

OECD releases 2017 Mutual Agreement Procedure statistics

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Executive summary

On 10 October 2018, the Organisation for Economic Co-operation and Development (OECD) released its annual publication on the 2017 Mutual Agreement Procedure (MAP) statistics.¹ For 2017, the report includes statistics from all OECD members and most of the members of the OECD Inclusive Framework on BEPS² (BEPS IF) – a total of 87 jurisdictions and almost all MAP cases worldwide.³ The report provides information separately for transfer pricing cases and non-transfer-pricing cases regarding the:

- ▶ Opening and ending inventory of MAP cases for 2017
- ▶ Number of new MAP cases initiated
- ▶ Number of MAP cases completed
- ▶ Cases closed or withdrawn
- ▶ Average cycle time for cases completed, closed or withdrawn

In addition, the report provides for each jurisdiction the number of MAP cases it has with each of its treaty partners.⁴ This increased transparency should allow greater insight into each jurisdiction's unique MAP situation.

Detailed discussion

Background

On 5 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 or the Report).⁵

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

Jurisdictions 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. One element of the 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 BEPS IF have committed to report their MAP statistics pursuant to an [agreed reporting framework](#).⁶ In addition, the minimum standard requires certain other behavioral commitments which will be subject to a peer-based monitoring mechanism.

Other changes in their approach to dispute resolution may require modifications to treaty MAP Articles. Given the number of countries that will need to modify their treaties, the OECD will employ its multilateral instrument (MLI) to allow for a rapid and uniform modification of those treaties.

For example, many jurisdictions have 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.

The agreed reporting framework includes tracking statistics for cases received prior to 1 January 2016 or of the year of joining the BEPS IF *and* for cases received on or after 1 January 2016 or of the year of joining the BEPS IF. The most important highlights of these MAP statistics in relation to the year 2017 are provided below.

Cases received, cases closed, and MAP inventories

The starting inventory of all MAP cases (i.e., transfer pricing and non-transfer pricing) fell by 6% between 2016 and 2017, from 8,002 to 7,500 cases. The ending inventory for all cases also fell during this period, by 5%, from 7,190 to 6,831.

The number of all cases closed grew by almost 19 % between 2016 and 2017, from 2,308 to 2,745. The five jurisdictions completing the most transfer pricing cases in 2017 were the United States (228), Germany (156), France (134), Canada (114) and India (95). The five jurisdictions with the highest number of completed "other" (non-transfer pricing) cases in 2017 were Belgium (497), Germany (366), Luxembourg (341), France (157), and the United Kingdom (139).

The number of all cases started, however, grew by almost 39% between 2016 and 2017, from 1,496 to 2,076, more than double the growth of the case closure rate.

Germany (1,241), the United States (983), France (882) and India (763) had the largest ending inventories of MAP cases in 2017.

MAP cases initiated during 2017

According to the OECD data, 2,076 cases were started on or after 1 January 2017. Table 1 below presents the 10 reporting jurisdictions with the highest number of all MAP cases initiated in 2017:

Jurisdiction	Number of new cases	Jurisdiction	Number of new cases
Germany	582	Luxembourg	250
Belgium	502	Netherlands	223
United Kingdom	344	Italy	206
France	336	Switzerland	169
United States	299	India	136

MAP cases completed in 2017

The number of cases reported as completed in 2017 is 2,745, a 19% increase over 2016 figures, which were also reported under the same methodology. The five jurisdictions completing the most MAP cases in 2017 were Belgium (537), Germany (522), Luxembourg (347), the United States (293) and France (291).

According to the OECD, of the MAP cases concluded in 2017, 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. For 1% of the MAP cases closed, parties agreed that there was no taxation not in accordance with the tax treaty.

Of the 16% of cases closed that did not resolve the issue, 5% were withdrawn by taxpayers while 11% were not resolved for various reasons (i.e., no agreement by the competent authorities; objection was not justified; and any other outcome). It should be noted that the OECD methodology has no way of identifying cases where MAP access was either denied or not requested by the taxpayer in the first place.

Average cycle time for cases completed, closed or withdrawn

For all cases, the average cycle time (i.e., pre-2016 or year of BEPS IF membership cases and post-2016 or year of BEPS IF membership cases) fell from 22.5 months on average to 22.2 months on average - even though the underlying cycle times for all types of cases that feed into this average increased between 2016 and 2017.

