



Mutual agreement procedure based on Swiss double taxation agreements

2020 statistics

1 Introduction

The report on **Action 14** of the BEPS project (Base Erosion and Profit Shifting) contains measures to make dispute resolution mechanisms more effective with the goal of avoiding double taxation insofar as possible¹. Those measures are particularly important because they provide taxpayers with greater legal certainty in an area where numerous changes in domestic and international tax rules are taking place. Switzerland considers that mutual agreement procedures are an important element, which allow taxpayers to benefit fully from Swiss double taxation agreements.

In a bid to improve implementation of mutual agreement procedures, one of the measure under the Action 14 has given the member states of the OECD Inclusive Framework² a target of concluding their mutual agreement procedures in 24 months on average for mutual agreement procedures opened from 1 January 2016. To check that this ambitious target is pursued by the states, the OECD publishes detailed statistics on the implementation of the mutual agreement procedures.

2 Release of the 2020 statistics

The statistical data for the year 2020 were published at the end of November 2021 and are available on the [OECD website](#). The detailed statistics for Switzerland can also be found in the annex to this report. In order to understand these results, the following requirements have been set by the OECD Secretariat:

- A distinction is made between mutual agreement procedures initiated before 1st January 2016, for which limited information is sufficient and those that begin after 1st January 2016 and for which detailed information must be provided.
- A distinction is made between *Transfer pricing cases* and *Other cases*.
- The duration of the mutual agreement procedure also features in the statistics. To allow a comparison to be made of the statistical data between the different countries of the inclusive framework, the OECD has published clear guidelines for calculating data for mutual agreement procedures from 2016.

It is interesting to note that the average time taken for the procedures in Switzerland in 2020 was 20 months and this applies to both transfer pricing cases and other cases. Switzerland is thus meeting the commitments made to improving the duration of dispute resolution. In addition, Switzerland distinguished itself by winning the 1st international award in the category - Shortest average time to close *transfer pricing cases*³.

Switzerland's competent authorities are committed to maintaining the good results achieved and to investing the necessary resources to further improve dispute resolution mechanisms and thereby to enhance the appeal of Switzerland as a business location.

¹ <https://www.oecd.org/tax/making-dispute-resolution-mechanisms-more-effective-action-14-2015-final-report-9789264241633-en.htm>

² <http://www.oecd.org/tax/beps/beps-about.htm>

³ [2020 Mutual Agreement Procedure Awards - OECD](#)

3 2020 Swiss statistics

This chapter outlines selected Swiss statistics in more detail. In order to better illustrate the overall situation, the following statistics do not distinguish between procedures initiated before or after 1st January 2016.

3.1 Statistics on mutual agreements procedures concerning transfer pricing and APAs

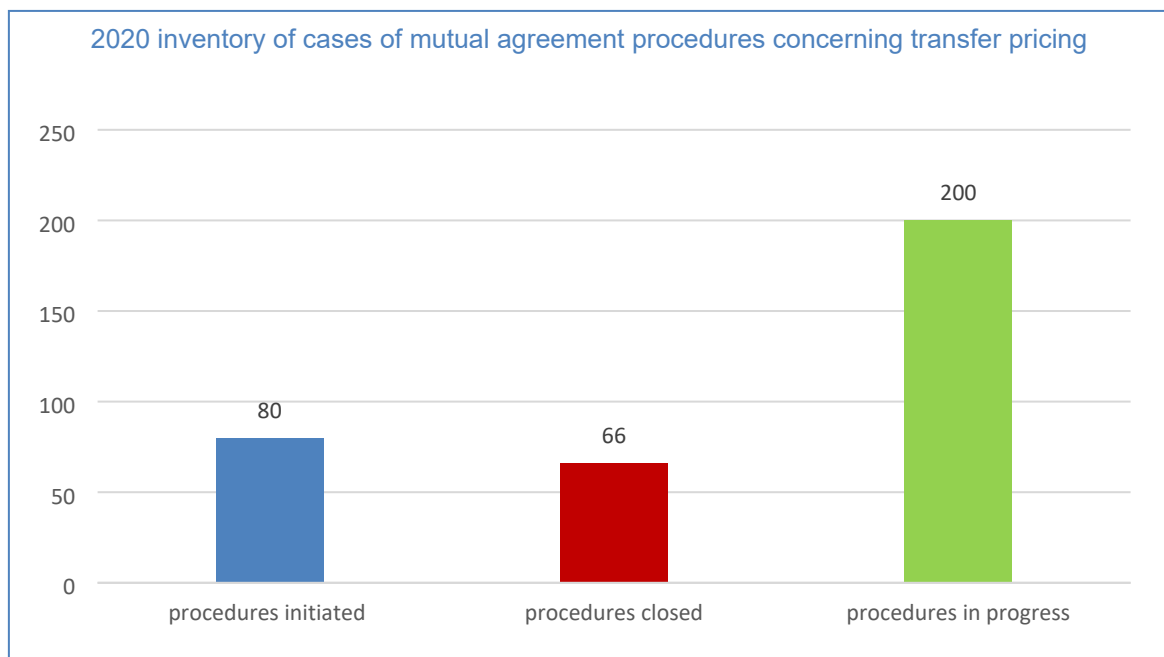
A transfer pricing case is one where the taxpayer's request for the mutual agreement procedure concerns either the attribution of profits to a permanent establishment (see Article 7 of the OECD Model Tax Convention) or the determination of profits between affiliated companies (see Article 9 of the OECD Model Tax Convention).

