

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

BEST PRACTICES

Sweden

2020



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Making Dispute Resolution More Effective
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Sweden (2020)

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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
EU	European Union
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 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 effect the assessment of the assessed jurisdiction. Jurisdictions are free, however, to identify best practices they have adopted.

Sweden 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 Sweden's adoption of the best practices.

The peer review process on the implementation of the Action 14 Minimum Standard consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Sweden. This document contains a general overview of the adoption of best practices and comments by peers on the adoption of these best practices during stage 1 (period ranging from 1 January 2016 up to 31 March 2017) and stage 2 (ranging from 1 April 2017 up to 30 September 2018).

¹ Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective.

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. In 2009, Sweden introduced a special law regarding APAs. This law came into force on 1 January 2010 and allows Sweden's Tax Agency to enter into bilateral and multilateral APAs.² Sweden reported that there no specific timelines for filing an APA request. Section 8 of this law stipulates that taxpayers, which are or may become taxable under the Swedish income tax act (1999:1229) and insofar a tax treaty applies, may submit a request for an APA.³ Pursuant to section 13 of this law, a decision containing an APA can only be issued to taxpayers if: (i) prior thereto an agreement has been reached with the other jurisdiction concerned, as specified in the request for an APA, insofar as there is a tax treaty with that particular jurisdiction and (ii) the APA is in accordance with the request for such APA, or has been accepted by the requesting taxpayer.⁴ The law further describes how the process of obtaining an APA is conducted, the content of an APA and the binding effect of such agreement.
3. The website of Sweden's Tax Agency containing information on APAs mentions that APAs are not issued for minor transactions or simple/straightforward issues, as also follows from section 12 of the law on APAs mentioned above. Sweden thereby charges fees to taxpayers when submitting a bilateral APAs request. These fees amount to SEK 150,000 for a new request, SEK 125,000 for a renewal of an existing APA with changes and SEK 100,000 for a renewal of an existing APA with no changes.⁵ All fees are due per jurisdiction the APA relates to.

² Available at: <http://www4.skatteverket.se/rattsligvagledning/321837.html>.

³ The website of Sweden's Tax Agency that contains information on APAs also mentions this requirement and further specifies which taxpayers can request for APAs. Available at: <http://www4.skatteverket.se/rattsligvagledning/edition/2016.5/339233.html?q=priss%C3%A4ttningsbesked%20>.

⁴ *The website of Sweden's Tax Agency that contains information on APAs further mentions that it is required that the applicable tax treaty includes a provision on the exchange of information. Available at: <https://www4.skatteverket.se/rattsligvagledning/edition/2019.1/339233.html>*

⁵ Section 24 of the law on APAs, however, grants Sweden's Tax Agency the right to decide on an exemption from all or part of the fee in individual cases, provided that there is a special reason for it.

4. Sweden publishes statistics on APAs in relation to EU and non-EU Member States on the website of the EU Joint Transfer Pricing Forum⁶ (in English) and for the years 2013-2015 on the website of Sweden's Tax Agency (in Swedish).⁷

5. Several peers provided input on Sweden's bilateral APA programme, although most input relates to granting roll-back of bilateral APAs by Sweden. Three peers in particular provided input to the bilateral APA programme of Sweden. The first peer noted that it has a cooperative and productive APA relationship with Sweden and that it values this relationship. This peer further mentioned it held one meeting with Sweden's competent authority, which was in this peer's view conducted in a cooperative manner. The second peer noted that it is aware that Sweden has implemented a bilateral APA programme and that it has a positive experience with Sweden's competent authority in pursuing a multilateral APA. This peer also addressed that it would like to discuss possible opportunities for pursuing additional multilateral APAs, as both the tax administrations and taxpayers can significantly benefit from such agreements. The third peer mentioned it is aware that Sweden has implemented an bilateral APA programme.

[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. Sweden reported that competent authority agreements, which resolve difficulties or doubts as to the interpretation or application of its tax treaties in relation to issues that are of a general nature and that concern, or may concern, a category of taxpayers, are implemented by law and as such are published. Such agreement is included in the law concerning each individual tax treaty the agreement relates to. Such laws are publically available at:

<http://www4.skatteverket.se/rattsligvagledning/15311.html>

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

⁶ Available at: https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en. These statistics are up to 2017.

