Inclusive Framework on BEPS: Action 14 Making Dispute Resolution More Effective MAP Peer Review Report Stage 2

BEST PRACTICES

United States

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Making Dispute Resolution More Effective
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Abbreviations and Acronyms

APA	Advance Pricing Arrangement
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.*

The United States 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 the United States' 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 the United States. 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 December 2016) and stage 2 (ranging from 1 January 2017 up to 31 August 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: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.

Part A

Preventing Disputes

[BP.1] Implement bilateral APA programmes

Jurisdictions should implement bilateral APA programmes.

1. APAs concluded bilaterally between competent authorities provide an increased level of certainty in both jurisdictions, lessen the likelihood of double taxation and may proactively prevent transfer pricing dispute.

2. The United States reported it has implemented a bilateral APA programme and has run such programme since the 1990s, under which it is allowed to enter into unilateral, bilateral or multilateral APAs. The IRS established the APMA team in 2012, which brought together its MAP and APA program into a single division, next to conducting mutual agreement procedures, is responsible for conducting the APA programme. The United States' further reported its APA programme is available for transfer pricing issues and for issues where transfer pricing principles may be relevant, which are either ongoing in nature or have already arisen.

3. The United States uses specific timelines for filing of APA requests, which are explained in section 3.03 of its APA guidance (see for a discussion element BP.3 below). Particularly with respect to requests for bilateral and multilateral APAs, taxpayers are required to file such request no later than 60 days after a corresponding bilateral or multilateral request has been filed with a foreign competent authority. Furthermore, in the United States fees are charged to taxpayers for an APA request, which range from USD 12,500 for an amendment of an existing unilateral, bilateral or multilateral APA to USD 60,000 for new APA requests.[2] Payments of these fees are a prerequisite for considering the formal request by the APMA team.

4. The United States Treasury department issued on 31 March 2016 its 2015 annual report concerning APAs and the APMA programme.[3] The report discusses in general the structure, composition and operation of the APMA programme and in detail the statistical data and description of APAs executed in 2015. In this year a total 183 of APA requests were submitted, which is an increase as compared to previous years, where the requests amounted to approximately 100 per year. Most bilateral APA request filed in 2015 concern the treaty with Japan (39%), Canada (17%) and Germany (19%). In total 110 APAs were executed in 2015, of which 66 concern a renewal of an existing APA. The majority of these

[2] Section 3.05 and the appendix to the United States' APA guidance include an overview of the user fees for obtaining APAs.

[3] Available at: www.irs.gov/pub/irs-utl/2015apmastatutoryreport.pdf. This is the last available year for which statistics have been published.

bilateral APAs were with Japan (46%) and Canada (23%). As per 31 December 2015, 410 requests for APAs are pending, of which 188 concern a renewal of an existing APA. The average time for completion of APAs executed in 2015 is as follows:

- *Unilateral APAs*: 28 months for new APAs and 20.2 months for the renewal of existing APAs; and
- *Bilateral APAs:* 40.6 months for new APAs and 42.4 months for the renewal of existing APAs.

5. Peers reported that they do negotiate and agree to bilateral APAs with the United States and expressed a general good working relationship with the United States in discussing and negotiating APAs.

[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. The United States reported it publishes memoranda of understanding and competent authority arrangements to 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. Memoranda of understanding and competent authority arrangements entered into are published on the website of the IRS and can be found at:

https://www.irs.gov/individuals/international-taxpayers/competent-authority-agreements

8. The United States further reported that its competent authority – as a matter of efficient and effective tax administration, transparency and fair treatment of taxpayers – strives to enter into memoranda of understanding and general competent authority arrangements with treaty partners with a view to address recurring issues that may reduce further potential cases and disputes. These memoranda of understanding and agreements inter alia relate to:

- How to conduct the arbitration procedure under tax treaties
- The application of the pension, teachers and students article in tax treaties
- The treaty application to hybrid entities such as partnerships
- The attribution of profits to permanent establishments under the equivalent of Article 7 of the OECD Model Tax Convention

- The interpretation and application of the limitations of benefits (LOB) article in tax treaties
- The improvement of tax compliance, the implementation of FATCA and the exchange of information under the intergovernmental agreement with treaty partners.

9. Further to the above, in the treaty between the United States and Ireland it is specifically addressed that any principle of general application agreed by the competent authorities of both states shall be published by them in accordance with their laws and administrative practices.[4]

10. 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.

11. 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.