In transfer pricing cases, a distinction is made between:

- mutual agreement procedures to eliminate double taxation that has already occurred or to prevent imminent double taxation (hereafter "mutual agreement procedure concerning transfer pricing"), (3.1.1) and
- mutual agreement procedures to avoid double taxation. Typically, a multinational wants the pricing of transactions between group companies to be determined in advance in the form of an advance pricing agreement (hereafter "APA"). These are mainly bilateral or multilateral rulings (3.1.2).

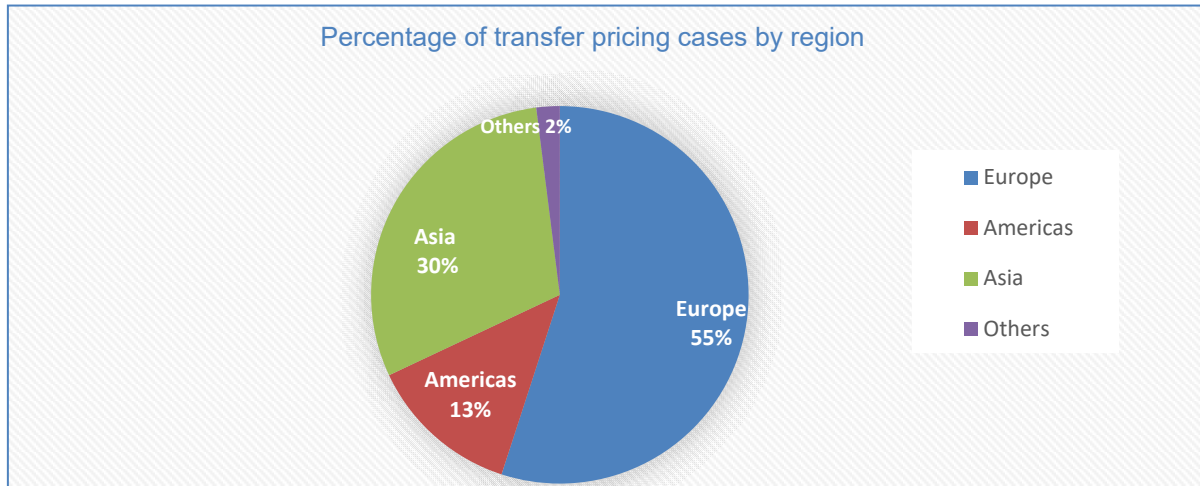
3.1.1 Mutual agreement procedures concerning transfer pricing

In 2020, 80 mutual agreement procedures concerning transfer pricing were initiated and 66 cases were closed, taking the inventory of cases under way as at 31 December 2020 to 200 cases.



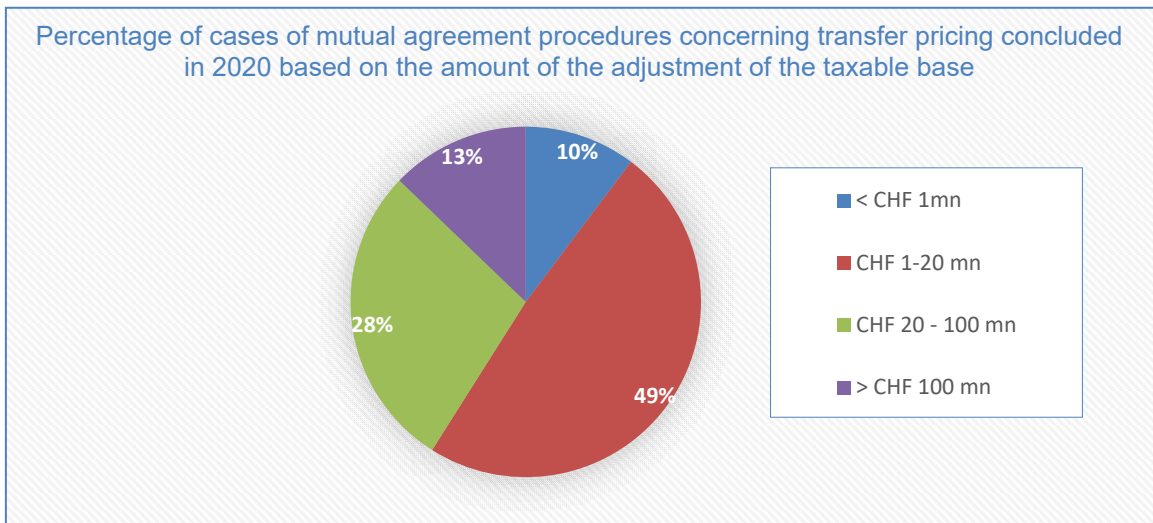
The duration of these procedures varies considerably from one case to the next. In certain cases closed in 2020, the duration is only a few weeks. On average, however, the mutual agreement procedures concerning transfer pricing cases closed in 2020 lasted 20 months.

