



Mutual agreement procedure based on Swiss double taxation agreements

2019 statistics

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Summary

In October 2015, the OECD published the reports on the base erosion and profit shifting (BEPS) project's action plan. The report on **Action 14** contains measures to make dispute resolution mechanisms more effective with the goal of avoiding double taxation insofar as possible. 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. Switzerland is thus committed to continuing its efforts to improve the implementation of mutual agreement procedures and consequently further enhancing the appeal of Switzerland as a business location.

In a bid to improve implementation of mutual agreement procedures, Action 14 has given the member states of the OECD Inclusive Framework¹ a target of concluding their mutual agreement procedures in 24 months on average. The rules concerning statistics on mutual agreement procedures were modified in 2016 to check that this ambitious target of speeding up the conclusion of mutual agreement procedures was pursued by the states. The summary statistics that were previously submitted to the OECD by its member states up to 2015 were replaced in 2016 by detailed statistics on the implementation of mutual agreement procedures, published by the [OECD on its website](#)

At the end of May 2020, Switzerland completed the online tool made available by the OECD secretariat to collect statistical data for 2019.

According to the statistics provided by Switzerland to the OECD concerning mutual agreement procedures, the average time taken for the procedures in Switzerland in 2019 was 21 months (23 months for transfer pricing and 20 months for other mutual agreement procedures). Switzerland is thus meeting the commitments made to improving the duration of dispute resolution.

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.

¹The inclusive framework brings together more than 130 countries and jurisdictions that collaborate in the implementation of the OECD / G20 BEPS Project, see <http://www.oecd.org/tax/beps/beps-about.htm>

1 Background

Switzerland has concluded double taxation agreements (DTAs) with numerous countries which can be found on the [website of the Confederation](#). If double taxation nevertheless occurs with a country with which Switzerland has signed a DTA or if there is a risk of such double taxation occurring, taxpayers resident in Switzerland has the right to request the State Secretariat for International Financial Matters (SIF) in the Federal Department of Finance in Bern to initiate a mutual agreement procedure².

In October 2015, the OECD published the reports on the base erosion and profit shifting (BEPS) project's action plan. The report on **Action 14** contains measures to make dispute resolution mechanisms more effective with the goal of avoiding double taxation insofar as possible. This measure is particularly important since it provides taxpayers with greater legal certainty in an area where numerous changes in domestic and international tax rules are taking place.

In a bid to improve implementation of mutual agreement procedures, Action 14 has given the member states of the OECD Inclusive Framework³ a target of concluding their mutual agreement procedures in 24 months on average. To check that this ambitious target is pursued by the states, the rules concerning statistics on mutual agreement procedures were modified in 2016. The summary statistics which, up to 2015, were submitted to the OECD by the member states were replaced in 2016 by detailed statistics on the implementation of the mutual agreement procedures, published by the [OECD on its website](#).

The **new statistics specifications** were elaborated in the first half of 2016 and adopted in the summer of 2016. Amongst the numerous changes introduced compared to the statistics, which were published previously, the main ones are listed below:

- A distinction is now made between two types of cases involved: those that begin as from 1 January 2016 and for which detailed information must be provided and those that started before 1 January 2016 for which limited information is sufficient. This artificial distinction is due to the fact that it was considered that the member states in the OECD Inclusive Framework should not be obliged to supply detailed information on procedures which started before the new rules on statistics were even known and thus before the states could gather the detailed information needed for the statistics.
- Transfer pricing cases are disclosed separately from the other cases. This makes it possible to obtain detailed information specific to this type of mutual agreement procedure, which has been increasing in importance in recent years.
- 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.
- For Switzerland and numerous other countries, these rules have resulted in a significant and purely statistical increase in the number of cases recorded in the inventory (e.g. one case involving five companies from the same group will now be recorded as five separate cases in the new system).

All of the changes introduced in 2016 make it impossible to compare the statistics previously published by Switzerland and the other countries with the current statistics in accordance with the new standard. However, a comparison among countries of the OECD Inclusive Framework is now possible for 2016 and subsequent years.