For transfer pricing cases only (pre-2016 or year of BEPS IF membership cases), the cycle time increased by 7.4 months, from 33.5 months to 40.9 months. For transfer pricing cases only (post-2016 or year of BEPS IF membership cases), the cycle time increased by 5.3 months, from 2.5 months to 7.8 months, an increase of 212%.

For non-transfer-pricing cases (pre-2016 or year of BEPS IF membership cases), the cycle time increased by 12.8 months, from 26.5 months to 39.3 months. For non-transfer-pricing cases (post-2016 or year of BEPS IF membership cases), the cycle time increased by 3.2 months, from 1.5 months to 4.7 months, an increase of 213%.

Geographic incidence of new MAP cases

As outlined below, the geographic incidence of new MAP cases varies significantly.

The OECD data reveals that only 25% of the jurisdictions received more than 25 new MAP cases. Of those jurisdictions, 90% are OECD member jurisdictions (mostly European jurisdictions, the United States, Canada, Japan, and Korea). India and China were the two non-OECD member countries that received more than 25 MAP cases.

Four jurisdictions (France, Germany, the United Kingdom, and the United States) had more than 250 new cases. Two jurisdictions (India, Italy) had between 100-250 cases. Three jurisdictions (Canada, China, Korea) had between 50 and 100 new cases. One jurisdiction (Japan) had between 25 and 50 cases and eight jurisdictions had fewer than 25 cases.

Interestingly, 75% of all jurisdictions (including Argentina, Australia, Brazil, Indonesia, Mexico, Russia, South Africa and Turkey) participating in the BEPS IF received fewer than 25 new MAP cases in 2017. No information was available for Saudi Arabia.

Access to MAP for cases where taxation contrary to the provisions of a tax treaty occurs remains a key issue for the OECD and jurisdictions to address, particularly in an environment where many countries have expanded their capacity to audit international tax issues, including in particular transfer pricing issues.

While interesting and helpful, the statistics provided do not necessarily indicate whether the MAP process in a particular jurisdiction is working effectively. A relatively low number of MAP cases in combination with relatively high levels of foreign direct investment to or from the jurisdiction (and/or a well-resourced audit function in the cross-border tax area). For example, a low number of MAP cases may actually be an indicator of tax administration processes or dynamics that have led to cases not reaching MAP for one or more reasons.

Implications

It is widely acknowledged within the global tax community that the continuing introduction of BEPS-related measures by governments, combined with the rapid introduction of the Anti-Tax Avoidance Directive (ATAD) measures by EU Member States, will continue to lead to jurisdictions disagreeing on the interpretation or application of treaty provisions and therefore to more tax disputes. This is already evident in the 38.8% growth rate of new MAP cases.

The release of 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. As noted, quantitative reporting does not necessarily indicate the degree to which the MAP in a jurisdiction is working effectively. Where companies continue to experience issues with MAP in a specific jurisdiction, they are advised to make these issues known directly to the OECD.

Endnotes

1. <http://www.oecd.org/tax/beps/oecd-releases-2017-global-mutual-agreement-procedure-statistics.htm>.
2. Base Erosion and Profit Shifting.
3. Angola, Argentina, Australia, Austria, Belgium, Bermuda, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Canada, Cayman Islands, Chile, China, Costa Rica, Côte d'Ivoire, Croatia, Curacao, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Guernsey, Haiti, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Isle of Man, Israel, Italy, Japan, Kenya, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Malta, Mauritius, Mexico, Monaco, Netherlands, New Zealand, Norway, Oman, Pakistan, Panama, Paraguay, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, San Marino, Senegal, Seychelles, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Thailand, Tunisia, Turkey, Turks and Caicos Islands, Ukraine, United Kingdom, United States, Uruguay, Vietnam, and Zambia.
4. The MAP inventory statistics include only MAP cases started after 2015.
5. See Global Tax Alert, [OECD releases final report on improving the effectiveness of dispute resolution mechanisms under Action 14](#), dated 8 October 2015.
6. For more information on the agreed framework, see EY Global Tax Alert, [OECD releases mutual agreement procedure statistics for 2016](#), dated 1 December 2017.

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