

# OECD releases Singapore's peer review report on implementation of Action 14 minimum standard

## Executive summary

On 12 March 2018, the Organisation for Economic Co-operation and Development (OECD) released the third batch of peer review reports relating to the implementation of the Base Erosion and Profit Shifting (BEPS) minimum standard under Action 14 on improving tax dispute resolution mechanisms.<sup>1</sup> Singapore was amongst the assessed jurisdictions in the third batch.<sup>2</sup> Singapore requested that the OECD also provide feedback concerning their adoption of the Action 14 best practices. Therefore, in addition to the peer review report, the OECD has released an accompanying best practices report.<sup>3</sup>

Overall, the report concludes that Singapore meets almost all the elements of the Action 14 minimum standard. In the next stage of the peer review process, Singapore's efforts to address any shortcomings identified in the Stage 1 peer review report will be monitored.

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<sup>1</sup> See EY Global Tax Alert, *OECD releases third batch of peer review reports on Action 14*, dated 12 March 2018.

<sup>2</sup> <http://dx.doi.org/10.1787/9789264290488-en>

<sup>3</sup> <http://www.oecd.org/tax/beps/beps-action-14-peer-review-best-practices-singapore.pdf>

## Detailed discussion

### Background

In October 2016, the OECD released the peer review documents (i.e., the Terms of Reference and Assessment Methodology) on Action 14 on Making Dispute Resolution Mechanisms More Effective.<sup>4</sup> The Terms of Reference translated the Action 14 minimum standard into 21 elements and the best practices into 12 items. The Assessment Methodology provided procedures for undertaking a peer review and monitoring in two stages.

In Stage 1, a review is conducted of how a BEPS member implements the minimum standard based on its legal framework for Mutual Agreement Procedure (MAP) and how it applies the framework in practice.

In Stage 2, a review is conducted of the measures the BEPS member takes to address any shortcomings identified in Stage 1 of the peer review.

Both of these stages are desk-based and are coordinated by the Secretariat of the Forum on Tax Administration's (FTA) MAP Forum. In summary, Stage 1 consists of three steps or phases:

- ▶ Obtaining inputs for the Stage 1 peer review
- ▶ Drafting and approval of a Stage 1 peer review report
- ▶ Publication of Stage 1 peer review reports

Input is provided through questionnaires completed by the assessed jurisdiction, peers (i.e., other members of the FTA MAP Forum) and taxpayers. Once the input has been gathered, the Secretariat prepares a draft Stage 1 peer review report of the assessed jurisdiction and sends it to the assessed jurisdiction for its written comments on the draft report. When a peer review report is finalised, it is sent for approval by the FTA MAP Forum and later to the OECD Committee on Fiscal Affairs to adopt the report for publication.

### Minimum standards peer review reports

The report is divided into four parts, namely:

- ▶ Preventing disputes
- ▶ Availability and access to MAP
- ▶ Resolution of MAP cases
- ▶ Implementation of MAP agreements

Each part addresses a different component of the minimum standard.

The report includes 21 recommendations relating to the minimum standard. In general, the performance of Singapore with regard to MAP has proven to be satisfactory in their respective reports. The report states that overall, Singapore meets almost all of the elements of the Action 14 Minimum Standard.

### Preventing disputes

Singapore generally meets the Action 14 minimum standard concerning the prevention of disputes. It has an extensive tax treaty network with 85 tax treaties in place and has an established MAP programme.

82 out of the 85 tax treaties with Singapore contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD MTC 2015) requiring competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

With regard to the other three remaining tax treaties:

- ▶ Singapore recently signed the Multilateral Instrument (MLI) with the view of modifying one tax treaty that differs to Article 25(3), first sentence, of the OECD MTC 2015 upon its entry into force.
- ▶ For the other two tax treaties, Singapore seeks to update them via bilateral negotiations.

<sup>4</sup> See EY Global Tax Alert, *OECD releases BEPS Action 14 on More Effective Dispute Resolution Mechanisms, Peer Review*, dated 31 October 2016.