The majority of cases in progress in 2020 concerned European partner countries, followed by Asian countries and the American continent.



The cases of mutual agreement procedures concerning transfer pricing generally consist of an adjustment carried out by the tax authorities of a country, which increases the taxable base of a company. It is the amount of this initial adjustment of the taxable base, which is the issue in the negotiations during a mutual agreement procedure. The amount of additional tax resulting from this initial adjustment then depends on the tax rate of the company targeted. To eliminate the double taxation that results from a taxable base adjustment of this nature, the countries seek to reach an agreement on the amount of the adjustment in line with international standards within the context of the mutual agreement procedure on this matter. Following such an agreement and depending on the agreed solution, the first country will eventually correct its initial adjustment and the second country will proceed with the corresponding adjustment to eliminate double taxation.

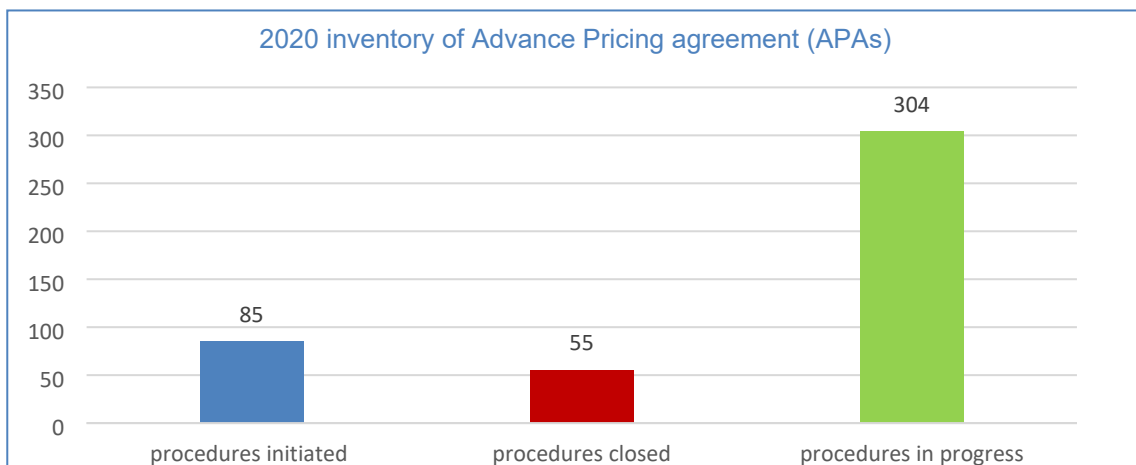
The amounts of the initial adjustments concerning cases closed in 2020 vary greatly from case to case but that the majority of the cases concern initial adjustments of the taxable base of less than CHF 20 million.



3.1.2 Statistics on advance pricing agreements (APAs)

As already explained, APAs are preventive mutual agreement procedures in connection with transfer pricing to avoid double taxation. These are mainly bilateral or multilateral rulings. These mutual agreement procedure cases are not included in the released OECD statistics.

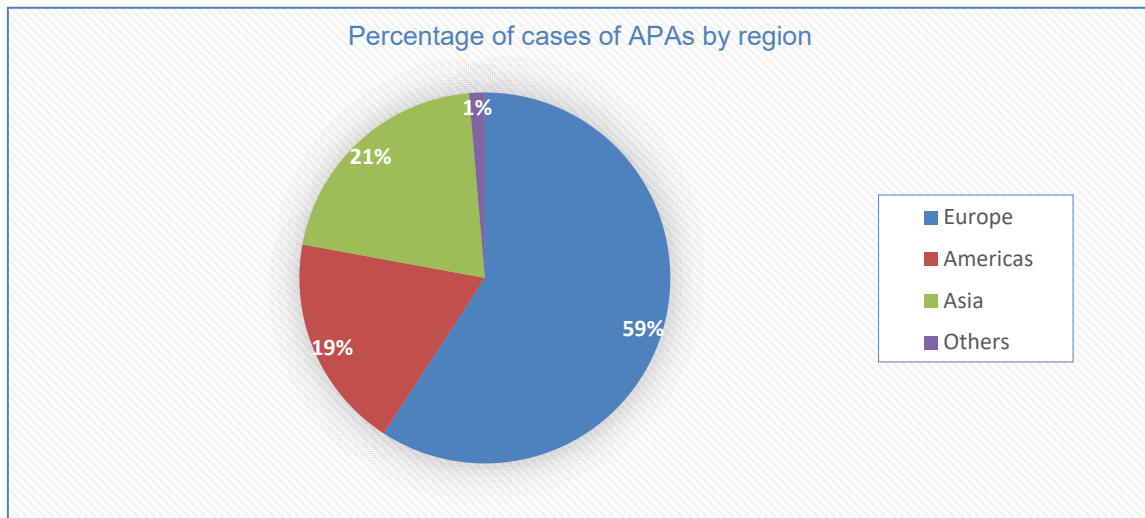
In 2020, 85 procedures were initiated and 55 procedures were closed, taking the inventory of cases in progress as at 31 December 2020 to 304.