² <https://www.sif.admin.ch/sif/en/home/bilateral/verstaendigungsverf.html>

³ <http://www.oecd.org/tax/beps/beps-about.htm>

2 Swiss statistics concerning mutual agreement procedures in accordance with the OECD standard

This chapter outlines some interesting points concerning the statistics supplied by Switzerland to the OECD.

At the end of May 2020, Switzerland completed the online tool made available by the OECD secretariat to collect statistical data for 2019.

The statistics required by the OECD in September 2020 are presented in the form of four tables, which do not take advance pricing agreements (APAs) into account.

- Table of cases started before 1 January 2016, *pre-2016 cases* (table 1).
- Table of cases started as from 1 January 2016, *post-2015 cases* (table 2).
- Table on the average time required to conclude procedures opened before 1 January 2016, *pre-2016 cases* (Table 3).
- Table on the average time required to conclude procedures opened as from 1 January 2016, *post-2015 cases* (Table 4).

These tables can be found in the annexes to this report. The key elements of these tables are as follows:

- The mutual agreement procedures which were initiated before 1 January 2016 ("pre-2016 cases") and which were completed in 2019 lasted on average 53.7 months (weighted average), i.e. 63.12 months for the mutual agreement procedures concerning transfer pricing and 50.86 months for the other types of mutual agreement procedures.
- The mutual agreement procedures which were initiated after 31 December 2015 ("post-2015 cases") and completed in 2019 lasted on average 14.94 months (weighted average), i.e. 17.29 months for mutual agreement procedures in transfer pricing and 13.87 months for other types of mutual agreement procedures.
- The total weighted average, taking into account the "pre-2016 cases" and "post-2015 cases", for both transfer pricing and other types of mutual agreement procedures is 21.40 months. This Swiss average is below the deadline of 24 months set by the OECD.

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.

3 Swiss statistics 2019 – selected questions

This chapter presents a selection of various Swiss statistics in greater detail.

3.1 Statistics on mutual agreements procedures concerning transfer pricing and APAs

A transfer pricing case (attribution/allocation MAP cases) 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).

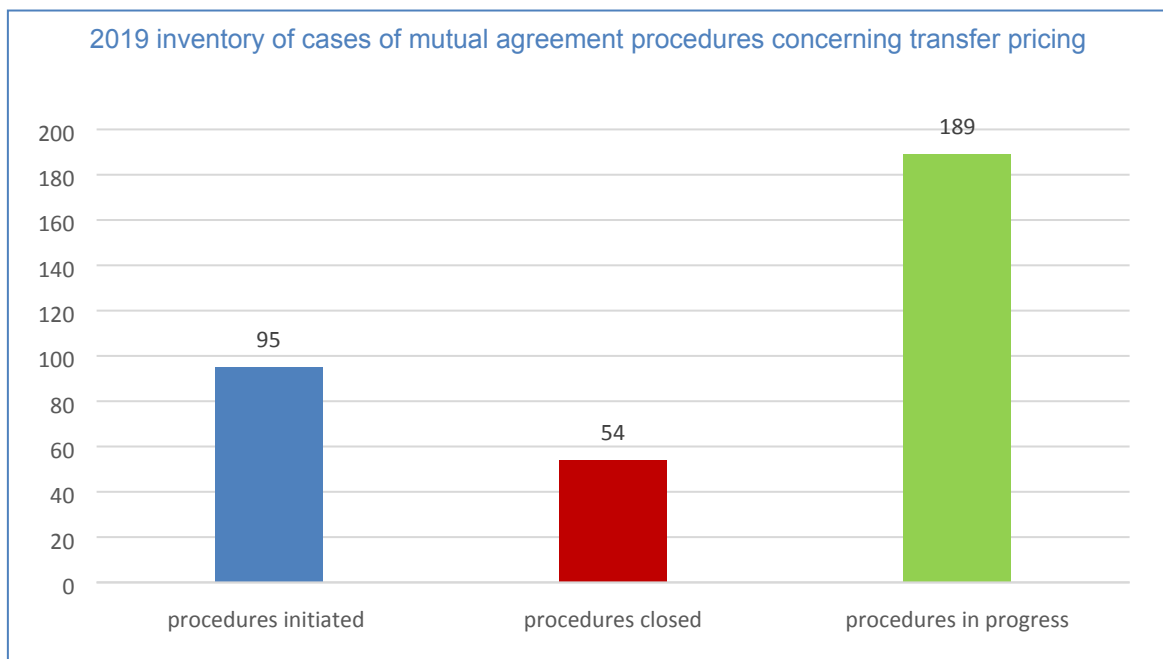
In transfer pricing cases, a distinction is made between:

