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Submitted by email: taxpublicconsultation@oecd.org

January 25, 2021

Comments on the Public Consultation Document: BEPS Action 14: Making Dispute Resolution Mechanisms More Effective – 2020 Review

Dear Sir / Madam,

A&M Taxand welcomes the opportunity to provide comments on the Public Consultation Document: BEPS Action 14: Making Dispute Resolution Mechanisms More Effective – 2020 Review (2020 Review). We would like to share our thoughts and comments based on our experience in advising multinational enterprises in resolving transfer pricing disputes. Our responses herein are focused on those questions where we have substantive comments to make and numbered in accordance with the 2020 Review.

The work done in the area of improving the effectiveness of resolving disputes under Mutual Agreement Procedure (MAP) and Advance Pricing Agreement (APA) continues to be of great importance. With the uncertainty presented by today's economic environment and evolving tax measures introduced by legislative bodies and tax authorities around the world, the number of treaty-based tax disputes can be expected to rise. A&M Taxand, therefore, agrees it is critical to ensure proper access to MAP, and under the right circumstances APA, and the efficient handling of cases that are brought forward.

Experience has shown that when executed well, these forums for resolving tax disputes can be a very effective tool to obtaining greater certainty in the otherwise uncertain area of international tax, in particular with respect to transfer pricing. Whether in the context of a bilateral or multilateral APA, or a case that originates through a tax audit adjustment, a MAP that is supported by many of the principles identified in the 2020 Review generally leads to a more satisfying experience for taxpayer and tax authority alike.

Responses to Specific Questions Raised in the 2020 Review

Response to Question 1:
In general, the U.S. MAP process for transfer pricing cases is effective and efficient. There is adequate guidance on the information needed to be included in a MAP request and that guidance is readily available to the public. Double tax is avoided in the vast majority of cases, evidencing

the overall effectiveness of the program. While resolution of cases with certain treaty partners takes too long, on average cases are resolved in a reasonable period of time.

Response to Question 2:
Given the time and effort required to develop an effective APA program, jurisdictions that have only a minimal number of transfer pricing MAP cases should not be required to introduce an APA program until their inflow of MAP cases reaches a critical mass. For example, such a threshold could be established at either 25 MAP cases in inventory or 10 cases received annually.

Response to Question 3:
We have seen inappropriate adjustments reflecting lack of experience on international tax issues that were later withdrawn in MAP. We support the idea that training of audit/examination personnel on international tax matters should be elevated from a best practice to a Minimum Standard.

Response to Question 4:
The international tax training would be most effective if accompanied by having audit/examination personnel work live MAP cases, so they get a first-hand look at the MAP process from start-to-finish.

Response to Question 5:
In our experience, MAP requests have not been submitted only in cases where the treaty time limit for presentation of the case had expired.

Response to Question 7:
Through our experience, differences between jurisdictions in the documentation that needs to be provided when a MAP request is filed have not yet resulted in problems in practice. Nevertheless, a common list of minimum information that needs to be provided would be helpful in avoiding future problems and to ease the burden for taxpayers seeking cost-effective MAP relief.

Response to Question 12:
We have not experienced cases where interest and penalties have not been aligned with the outcome of the MAP process. However, this is an important issue and alignment of interest and penalties with the outcome of the MAP process should be part of the Minimum Standard.

Response to Question 14:
Based on our experience, implementation of MAP agreements has not been prevented by the expiration of domestic time limits.

Response to Question 15:
While we have not experienced the issue identified, one solution may be for the jurisdictions to roll the settlement into a more current year to avoid the domestic time limits.

Response to Question 17:
Multi-year resolution of recurring issues through the MAP process is possible in the U.S. using the Accelerated Competent Authority Procedure (ACAP), assuming the treaty partner agrees. Some treaty partners readily agree to the use of ACAP, but a number do not.

Response to Question 18:
While the roll-forward of a MAP agreement to future years via the bilateral APA process is possible in the U.S., in our experience this has not been done in many cases.

Response to Question 20:
We have observed significant differences in resolution time and costs of the proceedings for tax disputes under treaties with MAP arbitration as compared to tax disputes under tax treaties without MAP arbitration. This statement is not true for every country without MAP arbitration, but there are some jurisdictions for which MAP arbitration has the potential to enormously reduce resolution times and costs.

Response to Question 23:
We agree with the three proposals for the reporting of additional data since they improve transparency and provide clarity on jurisdictions' MAP inventory. This improved transparency and clarity will help to remove some of the "black box" nature of the MAP process, which tends to discourage companies from pursuing MAP.

Response to Question 25:
The U.S. already publishes statistics on APAs that include the data categories being considered. This data helps companies in making the decision whether to pursue an APA and this data should be available for all APA countries.

Response to Question 26:
Additional information to be added that we feel would be beneficial to taxpayers and furthering transparency include total number of requests, case closures and inventory by jurisdiction for jurisdictions that represent at least 3% of the total for each respective category.

Yours sincerely,
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