



BEPS ACTION 14: MAKE DISPUTE RESOLUTION MORE EFFECTIVE

ICAEW welcomes the opportunity to comment on the Public Discussion Draft *BEPS Action 14: Make dispute resolution more effective* published by OECD on 18 December 2014.

This response of 16 January 2015 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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For more information, please contact ICAEW Tax Faculty: taxfac@icaew.com

icaew.com

Some background

1. OECD has been producing statistics on new MAP cases, and the time-frame during which they are resolved, for nearly ten years and with the exception of 2010 the number of new cases has increased each year. In 2013 new cases were nearly twice as numerous as in the earliest year, 2006: there were nearly 2,000 new cases in that most recent year. The statistics also show that for the OECD member countries about 90% of their outstanding MAP cases are with other OECD member countries.
2. The current OECD Discussion Draft also makes it clear, paragraph 36, that MAP process issues are likely to become more significant as a result of the current work on BEPS.
3. So it does seem to us that the OECD member countries really do need to show a lead in taking the necessary steps to ensure that the MAP process can work, in the future, and that it can be made more robust than it has sometimes been in the past.
4. The OECD Forum on Tax Administration (FTA) launched the MAP Forum in Moscow in May 2013 and this was further endorsed in October 2014, at the latest FTA meeting in Dublin, with the MAP Forum designed to “work in accordance with a multilateral strategic plan to collectively improve the effectiveness of [the OECD] mutual agreement procedures in order to meet the needs of both governments and taxpayers and so assure the critical role of those procedures in the global tax environment.” Details are available at <http://www.oecd.org/site/ctpfta/map-strategic-plan.pdf> and this work is referred to at, for instance, paragraphs 13, 14, 20 and 39 of the current Discussion Draft. We fully support this new MAP Forum and we hope that it will be able to play a fundamental role to ensure that the work on Action 14 brings real change to the MAP process.
5. We are also convinced that a strong push to bring in mandatory arbitration will have an enormously beneficial impact on the working of MAP cases. Even if the number of actual arbitrations does not increase significantly, the threat of arbitration will, we believe, have a positive impact on the working of MAP cases and concentrate the minds of those involved to resolve the issues under discussion.
6. The BEPS Action 14 Discussion Draft identifies four key principles and sets out various obstacles and options in relation to those principles

Ensuring that Treaty obligations related to MAP are fully implemented in good faith

7. We support the introduction of a, new, paragraph 5.1 to the Commentary on Article 25 to emphasise that MAP is an integral part of the obligations that follow from concluding any particular tax treaty.

Improving Administrative Processes for the Prevention and Resolution of Treaty-related disputes

8. We fully endorse the various options set out in the discussion draft designed to ensure that administrative processes promote the prevention and resolution of treaty-related disputes.

Ensuring that taxpayers can access the MAP when eligible

9. We endorse Options 10 and 11 in the discussion draft for best practices currently included in the MEMAP to make sure access to MAP is made more straightforward and it is made explicit what specific information and documentation is required.

Ensuring that cases are resolved once they are in MAP

- 10.** We think it would be enormously beneficial if OECD were to recommend mandatory and binding arbitration and to provide information to those countries that are currently not convinced of the benefits of such arbitration so that those concerns can be addressed.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))