

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

BEST PRACTICES

Singapore



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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
FTA	Forum on Tax Administration
IRAS	Inland Revenue Authority of Singapore
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 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.

Singapore 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 Singapore'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.

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

[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. Singapore is authorised to enter into bilateral APAs and has implemented a bilateral APA programme. The guidance on Singapore's bilateral APA programme can be found in a specific guide² covering attribution / allocation cases ('**Singapore's Transfer Pricing Guidelines**') published on the homepage of IRAS include guidance on its APA programme.
3. Paragraph 8.16 of Singapore's Transfer Pricing Guidelines states that IRAS will generally accept an APA request to cover three to five future fiscal years, although the duration of the covered period should be based on taxpayers' assessment that there will not be any significant changes during the covered period that may affect the validity of the APA. According to paragraph 8.17, Singapore also consider taxpayers' request to extend the APA to prior years (i.e. roll-back years) for a bilateral or multilateral APA based on the merits of the request when there is no significant difference in the facts and circumstances for the covered periods and for the roll-back years. Singapore's MAP profile³ indicates that roll-backs are generally given up to two years prior to the period originally covered by APAs. Singapore reported that a bilateral APA request should be introduced during a pre-filing meeting that should be held at the latest nine months before the start of the period to be covered by the bilateral APA.
4. Singapore annually publishes statistics⁴ on MAP and APA cases on the IRAS's homepage. The IRAS's annual reports⁵ also contain the references to the number of both cases.

² Available at https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Transfer%20Pricing%20Guidelines_4th.pdf

³ The MAP profile of Singapore is available at: <http://www.oecd.org/tax/dispute/Singapore-Dispute-Resolution-Profile.pdf>

⁴ Statistics for fiscal years 2013-2015 are available at: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Publications/IT_Transfer%20Pricing%20MAP%20and%20APA%20Cases_FY13-FY15.xls

⁵ The IRAS annual report for year 2015/16 is available at: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/Annual_Reports/IRAS%20Annual%20Report%20FY2015-16_30Aug2016.pdf

5. Singapore reported that IRAS had agreed on frameworks and milestones with competent authorities having a steady inventory of MAP and APA cases in order to facilitate and expedite the resolution of cases in a timely and principled manner.
6. Two peers provided general comments on their MAP and APA programme with Singapore. Both of them emphasised that they had established an open, cooperative and/or productive working relationship with Singapore's competent authority.

[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.

7. 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.
8. Singapore reported that it has not published agreements reached by competent authorities on difficulties or doubts arising as to the interpretation or application of their tax treaties so far. Singapore reported that IRAS intends to publish, when appropriate, such contents of general nature in the near future.
9. Peers did not provide input on this particular best practice.

[BP.3] Provide guidance on APAs

Jurisdictions' published MAP guidance should provide guidance on APAs.

10. 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.
11. As mentioned under element BP.1, Singapore has implemented a bilateral APA programme, and its guidance is provided in Singapore's Transfer Pricing Guidelines.⁶ These Guidelines present the timeline of each of the four steps after the submission of pre-filing materials by taxpayers, as well as the required actions for each step that should be taken by taxpayers. The four steps include: 1) a pre-filing meeting, 2) the submission of the APA application, 3) review and negotiation, and 4) implementation. The same steps are taken in case of a renewal of APAs.

⁶ Available at: https://www.iras.gov.sg/irashome/uploadedFiles/IRASHome/e-Tax_Guides/etaxguide_CIT_Transfer%20Pricing%20Guidelines_4th.pdf

12. The Transfer Pricing Guidelines also provide, in Annex B2, the contents of information to be prepared and submitted by taxpayers to apply for a pre-filing meeting that takes place before the submission of the APA request. Annex B3 lists up information that should be included in annual compliance reports concerning the periods covered by APAs.
13. Peers did not provide input relating to this particular best practice.

[BP.3] 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.

14. Making audit/examination functions 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.
15. Singapore reported that the Singapore Tax Academy provides a series of training programmes⁷ containing international taxation issues for auditors. Specifically, its Advanced Management Programme in International Tax provides advanced training on tax treaties and transfer pricing concepts and rules, and modules including an in-depth examination of the rules and structure of the OECD Model Tax Convention and the OECD’s Transfer Pricing Guidelines.
16. Peers did not provide input on this particular best practice.

⁷ Further details on the programme are available at: <https://www.taxacademy.sg/tax-training-roadmap.html>

Part B

Availability and access to MAP

[BP.1] 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.

17. 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.

18. Singapore reported that no fees are charged to taxpayers when a MAP request is submitted in Singapore and specified that taxpayers are allowed to request MAP in cases where they have also sought to resolve the dispute via judicial administrative remedies under domestic law. According to Singapore's MAP profile, IRAS will consider such a taxpayer's request for a MAP based on the merits of each case.

19. As described in BP.10, both Singapore's MAP guidance⁸ and Singapore's Transfer Pricing Guidelines contain relevant information on the relationship between MAP and domestic administrative and judicial remedies. According to Singapore's MAP guidance, MAP does not deprive taxpayers of other remedies available under their respective domestic tax law. Singapore reported that taxpayers should inform IRAS and the relevant foreign competent authority if the matter is adjudicated through any legal or judicial proceedings while the MAP process is still ongoing and that the competent authorities will discuss and decide if the MAP should continue, cease or be suspended. Singapore's MAP guidance also states that "*Where the matter has been subjected to litigation and determination by the Singapore tribunals and courts, IRAS is unlikely to depart from the determination of the Singapore tribunals and courts*".

