DISPUTE PREVENTION AND DISPUTE RESOLUTION

Regional Outreach Meeting on International Tax Developments
for
Europe and Central Asia
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OECD Multilateral Tax Centre (MTC), Vienna, Austria

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OECD
BETTER POLICIES FOR BETTER LIVES

How can the cross-border tax certainty tools work together? Policy and Practice

Clarity and certainty of policy framework

Dispute Prevention to avoid unnecessary adjustments

Dispute Resolution

	Legislative Framework	**Regulatory Framework**	**Advance certainty**	**Taxpayer engagement & Risk assessment**		**Tax audit & verification**	**Dispute resolution**
Domestic tools	Stable, well-understood rules	Clear guidance including safe harbours, simplifications	Unilateral APAs & Rulings	Offers cooperative compliance programme	Has structured risk assessment process	Published procedures that are risk based, principled and seek timely resolution	Domestic dispute resolution remedies
Multilateral tools	Adopts common rules, follows common guidance, uses internationally agreed simplifications, allows for co-ordinated filings		Bilateral & Multilateral APAs	Participates in internationally co-ordinated risk assessment, including ICAP		Simultaneous / Joint audits	Bilateral & Multilateral MAP Arbitration
Administration			Efficient, effective and timely, follows best practices i(e.g. BAPAM, MoMA)	Availability of pre-filing meetings, open dialogue, feedback loops	Use of technology to simplify compliance	Proportionate, targeted (e.g. principled, clear info requests, taxpayer rights respected) Culture, incentives, training, global awareness	Efficient, effective timely (e.g. BEPS Action 14, best practices in MEMAP, MoMA)

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DISPUTE PREVENTION AT THE LEVEL OF TAX ADMINISTRATIONS

INTERNATIONAL COMPLIANCE ASSURANCE PROGRAMME (ICAP)

The ICAP programme



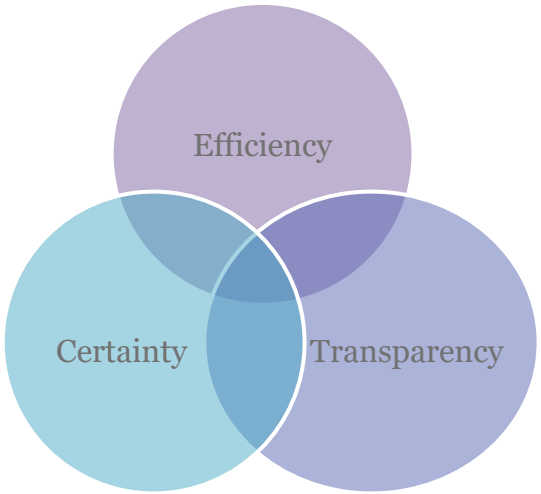
- Multinational enterprises within scope of CbCR
- Multilateral engagement between multiple tax administrations
- Focus on international tax risks (TP, PE but also GMT in the future)

- Involves a multilateral risk assessment of TP, PE and other common risks
- Provides multilateral comfort over covered risks, that may not otherwise be available

- Voluntary programme
- Multilateral meetings (tax administrations + MNE)
- The lead tax administration is responsible for managing an MNE's ICAP risk assessment

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Benefits



For participating tax administrations + MNEs

Efficiency

- Fast (6 months from start of risk assessment)
- Targeted documentation package
- MNE engages with multiple tax administrations simultaneously (typically 6-8 but has been as many as 13)
- Questions are co-ordinated by lead tax administration

Transparency

- Co-operative engagement between tax administrations and MNE
- All tax administrations have access to and use the same information at the same time
- An MNE is kept updated as to the status of its risk assessment throughout the process
- Assurance that all available information is used to correctly assess potential risks (CbC reports, master file, local files plus more)

Multilateral Certainty

- Comfort for all participating parties
- Where transactions are not low risk, issues may be addressed within the programme, avoiding the need for audit (e.g. where adjustments can be agreed by two or more tax administrations)
- Prevention of disputes ending up in MAP etc.

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Key Points for programme

- FTA programme
- Programme handbook published on OECD ICAP website
- List of participating tax administrations periodically updated (currently 25 with others in discussion)
- Induction sessions and support available for newly joined tax administrations
- Current focus on improvements to the programme building on feedback from MNEs (e.g. to provide greater flexibility over the scope of a risk assessment)

- **Contact us about joining ICAP at ICAP@oecd.org**

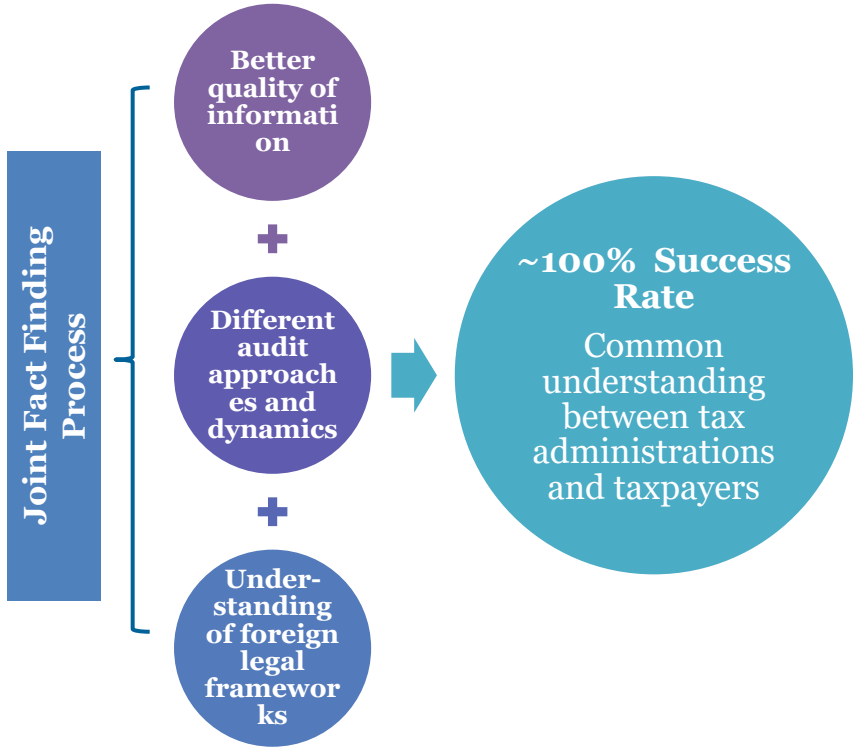


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JOINT AUDITS

Joint audits

TWO audit teams – ONE common solution – ZERO double taxation



- Separate unilateral audits of bi- and multilateral tax issues can only be a plan B
- Tax administrations increasingly realise that Joint Audits are an effective tool to achieve common understanding on TP and PE questions
- The joint fact finding process can be used to enhance the outcome of other tax certainty approaches (e.g. APA roll forward etc.)

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GLOBAL AWARENESS TRAINING

Global awareness training
Background

Strategic plan of the FTA MAP Forum

Increasing the « global awareness » of the audit and examination functions involved in international matters is of central importance in preventing dysfunctional tax administration behaviours (e.g. unprincipled adjustments to non-resident companies) and avoiding the disputes that these behaviours can create

All audit functions involved in adjusting taxpayer positions on international matters must be aware of

(1) The potential for creating double taxation

(2) The impact of the proposed adjustments on the tax base of one or more other jurisdictions, and

(3) The processes and principles by which competing jurisdictional claims are reconciled by competent authorities

Created and approved by the FTA

Use of this module became a best practice in the final report on Action 14

At its October 2017 plenary meeting, FTA commissioners committed to promote the use of this training module and more generally to explore ways in which tax adjustments that cannot be defended at the MAP stage could be minimised.