The duration of APAs varies greatly from one case to another. In certain cases closed in 2020, the duration was as short as 1 month. On average, however, the mutual agreement procedures concerning APAs, which were closed in 2020 lasted 33 months.

Although there is actually no OECD obligation in terms of duration for APAs, Switzerland believes that such procedures are essential for legal certainty and the appeal of Switzerland as a business location. Switzerland thus strives to accelerate the processing of such procedures while at the same time putting a priority on achieving the best possible results in each case.

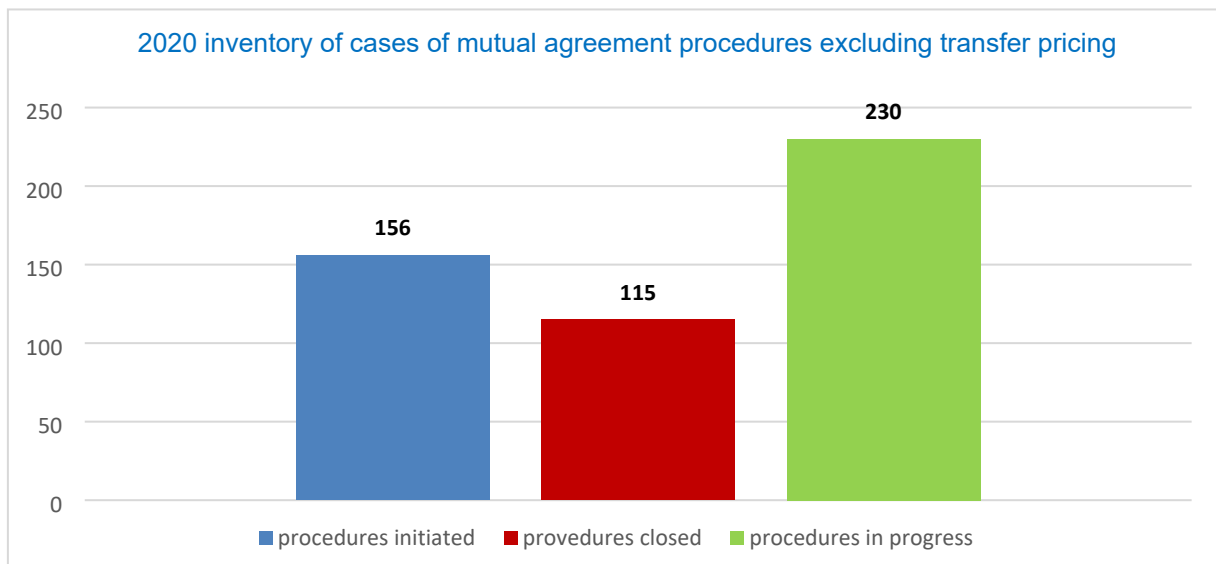
The majority of the APAs in progress in 2020 concern European partner countries. Asia is in second place here just before Americas.



3.2 Statistics concerning all mutual agreement procedures excluding transfer pricing

The other types of mutual agreement procedure (non TP, i.e. other cases) concern all mutual agreement procedures based on a double taxation agreement, excluding cases dealing with transfer pricing. It is mainly about **residency** of individuals, the right of taxation for **dependent personal services**, the differentiation between dependent and independent personal services and income from **government services**.

In 2020, 156 procedures were initiated and 115 procedures were closed, taking the inventory of cases in progress as at 31 December 2020 to 230.



The duration of mutual agreement procedures excluding transfer pricing varies considerably from one case to the next. It was noted that in certain cases closed in 2020, the duration was as short as 14 days. On average, however, the mutual agreement procedures excluding transfer pricing which were closed in 2020 lasted 20 months.

Almost all cases in progress in 2020 concern European partner countries (more than 90%).

3.3 Total statistics

Finally, for the sake of completeness, we present here the total statistics below concern all of the mutual agreement procedures mentioned previously (including APAs).

