

Bond University

Revenue Law Journal

Volume 31 (2)

2026

The current state of treaty-based transfer pricing controversy in Australia

Simrata Nand
Bond University

Follow this and additional works at: <https://rlj.scholasticahq.com/>



© Copyright the authors.

This work is licensed under a [Creative Commons Attribution-NonCommercial-NoDerivative 4.0 International Licence](https://creativecommons.org/licenses/by-nc-nd/4.0/).

THE CURRENT STATE OF TREATY-BASED TRANSFER PRICING CONTROVERSY IN AUSTRALIA

SIMRATA NAND*

Transfer pricing controversy has been a continuing focus for revenue authorities, including the Australian Taxation Office (ATO), for many decades. Public messaging indicates that this will continue into 2026. Multinational enterprises engaging in business operations in Australia will need to carefully consider their transfer pricing obligations, especially in light of the ATO's increasing focus and experience in transfer pricing controversy. Where there is a relevant bilateral treaty in place, companies have access to the Mutual Agreement Procedure (MAP) and potentially also Advance Pricing Arrangements (APAs) to manage their transfer pricing affairs. This article discusses the recent developments regarding the treaty-based dispute resolution and dispute prevention mechanisms in Australia. For MAP, the decision in *Oracle*, as well as the newly revised Manual on Effective Mutual Agreement Procedures (MEMAP) improves taxpayer access to MAP in Australia. For APAs, the ATO concluded the final stage of its APA review with the update of PSLA 2015/4 in October 2025. The revisions formalise changes to APA program regarding the program scope, entry criteria, and case procedures.

ACKNOWLEDGMENTS

This article has been authored in honour of the late Professor Michelle Markham and her extensive scholarship in the field of international tax disputes.

All opinions presented in this paper are offered solely in the author's personal capacity as a PhD candidate and are in no way a reflection of the views of her employer, the Australian Taxation Office.

I. INTRODUCTION

Transfer pricing has historically been one of the most dispute-prone areas in international tax.¹ This article discusses the current state of transfer pricing disputes in Australia and the treaty-based options available for multinational enterprises in 2026, both for dispute resolution and dispute prevention.

The international tax concept of transfer pricing arises when controlled entities, such as those in the same multinational group, transact with each other.² Globally, tax authorities require these entities to price the transaction in accordance with the arm's-length principle, a standard which

* LLB(Hons), B.Com, GDLP, Bond University

¹ Organisation for Economic Co-operation and Development, OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Publishing, 2022), 173 [4.1] ('OECD Transfer Pricing Guidelines'); Anuschka Bakker and Marc M Levey (eds), *Transfer Pricing and Dispute Resolution* (IBFD, 2011), Chapter 1.

² OECD Transfer Pricing Guidelines (n 1) 29 [1.2].

essentially means that the controlled transaction should be priced as though it was between third parties.³ Determining arm's-length conditions is not an exact science; there is room for differences in interpretation, placing emphasis on different factors when undertaking the pricing analysis, and the final outcome can often be a range of pricing outcomes.⁴ These factors create an environment in which transfer pricing is a dispute-prone area for multinationals and revenue authorities alike.

In 2026, transfer pricing controversy appears to show no signs of slowing down. At a global level, the Organisation for Economic Co-operation and Development (OECD) reported that new transfer pricing Mutual Agreement Procedure⁵ (MAP) cases had increased by 29% in 2024.⁶ MAPs commonly stem from unilateral audit action in one country, so an increase in MAP cases indicates that transfer pricing audits are on the rise.⁷ A recent EY Tax Risk and Controversy Survey also found that:

Current tax controversy is largely being driven by more tax audits, more demands for information, more transfer pricing adjustments and better coordination between governments. Some 99% of respondents say they have at least one tax dispute ongoing, and 69% say they have between 11 and 99.⁸

In Australia, the Australian Taxation Office's (ATO) latest Findings Report – Public and Multinational Business Disputes and Outcomes reported that:

As of 1 July 2025, there were 127 audits in progress involving 96 different economic groups. Of these, 116 audits involve income tax issues. This reflects an increase of 16 audits in progress compared with the 2023–24 period.⁹

Another strong factor influencing the increasing controversy in this area is the dollars involved. In Australia, recent decisions such as *Singapore Telecom Australia Investments Pty Limited v Commissioner of Taxation* [2024] FCAFC 29 have revealed that almost \$900 million in interest deductions was in dispute relating to related party financing arrangements.¹⁰

³ Ibid 31 [1.6].