FTA MAP Forum has updated the training module:

- One for TP cases
- One for other cases

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Training module Overview

ITEs play an important role in a broader "global tax administration" established through relationships between and among countries that have entered into income tax treaties with one another

The primary goals of tax treaty partners are to

- secure the appropriate tax base in each jurisdiction and
- avoid double taxation and other taxation not in accordance with their treaty, and
- minimize conflicts between tax administrations and promoting international trade and investment

- Adjustments resulting in double taxation and adjustments resulting in taxation not in accordance with the treaty and examples
- Purpose and operation of tax treaties
- Relation tax treaties and domestic law
- Resolving double taxation through MAP
- Access to MAP
- Role of CA and tax examiners in MAP
- Global awareness considerations at different stages
- Sources of principles

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ADVANCE PRICING ARRANGEMENTS (APAs)

Advance Pricing Arrangements (APAs)

Purpose

- An Advance Pricing Arrangement determines, in advance, an appropriate set of criteria for pricing specified related-party transactions over a fixed period
- APAs are a useful tool to create tax certainty for TP transactions or to allocate profits to PE
- They are most appropriate
  - when transactions are particularly complex
  - after a TP examination, to solve future years on the same basis as agreed for the audited years, where audited transactions continue in the future.
- They are a voluntary process for all stakeholders and are usually permitted under Art. 25(3) of the OECD MTC
- APAs can be unilateral, bilateral or multilateral
- APAs can eliminate the need for MAP

Elements agreed in an APA

- Covered years and transactions
- Transfer pricing method
- Comparables and adjustments
- Critical assumptions

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Major Benefits of APAs

For the taxpayer

- Legal certainty (up to 5 years + possible renewal) and planning reliability
- Increased influence in tax administration's analysis

For tax administrations

- Upfront co-operation =>enhanced taxpayer compliance
- Shorter time needed to reach agreement as current data are available as opposed to prior year data that may be difficult and time-consuming to produce
- Better insight into complex transactions and improved industry and taxpayer knowledge →development of specialist skills
- New academic work suggests that APAs are linked to a reduction of the tax gap

For both

- Limits costly and time consuming TP examinations in future tax audits
- Reduced risk of time consuming MAP/litigation

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Possible disadvantages of APAs

For the taxpayer

- Fear to engage with tax administration
- An APA request may be rejected
- Consultancy costs, fees
- Reduction of flexibility during the APA period

For tax administrations

- Risk of conflict of interest
- Compensating adjustments may be difficult in practice
- Initial resource costs can be substantial
- Attractive to compliant taxpayers but can divert resources from less compliant taxpayers

- *APA fees may overcome burden on tax administration's financial resources*

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Lifecycle of APAs



1) Pre-filing	Taxpayer approaches CA to discuss a potential APA. CA considers whether the case is suitable for the APA process and discusses the proposed scope, transactions and jurisdictions involved. Preliminary discussions help clarify expectations, information requirements and the process ahead.
2) Formal Application	Taxpayer submits the APA request with the relevant facts, functional analysis, proposed transfer pricing methodology, financial information and supporting documentation. CA reviews whether the application is sufficiently complete to proceed.

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Lifecycle of APAs

1) Pre-filing → 2) Formal Application → 3) Evaluation, Discussion → 4) Formal Agreement → 5) Implemen-tation → 6) Monitoring Extension

3) Evaluation, Discussion

Each CA analyses the covered transactions and assesses the proposed transfer pricing methodology, comparables and critical assumptions.

For bilateral or multilateral APAs, the CAs develop their respective positions and discuss any areas of disagreement.

The CAs seek to agree on an appropriate and consistent transfer pricing treatment, including the methodology, scope and key assumptions.

4) Formal Agreement

Once a common position is reached, the CAs agree on the proposed terms of the APA and communicate them to the taxpayer.

If the taxpayer accepts the terms, the mutual agreement is finalised in writing. If not, further discussions may take place or the APA request may be declined.

The final agreement sets out the covered transactions, transfer pricing methodology, period of application and critical assumptions.

Where appropriate and permitted, the agreed approach may also be applied to earlier years through a roll-back.

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Lifecycle of APAs

1) Pre-filing → 2) Formal Application → 3) Evaluation, Discussion → 4) Formal Agreement → 5) Implemen-tation → 6) Monitoring Extension

5) Implementation

Once the APA is agreed, it must be given effect under the domestic law and administrative practice of each jurisdiction concerned.

The form of the confirmation or agreement between the tax administration and the taxpayer may therefore vary across jurisdictions.

The APA provides certainty that no transfer pricing adjustment will be made to the covered transactions, provided the taxpayer complies with its terms and conditions.

This protection may not apply where the taxpayer provided false or misleading information during the APA process or in its compliance reports.

Some jurisdictions may also require the taxpayer to waive relevant appeal rights before the APA becomes effective.

6) Monitoring Extension

The taxpayer generally submits annual compliance reports demonstrating that the agreed methodology has been applied and the critical assumptions remain valid.

The tax administration reviews these reports and monitors compliance with the APA.

A material deviation from the agreed terms or critical assumptions may lead to renegotiation, revision, cancellation or revocation of the APA.

No transfer pricing adjustment should be made where the taxpayer has correctly applied the agreed methodology and complied with the APA's conditions.

An APA may be renewed upon request, subject to the agreement of all parties. The renewal process may be simplified where the relevant facts and circumstances remain substantially unchanged, although the methodology or terms may still be revised.

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Documentation and Capacity building on APAs

Documentation

- The OECD TP Guidelines describe APAs in Chapter IV.F and Annex II
- The Bilateral APA Manual (BAPAM) was published by the OECD in 2023 and gives best practices on the handling of bilateral APA cases
- The Manual on Multilateral MAPs and APAs (MoMA) gives information on multilateral APAs and MAPs

Capacity building

- MAP Training workshops have a module on APAs
- We can review draft or existing APA guidelines if needed

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STOCKTAKE ON THE DISPUTE PREVENTION PROGRAMME

Stocktake on the Dispute Prevention Programme

Demonstrating the benefits of tax certainty

- BIAC–OECD Round Table: **academia, administrations, business**
- Evidence linking certainty to **investment, compliance, and trust**
- Work underway to define **future analytical and policy direction**

Advance certainty

- Continued promotion of **APAs as a key prevention tool**
- **APA Statistics** enhancing transparency with scheduled revision of the Reporting Framework in 2027

Understanding MAP drivers

- "Mapping MAP" exercise to identify **common drivers of disputes**
- Data gathered from **tax administrations and businesses**
- Consider more **targeted, upstream solutions**

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Stocktake on the Dispute Prevention Programme

GMT implementation: strengthening co-operation

Continued engagement through the **Amsterdam Dialogue**

New **Community of Experts** platform (regular exchanges on interpretation issues)

Early sharing of experience across implementing jurisdictions

- Supporting **consistent interpretation and practical implementation**

Upfront compliance & risk assessment framework

FTA-approved toolkit on upfront compliance best practices

Phase 2: development of **GMT risk assessment framework**:

- Detecting non-filing
- Reliance on control frameworks
- Common risk filters
- Multilateral dispute prevention

First stage: focus on **early implementation risks**
Moving towards **structured, risk-based administration**

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Stocktake on the Dispute Prevention Programme

A tax administration tax certainty toolkit for large business

- Discussions on tax certainty for MNE groups largely focus on:
  - **APAs** as a *dispute prevention* tool, and
  - **MAP** as a *dispute resolution* tool, where a dispute cannot be prevented
- However, many tax administrations have developed additional tools that also provide greater certainty
- The proposed *tax administration tax certainty toolkit for large business* includes a range of tools that tax administrations can use to improve tax certainty for large MNE groups, based on approaches currently applied by FTA and IF members, identified through survey responses and interviews with tax administrations, advisers and MNE groups
- The Toolkit is not mandatory and it is not intended or expected that tax administrations will implement all of the tools. Where a tax administration wishes to improve tax certainty for large business, the Toolkit provides practical and administrable approaches backed up by real life experience

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DISPUTE RESOLUTION MECHANISMS

Tax treaty disputes and the role of MAP

Rising cross-border disputes

- Increased need for tax certainty

MAP

- Core treaty mechanism for dispute resolution

Focus today:

- How MAP works in practice
- What makes MAP effective (BEPS Action 14)
- The Action 14 peer review process
- MAP Arbitration
- Challenges and Lessons

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HOW TO MAKE THE MUTUAL AGREEMENT PROCEDURE (MAP) MORE EFFECTIVE (BEPS ACTION 14)

What is MAP and how does it work?

