

MAP, APA, AND TAX CERTAINTY



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Views expressed here are mine, and should not be attributed to the IMF, its Executive Board or its management

Context

- BEPS Actions address gaps and mismatches in tax rules that facilitated no/low taxation
- Business community are concerned about an increase in double taxation cases and tax uncertainty
- BEPS Action 14 aims to improve the effectiveness of dispute resolution mechanisms including MAPs. The IMF/OECD Report on Tax Certainty also recommended APAs and MAPs as effective measures to improve tax certainty.
- What is MAP/APA's state of play in Asian Countries?
- What should/could be done to make MAP/APA more functioning in emerging and developing countries?

Outline

- BEPS Action 14
- Tax Certainty
- Survey Outcomes
 - MAP in Asian Countries
 - APA in Asian Countries
 - Asian Courtiers' Approach to Tax Certainty
- What should/could be done to make MAP/APA more functioning?

BEPS Action 14

Minimum Standard

- Countries should 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 ensure that administrative processes promote the prevention and timely resolution of treaty-related disputes; and
- Countries should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 can access the mutual agreement procedure.
- ❖ The minimum standard is complemented by a set of best practices

(Optional) Mandatory Binding MAP Arbitration

- 20 countries: Australia, Austria, Belgium, Canada, France, Germany, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, the United Kingdom and the United States committed to provide for mandatory binding MAP arbitration in their bilateral tax treaties in addition to minimum standard.
- ❖ These countries were involved in more than 90 percent of the total MAP cases at the end of 2013.
- Mandatory binding MAP arbitration is mechanism to guarantee that treaty-related disputes will be resolved within a specified timeframe.
- MLI (Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS) allows a signatory to opt in mandatory binding MAP arbitration.

Peer Review and Monitoring Process

- The peer review and monitoring process will be conducted by the Forum on Tax Administration MAP Forum in accordance with the Terms of Reference and Assessment Methodology.
- The Terms of Reference elaborates what the minimum standard requires with best practices.
- The stage one peer review reports for 21 countries/jurisdictions were published as of March 2018.
- In peer review process, taxpayers can provide inputs.

Tax Certainty

Key findings in IMF/OECD Report

- There is risk of uncertainty discouraging investment.
 - Uncertainty in the corporate income tax and the VAT systems is reported by business as having an important influence on investment and location decisions.
 - Tax certainty is a high priority for tax administrations.
- ❖ The report focuses on tax certainty from the perspective of businesses and tax administrations in G20 and OECD countries, and the issues faced and many of the responses needed are likely to be different in developing countries.

Key findings in the IMF/OECD Report

[Sources of Uncertainty]

- Issues related to tax administration were ranked as among the major drivers of uncertainty in tax systems
- Concerns over the inconsistent approaches of different tax authorities towards the application of international tax standards ranked high in the business survey.
- Issues associated with dispute resolution mechanisms, including timescales, were also identified as an important driver of uncertainty.
- Tax administrations identified taxpayer behavior as an important source of uncertainty.
- A key area of agreement in both surveys was that legislative and tax policy design issues are a major source of tax uncertainty.

Practical Tools to Enhance Tax Certainty Outlined in the IMF/OECD Report

- Reducing complexity and improving the clarity of legislation through improved tax policy and law design.
- Increasing predictability and consistency by tax administrations, through timely issuance of rulings and technical interpretations.
- Effective dispute resolution mechanisms have a critically important role to play in establishing certainty.