12. The United States has issued guidance on APA's in its Rev. Proc. 2015-41, which is available at:

https://www.irs.gov/pub/irs-drop/rp-15-41.pdf.[5]

This guidance sets out in detail what APAs are, when and by whom they can be applied for, for what issues APAs can be obtained, how the process for obtaining an APA functions in the United States, what information is to be included in a request for an APA, which government institution is responsible for handling APA requests, the legal effects of APAs and the possibility to renew existing APAs. The appendix to this APA guidance includes instructions and requirements on preparing and filing an APA request in the United States.

13. The MAP guidance of the United States includes in section 2.05 a brief description of an APA, where guidance on APAs can be found and how APAs are related to mutual agreement procedures, specifically the possibility to extend MAP agreements into APAs. The United States' MAP profile includes information on its APA programme as well.

14. Furthermore, the United States Treasury issued on 31 March 2016 its 2015 annual report concerning APAs and the APMA programme.[6] This report discusses the structure, composition and operation of the APMA programme, statistical data and description of APAs executed in 2015.

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

[4] See Article 26(4) of the treaty between Ireland and the United States. Available at: www.irs.gov/pub/irs-trty/ireland.pdf.

[5] Further guidance on the United States' APA programme is also available at: www.irs.gov/businesses/corporations/apma. Prior to releasing Rev. Proc. 2015-41, the United States issued Rev. Proc. 2013-79, which was open to public comments. Based on the public comments received, the IRS and the United States Treasury Department updated the APA guidance, resulting in Rev. Proc. 2015-41.

[6] Available at: www.irs.gov/pub/irs-utl/2015apmastatutoryreport.pdf.

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

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

16. 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.

17. The United States reported it uses several methods to provide training to IRS officials that are involved in the auditing/examination of taxpayers. In 2012 the Large Business and International Division within the IRS launched the practice network programme, which is designed to develop the technical expertise of personnel involved in audits and examination and aims at facilitating coordination among the examination and other functions within the Large Business and International Division. These functions inter alia concern the work performed by the United States' competent authority. Specific elements of the practice network programme focus on procedural/interpretative treaty issues and on transfer pricing issues. In addition, the program provides the APMA and TAIT teams a platform by which they can give webinars to explain:

(a) The mutual agreement procedure in general;

(b) The internal procedures as set out in the MAP and APA guidance; and

(c) Common issues relating to the interpretation and application of tax treaties.

18. The United States indicated that the introduced practice network programme has helped examiners in making decisions on issuing adjustments that can be defended by the United States' competent authority in a MAP. In addition, the United States indicated that the program also helped to prevent (unnecessary) disputes, and where disputes inevitable do arise, to provide examiners knowledge so as to ensure that taxpayers have access to the MAP and to implement MAP agreements on a timely and accurate basis. With respect to further updating the practice network program, the United States reported that it is developing materials to provide further clarity on how the United States conducts the MAP process. If developed, these materials will be published on the website of the IRS.

19. Further to the above, the website of the IRS also provides for so-called international practice units, which aims at helping personnel in understanding international tax issues as also providing training materials on these issues.[7] The for this purpose dedicated website includes information on multiple issues relating to international taxation, which gives an in-depth overview of these issues. In addition, the website of the IRS includes an Internal Revenue Manual, which includes in section 4.60 respectively 4.61 information on the

[7] Available at: https://www.irs.gov/businesses/corporations/international-practice-units.

mutual agreement procedure and on the international program audit guidelines.[8] The part relating to the mutual agreement procedure includes detailed information and guidelines for IRS examiners on inter alia the:

- Notification to taxpayers of potential double taxation
- Role of the IRS examination department
- Process of examining cases
- Preparation and issuance of a MAP report for assisting the United States' competent authority
- Influence of a foreign-initiated adjustment in relation to taxpayers in the United States.

20. Lastly, the website of the IRS also provides for an electronic reading room.[9] Next to the above mentioned international practice units, the dedicated webpage includes a link to a presentation regarding the Global Awareness Training Module for international tax examiners within the IRS.[10] The presentation discusses inter alia potential issues for double taxation, the role of tax treaties, the function of the United States' competent authority and the functioning of the mutual agreement procedure.

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

[8] Available at: https://www.irs.gov/irm/part4/irm_04-060-002.html.

[9] Available at: www.irs.gov/uac/electronic-reading-room.

[10] Available at: www.irs.gov/pub/irs-utl/Global_Awareness_Training_for_IEs.pdf.

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.

22. 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.

23. As set out in section 14.01 of its MAP guidance, the United States does not charge fees to taxpayers when submitting a MAP request in the United States. Requests for discretionary granting of treaty benefits under the LOB provision included in tax treaties, which are competent authority requests but not MAP requests, however, are subject to fees.