⁴ Ibid 32–33 [1.11]–[1.13].

⁵ The Mutual Agreement Procedure is a treaty-based dispute resolution mechanism, whereby entities may apply to request resolution of taxation not in accordance with a tax convention between countries. Organisation for Economic Co-operation and Development, Model Tax Convention on Income and on Capital 2017 (Full Version) (OECD Publishing, 2019), 68 ('OECD Model Tax Convention').

⁶ Organisation for Economic Co-operation and Development, Key Trends: 2024 MAP & APA Statistics (Report, OECD, 2025) <<https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/key-trends-2024-map-apa-statistics.pdf>>.

⁷ OECD Transfer Pricing Guidelines (n 1) 173 [4.2].

⁸ EY, 2025 Tax Risk and Controversy Survey (Web Page, 10 December 2025) <https://www.ey.com/en_us/insights/tax/tax-risk-and-controversy-survey>.

⁹ Note that these are audits on a range of tax issues not just transfer pricing. Australian Taxation Office, 'Findings Report – Public and Multinational Business Disputes and Outcomes' (Web Page, 8 November 2024) <<https://www.ato.gov.au/businesses-and-organisations/corporate-tax-measures-and-assurance/large-business/engaging-with-large-corporates-insights/findings-report-public-and-multinational-business-disputes-and-outcomes>> ('Public and Multinational Business Disputes and Outcomes').

¹⁰ [2024] FCAFC 29; Tom Baker, 'Singtel Loses A\$393m Australian TP Appeal', International Tax Review (Web Page, 13 March 2024) <<https://www.internationaltaxreview.com/article/2cyui02l2fn7p6w7rwcw8/transfer-pricing/singtel-loses-a-393m-australian-tp-appeal>>.

Despite the ATO's decade of multilateral compliance and assurance work since the inception of the Tax Avoidance Taskforce,¹¹ audits of public multinationals continue to be a focus for the ATO in 2026.¹² The next section addresses the treaty-based options available for taxpayers with transfer pricing issues in Australia.

II. THE MUTUAL AGREEMENT PROCEDURE (MAP)

MAP is the traditional dispute resolution pathway available in treaties that contain an equivalent to Article 25 of the OECD Model Tax Convention. Australia has 47 tax treaty partners, with all treaties including a MAP provision.¹³

Taxpayers can apply for MAP with treaty partner countries where they consider that the 'actions of one or both of the Contracting States result or will result for [them] in taxation not in accordance with the provisions of [the] Convention'.¹⁴ In practical terms for transfer pricing, this usually means that the taxpayer considers that they are facing economic double taxation resulting from the unilateral audit assessment in one of the partner countries.

If the MAP is valid, the Competent Authorities (CAs) from the partner countries 'shall endeavour to' unilaterally resolve the dispute in the first instance, or if unable to, then endeavour to 'resolve the case by mutual agreement with the competent authority of the other Contracting State'.¹⁵ Importantly, there is no obligation for the CAs to reach a solution. However, 20 treaties in Australia now contain a mandatory binding arbitration clause,¹⁶ whereby the taxpayer may seek independent resolution through an arbitration panel if the CAs are unable to seek resolution within a set number of years, usually two.¹⁷

Undoubtedly the biggest challenge with MAP is the time taken.¹⁸ The ATO's most recent statistics show an average of 36.11 months for transfer pricing MAP cases to be resolved.¹⁹ Compared to

¹¹ 'The Tax Avoidance Taskforce (taskforce) aims to prevent, detect and address tax avoidance to ensure the largest and wealthiest taxpayers pay the right amount of tax in Australia. Formed in 2016, it enhances and extends our existing activities to eradicate illegal and fraudulent tax arrangements.' Australian Taxation Office, 'Tax Avoidance Taskforce' (Web Page, 11 November 2025) <<https://www.ato.gov.au/about-ato/tax-avoidance/tax-avoidance-taskforce>>.

¹² Public and Multinational Business Disputes and Outcomes (n 9).

¹³ Australian Government – The Treasury, 'Income Tax Treaties', (Web Page) <<https://treasury.gov.au/tax-treaties/income-tax-treaties/>>.

¹⁴ OECD Model Tax Convention (n 5) art 25.

¹⁵ Ibid.

