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OECD
Center of Tax Policy and Administration
Co-operation and Tax Administration Division
2, rue André Pascal
75016 Paris
France

Ref. BEPS ACTION 14: Making Dispute Resolution Mechanisms More Effective -2020 Review

Public Consultation

Outokumpu Group (hereinafter "Outokumpu or "we") would like to thank you for your efforts and this possibility to provide feedback on the 2020 Review of BEPS Action 14, Making Dispute Resolution Mechanisms More Effective. Outokumpu sincerely appreciates this opportunity.

Outokumpu is global leader in Stainless Steel manufacturing with additional Business Area in mining business. Outokumpu operates in the global stainless-steel market being present in approximately 30 jurisdictions throughout Europe, Middle East, Asia Pacific, Africa and Americas. Market for cold-rolled stainless-steel products totaled approximately 30.5 million tonnes in 2019, of which Outokumpu's market share globally was approximately 5%. Our cold rolled market share in Europe is approximately 28% and in the NAFTA region approximately 21%. Outokumpu is the market leader in Europe and the clear number two in the Americas with a market share of approximately 20% in the US. For more information please visit: https://www.outokumpu.com/

Please find below our feedback on the questions raised in the Public Consultation Document BEPS Action 14 Making Dispute Resolution Mechanisms More Effective -2020 Review (hereinafter "Public Consultation Document"). We have focused on practical aspects of functioning of tax treaty dispute resolution mechanisms mainly form an MNE perspective keeping in mind the current mutual agreement procedure (hereinafter "MAP") landscape but briefly considered, when necessary, the ongoing work on tax challenges arising from the digitalization of the economy, mainly the October 2020 Blueprint on Pillar one. Please also note that paragraphs below follow the order of the questions raised in the Public Consultation Document.

1 General Comments and Suggestions for Improvement of Dispute Resolution

1.1 Significance of MAP in General

Already in 2013 FTA Multilateral Strategic Plan on Mutual Agreement Procedures commits to continually seek process improvements to ensure that MAP cases are resolved as efficiently and effectively as possible. As acknowledged by 2015 BEPS Action 14 Final Report, effective and efficient prevention of double taxation is critical in building an international tax system that supports economic growth and a resilient global economy. The Action 14 Final report thus developed solutions to address obstacles that prevent countries from solving treaty-related disputes under MAP and includes both Minimum Standars which are being peer reviewed and Best Practices.

Securing tax certainty is also an essential element of Pillar One 2020 Blueprint. Providing and enhancing tax certainty across all possible areas of disputes brings benefits for taxpayers and tax administrations alike and is key in promoting investment, jobs and growth. Despite of introduction of early tax certainty process mutual agreement procedure would remain when early tax certainty is not seeked and, naturally, for taxpayers not in scope of Amount A.

The 2020 review of BEPS Action 14 on the efficiency of MAP process is welcomed especially since the OECD MAP statistics disclose continuous trend in rise of annually filed MAP requests. Considering also current pandemic-environment it is anticipated that cross-border tax disputes and need for preventing taxation not in accordance with tax treaties i.e. elimination of double taxation will continue to rise. Thus, it is vital to have mechanisms to effectively resolve international tax disputes in addition to effective methods to seek for tax certainty.

1.2 State of the Play for an MNE

For Outokumpu, as a multinational enterprise, tax is an integrated part of business operations and we are committed to report and pay taxes in a timely manner, in compliance with local regulations in the countries where we create value. We emphasis tax certainty and are committed to ensuring it by the means available. However, taxation not in accordance with tax treaties i.e. elimination of double taxation does occur and when it does it is costly, therefore mutual agreement procedures among other legal proceedings are used in order to eliminate double taxation.

