

**Inclusive Framework on BEPS: Action 14
Making Dispute Resolution More Effective
MAP Peer Review Report**

BEST PRACTICES

Austria

2020



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Austria (2020)

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
EU	European Union
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Introduction

The final report on BEPS Action 14: « Making Dispute Resolution Mechanisms More Effective », identified a number of best practices related to the three general objectives of the Action 14 Minimum Standard.

Paragraph 9 of the Terms of Reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective¹ stipulates that:

The best practices are not part of the Action 14 minimum standard and whether or not a jurisdiction has implemented the best practices will not be peer reviewed or monitored, nor will it affect the assessment of the assessed jurisdiction. Jurisdictions are free, however, to identify best practices they have adopted.

Austria has provided information and requested feedback by peers on how it has adopted best practices. In that regard, the FTA MAP Forum agreed on an optional best practices feedback form that peers have used to provide feedback on Austria's adoption of the best practices.

The peer review process on the implementation of the Action 14 Minimum Standard consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Austria. This document contains a general overview of the adoption of best practices and comments by peers on the adoption of these best practices during stage 1 (period ranging from 1 January 2016 up to 31 March 2017) and stage 2 (ranging from 1 April 2017 up to 30 September 2018).

¹ Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).

Part A

Preventing Disputes

[BP.1] Implement bilateral APA programmes

Jurisdictions should implement bilateral APA programmes

1. APAs concluded bilaterally between competent authorities provide an increased level of certainty in both jurisdictions, lessen the likelihood of double taxation and may proactively prevent transfer pricing disputes.
2. Austria reported that it has implemented an APA programme, under which it is authorised to enter into bilateral APAs. The competent authority for handling APA requests is Directorate IV/8 of the Federal Ministry of Finance. Furthermore, the legal basis for entering into APAs is the MAP provision under the applicable tax treaty. In that regard, Austria reported that APAs are dealt with under the same principles as MAP cases. More specifically, the timeline for requesting an APA is dependent on the specific timelines for filing a MAP request under the applicable tax treaty and the process for obtaining an APA is similar to the process for handling MAP cases.
3. Further to the above, Austria reported it does not charge any fees to taxpayers for a bilateral APA request. It, however, publishes statistics on APAs in relation to EU Member States on the website of the EU JTPF.²
4. Two peers provided input on this best practice. One peer indicated that all of their APA cases with Austria have been successfully resolved in a timely manner. Another peer noted that Austria has a well-functioning APA programme.

[BP.2] Publish mutual agreements of a general nature

Jurisdictions should have appropriate procedures in place to publish agreements reached by competent authorities on difficulties or doubts arising as to the interpretation or application of their tax treaties in appropriate cases.

5. Agreements reached by competent authorities to resolve difficulties or doubts arising as to the interpretation or application of their tax treaties in relation to issues of a general nature which concern, or may concern, a category of taxpayers, reflect the competent authorities' mutual understanding of the meaning of the convention and its terms. As such agreements provide information that might be useful to prevent difficulties

²Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en.

or doubts in the interpretation or application of tax treaty provisions, publication of these agreements is valuable.

6. Austria reported that it publishes agreements reached on difficulties or doubts arising as to the interpretation or application of their tax treaties by the Federal Ministry of Finance in the form of directives or regulations. This policy is also specified in section B.2.2 of its MAP guidance. Such publications can be found at:

<https://findok.bmf.gv.at>

7. Peers provided no input in relation to this best practice.

[BP.3] Provide guidance on APAs

Jurisdictions' published MAP guidance should provide guidance on APAs.

8. Guidance on a jurisdiction's APA programme facilitates the use of that programme and creates awareness for taxpayers on how the APA process functions. As APAs may also prevent future disputes from arising, including information on APAs in a jurisdiction's MAP guidance is relevant.

9. Austria has published guidance in relation to the MAP process and also has published domestic Transfer Pricing Guidelines. Both documents, however, initially did not include specific information on Austria's APA programme. In July 2019, Austria published an update of its MAP guidance (including an unofficial English translation), which in section E includes information on Austria's APA programme. This concerns:

- A general outline of the APA programme and the legal basis of this programme
- The process for obtaining an APA, including the information to be included in a request for an APA and a schematic overview
- The possibility of roll-back of bilateral APAs
- The effect of a concluded APA, its implementation and monitoring
- The possibility of cancellation, revocation or renewal of granted APAs.

10.

11. One peer provided input in relation to this best practice and commended the detailed guidance provided on the webpage of the Austrian Ministry of Finance in relation to bilateral APAs. This peer, however, also mentioned that it would appreciate to have a curtesy non-binding/non-official translation in the English language. In this peer's view such translation could be of great use to other competent authorities and to non-resident taxpayers.

