

**Inclusive Framework on BEPS: Action 14  
Making Dispute Resolution More Effective  
MAP Peer Review Report**

**BEST PRACTICES**  
**Belgium**





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## *Abbreviations and acronyms*

<b>APA</b>	Advance Pricing Arrangement
<b>MAP</b>	Mutual Agreement Procedure
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>SPF</b>	<i>Service Public Fédéral</i> (Federal Public Service of Finance of Belgium)





## Introduction

The final report on BEPS Action 14 : « Making Dispute Resolution Mechanisms More Effective », identified a number of best practices related to the three general objectives of the Action 14 Minimum Standard.

Paragraph 9 of the Terms of Reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective<sup>1</sup> stipulates that:

*The best practices are not part of the Action 14 minimum standard and whether or not a jurisdiction has implemented the best practices will not be peer reviewed or monitored, nor will it affect the assessment of the assessed jurisdiction. Jurisdictions are free, however, to identify best practices they have adopted.*

Belgium has provided information and requested feedback by peers on how it has adopted best practices. In that regard, the FTA MAP Forum agreed on an optional best practices feedback form that peers have used to provide feedback on Belgium's adoption of the best practices.

This document contains a general overview of the adoption of best practices and comments by peers on the adoption of these best practices.

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<sup>1</sup> Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective: [www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf](http://www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf).



## *Part A*

### Preventing Disputes

#### [BP.1] Implement bilateral APA programmes

Jurisdictions should implement bilateral APA programmes.

1. APAs concluded bilaterally between competent authorities provide an increased level of certainty in both jurisdictions, lessen the likelihood of double taxation and may proactively prevent transfer pricing disputes.
2. Belgium has implemented bilateral APA programmes on the basis of Article 25(3), first sentence, of the OECD Model Tax Convention. The basics about APAs in Belgium is available in the FAQs, which addresses what an APA is, how to make a bilateral or multilateral APA request in practice (under which timeline and in which language). In particular, Belgium’s competent authority levies no charges for an APA request or renewal and Belgium applies APAs as from the first year covered by the request, irrespective of the date when the competent authorities reach an agreement, provided the request is submitted before the end of the first taxation year that is to be covered by the APA.
3. For fiscal year 2014, 6 applicants submitted a request for a bilateral or multilateral APA<sup>2</sup>. Statistics on APAs are also published on the EU JTPF website<sup>3</sup> showing that in average, 24 months are needed to reach an APA with EU members and 36 months with non EU members.
4. One peer mentioned that it was aware of Belgium’s APA programme and that it would even further welcome the opportunity to discuss multilateral APAs. In recent years, Belgium’s competent authority concluded several multilateral MAPs and APAs. Based on this experience, detailed guidelines will be provided in the guidance to be published.

#### [BP.2] Publish mutual agreements of a general nature

Jurisdictions should have appropriate procedures in place to publish agreements reached by competent authorities on difficulties or doubts arising as to the interpretation or application of their tax treaties in appropriate cases.

<sup>2</sup> [www.2014.rapportannuel.finances.belgium.be/fr/chiffres/collaboration/niveau-international](http://www.2014.rapportannuel.finances.belgium.be/fr/chiffres/collaboration/niveau-international).

<sup>3</sup> [http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/jtpf009\\_2015apastatistics2014.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/jtpf009_2015apastatistics2014.pdf).

5. Agreements reached by competent authorities to resolve difficulties or doubts arising as to the interpretation or application of their tax treaties in relation to issues of a general nature which concern, or may concern, a category of taxpayers reflect the competent authorities' mutual understanding of the meaning of the convention and its terms. As such agreements provide information that might be useful to prevent difficulties or doubts in the interpretation or application of tax treaty provisions, publication of these agreements is valuable.

6. Belgium publishes agreements reached on difficulties or doubts arising as to the interpretation or application of their tax treaties by the competent authorities. These publications can be found in the Belgian official Gazette as well as online, next to the relevant treaties in fisconetplus, the SPF's online database<sup>4</sup>. For instance, Belgium published an agreement reached with the United States' competent authority on the interpretation of Article 21 (Limitation on Benefits) of the Belgium-United States tax treaty<sup>5</sup>.

