



June 23, 2020

VIA EMAIL

Forum on Tax Administration

Attn: Hans Christian Holte, Chair

Organisation for Economic Cooperation and Development

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Dear Mr. Holte:

USCIB¹ welcomes the recent efforts by the Forum on Tax Administration (FTA) to support tax administrations during the COVID-19 pandemic. In particular, we applaud the FTA's survey of measures being taken to address taxpayers' cash-flow concerns and difficulties in meeting reporting and payment deadlines, as well as the statement encouraging FTA Commissioners to collaborate in appropriate circumstances to alleviate potential adverse tax consequences resulting from pandemic-driven remote work.

Although these valuable efforts target some of the most immediate challenges presented by the crisis, they do not address its detrimental impact on tax certainty. We therefore ask that the FTA consider issuing guidance in the form of best practices, facilitating bi- or multilateral agreements, and/or performing other coordination functions to shore up dispute prevention and resolution mechanisms in the current climate.

We provide specific proposals below. As a broad theme, we believe that governments should be encouraged to afford taxpayers more flexibility with regard to mutual agreement procedure (MAP) and advance pricing agreement (APA) cases by adapting rules and procedures for pandemic conditions. Indeed, such adaptation may benefit tax administrations, themselves, by facilitating business continuity and speedier processing of MAPs and APAs going forward.

¹ USCIB promotes open markets, competitiveness and innovation, sustainable development and corporate responsibility, supported by international engagement and prudent regulation. Its members include top U.S.-based global companies and professional services firms from every sector of our economy, with operations in every region of the world. With a unique global network encompassing leading international business organizations, USCIB provides business views to policy makers and regulatory authorities worldwide, and works to facilitate international trade and investment.

Advance Pricing Agreements

With regard to APAs, the FTA could urge tax administrations to—

- Be receptive to taxpayer requests to extend or shorten the duration of APAs.

For taxpayers with APAs expiring in the next six to twelve months, conducting appropriate factual due diligence and gathering the data and analyses needed for a complete APA renewal request could be prohibitively difficult. In this situation, a one-year extension of the current APA term, subject to the continued satisfaction of the current APA's critical assumptions, would afford taxpayers sufficient time after COVID-19-related restrictions ease to prepare and file complete APA renewal requests before their APA terms expire. Conversely, transfer pricing outcomes produced by some APAs may not be appropriate for today's virtually unprecedented economic conditions, prompting APA taxpayers to request early termination. The FTA could assist tax administrations by identifying factual considerations and transfer pricing principles relevant to evaluating such requests.

- Eliminate or modify domestic due diligence procedures that require in-person interaction between taxpayers and tax administrations.

Some jurisdictions require that tax administrators meet with an APA applicant's representatives, interview its employees, and/or visit its premises as part of the due diligence process. Unless such requirements are waived or relaxed, pending APAs will be delayed—perhaps indefinitely in light of widespread international travel restrictions and quarantine requirements. The FTA could identify circumstances in which it may be appropriate to waive such requirements, such as in an APA renewal where no changes are proposed and applicant can provide evidence of the continued satisfaction of critical assumptions, or recommend the adoption of technologies that will enable required interactions to occur virtually.

Mutual Agreement Procedure Cases

With regard to MAPs, the FTA could encourage governments to—

- Temporarily extend notification deadlines for MAP in bilateral income tax treaties.

Taxpayers should not lose access to an essential dispute resolution mechanism simply due to the logistical complications presented by widespread lockdowns. Such extensions would in principle need to be implemented on a bilateral basis, treaty by treaty. To shortcut this potentially cumbersome process, the FTA could consider developing a template bilateral competent authority agreement or a multilateral competent authority agreement allowing the

extension of the notification deadlines, akin to the Multilateral Instrument produced by BEPS Action 15.

- Suspend domestic collection of assessed tax in pending MAP cases.

Suspending collection of disputed amounts would preserve the status quo while the competent authorities consider the merits of a case and avoid compounding taxpayer liquidity constraints resulting from the present crisis.

- Ensure prompt implementation of MAP agreements in all cases.

Prompt implementation of MAP agreements has always been appropriate as a matter of comity among treaty partners and fairness to the concerned taxpayer(s). Accelerating implementation, especially in cases where refunds are due, could help to ameliorate the current liquidity crisis.

Competent Authority Proceedings, Generally

More broadly, the FTA could urge governments to—

- Extend domestic law due dates for MAP and APA/renewal requests.

Uniform extensions to, for example, June 30, 2021 (approximately six to twelve months after the most significant COVID-19-related restrictions will likely have expired, taking into account the possibility of a second wave of infections), would ensure that taxpayers have adequate opportunity to prepare thorough and complete MAP and APA requests or renewal requests.

- Ease filing requirements for MAP and APA requests and renewal requests.

Jurisdictions that require hard copy filings should allow electronic filings and adopt any necessary technologies. The FTA could develop minimum standards for electronic filing mechanisms that protect taxpayer confidentiality and facilitate ready access by tax administrators working remotely. Relatedly, jurisdictions could consider reducing or eliminating certain initial MAP or APA filing requirements, such as those that demand access to paper files or seek copies of materials on file with other government departments.

- Continue bilateral negotiations, safely.

COVID-19 should not bring competent authority negotiations to a halt. Tax authorities should schedule telephonic negotiations and/or adopt videoconferencing technology to facilitate

“virtual” meetings. The FTA could assist by developing a uniform standard for secure videoconferencing and best practices for socially distanced in-person meetings, for when travel restrictions are eased. This investment will support the expected permanent increase in the use of online communications as a result of the positive experience many governments and businesses have had with these tools during the COVID-19 restrictions.

- Delegate decision-making authority to lower levels.

Continuing competent authority negotiations as recommended above will be futile if key decision-makers are working remotely without access to necessary paper files or to reliable communications technology. Particularly where lockdowns are strictest and/or telecommunications infrastructure less developed, requiring high-level sign-off on discrete details of competent authority agreements may unduly impede negotiations. In these circumstances, temporary delegation of decision-making authority to lower-level officials actively engaged in competent authority discussions will ensure that progress can be made.

- Combine MAP and APA functions in one office.

Some jurisdictions have realized benefits by giving responsibility for MAP cases and APAs to a single office. Because the majority of MAP cases involve transfer pricing issues, there is substantial overlap in the technical expertise required to handle MAP and APA cases. Moreover, pending MAPs and APAs frequently involve the same issues for the same taxpayers because taxpayers often seek APAs where they have experienced repeated transfer pricing adjustments. Where separate groups within the tax administration hold responsibility for MAPs and APAs, cases involving the same issue could be resolved inconsistently, and according to different principles. Alternatively, an APA could be delayed due to the MAP function’s delay in processing its cases—or vice versa. Combining the two functions can improve efficiency and case processing times.

Sincerely,

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