[International context]

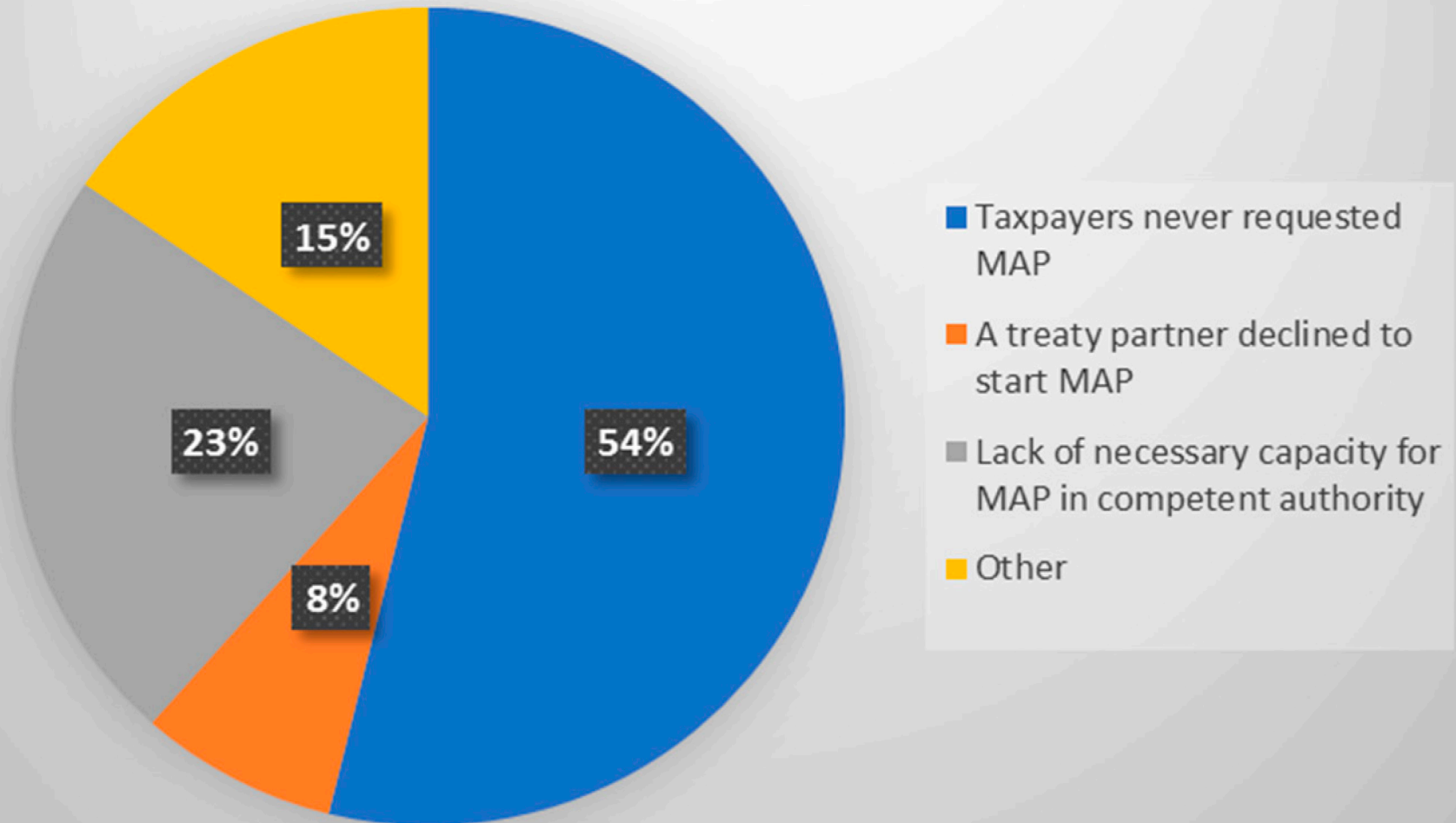
- Dispute prevention and early issue resolution programs
- **Robust and effective international dispute resolution procedures**
- Updating of tax treaties through the use of the MLI
- Making further progress towards simplified and effective withholding tax collection and treaty relief procedures
- Cooperation and coordination on the development of coherent international standards and guidance

