

OECD releases Manual on handling MAPs and APA as a part of tax certainty programme

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OECD releases Manual on Handling of Multilateral Mutual Agreement Procedures [MAPs] and Advance Pricing Arrangements [APAs], (the MoMA), as a part of FTA's tax certainty work programme and produced jointly by members of FTA MAP Forum; MoMA intends to act as a guide to multilateral MAP and APA processes from both - legal and procedural perspective; Also intends to provide tax administrations and taxpayers with information on operation of these procedures and suggest different approaches based on practices of jurisdictions, without imposing binding rules; Clarifies that the MoMA complements and does not affect the requirements, best practices or procedures established by the FTA MAP Forum in connection with Action 14 minimum standard; Further, outlines actions and cooperation expected from taxpayers to allow tax administrations to consider MAP and APA cases multilaterally; Also allows tax administrations to assess whether implementation of any approach is appropriate considering circumstances of their own MAP and APA programmes and processes and the unique features of each case; Allows tax administrations to consider whether the guidance therein may be incorporated in their domestic guidance on MAP or APA processes to provide additional clarity; Stating that although taxpayers and tax administrations should consider these approaches while looking at MAP or APA processes, the MoMA clarifies that *"it may not always be possible to apply an approach as described in this Manual or that there may be situations where application may not be appropriate"*; The MoMA also highlights that *"It is also recognised that all references to timeframes for various steps in multilateral MAP or APA processes in this Manual are indicative and should only be treated as aspirational by jurisdictions"*

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Key takeaways:

1. The MoMA highlighted that the approaches outlined in this Manual apply to both MAPs and APAs, except in sections where different approaches have been identified as ideal for each of these procedures.
2. The MoMA put forth certain important elements required to consider in understanding the status of the Manual and its interaction with other OECD guidance such as -
 - This Manual complements and does not affect the requirements, best practices or procedures established by the FTA MAP Forum in connection with Action 14 minimum standard;
 - If there are any statements or information in this Manual which appear to conflict, or to be incompatible with a convention, domestic guidance provided by a country, OECD Model Tax Convention, its Commentary, OECD Transfer Pricing Guidelines or Action 14 final report, then those documents will take precedence over this Manual etc.
3. This manual is divided into following parts:
 - *Introduction* - comprise the outline of MoMA, challenges that generally arise in multilateral cases and overview of experiences of Focus group members based on their responses to the survey.
 - *Basis for handling multilateral MAP and APA cases* - Contain guidance on definition of a multilateral case, legal basis for handling multilateral cases, request filed in multilateral cases and connection between access to multilateral procedures and the Action 14 minimum standard.
 - *Procedural aspects to consider in multilateral cases* - Contains guidance on approaching other jurisdictions concerned in multilateral cases, possible approaches to discussions, coordination of procedural matters, modalities of discussions, interaction of available domestic remedies or procedures with multilateral cases, etc.
 - *Examples of multilateral cases* - A number of representative, simplified examples of transactions which would generally benefit from multilateral solutions
 - *Ideal timeline for a typical multilateral case* - Indicative timelines for each step of a multilateral

MAP or APA case in line with the guidance provided in MoMA.

4. The outcome of survey document (produced and circulated to the Focus group in April 2020) which contained an outline of legal basis for multilateral MAP and APA cases as well as the process for handling these cases, reinforced the need for centralized practical guidance outlining legal and non-legal issues faced by jurisdictions when dealing with multilateral APAs and MAP cases. In this context, MoMA aimed to set out legal and procedural guidelines for multilateral MAP/ APA cases, highlighting the different practices of jurisdictions having experience in this area and noting possible benefits and issues arising from each such approach.

5. From a legal standpoint, any reference to multilateral MAP/APA cases in this Manual only covers a series of bilateral MAPs/APAs under provisions equivalent to Article 25 contained in OECD Model Tax Convention which may be procedurally undertaken in a multilateral way for discussion purposes by competent authorities at their discretion.

6. While highlighting coordination of procedural matter - it is stated that the coordination measures such as appointment and role of the coordinating competent authority and the creation of a project plan are only meant to facilitate the process and are not meant to be formalistic determinations that would be resource intensive.

7. MoMA clarified that discussions in multilateral cases may lead to agreement among some but not all competent authorities involved and in such cases, competent authorities that find agreement should develop a multilaterally coordinated solution with each other. It is also stated that competent authorities that could not find agreement on multilateral coordination should nevertheless endeavor to resolve the issue for each bilateral case where possible, atleast partially eliminating the double or multiple taxation created to the extent conceivable.

8. The MoMA stated that when competent authorities arrive at a tentative agreement(s) in the case, they should document the details of those tentative agreement(s) in writing as soon as possible in order to avoid possible disagreements as to what was agreed in the discussions.

9. The MoMA highlighted that implementation of mutual agreement(s) concerning multilateral MAP/APA cases should be done in a timely manner, which is also a requirement as per Action 14 minimum standard.

10. It is also stated that recognising that finding a resolution in multilateral MAP cases may require more than 2 years, jurisdictions may either consider revisiting their treaty provisions or where a treaty specifically allows competent authorities to agree to extend the time period for specific cases, to extend the period following which arbitration can be triggered by the taxpayer under the treaty to 36 months from when all information necessary to proceed with the case has been received by the competent authorities concerned.

11. It is clarified that taxpayer conduct, participation and cooperation in a multilateral APA process should be in line with best practices agreed by the FTA MAP Forum for bilateral APAs in the BAPAM.