7. Peers did not provide input relating to this particular best practice.

### [BP.3] Provide guidance on APAs

Jurisdictions' published MAP guidance should provide guidance on APAs.

8. Guidance on a jurisdiction's APA programme facilitates the use of that programme and creates awareness for taxpayers on how the APA process functions. As APAs may also prevent future disputes from arising, including information on APAs in a jurisdiction's MAP guidance is relevant.

9. Belgium has implemented bilateral APA programmes. Belgium's FAQs<sup>6</sup> on MAPs contain guidance on APAs and explain what an APA is and how to make an APA request in practice. In particular, a request for a bilateral or multilateral APA must be submitted in writing (by registered letter, ordinary or electronic letter). In order to examine the APA request, Belgium's competent authority requests to include the following in the APA request:

- Identity of the taxpayer(s) covered in the APA request;
- The basis for the request (tax years, intragroup transactions covered);
- The selected transfer pricing method and comparables (if available);
- Functional analysis;
- Unilateral rulings involving the group (if any);
- Financial statements of the applicant.

10. Peers did not provide input relating to this particular best practice.

<sup>4</sup> <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&id=3232bda5-33df-4fdd-b3b2-c7ada30b7da1#findHighlighted>.

<sup>5</sup> <http://ccff02.minfin.fgov.be/KMWeb/document.do?method=view&nav=1&id=830a1fac-b8b1-45d1-8b02-24a57035f229&disableHighlighting=830a1fac-b8b1-45d1-8b02-24a57035f229/#findHighlighted>.

<sup>6</sup> <http://finances.belgium.be/sites/default/files/downloads/126-procedure-amiable-apa-faq.pdf>.

**[BP.4] Develop “global awareness” of the audit/examination functions**

Jurisdictions should develop the “global awareness” of the audit/examination functions involved in international matters through the delivery of the Forum on Tax Administration’s “Global Awareness Training Module” to appropriate personnel.

11. Making audit/examination function of tax administrations that are involved in international matters aware of: (i) the potential for creating double taxation, (ii) the impact of a proposed adjustment on the tax base of one or more jurisdictions and (iii) the process and principles by which competing juridical claims are reconciled by competent authorities, may be useful to prevent disputes from arising. Using the Global Awareness Training Module developed by the Forum on Tax Administration (FTA) can be helpful in this respect.
12. Specific courses are organised for all auditors with respect to specific topics covered by an audit action, which can cover foreign income. Then, information is available for all auditors on the intranet. Moreover, specific courses were organized in cooperation with the OECD for transfer pricing auditors.
13. One peer mentioned that they regard Belgium’s competent authority as a committed partner within the FTA MAP Forum and FTA Large Business Programme to raising awareness of the principles of the Global Awareness Training Module within its examination and competent authority functions. In this regard, that peer would welcome discussions with Belgium’s competent authority about both competent authorities and examination functions.



## *Part B*

### Availability and access to MAP

#### **[BP.5] Implement appropriate administrative measures to facilitate recourse to MAP**

Jurisdictions should implement appropriate administrative measures to facilitate recourse to the MAP to resolve treaty-related disputes, recognising the general principle that the choice of remedies should remain with the taxpayer.

14. Under Article 25(1) of the OECD Model Tax Convention, the mutual agreement procedure is a dispute settlement procedure in annex to domestic available remedies and not a substitute for such remedies. Reference is made to inter alia paragraph 7 of the Commentary to Article 25 of the OECD Model Tax Convention, which specifies that the right to submit a MAP request is available to taxpayers without depriving them of the ordinary legal remedies available. Facilitating recourse to the MAP through appropriate administrative measures, under the general principle that the choice of remedies remains with taxpayers, enables them to effectively resort to such dispute settlement procedure.

