP cases completed, cases closed or withdrawn, and the average cycle time for cases completed, closed or withdrawn cases.

The statistics provide great insight into the development of MAPs in the various countries. Slightly more than half of the MAP cases in inventory are transfer pricing cases. Almost 85% of MAPs concluded in 2016 resolved the issue.

### Detailed discussion

On 5 October 2015, the OECD released final reports on all 15 focus areas in its Action Plan on Base Erosion and Profit Shifting (BEPS). Among the final reports was the final report on Action 14: *Making Dispute Resolution Mechanisms More Effective* (the Action 14 Report or Report).<sup>2</sup>

As detailed in the Action 14 Report, improving dispute resolution mechanisms is an integral component of the work on BEPS. The measures developed under Action 14 of the BEPS project and contained in the Report aim to minimize the risks of uncertainty and unintended double taxation. They do so by ensuring the consistent and proper implementation of tax treaties, including the effective and timely resolution of disputes regarding their interpretation or application through the MAP.

Countries have agreed to important changes in their approach to dispute resolution, such as a minimum standard with respect to the resolution of treaty-related disputes. They have committed to its rapid implementation and agreed to ensure its effective implementation through the establishment of a robust peer-based monitoring mechanism.<sup>3</sup> A large group of countries has also committed to provide for mandatory binding arbitration in their bilateral tax treaties as a mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe.

One of the elements of the Action 14 minimum standard requires jurisdictions to seek to resolve MAP cases within an average timeframe of 24 months. To monitor compliance with this, members of the Inclusive Framework on BEPS have committed to report their MAP statistics pursuant to an agreed reporting framework. The most important highlights of these MAP statistics in relation to the year 2016 are provided below.

### New reporting framework

- ▶ The 2016 MAP statistics are for the first time reported under the newly agreed reporting framework which reflects a collaborative approach for cases started as from 1 January 2016, the date as from when the reporting jurisdictions committed to implement the Action 14 minimum standard.
- ▶ The agreed reporting framework provides common definitions (MAP case, start date, end date, outcomes), which are now used for counting MAP cases and computing the average time needed to close MAP cases.
- ▶ Each jurisdiction reports MAP statistics per treaty partner or per category of treaty partners and each case initiated as from 1 January 2016 in a given jurisdiction now appears in the MAP statistics of the treaty partner that is involved as well, enabling the identification of cases that are reported by two different jurisdictions at the same time as well as avoiding double counting of these cases.

- ▶ The agreed reporting framework now makes a distinction between “attribution/allocation” cases and “other” cases. An attribution/allocation case (called a “transfer pricing case”) is a MAP case where the taxpayer’s MAP request relates to either:

- The attribution of profits to a permanent establishment (see e.g., Article 7 of the OECD Model Tax Convention).

Or

- The determination of profits between associated enterprises (see e.g., Article 9 of the OECD Model Tax Convention).

Any MAP case that is not an attribution/allocation MAP case is considered as an “other” MAP case.

### Overall 2016 inventory<sup>4</sup>

In comparison with the 2015 MAP statistics,<sup>5</sup> both the number of MAP cases in start inventory and the number of started MAP cases have increased, which results from both an increase in the number of reporting jurisdictions and modified counting rules. A total of 8,002 cases were in the inventory of the reporting jurisdictions as per 1 January 2016 and almost 25% of them were closed during 2016 (ending inventory was 7,190). Germany (1,180), the United States (967), France (837) and Belgium (752) had the largest ending inventories of MAP cases in 2016. Furthermore, transfer pricing cases accounted for slightly more than half of the MAP cases in ending inventory (3,484 cases vs. 3,158 other cases).

### MAP cases initiated during 2016

According to the OECD data, 1,496 cases started on or after 1 January 2016. Belgium experienced the largest overall number of new MAP cases of all member countries (426 in 2016). Table 1 below presents the 10 reporting countries with the highest number of MAP cases initiated in 2016:

Country	Number of new cases	Country	Number of new cases
Belgium	426	Italy	159
Germany	353	Switzerland	147
France	296	Canada	124
Luxembourg	284	Netherlands	113
United States	179	United Kingdom	109

## MAP cases completed in 2016

While 1,496 new MAP cases were initiated in 2016, approximately 25% (353 cases) of them were reported to have been completed in 2016. The five countries completing the most MAP cases in 2016 (which includes cases that started before 1 January 2016) were Belgium (438), Germany (350), Luxembourg (335), France (303) and the United States (184).

Of the MAPs concluded in 2016, 84% resolved the issue. Of that 84%, 59% of MAP 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, 19% of them were granted unilateral relief while 4% were resolved via domestic remedy. Furthermore, on 1 % of the MAP cases closed, parties agreed that there was no taxation not in accordance with the tax treaty. Finally, 5% of the MAP cases closed were withdrawn by taxpayers while 11% were not resolved for various reasons (i.e., no agreement including agreement to disagree; objection was not justified; MAP access was denied; and any other outcome).

## Average cycle time for cases completed, closed or withdrawn

For the countries for which data was provided, the average time for the completion of transfer pricing cases was approximately 30 months, while the average life cycle of other cases was approximately 17 months.

## Implications

The rapid introduction of BEPS-related measures by governments may lead to two jurisdictions disagreeing on the interpretation or application of a treaty provision and therefore to more tax disputes. The release of the MAP statistics by the OECD provides a measure of the effects of the implementation of some elements of the Action 14 minimum standard as part of the OECD's BEPS Action plan.

Multinationals that are being confronted with taxation not in accordance with the treaty, including double taxation, should consider making use of the MAP process as one of the available tools. EY's 2017 Tax Risk and Controversy Survey series provides more insights in emerging trends in controversy and best practices businesses are following to manage tax risk and thrive.<sup>6</sup>

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## Endnotes

1. See <http://www.oecd.org/tax/oecd-releases-mutual-agreement-procedure-statistics-for-2016.htm>.
2. See Global Tax Alert, [OECD releases final report on improving the effectiveness of dispute resolution mechanisms under Action 14](#), dated 8 October 2015.
3. See Global Tax Alert, [OECD releases first batch of peer review reports on Action 14](#), dated 27 September 2017.
4. It should be noted that the overview of total numbers included in the MAP statistics deviates from the sum of the numbers in the breakdown
5. See Global Tax Alert, [OECD releases 2015 Mutual Agreement Procedure statistics](#), dated 7 December 2016.
6. The series is accessible through: <http://www.ey.com/gl/en/services/tax/tax-policy-and-controversy/ey-tax-risk-and-controversy-survey>.



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