Comments of BEPS Action Plan 14 – Dispute Resolution:

1. *Please share any general comments on your experiences with, and views on, the status of dispute resolution and suggestions for improvement, including experiences with jurisdictions that obtained a deferral of their peer review*

   Response: With OECD's continuous effort to make its member nations implement the recommended best practices to make MAP process an effective tool for dispute resolution and prevention of double taxation, there has been a greater shift in the acceptance of alternate dispute resolution mechanisms such as MAP, BAPA etc. over the last few years amongst MNEs. With commitment from more and more jurisdictions to endeavor a MAP resolution within 24 month's timeframe in line with BEPS AP14 recommendation, MAP becomes a more lucrative option to choose for the MNEs for early disposal/ resolution of their disputes vis-a-vis traditional court route or filing BAPAs with roll back option.

   Whilst OECD is taking all requisite steps in the right direction to promise less adversarial tax regime globally for the taxpayers, the respective jurisdictions should act together by building required infrastructure, deploying necessary resources, putting in place relevant guidelines and processes to meet the recommended standards for dispute resolution / prevention mechanism. Our suggestions in these regards have been provided in following section.

A. Proposals to strengthen the Minimum Standard:

Proposal 1: Increase the use of bilateral APAs

2. *Please share your views on this proposal.*

   Response: The Draft proposal suggests that jurisdictions that have only a minimal number of transfer pricing MAP cases would not be required to introduce an APA programme until their MAP inventories reached a relevant number of transfer pricing MAP cases.

   Both MAP and Bilateral APA have different utilities. While MAP is a dispute resolution mechanism, Bilateral APA is primarily a dispute prevention mechanism with added feature of dispute resolution by way of rollback provisions. In most countries, MAP is an ex-post mechanism where tax adjustment under the domestic law is a prerequisite to invoke MAP, which is not the case with Bilateral APA.

   Bilateral APA offers tax certainty in respect of future transactions with related parties. The factor which makes Bilateral APA lucrative, is that a resolution for multiple years (generally 5 year) is achieved through a single negotiation process and, that also can be extended through simplified renewal process.

The most important edge that Bilateral APA's have over MAP is: outcome of a Bilateral APA is derived primarily on basis of functional and economic analysis, which is determined through a comprehensive process of site visits, functional interviews, benchmarking analysis, etc. with a greater involvement of the taxpayer. As against this, the solution offered by MAP is more in the nature of a settlement, affected largely by the negotiation powers of the treaty partners. Thus, irrespective of the size of MAP inventory, in case a country has in place formal transfer pricing laws, Bilateral APA should be introduced and must be elevated to a minimum standard from best practices.

Further, it is desirable to have uniformity in the APA programme across jurisdictions in terms of eligibility, time frame, documentation, etc.

Further, it would be worthwhile for jurisdictions to include permanent establishments within the ambit of the APA program. Many countries do not have the authority to enter into Bilateral APAs for branches. Hence, including branches also within the Bilateral APA program will serve to create a non-adversarial tax regime for taxpayers.

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

3. *Do you have experience with inappropriate adjustments reflecting lack of experience on international tax matters that would later need to be withdrawn in MAP? If so, what do you think would be the best way to address this situation? For instance, would you support elevating the best practice into the Minimum Standard?*

Response: We have encountered situations where inappropriate adjustments were made, but outcome of such adjustments is still pending finalization under MAP. We have also experienced instances where adjustments on international tax matters has been overruled by appellate authorities of the concerned jurisdictions.

Digital era has made it difficult for auditors and examiners to stay abreast with the latest development due to information explosion/ overload. Also, the digital era has opened doors to plethora of business models which did not exist in the past decades. The lag between the Global updates and existing practices/ knowledge sometimes lead to unintentional erred adjustments by the auditor during assessments.

Thus, we are in agreement with the proposal to make training mandatory on international tax issues for auditors and examination personnel and, elevate it from best practices to minimum standard. Further, below are some other measures which should be looked at in order to reduce MAP inventory:

- Implementing guidelines and safe harbour measures or by broadening scope of existing safe harbour
- Make domestic dispute resolution scheme more lucrative by introducing measures such as time bound resolution at appellate level, block assessments & appeals

4. *Do you have suggestions on how tax administrations can increase awareness on international taxation in the relevant audit and examination staff?*

   Response: Having a mandatory global e-training module would ensure that the auditors in any jurisdiction would have adequate knowledge and follow best practices to address tax disputes during assessments and stay updated. Further, tax office should issue guidelines or FAQs at regular intervals. Another option is that any international tax matters can be referred to a special cell within the audit examination team.

