



Tax Certainty

10th IMF - Japan High - Level Tax Conference for Asian Countries

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

Context

- IMF and OECD are currently working on the report on tax certainty to the G20
- The previous IMF/OECD Report recommended APA and MAP as effective measures to improve tax certainty.
- Curbing corruption in revenue administration would also improve tax certainty
- What is state of play in MAP/APA in Asian countries?
- A new approach to tax certainty: transfer pricing insurance

Outline

- Key features of good governance in revenue administration
- Survey outcomes
 - MAP in Asian countries
 - APA in Asian countries
 - Domestic dispute resolution mechanism in Asian countries
 - Asian countries' approach to tax certainty
- Tax insurance

Key features of good governance in revenue administration

Online Annex 2.3 Fiscal Monitor, April 2019

- Sound Policy and Legislation
 - Tax policy designed based on principles of equity, efficiency, neutrality, simplicity, and transparency
 - A common set of administrative and procedural laws that are simple and reliable for different tax types.
- Modern System and Processes
 - Revenue administration work plans, budget, performance objectives are regularly reported to the public.
 - Collection systems and procedures are streamlined to secure timely revenue without imposing undue compliance costs and inconvenience to the business.

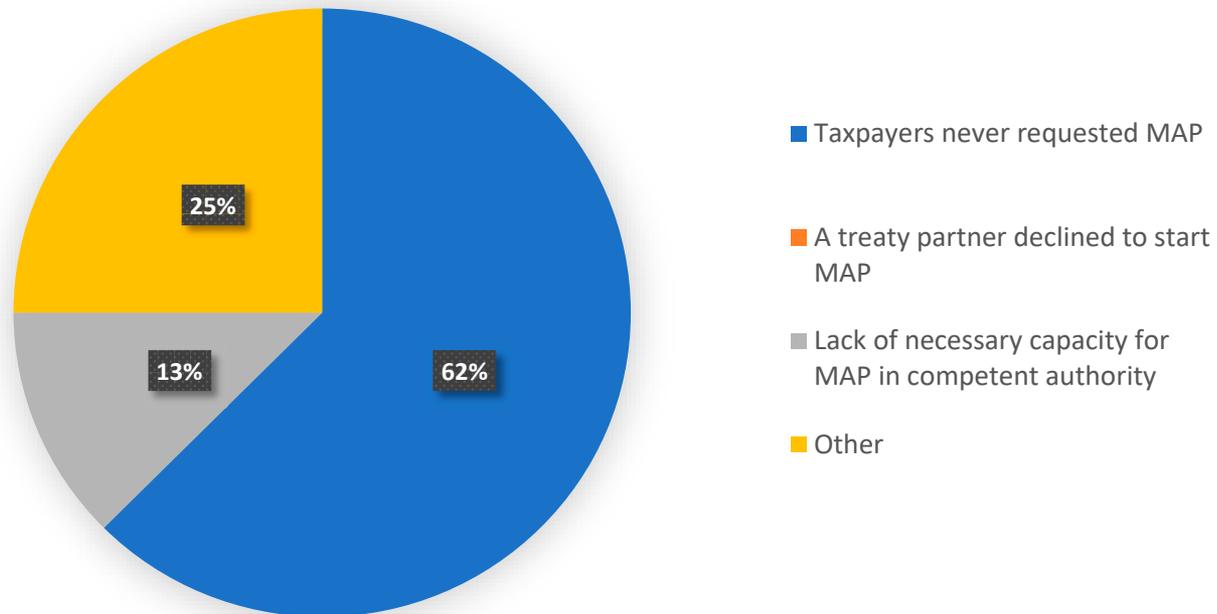
- Streamlined Organization and Management
 - Revenue administration is established with independence from political direction
 - A function-based organization design with separation of duties and appropriate number of staff assigned to each function based on workload.
- Extensive Use of Technology
 - Revenue administration processes are digitalized and automated to the extent possible.
 - Robust automation system of internal control checks and monitoring of processes , with access controls and audit logs.