Survey Outcomes

Overview of MAP in Asian Countries

- Out of 18 countries/jurisdictions in the region, which responded to the questionnaire, 17 have tax treaties; 9 have conducted MAP.
 - In 12 countries/jurisdictions, competent authority can make a decision in MAP without approval or direction of other departments.
 - The number of staff in competent authority office for MAP varies by country/jurisdiction from 0 to 27.
 - Australia (<http://www.oecd.org/tax/dispute/australia-2016-mutual-agreement-procedure-statistics.pdf>), Indonesia (<http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm>), and Singapore (<https://www.iras.gov.sg/irashome/Publications/Statistics-and-Papers/Tax-Statistics/>) publish MAP statistics
- ❖ Members of the Inclusive Framework need to publish MAP statistics

Reason/s for no record of MAP



Challenges in Building Capacity for MAP

Lack of Knowledge of cross border transaction and transfer pricing

Lack of experience in handling cross border tax dispute

Limited number of staffs who have expertise in MAP cases

Time frame to conclude a case

Skills and knowledge on international taxation

Establishment of a proper mechanism to conduct the MAP process

Weak transfer pricing rule in the law and tax inspector capacity

Very limited human resources (difficulty in keeping staff who can dedicate themselves to MAP)

Limited budget

Technical Assistance

Training and retaining experienced staff dealing with transfer pricing cases

Internal coordination and procedures

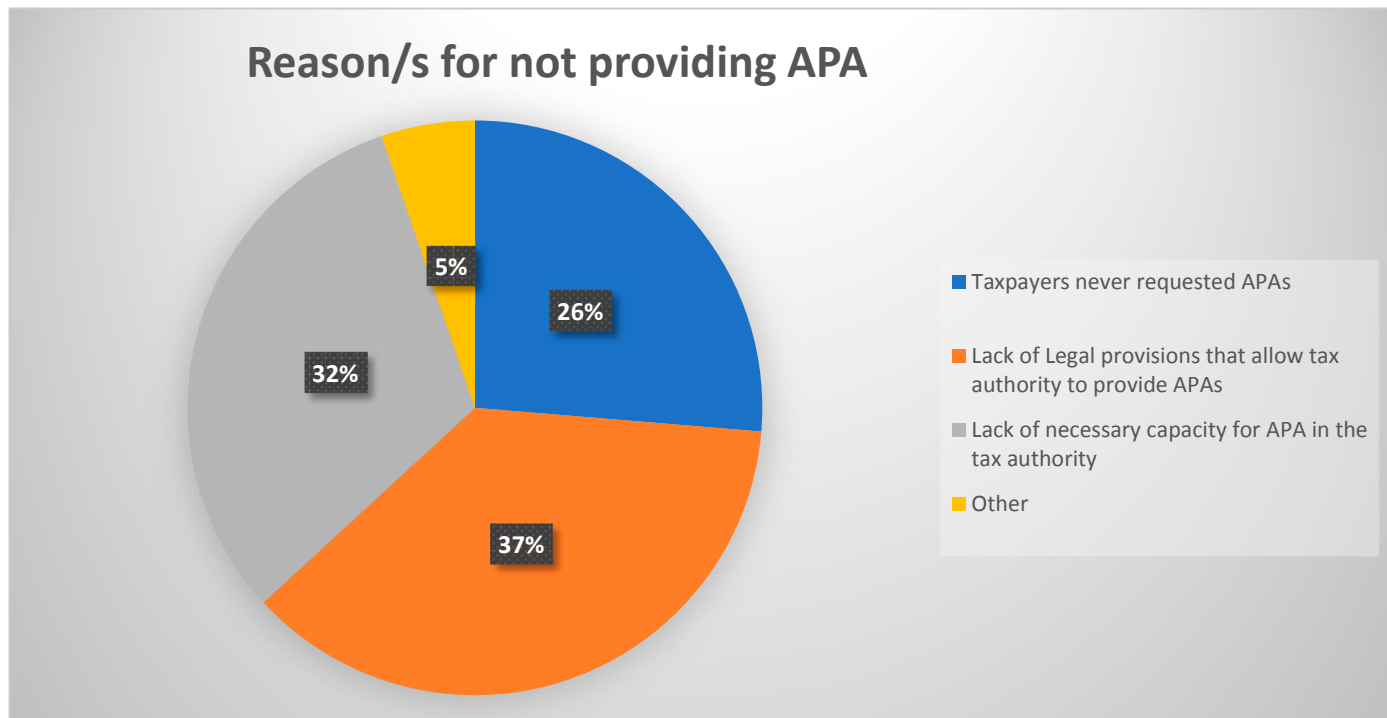
Organizational structure

Language barrier

Retaining experts on international taxation

Overview of APAs in Asian Countries

- Out of 18 countries/jurisdictions, 8 have APA programs.
- These 8 can provide bilateral APAs.