[BP.4] Develop "global awareness" of the audit/examination functions

Jurisdictions should develop the "global awareness" of the audit/examination functions involved in international matters through the delivery of the Forum on Tax Administration's "Global Awareness Training Module" to appropriate personnel.

12. Making audit/examination function of tax administrations that are involved in international matters aware of: (i) the potential for creating double taxation, (ii) the impact of a proposed adjustment on the tax base of one or more jurisdictions and (iii) the process and principles by which competing juridical claims are reconciled by competent authorities, may be useful to prevent disputes from arising. Using the Global Awareness Training Module developed by the Forum on Tax Administration (FTA) can be helpful in this respect.

13. Austria reported that training is provided to officials in Austria's tax administration that are involved in the auditing and examination of taxpayers, such to ensure that any assessments made by them are in accordance with the provisions of Austria's tax treaties. It further indicated that all officials of Austria's tax administration have to complete a basic training ('Grundausbildung') that encompasses all areas of tax law, commercial law and accounting. They must also pass exams related to this material. Tax officials with a special function, such as auditors, further have to complete a special training ('Funktionsausbildung') that prepares them for performing their specific tasks. In this respect, Austria specified that the training for their auditors comprises both a practical and a theoretical training, which intensifies and complements the knowledge obtained within this basic training.

14. Peers did not provide input in relation to this best practice.

Part B

Availability and access to MAP

[BP.5] Implement appropriate administrative measures to facilitate recourse to MAP

Jurisdictions should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes, recognising the general principle that the choice of remedies should remain with the taxpayer.

15. Under Article 25(1) of the OECD Model Tax Convention, the mutual agreement procedure is a dispute settlement procedure in annex to domestic available remedies and not a substitute for such remedies. Reference is made to inter alia paragraph 7 of the Commentary to Article 25 of the OECD Model Tax Convention, which specifies that the right to submit a MAP request is available to taxpayers *without depriving them of the ordinary legal remedies available*. Facilitating recourse to the MAP through appropriate administrative measures, under the general principle that the choice of remedies remains with taxpayers, enables them to effectively resort to such dispute settlement procedure.

16. Austria reported it does not charge fees to taxpayers when they submit a MAP request. As is set out in section B.2.1.1 and 6.3 of its MAP guidance, taxpayers are in Austria allowed to request MAP assistance and seek to resolve the same dispute via domestically available judicial and administrative remedies. MAP requests can thereby be made regardless of whether the issue under dispute has already been decided via these judicial and administrative remedies. However, Austria reported that its competent authority is bound by decisions of its domestic courts and cannot deviate from such decisions in MAP. To avoid that a court renders a decision before a MAP case is closed, Austria noted that it is, pursuant to section 271 of the Federal Fiscal Code, possible to suspend domestic appeals procedures until the case under review is resolved in MAP under a tax treaty. Suspension is also possible for cases that are being dealt with under the procedures of Council Directive 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms. However, if the taxpayer requests a continuation of the appeals procedure while the case is under consideration in MAP, the suspension procedure is no longer valid and it may constitute a ground for interrupting or ending the MAP process, which, however, is dependent on the situation of each case.

17. Article 7(3) of the EU Arbitration Convention allows EU Member States not to apply the arbitration procedure as a supplement to the mutual agreement procedure, if pursuant to their domestic legislation they are not allowed to derogate from decisions of their judicial bodies.³ The provision shall, however, not apply if the taxpayer resident in that particular member state has allowed the time provided to lodge an appeal to expire, or has withdrawn any such appeal before a decision has been delivered. Although Austria

³ Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>

reported it is bound to decisions of its domestic courts, it did not make a declaration in that it applies Article 7(3) of the EU Arbitration Convention. Section D.3.2 of Austria's MAP guidance, however, states that Austria will not commence an arbitration procedure under the EU Arbitration Convention unless the taxpayer withdraws or renounces any domestic remedies.

18. One peer mentioned that Austria is not allowed to deviate from a court decision and that this sometimes prevents their competent authorities from finding a solution that avoids double taxation.

[BP.6] Provide access to MAP for bona fide taxpayer-initiated foreign adjustments

Jurisdictions' published MAP guidance should provide that taxpayers will be allowed access to the MAP so that the competent authorities may resolve through consultation the double taxation that can arise in the case of bona fide taxpayer-initiated foreign adjustments.

