

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

BEST PRACTICES

Latvia

2021



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Making Dispute Resolution More Effective
MAP Peer Review Report

Latvia
Best practices (2021)

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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 implementation 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.

Latvia 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 Latvia’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 Latvia. 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 August 2018) and stage 2 (ranging from 1 September 2018 up to 30 April 2020).

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. Latvia reported that it has a unilateral APA programme since 2013, but it has not introduced a formal bilateral or multilateral APA programme.
3. However, Latvia reported that in practice, it is possible to enter into bilateral or multilateral APAs since its competent authority is open to accepting and discussing a bilateral or multilateral APA request, provided that the request clearly states that the taxpayer wants to pursue such a bilateral or multilateral APA and provided that the relevant treaty contains a provision equivalent to Article 25(3) of the OECD Model Tax Convention (OECD, 2017).
4. Latvia reported having received four requests for bilateral APAs. Latvia noted that all of these APA requests have been granted and resolved.
5. Peers did not provide input relating to this particular best practice.

[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.

6. 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.
7. Latvia reported that it does not publish agreements reached concerning difficulties or doubts arising as to the interpretation or application of their tax treaties by the competent authorities.

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

[BP.3] Provide guidance on APAs

Jurisdictions' published MAP guidance should provide guidance on APAs.

9. 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.

10. As previously mentioned under element BP.1, Latvia's current APA programme provides that APA requests are possible on a unilateral basis, but that it is open to discussing bilateral and multilateral APA cases based on the equivalent of Article 25(3) in the relevant tax treaty.

11. Latvia reported that guidance on the conduct of advance pricing arrangements in Latvia was released through the introduction of Regulation No. 802 of the Cabinet dated 18 December 2018 and available (in English) at:

<http://vvc.gov.lv/image/catalog/dokumenti/Cab.%20Reg.%20No.%20802%20-%20Transfer%20Pricing%20Documentation.docx>

12. This guidance generally deals with the unilateral APA programme in Latvia, but acknowledges the possibility of bilateral or multilateral APAs involving Latvia in the section concerning transfer pricing documentation.

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

[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.

14. 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.

15. Latvia reported that its tax administration provides internal trainings as well as opportunities to participate in international events for its officials involved in the auditing/examination of taxpayers.

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

17. 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, enabling them to effectively resort to such dispute settlement procedure.

18. Latvia reported that taxpayers are allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and/or administrative remedies provided by its domestic law. Latvia reported in this regard that since 1 September 2018, Latvia has also granted access to MAP even where there is a judicial decision on the issue in question. However, Latvia clarified that its competent authority would not be able to derogate from a judicial decision in MAP but that it would allow correlative adjustments in the treaty partner jurisdiction.

19. Latvia further reported that even if a MAP case is initiated based on its implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, access to MAP would be granted even where there is a judicial decision on the issue. However, Latvia clarified that it would not continue the MAP process where domestic remedies are finalised in an accepted MAP case which is not yet closed.

20. Latvia reported that it intends to publish MAP guidance, inter alia with a view to facilitate recourse to MAP by Latvian taxpayers and noted that no fees are charged to taxpayers for a MAP request.

21. 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.

22. 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.

23. Latvia reported that it does not provide access to MAP in cases of bona fide taxpayer-initiated foreign adjustments, which is also clarified in its MAP profile. Latvia further reported that it plans to address this item in its future MAP guidance.

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

[BP.7] Provide guidance on multilateral MAPs

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

25. 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.

26. Latvia noted that multilateral MAPs are possible for MAP cases with EU member states arising under Chapter XV of the law "On Taxes and Duties", which is Latvia's implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union. Latvia further reported that it plans to address this item in respect of other instruments in its future MAP guidance.

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

[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.

28. 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.

29. Latvia reported that there is currently no mechanism to suspend tax collection when a taxpayer submits a MAP request. This is confirmed in Chapter XV of the law “On Taxes and Duties” in respect of intra-EU MAP cases arising from the implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, which policy Latvia reported that it extends to other MAP cases as well. This is further confirmed in Latvia’s MAP profile.

30. Specifically with respect to EU arbitration convention, Latvia also specified in Annex 3 of the final report on improving the functioning of the arbitration convention that there are no specific rules dealing with suspension of tax collection in Latvia, and standard domestic rules apply.²

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

²

Available at https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/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.

32. 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.

33. Latvia reported it allows taxpayers to request the multi-year resolution of recurring issues through the MAP on the conditions that such years are audited. This is clarified in Latvia's MAP profile. Latvia further reported that it plans to address this item in its future MAP guidance as well.

34. Peers did not provide input relating to this particular 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.

35. 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.

36. Apart from the information available in Latvia's MAP profile, there is no information publicly available on the relationship between MAP and domestic remedies in Latvia. Latvia

further reported that it plans to address this item in its future MAP guidance. However, Chapter XV of the law “On Taxes and Duties” addresses the relationship between MAP cases arising from Latvia’s implementation of Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union and domestic available remedies.

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

[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.

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. Latvia reported that interest and penalties resulting from adjustments can be waived or dealt with as part of the MAP. Specifically with respect to the EU Arbitration Convention, Latvia specified in Annex 3 of the Final report on improving the functioning of the Arbitration Convention that in its domestic legislation, however, there is no special provision that waives interest on unpaid tax due to the fact a case has been pending under the mutual agreement procedure.³ The normal rules for charging and refunding of interest thus apply.

40. Latvia’s MAP profile clarifies that there is no special regulation available in Latvia on this issue and that each case would be considered on a case-by-case bases. It is specified that the taxpayer should request for the consideration of interest and penalties in MAP in the MAP request.

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

[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.

42. Article 9(2) of the OECD Model Tax Convention (OECD, 2017) 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

43. Out of Latvia’s 62 tax treaties, 54 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner.

³ Available at https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_report_ac_jtpf_002_2015_en_final_clean.pdf

Furthermore, three do not contain a provision that is based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The remaining five treaties do contain a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviate from this provision for the following reasons:

- in two treaties, the term “may” is used instead of “shall” when it concerns the granting of a corresponding adjustment
- in two treaties, its provision only indicates that the competent authorities may consult together for granting a corresponding adjustment
- in one treaty, it requires the agreement by the competent authorities of both states to grant a corresponding adjustment.

44. Latvia is a signatory to the EU Arbitration Convention, which provides for a mutual agreement procedure supplemented with an arbitration procedure for settling transfer pricing disputes and disputes on the attribution of profits to permanent establishments between EU Member States.

Recent developments

Bilateral modifications

45. Latvia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. It contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

46. Latvia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties. In that regard, Latvia signed the Multilateral Instrument and has deposited its instrument of ratification on 29 October 2019. The Multilateral Instrument has entered into force for Latvia on 1 February 2020.

47. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – 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 (OECD, 2017). 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 for a tax treaty not take effect if one or both of the treaty partners to the tax treaty 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 (OECD, 2017), 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 make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). 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 (OECD, 2017)).

48. Latvia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Furthermore, Latvia reserved its right not to apply the provision on the basis that in the absence of a provision referred to in Article 17(2) in its Covered Tax Agreement:

- i. it shall make the appropriate adjustment referred to in Article 17(1); or
- ii. its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to the mutual agreement procedure.

49. Therefore, at this stage, none of the eight tax treaties identified in paragraph 43 above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

50. Peers did not provide input relating to this particular 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
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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