15. Belgium does not charge any fees are charged to taxpayers when submitting a MAP request. The Belgian tax assessment notice specifies that MAP is available and contain the name and contact details of the service that can be contacted in order to initiate such a procedure or to obtain further information on how to make a MAP request. As explained in the FAQs, in Belgium taxpayers are allowed to request MAP assistance and at the same time seek to resolve the same dispute via domestically available judicial and administrative remedies. Such request can be made regardless of whether the issue under dispute has already been decided via these judicial and administrative remedies. The director of the local tax office who is responsible to make a decision on the administrative appeal generally provides the taxpayer with the contact details of the competent authority in order to initiate a MAP or obtain more information about the MAP as the case may be. Therefore, in case of an administrative appeal being rejected, the taxpayer continues to be informed on the availability of the MAP.

16. Belgium reported that in cases where a judicial decision has become final and binding, that decision cannot be overridden by a MAP agreement. In particular, Article 7(3) of the EU Arbitration Convention<sup>7</sup> allows EU Member States not to apply the arbitration procedure as a supplement to the mutual agreement procedure, if pursuant to their domestic legislation they are not allowed to derogate from decisions of their judicial bodies. The provision shall, however, not apply if the taxpayer resident in that particular member state has allowed the time provided to lodge an appeal to expire, or has withdrawn any such appeal before a decision has been delivered. In the Guidance on arbitration available under the EU Arbitration Convention is found in circular AAF/Intern.ISR/98-0170, Belgium stated that it will apply Article 7(3).

<sup>7</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>.

17. Peers did not provide input relating to this particular best practice.

#### **[BP.6] Provide access to MAP for bona fide taxpayer-initiated foreign adjustments**

Jurisdictions' 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.

18. A taxpayer-initiated foreign adjustment is considered bona fide where it reflects the good faith effort of the taxpayer to report correctly, timely and properly the adjusted taxable income from a controlled transaction or the profits attributable to a permanent establishment with a view to reflect an arm's length result, and where the taxpayer has otherwise timely and properly fulfilled all of its obligations related to such taxable income or profits under the laws of the treaty partners. As such taxpayer-initiated foreign adjustments may lead to cases of double taxation, it is relevant that there is access to MAP for resolving these cases. Furthermore, specifying whether there is access to the MAP for these adjustments in a jurisdiction's MAP guidance also provides additional clarity.

19. Belgium would grant access to the MAP in practice if the taxpayer-initiated foreign adjustment is permitted under the domestic laws of the treaty partner and followed by the filing of an amended tax return in the other jurisdiction, even though it does not provide guidance for bona fide taxpayer-initiated foreign adjustments. In such a case, Belgium's competent authority would consult the other competent authority in order to determine whether the initial adjustment meets the conditions outlined in the OECD Transfer Pricing Guidelines.

20. One peer confirmed that Belgium's competent authority was amenable to consider such cases involving bona fide taxpayer-initiated foreign adjustments on a case-by-case basis.

#### **[BP.7] Provide guidance on multilateral MAPs**

Jurisdictions' published MAP guidance should provide guidance on multilateral MAPs.

21. In recent years, globalisation has created unique challenges for existing tax treaty dispute resolution mechanisms. Whilst the mutual agreement procedure provided for in Article 25 of the OECD Model Tax Convention has traditionally focused on the resolution of bilateral disputes, phenomena such as the adoption of regional and global value chains as well as the accelerated integration of national economies and markets have emphasised the need for effective mechanisms to resolve multi-jurisdictional tax disputes. In that regard, it is for clarity purposes relevant that jurisdiction's MAP guidance includes information on availability of and access to multilateral MAPs.

22. Belgium's FAQs apply to multilateral MAP in general. In recent years, Belgium's competent authority concluded several multilateral MAPs and APAs. Based on this experience, detailed guidelines will be provided in the guidance to be published.

23. One peer confirmed that Belgium's competent authority was amenable to consider such multilateral MAPs on a case-by-case basis. Such peer was very positive about its experience with Belgium's competent authority in this respect.