Due to our commitment in tax certainty we also seek bi/multilateral advance pricing arrangements (hereinafter “APA”). Despite of this, for tax treaty related disputes do happen, especially ones covering articles 7 and 9. Filing a MAP request always involves case specific considerations occasionally involving also use of domestic remedies. Cross-border dispute resolution may well also include domestic appeals to secure second review of the case in case access to MAP would be denied by one jurisdiction. For example, based on our experience recurring transfer pricing audits covering just one year at a time leading to a primary adjustment are, in practice, conducted every year. MAP requests will thus need to be filed every year with simultaneous domestic appeals (necessary in some jurisdictions) which are to be withdrawn once written acceptance of the MAP request is received from all the competent authorities (hereinafter also “CA”) involved.

MNEs, such as Outokumpu, which have strong presence within the European Union have access to multiple instruments to file a MAP request i.e. bi/multilateral tax treaties, EU Arbitration Convention and EU Dispute Resolution Directive (and its national implementations). Access to multiple instruments brings more possibilities but it also brings complexities for choosing the right process and proper usage of it. There are slightly differing formalities between jurisdictions and procedures between the instruments such that under EU Dispute Resolution Directive MAP request have to be filed at each CA usually in local language as well as the fact that the EU Dispute Resolution Directive precludes MAP requests under any other instruments. On the other hand, EU Dispute Resolution Directive entails access to arbitration on disputes about justification of MAP in such a case one CA denies access to MAP.

We have experience on MAP in various jurisdictions. Sometimes the experience is pleasant, process functions well, as designed, and cases are solved well within the 24-month average time frame and also the implementation of the MAP-agreement follows without delays. Unfortunately, sometimes the only action and proof of existence of the MAP case is a copy of the MAP request in taxpayer's own files or the case does not seem to proceed at all.

1.3 Suggestions for Improvement of MAP

MNE business models and transfer pricing frameworks may be complex they may e.g. be decentralized with various intra-group transactions with multiple fully-fledged related parties in different jurisdictions or centralized with more than one principal entity and multiple limited risk entities. This, and also, both application of profit split method and triangular PE cases are likely to create complexity and need for multilateral perspective in MAP. Multilateral context is also likely to rise considering tax challenges arising from the digitalization of the economy e.g. if under Pillar one a taxpayer in scope of Amount A chooses not to file for early tax certainty and considering that an MNE may face multiple disputes on scope of Amount B for its numerous limited risk entities.

It is our pleasure to state that we do have good experiences in the use MAP in elimination of double taxation, it can function very well. Despite of that there are, of course, different practices among various jurisdictions and thus details to work on to make dispute resolution mechanisms even more effective, accessible, transparent and simple. Please find below a few proposals.

- Roll over MAP and APA: In practice There are annual tax audits covering one fiscal year with annual primary adjustments covering the same issue conducted. Since normally tax audits cover past years and not the current year, it would be practical and resource saving on both sides to be able to roll over the MAP agreement and even conclude an APA into future years when the same issue with the same relevant facts and circumstance clearly continues throughout the years and into future years. Considering e.g. that a current audit would cover fiscal year 2015 and the treaty partner does not accept roll back years into APA request there would still be several years to cover even if a bilateral APA would be filed in FY 2021.

- Early use of MAP: OECD Model Tax Convention article 25 (as well as EU Arbitration Convention Article 4 and EU Dispute Resolution Directive article 3) clearly state that where the actions of one or both of the Contracting States result or **will result** in taxation not in accordance with the provisions of the Convention the case can be

presented to CA. Thus, MAP could be set in motion as soon as primary adjustment is probable. This early use of MAP would have potential for early resolution of emerging disputes and elimination of double taxation even before any primary adjustment is made and taxes are due. Unfortunately, this does not seem to function in practice. We would welcome consideration on this possibility. This leads to also to the requirement that there should be adequate resources at CAs (Minimum Standard 2.5) to be able to get involved with tax audit/examination function to handle cases where MAP request is filed when primary adjustment is not made but is probable.

- Priority on MAP: Depending on the jurisdiction priority may be given to either MAP or domestic processes if they are filed simultaneously. Although both practices are acknowledged by the OECD MTC Commentary on Article 25 (Par 42) in order to avoid situations where jurisdictions have contradicting positions which would effectively block the negotiations it would be helpful to consider means to avoid such a situation by e.g. defining either one as default or Best Practice or Minimum Standard.