24. The United States reported that taxpayers are in the United States not allowed to request MAP assistance in cases where the taxpayer has also sought to resolve the case via domestically available judicial and administrative remedies. Section 6.05 of its MAP guidance details the policy of the United States in relation to the conjunction of MAP and domestic available remedies. The United States' competent authority will not accept a MAP request or continue proceedings under the MAP if it concerns any issue and fiscal years:

(a) That are designated for litigation with respect to the same taxpayer; or

(b) That are pending before a federal court in the United States and that were, before the commencement of the litigation, under IRS appeals' jurisdiction with respect to the same taxpayer.

25. Section 6.05 continues by stipulating that in other cases where a taxpayer has submitted a MAP request with respect to a fiscal year for which domestic remedies are pending, the United States' competent authority is authorised to accept, or continue to consider, the MAP request after consulting with the Associate Chief Counsel (International). In turn, if the dispute is under discussion in a MAP, the United States'

competent authority may ask taxpayer to join a motion with the federal tax courts to sever the MAP discussion, to delay trial or to stay domestic proceedings until completion of the MAP discussion. If, however, a court denies a motion to sever MAP discussions, delay trail or to stay domestic proceedings, the United States' competent authority will terminate any ongoing MAP discussions.

26. Where in the United States the issue under dispute is already been decided on via domestic available judicial and administrative remedies, the United States reported taxpayers can validly request for MAP assistance. The United States' competent authority, however, will only seek correlative relief from the other competent authority concerned and will not deviate from the decision following domestic judicial and administrative remedies.

27. 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.

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

29. The United States reported that it grants access to the MAP in cases where double taxation results from bona fide taxpayer initiated-foreign adjustments. Section 2.01(2) of its MAP guidance enumerates that a MAP can be requested as a result of adjustments initiated by the United States or a treaty partner as well as for taxpayer-initiated adjustments. In addition, section 3.02(3) of the MAP guidance provides the conditions upon which taxpayers can submit a MAP request in relation to taxpayer-initiated adjustments. In such situation, taxpayers must submit a pre-filing memorandum prior to submitting a MAP request. This memorandum should include: (i) an identification of the taxpayer, (ii) explain the factual and legal basis of the taxpayer-initiated position, (iii) describe any administrative, legal or other procedural steps undertaken in the other involved jurisdiction and (iv) describe any communications with the foreign competent authority regarding the taxpayer's position.

30. 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.

31. 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 a jurisdiction's MAP guidance includes information on availability of access to multilateral MAPs.

32. The United States reported that in a general sense, taxpayers can in the United States submit a MAP request for multi-jurisdictional tax disputes under the same procedures that apply for bilateral disputes. The United States further indicated that it has experience regarding multilateral disputes to be discussed in MAP and that section 2 of its MAP guidance holds relevance for these multilateral MAPs as well. This section, however, does not specify that taxpayers can request for multi-jurisdictional tax disputes under the same procedures that apply for bilateral dispute.

33. 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.

34. 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.

35. The United States reported it allows for the suspension of tax collection procedures during the period a MAP case is pending. As noted in section 6.01 of its MAP guidance the United States' competent authority has exclusive jurisdiction within the IRS over all competent authority issues once a MAP request has been accepted. In that regard, any further administrative action by the IRS, such as assessment and collection procedures, will automatically be suspended unless the United States' competent authority instructs the IRS otherwise.

36. The tax treaties the United States entered into with Bangladesh, Belgium, Denmark, Malta and Slovenia include a provision stipulating that assessment and collection

procedures will be suspended during the period a MAP is pending.[11] Furthermore, the United States also has entered into a competent authority agreement with the Netherlands, which also stipulates that competent authorities will not collect the tax in dispute that is under review in a MAP for the period until the case is completed.[12] In addition, in the Exchange of Notes to the tax treaty with the United Kingdom it is determined that disputed taxes shall not be collected during the period a MAP is pending.

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

[11] Available at: www.irs.gov/businesses/international-businesses/united-states-income-tax-treaties-a-to-z.

[12] Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 29) of the Convention Between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (signed on December 18, 1992, as amended by Protocols). Available at: www.irs.gov/pub/irs-news/ir-03-116.pdf.

Part C

Resolution of MAP cases

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

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

38. In certain cases, a MAP request with respect to a specific adjustment to income may present recurring issues that may also 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.

39. The United States reported that it allows taxpayers to request for multi-year resolution of recurring issues through MAP. In addition, taxpayers may also request for such multi-year resolution through the APA process. In section 4.01 of its MAP guidance the United States has set out the conditions upon which such multi-year resolution is possible. This in particular concerns the so-called accelerated competent authority procedure ('ACAP'), pursuant to which taxpayers may request that a MAP agreement for specific fiscal year(s) is extended to cover subsequent fiscal years for which the taxpayer has filed tax returns. If considered appropriate, the United States' competent authority may also request taxpayers to expand its MAP request to include ACAP years. Taxpayers can include such ACAP request alongside with its MAP request, or request it separately. If a separate request is filed, such request, however, should be made before the United States' competent authority has reached an agreement with the competent authority of its treaty partner. The Appendix to the United States' MAP guidance details what information is to be included in an ACAP request.