In 2020, 321 cases were initiated and 236 cases were closed, taking the inventory of cases in progress to 734. On average, the mutual agreement procedures which were closed in 2020 lasted 23 months.

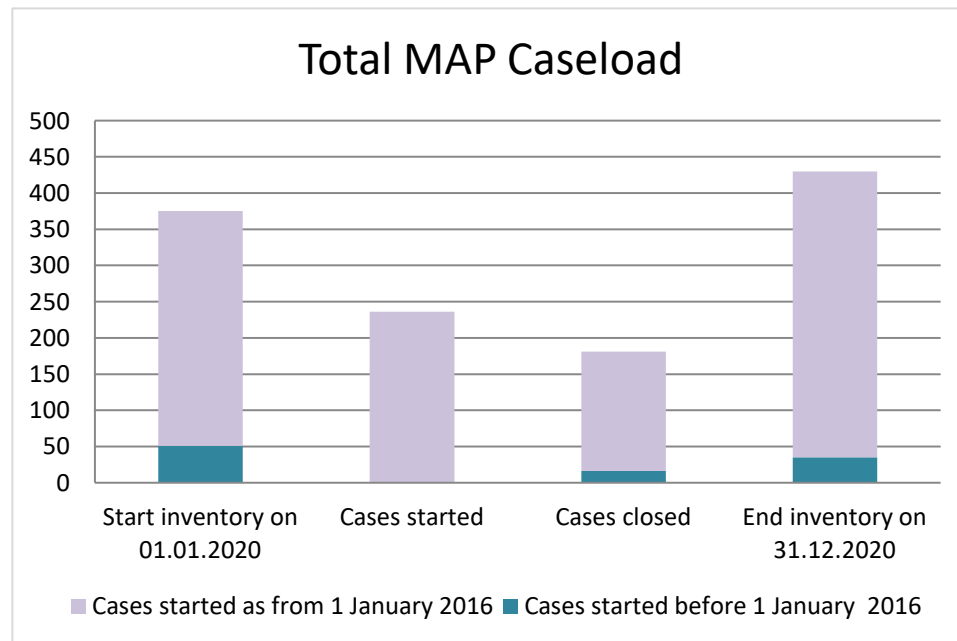
4 Conclusions

The commitment made by the member states of the OECD Inclusive Framework to improve dispute resolution mechanisms and in particular the commitment to achieve an average duration of 24 months for mutual agreement procedures is a welcome development at a time when taxpayers are confronted with numerous changes in domestic and international tax rules. Speeding up the mutual agreements procedures based on DTAs is moving towards legal certainty and the elimination of double taxation.

Switzerland is pleased that it was able to meet its international commitments (average duration of 24 month) in 2020 by resolving Swiss mutual agreement procedures (excluding APAs) in 20 months and it will make every effort to maintain this result in the coming years whilst continuing to place a priority on the quality of the results achieved.

Annex 1 - OECD statistics 2020 for Switzerland

Switzerland



Cases started before 1 January 2016	2020 Start inventory	Cases started	Cases closed	2020 End inventory
Transfer pricing cases	24	0	3	21
Other cases	27	0	13	14

Cases started as from 1 January 2016	2020 Start inventory	Cases started	Cases closed	2020 End inventory
Transfer pricing cases	162	80	63	179
Other cases	162	156	102	216

Average time needed to close MAP cases

Cases started before 1 January 2016	Average time
Transfer pricing cases	55.61
Other cases	55.71

