

OECD releases 2019 MAP statistics – a snapshot of transfer pricing cases in mainland China and Hong Kong SAR

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In brief

As part of the Base Erosion and Profit Shifting (BEPS) Action 14 minimum standard (Make Dispute Resolution Mechanisms More Effective), the OECD released the [2019 mutual agreement procedure \(MAP\) statistics](#) on November 18, covering 105 jurisdictions and almost all MAP cases worldwide.

Statistics reveal that for mainland China and Hong Kong Special Administrative Region (SAR) transfer pricing MAP cases, most of the closed cases in 2019 partially or fully eliminated the double taxation issue for taxpayers.

With the increasing efficiency of China's MAP implementation, we expect that more multinational enterprises will be able to benefit from more effective dispute resolution mechanisms in seeking to avoid or eliminate the adverse effects of international double taxation.

In detail

According to the statistics, MAP cases are classified into: (1) transfer pricing cases, referring to transfer pricing tax adjustments made by one tax treaty contracting party that may lead to corresponding adjustments made by the other tax treaty contracting party, but excluding bilateral or multilateral Advance Pricing Arrangements (APAs); and (2) other cases, including creation of residency issues, interpretation of permanent establishment (PE), applicable tax rate, non-discriminatory treatment, and other cases related to tax treaties not involving transfer pricing disputes.

Mainland China transfer pricing MAP cases

Closed MAP cases in 2019

According to the 2019 statistics, China's State Taxation Administration (STA) started 10 new transfer pricing MAP cases, and 15 cases were closed in 2019 (including MAP cases accepted in previous years). The outcomes of the 15 closed cases were as follows:

MAP Outcomes	Number of Cases	Proportion
Withdrawn by taxpayer	2	13%
Resolved via domestic remedy	1	7%
Agreement fully eliminating double taxation	3	20%
Agreement partially eliminating double taxation	6	40%
No agreement including agreement to disagree	3	20%
Total	15	100%

As shown in the table above, with the exception of the two cases withdrawn by the taxpayer, 20 percent of transfer pricing MAP cases were closed with no agreement, while most of the closed cases partially or fully eliminated the double taxation impact for taxpayers.

Average time taken to close MAP cases

For the cases started since January 1, 2016, the average time to close mainland China transfer pricing MAP cases was 28.78 months, close to the OECD's recommended target of 24 months.

As mentioned above, the statistics of the OECD transfer pricing MAP cases does not include bilateral or multilateral APAs. According to the China Advance Pricing Arrangement Annual Report (2019) (2019 APA Annual Report) published by the STA, China tax authorities signed nine bilateral APAs, of which five cases were concluded within one year after the formal application, and two cases were concluded within one to two years after the formal application.

Hong Kong SAR transfer pricing MAP cases

Closed MAP cases in 2019

In 2019, Inland Revenue Department (IRD) started one new transfer pricing MAP case, and four cases were closed (including MAP cases accepted in previous years). The outcomes of the four closed cases were as follows:

MAP Outcomes	Number of Cases	Proportion
Denied MAP access	1	25%
Withdrawn by taxpayer	1	25%
Unilateral relief granted	2	50%
Total	4	100%

As shown in the table above, 50% of the transfer pricing MAP cases were granted unilateral relief by the IRD or the competent authority in accordance to respective domestic laws, so as to resolve the double taxation issue.

Average time taken to close MAP cases

For the cases started since January 1, 2016, the average time to close Hong Kong SAR transfer pricing MAP cases was 21.44 months, achieving OECD's recommended target.

The takeaway

The OECD indicated in its news release that the 2019 MAP statistics show the following trends:

- Number of cases keeps increasing;
- Number of cases closed is increasing as well, but at a slower pace;
- Outcomes are generally positive; and
- Cases continue to take a long time to be resolved.

Since the launch of the 15 BEPS Action Plans, the China STA has continuously promoted bilateral negotiations. On November 28, 2019, the OECD released the stage 1 MAP peer review report on dispute resolution for China (MAP Peer Review Report). The MAP Peer Review Report concludes that China meets the Action 14 Minimum Standard in terms of (1) preventing disputes, (2) availability and access to MAP, (3) resolution of MAP cases, and (4) implementation of MAP agreements.

The Hong Kong SAR enacted its transfer pricing regulations in 2018, followed by the Hong Kong IRD issuing MAP guidelines in February 2019 to help taxpayers resolve double taxation issues. In general, the IRD supports taxpayers in eliminating or reducing double taxation by MAP application to resolve double taxation issues arising from transfer pricing adjustments imposed on overseas affiliates.

With the increasing efficiency of China's MAP implementation, we expect that more multinational enterprises will be able to benefit from more effective dispute resolution mechanisms to avoid in seeking or eliminate the adverse effects of international double taxation on taxpayers.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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