¹⁶ 17 as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting opened for signature 31 December 2016, [2017] ATS No 23 (entered into force 1 July 2018).

¹⁷ Australian Taxation Office, 'Mutual Agreement Procedure: Arbitration' (Web Page, 13 October 2024) <<https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/in-detail/doing-business-in-australia-or-overseas/mutual-agreement-procedure#ato-Arbitration>> ('Mutual Agreement Procedure: Arbitration').

¹⁸ Organisation for Economic Co-operation and Development, Manual on Effective Mutual Agreement Procedures (2026 Edition) (Report, Inclusive Framework on BEPS, OECD Publishing, Paris, 2 February 2026), 9 [14] ('MEMAP').

¹⁹ Organisation for Economic Co-operation and Development, Mutual Agreement Procedure Statistics: Australia (Report, 2024) 1 <<https://www.oecd.org/content/dam/oecd/en/topics/policy-issue-focus/map-statistics/map-statistics-australia.pdf>> ('Australian MAP Statistics').

OECD aggregate trends where transfer pricing cases globally took 30.9 months on average in 2024,²⁰ Australia's figures are placed higher than the OECD average. This may indicate that these cases are significantly complex or that Australia's MAP program is under-resourced.

The inclusion of mandatory binding arbitration in 20 treaties means that taxpayers are essentially guaranteed to get a resolution through MAP.²¹ This is one of the biggest changes to the MAP landscape in decades and addresses one of the central challenges to the historic MAP system. However, there are still 27 of Australia's tax treaties without an arbitration clause.²² For these countries in particular, MAP can be indefinite, as CAs do not have any obligation to resolve the case, merely to use best efforts to attempt resolution.²³ Further, even though arbitration has been available for six years in Australian treaties, the ATO has reported only one matter proceeding to arbitration.²⁴ This may indicate that treaties with an arbitration clause are having greater closure success rates than previously, as parties are not willing to progress to arbitration.

Despite its challenges, MAP remains a necessary part of the international tax system.²⁵ It has the ability to resolve double taxation in full, given both treaty partners are able to be involved in the dispute resolution process. In its most recent statistics, the ATO has reported 66% of transfer pricing cases being closed with double tax fully eliminated.²⁶

MAP can also be more cost-effective than litigation, as once the taxpayers prepare and lodge their MAP request, they are not significantly involved in the process.²⁷ Therefore, even if they are engaging advisors, they do not incur significant ongoing costs as they would in litigation. MAP is also a more private route than litigation, limiting brand and reputation damage for the company involved.

In 2026, access to MAP is stronger than ever for taxpayers in Australia following the Full Federal Court of Australia's decision in *Oracle Corporation Australia Pty Ltd v Commissioner of Taxation* [2025] FCAFC 145.²⁸ The substantive issues of the matter related to Oracle's intercompany software and hardware sublicensing agreements and the characterisation of the payments to be made under those

²⁰ Organisation for Economic Co-operation and Development, Mutual Agreement Procedure Statistics (Web Page, updated 2025) <<https://www.oecd.org/en/data/datasets/mutual-agreement-procedure-statistics.html>>.

²¹ Mutual Agreement Procedure: Arbitration (n 17); Michelle Markham, 'New Developments in Dispute Resolution in International Tax' (2017) 25(1) Revenue Law Journal 1, 19.

²² Mutual Agreement Procedure: Arbitration (n 17).

²³ Michelle Markham, 'The Timely Resolution of Mutual Agreement Procedure Disputes – Secrets of Success?' (2023) 77(5) Bulletin for International Taxation 213, 214 ('The Timely Resolution of Mutual Agreement Procedure Disputes'); Michelle Markham, 'Seeking New Directions in Dispute Resolution Mechanisms: Do We Need a Revised Mutual Agreement Procedure?' (2016) 70(1/2) Bulletin for International Taxation 82, 85; Michelle Markham, 'Litigation, Arbitration and Mediation in International Tax Disputes' (2018) 11(2) Contemporary Asia Arbitration Journal 277, 280.

²⁴ Public and Multinational Business Disputes and Outcomes (n 9).

²⁵ Markham, The Timely Resolution of Mutual Agreement Procedure Disputes (n 23) 213, 213.

²⁶ Australian MAP Statistics (n 19) 5.

²⁷ Australian Taxation Office, 'Mutual Agreement Procedure' (Web Page, 13 October 2024) <<https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/in-detail/doing-business-in-australia-or-overseas/mutual-agreement-procedure>>.