MAP (Article 25 of OECD/UN Model Tax Convention - MTC) → **Resolution of taxation not in accordance with tax treaties**

Taxpayer sends a MAP request to competent authority (CA)

- Formal eligibility requirements
  - Who? Where? When?
- Provides evidence of taxation not in accordance with the tax treaty

Process

- Initial review by CA
- Possible unilateral solution
- If no unilateral relief granted, bilateral negotiations need to start

Discussion

- Obligation to **endeavour in good faith** to resolve disputes
- If no solution reached within 24 months, case can go to MAP arbitration if available under the treaty

Implementation of the MAP agreement

- In a timely manner
- Not constrained by domestic time limits

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Article 25 of the OECD Model Tax Convention (Para. 1 to 3)

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention. ***(Element B.1)***
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. ***(Element C.1)*** Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States. ***(Element D.3)***
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. ***(Element A.1)*** They may also consult together for the elimination of double taxation in cases not provided for in the Convention. ***(Element B.7)***

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Action 14 Minimum Standard: three core elements

	Core elements	Key requirements
A	Ensure that treaty obligations related to the mutual agreement procedure are fully implemented in good faith and that MAP cases are resolved in a timely manner.	• Countries should include paragraphs 1 through 3 of Article 25 in their tax treaties • 24-month targeted average for resolution of MAP cases (monitored through MAP Statistics reporting)
B	Ensure the implementation of administrative processes that promote the prevention and timely resolution of treaty-related disputes.	• Publish MAP guidance and MAP profile • Independent competent authority (CA) with adequate resources • Roll-back of bilateral Advance Pricing Arrangements (APAs)
C	Ensure that taxpayers can access the MAP when eligible.	• Notify other CA when disagreement with taxpayer's objection • Inform taxpayers of information required in a MAP request

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PEER REVIEW PROCESS

The Action 14 Minimum Standard
Basis for the peer review process



Analysis of the assessed jurisdictions

- Legal framework (including treaties)
- Practice
- Anticipated modifications
- Statistics



Peer input

- Experience with the assessed jurisdiction
- Significant MAP partners or not
- Includes inputs from taxpayers

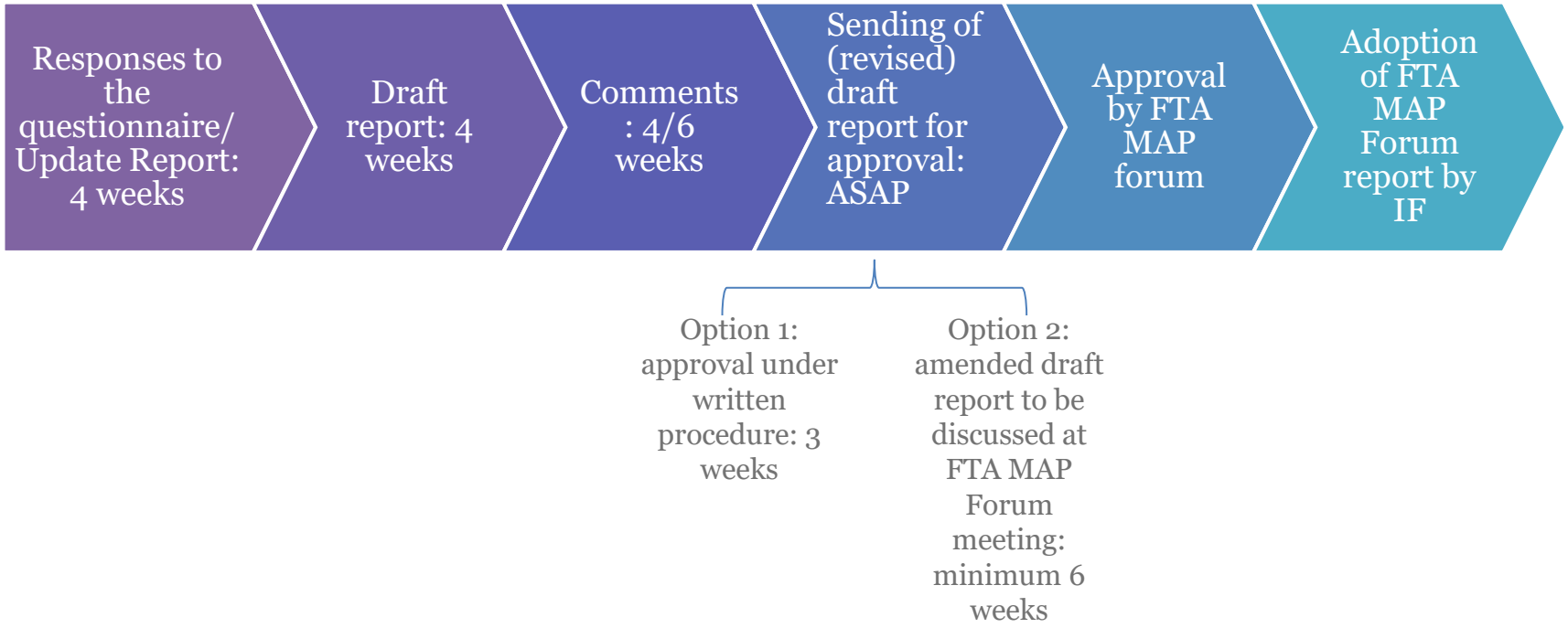


Individual reports

- 82 jurisdictions initially peer reviewed in 2 stages
- Simplified Peer Review
- Full Peer Review
- Considered by the EU when establishing the list of non-cooperative jurisdictions for tax purposes

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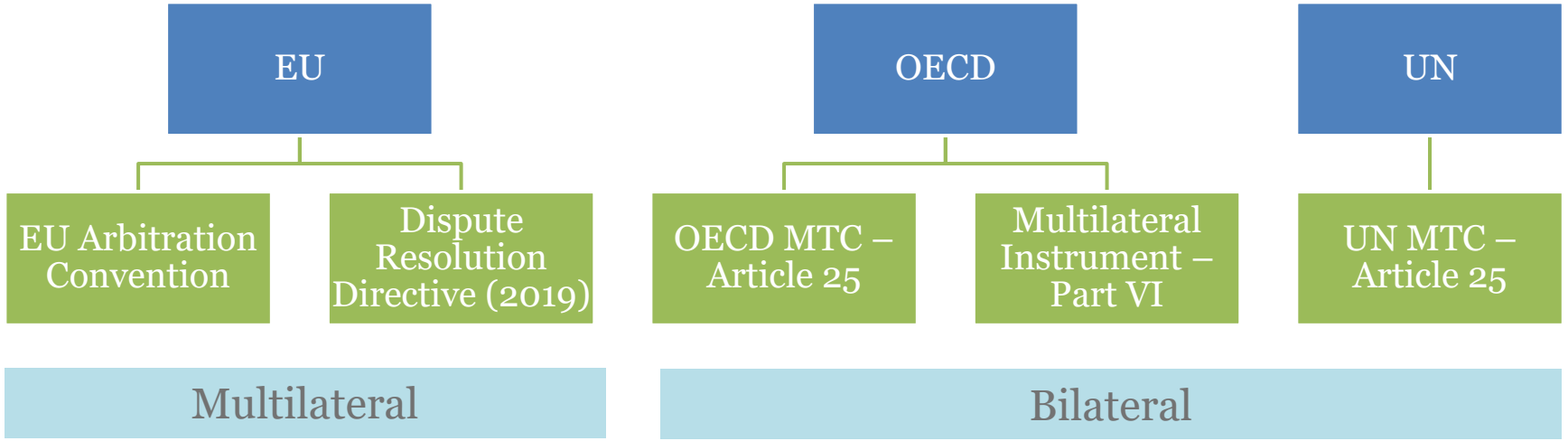
General timeline for peer reviews