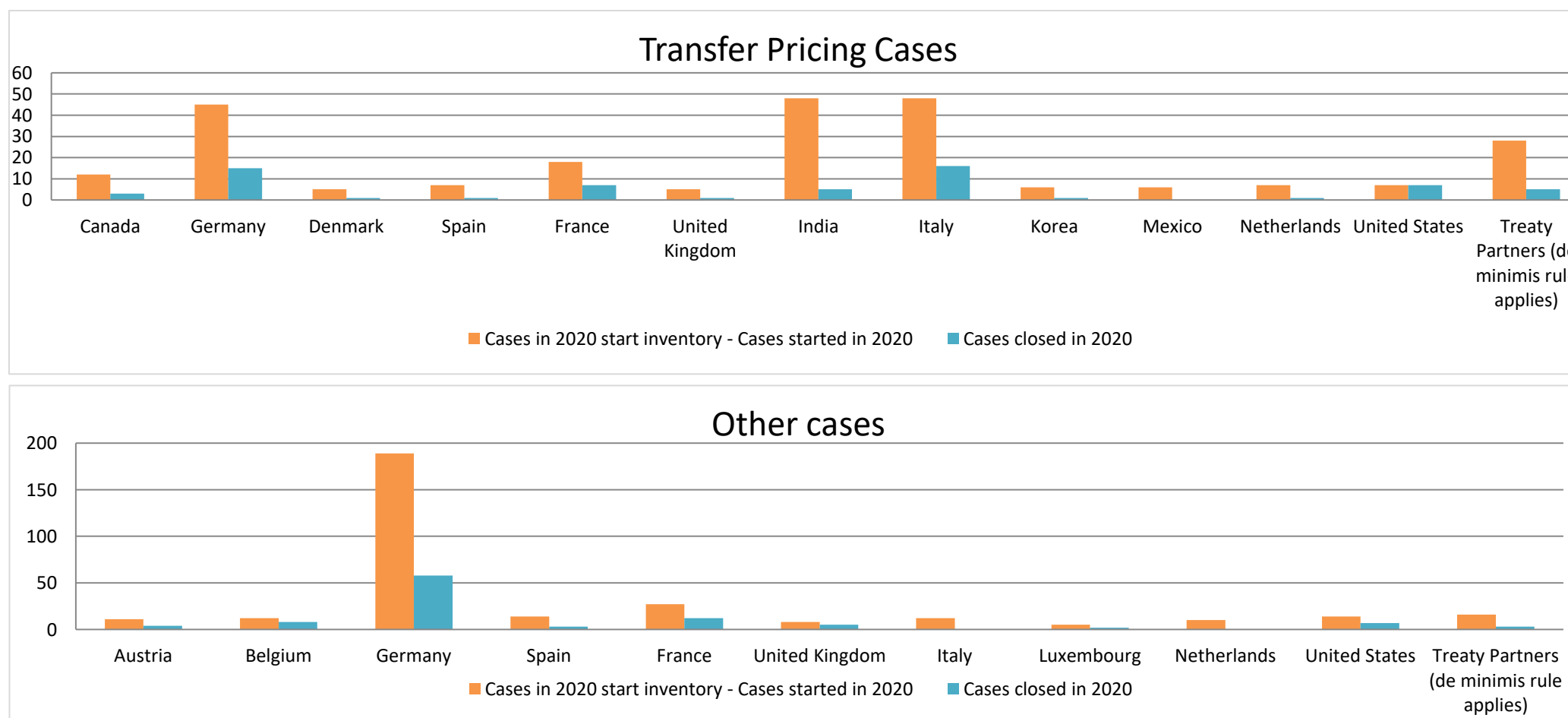
Note: the average time taken to close MAP cases that started before 1 January 2016 was computed by applying the following rules:
 (i) start date: the date when the MAP request was received; and
 (ii) end date: either the date of the closing letter sent to the taxpayer or the date of final closure of the case if no agreement was reached.

Cases started as from 1 January 2016	Start to End	Receipt to Start	Start to Milestone 1	Milestone 1 to End
Transfer pricing cases	18.55	1.49	12.83	9.74
Other cases	15.45	2.34	9.06	9.14

Note: the average times to close MAP cases that started as from 1 January 2016 were computed according to the MAP statistics reporting framework available at <http://www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics-reporting-framework.pdf>

Overview of MAP partners (only for cases started as from 1 January 2016)

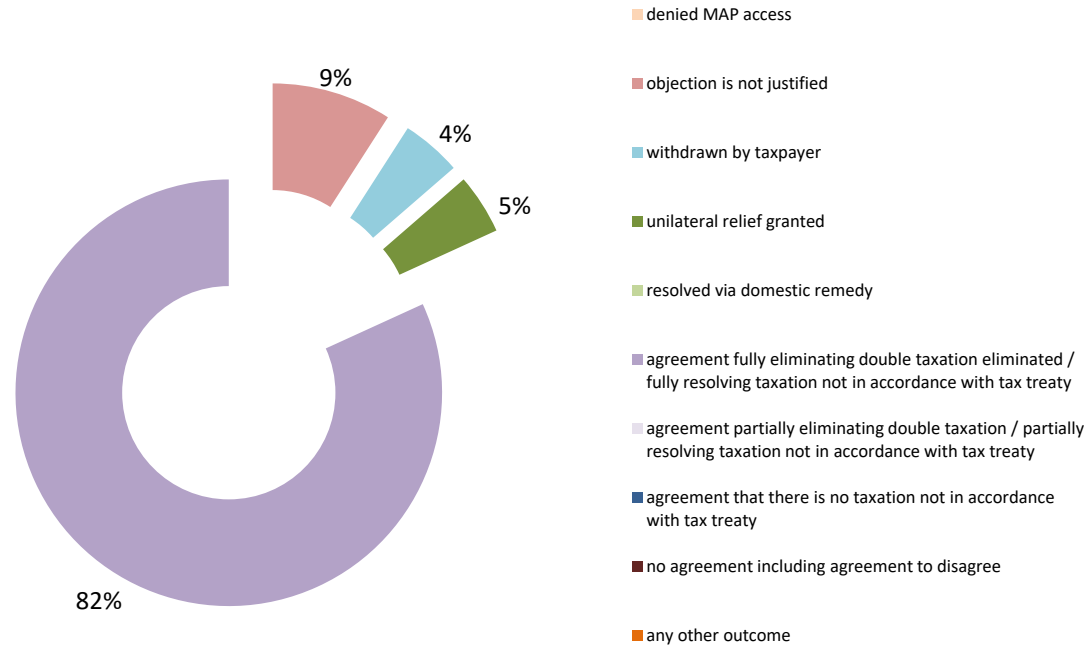
Note: the MAP cases started before 1 January 2016 and closed in 2020 are not shown in these graphs