²⁸ [2025] FCAFC 145 ('Oracle on appeal').

agreements.²⁹ These substantive issues were at the centre of an ATO audit concluded in 2018.³⁰ Following the audit, the taxpayer filed a notice of objection against the Commissioner's penalty notice in 2020.³¹ Then in 2021, the taxpayer requested these issues be resolved under the MAP with respect to the Australia/Ireland treaty.³² There was a second audit commenced for future years relating to the same intercompany arrangement.³³ That second audit was finalised in 2022 and later accepted as a separate MAP.³⁴ In 2023, the Commissioner disallowed Oracle's objections in full for all income years that were audited.³⁵ Following the disallowed objection, the taxpayer had 60 days to commence litigation proceedings or otherwise lose their rights to domestic resolution.³⁶

To preserve the statutory timeframes, the taxpayer filed for litigation and then immediately sought a stay of proceedings.³⁷ This was the subject of the original Federal Court decision in *Oracle Corporation Australia Pty Ltd v FCT* [2024] FCA 1262.³⁸ In that primary decision, Perram J dismissed the stay on the basis that the characterisation issue was one of public and international interest and required judicial clarification.³⁹ This was in relation to the evidence posited by the ATO that there were 15 similar matters within the office hinging on judicial clarification,⁴⁰ as well as an ongoing discussion with international treaty partners, such as the US,⁴¹ regarding the interpretation of royalty characterisation. Given that MAP is not a binding process, although it may help resolve the double tax in dispute with regard to Oracle, it would not help provide interpretive assistance in the same manner as legal precedent.⁴²

Perram J noted for completeness that it is generally the taxpayer's choice as to which resolution path to proceed with, and also that the terms of the treaty show that typically where a taxpayer has been forced to commence domestic proceedings, such proceedings should be stayed to allow the MAP to run its course if that is the taxpayer's preference.⁴³ Perram J went so far as to say that he would have granted the stay had the public interest in royalty interpretative issues not have been a significant factor.⁴⁴

One year later, the primary decision was overturned by the Full Court of the Federal Court of Australia (FCAFC).⁴⁵ This allowed litigation proceedings to be stayed until the related MAP had run its course. The FCAFC overturned the primary decision on the basis that the substantive dispute to be heard regarding payment of royalties was too fact-specific to the taxpayer's intercompany agreements, and therefore any Australian litigated outcome would not effectively set

²⁹ Ibid [3].

³⁰ [2024] FCA 1262, 2-3 [9] ("Oracle").

³¹ Oracle (n 30) 2-3 [9].

³² Ibid 3 [11].

³³ Ibid 3 [20].

³⁴ Ibid 3 [20].

³⁵ Ibid 3 [12].

³⁶ Oracle (n 30) [14].

³⁷ Ibid.

³⁸ Oracle (n 30).

³⁹ Ibid 23-24 [82]-[86].

⁴⁰ Oracle (n 30) 17 [62].

⁴¹ Ibid 17 [63].

⁴² Ibid 24 [86].

⁴³ Ibid 23 [82].

⁴⁴ Ibid 24 [85].

⁴⁵ Oracle on appeal (n 28) 22 [63].

a precedent for other software-related disputes,⁴⁶ or the ongoing US diplomatic disagreement regarding the interpretation of royalty provisions.⁴⁷ The Court also confirmed that although MAPs and domestic resolution pathways should not run concurrently, the taxpayer should have the right to choose (as contemplated by the OECD's Model Tax Convention, the Australia/Ireland tax treaty, and the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting).⁴⁸ The ATO cannot compel a taxpayer to abandon one of the two options.⁴⁹

The findings in the *Oracle* decision align with the OECD's guidance on MAP. In February 2026, the OECD issued the revised Manual on Effective Mutual Agreement Procedures (MEMAP).⁵⁰ The manual builds on the 2007 original document, updating it to list a total of 59 non-binding best practices from over 50 CAs and 10 business representatives globally.⁵¹ The best practices range all the way from access to MAP, to MAP procedure, and MAP administration.

Coming into 2026, taxpayers in Australia have galvanised their rights to access MAP as a result of the new MEMAP and recent *Oracle* decision. MAP continues to have a strong success rate in resolving double taxation, especially where an arbitration clause is present. However, taxpayers must be prepared to wait at least three years for resolution. Australia's average transfer pricing MAP resolution times remain above the OECD's recommended 24-month target for cases, as well as the global average for concluding transfer pricing MAPs. Although improvements could be made to transfer pricing MAP timeframes in Australia, taxpayers should keep in mind that MAP is typically still quicker than litigation.