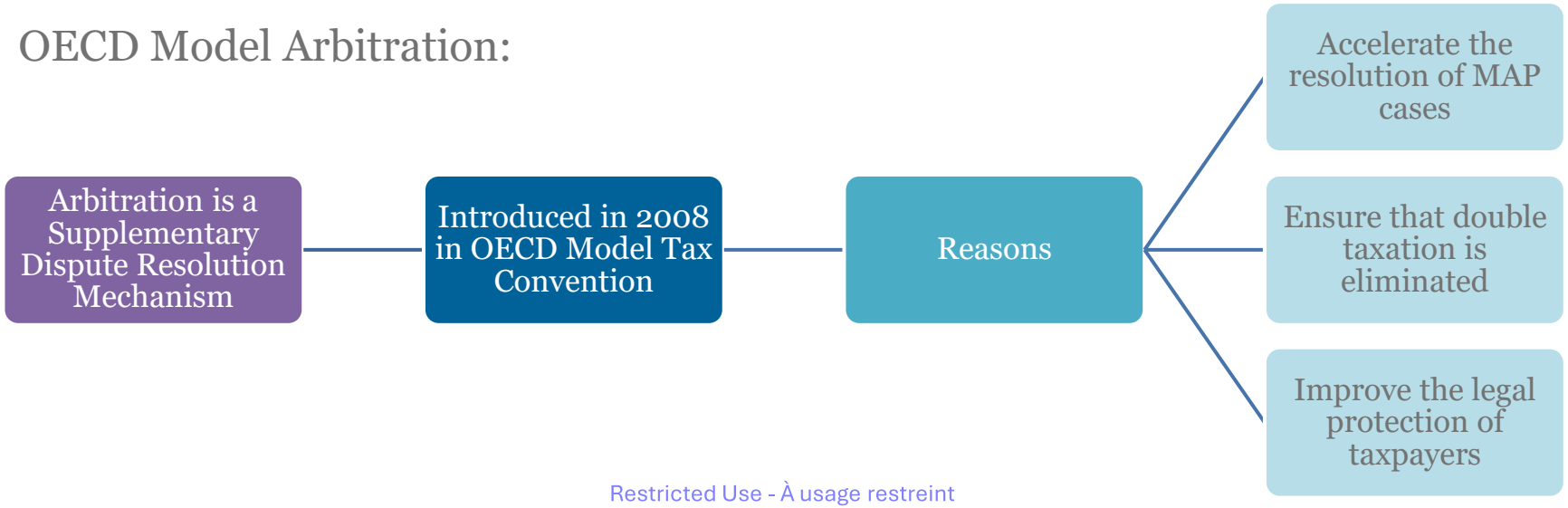
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ARBITRATION

Available arbitration instruments



OECD Model Arbitration:



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Arbitration under the OECD Model Tax Convention
Operation of Article 25(5)

Where

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States ***have resulted*** for that person ***in taxation not in accordance*** with the provisions of this Convention, and

b) the competent authorities ***are unable to reach an agreement*** to resolve that case pursuant to paragraph 2 ***within two years*** from the date when all the information required by the CAs in order to address the case have been provided to both CAs

... any **unresolved issues** arising from the case shall be submitted to arbitration if the person so requests in writing.

the case **does not accept** the mutual agreement that implements the arbitration decision, that decision shall be **binding** on both Contracting

... shall be implemented **notwithstanding any time limits** in the domestic laws of these States.

These unresolved issues shall **not**, however, be submitted to arbitration if a **decision on these issues has already been rendered by a court or administrative tribunal** of either State.

Article 25 (5) of the OECD Model Tax Convention *Summary*

Mandatory, binding arbitration of unresolved issues in Article 25(1) cases after 2-years of MAP

- Flexible – mode of application left to mutual agreement of Contracting States
- Sample mutual agreement on procedures included in Commentary to Article 25
- Countries not willing to include arbitration in their treaties → reservation in the commentary

- Only the unresolved issues are arbitrated, not the entire case
- CAs can reach an agreement at any time before the decision is rendered
- The arbitration decision is implemented through a mutual agreement

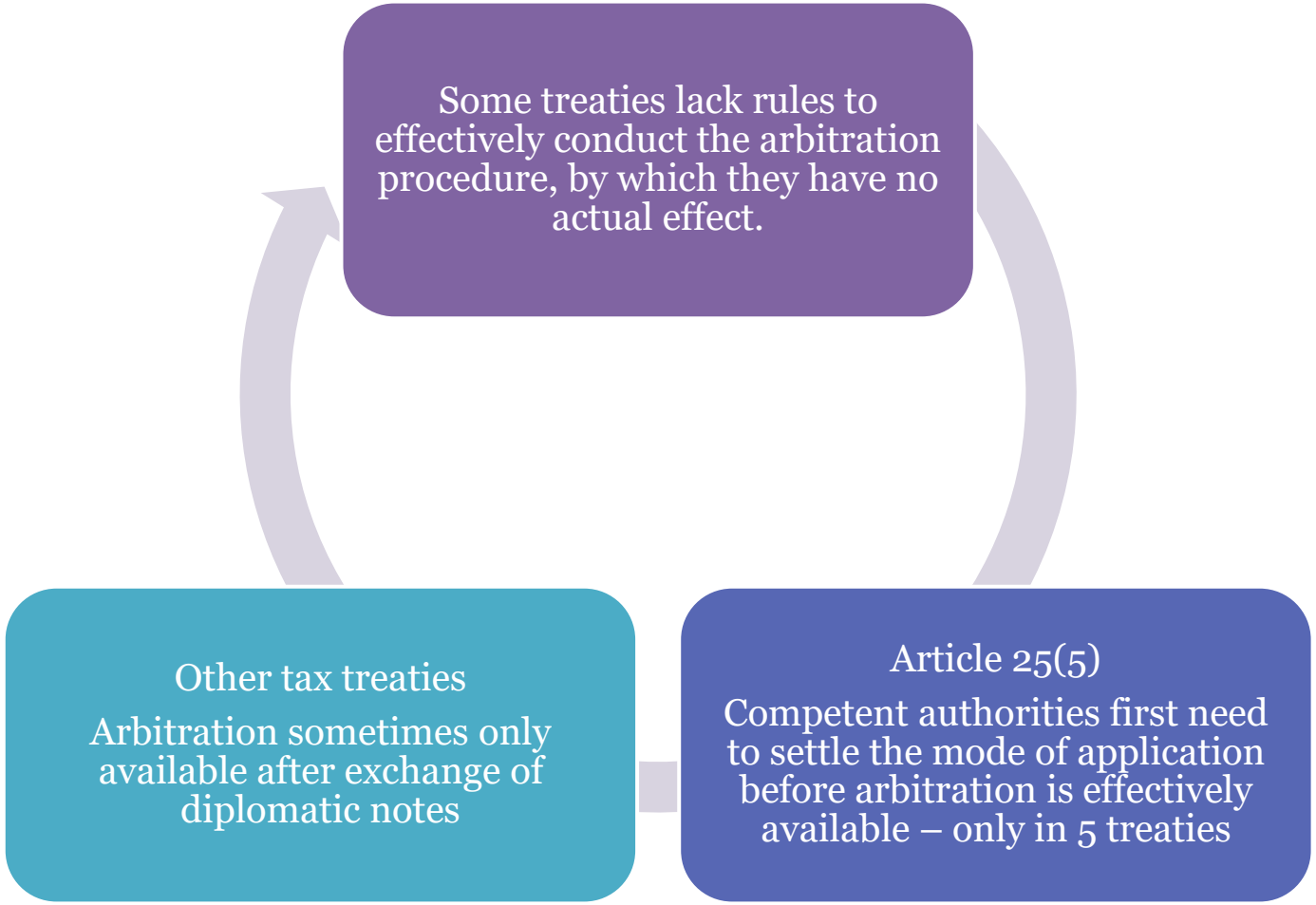
The arbitration process is part of MAP

- Alleviates weaknesses of MAP (no obligation of result)
- Increased resolution of cases before arbitration
- Improvement of tax treaty network and legal protection of taxpayers

Arbitration supplements MAP

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Effectiveness of existing arbitration provisions



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MAP Arbitration in a Nutshell

- Acts as a « scarecrow » to push competent authorities to agree within a given timeframe
- Prevents cases from remain unresolved indefinitely
- Remains a government-to-government process with strict cost limits for appointed arbitrators
- Is available through opting-in for Part VI of the MLI
- Extensive guidance on the process can be found in MEMAP

