

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

Overall the report concludes that Slovakia meets almost all the elements of the Action 14 minimum standard. In the next stage of the peer review process, Slovakia'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 consists 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 Slovakia with regard to MAP has proven to be satisfactory in their respective reports. Overall, Slovakia meets almost all of the elements of the Action 14 minimum standard.

Preventing disputes

Only 4 out of Slovakia's 70 tax treaties do not contain a provision that meets the Action 14 minimum standard concerning the prevention of disputes. One of these treaties will be appropriately amended by the *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base*

Erosion and Profit Shifting (MLI). For the remaining three treaties, Slovakia should request the inclusion of the required provision via bilateral negotiations.

The OECD concluded that Slovakia is in theory able to provide for the roll-back of bilateral Advance Pricing Agreements (APAs), however, it was not possible to evaluate the effective implementation of this element in practice since Slovakia did not receive any request for roll-back of bilateral APAs during the reviewed period.

Availability and access to MAP

Several inefficiencies were identified with regards to the concluded tax treaties. Out of the 70 tax treaties, 9 do not contain a provision allowing taxpayers to submit a MAP request to the local competent authority conforming to the Action 14 minimum standard. Furthermore, 11 tax treaties do not contain a provision related to the mutual consultation in cases not provided in the MLI. Finally, none of the 70 tax treaties contain a provision allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. For these treaties, no documented bilateral consultation or notification process is in place, which allows the other competent authority to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.

Some of these issues will be rectified by the adoption of the MLI. For the remaining treaties, Slovakia should request the inclusion of the required provision via bilateral negotiations.

Slovakia should also, without further delay, introduce a documented notification and/or consultation process and apply that process for cases in which its competent authority considered the raised objection as being unjustified.

Slovakia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Slovakia's information and documentation requirements for MAP requests. Also, it was expressed that Slovakia will give access to MAP in transfer pricing cases, however, the competent authority did not receive any MAP requests of this kind from taxpayers during the reviewed period.

Similarly, Slovakia expressed that it will give access to MAP in cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty. However, the competent authority did not receive any MAP requests of this kind from taxpayers during the reviewed period.

In order to improve the level of its MAP Guidance, Slovakia should provide information on:

- ▶ The relationship of MAP with domestic available remedies
- ▶ Whether MAP is available in cases of: (i) multilateral disputes and (ii) bona fide foreign-initiated self-adjustments
- ▶ Whether taxpayers can request for the multi-year resolution of recurring issues through MAP
- ▶ The possibility of suspension of tax collection during the course of a MAP
- ▶ The consideration of interest and penalties in the MAP
- ▶ The steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any)

Resolution of MAP cases

Slovakia's MAP statistics show that during the Statistics Reporting Period it closed 18% (2 out of 11 cases) of its post-2015 cases in 1.30 months on average. In that regard, Slovakia is recommended to seek to resolve the remaining 82% of the post-2015 cases pending on 31 December 2017 (9 cases) within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

Slovakia could consider devoting additional resources to accelerate the resolution of MAP cases.

Implementation of MAP agreements

As there was no MAP agreement reached that required implementation by Slovakia during the reviewed period, the OECD could not perform a proper assessment.

Of Slovakia's 70 tax treaties, 36 do not contain a provision stating that any agreement reached between competent authorities can be implemented notwithstanding any time limits provided by the domestic legislation. Implementation of the MLI should rectify the situation for 21 treaties. For the remaining 15 tax treaties, Slovakia should request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions.

Next steps

Slovakia is already working to address deficiencies identified in its peer review and will now move on to Stage 2 of the process, where Slovakia's efforts to address any shortcomings identified in its Stage 1 peer review report will be monitored. Under the peer review program methodology, Slovakia will 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 Slovakia'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 Slovakia 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 Slovakia 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 Action 14*](#), dated 18 February 2019.
2. https://www.oecd-ilibrary.org/taxation/making-dispute-resolution-more-effective-map-peer-review-report-slovak-republic-stage-1_9789264309890-en;jsessionid=OSyofUUDppGM95rLFSi3nGmG.ip-10-240-5-126.
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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