SwissHoldings

Verband der Industrie- und Dienstleistungsunternehmen in der Schweiz
Fédération des groupes industriels et de services en Suisse
Federation of Industrial and Service Groups in Switzerland

International Co-operation and Tax Administration Division
Centre for Tax Policy Administration
Organisation for Economic Cooperation and Development
2, rue André Pascal
75775, Paris Cedex 16
France

Via E-Mail to: taxpublicconsultation@oecd.org

Berne, 25th January 2021

SwissHoldings Input on the Public Consultation on 2020 Review of BEPS Action 14

Dear Madam, Dear Sir,

SwissHoldings represents the interests of 58 Swiss-based multinational enterprises from the manufacturing and service sectors. We would like to thank the OECD for the opportunity to submit additional comments on the 2020 review of the BEPS Action 14 Minimum Standard.

The concept and operation of the Action 14 standards and review mechanism has been a notable success of the BEPS project, and we congratulate the OECD on the successful implementation of this program. As indicated by the OECD's statistics cross-border tax disputes have steadily increased over the last years, the same is true for mutual agreement procedure based on Swiss double taxation agreements. We are convinced that, especially against the background of the OECD initiative towards reaching a consensus-based long-term solution to the tax challenges arising from the digitalisation of the economy, effective and timely international dispute resolution will become more important in the future and therefore welcome the initiatives to improve the mutual agreement procedure to resolve double taxation issues. The envisaged reform of the international taxation system will lead to an increase in mutual agreement procedures, which makes it essential to have internationally uniformly implemented measures that lead to rapid dispute resolution and tax certainty.

SwissHoldings fully supports the comments collected and provided by Business at OECD (BIAC). We would also like to point out the following concerns:

- The predominant issue is the **duration of dispute resolution procedures**. Multiple rounds of meetings between states regarding bilateral APAs is leading to a lengthy commitment of personnel which also makes the process more vulnerable to numerous changes of personnel on all sides (administration, business, advisors). The lengthy commitment is leading to high costs to taxpayers as well as tax administrations and causes tax uncertainty over several years. **Increased taxpayer involvement and more transparency of tax administrations during the process could contribute to more effective information gathering by all actors involved and thereby increase tax certainty for taxpayers through ongoing participation in the decision-making process. Transparent communication to the taxpayers is very important.**

SwissHoldings
Naegeligasse 13
CH-3011 Bern
+41 31 356 68 68
info@swissholdings.ch
www.swissholdings.ch

- To ensure that access to MAPs is granted in eligible cases, the **formal hurdles for opening such procedures should be harmonized internationally and not hindered by hardly feasible and different formal rules.** A consistent legal framework would ensure taxpayers the certainty of being able to initiate a MAP at any location. Moreover, very strict local administrative rules combined with an over-formalistic approach of the tax administration can preclude the access to the MAP and override them.
- **Barriers to access MAPs, in particular during tax audits settlements, need to be abolished**. We experience a growing trend that tax administrations may only agree to an audit settlement with the taxpayers based on the condition the taxpayer will not pursue a MAP. Such agreements (or sometimes even threats) disincentives potential MAP solutions. In this context, we propose the definition and development of sanctions for tax administrations by the OECD.
- **Unilateral tax measures such as Diverted Profit Tax, Digital Service Tax or local CFC rules are regularly not subject to any double tax treaties.** Access to MAPs are consequently denied. Such gaps, which obviously lead to double taxation for MNEs need be closed within the framework of MAPs.
- To **guarantee timely and effective resolution of cases through the mutual agreement procedure, arbitration and dispute resolution mechanisms should be included within double tax treaties to ensure a mandatory and legally enforceable access** to MAP. If a DTT does not foresee arbitration or mandatory resolution mechanisms, the initiation of a MAP is usually associated with high administrative hurdles and uncertainties and leads to taxpayers often refraining from initiating a MAP. Unintended additional tax burdens or double taxation can occur as a result. **As we expect an increase in mutual agreement procedures, MAP arbitration should be included into the minimum standard.**
- Given the current lengthy duration of dispute resolution procedures, appropriate interest and penalty payments should be linked to standardised rules that include interest on both tax refunds and tax arrears. Many taxpayers face extraordinary interest on back payments that are disproportionate to the initial tax claim. The uncertain outcome of a MAP/APA also makes it almost impossible for taxpayers to make prepayments to avoid or reduce interest on back taxes. An option to prepay or suspend interest during a MAP/APA would increase certainty for taxpayers and strengthen dispute resolution mechanisms. **A consistent legal framework for interest and penalties within the minimum standard is therefore welcomed.**
- Lastly, it should also be **ensured that MAP is not misused.** Members have observed that tax authorities may misuse MAP by making high tax adjustments on weak grounds, hoping to achieve a better compromise in a MAP than what they would in principle be entitled to. The abuse of MAP must not be financially beneficial.

Yours faithfully,

Dr. Gabriel Rumo	Martin Hess
CEO	Member of the Executive Committee, Head Taxation

Annex:

- BUSINESS AT OECD INPUT ON 2020 REVIEW OF BEPS ACTION 14