- 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

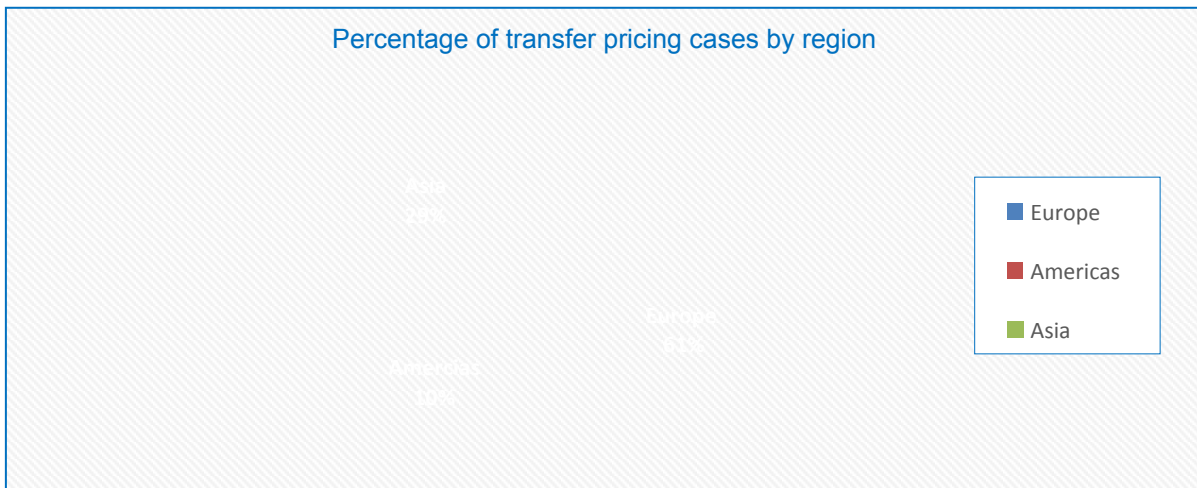
The aim of mutual agreement procedures concerning transfer pricing is to eliminate double taxation that has already occurred or to prevent imminent double taxation. These are the same procedures as those mentioned in the OECD statistics (attribution/allocation cases). However, no distinction is made here between cases initiated before or after 1 January 2016.

In 2019, 95 mutual agreement procedures concerning transfer pricing were initiated and 54 cases were closed, taking the inventory of cases under way as at 31 December 2019 to 189 cases.