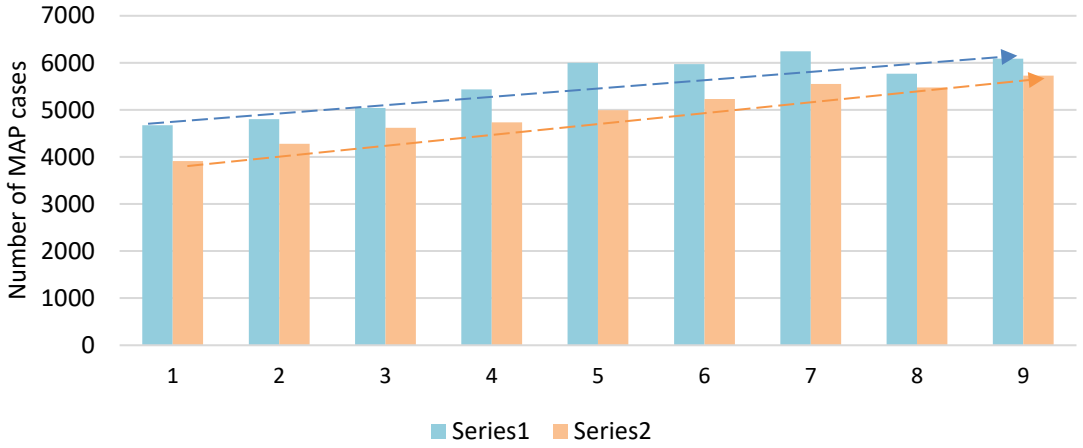
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IMPLEMENTATION STATUS AND CHALLENGES, LESSONS FROM THE ACTION 14 PEER REVIEW PROCESS:

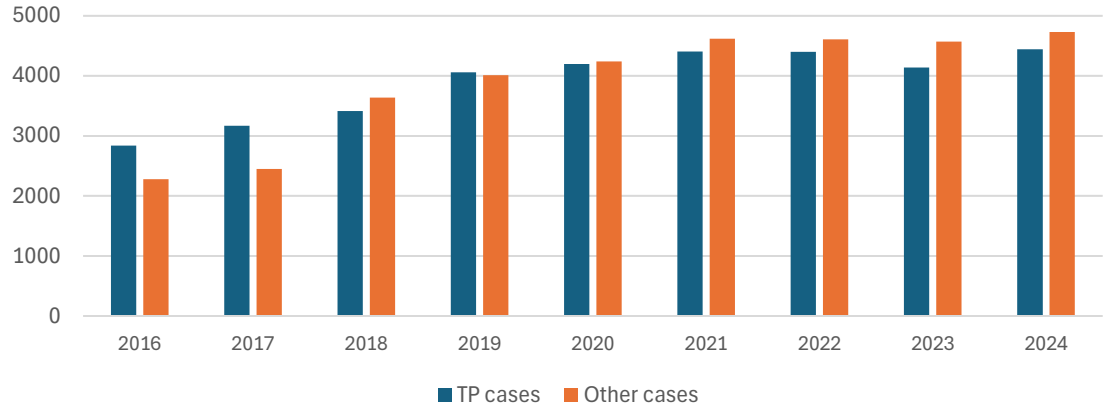
What does the data tell us?
Evolution of MAP inventories*

* The sum of MAP cases opened / closed of all jurisdictions does not eliminate double counting

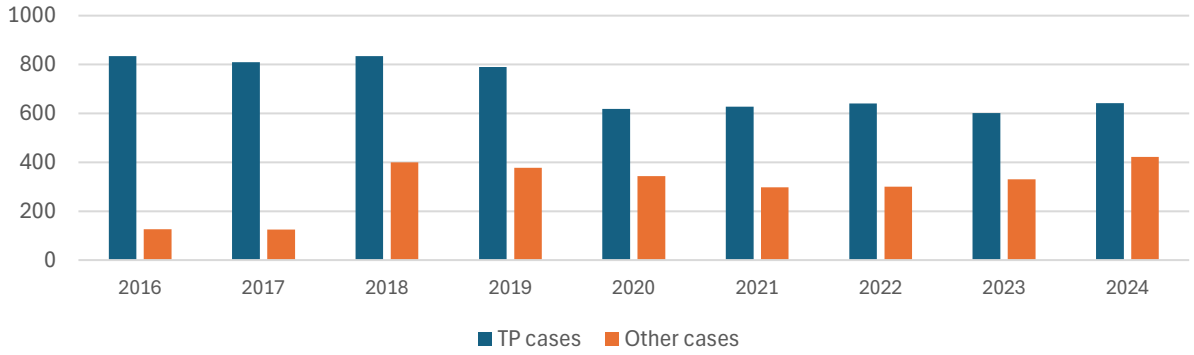
TP and other cases keep increasing after COVID dip in 2023



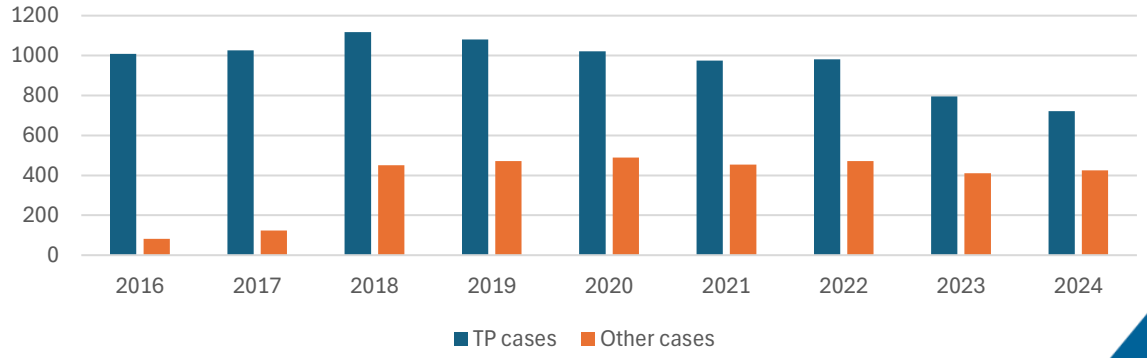
Continued increase matching global trends in Europe