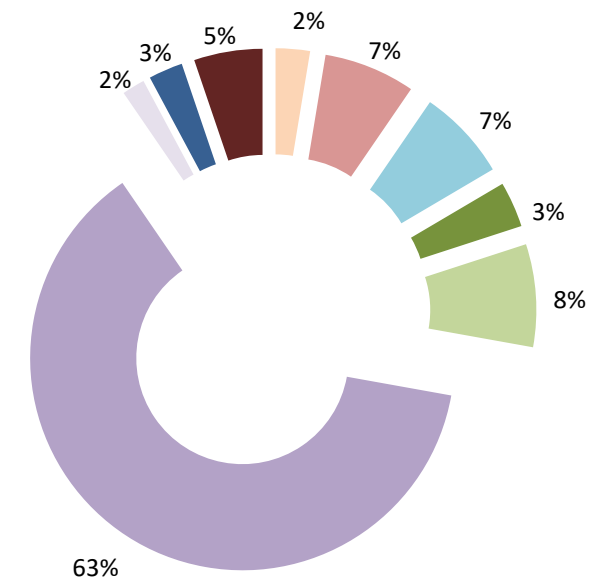
The label "Treaty Partners (de minimis rule applies)" applies to treaty partners with which the number of cases in start inventory plus the number of cases started is at least 5. The relevant MAP statistics are aggregated under this category.

The label "Treaty Partners (Others)" applies to treaty partners that are not reporting MAP statistics for the reporting period. The relevant MAP statistics are aggregated under this category.

MAP Outcomes - TP cases



MAP Outcomes - other cases



Cases closed by outcome	denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	Total
Transfer pricing cases (all)	0	6	3	3	0	54	0	0	0	0	66
Cases started before 1 January 2016	0	0	0	0	0	3	0	0	0	0	3
Cases started as from 1 January 2016	0	6	3	3	0	51	0	0	0	0	63
Other cases (all)	3	8	8	4	9	72	2	3	6	0	115
Cases started before 1 January 2016	0	0	0	0	0	11	1	0	1	0	13
Cases started as from 1 January 2016	3	8	8	4	9	61	1	3	5	0	102
All cases	3	14	11	7	9	126	2	3	6	0	181

Annex A
MAP Statistics Reporting for the 2020 Reporting Period (1 January 2020 to 31 December 2020)

	category of cases	no. of pre-2016 cases in MAP inventory on 1 January 2020	number of pre-2016 cases closed during the reporting period by outcome:									no. of pre-2016 cases remaining in on MAP inventory on 31 December 2020	average time taken (in months) for closing pre-2016 cases during the reporting period	
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree			any other outcome
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Row 1	Attribution/ Allocation	24	0	0	0	0	0	3	0	0	0	0	21	55.61
Row 2	Others	27	0	0	0	0	0	11	1	0	1	0	14	55.71
Row 3	Total	51	0	0	0	0	0	14	1	0	1	0	35	55.69
<u>Notes:</u>														
Definition of a MAP case and counting of MAP cases		In general, Switzerland uses the same methods to (i) classify the MAP "pre- 2016"-cases and (ii) to count these "pre- 2016"-cases as for the "post-2015"-cases (according to MAP Statistics Reporting Framework.)												
Category of cases		Switzerland uses the definitions set under the MAP Statistics Reporting Framework.												
Notes on the computation of average time		In general, Switzerland uses the same definitions of the (i) start date, (ii) end date and (iii) average times as for the "post-2015"-cases (according to MAP Statistics Reporting Framework.)												

