



## Tax alert: OECD releases global MAP statistics of seven years

### 21 November 2023

OECD has released annual country-wise MAP statistics for the year ending December 2022. The MAP statistics has been released for 133 tax jurisdictions which practically cover the worldwide data of MAPs. In addition, OECD this year, has also released a consolidated country-wise and year-wise MAP statistics from the years ending December 2016 to December 2022.

### In a nutshell



BEPS Action Plan 14 was implemented in 2016. All members jurisdictions of Inclusive Framework on BEPS had committed to the implementation of the Action 14 minimum standard, which includes timely and complete reporting of mutual agreement procedure (MAP) statistics.



The member jurisdictions have been sharing the annual statistics of MAPs with the OECD from 2016. The OECD has been publishing such jurisdiction-wise MAP data for each year, on its website.



On 14 November 2022, OECD published MAP statistics for the FYE 2022 and a consolidated year-wise and jurisdiction wise compilation of such statistics from 2016.



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## Global trends in MAP closure<sup>1</sup>:

- **Filings and closures:** Over the years, globally, there has been a steady increase in MAP applications by taxpayers. However, there was a minor fall (around 3%) in the new filings during the year 2021, due to Covid<sup>2</sup>. New filings bounced back in the FYE Dec 2022. Globally, total MAP inventory pending for closure by Dec 2022 is more than 11,500 MAP cases.

In 2022, the total MAP closed by all countries were around 4,500, which is higher than earlier years, except in FYE 2021 when closures in that year were mostly on simpler cases.

- **Outcomes:** Around 59% of the MAP applications in 2022, covering transfer pricing and other treaty issues, provided full resolution to the disputes. A further 8% of the applications were closed with unilateral relief granted to the taxpayer and 6% of the applications were resolved via domestic remedy. Approximately, 2% of MAP cases were closed with no agreement. These numbers remain broadly similar to 2021.
- **Average Time for processing:** Over the years, the OECD has recommended for the closure of MAP cases in 24 months. The countries have been making efforts to expedite MAP closures. These efforts are evidenced by the average time for closing the MAP cases that reduced to 25.3 months in FYE 2022, from 26 months in FYE2021. Earlier, the same was more than 30 months.
- **MAP Awards:** Each year, the OECD awards the efforts and contributions of the best performing jurisdictions. In 2022, the **Netherlands** won the award for shortest average time to close transfer pricing MAP cases, while **New Zealand** won the award for shortest average time to close cases other than transfer pricing, in MAP. **Denmark and Ireland** won the award for pair of jurisdictions which fully resolved MAP cases through an agreement.

## India's MAP closures:

- **Filings:** More than 100 MAP applications are filed every year in India, with the most applications received in 2019. In 2019, the number of MAP applications were 206. During the year ending 2022, India received a total of 101 new MAP applications. On an average, around 70% of the new MAP applications are filed with three tax treaty partners i.e., the United States, Japan, and the United Kingdom. It is important to note that majority of the MAP applications filed with Japan were on transfer pricing disputes.
- **Closures:** In the last seven years, India has closed a total of 879 MAP cases<sup>3</sup>. India has been closing more than 100 MAP cases during the last four years - 144 in 2022, 194 in 2021, 182 in 2020 and 121 in 2019. On an average, 70% of cases have been closed with only three tax treaty partners, i.e., the United States, the United

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<sup>1</sup> Closure means the closing of the MAP inventory by means of

- denied MAP access
- objection is not justified
- withdrawn by taxpayer
- unilateral relief granted
- resolved via domestic remedy
- agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty
- agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty
- agreement that there is no taxation not in accordance with tax treaty
- no agreement including agreement to disagree
- any other outcome

<sup>2</sup> <https://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-2022-inventory-trends.htm>

<sup>3</sup> Covering both transfer Pricing cases and other cases. These cases include both pre-2016 filings as well as post 2016 MAP cases.

Kingdom and Japan.<sup>4</sup> In the year ending 2022, 20 MAP cases were closed with Denmark, which was highest amongst all earlier years.

India has an agreement for suspension of tax demand till the closure of MAP with the US, the UK, Sweden, Denmark, and Korea. This could be one of the reasons for the higher number of MAP application filings and closures with these countries.

The year ending 2022 also saw some MAP closures with new treaty partners such as the Netherlands and South Korea. Two MAPs for transfer pricing cases were resolved with the Netherlands, while five MAPs with South Korea were closed. It is important to note that India has already closed 3 bilateral APAs with the Netherlands, but MAPs were closed for the first time in 2022.

Article 9(2) condition was unilaterally relaxed by India in November 2017. That resulted in filing of MAP applications for closures, with Germany, France, Finland etc. The OECD MAP statistics highlight closures of 3 and 5 MAP cases, respectively, with Germany and France. However, these cases have been closed without treaty negotiations. This may mean that these cases were closed either by a unilateral relief or domestic remedy or due to withdrawal of the MAP application. Over the period of six years, starting from 2017, India has closed 228 MAP cases with the United States. This represents about 50% of all the MAP cases closed by India.<sup>5</sup>

- **MAP pendency:** For the year ending Dec 2022, India had a total MAP application inventory of around 700 MAP cases. Out of these cases, maximum number, about 158 cases, are pending with the United States.
- **Time for processing:** For MAP applications filed prior to 2016, resolved in the year 2022, India took around 127 months and 88 months for transfer pricing and other treaty issues, respectively. For MAP applications filed post 2016, resolved in the year 2022, India took around 34.5 months each to close a MAP for transfer pricing and other issues. The average time for processing MAP applications in India is higher than the global average time for processing MAP applications.
- **Outcomes:** Of the MAP cases closed in 2022 for transfer pricing issues, 31% were closed with agreements fully eliminating double taxation, 15% were closed with agreements partially eliminating double taxation, 22% via domestic remedy and 20% were closed with no agreement. For other than transfer pricing issues, 55% were closed with the agreement fully eliminating double taxation, 36% were resolved via domestic remedy and the remaining 9% were withdrawn by the taxpayer.
- **Country-wise MAP cases closed by India during the period 2017 to 2022<sup>6</sup> are as under:**

Treaty Partners	Number of post-2015 cases closed during the period <sup>7</sup>
United States	228
United Kingdom	62
Japan	56
Denmark	29
Switzerland	25
Treaty Partners (de minimis rule applies)	23

<sup>4</sup> The country-wise data of pre-2016 MAP filings which were closed during 2017 to 2022 has not been published by OECD. These numbers are based on the country-wise data for post-2016 filings reported to OECD by the countries starting 2017.

<sup>5</sup> ibid

<sup>6</sup> ibid. Total cases closed by India during 2017-2022 are 824. However, country wise data is available for only 467 cases.

<sup>7</sup> Cases closed includes cases through Competent Authority negotiations as well as closed by other means such as by domestic remedy, through unilateral relief or by withdrawal.

Treaty Partners	Number of post-2015 cases closed during the period <sup>7</sup>
Sweden	9
Germany	6
Singapore	6
France	5
Italy	5
Korea	5
Australia	3
China (People's republic of)	3
Netherlands	2
Total	467

**Conclusion:**

Since 2015, MAPs have been pursued by taxpayers in India as an effective alternative dispute resolution mechanism. Implementation of BEPS Action-14 has given further impetus to this. Continuous monitoring by the OECD, of countries' performance on effective and timely dispute resolution, has helped streamline the legal and procedural framework of MAP resolutions in India.

In a nutshell, taxpayers can evaluate and opt for MAP to resolve treaty related litigation and avoid double taxation.



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