

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

BEST PRACTICES

Liechtenstein

2020



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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 of 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.

Liechtenstein 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 which peers have used to provide feedback on Liechtenstein'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 Liechtenstein. 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 31 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 (CTPA/ CFA/ NOE2 (2016) 45/REV1).

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. Liechtenstein reported that it has not implemented a bilateral APA program. Liechtenstein also reported that it is currently considering implementing such a programme. While there is not yet a formal APA programme in place, the Fiscal Authority of Liechtenstein is authorised to enter into bilateral APAs upon request of the taxpayer or upon request of the competent authority of the other contracting state for which the legal basis Article 25(3) of the OECD Model Tax Convention as incorporated in Liechtenstein's tax treaties.
3. 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.

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. Liechtenstein reported that it publishes agreements reached on difficulties or doubts arising as to the interpretation or application of its tax treaties. These publications are published in the original language and can be found on the webpage of the Liechtenstein Fiscal Authority.² Liechtenstein further reported that in 2016 it reached such an agreement, which was published.

² <http://www.llv.li/files/stv/int-uebersicht-dba-tiea-engl.pdf>

6. 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.

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. There is no guidance on APAs as Liechtenstein has not yet implemented a bilateral APA programme.
9. 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.

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. Liechtenstein reported that it provides training to officials involved in the auditing and examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of its tax treaties. Liechtenstein further indicated that internal trainings are provided by members of the International Division on a regular basis.
12. 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.

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. Liechtenstein reported that no fees are charged to taxpayers for a MAP request. Taxpayers in Liechtenstein are allowed to request MAP assistance and seek to resolve the same dispute via domestically available judicial and administrative remedies. These requests can be made regardless of whether the issue under dispute has already been decided via domestically available judicial and administrative remedies.

15.

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 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.

18. Liechtenstein's MAP guidance stipulates in section 3.1.6 that access to MAP would be granted in cases where double taxation results from an adjustment made by a taxpayer himself in good faith to a previously submitted tax return, when the adjustment made was related to the attribution of permanent establishment profits or transfer prices.

19. 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.

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. Liechtenstein's MAP guidance does not contain information on multilateral MAPs.

22. 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.

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 procedures for this period under at least the same conditions as available for domestic remedies.

24. Liechtenstein reported that it does not provide for the suspension of collection procedures during the period a MAP case is pending.

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

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. Liechtenstein reported that taxpayers are allowed to request multi-year resolution of recurring issues through the MAP. However, Liechtenstein's MAP guidance does not indicate that multi-year resolution of recurring issues through MAP would be granted in this type of cases.

28. 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.

29. 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.

30. Liechtenstein has included in its MAP guidance an explanation addressing the relationship between the MAP and domestic law administrative and judicial remedies. Sections 3.1.1 and 3.1.6 state that in Liechtenstein, mutual agreement procedures can, in

general, be requested irrespective of the remedies provided by domestic or foreign law and that the fact that a Liechtenstein court has rendered judgement in a case covered in a MAP request does not per se prevent a mutual agreement procedure from being initiated.

31. 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

32. 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.

33. Liechtenstein indicated that interest or penalties resulting from adjustments made pursuant to a MAP agreement are waived or dealt with as part of the MAP procedure depending on the specific case. Furthermore, Liechtenstein mentioned that as a matter of principle is prepared to include interest or penalties resulting from adjustments as part of the MAP procedure. However, Liechtenstein's MAP guidance does not include guidance on the consideration of interest and penalties in the MAP.

34. 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.

35. 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.

36. Liechtenstein signed new treaties with three treaty partners, which all regards a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. All three treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention. Two of these three treaties have already entered into force. The effects of these three newly signed treaties have been reflected in the analysis.

37. Liechtenstein further signed the Multilateral Instrument and is currently in the process of ratification, which is expected to be completed in the second half of 2019.

38. 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).

39. Liechtenstein has 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. The treaties listed under this reservation also regards the one treaty identified above that does not contain Article 9(2). Therefore, this treaty will not be modified by the Multilateral Instrument to include that provision.

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

Part D: Implementation of MAP Agreements

41. 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 Resolution Mechanisms More Effective
MAP guidance	Fact sheet on international mutual agreement procedures under the double taxation conventions with respect to taxes on income and on capital
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017



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