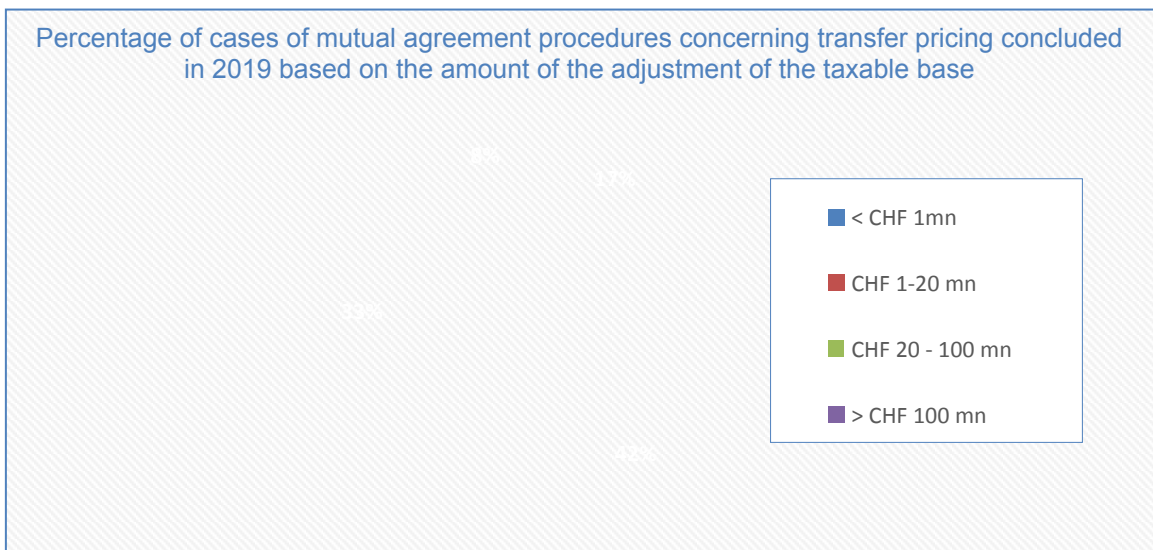
The duration of these procedures varies considerably from one case to the next. In certain cases closed in 2019, the duration is only a few weeks. On average, however, the mutual agreement procedures concerning transfer pricing cases closed in 2019 lasted 23.23 months.

The majority of cases in progress in 2019 concerned European partner countries (61 %), followed by Asian countries (29 %) and the American continent (10 %). Compared to the 2018 statistical report, there is an increase in cases for Asia, a stable trend in cases for Europe and a decrease in cases in America.



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 and thereby the amount of tax to be paid by 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, the first country will correct its initial adjustment and the second country will proceed with the corresponding adjustment to eliminate double taxation.

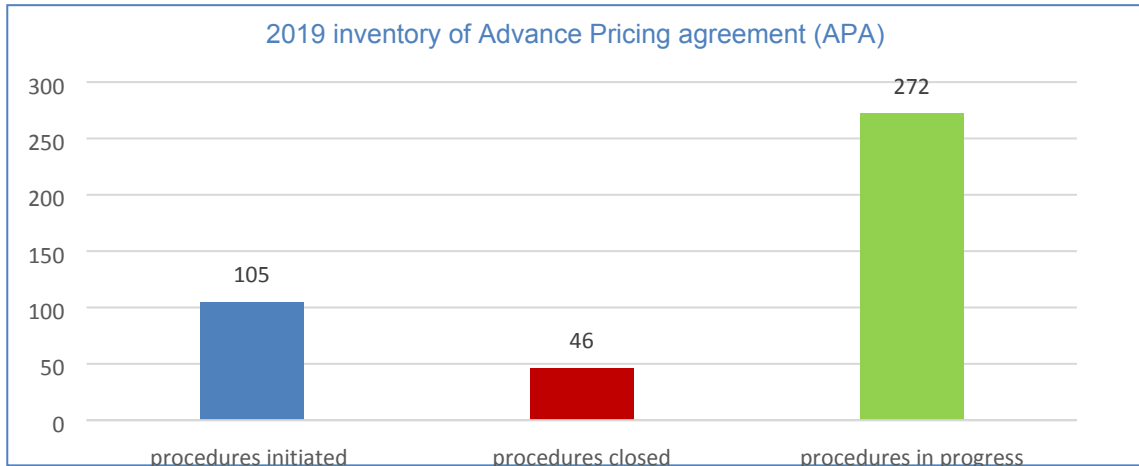
It is interesting to note that the amounts of the initial adjustments concerning cases closed in 2019 vary greatly from case to case but that the majority of the cases concern initial adjustments of the taxable base of less than CHF 20 million.



3.1.2 Statistics on advance pricing agreements (APAs)

APAs are 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 OECD statistics framework.