TP cases stable, other cases increasing in North America



TP cases decreasing, other cases stable for APAC

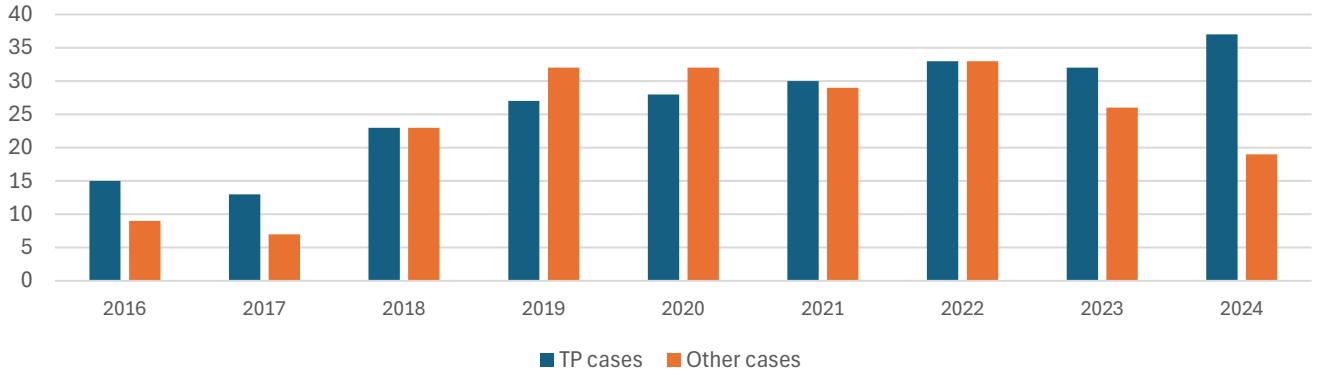


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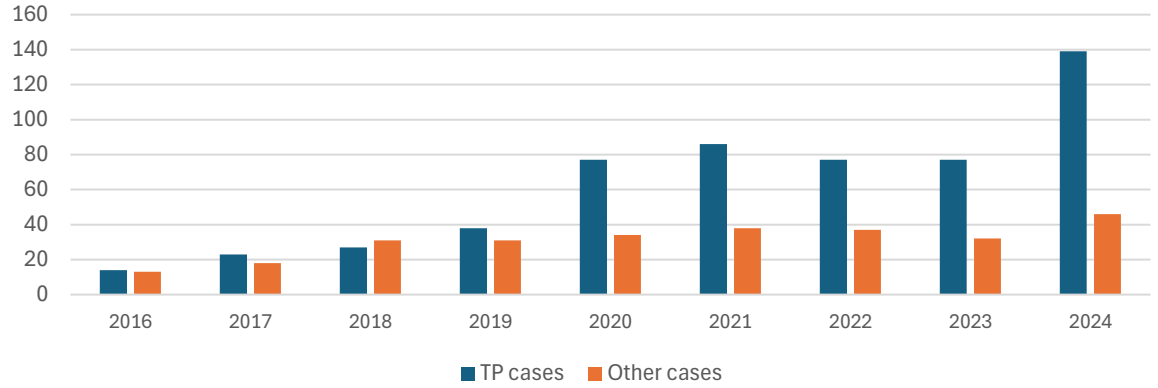
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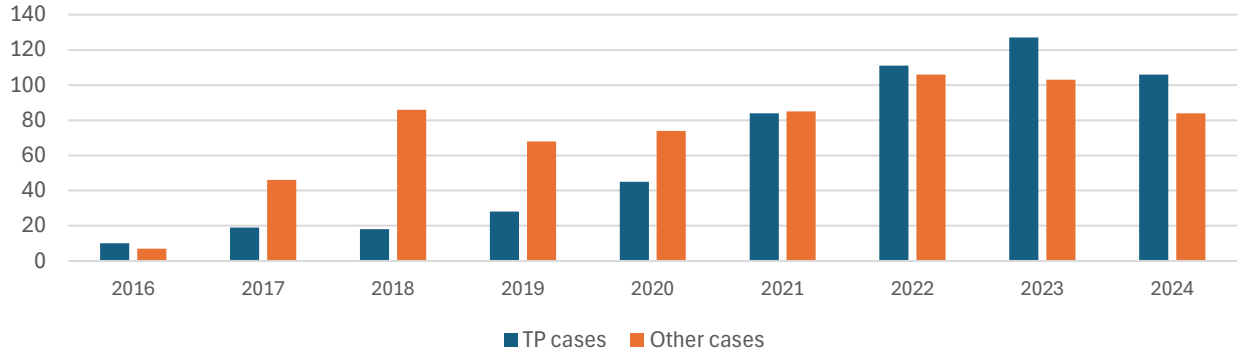
Increase since 2016 for Africa; peak for TP, dip for other cases in 2024



Strong increase in TP cases for LatAm, almost doubled in 2024



Efforts to stabilise MAP inventory in MENA after previous surge

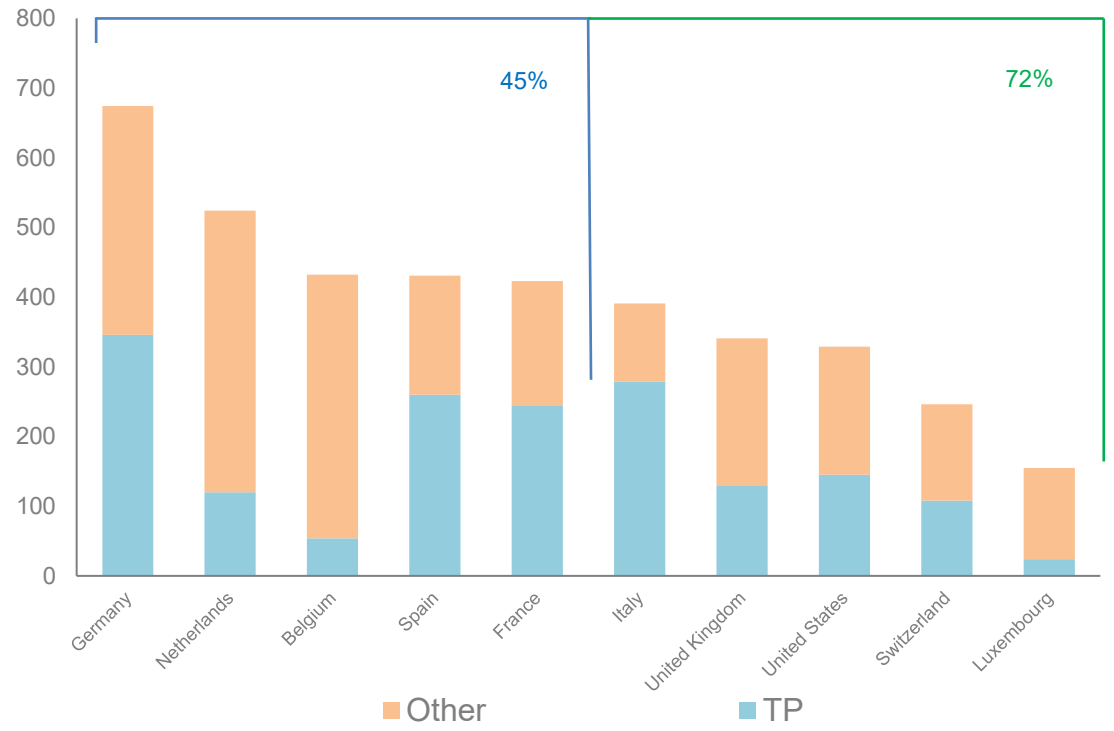


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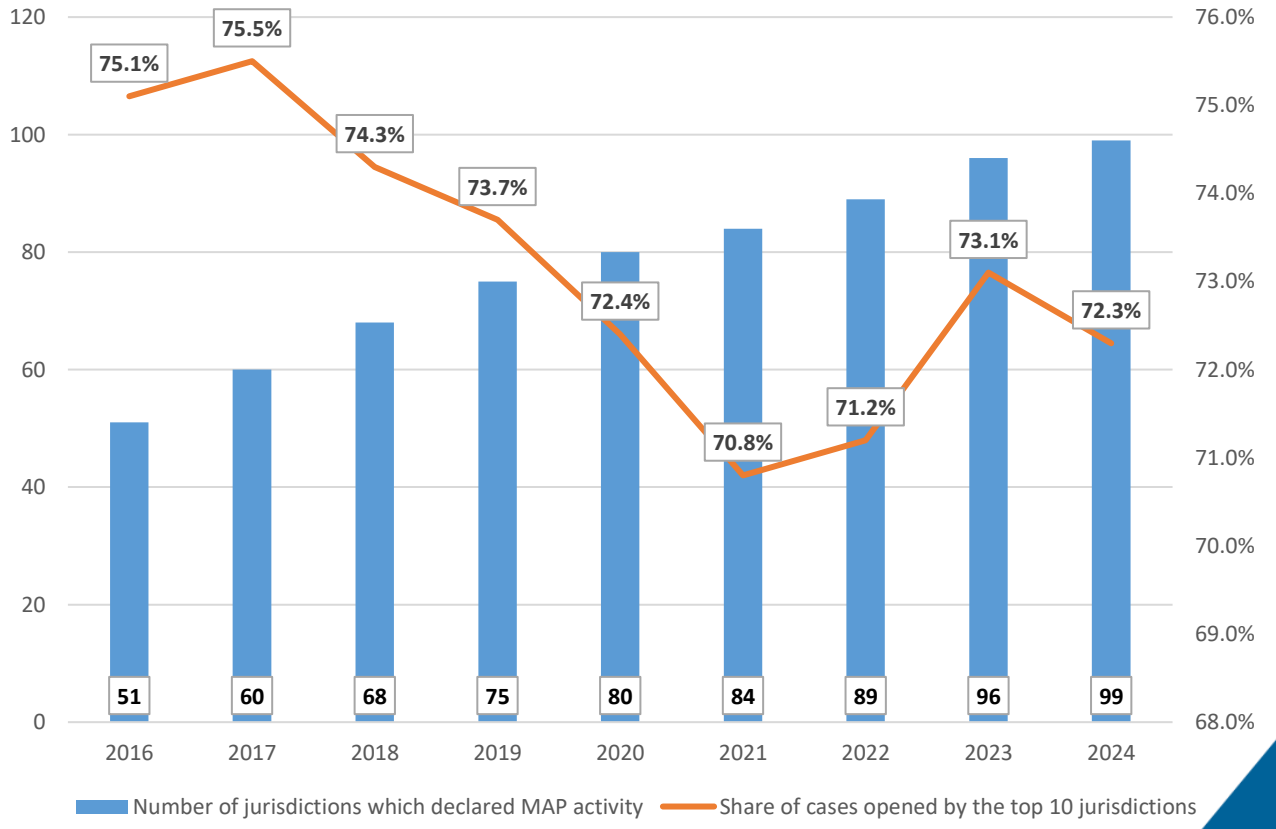
What does the data tell us?

