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Transfer Pricing Takeaways from 2022's MAP Statistics

Phil Roper, Mark Martin, Cameron Taheri, Thomas Bettge, and Alistair Pepper*
KPMG LLP

The OECD's 2022 MAP statistics provide taxpayers insight into the effectiveness of the MAPs around the world, allowing taxpayers to gauge whether a particular case will be resolved in an efficient and timely manner, say KPMG practitioners.

The Organisation for Economic Cooperation and Development (OECD) on November 14, 2023, released the latest Mutual Agreement Procedure (MAP) **statistics** and **awards** for the calendar year ended December 31, 2022, that highlight important takeaways for multinational enterprises. In addition, for the first time, the OECD published a consolidated guide to MAP in each of the BEPS Inclusive Framework Jurisdictions — **Making Dispute Resolution Mechanisms More Effective – Consolidated Information on Mutual Agreement Procedures 2023**. The guide sets out an overview of each jurisdiction's MAP policy and practices, including treaty references and Competent Authority contact details, together with an overview of the latest MAP statistics.

The statistics highlight a number of important trends in relation to transfer pricing and profit attribution MAP cases (TP MAP cases), which are in the main positive. Taxpayer engagement with MAP remains high with 1,166 new TP MAP cases opened in 2022 (115 more cases than 2021 (+11%)). The OECD attributes this to increasing availability and access to the process resulting from adoption of the BEPS Action 14 Minimum Standard. Tax administrations are continuing to close large numbers of TP MAP cases: 1,117 cases were closed in 2022. The total figure was 5% lower than 2021. This includes substantially fewer resolutions for pre-2016 TP MAP cases, due to the dwindling inventory of such cases and the presumably contentious nature of the cases that remain.

* [Phil Roper](#) is a partner at KPMG UK. [Mark Martin](#) and [Cameron Taheri](#) are principals, [Thomas Bettge](#) is a senior manager, and [Alistair Pepper](#) is a managing director in the Washington National Tax practice of KPMG LLP.

MAP Outcomes

As its popularity implies, MAP outcomes are generally positive, with 63% of the TP MAP cases closed in 2022 fully resolving potential double taxation. This was slightly lower than 2021 (65%) with fewer cases resolved in 2022 through unilateral relief (down from 8% to 2%) partially offset by a higher proportion of bilateral resolutions (up from 57% to 61%). The proportion of cases where no agreement was possible or the outcome only partially eliminated, the double taxation rose from 5% to 9%. Note that these closure statistics include all possible reasons for closure, including withdrawal by the taxpayer or resolution in a parallel domestic proceeding outside of MAP. If one looks instead at cases that reach a substantive resolution through the MAP process (i.e., “agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty,” “agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty,” “unilateral relief granted,” and “no agreement including agreement to disagree”), the success statistics are generally much higher. Viewed on this basis, approximately 87% of TP MAP cases that closed in 2022 resulted in full relief from potential double taxation, with partial relief in approximately 7% of cases.

One of the areas of concern we highlighted last year was the number of cases which were closed after the taxpayer withdrew from MAP and this figure rose from 11% to 14% in 2022. It is unclear whether another solution was found in these cases or whether this effectively means that the 5% of cases where there was no relief from double taxation is understated. What we are able to see is that these are largely post-2015 cases and many involve Italy, Germany and/or France.

Parsing the outcome statistics requires some familiarity with the OECD’s agreed reporting framework. For instance, the distinction between “unilateral relief granted” and “resolved via domestic remedy” is subtle, but significant. The OECD defines “unilateral relief granted” as situations where a competent authority receives a MAP request and is able to provide a “satisfactory solution” on a unilateral basis. The OECD defines “resolved via domestic remedy” as situations where the issues raised by a MAP request are resolved through domestic remedy, while the MAP request is pending, or where a taxpayer withdraws a MAP request following the finalization of a domestic remedy. Put differently, “unilateral relief granted” reflects a positive outcome achieved through the MAP process (albeit without the need for bilateral engagement), while “resolved via domestic remedy” reflects outcomes outside of MAP, which may or may not be in the taxpayer’s favor.

MAP Timelines

Time taken is another key measure of success for MAP, and the 2022 statistics show encouraging progress as the average for TP MAP cases reduced from 32.3 months in 2021 to 28.9 months for cases closed in 2022, despite significantly less cases being resolved unilaterally. 2022 is the first time the average time taken for closing TP MAP cases has been below 30 months. The 24-month target established by the BEPS Action 14 Minimum Standard is very much in sight: if the 12% of pre-2016 cases closed in 2022 (i.e., 133 TP MAP cases) are excluded, the average time taken for the remaining 88% of post-2016 TP MAP was just below 23 months. This demonstrates that despite high demand for MAP, competent authorities are rising to the challenge.

There is still a stubborn tail of 529 pre-2016 TP MAP cases which represent over 15% of the closing 2022 TP MAP case inventory. India (215) and France (91) have the heaviest caseload for pre-2016 TP MAP cases.

Table 1: Change in Transfer Pricing Cases Over the Past Five Years

	2017	2018	2019	2020	2021	2022
Cases started	779	930	1,156	1,178	1,051	1,166
Cases closed	1,235	1,148	1,114	1,077	1,179	1,117
Change in inventory	(456)	(218)	42	101	(128)	49

MAP remains highly concentrated with 44% of all MAP cases (including TP and other MAP cases) involving one or more of the Top 5 countries by caseload and 69% involving one or more of the Top 10 countries. The MAP statistics prepared by the OECD contain a lot of country-specific detail that is often lost in the headlines and awards, but which companies can use to help assess whether and when MAP might be the right way to resolve transfer pricing disputes. This is the issue on which the rest of this article is focused.