- 6 have concluded actual BAPAs and 1 has a ongoing first BAPA. 3 concluded their first APA in the last 4 years.



Challenges in Building Capacity for APA

Lack of adequate knowledge and procedure

lack of skilled officials having knowledge on APA

Lack of legal provisions and administrative structure/procedures

Improvement of the knowledge sharing platform within the Department

Time frame

Skills and knowledge on International taxation

Limited budget

Technical Assistance

Training and retaining experienced staff

Meeting stakeholder expectations

Organizational structure

Internal coordination and
procedures

Professional development

Lack of adequate knowledge and procedure

Asian Countries' Approach to Tax Certainty

Tools	In place / done	Reform is ongoing	Plan to reform	No plan for now
Tax Policy Design and Legislation				
Reduced frequency of changes in the tax legislation	5	7	2	4
Reduction of bureaucracy to comply with tax legislation	4	9	4	1
Detailed guidance in tax regulations	9	7	1	1
Tax Administration				
Increased transparency from tax administrations in relation to their compliance approaches	6	11	1	
Timely communication of tax authority during tax audits	13	5	1	
Increased transparency from tax administrations in relation to their risk assessment protocols	7	9	1	4

Asian Countries' Approach to Tax Certainty

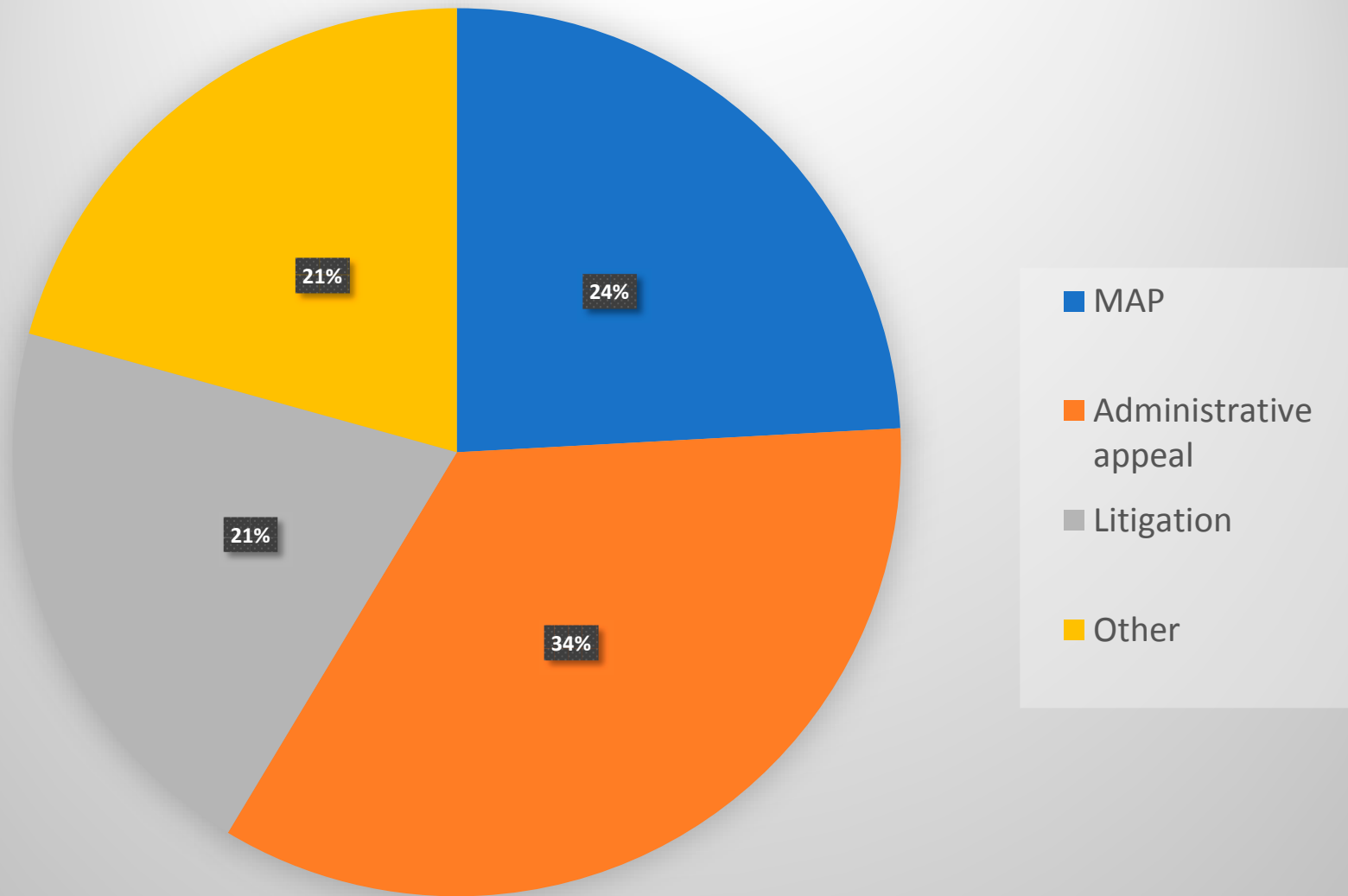
Tools	In place / done	Reform is ongoing	Plan to reform	No plan for now
Dispute Resolution				
Effective domestic dispute resolution regimes	10	3	5	
Mutual agreement procedure (MAP)	6	4	4	3
Mandatory Binding Arbitration	1	1	6	10
Specific International Dimensions				
Multilateral APAs in collaboration with other jurisdictions	5		4	8
Multilateral co-operative compliance programs in collaboration with other jurisdictions		3	4	10
Multilateral audits in collaboration with other jurisdictions	1	1	3	12