In addition, Singapore has implemented a bilateral Advance Pricing Arrangement (APA) programme and guidance on the programme is documented in the Singapore Transfer Pricing Guidelines. In general, the Inland Revenue of Singapore (IRAS) accepts APAs covering three to five future fiscal years and roll-backs of bilateral APAs can be provided up to two years prior to the original APA covered period. Since 1 January 2014, four cases have been accepted for roll-back of bilateral APAs in Singapore. The report recommends that, in appropriate cases, Singapore should continue to provide roll-backs of bilateral APAs. Peers also confirmed that it is possible to enter into roll-back bilateral APAs with Singapore.

### Availability and access of MAP

The report notes that Singapore meets the Action 14 minimum standard concerning the availability and access of MAP.

Singapore provides access to MAP in all eligible cases (including transfer pricing cases, application of anti-abuse provisions, audit settlements and when required information is submitted) since 1 January 2014. Peers noted that they were not aware of any denial of access to MAP by Singapore in any of the eligible cases. MAP cases submitted that required additional information were not denied access, and taxpayers were afforded opportunities to provide the missing information. In case a MAP request does not include sufficient information or documentation, Singapore reported that its competent authority will ask the taxpayer to submit missing information within one month after being asked to do so. Singapore will also generally accept an extension if the taxpayer requests for it.

Singapore's MAP guidance is publicly available on the IRAS' website<sup>5</sup> and reviewed on an annual basis, together with the Singapore Transfer Pricing Guidelines.

The report recommends Singapore to include the following information to improve its MAP guidance:

- ▶ Whether MAP is available in cases of: (i) the application of anti-abuse provisions and (ii) bona fide foreign-initiated self-adjustments
- ▶ The possibility of suspension of tax collection during the course of a MAP

- ▶ Clarify the access to MAP cases to taxpayers in case of audit settlements

Singapore indicated its intentions to continuously improve the presentation of the MAP guidance.

### Resolution of MAP cases

Singapore generally meets the Action 14 minimum standard concerning the resolution of MAP cases, at the exception of the average time required to solve cases.

The Action 14 minimum standard recommends that jurisdictions aim to resolve MAP cases within an average time frame of 24 months. The average time to resolve all MAP cases was 47.39 months in the reporting period. Specifically, the average duration taken to resolve attribution or allocation cases was 54.95 months and other cases was 35.05 months. The report further suggests that additional resources may be necessary for Singapore to reduce the time for resolution of MAP cases.

The Singapore competent authority cited external factors for the delay in finalising MAP cases: lack of receiving sufficient information from taxpayers, unclear directions provided to taxpayers by the relevant authority and delay of response from some treaty partners. In addition, Singapore believes that it has adequate resources to the MAP function.

Peers noted that Singapore's competent authority attempts to resolve MAP cases within a reasonable timeframe and that there are no impediments leading to unnecessary delays to resolve MAPs observed within Singapore, other than in one special case. Peers generally reported that Singapore's competent authority has adequate resources to resolve MAP cases. Singapore will work towards improving the time needed to resolve MAP cases.

<sup>5</sup> <https://www.iras.gov.sg/irashome/Quick-Links/International-Tax/Mutual-Agreement-Procedure/>

## Implementation of MAP agreements

Singapore meets the Action 14 minimum standard concerning the implementation of MAP agreements. Singapore has a robust framework for the implementation of MAP agreements on a timely basis.

Singapore reported that it will implement all MAP agreements, irrespective of whether they relate to upward or downward adjustments to taxpayers' positions, on a timely basis. Whilst there was a four-year domestic time limit for implementing upward adjustments, this was lifted in 2017 with the passing of the Income Tax Amendment Bill.<sup>6</sup> There is also no domestic time limit for implementing downward adjustments of the taxpayer's position.

It was reported that Singapore informs taxpayers of any mutual agreement reached within one month after entering into an MAP. Taxpayers subsequently have one month to accept or reject the outcome of the MAP. Once taxpayers provide approval, the IRAS will (i) exchange confirmation letters with the foreign competent authority, (ii) provide the taxpayer with a copy of the mutual agreement, and (iii) amend the tax assessment by making relevant adjustments. The IRAS also tracks the implementation of all MAP agreements. In addition, Singapore reported that the IRAS is committed to respond to 80% of the letters, such as mutual agreements, within 15 working days. Peers generally reported that MAP agreements were implemented in Singapore on a timely basis.

## Best practice peer review reports

Each assessed jurisdiction can provide information and request feedback from peers on how it has adopted the 12 best practices contained in Action 14 final report. All of the jurisdictions in the third batch of the peer review requested that the OECD provide feedback concerning their adoption of the best practices contained in Action 14 final report, including Singapore. However, for most of the best practices, the peers provided only limited input.