- Written acceptance and default of acceptance: Such as many CAs already do, it is a good practice to send a written acceptance of MAP request to the taxpayer in timely manner. This is important in e.g. cases where domestic appeal need to be filed in addition to MAP request or deferral of tax payment is sought. It would also be very appreciated if there would be a mechanism where in absence of acknowledgement /acceptance/denial from the CAs within e.g. three months the MAP request is considered to be accepted by default.

- Bilateral agreement -simplified mechanism to join (multilateralism): Primary adjustment within certain transfer pricing models may require MAP with multiple jurisdictions, nowadays these tend to be bilateral discussions even if taxpayer requests a multilateral procedure which is well acknowledged both by the OECD and the EU. Multilateral procedure would be beneficial in reaching just **one unified agreement /solution** within an MNEs transfer pricing framework covering multiple jurisdictions. Multilateral discussions are thus encouraged from MNE perspective.

  Although in addition to details of each particular tax treaty each MAP case should be solved in its own merits and transfer pricing cases have case specific facts and circumstances, the aim in transfer pricing is to find a reasonable estimate of arm's length principle. Thus, there already are safe harbors e.g. for low value adding intra-group services. With MAP, a practical approach could be a mechanism where an additional bilateral case could be solved with the same outcome in simplifies procedure than same taxpayer's earlier bi/multilateral case. This could also apply to APAs where e.g. when a principal jurisdiction has already agreed with a few other jurisdictions an additional jurisdictions could "join" the APA solution in simplified procedure. This could safe resources on both CAS and taxpayers. Nowadays this could be a good approach for e.g. a principal model including limited risk entities. Should the ongoing work on tax challenges arising from the digitalization of the economy, mainly Pillar one Amount B remain there may, in the future, e multiple disputes covering the scope of Amount B.

- Taxpayer initiated adjustments: Elevation of Best Practice #9 into Minimum Standard. It can be that a taxpayer afterwards discovers a mistake in a financial year's taxation and seeks to correct it. Thus, it is important to ensure that MAP is available in bone fide taxpayer-initiated adjustment when the result leads to taxation not in accordance with the tax treaty. This seems to be disputable in some jurisdictions.

- Common working language (English): There is clearly well functioning practice in many cases and no arguments on the language of the MAP request or correspondence with CAs. On the other hand, some CAs may still request local language which is burdensome (time consuming and costly) for MNEs and may be overly burdensome for an individual. Unfortunately, based on EU Dispute Resolution Directive some jurisdictions have now started to request at least the MAP request under the EU Dispute Resolution Directive to be filed in domestic language and all the correspondence related to that MAP request to be done in domestic language.

- Unified content of MAP request: Needles to say it would contribute to the simplicity of filing a MAP request to have globally unified requirements for the content of MAP request without further requirements included in domestic legislations. It would be practical to even unify Tax treaty, EU with both EU Arbitration Convention (Revised Code of Conduct for Effective Implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01), paragraph 5) and the EU Dispute Resolution Directive (COUNCIL DIRECTIVE (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Article 3) requirements.

- Access to arbitration: There are thousands of MAP cases reported in the OECD MAP statistics, many of them remain unsolved year after year. Arbitration is already available in some tax treaties and EU Arbitration Convention (MLI and EU Arbitration directive will further widen the coverage of the arbitration), However, in practice arbitration cases are extremely few and tend to require a primary adjustment which has very high monetary value.

  According to OECD Model Tax Convention Article 25 any unresolved issues arising from the case shall be submitted to arbitration **if the person so requests in writing**. In comparison e.g. in the EU Arbitration Convention **the CAs can decide to set up the advisory commission**. It would be preferable to align all instruments/interpretations to allow taxpayer to request arbitration when the time to solve the case by mutual agreement has lapsed. Arbitration should be considered a normal step in the process, not something rare or a sing of a failure of the mutual agreement by the CAs.

  Access to arbitration to assess the justification of MAP in such a case that one but not all CAs deny access to MAP i.e. when one or more CAs would be willing to process the case but one denies (for reference EU Dispute Resolution Directive, Article 6.1 a).