- Human Resource Management
 - HR policies and processes ensure merit-based selection, appointment, appraisal, and promotion of revenue officials.
 - Senior management of revenue administration is appointed for a fixed period (tenure).
- Institutionalized Promotion of Integrity
 - Staff is regularly informed about and supported in adopting positive behavior.
 - Legal sanctions are effectively applied on each detected corrupt behavior and publicly announced.

Survey Outcomes

Overview of MAP in Asian Countries

- Out of 16 countries/jurisdictions in the region, which responded to the questionnaire, 7 have conducted MAP.
- Reasons for no record of MAP



Overview of MAP in Asian Countries

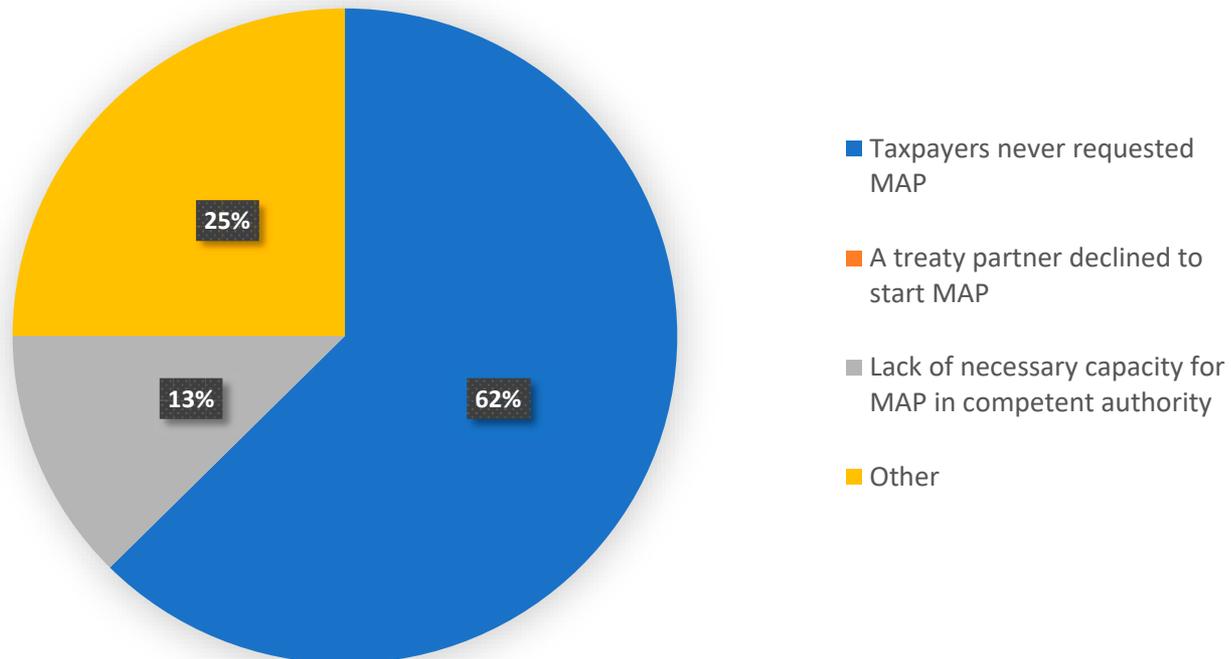
- Having a tax treaty does not necessarily mean the competent authority conducted MAP with all of treaty partner countries.
- Among 7 countries/jurisdictions which have conducted MAP, on average, they have conducted MAP with 23 percent of their treaty partners.
- 3 countries/jurisdictions have started MAP in and after 2010.