Table 1: Attribution / Allocation MAP Cases													
Treaty Partner	no. of post-2015 cases in MAP inventory on 1 January 2020	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome:										no. of post-2015 cases remaining in MAP inventory on 31 December 2020
			denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation eliminated / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Row 1	Canada	8	4	0	0	0	0	0	3	0	0	0	9
	Germany	23	22	0	6	1	0	0	8	0	0	0	30
	Denmark	3	2	0	0	1	0	0	0	0	0	0	4
	Spain	3	4	0	0	0	0	0	1	0	0	0	6
	France	6	12	0	0	0	1	0	6	0	0	0	11
	United Kingdom	4	1	0	0	0	0	0	1	0	0	0	4
	India	48	0	0	0	0	0	0	5	0	0	0	43
	Italy	33	15	0	0	0	0	0	16	0	0	0	32
	Korea	2	4	0	0	0	0	0	1	0	0	0	5
	Mexico	4	2	0	0	0	0	0	0	0	0	0	6
	Netherlands	6	1	0	0	0	0	0	1	0	0	0	6
Row 2	United States	7	0	0	0	1	2	0	4	0	0	0	0
	Treaty Partners (de minimis rule applies)	15	13	0	0	0	0	0	5	0	0	0	23
	Total	162	80	0	6	3	3	0	51	0	0	0	179
Notes:													

	Table 2: Other MAP Cases													
	Treaty Partner	no. of post-2015 cases in MAP inventory on 1 January 2020	no. of post-2015 cases started during the reporting period	number of post-2015 cases closed during the reporting period by outcome										no. of post-2015 cases remaining in MAP inventory on 31 December 2020
				denied MAP access	objection is not justified	withdrawn by taxpayer	unilateral relief granted	resolved via domestic remedy	agreement fully eliminating double taxation / fully resolving taxation not in accordance with tax treaty	agreement partially eliminating double taxation / partially resolving taxation not in accordance with tax treaty	agreement that there is no taxation not in accordance with tax treaty	no agreement including agreement to disagree	any other outcome	
	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Row 1	Austria	6	5	0	1	0	0	0	2	0	0	1	0	7
	Belgium	3	9	0	0	1	0	1	6	0	0	0	0	4
	Germany	97	92	0	1	5	3	6	38	1	1	3	0	131
	Spain	8	6	1	1	0	0	0	1	0	0	0	0	11
	France	16	11	2	1	0	0	1	6	0	2	0	0	15
	United Kingdom	1	7	0	0	0	0	1	4	0	0	0	0	3
	Italy	1	11	0	0	0	0	0	0	0	0	0	0	12
	Luxembourg	3	2	0	0	0	1	0	1	0	0	0	0	3
	Netherlands	7	3	0	0	0	0	0	0	0	0	0	0	10
Row 2	United States	8	6	0	4	1	0	0	1	0	0	1	0	7
	Treaty Partners (de minimis rule applies)	12	4	0	0	1	0	0	2	0	0	0	0	13
	Total	162	156	3	8	8	4	9	61	1	3	5	0	216
	Notes:													

Table 1: Attribution / Allocation MAP Cases					
Treaty Partner	average time taken (in months) for post-2015 cases from:				
	"Start" to "End"	Receipt of taxpayer's MAP request to "Start"	"Start" to Milestone 1	Milestone 1 to "End"	
Column 1	Column 2	Column 3	Column 4	Column 5	
Row 1	Canada	18.20	1.15	13.44	4.77
	Germany	14.79	1.42	21.49	3.98
	Denmark	28.50	0.76	2.53	25.97
	Spain	1.61	4.37	0.26	1.35
	France	4.34	3.46	n.a.	n.a.
	United Kingdom	5.46	0.16	4.41	1.05
	India	10.31	1.15	6.81	1.41
	Italy	35.01	1.26	18.75	29.80
	Korea	38.43	1.15	n.a.	n.a.
	Netherlands	13.32	0.53	n.a.	n.a.
	United States	14.91	0.98	9.52	3.20
	Treaty Partners (de minimis rule applies)	11.67	0.99	6.71	13.55
Row 2	Total	18.55	1.49	12.83	9.74
	Notes:				

Table 2: Other MAP Cases					
Treaty Partner	average time taken (in months) for post-2015 cases from:				
	"Start" to "End"	Receipt of taxpayer's MAP request to "Start"	"Start" to Milestone 1	Milestone 1 to "End"	
Column 1	Column 2	Column 3	Column 4	Column 5	
Row 1	Austria	20.49	1.14	5.13	21.06
	Belgium	7.98	1.05	5.80	3.04
	Germany	15.63	2.97	10.96	7.33
	Spain	3.84	1.15	5.16	4.60
	France	21.16	1.83	16.89	9.73
	United Kingdom	2.91	0.85	0.72	2.49
	Luxembourg	5.75	2.53	0.00	11.28
	United States	24.19	2.17	3.04	33.12
Row 2	Treaty Partners (de minimis rule applies)	20.97	1.16	2.38	18.92
	Total	15.45	2.34	9.06	9.14
Notes:					

	Table 3: All MAP Cases				
	average time taken (in months) for post-2015 cases from:				
	"Start" to "End"	Receipt of taxpayer's MAP request to "Start"	"Start" to Milestone 1	Milestone 1 to "End"	
	Column 1	Column 2	Column 3	Column 4	
Row 1	Total Average Time	16.63	2.01	10.10	9.31
	Notes:				