



OECD's newly released 2018 MAP statistics indicate that total number of cases continues to increase

Global Transfer Pricing Alert 2019-030

The OECD on September 16 issued the 2018 mutual agreement procedure (MAP) statistics, which provide detailed information regarding the MAP activities of 89 OECD and G20 jurisdictions. According to the OECD, these statistics indicate that the aggregate number of MAP cases continues to increase, even though tax administrations are closing an increasing number of cases. In part, this result reflects that the number of new transfer pricing cases is rising faster than the number of transfer pricing cases closed.

Background

Under BEPS Action Item 14 ([Making Dispute Resolution Mechanisms More Effective](#)) jurisdictions committed to a minimum standard regarding resolution of treaty-related disputes in a timely, effective, and efficient manner. All 134 members of the Inclusive Framework on BEPS committed to implement the Action 14 minimum standard, which also provides for timely and complete reporting of MAP statistics pursuant to an [agreed framework](#). The 2018 MAP statistics are reported using this new framework.

Total MAP Caseload

The MAP Statistics Reporting Framework distinguishes between cases that were initiated before and after January 1, 2016. The latter date is the date on which the reporting jurisdictions committed to implement the Action 14 minimum reporting standard. The Reporting Framework also

distinguishes transfer pricing cases (which for this purpose include cases that involve the attribution of profits to permanent establishments (PEs)) and “other cases” accepted into MAP. For jurisdictions that joined the Inclusive Framework after December 31, 2016, the distinction with respect to timing is between cases received before and after January 1 of the year in which the country joined the Inclusive Framework.

With that in mind, the total number of MAP cases is as follows:

All cases	2018 Starting inventory	Cases initiated in 2018	Cases closed	Ending inventory
Cases received prior to January 1, 2016 of the year of joining the BEPS Inclusive Framework	4,586	0	1,231	3,355
Cases received on or after January 1, 2016 of the year of joining the BEPS Inclusive Framework	2,338	2,385	1,473	3,250

The number of transfer pricing cases closed in 2018, and the ending inventory of these cases is as follows:

Transfer pricing cases*	Starting inventory	Cases initiated	Cases closed	Ending inventory
Cases received prior to 1 January 2016 or of the year of joining the BEPS Inclusive Framework	2,599	0	7,54	1,845
Cases received on or after 1 January 2016 or of the year of joining the BEPS Inclusive Framework	1,132	930	394	1,668

Of the total number of cases in MAP inventory – 6,605 – transfer pricing cases account for 3,513, or 53 percent of the total. Of the total 3,513 transfer pricing cases in inventory at the end of 2018, the largest number of cases involve India

with 710, followed by the United States with 670, France with 560, and Italy with 501.

The individual country data show a decrease in inventory in about half the reporting jurisdictions and an increase in the other half. Compared to 2017, new transfer pricing cases in 2018 have increased by almost 20 percent, and other cases increased by more than 10 percent. As a result, despite a greater number of cases closed, the aggregate number of cases in the global inventory increased.

The table below lists the countries that received the largest number of new transfer pricing cases in 2018:

	Cases started in 2018
France	222
Italy	196
Germany	178
United States	157
India	133
Spain	132
UK	80
Canada	75
Switzerland	70
Netherlands	64

Average time to close MAP cases

Under the Action 14 minimum standard, jurisdictions undertook to resolve MAP cases within an average time frame of 24 months. According to the OECD statistics, the average time needed to close a MAP transfer pricing case in 2018 was 33 months, up from 30 months in 2017. By comparison, for other cases, the average time to closure was only 14 months, down from 17 months in 2017. This disparity in time to completion may not be surprising, given that many transfer pricing disputes referred to MAP tend to raise more complex, fact-intensive issues.

Average times for case resolution varied significantly by jurisdiction, ranging from 2 to 66 months. Roughly 60 percent of the reporting jurisdictions met the 24-month goal across all cases, which was similar to the results in 2017.

MAP outcomes

Of the transfer pricing cases closed in 2018, an agreement fully or partially resolving taxation not in accordance with a tax treaty was reached in almost 75 percent of the cases. Unilateral relief was granted in 5 percent of all cases, and 5 percent of the cases were resolved through a domestic remedy. Only 2 percent of all MAP cases were closed because the competent authorities could not reach a mutual agreement.

US statistics

In addition to the global MAP statistics described above, the OECD released data for each of the 89 participating

jurisdictions. The United States started the year with 694 cases in inventory and closed 181 transfer pricing cases in 2018. However, 157 new cases were initiated, for a closing total of 670 cases.

Cases started before January 1, 2016	2018 Starting inventory	Cases initiated	Cases closed	2018 Ending Inventory
Transfer pricing cases	429	0	90	339
Other cases	189	0	29	160

Cases started after January 1, 2016	2018 Starting inventory	Cases initiated	Cases closed	2018 Ending Inventory
Transfer pricing cases	265	157	91	331
Other cases	122	96	41	177

Of the 181 cases closed in 2018, 161 were resolved based on an agreement that fully or partially eliminated double taxation or taxation not in accordance with the tax treaty.

The lack of uniform starting dates and the use of different reporting conventions by specific countries may suggest that the historic (pre-2016) data may have reduced reliability, although they remain useful in discerning overall trends. The pre-2016 data for specific countries also permit evaluation of the effectiveness of the procedures in specific jurisdictions. As countries fully adopt the reporting standard under BEPS Action Item 14, the aggregate data for post-2016 cases will become more useful as an indicator of aggregate trends and will indicate the extent to which countries are achieving the standards for timely and effective resolution of MAP cases under BEPS Action Item 14.

Timely filing MAP requests

Practitioners should keep in mind that competent authority assistance to relieve double taxation is available under the MAP articles of most or all income tax treaties. To grant relief from double taxation, the relevant competent authorities must either be notified of the proposed transfer pricing adjustments, or a formal request for MAP assistance must be filed with them, within the specific time limits in the applicable income tax treaty. Failure to make the appropriate filings can result in denial of the taxpayer's request for competent authority relief to eliminate double taxation. For a more detailed discussion of the deadlines to preserve taxpayer rights to request competent authority assistance to relieve double taxation, see [Global Transfer Pricing Alert 18-030](#).

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