- Transparency: The more MAP cases there are the more MAP agreements i.e. tax practice is made. Contrary to the court decisions which tend to have lengthy reasoning and analysis on both facts and circumstances as well as applicable rules and regulations the MAP outcome disclosed to the taxpayer usually contains the mere outcome of the elimination of the double taxation. In addition, in many jurisdiction court cases are public (either all or some) i.e. case law is transparent whereas MAP is between CAs only.

  To provide basic argumentation and make public at least summary of standard interpretations and/or important issues on anonymous basis would enhance transparency and allow taxpayers to follow these interpretations i.e. it would have potential to reduce future disputes form arising. For example, Denmark has recently made a reservation to MLI stating that binding arbitration only applies in respect of tax treaties where the other contracting party accepts that Denmark will publish a summary of the decision of the arbitration panel to ensure transparency and impartiality.

- Taxpayer participation: Already FTA MAP Forum 2013 strategy acknowledges the need to enhance and streamline the taxpayer's involvement in case resolution. The attitude towards taxpayer tends to vary greatly between CAs. Some CAs kindly keep taxpayer informed of the developments of the case, some CAs ignore taxpayer's efforts to contact CAs about the case. It would be very welcomed to continue developing the message given in 2013 and include e.g. a Minimum Standard or at least a Best Practice to keep taxpayer informed of the development of the case.

  To take this further, it would e.g. be a practical way to invite taxpayer to the CA meeting to provide additional information to all involved CAs at the same time and directly answer any questions raised. In addition, a prefiling meeting could serve well e.g. in complicated MAP cases.

- Standardized implementation of MAP agreement with time limit for implementation: When the CAs agree and the CA-agreement is signed implementation phase, which is based on domestic rules and regulations, begins. These domestic rules tend to vary significantly and sometimes may even conflict, and taxpayer need to be aware of these rules and regulations in each jurisdiction. The approach tends to be different also regarding implementation of the CA-agreement without domestic time limits and/or covering the interest and penalties.

  Standardization of the implementation of MAP-agreement to the extent possible would simplify the process. Having a time limit for implementation as a Minimum Standard would shorten the entire length of the process in many cases.

- Competent authority resources: Although already being a Minimum Standard (2.5) it need to be emphasized that for the efficient functioning of MAP the CAs should have adequate resources, both personnel and other means (e.g. budget and technology for virtual meetings). No doubt some competent authorities are well resourced in any way but unfortunately not all. Quite clearly some jurisdictions lack personnel which obviously hinders timely resolution of MAP cases. To ease the situation at least one

jurisdiction hands MAP cases to be handled in audit/examination function. Also, at least one jurisdiction seems to lack means to travel to negotiations.

- Independence of competent authority: Although this also already being a Minimum Standard (2.3) it is important to repeat that staff in charge of MAP cases should have the authority to resolve MAP cases without being dependent on the approval of the tax authority personnel who made the adjustment. In practice there is at least one jurisdiction where CA always needs the acceptance of the audit function.

2 Obligation to Establish Bilateral APA Program

Bilateral APAs are an effective tool to ensure tax certainty, although being rather burdensome and lengthy process it is a proper instrument in many circumstances. In addition to other relevant instruments such as ICAP and Cross Birder Dialogue APAs are needed and we would wish to see the best practice #4 elevated as a Minimum Standard. APA may well be sought either via APA program or solely based on Article 25 we would, however, we would like to point out that differing domestic formalities, documentation requirements, timings for filing and implementation practices do complicate the process in practice.

From an MNE to achieve tax certainty a great number of bilateral APAs would be needed which is rather burdensome and therefore work on multilateral approaches would be appreciated. Additional flexibility and effectiveness could be reached if, for example, additional jurisdictions could join a bilateral APA when the relevant facts and circumstances are the same. e.g. when there is a principal model in place with limited risk entities in multiple jurisdictions. Further flexibility would also be welcomed when there is e.g. a multilateral APA in place for a TP framework with e.g. application of profit split and if in such a case one of the profit split participants enters into additional bilateral APA with additional jurisdiction, it would be helpful to have generally accepted principles for the others to accept the additional bilateral APA or similarly a MAP outcome. This could also be achieved by agreeing on such a mechanism already in the original APA.