⁷ Available at:

<http://www.skatteverket.se/download/18.3810a01c150939e893f2ae97/1455890256090/arsredovisning-skatteverket-2015-skv165-utgava24.pdf>
<https://www.skatteverket.se/download/18.51fbd538168bf5dc48642db/1550737492951/arsredovisning-skatteverket-2018-skv165-utgava27.pdf>. See page 109 of the document the link refers to. These statistics are up to fiscal years 2017.

[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 mentioned under element BP.1, Sweden has implemented a bilateral APA programme by means of a specific law on APAs. This law contains the process for submitting an APA request, the information taxpayers should include in such request, the content of an APA, the basis for the pricing of transactions and the assumptions, terms and conditions underlying the agreement. It further deals with the term of an APA, the binding effect of the agreement and finally information on the process of notification of changes, amendment and revocation of the APA. Further details on the procedure can be found in Regulation (2009:1295) to this law.

11. Further to the above, the website of Sweden's Tax Agency also includes information on APAs. This concerns information on which government authority is competent for handling APA requests, what an APA is, what the requirements are for obtaining an APA, by whom they can be requested, a detailed list of information to be included in an APA request, costs for obtaining an APA and the binding effect of APAs once entered into. The relevant website is available at:

<https://www4.skatteverket.se/rattsligvagledning/edition/2019.1/339233.html>

12. The website of Sweden's Tax Agency containing information on MAP includes a link to the website listed above concerning APAs, which was updated in June 2019.

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

[BP.4] Develop "global awareness" of the audit/examination functions

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.

14. 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.

15. Sweden reported that its Tax Agency has a comprehensive education programme in place for tax auditors. With respect to attribution/allocation cases, issues are managed in Sweden's Tax Agency in a coordinated effort on an operational level. There are working

meetings and workshops, which aim at conveying knowledge among personnel in Sweden's Tax Agency and during which substantive issues are discussed. Sweden further reported that it has also distributed the Global Awareness Training Module to the relevant staff within Sweden's Tax Agency that is charge of audits for attribution/allocation cases.

16. One peer provided input in relation to this best practice. It considers Sweden as a committed partner within the FTA MAP Forum and the FTA Large Business Programme, as also being committed to create awareness on the principles of the Global Awareness Training Module at the level of its audit/examination and the competent authority function. In addition, this peer indicated that it would welcome discussing with Sweden's competent authority issues of joint concern both at the level of the audit/examination and the competent authority function.

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.

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. Sweden reported that no fees are charged to taxpayers when submitting a MAP request in Sweden. Taxpayers are further allowed to request for MAP assistance even in cases where they also have sought to resolve the dispute via domestically available administrative and judicial remedies. Furthermore, taxpayers are also allowed to request MAP assistance even if the dispute under review has already been decided via these domestic remedies. In that regard, Sweden reported that its competent authority is under domestic law not legally bound by decisions from its domestic courts and that there are no policy or administrative constraints for the competent authority to deviate from a court decision in a MAP agreement.

19. Article 7(3) of the EU Arbitration Convention 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 it has withdrawn any such appeal before a decision has been delivered. Sweden has not made a declaration in the Unilateral Declarations to the EU Arbitration Convention that it will apply Article 7(3).⁸

20. Two peers provided input in relation to this best practice. One peer noted that it had a MAP case with Sweden where the taxpayer also opted to have the case reviewed by domestic courts in Sweden. It appreciated the fact that Sweden's competent authority proposed to proceed with the domestic remedy first, as this allowed them to go further back

⁸ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41990A0436:en:HTML>.

in time to refund Swedish withholding taxes, which benefitted the taxpayer. The other peer noted that with respect to attribution/allocation cases Sweden is not willing to negotiate a MAP case if there is a domestic court case pending in Sweden, as it puts the discussions in MAP on hold until the court has decided on the case.

[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.

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. Sweden reported it grants access to MAP in cases where double taxation results from bona fide taxpayer-initiated foreign adjustments. The website of Sweden's Tax Agency containing information on MAP stipulates that there is no obstacle for submitting a MAP request where double taxation has arisen as a result of taxpayer initiated self-adjustment.