**[BP.8] Provide for suspension of collection procedures for pending MAP cases**

Jurisdictions should take appropriate measures to provide for a suspension of collections procedures during the period a MAP case is pending. Such a suspension of collections should be available, at a minimum, under the same conditions as apply to a person pursuing a domestic administrative or judicial remedy.

24. If, following an adjustment taxpayers immediately have to pay the tax due, whereas the same amount was already paid to the tax administration of the other jurisdiction involved, double taxation will in fact occur. As taxpayers may then face significant cash-flow issues, at least for the period the MAP case is pending, it is relevant that jurisdictions provide for suspension of collection procedure for this period under at least the same conditions as available for domestic remedies.

25. As mentioned in the FAQs, Belgium does not provide for automatic suspension of collection procedures during the period a MAP is pending but such suspension can be requested. In practice, upon reception of a MAP request, Belgium's competent authority informs the tax collector that a MAP request has been submitted. To obtain a suspension of collection, the taxpayer must submit a request at the competent tax collection office where he/she is established. The tax collector is the only governmental agent that is authorised to accept or deny a request for suspension. The decision will be made independently and Belgium's competent authority will not be consulted. Belgium's FAQs mention that in practice suspension is often granted.

26. Specifically with respect to the EU Arbitration Convention, Belgium specified in Annex 3 of the Final report on improving the functioning of the Arbitration Convention that taxpayers are allowed to request for a suspension of tax collection when filing a MAP request under this convention<sup>8</sup>. Furthermore, the treaty with the United States includes a provision that stipulates that assessment and collection procedures will be suspended during the period a MAP is pending.

27. Peers did not provide input relating to this particular best practice.

<sup>8</sup> See EU Joint Transfer Pricing Forum, *Final Report on improving the functioning of the Arbitration Convention (JTPF/002/2015/EN)*, March 2015. Available at:

[http://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/taxation/company\\_tax/transfer\\_pricing/forum/final\\_report\\_ac\\_jtpf\\_002\\_2015\\_en\\_final\\_clean.pdf](http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/company_tax/transfer_pricing/forum/final_report_ac_jtpf_002_2015_en_final_clean.pdf).

## *Part C*

### **Resolution of MAP Cases**

#### **[BP.9] Permit taxpayers to request multi-year resolution of recurring issues through the MAP**

Jurisdictions should implement appropriate procedures to permit, in certain cases and after an initial tax assessment, requests made by taxpayer which are within the time period provided for in the tax treaty for the multi-year resolution through the MAP of recurring issues with respect to filed tax years, where the relevant facts and circumstances are the same and subject to the verification of such facts and circumstances on audit.

28. In certain cases, a MAP request with respect to a specific adjustment to income may present recurring issues that may be relevant in previous or subsequent tax years. Allowing taxpayers to submit requests for the multi-year resolution through MAP with respect to such recurring issues, where the relevant facts and circumstances are the same, may help avoid duplicative MAP requests and facilitate a more efficient use of competent authority resources.

29. Belgium permits taxpayers to request multi-year resolution of recurring issues through the MAP for subsequent years, provided the facts and circumstances are the same. With respect to previous years, an additional condition applies as taxpayers should submit their MAP requests with the deadline provided by the treaty. This can however only apply to recurring issues, such as for instance the presence of a permanent establishment, but not the division of a remuneration based on the number of days present in a State. So far, this is not addressed in Belgium's FAQs.

30. Peers did not provide input relating to this particular best practice.

#### **[BP.10] Publish explanation of the relationship between the MAP and domestic remedies**

Jurisdictions should publish an explanation of the relationship between the MAP and domestic law administrative and judicial remedies.

31. As mentioned under BP.5, pursuant to Article 25(1) of the OECD Model Tax Convention taxpayers are allowed to submit a MAP request irrespective of available domestic remedies. This, however, does not further specify how to proceed if both available remedies are initiated and the case is dealt with in the bilateral phase of the MAP. Publicly available guidance on the relationship between the MAP and domestic remedies provides clarity to taxpayers as well as treaty partners.