MAP remains concentrated…

Cases started in 2024
Top 10 jurisdictions



… but more and more jurisdictions declare having MAP cases !

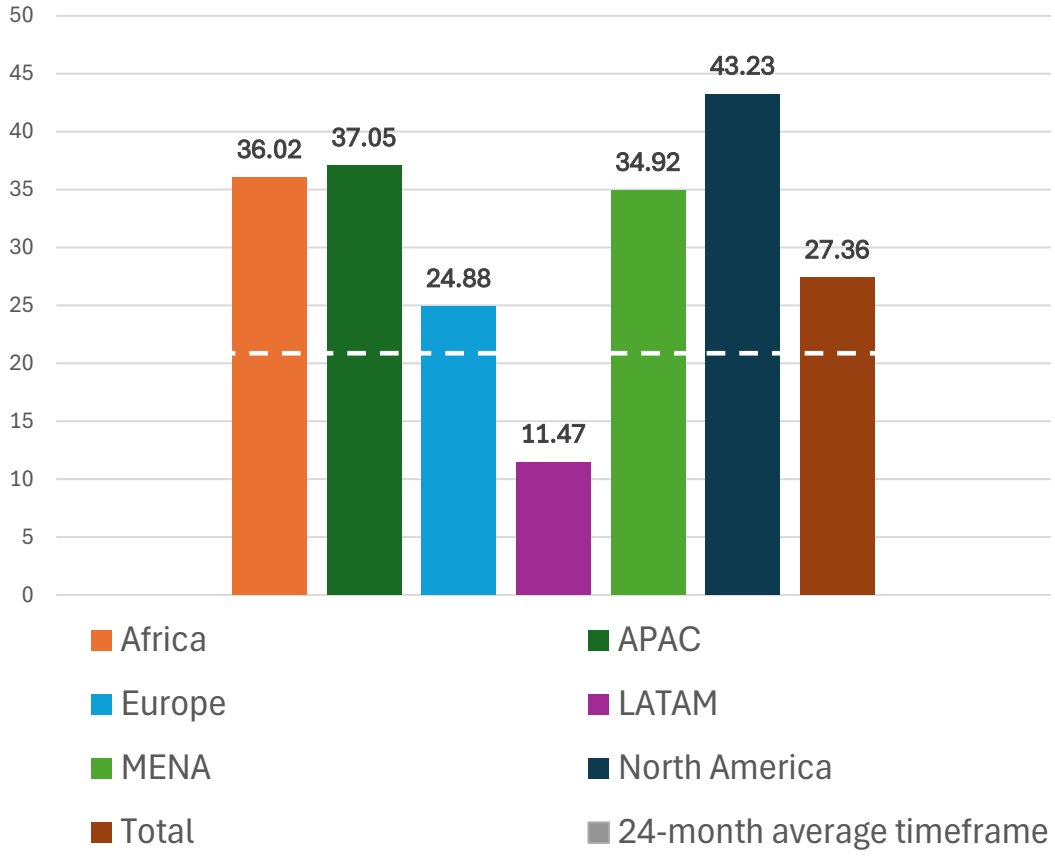


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What does the data tell us?

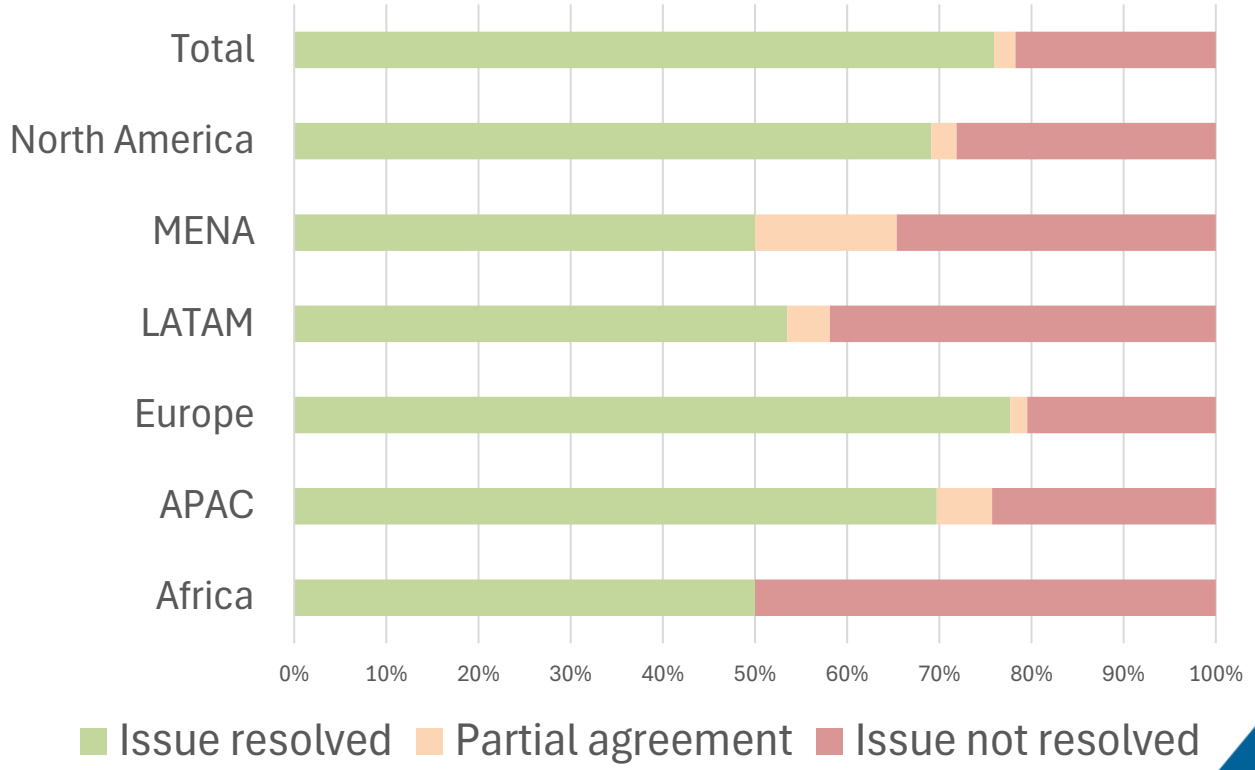
Average time taken to close MAP cases (in months)

Resolution time in 2024 often exceeds the 24-month target, with Africa, APAC and North America taking longest