19. A taxpayer-initiated foreign adjustment is considered bona fide where it reflects the good faith effort of the taxpayer to report correctly, timely and properly the adjusted taxable income from a controlled transaction or the profits attributable to a permanent establishment with a view to reflect an arm's length result, and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the laws of the treaty partners. As such taxpayer-initiated foreign adjustments may lead to cases of double taxation, it is relevant that there is access to the MAP for resolving these cases. Furthermore, specifying whether there is access to the MAP for these adjustments in a jurisdiction's MAP guidance provides additional clarity.

20. Austria reported it provides access to MAP for cases of bona fide taxpayer-initiated foreign adjustments and that such cases have been accepted into the MAP process. Austria's MAP guidance, in section B.8, also clarifies that taxpayers have access to MAP in such cases

21. One peer provided input and mentioned that it did not have experiences in its MAP relationship with Austria that would point to any shortcomings in Austria's implementation of this best practice.

[BP.7] Provide guidance on multilateral MAPs

Jurisdictions' published MAP guidance should provide guidance on multilateral MAPs.

22. In recent years, globalisation has created unique challenges for existing tax treaty dispute resolution mechanisms. Whilst the mutual agreement procedure provided for in Article 25 of the OECD Model Tax Convention has traditionally focused on the resolution of bilateral disputes, phenomena such as the adoption of regional and global value chains as well as the accelerated integration of national economies and markets have emphasised the need for effective mechanisms to resolve multi-jurisdictional tax disputes. In that regard, it is for clarity purposes relevant that jurisdiction's MAP guidance includes information on availability of and access to multilateral MAPs.

23. Austria's MAP guidance does not contain information on multilateral MAPs.
24. One peer provided input and mentioned it noticed that the information in relation to this best practice has not been addressed in Austria's MAP profile.

[BP.8] Provide for suspension of collection procedures for pending MAP cases

Jurisdictions should take appropriate measures to provide for a suspension of collections procedures during the period a MAP case is pending. Such a suspension of collections should be available, at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.

25. If, following an adjustment taxpayers immediately have to pay the tax due, whereas the same amount was already paid to the tax administration of the other jurisdiction involved, double taxation will in fact occur. As taxpayers may then face significant cash-flow issues, at least for the period the MAP case is pending, it is relevant that jurisdictions provide for suspension of collection procedure for this period under at least the same conditions as available for domestic remedies.

26. Austria reported that following the implementation of the Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union⁴, it has modified the possibilities for taxpayers to obtain the suspension of tax collection during the period a MAP case is pending, which is introduced in section 48(1) of the Federal Fiscal Code. Pursuant to this section, taxpayers can apply for a confirmation notice from the Federal Minister of Finance if they have submitted a MAP request (e.g. under the tax treaty, the EU Arbitration Convention or the directive). Austria clarified that this confirmation notice is an official legal document that confirms the amount at stake in MAP at the outset of the MAP process. This document then serves as a basis for the local tax office to apply the procedure on suspension of collection under section 212a of the Federal Fiscal Code.

27. Section 212a of the Federal Fiscal Code stipulates that taxpayers may submit an application for the suspension of tax collection when the prerequisites under domestic law are met. Under this option, taxpayers are required to provide a calculation of the amount by which the tax due would be reduced if the position put forward in a MAP request would be the outcome of the mutual agreement procedure. In addition, the taxpayer should provide for an explanation of the difference between the tax due in the tax assessment notice and the calculated reduced tax due. In that regard, Austria noted that generally the information that is included in a MAP request is sufficient for making an assessment on the suspension of tax collection under section 212a. It further noted that there are under section 212a other prerequisites for granting the suspension of tax collection, such as that collection of taxes due should not be jeopardized by granting a suspension.

28. Section B.2.1.4 of Austria's MAP guidance further describes the availability of deferrals and the suspension of tax collection. Austria published an update of its MAP guidance in July 2019 (including an unofficial English translation), which also expanded section B.2.1.4 to clarify the possibility of suspension of tax collection in relation to the MAP process.

⁴ Available at: <https://eur-lex.europa.eu/eli/dir/2017/1852/oj>.

29. Specifically with respect to the EU Arbitration Convention, Austria specified in Annex 3 of the Final report on improving the functioning of the Arbitration Convention that taxpayers are allowed to request for a suspension of tax collection when filing a MAP if an appeal has been lodged.⁵ Depending on the case, such suspension may be available if the amount of tax is directly, or indirectly, dependent on the outcome of an appeal filed by the taxpayer (reference is made to section 212a of the Federal Fiscal Code discussed above). Such suspension is generally not granted if it seems less likely that: (i) the appeal will be successful, (ii) the appeal challenges a decree as to matters that do not deviate from a submission of the taxpayer, or (iii) the conduct of the taxpayer aims at endangering the collection of the tax.