Since currently one can only seek APA for transfer pricing, we would wish to see it considered that APAs would also be available for other tax treaty issues such as the Cross Border Dialogue.

Despite of the requirement of Minimum Standard 2.7 to provide roll back in APAs the Minimum Standard has not, in practice, been fully implemented. Roll back period may not be available at all or it may be limited to e.g. two years. Lengthy roll back period may be relevant e.g. when taxpayer would likely to proceed APA instead of multiple annual transfer pricing adjustments and MAPs on the same issue. There would be several years to be covered in roll back in between APA filed in 2021 and the last audited year in MAP.

3 Obligation to Roll-out Training Programs

We welcome the initiative to elevate the message of 2015 BEPS Action 14 Best Practice #3 into Minimum Standard i.e. countries should develop “global awareness” of the audit/examination functions involved in international matters by appropriate training.

This has potential to avoid unnecessary primary adjustments but also resistance of audit/examination functions towards the case being taken into MAP.

Considering the training any potential to unified interpretation(s) of tax treaty issues would be welcomed. Despite the fact, that jurisdictions usually have bilateral tax treaties (contrary to e.g. multilateral Nordic Tax Treaty) many treaty articles tend to be identical and based on the OECD Model Tax Convention which would allow for further use of "safe harbors" to increase tax certainty especially in transfer pricing where the objective is to find a reasonable estimate of an arm's length outcome.

In fact, we also have experience on tax audits where there are items in the primary adjustments which clearly contradict with the interpretation of MTC Article 9 and the wording in the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations.

4 Suggestions How to Increase Awareness on International Taxation

As already in 2015 BEPS Action 14 Best Practice #3 Global Awareness Training Module and similar trainings are good and valid tool. Awareness of mutual agreement procedure would preferably also be part of the training. Based on our experience auditors/examiners in some jurisdictions are not in favor of the case being taken into MAP and thus the case sometimes cannot, in practice, be taken into MAP in order not jeopardize the relationship with the auditor/examiners in following years tax audits/examinations.

5 Listing When MAP Access Can Be Denied

Denial of MAP access is an unfortunate event in such a case that taxpayers faces taxation not in accordance of the tax treaty and domestic remedies are unlike to eliminate double taxation. Thus, the initiative to include into BEPS Action 14 Minimum Standard 2.1 that jurisdictions include in their MAP guidance criteria to define when MAP request should be accepted/can be denied strongly supported by us. Such approach would enhance transparency and enable taxpayer to choose proper remedy for a dispute from the beginning. Disclosing situation when MAP access can be denied would also contribute to peer review since some jurisdictions still remain reluctant e.g. to grant access in cases where the wording in primary adjustment is based on domestic legislation (and not mentioning any tax treaty articles) although be an issue covered by a tax treaty. Additional aspects to this are e.g. that some jurisdictions will not grant access to tax treaty MAP if the primary adjustment includes application of domestic GAAR (despite of Minimum standard 1.2) Also, some jurisdictions still deny access to MAP, despite of Minimum standard 2.6 when there is an audit settlement, this is sometimes even clearly stated in domestic MAP Circular. Further, if there is a MAP request under EU Arbitration Convention simultaneously with tax treaty MAP request at least one jurisdiction denies access to tax treaty MAP based on interpretation of domestic law (EU Dispute Resolution directive precludes other MAPs in its Article 6).

Fortunately, based on our experience, denial of MAP access is not a common practice. However, we have faced a situation where we had to withdraw a tax treaty MAP to be able to maintain simultaneously filed MAP request under EU Arbitration Convention in a certain EU Member State due to interpretation of domestic legislation. There are also a few cases in a couple of jurisdictions where MAP was not filed after audit settlement/verbal agreement which

led to double taxation due to preserving the relationship with the audit / examination function in future year audits/examinations.