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

⁸ Guidance on MAP in general is found at: <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/Mutual-Agreement-Procedure/>

[BP.2] 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.

21. 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 the MAP for resolving these cases. Furthermore, specifying whether there is access to the MAP for these adjustments in a jurisdiction's MAP guidance provides additional clarity.

22. Paragraph 11.3 of Singapore's Transfer Pricing Guidelines prescribes that taxpayers may make self-initiated retrospective adjustments in their tax returns or after the filing of their tax returns. Such adjustments are not allowed, according to Paragraph 11.7, in the absence of contemporaneous transfer pricing documentation. Singapore reported that IRAS will consider MAP requests regarding bona fide taxpayer-initiated foreign adjustments, based on the merits of each case. Singapore's MAP profile states that bona fide taxpayer initiated foreign adjustments must be supported by contemporaneous transfer pricing documentation.

23. Peers did not provide input with regard to this particular practice.

[BP.3] Provide guidance on multilateral MAPs

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

24. 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.

25. Singapore's MAP guidance and paragraph 8.6 of Singapore's Transfer Pricing Guidelines includes a sentence stating that it is possible for IRAS to enter into a multilateral MAP involving three or more competent authorities. Singapore's MAP profile mentions that the guidance for bilateral MAPs is also applicable to multilateral MAPs.

26. Peers did not provide input with regard to this particular practice.

[BP.4] 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.

27. 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.

28. Singapore reported that in general, IRAS does not suspend collection due to the submission of MAP requests. Singapore reported that the same domestic procedures, applicable to domestic audit cases, also apply to those under MAP. Apart from the information available in Singapore's MAP profile, there is no publically available information on this particular item.

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

Part C

Resolution of MAP Cases

[BP.1] 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. Singapore reported that multi-year resolution of recurring issues is allowed through a MAP where the relevant facts and circumstances of the case are the same, subject to the relevant conditions being met. Singapore's MAP guidance indicates that taxpayers may seek resolution on double taxation issues that occur over multiple tax years, subject to the time limits provided in the relevant double taxation agreement. Paragraph 8.22 of Singapore's Transfer Pricing Guidelines also states that such resolution is available in transfer pricing cases. Singapore's MAP profile also mentions that Singapore is open to accept MAP requests for recurring issues affecting multiple tax years.

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

[BP.2] 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, taxpayers are pursuant to Article 25(1) of the OECD Model Tax Convention 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 for taxpayers and provides clarity to taxpayers as well as treaty partners.

34. As described in BP.5, both Singapore's MAP Guidance and Singapore's Transfer Pricing Guidelines contain information on the relationship between MAP and domestic law administrative and judicial remedies.

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

[BP.3] 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. Both Singapore's MAP guidance and Singapore's the Transfer Pricing Guidelines (in Paragraph 9.16) refer to the consideration of interest and penalties in MAP. If any interest or penalties has been imposed in a jurisdiction in connection with the taxation imposed that is the subject of the MAP, the MAP agreement reached by Singapore's competent authority may address whether any refund of such interest or penalties should appropriately be made. This information is also available in Singapore's MAP profile.

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

[BP.4] 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 Singapore's 85 tax treaties, 38 contain a provision 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. 13 treaties do not contain a provision equivalent to or based on Article 9(2) of the OECD Model Tax Convention. For the remaining 34 treaties the following specifications can be made:

- 32 treaties contain a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby a corresponding adjustment is only provided through consultations or agreements between the competent authorities;

- one treaty contains a protocol article which makes the competent authority not obliged to provide a corresponding adjustment until such consultation and an agreement is made;
- one treaty necessitates the agreement of the competent authority in order to make a corresponding adjustment.

41. Singapore 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 Article 9(2) of the OECD Model Tax Convention in all of its future treaties. In that regard, Singapore recently signed the Multilateral Instrument. 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. This shall apply, however, only if both contracting parties to the applicable treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar both notified the depository of the fact that this treaty does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Furthermore, Article 17(2) of the Multilateral Instrument does not take effect if one or both of the signatory states to the tax treaty 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, on the basis 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.

42. Singapore did not reserve the right not to apply Article 17(2) of the Multilateral Instrument on the basis that these treaties already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. Among the 47 treaties identified in paragraph 42 that do not contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention, Singapore listed 37 treaties pursuant to Article 2(1)(a) of the Multilateral Instrument, and of those 37, 26 treaties are notified of by its partner jurisdictions and are covered tax agreements. With regard to those 26 treaties, 13 jurisdictions reserved the right on the basis of Article 17(3) of the Multilateral Instrument not to apply Article 17 at all to their tax treaty with Singapore. At this stage therefore, the Multilateral Instrument will, upon entry into force, modify the remaining 13 treaties.

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

Part D

Implementation of MAP agreements

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 Resolution 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 15 July 2014
Singapore's MAP Guidance	The IRAS webpage on Mutual Agreement Procedures
Singapore's Transfer Pricing Guidelines	The e-Tax Guide "Transfer Pricing Guidelines" available on the IRAS website
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)



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For more information:

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