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BEPS Actions 14: Making dispute resolution mechanism more effective – 2020 review

AstraZeneca welcomes the opportunity to comment on the public discussion document in relation to BEPS Action 14: Making dispute resolution mechanism more effective -2020 review. We consider this to be an important initiative as effective dispute resolution mechanisms are critical to relieve any economic double taxation suffered during a tax dispute.

This letter sets out our comments on the OECD proposals to strengthen both the Action 14 Minimum Standard and the MAP Statistics Reporting Framework.

General comments

The Mutual Agreement Procedure ('MAP') provision within tax treaties is critical for MNEs to eliminate any economic double taxation suffered in the event of a tax dispute. It is important the process is effective and provides binding outcomes supported by economic principles.

AstraZeneca welcomes the improvements made under the Action 14 Minimum Standard to improve access to MAP and the effectiveness of MAP. However we consider that there are still improvements that could be made to ensure that the process is more accessible to MNEs. As indicated in the discussion document, access to MAP can be restricted by both practical and procedural considerations.

Practical considerations for a more effective MAP process

We would welcome the following practical measures to ensure a more effective MAP process:

- **A consistent agreed set of information** for MNEs to put together when making a MAP application would be helpful. Currently, Competent Authorities from different countries have different requirements as to the documents they require as part of a MAP application. This can make the process time consuming and confusing for taxpayers and a standard set of documentation agreed by and applicable for all countries would reduce the burden on MNEs and therefore be preferable. If the MAP process is more standardised with a consistent framework that can be followed by Competent Authorities, this would help reduce the burden on taxpayers and MAP can be used more routinely as a dispute resolution mechanism.

- **A co-operative and collaborative approach to information requests** from the Competent Authorities involved in the MAP discussions following the formal MAP application would also be helpful. This would help to bring efficiencies to the process and improve transparency as all Competent Authorities involved would receive the same information at the same time compared with the current situation whereby different information may be requested from different tax authorities at different times resulting in asymmetry of information and inefficiencies.

- **Clear defined timelines for each phase** would improve the efficiency of the MAP process. The MAP process can currently take a number of years to resolve as noted by the OECD in paragraph 29 of the public consultation document. The introduction of an independent panel as suggested in the Pillar One Blueprint to monitor progress could be helpful.

- **More training and guidance to tax auditors on international tax dispute resolution** so as to reduce the need for MAP. It may often currently be the case that an audit settlement is reversed as part of the MAP process. Tax auditors should look to focus on an equitable outcome taking into account the expected outcome if the case were to go to MAP.

Procedural considerations for a more effective MAP process:

We would welcome the following procedural measures to ensure a more effective MAP process along with a commitment to the Action 14 Minimum Standard from all OECD members:

- **Access to MAP.** Further work to make the provisions permitting access to MAP in tax treaties consistent would be helpful. It is still not possible to access MAP in all countries on a consistent basis as MAP provisions may not be included in certain tax treaties and even if they are included, the provisions may not be sufficiently robust to enable resolution of the issue. For example, if the tax treaty does not cover transfer pricing as contained in Article 9 of the OECD Model Tax Convention, then MAP will not be able to address transfer pricing matters and meet the Action 14 Minimum Standard.

- **Strengthening of Binding Arbitration**. More emphasis on binding arbitration is required to ensure cases of economic double taxation are resolved and accepted by both parties. Some MAP provisions within existing double tax treaties do not have binding arbitration provisions. The introduction of mandatory binding arbitration would be in line with our recommendations in relation to Pillar One and Pillar Two and result in more effective dispute resolution.

Proposals to strengthen the Action 14 Minimum Standard

We have included comments below in relation to the proposals to strengthen the Action 14 Minimum Standard.

Proposal 1: Increase the use of bilateral APAs

Bilateral APAs are an important tool for taxpayers to obtain tax certainty in relation to the future pricing of a related party transaction. The possibility of a rollback is helpful to reduce the burden when seeking to eliminate double taxation for prior periods when the principles are the same.