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

5. *Based on your experience, are there any particular situations or circumstances in which access to MAP was inappropriately denied and that are currently not covered by the Action 14 Minimum Standard? In addition, are there circumstances where you did not submit a MAP request because access would be denied according to available information? If so, please specify these situations or circumstances.*

   Response: We have not encountered any situation where access to MAP had been denied. However, in a few instances, MAP application was not made having regards to facts, such as an absence of MAP enabler clause in the treaty with a particular jurisdiction, negative feedback on MAP process of a particular jurisdiction, different timelines of invoking MAP in resident jurisdiction and the other jurisdiction, etc. Further, there are situations where although the MAP application has been accepted, the Competent Authorities have not selected the cases for discussion as they disagree on the overall position with regards to the adjustment. Thus, we suggest having standard operating guidelines across the globe to make the program more useful, and also introduce measures which enable tax authorities to settle a MAP dispute in case of a disagreement in positions.

6. *Please share your views on whether there should be additions to the list of situations/circumstances in which access to MAP should be granted.*

   Response: We do not suggest having lists of affirmative circumstances where access to MAP is granted. Instead we recommend, any circumstances which result into taxation not in accordance with the provisions of the convention, should be granted access to MAP. For example, generally MAP cannot be invoked in cases where the order of the tax court has

been received on the same issue; this could potentially result in undue hardship to the taxpayer i.e. taxpayer will have pay tax on the income which has already been taxed in the other jurisdiction. Thus, in such cases, although MAP authority of jurisdiction, where the tax court has passed the order, cannot deviate from the order of the tax court, they could engage in discussions with the Competent Authority ('CA') of the treaty partner and request to provide correlative relief and ensure that the taxpayer is not subject to double taxation.

7. *We recognise differences between jurisdictions in the documentation that needs to be provided when a MAP request is filed. Have these differences led to problems in practice? If so, would a common list of minimum information that needs to be provided solve these problems? If so, please specify:*

   a. *Whether any particular items should or should not be included in such list; and*

   b. *Whether there is a need to align the content of such (to be developed) list with any other international rules relating to tax-dispute resolution procedures. If so, please specify which rules and what items in particular.*

   Response: MAP is a process where the Competent Authorities (CAs) of two or more jurisdictions come together to resolve tax disputes. Hence, working on the same set of information helps CAs of both the jurisdictions to arrive at a coordinated resolution, without creating additional compliance or administrative burden on the taxpayer.

   However, the MAP application format varies from country to country and in many instances the Tax authorities seek information as part of the MAP application, which is far more than what has been prescribed in Annexure A to the Public Consultation document. The objective of filing the MAP application is for countries to assess whether they should accept the case for MAP resolution discussions. Hence, only that information, that is necessary for tax authorities to determine the fitment of the request, should be included in the application.

8. *Do you have any other comments on this proposal?*

   Response: While it is a welcome move to have standardized documentation requirements across the jurisdictions, additional measures should be taken towards simplification of processes, by allowing a taxpayer to file a single MAP application for multiple years, rather than requiring separate applications for each year, where the issues involved are recurring. This mechanism is currently followed under the APA programme and offers ease in administration to both, the taxpayer and the tax departments.

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

9. *Has the lack of suspension of tax collection in MAP cases created problems in specific cases? Should the best practice be elevated to a Minimum Standard?*

   Response: Generally, where an adjustment to taxable income is made in one jurisdiction, the same income has already been taxed in another jurisdiction. Compelling taxpayers to pay taxes on the same income twice i.e. taxes are already paid in the jurisdiction where income has been offered in the return of income and in another jurisdiction where tax authorities have made an adjustment, creates double taxation and imposes significant hardship/financial burden on the taxpayers.

   Since, the underlying objective of MAP is to eliminate double taxation, corresponding collection of tax in the jurisdiction, where income adjustment is made, should be suspended till resolution is reached under MAP.

   In absence of suspension of tax collection, taxpayer may have to continue with domestic dispute resolution, despite the fact that it is the less preferred option.