6 Listing Situations where Access to MAP Should Be Granted

This would likewise enhance transparency and would be a practical tool to assess and standardize accessibility of MAP and could be especially helpful for individuals. Assuming also that work on tax challenges arising from the digitalization of the economy, mainly Pillar one would affect both lists.

Mirroring the comments above on inappropriate denial of MAP access, MAP should naturally be accepted when the MAP request is properly filed in time and covers an issue covered by the applicable tax treaty even if the wording of the adjustment is referring to domestic legislation and e.g. when there is simultaneously MAP under EU Arbitration Convention. In addition, we would favor accepting MAP request also in situations where there is some kind of unilateral ruling in one jurisdiction as a primary adjustment of a treaty partner can well lead to taxation not in accordance with the tax treaty.

Further, MNEs group structures evolve, there are mergers and liquidations throughout the years. Just as it well works in many jurisdictions it would be helpful to have it recommended that MAP agreements should be implemented despite of mergers and in case of liquidations there should be means of implementing the CA-agreement also in such case where the primary adjustment of a liquidated entity is withdrawn fully or partially in its jurisdiction.

7 Establishing a List of Documentation needed to file MAP request

We welcome this initiative. Standardized list of documentation needed for MAP request would contribute to the availability and effectiveness of MAP by simplifying the filing process. It would enable taxpayers more easily to compile a comprehensive MAP requests and enable the competent authorities to receive complete MAP requests which would also have potential to contribute to the timely resolution of the cases. Currently various jurisdictions have their own lists of requirements which differ to some extent. In addition, there is a list for the mandatory documentation required for of MAP request included in EU Arbitration Convention Code of Conduct and in the EU Dispute Resolution Directive. For the practical functioning of MAP and timely resolution of disputes it would also be necessary to prepare the standardized list of documentation in such a manner that the requirements as well as requests for additional information include **relevant information** only.

7.1 Whether Any Particular Items Should/Should not Be on the List

Considering the Annex A, of the Public Consultation Document we would like to comment the phrase “analysis of the issues” included in (iv). Materially same requirement is expressed also in the Code of Conduct of the EU arbitration Convention and in the EU Dispute Resolution Directive as ”an explanation”. It seems like requiring analysis goes further in content and may e.g. be rather burdensome for individuals.

We would also like to point out in reference to (v) and (vi) that currently, in some jurisdictions, MAP request is filed to the competent authority mailing address / e-mail inbox and neither the location of the office nor the name and contact details of the case handler are available. Leaving this requirement as such on the list will result in a great number of incomplete MAP requests.

7.2 Alignment with other Dispute Resolution Mechanisms

As there are several cross-border dispute resolution mechanisms within the European Union we would welcome alignment with both EU Arbitration Convention (Revised Code of Conduct for Effective Implementation of the Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (2009/C 322/01), paragraph 5) and the EU Dispute Resolution Directive (COUNCIL DIRECTIVE (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, Article 3).

8 MAP and Suspension of Tax Collection

Once the MAP agreement is reached and the implementation takes place, the domestic rules and regulations start to apply. This can be a complex compilation of domestic rules especially in a multilateral situation where, based on the MAP-agreement, adjustments are needed in multiple jurisdictions. It is rather clear, that from taxpayer perspective, mutual agreement procedure does not end when the CA-agreement is signed. The implementation may be complex and may add another year or two to the duration of the whole process.

We strongly support elevation of the Best Practice #6 into Minimum Standard. Suspension of tax collection in MAP cases should be available as long as the CA-agreement is implemented at least under the same conditions as are available to domestic procedures. Requirement to first make a payment and then process the case creates financial burden which may be significant to individuals. In addition, primary adjustments covering transfer pricing tend to be substantial and cover multiple years thus the amount payable may become rather high. It would also be unfortunate if the interest is collected for the entire duration of the prolonged MAP process e.g. due to lack of CA resources in case the primary adjustment remains wholly or partially.