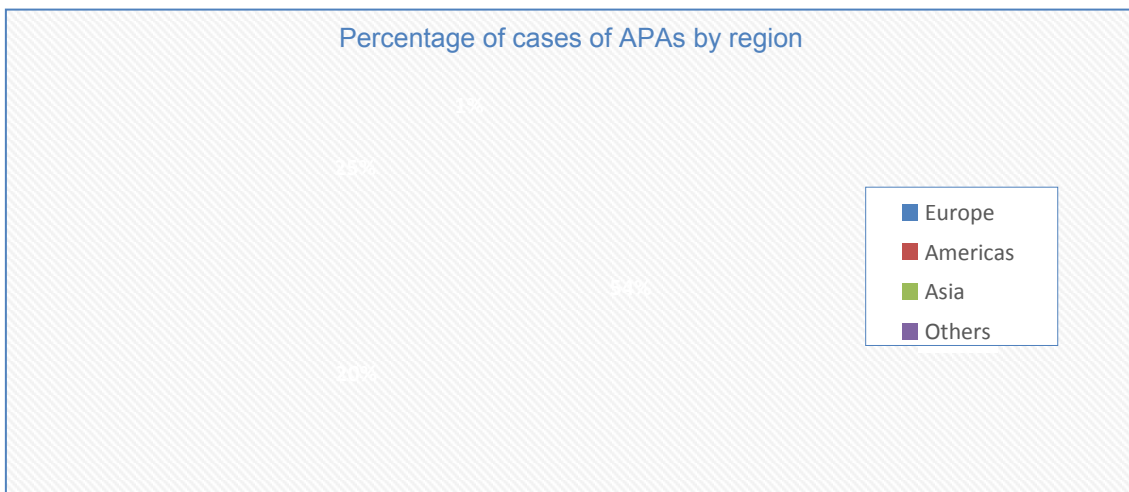
In 2019, 105 procedures were initiated and 46 procedures were closed, taking the inventory of cases in progress as at 31 December 2019 to 272. There is an increase in the number of cases compared to 2018.



The duration of APAs varies greatly from one case to another. In certain cases closed in 2019, the duration was as short as 1 month. On average, however, the mutual agreement procedures concerning APAs which were closed in 2019 lasted 21 months. In fact, this average has dropped from the 2018 statistic of 29 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.

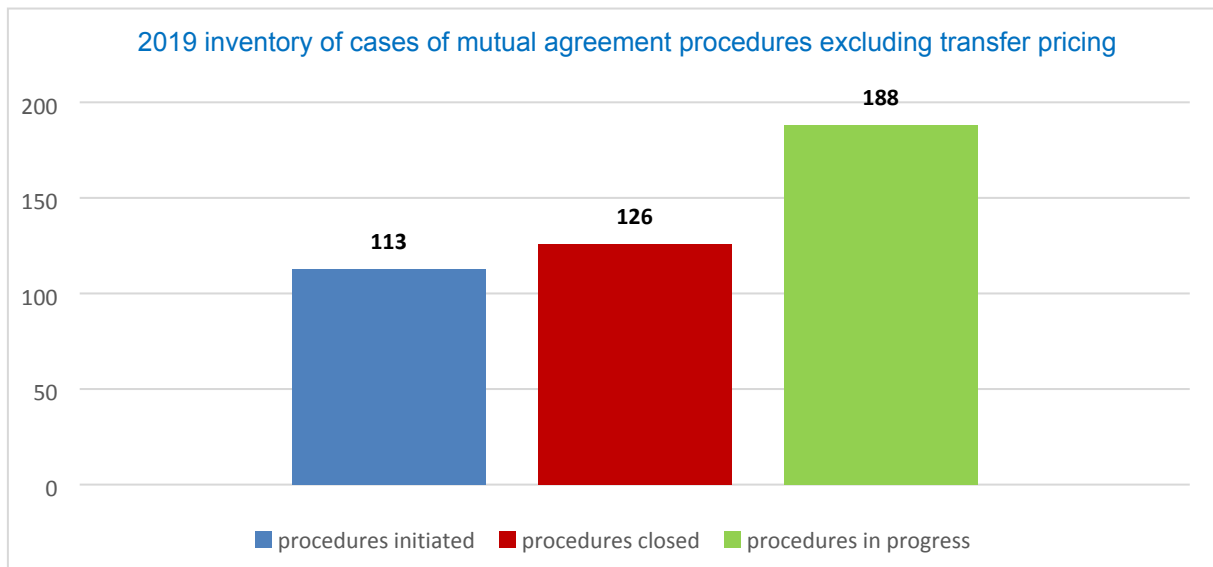
The majority of the APAs in progress in 2019 concern European partner countries. Asia is in second place here.