Tax Treaty Network of Asian Countries

Country/Jurisdiction	Tax Treaties in force
Australia	44
Bangladesh	34
China	110
Hong Kong	40
India	95
Indonesia	69
Japan	61
Korea	99
Lao PDR	14
Malaysia	75
Mongolia	26
Myanmar	8
Nepal	11
PNG	10
Philippines	43
Sri Lanka	44
Thailand	61
Timor Leste	0
Vietnam	73

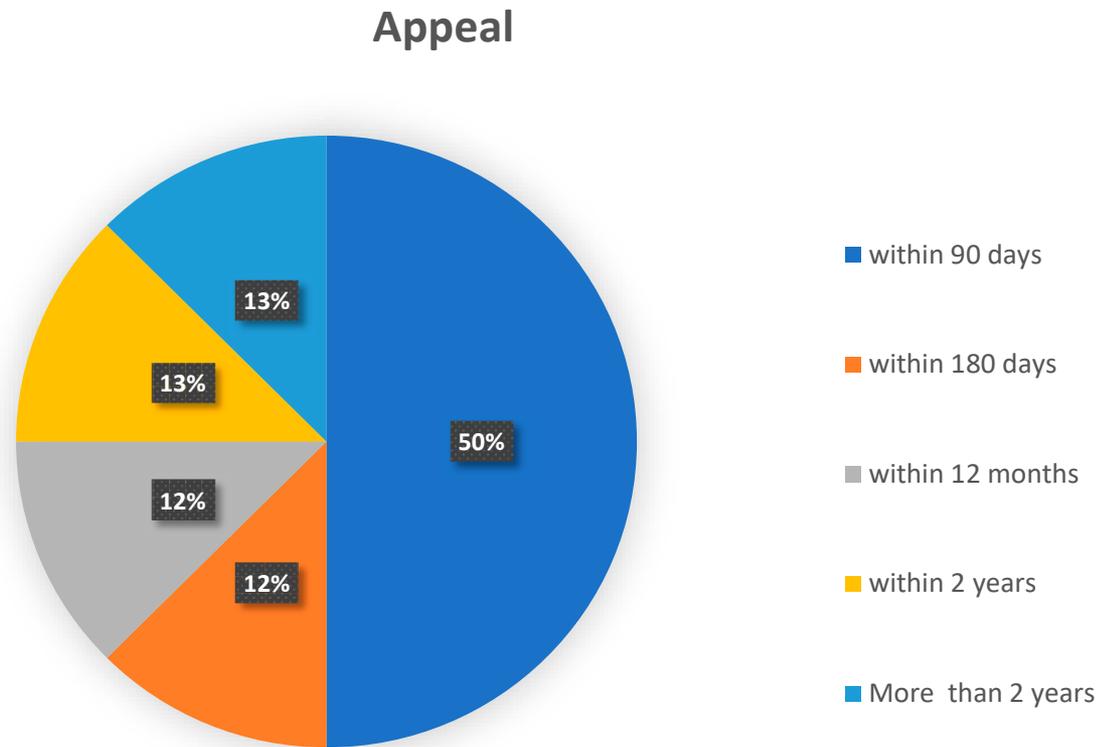
Overview of APA in Asian Countries

- Out of 15 countries/jurisdictions in the region, 7 have conducted APA.
- Reasons for no record of APA

