

OECD releases Iceland 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 Action 14 on improving tax dispute resolution mechanisms.¹ Iceland was among the assessed jurisdictions in the fifth batch.²

Overall the report concludes that Iceland meets most of the elements of the BEPS Action 14 (Action 14) Minimum Standard. In the next stage of the peer review process, Iceland'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 a number of recommendations relating to the minimum standard. In general, the performance of Iceland with regard to MAP has proven to be satisfactory in their respective reports. Overall, Iceland meets most of the elements of the Action 14 minimum standard.

Preventing disputes

Of Iceland's 49 tax treaties, 46 treaties meet the Action 14 minimum standard concerning the prevention of disputes. As the three remaining treaties will not be modified by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (the MLI)'s entry into force, Iceland should request the inclusion of the required provision via bilateral negotiations.

Iceland does not have any bilateral Advance Pricing Agreement program in place, there were no other elements to assess regarding the prevention of disputes.

Availability and access to MAP

Out of its 49 tax treaties, 3 tax treaties do not contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (MTC), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. Of those three treaties, two treaties could be modified by the MLI upon its entry into force. Iceland should ratify the MLI as soon as possible to incorporate the equivalent to Article 25(1) of the OECD MTC in those treaties that do not contain such equivalent. As for the third treaty, that will not be modified by the MLI in regard to Article 25(1), first sentence, of the OECD MTC, Iceland should request the inclusion of the required provision via bilateral negotiations. Iceland should put a plan in place on how it envisages updating the one remaining treaty accordingly and should maintain its stated intention to include the required provision in all future tax treaties.

Iceland should ensure that, in the absence of such provision in its treaties, its domestic time limits for the filing of MAP requests do not prevent taxpayers from being granted access to MAP, if the request 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.

As previously discussed, 46 of Iceland's 49 treaties do not contain a provision equivalent to Article 25(1) of the OECD MTC, as changed in the Action 14 final report. Iceland should produce a documented notification and/or consultation that applies to those cases when the taxpayer's objection raised in the MAP request is not considered to be justified and the tax treaty concerned does not contain Article 25(1) of the OECD MTC, as amended by the Action 14 final report.

Furthermore, 11 out of 49 treaties do not contain the equivalent to Article 25(5), second sentence, of the OECD MTC. Of those 11 treaties, 3 treaties could be modified by the MLI upon its entry into force. Iceland should therefore ratify the MLI as soon as possible to incorporate the equivalent to Article 25(3), second sentence, of the OECD MTC in those treaties that do not contain such equivalent. As for the other eight treaties, that will not be modified by the MLI in regard to Article 25(3), second sentence, of the OECD MTC, Iceland should request the inclusion of the required provision via bilateral negotiations. Iceland should put a plan

in place on how it envisages updating the one remaining treaty accordingly and should maintain its stated intention to include the required provision in all future tax treaties.

Iceland's competent authority did not receive any MAP requests during the review period and its MAP guidance is still under development.

No audit settlement process is available under Icelandic law.

Resolution of MAP cases

Of Iceland's 49 tax treaties, 1 does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD MTC. As this treaty will not be modified by the MLI in regard to Article 25(2), first sentence, of the OECD MTC, Iceland should request the inclusion of the required provision via bilateral negotiations. Iceland should put a plan in place on how it envisages updating the one remaining treaty accordingly and should maintain its stated intention to include the required provision in all future tax treaties.

Iceland's competent authority operates fully without being dependent on approval or direction from the audit function of the tax authorities. The competent authority resolves MAP cases in an effective and efficient manner and the performance indicators used to perform the MAP function are appropriate. The average time needed to close MAP cases for the period 2016-2017 was 3.23 months and therefore significantly shorter than 24 months. No pre-2016 cases were in Iceland's inventory.

Iceland reported that there are no domestic limitations for including MAP arbitration in its tax treaties.

Implementation of MAP agreements

Iceland reported it implements all MAP agreements reached if the conditions for such implementation are fulfilled. Even though the implementation of these agreements is not monitored by Iceland, no issues regarding the implementation surfaced during the peer review process. Iceland could introduce a tracking system to ensure that all MAP agreements continue to be implemented if the conditions for such implementation are fulfilled. Iceland reported that MAP agreements are implemented as soon as an agreement has been reached.

Out of 49 tax treaties, 5 treaties do neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD MTC, nor any of the alternative provisions provided for in Articles 9(1) and 7(2). One of these five treaties will be modified by the MLI upon its entry into force. Iceland

should therefore ratify the MLI as soon as possible to incorporate the equivalent to Article 25(2), second sentence, of the OECD MTC in that treaty. As for the remaining four treaties that will not be modified by the MLI in regard to Article 25(2), second sentence, of the OECD MTC, Iceland should request the inclusion of the required provision via bilateral negotiations. Iceland should put a plan in place on how it envisages updating these four treaties accordingly and should maintain its stated intention to include the required provision in all future tax treaties or be willing to accept the inclusion of both alternative provisions.

Next steps

Iceland is already working to address deficiencies identified in its peer review and will now move on to Stage 2 of the process, where Iceland's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored. Under the peer review program methodology, Iceland shall 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 Iceland'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 Iceland 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 Iceland 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 BEPS Action 14*](#), dated 18 February 2019.
2. <https://www.oecd-ilibrary.org/docserver/9789264309968-en.pdf?expires=1550650749&id=id&accname=guest&checksum=D708C0DBE3A93D14B34B028BE0C8265B>.
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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