30. Peers did not provide input in relation to this best practice

⁵ See EU Joint Transfer Pricing Forum, *Final Report on improving the functioning of the Arbitration Convention (JTPF/002/2015/EN)*, March 2015. Available at: http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf.

Part C

Resolution of MAP Cases

[BP.9] Permit taxpayers to request multi-year resolution of recurring issues through the MAP

Jurisdictions should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, requests made by taxpayer which are within the time period provided for in the tax treaty for the multi-year resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit.

31. In certain cases, a MAP request with respect to a specific adjustment to income may present recurring issues that may be relevant in previous or subsequent tax years. Allowing taxpayers to submit requests for the multi-year resolution through MAP with respect to such recurring issues, where the relevant facts and circumstances are the same, may help avoid duplicative MAP requests and facilitate a more efficient use of competent authority resources.

32. Austria reported it has implemented procedures to permit taxpayers to request multi-year resolution of recurring issues through the MAP. While initially its MAP guidance did not include any information in relation hereto, Austria published an update of its MAP guidance in July 2019 (including an unofficial English translation. In section B.2.1.1 of this updated guidance it is now explicitly stipulated that taxpayers are allowed to request for the multi-year resolution of recurring issues through the MAP. More specifically, where an issue concerns multiple tax years, taxpayers are allowed to include all those years in a single MAP request. Furthermore, where during the MAP process it becomes apparent that the case regards multiple tax years, taxpayers are allowed to expand their initial MAP request to those years as well.

33. Peers did not provide input in relation to this best practice.

[BP.10] Publish explanation of the relationship between the MAP and domestic remedies

Jurisdictions should publish an explanation of the relationship between the MAP and domestic law administrative and judicial remedies.

34. As mentioned under BP.5, taxpayers are pursuant to Article 25(1) of the OECD Model Tax Convention allowed to submit a MAP request irrespective of available domestic remedies. This, however, does not further specify how to proceed if both available remedies are initiated and the case is dealt with in the bilateral phase of the MAP. Publicly available

guidance on the relationship between the MAP and domestic remedies for taxpayers and provides clarity to taxpayers as well as treaty partners.

35. In Austria's MAP guidance it is in section B.2.1.1 and B.6.3. clarified that under Austrian domestic law taxpayers can request for MAP regardless of the fact that a legal remedy is pending or that appellate remedies within Austria are not yet exhausted. However, as noted in element BP.5, Austria is under its domestic law legally bound by decisions from its domestic courts and its competent authority is not allowed to deviate from such agreement in MAP. This rule is clarified in section B.6.3 of Austria's MAP guidance. To avoid the concurrent running of both procedures, section B.6.3 further clarifies that taxpayers may request for the suspension of domestic remedies for the duration of the mutual agreement procedure.

36. With respect to the arbitration procedure, section C.1.3 of Austria's MAP guidance stipulates that an arbitration procedure under a tax treaty may not be pursued if a domestic court has decided the case. However, where domestic remedies have been suspended, there would not be an obstacle not to initiate the arbitration procedure. Section C.2 further includes a description of the concurrence of the arbitration procedure under part VI of the Multilateral Instrument with domestic remedies. Lastly, with respect to the EU Arbitration Convention, Section D.3.2 of that guidance notes that as Austria is not allowed to deviate from court decisions, the arbitration procedure under the EU Arbitration Convention will not be applied unless taxpayer withdraw or waive appellate remedies. Also, the two-year period for the mutual agreement procedure will not commence until domestic remedies have been completed.

37. One peer provided input and indicated that Austria's published MAP profile provides the information that decisions which have been rendered by its domestic court are binding on Austria's competent authority. However, this peer indicated that it was unclear at what stage a court decision becomes binding in Austria and how the suspension process of a pending court case works in cases where a MAP has already been initiated or where a request thereto will be submitted.

[BP.11] Publish guidance on consideration of interest and penalties in MAP

Jurisdictions' published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.

38. As interest and penalties may concern substantial amounts, providing clarity in a jurisdiction's MAP guidance on whether interest and penalties are in the scope of the MAP is relevant to ensure that a taxpayer is well-informed on this issue.