Based on the most current publicly available statistics, the ATO received 14 new MAP requests for transfer pricing and closed 18 cases in the 2024 calendar year.⁵² Given the *Oracle* decision and the continuing focus on transfer pricing audits in the ATO, it is likely that at least a similar, if not an increasing, number of transfer pricing MAP cases will be seen in the future in Australia.

III. ADVANCE PRICING ARRANGEMENTS (APAs)

Given the historic challenges with MAP and the often-preceding audit process, dispute prevention strategies are becoming increasingly popular with taxpayers. The longest standing dispute prevention product for transfer pricing disputes with the ATO is the Advance Pricing Arrangement (APA) Program. The ATO is one of the global leaders with regard to administering APAs, establishing its program in the 1990s.⁵³ APAs allow taxpayers and either one or more revenue authorities to prospectively agree on the transfer pricing for covered transactions for a set period of time.⁵⁴

⁴⁶ Oracle on appeal (n 28) 26 [84]-[85].

⁴⁷ Ibid 29 [89].

⁴⁸ Ibid 21 [58].

⁴⁹ Ibid 33 [104].

⁵⁰ MEMAP (n 18).

⁵¹ Ibid 3.

⁵² Australian MAP Statistics (n 19) 1.

⁵³ Michelle Markham, *Advance Pricing Agreements: Past, Present and Future* (Wolters Kluwer Law & Business: Kluwer Law International, 2012) 7, 24.

⁵⁴ OECD Transfer Pricing Guidelines (n 1) 19.

Taxpayers can apply for unilateral APAs with the ATO under the Law Administration Practice Statement 2015/4 (PSLA 2015/4)⁵⁵ and the Commissioner's general powers of administration.⁵⁶ However, to seek a bilateral or multilateral APA, Australia must have a tax treaty with the counterparty countries and the equivalent of Article 25(3) of the OECD Model Tax Convention in each of the treaties.⁵⁷

Broadly, the APA process involves the taxpayer sharing information about the covered transactions and their business, and then engaging in regular discussions with the ATO to endeavour to reach resolution regarding the conditions of the transactions.⁵⁸ For bilateral and multilateral APAs, the CAs of the involved countries negotiate the conditions between them and present the outcome to the taxpayer.⁵⁹ Where agreement cannot be reached, parties may decide to withdraw from the process.⁶⁰ If agreement is reached, the taxpayer will lodge an annual report with the ATO to confirm compliance with the terms of the APA.⁶¹

APAs are highly valued for the degree of certainty they provide both revenue authorities and taxpayers.⁶² They are administratively binding and actively protect taxpayers from audit activity on any transactions covered by the APA, provided that the terms of the agreement are met.⁶³ This also allows tax administrations to divert their resources to other matters, reducing the potential review and audit pool.

However, APAs are repeatedly called out for taking too long to conclude.⁶⁴ The OECD recently published non-binding timeframe guidelines for APAs to take 30 months, or 24 months for experienced jurisdictions.⁶⁵ In contrast, the average bilateral APA takes 41.31 months in Australia.⁶⁶ Unilateral APAs are also taking 22.98 months on average.⁶⁷ The ATO has reported that longer cycle times in recent years are due to older cases being finalised and driving up the averages.⁶⁸ Complexity is also increasing in cases, both with substantive transfer pricing issues and collateral issues.⁶⁹

⁵⁵ Australian Taxation Office, Law Administration Practice Statement 2015/4: Advance Pricing Arrangements, PSLA 2015/4, 23 July 2015, updated 29 October 2025 ('PSLA 2015/4').

⁵⁶ *Ibid* [20].

⁵⁷ *Ibid* [20].

⁵⁸ *Ibid* [10]–[11].

⁵⁹ PSLA 2015/4 (n 55) [11R].

⁶⁰ *Ibid* [11].

⁶¹ *Ibid* [12].

⁶² Australian Taxation Office, 'Findings Report – APA Program Review' (Web Page) <<https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/in-detail/pricing/findings-report-apa-program-review>> ('APA Program Review Findings Report').

⁶³ PSLA 2015/4 (n 55) [4].