Fortunately, in some jurisdictions suspension of tax collection in MAP cases is already available, at least to partial amount of the tax due. Contrary to this, some jurisdictions do not allow suspension of tax collection in MAP cases at all even if it available for domestic procedures.

Should suspension of tax collection in MAP cases be available under the same conditions as are available to domestic procedures there tend to be mechanisms already available. Even if there is a merger, disposal or liquidation there are domestic procedures available to allow taxpayment in right jurisdiction when due.

9 Alignment of Interest and Penalties in Proportion of the Outcome

As described in the Public Consultation Document interests and penalties should only stand to the extent the taxation upon which they are based remains after agreement has been reached. This topic which is also acknowledged by the OECD MTC Commentary on Article 25 (Par 49.) would be important to be included in the Minimum Standards since the amounts at stake can be significant.

These items tend to be covered by domestic legislation which varies among jurisdictions and they are not aligned within jurisdictions. In addition, the case is sometimes agreed so that the implementation is made to a recent year and thus interest and penalties may unfortunately remain at least to some extent.

10 Other Comments on Implementation of MAP Agreement

Implementation of the MAP-agreement in many cases includes Group companies and many jurisdictions apply tax consolidation regimes for its Group companies. These regimes are either based on group contribution payments or tax group consolidation. This may add complexity and result in surprises for example in later year adjustments by the implementation when group contribution regime requires the payment to be booked in financial statements and the group contribution payment cannot reduce taxable income below zero.

In addition, as addressed in OECD Model Tax Convention Commentary on Article 25 (Par. 49.1) in addition to penalties directly linked to the primary adjustment some administrative penalties such as penalty on incomplete transfer pricing documentation could be addressed in considering e.g. Best Practices specially if the primary transfer pricing adjustment is somehow linked to the claim of incomplete transfer pricing documentation and actually withdrawn as a result of MAP.

Considering that the objective of MAP is to eliminate double taxation the implementation of the CA-agreement, whether MAP or APA should take place in such a manner that the double taxation is truly eliminated despite of e.g. group consolidation regimes and penalties indirectly linked to the primary adjustment.

11 Implementation of MAP agreement Despite of Domestic Time Limits

As known, primary adjustments may be made up to ten years backwards, in general there is a 3-year period to file a MAP and if a domestic appeal is also filed some jurisdictions choose to wait for its outcome for several years before proceeding with MAP which itself may also take several years and the time is even prolonged in case of arbitration. Thus, the MAP outcome could cover even 20 years old tax years. Therefore, for the functioning of the process itself it would be vital to have a Minimum Standard requiring implementation of MAP agreement despite of domestic time limits.

A practical solution to tackle this issue is to make the implementation in a more recent year but it has its obvious flaws mentioned above and it is mere as a bandit but not the cure to the wound.

We have, fortunately, not faced issues with implementation of MAP agreements, not even in cases where the entities have merged with other group entities within the same jurisdiction. Stating this, we have had to postpone liquidation of an entity due to ongoing MAP to secure its potential implementation. In this particular jurisdiction it was not possible to liquidate the entity and afterwards receive compensation without a domestic entity due to reduced primary adjustment.

12 Experiences on Multi-Year Recurring Issues

We strongly support elevation of Best Practice #5 into Minimum Standard, jurisdictions should allow multi-year resolution in recurring issues when the relevant facts and circumstances are the same. It would also be practical not to require the later years to be under audit before being able to deal with them in previously filed MAP. In addition, it is not clear yet which kind of request has to be made for multi-year resolution.

For example, when a transfer pricing audit covers year 2015 and MAPs are already filed for a few earlier years and the very same issue under the same facts and circumstances continues to 2021 and beyond it would be helpful to be able to cover the period 2015-2020 with the previously field MAPs, since it is rather probable that there will be action of a state each year leading to double taxation. This has proven not be possible with many jurisdictions and it is not very helpful to file an APA in 2021 when a jurisdiction involved does not provide for roll back.

Thus, we would welcome in addition to the process described in Best Practice #5 more flexible use of rolling over a MAP agreement and allowing decent amount of roll back years in APA.