The comments provided by peers confirm that they have a good working relationship with Singapore, with two peers commenting on the open, cooperative and productive working relationship with Singapore's competent authority.

## Next steps

Singapore is already working to address deficiencies identified in its peer review and will now move on to Stage 2 of the process, where Singapore's efforts to address any shortcomings identified in the Stage 1 peer review report will be monitored. Under the peer review programme methodology, Singapore shall submit an update report to the Forum on Tax Administration's MAP Forum within one year of the OECD Committee on Fiscal Affairs' adoption of the Stage 1 peer review report.

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<sup>6</sup> The Income Tax Amendment Bill was gazetted on 26 October 2017.

## Implications

In a post-BEPS world, where multinational enterprises (MNE) face tremendous pressures and scrutiny from tax authorities, the release of Singapore's peer review report represents the continued recognition and importance of the need to achieve tax certainty to cross-border transactions for MNEs. Whilst increased scrutiny is expected to significantly increase the risk of double taxation, the fact that tax authorities may be subject to review by their peers should be seen by MNEs as a positive step to best ensure access to an effective and timely mutual agreement process.

Furthermore, the peer review for Singapore provides insights to taxpayers on the availability and efficacy of MAP. With additional countries continuing to be reviewed, the OECD has made it known that taxpayer input continues to be welcomed on an ongoing basis.

With stakeholder feedback in mind, businesses are encouraged to share their views with the OECD on the peer review for Singapore and any other jurisdictions, and to comment on whether the next iteration of the OECD's assessment of tax administration's MAP performance warrants greater feedback from taxpayers as the primary source. Feedback from the international tax community is the logical next step after peer review, which may help to further validate the current result.

## How EY can help

EY can assist taxpayers in providing tax advisory services relating to the management and resolution of tax disputes.

EY can also assist taxpayers in managing the four stages of their transfer pricing life cycle:

- ▶ Planning - assist in developing the right transfer pricing policy and help determine an appropriate transfer pricing risk management strategy.
- ▶ Accounting - provide guidance on how to implement the adopted transfer pricing policy.
- ▶ Compliance - assist in the preparation of transfer pricing documentation, defence file, business case for change etc.
- ▶ Controversy - assist in addressing queries from the IRAS, as well as assisting with APA or MAP applications.

*EY is the Singapore Tax Firm of the Year and Singapore Transfer Pricing Firm of the Year at the International Tax Review Tax Awards 2017.*

## Contact us

**Luis Coronado**

Partner, EY Asean International Tax Services Leader  
Ernst & Young Solutions LLP  
+65 6309 8826  
luis.coronado@sg.ey.com

**Stephen Lam**

Partner, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 8305  
stephen.lam@sg.ey.com

**Jonathan Belec**

Partner, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 6175  
jonathan.belec@sg.ey.com

**Stephen Bruce**

Partner, Financial Services Tax  
Ernst & Young Solutions LLP  
+65 6309 8898  
stephen.bruce@sg.ey.com

**Rajesh Bheemanee**

Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 8274  
rajesh.bheemanee@sg.ey.com

**Warren Chung**

Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6718 1072  
hoonseok.chung@sg.ey.com

**Jiyeon Chang**

Associate Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 6400  
jiyeon.chang@sg.ey.com

**Chung-Sim Siew Moon**

Partner, Head of Tax  
Ernst & Young Solutions LLP  
+65 6309 8807  
siew-moon.sim@sg.ey.com

**Chester Wee**

Partner, International Tax Services  
Ernst & Young Solutions LLP  
+65 6309 8230  
chester.wee@sg.ey.com

**Wong Hsin Yee**

Partner, International Tax Services  
Ernst & Young Solutions LLP  
+65 6309 8138  
hsin-yee.wong@sg.ey.com

**Sharon Tan**

Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 6375  
sharon.tan@sg.ey.com

**Jow Lee Ying**

Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
lee-ying.jow@sg.ey.com

**Anju Singh**

Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 6712  
anju.singh@sg.ey.com

**Molvin Yiu**

Associate Director, Transfer Pricing Services  
Ernst & Young Solutions LLP  
+65 6309 6478  
molvin.yiu@sg.ey.com

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