⁶⁴ OECD (2022), *Bilateral Advance Pricing Arrangement Manual*, OECD Publishing, Paris, 17, 26–28 <<https://doi.org/10.1787/4aa570e1-en>>.

⁶⁵ *Ibid* 28.

⁶⁶ Australian Taxation Office, 'Public and Multinational Business Tax Certainty Programs' (Web Page) Public and multinational business tax certainty programs | Australian Taxation Office> ('Public and Multinational Business Tax Certainty Programs').

⁶⁷ *Ibid*.

⁶⁸ *Ibid*.

⁶⁹ *Ibid*.

The author notes that the ATO's cycle times are 'calculated as the average number of months taken between when a taxpayer lodges their formal application (post-acceptance) to when the APA is signed',⁷⁰ meaning that early engagement is in addition to the timeframes reported. Therefore, bilateral APAs are likely to take even longer than the reported 41 months to conclude in totality. On balance, it may appear that APAs take longer to reach a resolution than MAPs; however, that does not take into account the number of years that an audit can take prior to the MAP being initiated. Further, APAs have the added advantage of being able to be renewed, which, on average take less time to conclude than the original APA. This results in the APA process often being more resource intensive upfront, but with a potential for longer coverage through renewals. Finally, despite being largely a prospective process, APAs can provide certainty on back years through rollbacks too.

To ensure the program remains contemporary and congruent with modern tax practices, the ATO recently embarked on a review of the APA program. The recommendations were released in 2023⁷¹ and were finalised in 2025 through an updated PSLA 2015/4. As part of the review, taxpayers and advisors were consulted, with their feedback being addressed in the final recommendations.⁷² The review recommendations focussed on improvements to ATO processes, including 'a re-focused scope, better defined entry criteria, approach to collateral issues, and other practical improvements to governance processes.'⁷³

Since the review recommendations were published in 2023, the ATO's APA program has seen a decrease in APAs in place from 161 to 156.⁷⁴ This is largely attributed to the decline in unilateral APAs,⁷⁵ with bilateral APAs increasing from 94 to 100 across the same period.⁷⁶ This development aligns with the ATO's overall direction to encourage taxpayers away from unilateral APAs.⁷⁷ The author notes that BEPS Action 5 also discourages the use of unilateral APAs through increased disclosure requirements.⁷⁸ Taxpayers considering applying for APAs need to be mindful of the redefined entry criteria, as well as new collateral issue resolution processes. It appears that unilateral APAs will be increasingly unlikely, and taxpayers will need to meet the materiality thresholds as well as demonstrate the likelihood of double tax without an APA when applying. They must also demonstrate a positive track record with their Australian tax obligations. Finally, they must be prepared to invest the time and resources required for an APA, as the process will still take some years to conclude.

⁷⁰ Ibid.

⁷¹ APA Program Review Findings Report (n 62).

⁷² Ibid.

⁷³ Public and Multinational Business Tax Certainty Programs (n 66).

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Public and Multinational Business Tax Certainty Programs (n 66); APA Program Review Findings Report (n 62); Michelle Markham, 'Are Advance Pricing Agreements Experiencing a Renaissance as a Dispute Resolution Mechanism in the Era Following the OECD/G20's Base Erosion and Profit Shifting Initiative?' (2020) 74(1) *Bulletin for International Taxation* 2, 6.

⁷⁸ OECD, *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance*, Action 5: Final Report 2015.

IV. CONCLUSION

With transfer pricing squarely in focus for the ATO in 2026, taxpayers need to be prepared with their dispute resolution strategy. Taxpayers will need to choose whether to prepare for the audit, defence, and MAP strategy, or proactively engage with the ATO in the APA program.

Both the MAP and APAs are time intensive. More time is required to see how the recommendations from the APA review and the revised MEMAP impact case timeframes in practice. Some taxpayers may consider that APAs are more resource intensive overall than MAPs, but that view fails to factor in the resources spent on the precursor audit to the MAP.

With the reinforced access to MAP as a result of the recent *Oracle* decision and inclusion of arbitration in some tax treaties, MAP has become a more attractive option than in previous years. However, in the author's view, cooperative, proactive engagement is often the better option than an adversarial audit and eventual MAP, and it is the only option that provides taxpayers with prospective tax certainty. Given the redefined entry criteria for Australia's APA program, APAs may be more difficult to obtain for some taxpayers in present times. However, the author still considers it a worthwhile pathway for eligible entities.