   This best practice should be elevated to minimum standard. Further, the suspension should be allowed for full amount of tax, till pendency of MAP, rather than aligning it with the domestic law.

10. *If you support the elevation to a Minimum Standard, what can be reasonably expected from taxpayers to ensure that taxes due can be collected if the outcome of the MAP process confirms the taxes imposed?*

    Response: In cases where the tax adjustment is confirmed under the MAP process, collection of taxes from the taxpayer, can be ensured by obtaining a bank guarantee from the taxpayer.

11. *Do you have any other comments on this proposal?*

    Response: At this point of time, we do not have any other comments on this proposal.

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

12. *Have you experienced cases where interest and penalties have not been aligned with the outcome of the MAP process? If so, is this an important issue and should aligning interest charges and penalties with the MAP outcome become part of the Minimum Standard?*

    Response: Presently, MAP cases take a considerable time for resolution. Ensuing interest/ penalty on the disputed tax amount becomes as important as the tax amount. Considering the financial hardship faced by the taxpayer, the following is recommended:

    - Firstly, no interest or penalty should be levied on the adjustment determined through MAP, as the taxpayer has already paid the tax on the same income in the other jurisdiction.
    - Even if interest or penalty is to be levied, same should be restricted to the income adjustment confirmed in MAP, and no interest/penalty shall be levied on the amount of tax adjustment which has been reversed under the MAP resolution.
    - Lastly, the interest or penalty so levied should not exceed the interest earned by the taxpayer on additional taxes paid in the other country.

13. *Do you have any other comments on this proposal?*

    Response: At this point of time, we do not have any other comments on this proposal

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

14. *Based on your experience with the implementation of MAP agreements, has such implementation been prevented by the expiration of domestic time limits in any of the jurisdictions involved in the process? Alternatively, have you experienced cases where competent authorities did not come to an agreement because an agreement could no longer be implemented as a result of domestic time limits?*

15. *Based on your experience with the implementation of MAP agreements, have you experienced cases where solutions were found to implement the agreements despite domestic time limits having expired? If yes, please describe those solutions.*

16. *Do you have any other comments on this proposal?*

    Response: To make implementation process efficient, detailed guidelines / FAQs should be provided in the domestic legislations.

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

17. *Please share any experience with the multi-year resolution of recurring issues through the MAP process, in particular whether this was possible and, if so, under what circumstances.*

    Response: Multi-year resolution of recurring issues through the MAP process is desirable as it is beneficial both in terms of costs and efforts involved, for both the taxpayer and the tax authorities. Following are possible circumstances of multi-year resolution through MAP process:

    - Tax adjustment arising out of block assessment for multi-years under domestic law
    - Outcome of assessments for different years on recurring issue received in quick succession, so that the taxpayer is in a position to invoke MAP for multiple years together, within the 3 year timeline
    - MAP filed for a particular year is under negotiation; meanwhile taxpayer has lodged another MAP application on a recurring issue for the subsequent year. Resolution of both applications can be dealt together.

18. *Are there any other options – based on your experience – that would allow recurring issues to be dealt with in MAP or another dispute prevention/resolution process (e.g. a roll-forward of the MAP agreement to future years via bilateral APA)?*

    Response: In addition to the proposal recommended above, the jurisdictions should implement appropriate procedures to permit the multi-year resolution of recurring issues, once the dispute has been resolved through the MAP agreement.

19. *Do you have any other comments on this proposal?*

    Response: At this point of time, we do not have any other comments on this proposal.

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

20. *Based on your experience, how do tax disputes under treaties with MAP arbitration compare to tax disputes under treaties without MAP arbitration in terms of resolution time, effectiveness of the solution and costs of proceedings?*

    Response: We do not have any experience of dispute resolution under treaties with MAP arbitration. However, we do possess good amount of experience to resolution of tax disputes under treaties without MAP arbitration. Based on our experience, MAP provides

effective solution to the incident of double taxation. However, solution offered by MAP is more in nature of a settlement, which is affected largely by the negotiation powers of the treaty partners, rather than being based on functional and/or technical analysis of the case. Further, MAP requires substantial resources in terms of efforts and costs.

21. *Separately, do you have views or other suggestions regarding alternative approaches to dispute resolution that could provide taxpayers full and timely resolution of cases that remain unresolved in the MAP?*

    Response: At this point of time, we do not have any suggestions on alternative approaches to dispute resolution.