Most MAP cases end in full double taxation relief across regions in 2024

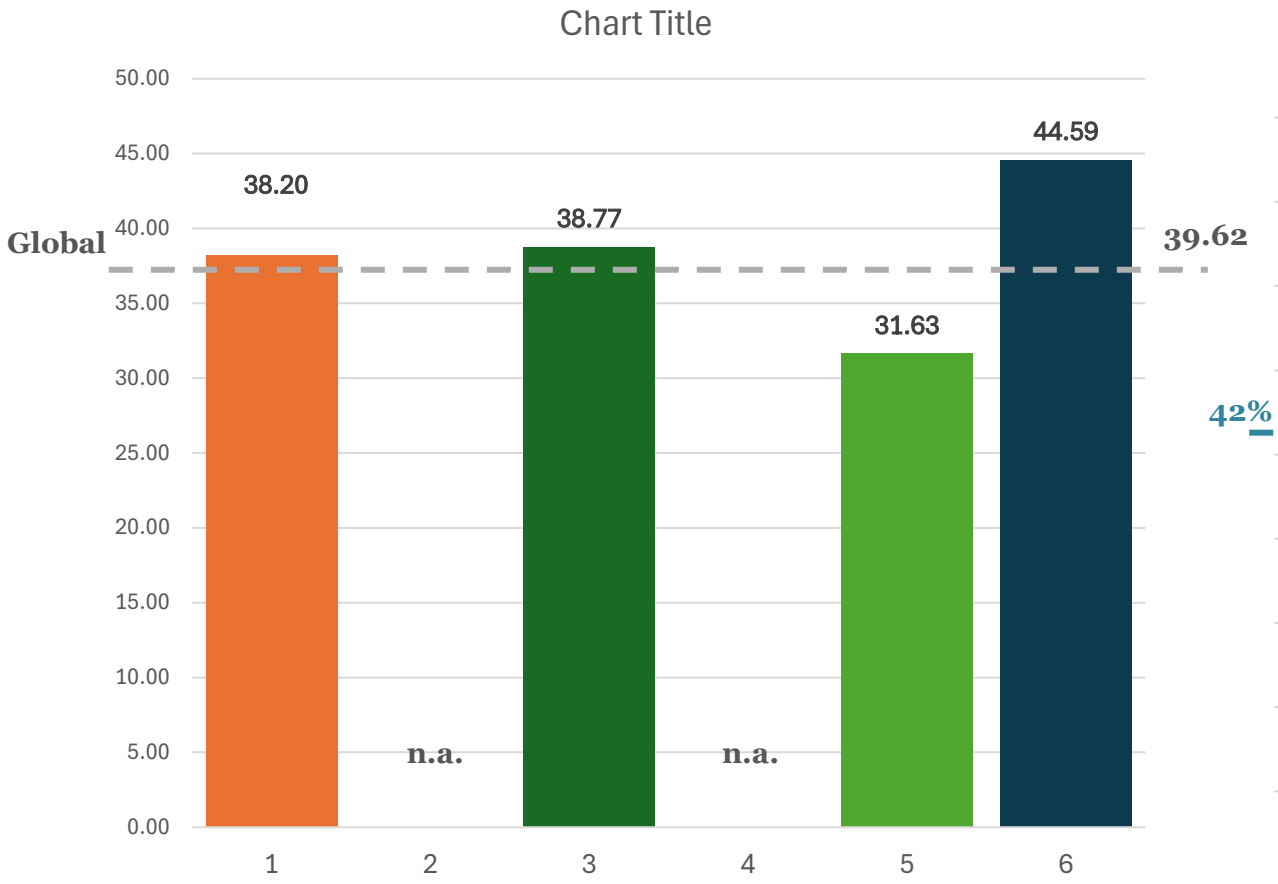
Resolution rates are strongest in APAC, Europe and North America, while LATAM, Africa and MENA see more denials, withdrawals or unresolved cases

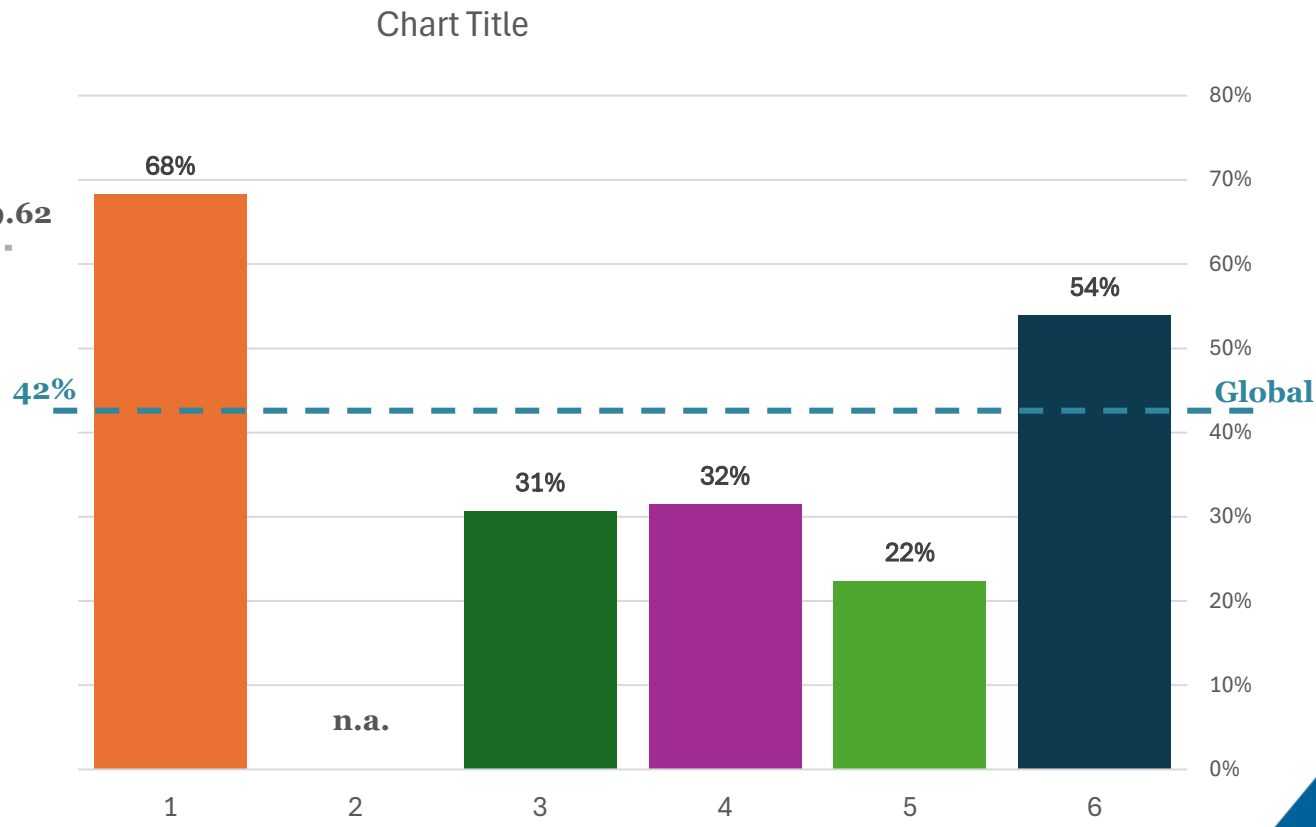


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What does the data tell us?

Average time to grant APAs and prevalence of APAs by Region in 2024*





For Developed Economies

All jurisdictions have been peer reviewed at least twice and the full peer review process is currently handling the last three batches

Significant progress has been made on the availability of MAP and dedicated guidance, very few recommendations remain

Although the number of MAP cases closed has greatly increased, the above and the great results achieved contribute to the popularity of MAP and result in more MAP requests

The number of staff in CAs has generally increased but training operational officers takes time

An increasing shift toward dispute prevention can be observed

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For Developing Economies

- Almost all jurisdictions have been peer reviewed at least once, the last batch of simplified peer review reports is ongoing
- Stage 1 aims to help clarify a jurisdiction's MAP policies and set priorities for stage 2
- Most jurisdictions allow MAP in eligible cases and have at least published a MAP profile
- Many jurisdictions have also either published a MAP guidance or are working on one
- Staff that would be in charge of MAP cases has been identified in almost all jurisdictions including those where no MAP request has been received to date
- Most jurisdictions now file their MAP Statistics correctly and on time

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For Developing Economies

The biggest challenge remains the allocation of ressources when they are scarce and there are competing priorities such as tax collection

MAP cases still take too long to be resolved and communication with treaty partners can be sparse resulting in a lack of trust in the process

Some laws still need to be passed, in particular on the implementation of MAP cases

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CAPACITY BUILDING AND RESOURCE MANAGEMENT

Capacity Building and Resource Management

- The OECD is frequently organising in-person MAP workshops across the globe (two to four each year) and virtual sessions can be organised as well
- The Tax Certainty unit offers MAP and APAs related draft reviews of guidance or laws upon request
- Similarly, jurisdictions can contact us for clarifications on some OECD texts if needed although MAP remains a government-to-government process where the OECD cannot be involved

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Capacity Building and Resource Management

- Best practices in the MEMAP targeted at low-capacity jurisdictions
  - BP57 - Capacity-building initiatives by jurisdictions with extensive MAP experience are encouraged
  - BP58 – Capacity-building offered following the Tax Inspectors Without Border (TIWB) model
  - BP59 – Establishing a buddy system between staff in experienced and low-capacity competent authorities, in part through coordination by regional tax organisations

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