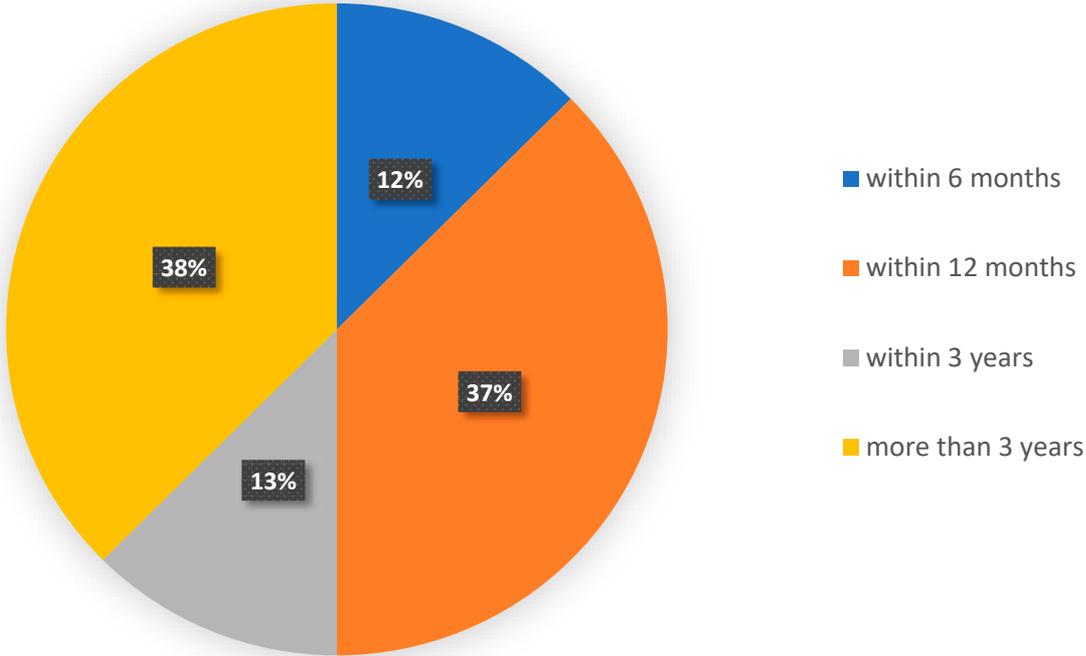


Overview of domestic dispute resolution mechanisms in Asian Countries

- How efficient domestic dispute resolution mechanism are.



Litigation



Asian countries' approach to enhance 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	2	3	3	2
	Reduction of bureaucracy to comply with tax legislation	2	5	4	
	Detailed guidance in tax regulations	5	4	1	
Tax Administration					
	Increased transparency from tax administrations in relation to their compliance approaches	4	6	1	
	Timely communication of tax authority during tax audits	5	5	1	
	Increased transparency from tax administrations in relation to their risk assessment protocols	1	7	2	1

Asian countries' approach to enhance tax certainty

Tools		In place / done	Reform is ongoing	Plan to reform	No plan for now
Dispute Resolution					
	Effective domestic dispute resolution regimes	6	5	1	
	Mutual agreement procedure (MAP)	5	2	2	3
	Mandatory Binding Arbitration		2	4	3
Specific International Dimensions					
	Multilateral APAs in collaboration with other jurisdictions	2	3	2	3
	Multilateral co-operative compliance programs in collaboration with other jurisdictions		2	5	3
	Multilateral audits in collaboration with other jurisdictions			7	3

Tax Insurance

Tax Insurance Typology

- Tax liability insurance
 - covers taxpayer's loss arising out of an identified uncertain tax position.
- Tax return insurance
 - covers unidentified tax risks associated with a given return filed by the insured taxpayer.
- Tax as part of Representation and Warranties Insurance
 - covers unidentified tax risks within an M & A transaction.

Transfer Pricing Insurance

- Tax liability insurance
- 3-4 insurers currently underwrite transfer pricing insurance policy world-wide.
- They have covered U.S., U.K., Denmark and Spain to date.
- TP insurance policy covers loss includes the determined tax liability, defense costs, and interest, fines and penalties.
- Premium depends on a case-by-case basis, but usually 3 to 8 percent of the policy limit.

Conditions required to be insured

- Transfer pricing policy and any underlying documents referred to therein
- Access to the author of the TP analysis
- Access to financial statements and tax returns
- Audit history
- Rights to participate in discussions with tax authorities following an audit.
- Tax authorities use the OECD TP Guidelines

Being eligible for TP insurance policy may mean the country's transfer pricing enforcement has a certain degree of certainty !