22. *Do you have other suggestions to strengthen the Action 14 Minimum Standard? In your response please also mention whether there are any other best practices that you think should be elevated to elements of the Minimum Standard.*

    Response: To strengthen Action 14 minimum standard, in addition to the proposal discussed above, following best practices should be elevated to the minimum standard:

    - Best practice 1: Countries should include paragraph 2 of Article 9 in their tax treaties.
    - Best practice 8: Countries should include in their published MAP guidance, an explanation of the relationship between the MAP and domestic law administrative and judicial remedies. Such public guidance should address, in particular, whether the competent authority considers itself to be legally bound to follow a domestic court decision in the MAP, or, whether the Competent Authority will not deviate from a domestic court decision, as a matter of administrative policy or practice.
    - Best practice 9: Countries' 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 – i.e. taxpayer-initiated adjustments permitted under the domestic laws of a treaty partner, which allow a taxpayer under appropriate circumstances to amend a previously-filed tax return to adjust (i) the price for a transaction between associated enterprises or (ii) the profits attributable to a permanent establishment, with a view to reporting a result that is, in the view of the taxpayer, in accordance with the arm's length principle. For such purposes, a taxpayer-initiated foreign adjustment should be considered bona fide, where it reflects the good faith effort of the taxpayer to report correctly the taxable income from a controlled transaction, or the profits attributable to a permanent establishment, and, where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the tax laws of the two Contracting States.

- Best practice 11: Countries' published MAP guidance should provide guidance on multilateral MAPs and advance pricing arrangements (APAs).

B. Proposals to strengthen the MAP Statistics Reporting Framework

Proposal 1: Reporting of additional data relating to pending or closed MAP cases

23. *Please share your views on the three proposals for the reporting of additional data under the MAP Statistics Reporting Framework, in particular whether they will provide more transparency and clarity on jurisdictions' MAP inventory.*

    Response: The three-proposal suggested under draft will enhance transparency of the MAP process, by imparting additional information, such as, which jurisdiction has taken the initiation to resolve dispute, average resolution time per category of outcome, age of the cases remaining in inventory and, the average resolution time per category of outcome.

24. *Are there any other items that could be reported under the MAP Statistics Reporting Framework to provide further transparency or to allow a more meaningful assessment of jurisdictions' progress toward meeting the 24-month target timeframe to resolve MAP cases?*

    Response: The current MAP statistics along with the suggested three additional data points, provide a global picture of a jurisdiction's MAP caseload, the evolution of its inventory, the time taken to close cases and the outcomes of these cases. Following are some additional data points which could be considered for providing the taxpayer, more clarity and assisting in decision-making:

    - Reporting of industry-wide resolutions reached by tax authorities with regards to issues involved
    - Reporting of case load, cases closed and cases in inventory to be segmented on basis of industry in which the taxpayer operates
    - Reporting of case load, cases closed and cases in inventory to be segmented on basis of issues involved
    - Strength of caseload per team member of the CA team

Proposal 2: Providing relevant information on other practices that impact MAP – APA statistics

25. *Please share your views on the proposal to also publish statistics on APAs, including the data categories being considered for publication.*

    Response: Bilateral APAs being dispute prevention mechanisms, can make a significant contribution to the improvement of dispute resolutions by preventing disputes from arising. Hence, if fewer cases come into the MAP process, the more likely it is that cases that make it into the process, can be resolved swiftly. Thus, both the APA and the MAP together provide a complete picture of case load of disputes. So, proposal to also publish statistics on APA is a step towards enhancing transparency and clarity. However, more data points should be included to the given list of data categories.

26. *What, if any, other items should be added to the data categories for reporting of statistics on APAs to increase transparency?*

    Response*:* Following data points should be added to APA statistics reporting:

    - If APA is subsequent to an adjustment, which jurisdiction made the adjustment or took action on the issue
    - Reporting of case load, cases closed and cases in inventory to be segmented on basis of industry in which taxpayer operates
    - Reporting of case load, cases closed and cases in inventory to be segmented on basis of issues involved
    - Industry level resolution reached by the tax authorities for the APA caseload

27. *Do you have other suggestions on how the MAP Statistics Reporting Framework could be supplemented or modified to provide increased transparency?*

    Response: At this point of time, we do not have any specific suggestions on this point.