

## ACTION 14: MAKE DISPUTE RESOLUTION MECHANISMS MORE EFFECTIVE

### Background Documents:

[OECD Discussion Draft:](#) December 18<sup>th</sup>, 2014

[BIAC Response:](#) January 16<sup>th</sup>, 2015

[OECD Report:](#) October 5<sup>th</sup>, 2015

**Last updated: 30 November 2015**

TOPIC	BIAC COMMENTS	OECD RESPONSE
<b>General</b>	1. A comprehensive framework of legal remedies is needed, including domestic measures as well as MAP and binding arbitration.	Comment not acknowledged. No reference to domestic legal remedies, although significant steps forward have been taken on MAP and binding arbitration.
	2. To replace the “could” recommendations with firm “should” commitments.	All the minimum standards and the best practices are worded using “should”.
	3. OECD should endorse and adopt mandatory binding arbitration as a best practice.	OECD does not endorse mandatory binding arbitration as a best practice. On this point there was no consensus within the OECD/G20 countries. However, 20 countries have committed to adopt and implement mandatory binding arbitration.
	4. If adopting mandatory binding arbitration does not succeed, further consideration must be given to how to mitigate the risk of double taxation caused by other BEPS Actions.	The minimum standards seek to ensure inter alia the timely, effective and efficient resolution of disputes, including cases of double taxation.
	5. The Forum of Tax Administration, and more specifically, the MAP forum, should be central to the process.	It is minimum standard to become a member of the Forum of Tax Administration MAP Forum.
	6. Tax administrations should be required to publish a standardized annual report that outlines several criteria relevant to measuring progress in meeting the objectives.	It is minimum standard to publish MAP statistics. This includes the progress towards meeting the 24-month target.
	7. The report should include, in addition to the MAP statistics: <ul style="list-style-type: none"> <li>- Number of officials dedicated to the competent authority (CA) division,</li> <li>- Description of performance evaluation criteria for CA officials,</li> <li>- Number of cases submitted to the CA in the past year,</li> <li>- Number of cases refused by the CA (through joint country CA consideration, as well as unilaterally),</li> <li>- High, low and average times to CA resolution,</li> </ul>	<p>It is a minimum standard to provide timely and complete reporting of MAP statistics (a reporting framework to be agreed in further work); this will likely include number of cases submitted/refused and average times.</p> <p>It is a minimum standard to not use performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue, but disclosure on the performance indicator is not required.</p> <p>The number of officials dedicated to MAP is not required, but it is a minimum standard to ensure that adequate resources are provided and a main resource</p>

	<ul style="list-style-type: none"> <li>- Number of CA waivers sought (and obtained) in the course of local tax audits, and</li> <li>- Best practices from MEMAP used in the local country's CA process.</li> </ul>	<p>is officials.</p> <p>No reference to MEMAP but it is a minimum standard to publish rules, guidelines and procedures to access and use MAP.</p>
	<p>8. Improvements to MAP timelines required (e.g. committing to binding, compulsory arbitration after a 24 month period with no breakthrough).</p>	<p>It is a minimum standard to seek to resolve MAP cases within an average of 24 months. If MAP exceeds this time threshold, there is no mandatory arbitration or any other consequence besides of not being in compliance with the minimum standards.</p>
	<p>9. Action 14 MAP process commitments should be integrated into the "multilateral instrument" (BEPS Action 15).</p>	<p>Action 14 will be included to some extent in the multilateral instrument and it will include the minimum standards.</p>