

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

BEST PRACTICES

**Isle of Man
2020**



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Making Dispute Resolution More Effective MAP
Peer Review report

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
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 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.

The Isle of Man 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 the Isle of Man’s adoption of the best practices.

This document contains a general overview of the adoption of best practices and comments by peers on the adoption of these best practices.

¹ Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1).

Part A

Preventing Disputes

[BP1.] 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. The Isle of Man reported that it does not have in place a bilateral APA programme.
3. Peers did not provide input relating to best practices.

[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.

4. 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 or doubts in the interpretation or application of tax treaty provisions, publication of these agreements is valuable.
5. The Isle of Man reported that it has not published agreements reached on difficulties or doubts arising as to the interpretation or application of their tax treaties by the competent authorities, but in order to assist taxpayers in the future it intends to publish a (anonymised) summary of successfully completed MAP cases.
6. Peers did not provide input relating to best practices.

[BP.3] Provide guidance on APAs

Jurisdictions' published MAP guidance should provide guidance on APAs.

7. 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.

8. As Isle of Man has not implemented a bilateral APA programme, there is no guidance on APAs.

9. Peers did not provide input relating to best practices.

[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.

10. 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.

11. The Isle of Man reported that as it only had one MAP case to date, it considers that the use of the Global Awareness Training Module is not required at this stage.

12. Peers did not provide input relating to best practices.

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.

13. 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.

14. The Isle of Man reported that its competent authority will endeavour to inform taxpayers of how it will deal with a MAP request within two months after the receipt of the request. Such information will contain how the request is progressing at regular intervals when significant developments occur. Furthermore, in order to facilitate recourse to MAP, the Isle of Man has included in its MAP guidance contact details of the officials in charge of MAP.

15. Further to the above, no fees are charged to taxpayers when submitting a MAP request.

16. Peers did not provide input relating to this particular best practice.

[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.

17. 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 MAP for resolving these cases. Furthermore, specifying whether there is access to the MAP for these adjustments in a jurisdiction's MAP guidance also provides additional clarity.

18. The Isle of Man reported that it provides access to MAP for cases concerning bona fide taxpayer-initiated foreign adjustments. The Isle of Man's MAP guidance, however, does not contain any particular guidance on this item.

19. Peers did not provide input relating to best practices.

[BP.7] Provide guidance on multilateral MAPs

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

20. 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.

21. The Isle of Man's MAP guidance does not contain any information on multilateral MAPs. Its MAP profile, however, confirms that guidance on multilateral MAPs is not publicly available.

22. Peers did not provide input relating to best practices.

[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.

23. 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.

24. The Isle of Man reported that when a MAP request is pending, its competent authority will ensure that the collection of any relevant outstanding tax amount will be suspended on the same terms as is available when pursuing domestic remedies. The MAP guidance of the Isle of Man, under the heading "Making a Mutual agreement procedure request (MAP request)", clarifies that the competent authority will ensure that any relevant outstanding amount of tax will be held over until the MAP process is completed.

25. Peers did not provide input relating to best practices.

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.

26. 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.

27. The Isle of Man reported that its competent authority permits taxpayers to request multi-year resolution of recurring issues through the MAP. Its MAP guidance does not contain relevant information hereon, but the Isle of Man's MAP profile confirms that taxpayers are allowed to submit such requests.

28. Peers did not provide input relating to best practices.

[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.

29. As mentioned under BP.5, pursuant to Article 25(1) of the OECD Model Tax Convention taxpayers are 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 provides clarity to taxpayers as well as treaty partners.

30. The Isle of Man has not included in its MAP guidance an explanation addressing the relationship between the MAP and domestic remedies.

31. Peers did not provide input relating to best practices.

[BP.11] Provide 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.

32. As interests 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.

33. The Isle of Man's MAP guidance, under the heading "Making a Mutual agreement procedure request (MAP request)", states that charging of interest will continue to run from the original due date until any final agreed liability. The guidance, however, does not further describe on whether interest or penalties will be in consideration in a mutual agreement procedure.

34. The Isle of Man's MAP profiles explains that penalties and interest will be reduced in proportion to any MAP related adjustments made, but it is not necessarily clear whether such treatments would be dealt with as part of MAP process.

35. Peers did not provide input relating to best practices.

[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.

36. The Isle of Man reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties.

37. Out of the Isle of Man's 24 tax treaties, 16 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Seven of these 16 treaties concern treaties with a limited scope that either only contain a provision on associated enterprises or cover cases of certain items of income of individuals and a provision on associated enterprises.

38. Of the remaining eight treaties, five do not contain a provision on associated enterprises at all, which can be clarified by the fact that these treaties only cover cases of certain items of income of individuals, or cover these cases and contain a MAP provision for transfer pricing adjustments. For the remaining three treaties the following analysis is made:

- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but the granting of a corresponding adjustment is only optional as the word "shall" instead of "may" and is therefore not being considered the equivalent thereof
- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but it contains an additional phrase under which

corresponding adjustments shall be only granted where the competent authorities agree and is therefore not being considered the equivalent thereof

- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but does not contain the last part of the sentence stating that the competent authorities “shall if necessary consult each other”;

39. The Isle of Man signed the Multilateral Instrument and has deposited its instrument of ratification on 25 October 2017. The Multilateral Instrument has for the Isle of Man entered into force on 1 July 2018.

40. 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 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).

41. The Isle of Man has, pursuant to Article 17(3), reserved 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 three treaties identified in paragraph 38 that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (disregarding those five treaties that do not contain Article 9 at all), the Isle of Man listed two of them as a covered tax agreement under the Multilateral Instrument and included one of them in the list of treaties for which the Isle of Man has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument. For the remaining treaty the Isle of Man did not make, pursuant to Article 17(4), a notification that this treaty does not contain such equivalent.

42. The relevant treaty partner is a signatory to the Multilateral Instrument, listed its treaty with the Isle of Man under that instrument, but also, on the basis of Article 17(3), reserved the right not to apply Article 17(2) for its covered tax agreements. Therefore, at this stage, none of the two tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

Part D

Implementation of MAP agreements

43. 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
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 (CTPA/CFA/NOE2(2016)45/REV1)



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