23. One peer provided input on this best practice. It mentioned that according to its experience, Sweden competent authority is amenable to consider 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.

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. The website of Sweden's Tax Agency that contains information on MAP does not include guidance relating to multilateral MAPs.

26. One peer provided input on this best practice and mentioned that 'Sweden's competent authority is willing to discuss multilateral MAPs on a case-by-case basis and that it welcomes the cooperation from Sweden's Tax Agency in this respect. This peer also noted that it is ready to work collaboratively and efficiently on such cases with Sweden's competent authority where they arise.

[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.

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. Pursuant to chapter 63, section 4, of Sweden's Tax Procedure Act, its competent authority may grant a deferral to pay the tax due when a case is dealt with in MAP. In this respect, Sweden reported that, upon request by taxpayers, it grants the suspension of collection procedures during the period a MAP case is pending. The website of the Sweden's Tax Agency containing information on MAP mentions that in order to apply for such suspension, the tax due in the other jurisdiction concerned and that is under review in a MAP has to be paid already and furthermore the taxpayer should be subject to double taxation. The amount of tax that will be suspended in Sweden is the lower of either the tax due in Sweden or in the other jurisdiction concerned. In that regard, Sweden reported that the requirements for obtaining a suspension of tax collection for MAP cases are less strict than when taxpayers request suspension for other cases (in the latter the taxpayer in certain cases has, among others, to show that immediate payment would be an undue hardship).

29. In 2013 Sweden and India entered into a competent authority agreement on the suspension of tax collection, interest and penalties when a MAP case is pending under their mutual tax treaty. In general, such suspension shall be granted for a period of two years, which upon mutual consent by the competent authorities can be extended to five years. In that regard, both competent authorities strive at resolving MAP cases within two years as from the date on which competent authorities notify each other of the submission of a MAP request.

30. Specifically with respect to the EU Arbitration Convention, Annex 3 of the Final report on improving the functioning of the Arbitration Convention specifies for Sweden that taxpayers are allowed to request for a suspension of tax collection when filing a MAP request under this convention and under the conditions mentioned in paragraph 29 above.⁹

⁹ 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.

31. One peer provided input relating to this particular best practice and stated that it is not aware as to whether Sweden provides for the suspension of tax collection during the period a MAP case is pending.

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.

32. 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.

33. Sweden reported that it allows taxpayers to make requests for the multi-year resolution of recurring issues through MAP, but did not provide additional information in relation hereto. The website of the Sweden's Tax Agency containing information on MAP stipulates that a MAP request may include several fiscal years..

34. One peer provided input to this particular best practice and stated that it is aware that Sweden allows for the multi-year resolution of MAP cases.

[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.

35. 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.

36. The website of the Sweden's Tax Agency containing information on MAP mentions that the period for filing of a MAP request under tax treaties also applies when taxpayers lodged an appeal to the tax assessment that includes the adjustment that is subject

of MAP. It further clarifies that taxpayers is not deprived of the right to submit a MAP request where for the case domestic judicial procedures in Sweden are pending or have been finalised.

37. 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.

38. 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.

39. Sweden reported that interest and/or penalties that result from tax adjustments are taken into account when implementing a MAP agreement. In other words, interest and penalties are not discussed in the course of MAP, but once a MAP agreement is reached Sweden's Tax Agency will take this agreement as the basis to decide on the final amount of interest and/or penalties. If a MAP agreement entails an adjustment that results in a reduction of the taxable base in Sweden, Sweden reported its Tax Agency will reduce interest and penalties in proportion to any adjustment that results from the MAP agreement.

40. The website of Sweden's Tax Agency containing information on MAP clarifies that if a MAP agreement is entered into for a case where Sweden made an adjustment and for which also a administrative penalty was imposed, and whereby the MAP agreement entails a reduction of the adjustment, then the administrative penalty will be reduced accordingly. It is further stated that the amount of interest due will also be in proportion credited.

41. Specifically with respect to the EU Arbitration Convention, Sweden specified in Annex 3 of the Final report on improving the functioning of the Arbitration Convention that its approach is to collect tax with charging interest and repaying interest if taxes are to be refunded following a MAP agreement.¹⁰

42. 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.