We welcome the proposal for the increased use of bilateral APAs. However given the significant internal resource required by an MNE and tax administrations to agree a bilateral APA, they are often limited to the most material transactions. There still needs to be a suitable dispute resolution method for transactions which are not covered by a bilateral APA due to resource constraints. For smaller transactions, establishing a consistent MAP process across all countries would be helpful.

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Proposal 2: Expand access to training on international tax issues for auditors and examination personal.

We would welcome further international tax training for audit/examination personnel. Tax Administrations could increase awareness by ensuring that audit teams work more closely with the Competent Authority teams to understand practically how an assessment which results in double taxation is best resolved. This could assist a tax auditor to try and find an equitable outcome during the tax audit by taking into account the considerations of the counterparty and reduce the need for MAP.

Proposal 3: Define criteria to ensure that access to MAP is granted in eligible cases and introduce standardised document requirements for MAP requests.

We agree that there should be a consistent and well defined set of criteria under which access to MAP is granted beyond the current four listed in the Action 14 Minimum Standard.

We also agree that there should be standardised document requirements for a MAP application. This would reduce the burden on taxpayers and also to make the process more efficient for tax administrations. In practice, a MAP application will be shared between all Competent Authorities involved in the MAP claim. It would make sense for the MAP application to contain the same information which is shared with all parties at the same time. Action 14 could be expanded to go beyond a list of minimum information to be provided and specify a complete agreed list of information that all tax authorities would accept. Additional information could be provided if required by the Competent Authority after reviewing the initial information provided.

Proposal 4: Suspend tax collection for the duration of the MAP process under the same conditions as are available under domestic rules

We agree with the proposal that tax collection be suspended for the duration of the MAP process and that this should become an element of the Action 14 Minimum Standard. This would reduce the burden on MNEs and enable the MAP discussions to proceed on an equitable basis.

Proposal 5: Align interest charges / penalties in proportion to the outcome of the MAP process

We agree that penalties and interest charges should be aligned and proportionate with the ultimate outcome of the MAP process. It is not equitable for taxpayers to pay penalties and interest charges for the length of the time that it takes to resolve the position through the MAP process without the opportunity to obtain a refund if the position is changed following MAP.

Proposal 6: Introduce a proper legal framework to ensure the implementation of all MAP agreements

It is important that domestic time limits do not restrict access to MAP and the taxpayer's ability to relieve economic double taxation. We would welcome the option a) suggested in the discussion document which suggests that aall double tax treaties contain the equivalent of Article 25(2), second sentence of the OECD Model Tax Convention which ensures that MAP agreements can be implemented notwithstanding domestic time limits.

Proposal 7: Allow multi-year resolution through MAP of recurring issues with respect to filed tax years

Where the relevant facts and circumstances to the MAP issue are consistent for multiple years, it would be equitable for the outcome to be applied in respect of all relevant filed tax years both before and after the period covered by the MAP. The roll forward of the MAP agreement to future years could also be achieved through a bilateral APA process if appropriate.

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Proposal 8: Implement MAP arbitration of other dispute resolution mechanisms as a way to guarantee the timely and effective resolution of cases through MAP.

It is important that there are robust and consistent dispute resolution mechanisms in place across all aspects of international tax. It may be appropriate to use an independent binding panel review for MAP claims that are not resolved within a certain timeframe in line with the proposed panel review for Pillar 1 and Pillar 2.

Proposals to strengthen the MAP Statistics Reporting Framework

We welcome the proposal to provide taxpayers with more information on MAP cases as information in relation to the number and type of cases and the time taken to conclude the cases would assist MNEs in making the decision as to whether to pursue the MAP process. In providing more data, it is important, however, to ensure that there is a balance between transparency and the confidentiality of the MAP agreements so that the identity of the relevant taxpayer is not disclosed.

We look forward to taking part in the public consultation scheduled for 1 February 2021.

Yours faithfully

Catherine Harlow
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