Transfer Pricing in Asia

Country	Introduced TP
Australia	1982
Bangladesh	2012
Cambodia	2017
China	1991
Hong Kong	2009
India	2002
Indonesia	2008
Japan	1986
Korea	1996
Malaysia	2009
Maldives	2011
New Zealand	1995
Philippines	2013
Singapore	2009
Sri Lanka	2013
Thailand	2002
Vietnam	2005

- 2 countries have not made TP adjustments.
- 3 countries made their first TP adjustments in the last 5 years.

Most common measure/s to resolve disputes on transfer pricing



Source: Participants' responses to questionnaire

Why MAP is important for dispute resolution of transfer pricing cases

- Domestic dispute resolution mechanisms may not be so reliable for multinational enterprises (MNEs), though it differs by country.
- MAP could better alleviate economic double taxation.
- If a country starts applying transfer pricing rules, the country should make MAP available to taxpayers.
- An increase in outbound investments also requires MAP.

What should/could be done to make
MAP/APA more functioning?

Best Practices

- BEPS Action 14 Final Report and Terms of Reference for peer reviews provide best practices.
- For example,
 - ensure that adequate resources are provided to the MAP function.
 - ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty.
 - should not use performance indicators for their competent authority and its staff based on the amount of sustained audit adjustments or maintaining tax revenue.

For emerging and developing countries

- Survey outcomes indicate that capacity building is key.
- Need to improve tax administration/large taxpayer office's overall level of expertise in international taxation while creating cadre for competent authority.
- Need to improve headquarters' control on international taxation cases so that competent authority could better prepare for MAP and implement MAP.
- APAs could be a good starting point for tax administration with scarce experts on international taxation as taxpayers' better cooperation can be expected, but may hinder tax administration from conducting compliance activities.
- Technical assistance

Thank you