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 pricing⁴. 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 2019, 113 procedures were initiated and 126 procedures were closed, taking the inventory of cases in progress as at 31 December 2019 to 188.



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 2019, the duration was as short as 14 days. On average, however, the mutual agreement procedures excluding transfer pricing which were closed in 2019 lasted 20 months.

Almost all cases in progress in 2019 concern European partner countries (more than 90%).

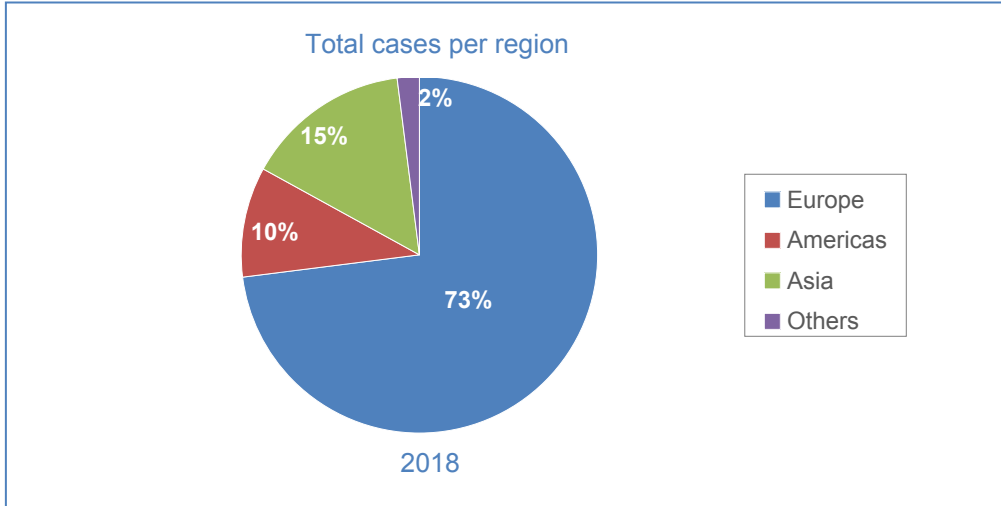
3.3 Total statistics

The total statistics below concern all of the mutual agreement procedures mentioned previously (including APAs).

In 2019, 303 cases were initiated and 226 cases were closed, taking the inventory of cases in progress to 649. On average, the mutual agreement procedures which were closed in 2019 lasted 22 months.

⁴ A transfer pricing case (attribution/allocation MAP cases) is one where the taxpayer's request for the mutual agreement procedure concerns 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).

Overall, the vast majority of the cases in progress as at 31 December 2019 concerned European partner countries.



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 where 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 in 2019 by resolving Swiss mutual agreement procedures (excluding APAs) in less than 24 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 2019 Statistics for Switzerland

Table 1

Cases started before 1 January 2016	Start inventory (01.01.2019)*	Cases started	Cases closed	End inventory
Transfer pricing cases	31	0	7	24
Other cases	50	0	23	27

Table 2

Cases started as from 1 January 2016	Start inventory	Cases started	Cases closed	End inventory
Transfer pricing cases	117	95	47	165
Other cases	151	113	103	161

Table 3

Cases started before 1 January 2016	Average time
Transfer pricing cases	63.12
Other cases	50.86

Table 4

Cases started as from 1 January 2016	Start to End	Receipt to Start	Start to Milestone	Milestone to End
Transfer pricing cases	17.29	1.05	13.24	8.21
Other cases	13.87	2.65	8.92	8.22