32. Belgium has included in its FAQs a brief explanation on the relationship between the MAP and domestic law administrative and judicial remedies. In particular, it is set out that MAP is available to taxpayers along with domestic remedies and can be initiated at the same time. In cases where a judicial decision has become final, the Belgian

Competent Authority is legally bound by domestic court decisions under its domestic law and cannot enter into a MAP that deviates from this decision.

33. Belgium reported that it will include detailed information on the relationship between MAP and domestic remedies in the MAP guidance to be published.

34. Peers did not provide input relating to this particular best practice.

**[BP.11] Provide guidance on consideration of interest and penalties in MAP**

Jurisdictions' published MAP guidance should provide guidance on the consideration of interest and penalties in the mutual agreement procedure.

35. As interests and penalties may concern substantial amounts, providing clarity in a jurisdiction's MAP guidance on whether interest and penalties are in the scope of the MAP is relevant to ensure that a taxpayer is well-informed on this issue.

36. The FAQs specify that, in case of a downward adjustment, the taxpayer receives interest on the reimbursement of the tax. In principle, interest and penalties resulting from adjustments made pursuant to a MAP agreement are generally not waived or dealt with as part of the MAP procedure, but they sometimes can be part of the outcoming mutual agreement.

37. Detailed guidelines will be provided in the guidance to be published.

38. Peers did not provide input relating to this particular best practice.

**[BP.12] Include Article 9(2) of the OECD Model Tax Convention in tax treaties**

Jurisdictions should include paragraph 2 of Article 9 of the OECD Model Tax Convention in their tax treaties.

39. Article 9(2) of the OECD Model Tax Convention allows competent authorities to make a corresponding adjustment to unilaterally eliminate double taxation arising from primary adjustments. Including this provision in tax treaties provides taxpayers the possibility to obtain the elimination of such double taxation via a unilateral corresponding adjustment.

40. Out of Belgium's 96 tax treaties, 54 contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention requiring their competent authorities to make a correlative adjustment in case a transfer pricing adjustment is made by the treaty partner. 41 tax treaties do not include such a provision while 4 tax treaties include a provision that is similar to Article 9(2) of the OECD Model Tax Convention, but uses different or includes additional wording. These can be classified as follows:

- One treaty does not specify that the corresponding adjustment relates to the to the amount of the tax charged therein on those profits;
- One treaty does not provide that the competent authorities of the contracting states shall if necessary consult each other to determine the amount of the adjustment;
- One treaty provides a variation of Article 9(2) and does not refer to a corresponding adjustment but to the avoidance of double taxation; and

- One treaty provides, instead of the sentence reading “*then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits*”, that the competent authorities of the contracting states may consult together with a view to reaching an agreement on the adjustment of profits or losses in both Contracting States.

41. Belgium has indicated being currently in a negotiation process with France and Germany (which both confirmed in their peer input) to modify or replace the existing tax treaties. Moreover, Belgium indicated that it intends including Article 9(2) of the OECD Model Tax Convention in all its existing tax treaties by signing the Multilateral Instrument. In that regard, Belgium envisages not making any reservations on the modifications made by Article 17 of the Multilateral Instrument. Furthermore, Belgium has indicated it will sign and ratify the Multilateral Instrument as soon as practicable. Where a tax treaty will not be modified by the Multilateral Instrument, Belgium reported that it intends to update via bilateral negotiations all of its tax treaties. In addition, Belgium will seek to include Article 9(2) of the OECD Model Tax Convention in all of its future treaties.

42. Peers did not provide input relating to this particular best practice.

## **Part D**

### **Implementation of MAP Agreements**

43. There are no best practices for Part D.

## Glossary

<b>Action 14 Minimum Standard</b>	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Settlement Mechanisms More Effective
<b>FAQs</b>	Frequently Asked Questions about the Mutual Agreement Procedure and the Advance Pricing Arrangements, published by Belgium’s competent authority
<b>MAP Statistics Reporting Framework</b>	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
<b>Multilateral Instrument</b>	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
<b>OECD Transfer Pricing Guidelines</b>	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
<b>Terms of Reference</b>	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective





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