

**Inclusive Framework on BEPS: Action 14
Making Dispute Resolution More Effective
MAP Peer Review Report Stage 2**

BEST PRACTICES
United Kingdom



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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
HMRC	Her Majesty's Revenue and Customs
OECD	Organisation for Economic Co-operation and Development
TIOPA 2010	Taxation of International and Other Provisions Act 2010

policy or administrative constraints for the competent authority to deviate from a court decision in a MAP. In section 423050 of the International Manual it is specifically mentioned that even where a case has been settled via domestic available remedies it can still be dealt with under the mutual agreement procedure. This generally also applies for the availability of the arbitration procedure if specifically provided for in the relevant tax treaty. As a matter of policy, the United Kingdom strives at allowing eligible cases to be referred to the arbitration procedure even if a case has already been settled via domestic available remedies. In the situation that a MAP is pursued first under the suspension of domestic available remedies, the United Kingdom allows taxpayers to reject the MAP agreement and pursue these domestic remedies if still available.

20. 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. 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resident in that particular Member State has allowed the time provided to lodge an appeal to expire, or if it has withdrawn any such appeal before a decision has been delivered. In the Unilateral Declarations to the EU Arbitration Convention, the United Kingdom declared that it will apply Article 7(3).⁸ In section 423080 of its International Manual on transfer pricing and the mutual agreement procedure, the United Kingdom, however, stipulates that it no longer sees the need to apply Article 7(3) of the EU Arbitration Convention. Conclusively, for purposes of that convention, the United Kingdom will refer eligible cases to the arbitration procedure in cases irrespective of whether a judicial process was already run through in the United Kingdom.

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 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.

23. The United Kingdom reported that it grants access to the MAP in cases where double taxation results from bona fide taxpayer-initiated foreign adjustments. Section 423030 of the International Manual on transfer pricing and mutual agreement procedures

⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>.

clarifies that the United Kingdom will accept MAP requests for these type of cases and that it will endeavour to resolve such cases through MAP with the other competent authority concerned.

24. One peer provided input on this best practice and indicated that according to its experience the United Kingdom is open to discuss cases concerning bona fide taxpayer-initiated foreign adjustments.

[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. The United Kingdom indicated that in practice it has entered into multilateral MAPs and that it follows OECD guidelines in relation to this subject. Section 423040 of the United Kingdom's International Manual on transfer pricing and the mutual agreement procedure sets forth that its competent authority will, in appropriate cases, engage with the other competent authorities concerned to jointly work on multilateral MAP cases.

27. One peer noted that the United Kingdom is amenable to consider multilateral MAPs on a case-by-case basis.

[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. The United Kingdom indicated that it provides for the suspension of collection procedures during the period a MAP case is pending. It specifically mentioned that taxpayers have the ability to make informal requests for such suspension. Section 7 of the United Kingdom's MAP guidance stipulates that payment of taxes on any assessments raised or determinations made may be suspended when a case is dealt with in MAP.

Furthermore, section 423070 of its International Manual on transfer pricing and the mutual agreement procedure also addresses that the tax collection may be suspended until the MAP cases is resolved, such on the rules under the normal appeals process in the United Kingdom.

30. Specifically with respect to the EU Arbitration Convention, the United Kingdom 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 request under this convention.⁹ In case no domestic appeal is pending, by which there is no domestic legal basis for such suspension, the United Kingdom's competent authority may make informal arrangements to suspend collection of taxes pending the outcome of the MAP. Furthermore, in the Exchange of Notes to the tax treaty with the United States it is determined that disputed taxes shall not be collected during the period a MAP is pending.

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

⁹ 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.

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. The United Kingdom indicated that it allows taxpayers to make requests for the multi-year resolution of recurring issues through MAP. Section 423040 of its International Manual on transfer pricing and the mutual agreement procedure describe that taxpayers have the right to request MAP for such cases and that its competent authority will seek to work the case in a co-ordinated manner.

34. Under the competent authority agreement the United States entered into with the United Kingdom, it is explicated that if their competent authorities enter into a MAP agreement for specific fiscal years and if it concerns an issue that has also arisen in subsequent years, taxpayers may also request for MAP with respect to these subsequent years.¹⁰

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

¹⁰ See Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 25) of the Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (signed on December 31, 1975, as amended by Protocols).

[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.

36. 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.

37. Section 423050 of the its International Manual on transfer pricing and the mutual agreement procedure sets out the policy of the United Kingdom in relation to the conjunction of the MAP and domestic available remedies. Reference is made to BP. 5 for a discussion hereof.

38. 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.

39. 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.