43. 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

¹⁰ 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

possibility to obtain the elimination of such double taxation via a unilateral corresponding adjustment.

Overview of tax treaties

44. Sweden reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention in its tax treaties where possible.

45. Out of Sweden 84 tax treaties, 58 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.¹¹ Furthermore, 23 treaties do not include a provision equivalent to or based on Article 9(2) of the OECD Model Tax Convention.¹² For the remaining three treaties the following specification can be made:

- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but which does not allow competent authorities to consult each other where necessary and is therefore considered not being equivalent thereof
- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but whereby a corresponding adjustment is only possible through consultations between the competent authorities and is therefore considered not being equivalent thereof
- one treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention, but which from a material perspective do not incorporate several elements of Article 9(2), such as the possibility to unilaterally grant a corresponding adjustment and is therefore considered not being equivalent thereof.

Recent developments

Bilateral modifications

46. Sweden signed an amending protocol to an existing treaty, which has entered into force and contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, which was not the case for the previous wording of the treaty. The effect of this protocol has been reflected in the analysis above where it has relevance.

Multilateral Instrument

¹¹ These 58 treaties include the Nordic convention that for Sweden applies to Denmark, Faroe Islands, Finland, Iceland and Norway.

¹² These 23 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic, the treaty with former Yugoslavia that Sweden continues to apply to Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Serbia and Slovenia and the agreement with the former Netherlands Antilles Islands that Sweden continues to apply to Curacao, St. Maarten and the Caribbean part of the Netherlands (being Bonaire, St. Eustatius and Saba).

In the stage 1 peer review report, reference was made to 22 treaties. Following the peer review process of other assessed jurisdictions, one treaty was identified that does not contain the equivalent of Article 9(2) of the OECD Model Tax Convention. Taking into account a newly signed protocol that contains Article 9(2), the total number of treaties not having this provision is 23.

47. Sweden signed the Multilateral Instrument and has deposited its instrument of ratification on 22 June 2018. The Multilateral Instrument has for Sweden entered into force on 1 October 2018.

48. 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 not take effect for a tax treaty if one or both of the treaty partners 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 notify the depositary 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).

49. In regard of the 26 tax treaties identified in paragraph 45 above that are considered not to contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention, Sweden listed 17 as a covered tax agreement under the Multilateral Instrument.¹³ For two of these 17 treaties Sweden has reserved, pursuant to Article 17(3), the right not to apply Article 17(2) of the Multilateral Instrument for those treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention. For none of the remaining 15 treaties did Sweden make a notification on the basis of Article 17(4).

50. With regard to these 15 treaties, four treaty partners are not a signatory to the Multilateral Instrument and one has, on the basis of Article 17(3), reserved the right not to apply Article 17(2) as they considered that their treaty with Sweden already contains the equivalent of Article 9(2).¹⁴

51. For the remaining ten treaties, two treaty partners have already deposited their instrument of ratification of the Multilateral Instrument, following which the Multilateral Instrument has entered into force for the treaty between Sweden and these treaty partners, and therefore have superseded the relevant treaty provisions to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions

¹³ These 17 treaties include the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic and the Slovak Republic.

¹⁴ This latter treaty concerns the treaty with former Czechoslovakia that Sweden continues to apply to the Czech Republic, but only as regards the Czech Republic, since the Czech Republic made the reservation under Article 17(3). This treaty is therefore listed here and will not be modified by the Multilateral Instrument concerning the Czech Republic. The Slovak Republic has, like Sweden, already deposited its instrument of ratification of the Multilateral Instrument, which therefore has entered into force for the treaty relationship between these two states. The instrument thereby has superseded the relevant treaty provision to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1).

contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1). The other eight treaties will, upon its entry into force of the Multilateral Instrument for these treaties, be superseded by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention, but only to the extent that the provisions contained in those treaties relating to the granting of corresponding adjustments are incompatible with Article 17(1).

52. 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 21 November 2017
Sweden's competent authority	Sweden's Tax Agency
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



BETTER POLICIES FOR BETTER LIVES

For more information:

 ctp.beps@oecd.org

 <http://oe.cd/bepsaction14>

 [@OECDtax](https://twitter.com/OECDtax)