13 Significance of MAP Arbitration Clause

As described in the public consultation document existence of arbitration clause provides both actual resolution of the cases and also incentive to solve the cases within the time limits. The actual arbitration cases seem to be rare. The process itself is rather similar available within EU and form practical point of view requires quite some effort in practical organizing form the CA whose jurisdiction made the primary adjustment.

Based on our experience existence of arbitration clause contributes in general to resolution of MAP case within 24-month time limit compared to MAP with no arbitration clause where the cases may be on their sixth year without an agreement. However, even with an arbitration clause available we have cases where no single position paper or negotiation have taken place within over two years after filing the MAP request. It may be difficult to enter into arbitration in such case.

14 Alternative Approaches to Dispute Resolution

As obvious, if disputes are prevented it would benefit both taxpayers and tax administrations. MNEs face tax administrations in the various locations they are present. Approached vary, some jurisdictions have trust on taxpayers by default and risk-based approach, some even choose to cooperate with taxpayer for future years and in return let the past years stay as it is. On the contrary, some jurisdictions are more suspicious of taxpayer behavior and conduct audit every year. Despite of differences we would favor developing measures to gain early tax

certainty, hopefully on a multilateral basis where ICAP type of instrument with greater tax certainty would be welcome (e.g. multilateral APA as the outcome of ICAP).

The ongoing work on tax challenges arising from the digitalization of the economy, mainly the October 2020 Blueprint on Pillar one builds on Panel procedures in its tax certainty. Perhaps, when difficult MAP cases are is such a situation that the involved CAs cannot agree and there is significant amount of time before arbitration is available a smaller scale panel could be utilized or alternatively an independent mediator (as already done in some jurisdictions).

Generally, regarding comments on tax certainty within Pillar one we would like to make reference to both comments given by Business at OECD and Technology Industries of Finland.

15 Proposals for Reporting Additional Data under MAP Statistics Reporting Framework

We welcome the initiative to add additional data points into MAP statistics since it enhances transparency and thus has potential to contribute to further developing dispute resolution mechanisms.

- Including data on the jurisdiction who conducted primary adjustment is valid. In practice it would be helpful in assessing which part of the process is functioning as it should since it would enable to review which jurisdictions take long time to issue a position papers (which already is a data point in the MAP statistics) although there is no time limit for position papers (EU Arbitration Convention Code of Conduct 6.4 c has 4 month-requirement).

- Breakdown of data of time taken to close MAP cases per type of outcome would be informative, it would allow taxpayer to assess the time taken to solve MAP case in choosing the most appropriate remedy for his case.

- Information on the year the MAP cases pending at year-end were initiated would also be informative and together with a potential datapoint cases in arbitration would allow analysis on access to arbitration.

16 Other Data Categories Which Could be Included in MAP Statistics Reporting Framework

Since we welcome the initiative to add data on the OECD MAP statistics reporting framework. We would like to propose the following additional categories to be included in the MAP statistics reporting framework:

- Cases in arbitration: Arbitration is discussed frequently although vast majority of cases tend to be solved by mutual agreement. Therefore, it would be justifiable to report the amount of cases in arbitration. It could be even included to report number of cases past the average 24-month negotiation period and if the cases are not in arbitration the reason for it.

- Implementation: To enable transparency into the length of the whole process we would propose to report both cases implemented during the year and time taken to implement MAP agreements.

17 APA Statistics Reporting and Items Included in APA Statistics

We welcome also the initiative to collect APA statistics. We would propose to report also APA cases withdrawn and APA cases which are not agreed (agree to disagree) for completing the information on APA statistics. We would also propose to include reporting on the amount of multilateral cases (despite them potentially being filed as series of bilateral APAs).

18 Practicalities

We sincerely hope that our comments would help to provide some practical insight to the challenges MNEs face when dealing with cross-border tax disputes with mechanisms for cross-border dispute resolution. Should you have any further questions please contact us.

Sincerely,

Outokumpu Group

Sanna Jäälinoja

Group Head of Transfer Pricing