39. Austria reported that it will deal with interest and penalties as part of the MAP process and that these are recalculated based on the outcome of a MAP case (either reduced or increased). This practice is confirmed in section B.6.4 of Austria's MAP guidance. Specifically with respect to the EU Arbitration Convention, this practice is also confirmed in Annex 3 of the Final report on improving the functioning of that convention.⁶

⁶ See EU Joint Transfer Pricing Forum, *Final Report on improving the functioning of the Arbitration Convention (JTPF/002/2015/EN)*, March 2015. Available at: http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf

40. One peer noted that guidance on the consideration of interest and penalties in MAP has not been referred to in the answer to question 21 in Austria's published MAP profile.

[BP.12] Include Article 9(2) of the OECD Model Tax Convention in tax treaties

Jurisdictions should include paragraph 2 of Article 9 of the OECD Model Tax Convention in their tax treaties.

41. Article 9(2) of the OECD Model Tax Convention allows competent authorities to make a corresponding adjustment to unilaterally eliminate double taxation arising from primary adjustments. Including this provision in tax treaties provides taxpayers the possibility to obtain the elimination of such double taxation via a unilateral corresponding adjustment.

Overview of tax treaties

42. Out of Austria's 90 tax treaties, 61 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the other treaty partner.⁷ Furthermore, in 26 tax treaties such a provision is not contained. The remaining three treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention. However, as under these treaties a corresponding adjustment can only be made via the mutual agreement procedure, they are considered not having the full equivalent of Article 9(2).

Recent developments

Bilateral modifications

43. Austria signed new treaties with two treaty partners, one of which concerns the replacement of an existing treaty. Both treaties have entered into force and contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention. This was not the case for the treaty that has been replaced. The effect of these newly signed treaties has been reflected in the analysis above where it has relevance.

Multilateral Instrument

44. Austria signed the Multilateral Instrument and has deposited its instrument of ratification on 22 September 2017. The Multilateral Instrument has for Austria entered into force on 1 July 2018.

45. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does not take effect for a tax treaty if one or both of the treaty partners have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of

⁷ These 61 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.

such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to notify the depositary whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

46. Austria has not reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. In regard of the 29 tax treaties identified in paragraph 42 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Austria listed 17 as a covered tax agreement under the Multilateral Instrument and for two of these 17 treaties did it make a notification on the basis of Article 17(4).⁸

47. With regard to those two treaties, one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Austria already contains the equivalent of Article 9(2) and the other treaty partner also made a notification on the basis of Article 17(4). This latter treaty partner has already deposited its instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Austria and this treaty partner, and therefore has modified this treaty to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

48. With regard to the remaining 15 treaties for which Austria did not make a notification on the basis of Article 17(4), all treaty partners are a signatory to the Multilateral Instrument and listed their tax treaty with Austria under that instrument. However, two of these 15 treaty partners have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Austria already contains the equivalent of Article 9(2). Concerning the remaining 13 treaty partners, six have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaties between Austria and these treaty partners, and therefore have superseded relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).⁹ The other seven treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

⁸ These 17 treaties include the treaty with former Czechoslovakia that Austria continues to apply to the Slovak Republic.

⁹ *Ibid.*

Other developments

49. For those treaties for which Article 9(2) of the OECD Model Convention is not included, Austria reported that it strives to include this provision in all of its tax treaties and to that effect signed without any reservations the Multilateral Instrument. If the effect of this instrument is that Article 9(2) will not be incorporated in the relevant tax treaties, Austria pointed to the fact that this follows from either the fact that the treaty partner did not sign the Multilateral Instrument or choices made by them in that instrument. In this respect, Austria mentioned it has not initiated bilateral negotiations only to include the equivalent of Article 9(2), also because having such a provision is a best practice. Where, however, negotiations with treaty partners are pending or where Austria contacted these partners to initiate such negotiations, *inter alia*, with a view to bring these treaties in line with the Action 14 Minimum Standard, Austria proposed to include Article 9(2), or, alternatively, to conclude a bilateral consultation on the basis of Article 25(3) of the OECD Model Tax Convention to clarify that transfer pricing cases can be dealt with in MAP in the absence of Article 9(2).

50. Peers did not provide input in relation to this best practice.

Part D

Implementation of MAP agreements

51. There are no best practices for Part D.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Settlement Mechanisms More Effective
Competent authority	Directorate International Tax Law (IV/8) of the Federal Ministry of Finance
Austrian Transfer Pricing Guidelines	Verrechnungspreisrichtlinien issued by the Austrian Bundesministerium für Finanzen of November 2010
Federal Fiscal Code of Austria	Bundesabgabenordnung
MAP guidance	Mutual Agreement and Arbitration Procedures under Double Taxation Treaties and the EU Arbitration Convention
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective



BETTER POLICIES FOR BETTER LIVES

For more information:

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 <http://oe.cd/bepsaction14>

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