

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

**BEST PRACTICES**  
**Switzerland**





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*Abbreviations and acronyms*

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





## Introduction

The final report of 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 more effective<sup>1</sup> 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.*

Switzerland 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 which peers have used to provide feedback on Switzerland'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 and lessen the likelihood of double taxation and may proactively prevent transfer pricing disputes.
2. Switzerland has an informal APA programme. There is not a specific timeline for the filing of an APA request. Rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance are publically available.<sup>2</sup> Switzerland does not charge any fees to taxpayers for a bilateral APA request nor does Switzerland publish statistics relating to bilateral APAs.
3. A peer noted that in recent years they had successfully resolved several APA cases. Another noted that Switzerland's competent authority has been amenable to considering multilateral APAs in appropriate cases.

#### [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.

4. 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.
5. Switzerland publishes agreements by its competent authority to resolve difficulties or doubts arising as to the interpretation or application of their tax treaties by

<sup>2</sup>

[www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-undamtshilfe/dbaverstaendigungsverfahren.html](http://www.sif.admin.ch/sif/en/home/themen/internationale-steuerpolitik/doppelbesteuerung-undamtshilfe/dbaverstaendigungsverfahren.html) (accessed on 10 September 2017).

the competent authorities. The competent authority agreements are published in the original language which could be Italian, English, German<sup>3</sup> or French.<sup>4</sup>

6. 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.

7. 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.

8. Switzerland has an informal APA programme. Switzerland does not have separate guidance on APAs that contains detailed information on APAs. There is brief mention of APA programmes in the MAP guidance. In such guidance, there is not a specific timeline for the filing of an APA request. However, there are no rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance are publically available in the MAP guidance.

9. 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.

10. 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.

11. Tax officials in Switzerland involved in the auditing /examination of taxpayers are generally trained to be tax experts. Transfer pricing principles are part of the courses that are taught.

12. One peer noted that Switzerland's competent authority is 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.

<sup>3</sup> [www.estv.admin.ch/estv/de/home/internationales-steuerrecht/fachinformationen/laender.html](http://www.estv.admin.ch/estv/de/home/internationales-steuerrecht/fachinformationen/laender.html) (accessed on 10 September 2017).

<sup>4</sup> [www.estv.admin.ch/estv/fr/home/internationales-steuerrecht/fachinformationen/laender.html](http://www.estv.admin.ch/estv/fr/home/internationales-steuerrecht/fachinformationen/laender.html) (accessed on 10 September 2017).

## 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.

13. 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.

14. No fees are charged to taxpayers when submitting a MAP request in Switzerland. Taxpayers are in Switzerland allowed to request MAP assistance and at the same time seek to resolve the same dispute via domestically available judicial and administrative remedies. Such requests can be made regardless of whether the issue under dispute has already been decided via these judicial and administrative remedies.

15. 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.

16. 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.

17. Switzerland provides access to MAP in double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP.

18. One peer indicated that Switzerland is amenable to providing access to MAP in double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP.

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

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

19. 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.

20. Switzerland's MAP guidance does not contain guidance on multilateral MAPs.

21. One peer noted that Switzerland's Competent Authority has been amenable to considering multilateral MAPs on a case-by-case basis.

**[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.

22. 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.

23. Switzerland applies its rules for suspension of domestic law during the period a MAP is pending. It should be noted, however, that most judicial domestic remedies are dealt with by Swiss cantonal law.

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

## 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.

25. 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.

26. Switzerland permits taxpayers to request multi-year resolution of recurring issues through the MAP.

27. 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.

28. 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.

29. Switzerland's MAP profile only describes that taxpayers are allowed to request MAP assistance in cases where the issue under dispute has already been decided via the juridical and administrative remedies provided by Swiss domestic law. Switzerland has not included in its MAP guidance and procedures an explanation addressing the relationship between the MAP and domestic law administrative and judicial remedies.

Furthermore, it is not clearly published that Switzerland’s Competent Authority is under its domestic law not legally bound by decisions from its domestic courts.

30. 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.

31. 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.

32. As indicated in its MAP profile, Switzerland does take interest and/or penalties into consideration in a mutual agreement procedure. In transfer pricing cases interest or penalties resulting from adjustments made pursuant to a MAP agreement could be part of the MAP procedure.

33. 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.

34. 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 it is for providing clarity and certainty to taxpayers relevant.

35. Out of Switzerland’s 90 tax treaties, 28 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 made by the other treaty partner. Furthermore, 21 tax treaties do not include such a provision 41 treaties do include a provision that is based on Article 9(2) of the OECD Model Tax Convention, but contains deviating wording, for example because they do not require a corresponding adjustment to be made further to a primary adjustment but only suggests the competent authorities may consult together with a view to reach an agreement on the adjustments of profits in both states. These 41 treaties can be classified as follows:

- 38 treaties provide, 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. In addition such treaties do not include the sentence: “*in determining such adjustment due regard shall be had to the other provisions of this convention and the competent authorities of the contracting states shall, if necessary, consult each other.*”
- One treaty does not specify that the corresponding adjustment relates to the amount of the tax charged therein on those profits.



- Two treaties include a provision that concerns the equivalent of Article 9(2) of the OECD Model Tax Convention, but the corresponding adjustment is only to be made through the mutual agreement procedure.
36. Peers did not provide input relating to this particular best practice.



## **Part D**

### **Implementation of MAP Agreements**

37. 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 Resolution Mechanisms More Effective
<b>MAP guidance</b>	Federal Department of Finance State Secretariat for International Financial Matters Tax Division's Fact Sheet on the Mutual Agreement Procedure, June 2016
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OECD Model Tax Convention</b>	OECD Model Tax Convention on Income and on Capital as it read on 15 July 2014
<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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