

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

BEST PRACTICES

Latvia

2019



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Latvia (2019)

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

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 effective¹ stipulates that:

The best practices are not part of the 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.

Latvia 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 Latvia’s adoption of the best practices.

This document contains a general overview of the adoption of best practices. No comments were received from peers on the adoption of these best practices by Latvia.

¹ Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ([CTPA/CFA/NOE2\(2016\)45/REV1](#)).

Part A

Preventing Disputes

[BP1.] 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. Latvia reported that it has had a unilateral APA programme since 2013, whereas it has not yet introduced a bilateral or multilateral APA programme. Latvia reported that its competent authority would however be open to discuss a bilateral APA request received by its treaty partner, provided that the relevant treaty would contain a provision equivalent to Article 25(3) of the OECD Model Tax Convention.
3. Latvia further reported two routes are available to Latvian taxpayers to request for bilateral APAs even though such a programme does not exist in Latvia's domestic legal framework. The first one is the use of a collaborative compliance project in Latvia, whereby Latvian multinational enterprises can ask their foreign affiliates located in other jurisdictions to submit a bilateral APA request in their jurisdiction. The other one would result from a consultation between Latvia's tax administration and a Latvian taxpayer who submitted a unilateral APA request, whereby Latvia would invite the taxpayer to submit a bilateral request via its affiliates in other jurisdictions.
4. Latvia reported it has never received requests for bilateral APAs from taxpayers. Latvia specified that it is currently conducting one pilot project with another jurisdiction that invited Latvia's competent authority to enter into a bilateral APA.
5. Peers did not provide input relating to this particular best practice.

[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.

6. 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.

7. Latvia reported that it does not publish agreements reached concerning difficulties or doubts arising as to the interpretation or application of their tax treaties by the competent authorities.

8. 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.

9. 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.

10. As previously mentioned under element BP.1, Latvia's current APA programme provides that APA requests are possible on a unilateral basis. Latvia further reported that it is open to discuss bilateral APA cases that would be received by other competent authorities.

11. Latvia specified that the legal basis for entering into unilateral APAs is section 16 of Latvia's law on taxes and duties. Latvia issued guidance on APAs that summarises the process as well as the information and documentation requirements to submit an APA request.²In addition to this, there is information available in Latvia's MAP profile and in Latvia's transfer pricing profile.³

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

[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.

13. 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

² Latvia's APA guidance is available at <https://likumi.lv/ta/en/en/id/253962-procedures-for-the-conclusion-of-an-advance-ruling-for-the-determination-of-the-arms-length-price-value-for-a-transaction-or-type-of-transactions-between-a-taxpayer-and-the-tax-administration>

³ Latvia's MAP profile is available at <http://www.oecd.org/tax/dispute/Latvia-Dispute-Resolution-Profile.pdf> and Latvia's transfer pricing profile is available at <http://www.oecd.org/tax/transfer-pricing/transfer-pricing-country-profile-latvia.pdf>

Module developed by the Forum on Tax Administration (FTA) can be helpful in this respect.

14. Latvia reported that its tax administration provides internal trainings as well as opportunities to participate in international events for its officials involved in the auditing/examination of taxpayers.

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

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.

16. 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, enabling them to effectively resort to such dispute settlement procedure.

17. Latvia reported that taxpayers are allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and/or administrative remedies provided by its domestic law. However, Latvia reported that where the issue under dispute has already been decided via the judicial remedies provided under Latvia's domestic law, taxpayers are no longer allowed to request for MAP assistance.

18. Latvia reported that it intends to publish MAP guidance, inter alia with a view to facilitate recourse to MAP by Latvian taxpayers. It further reported that no fees are charged to taxpayers for a MAP request.

19. 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.

20. 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.

21. Latvia reported that it provides access to MAP in cases of bona fide taxpayer-initiated foreign adjustments, which is also clarified in its MAP profile. Latvia further reported that it plans to address this item in its future MAP guidance.

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

[BP.7] Provide guidance on multilateral MAPs

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

23. 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.

24. There is no public information available regarding multilateral MAPs involving Latvia. Latvia further reported that it plans to address this item in its future MAP guidance.

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

[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.

26. 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.

27. Latvia reported that there is currently no mechanism to suspend tax collection when a taxpayer submits a MAP request. Latvia reported that its domestic law may provide for suspension of tax collection in case of MAP in the future, and that it also intends to address this issue in its future MAP guidance.

28. Specifically with respect to EU arbitration convention, Latvia also specified in Annex 3 of the final report on improving the functioning of the arbitration convention that

there are no specific rules dealing with suspension of tax collection in Latvia, and standard domestic rules apply.⁴

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

⁴ Available https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_report_ac_jtpf_002_2015_en_final_clean.pdf at

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.

30. 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.

31. Latvia reported it allows taxpayers to request the multi-year resolution of recurring issues through the MAP on the conditions that such years are audited. Latvia further reported that it plans to address this item in its future MAP guidance.

32. 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.

33. 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.

34. Apart from the information available in Latvia's MAP profile, there is no information publicly available on the relationship between MAP and domestic remedies in Latvia. Latvia further reported that it plans to address this item in its future MAP guidance.

35. 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.

36. As interest 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.

37. Latvia reported that interest and penalties resulting from adjustments can be waived or dealt with as part of the MAP. Specifically with respect to the EU Arbitration Convention, Latvia specified in Annex 3 of the Final report on improving the functioning of the Arbitration Convention that in its domestic legislation, however, there is no special provision that waives interest on unpaid tax due to the fact a case has been pending under the mutual agreement procedure.⁵ The normal rules for charging and refunding of interest thus apply.

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 Latvia's 61 tax treaties, 52 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, three treaties do not contain such a provision. The remaining six treaties deviate from this provision in the following manners:

- in three treaties, the term "may" is used instead of "shall" when it concerns the granting of a corresponding adjustment,⁶
- in two treaties, its provision only indicates that the competent authorities may consult together for granting a corresponding adjustment, and
- in one treaty, it requires the agreement by the competent authority of the other state to grant a corresponding adjustment.

⁵ Available at https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/final_report_ac_jtpf_002_2015_en_final_clean.pdf

⁶ These two treaties contain the treaty with former Serbia and Montenegro that Latvia continues to apply to both Serbia and Montenegro.

41. Latvia reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. In that regard, Latvia signed the Multilateral Instrument on 7 June 2017. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent of Article 9(2) of the OECD Model Tax Convention, or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention).

42. Latvia has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Furthermore, Latvia reserved its right not to apply the provision on the basis that in the absence of a provision referred to in Article 17(2) in its Covered Tax Agreement:

- i. it shall make the appropriate adjustment referred to in Article 17(1); or
- ii. its competent authority shall endeavour to resolve the case under the provisions of a Covered Tax Agreement relating to mutual agreement procedure.

43. Therefore, at this stage, none of the nine tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention.

44. Latvia reported that a draft protocol amending the tax treaty between Latvia and one jurisdiction has been agreed in order to ensure the implementation of the minimum standards of BEPS, and that this tax treaty will also be amended to include the equivalent of Article 9(2) of the OECD Model Tax Convention. This protocol is expected to be signed and to come into force in 2019, and its application could be started on January 1, 2020.

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

Part D

Implementation of MAP agreements

46. There are no best practices for Part D.

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Settlement Mechanisms More Effective
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (CTPA/CFA/NOE2(2016)45/REV1)



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