40. The United Kingdom reported that interest and/or penalties are taken into consideration in a mutual agreement procedure. More specific, the United Kingdom considers that interest and/or penalties that result from adjustments made pursuant to a MAP agreement are waived or dealt with as part of the MAP process. If in the United Kingdom a MAP agreement entails an adjustment that results in a reduction of the taxable base, then interest and penalties are reduced in proportion to any adjustment that results from the MAP agreement.

41. Section 19 of the MAP guidance of the United Kingdom notes that the normal rules for charging interest on tax adjustments apply, even when the collection of tax is suspended during the period a MAP case is pending. Likewise, interest will be refunded to the taxpayer on an overpaid amount of tax. Furthermore, section 19 notes that the United Kingdom will repay the appropriate portion of any tax-based penalty that is charged on an adjustment made by the United Kingdom, which adjustment is reduced or withdrawn as the outcome of the MAP discussions. Similar information is contained in section 423070 of the its International Manual on transfer pricing and the mutual agreement procedure

42. Specifically with respect to the EU Arbitration Convention, the United Kingdom 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.¹¹ The normal rules for charging and refunding of interest thus apply.

43. 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.

44. 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.

45. Out of the United Kingdom's 130 tax treaties, 84 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner. Furthermore, in 22 tax treaties such a provision is not contained.¹² With respect to the remaining 24 treaties, the following analysis is made:

- In 19 treaties this provision is not contained in Article 9, but in the article on the elimination of double taxation.¹³ With respect to these treaties, the United Kingdom indicated that this may effectively not lead to the same result as under Article 9(2), as elimination of double taxation may not always be provided for (i.e. in cases of losses)
- In four treaties a provision is contained that is based on Article 9(2) of the OECD Model Convention, but this provision uses additional or different wording and therefore is considered not being equivalent thereof
- In one treaty a provision is contained that is based on Article 9(2) of the OECD Model Tax Convention, but requires that competent authorities have to consult each other before granting a corresponding adjustment and therefore is considered not being equivalent thereof.

46. The United Kingdom signed the Multilateral Instrument and has deposited its instrument of ratification on 29 June 2018. The Multilateral Instrument has for the United Kingdom entered into force on 1 October 2018.

¹¹See 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.

¹² These 25 treaties include the treaty with former USSR that is continued to be applied to Belarus and the treaty with former Yugoslavia that is continued to being applied to Bosnia & Herzegovina, Montenegro and Serbia.

¹³ These 19 treaties include the treaty with former Czechoslovakia that is continued to be applied to the Czech Republic and the Slovak Republic.

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 – 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).

48. The United Kingdom 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 46 tax treaties identified in paragraph 45 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, the United Kingdom listed 42 as a covered tax agreement under the Multilateral Instrument and for 22 of these 42 treaties make a notification on the basis of Article 17(4) that they do not contain a provision described in Article 17(2).¹⁴

49. With regard to those 22 treaties, six treaty partners are not a signatory to the Multilateral Instrument, whereas three have, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with the United Kingdom already contains the equivalent of Article 9(2), and nine also made a notification on the basis of Article 17(4).¹⁵ The remaining four treaty partners did not make such a notification. Therefore, at this stage, nine of the 42 tax treaties identified above will be replaced by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 9(2) of the OECD Model Tax Convention and four will be superseded to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

50. With regard to the remaining 20 treaties for which the United Kingdom did not make a notification on the basis of Article 17(4), 16 treaty partners are not a signatory to the Multilateral Instrument, whereas one did not list its tax treaty with the United Kingdom under that instrument. The remaining three treaty partners did neither make, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with the United Kingdom already contains the equivalent of Article 9(2), nor did

¹⁴ These 22 treaties include the treaty with former Czechoslovakia that the United Kingdom continues to apply to the Czech Republic and the Slovak Republic.

¹⁵ Ibid.

they make a notification on the basis of Article 17(4). Therefore, at this stage, three of the 20 tax treaties will be superseded by the Multilateral Instrument upon its entry into force for these treaties 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).¹⁶

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

¹⁶ These three treaties include the treaty with former Yugoslavia that the United Kingdom continues to apply to Bosnia and Herzegovina, Montenegro and Serbia, but only as regards Serbia because Bosnia and Herzegovina and Montenegro are not signatories to the Multilateral Instrument.

Part D

Implementation of MAP Agreements

52. 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
APA guidance	Statement of Practice 2/2010 of November 2016
HMRC	Her Majesty's Revenue and Customs
MAP guidance	Statement of Practice 1/2018 of January 2018
OECD	Organisation for Economic Co-operation and Development
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



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