Country-Specific Statistics

The table below provides a few of the key TP MAP statistics for the 10 countries with the largest closing inventory of TP MAP cases in 2022.

Table 2: Transfer Pricing Cases by Country

	Italy	Germany	France	India	Spain	United States	United Kingdom	Switzerland	Netherlands	Belgium
Open TP cases at the beginning of 2022	668	624	564	590	442	424	303	202	183	132
Open TP cases at the end of 2022	707	677	646	557	494	440	297	226	167	157
% of 2022 closing inventory from pre-2016	3%	4%	14%	39%	2%	5%	1%	3%	1%	3%
Average time to close post-2015 TP cases (months)	25	22	23	35	26	31	27	21	19	23
Top three treaty partners with largest number of TP cases	France, Germany, Netherlands	Italy, Spain, France	Italy, Spain, Germany	United States, Japan, Germany	France, Germany, Portugal	India, Canada, Germany	Italy, Germany, France	Germany, Italy, India	Italy, Germany, Spain	Italy, Germany, France

The table shows a number of interesting trends:

- Four Western European countries— Italy, Germany, France and Spain —are responsible for a disproportionately large number of TP MAP cases.
- The majority of these countries' MAP inventories have increased again in 2022. Of the Top 10, only India and the Netherlands have managed to make double digit reductions in their inventory.
- Half the Top 10 were able to beat the 24 months target for closing post-2015 cases which shows encouraging progress. Of the others, only the United States and India were over 30 months on average for closing post-2015 cases.
- These headline numbers hide variation. Italy generally takes a long time to resolve cases but resolves some very quickly. 14% of France's closing 2022 inventory relates to cases which are over seven years old. In addition, results can vary significantly from year to year, and the resolution of remaining pre-2016 cases can have a sizeable effect on a jurisdiction's overall resolution timeframe.
- Countries continue to make progress in reducing their inventory of pre-2016 cases. Of the Top 10, only India and France have more than 5% of their TP MAP inventory which relates to pre-2016 cases.
- Japan, despite having a highly effective competent authority, did not make the Top 10 because most of its competent authority TP inventory consists of advance pricing agreement cases.

What Happened with the United States?

One other development deserves mention. The US competent authority has a large inventory of TP MAP cases, and in a typical year only a small fraction of U.S MAP cases are unsuccessful. Yet in 2022, the United States had 23 unsuccessful TP MAP cases, including 13 with India, two with Mexico, one with an unidentified treaty partner, and seven for the pre-2016 period (for which counterparties are not identified). All or almost all of the 13 Indian cases and the seven pre-2016 cases appear to relate to an Indian issue involving advertising, marketing, and promotion expenses, which had generated many pre-2016 MAP cases and follow-up cases for later years, all of which had been held in abeyance in MAP pending domestic resolution. When adjusting for those cases, the 2022 statistics show that the US competent authority continues to achieve its historical levels of success in resolving MAP cases.

What Happened with the United Kingdom?

The UK was one of only three countries in the Top 10 which managed to reduce its TP MAP case inventory, albeit only by 6. During 2022, the UK closed 69% of its pre-2016 TP MAP cases, of which more than half were resolved bilaterally fully eliminating double taxation, with only 4 such cases still to be resolved at the end of 2022. The UK closed 126 TP MAP cases in 2022, which was fewer than in 2021 (136) when there was an unusually high number of cases (41) resolved at the unilateral stage. Importantly, 77% of all TP MAP cases closed in 2022 fully resolved double taxation unilaterally or bilaterally, which is well above the international average of 63% and shows the UK MAP process is very effective. Italy and Germany have traditionally been the most common counterparts for UK TP MAP cases, and it was welcome news to see that in 2022 the U.K. reached a full bilateral resolution with Germany in 24 cases and with Italy in 18 cases. Another positive sign was that the average time taken for resolution of post-2015 cases with Germany was under 23 months.

Is MAP Right for Me?

Looking at trend data is helpful to get a big picture sense of how effectively MAP is operating at a global or country level, but it sometimes masks the key issues that taxpayers need to be looking at and considering when they think about entering into MAP:

- Importance of double tax relief (as opposed to, e.g., withdrawal of the tax authority's adjustment);
- Interaction of MAP with other available dispute resolution procedures;
- Track record of both competent authorities;
- Multilateral ramifications of the structure or transaction at issue;
- Relevance of a MAP request for foreign tax credit eligibility; and
- Relevance of MAP and the MAP statistics when accounting for uncertain tax positions.

Conclusion

The OECD's MAP statistics shine a spotlight on MAP and incentivize competent authorities to make this key dispute resolution more effective. The MAP awards might not quite be the Oscars, but a gong is a gong, and tax authorities' ongoing efforts to improve MAP deserve celebration.

For taxpayers, the statistics provide helpful insights into the effectiveness of particular MAP relationships – and the likelihood that a particular case will be resolved in an efficient and timely manner. If you have a dispute, these statistics are definitely worth a read.

The OECD announced that from next year, the statistics will also include the average age of cases in closing inventory, although this will not be split between TP and other MAP cases. Given the positive impact MAP statistics reporting has had, it is a significant positive development that Inclusive Framework members that have an Advance Pricing Arrangement (APA) program have agreed to new reporting on annual statistics with respect to APAs. These statistics will be published on the OECD website in a common format starting in 2024, as announced by the OECD in January 2023 with the release of the [APA Statistics Reporting Framework](#).

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