40. The United States and the United Kingdom entered into a competent authority agreement with respect to the MAP process, in which it is explicated that if their competent authorities enter into a MAP agreement for specific fiscal years and if it concerns an issue

that has also arisen in subsequent years, taxpayers may also request for MAP with respect to these subsequent years.[13]

41. One peer provided input in relation to this best practice and noted that the United States allows taxpayers to request – in certain cases – for the multi-year resolution of recurring issues through MAP, if the relevant facts and circumstances of the case under review are the same.

[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.

42. As mentioned under B.P 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 provides clarity to taxpayers as well as treaty partners.

43. Section 6.05 of its MAP guidance sets out the policy of the United States in relation to the conjunction of the MAP and domestic available remedies. Reference is made to BP. 5 for a discussion hereof.

44. 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.

45. 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.

46. As a matter of policy, the United States reported that it strives at including interest and/or penalties arising from an adjustment in the MAP discussions. It noted that it will consider requests for MAP assistance with respect to any issue for which its competent authority is authorised to resolve it under the applicable tax treaty. In section 4.02 of its MAP guidance it is determined that the United States' competent authority is under tax treaties allowed to discuss with competent authorities ancillary issues, such as the application of domestic regulations regarding penalties, fines and interest. In this respect,

[13] See Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 25) of the Convention Between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (signed on December 31, 1975, as Amended by Protocols). Available at: www.irs.gov/pub/irs-news/ir-00-79.pdf.

taxpayers may submit a request relating hereto in their MAP request or in a subsequent and separate request.

47. The competent authority agreement entered into with between the United States and the Netherlands stipulates that the competent authorities will not collect the tax in dispute that is under review in a MAP until that procedure is completed.[14] When such MAP is finalised, the tax due following such agreement shall be subject to interest charges and if applicable also to surcharges and penalties. If, however, the MAP agreement leads to a refund of taxes, then such refund is subject to interest refunds as well.

48. 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.

49. 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.

50. Out of the United States' 60 tax treaties, 40 contain a provision that is 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 other treaty partner. Furthermore, nine do not contain a provision regarding the granting of corresponding adjustments.[15] The remaining 11 treaties include a provision that is based on Article 9(2) of the OECD Model Tax Convention, but uses different or includes additional wording and are for that reasons considered not being equivalent thereof. These can be classified as follows:

- In eight treaties a provision for making corresponding adjustments is contained, but not all wording used in Article 9(2) of the OECD Model Tax Conventions is contained (i.e. the reference to the arm's length principle and/or the possibility of consultation[16]);
- In two treaties a corresponding adjustment is only to be made through the mutual agreement procedure; and
- In one treaty a provision for making corresponding adjustments is contained, but not all element of Article 9(2) of the OECD Model Tax Conventions are included (i.e. the reference to the arm's length principle and/or the possibility of

[14] Administrative Arrangements for the Implementation of the Mutual Agreement Procedure (Article 29) of the Convention Between the Kingdom of the Netherlands and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (signed on December 18, 1992, as amended by Protocols). Available at: www.irs.gov/pub/irs-news/ir-03-116.pdf.

[15] These nine treaties include the treaty with the former USSR that the United States continues to apply to Armenia, Azerbaijan, Belarus, Georgia, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan.

[16] It is noted that for one treaty, the unilateral technical explanation by the United States mentions that competent authorities are under the MAP article authorized to consult, if necessary, to resolve any differences in the application of the provisions of paragraphs 1 and 2 of Article 9.

consultation) and there is a time-limit for making these adjustments. This time-limit, however, can be waived.

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

Part D

Implementation of MAP Agreements

52. There are no best practices for Part D.

Glossary

ACAP	Accelerated Competent Authority Procedure
Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APMA	Advance Pricing and Mutual Agreement Program
APA guidance	Rev. Proc. 2015-41
MAP guidance	Rev. Proc. 2015-40
IRS	Internal Revenue Service
LB&I	Large Business and International Division
OECD	Organisation for Economic Co-operation and Development
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
TAIT	Treaty Assistance and Interpretation Team
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
U.S. Model Tax Convention	United States Model Income Tax Convention as it read on 17 February 2016

OECD

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For more information:

ctp.beps@oecd.org

http://oe.cd/bepsaction14

@OECDtax