

Bond University

Revenue Law Journal

Volume 31 (2)

2026

Did the World Listen: Honouring Michelle Markham's Prescient Analysis of OECD Dispute Prevention and Resolution

Kerrie Sadiq

Faculty of Business and Law, Queensland University of Technology

Michael D'Ascenzo

Former Commissioner of Taxation, Australia (2006–12)

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/).

DID THE WORLD LISTEN: HONOURING MICHELLE MARKHAM'S PRESCIENT ANALYSIS OF OECD DISPUTE PREVENTION AND RESOLUTION[∞]

KERRIE SADIQ* AND MICHAEL D'ASCENZO AO†

This article honours the scholarly legacy of Professor Michelle Markham by revisiting two of her final contributions to international tax law: her 2022 analysis of the OECD Bilateral Advance Pricing Arrangement Manual ('BAPAM') and her 2024 examination of multilateral dispute resolution processes. In this retrospective tribute, we assess whether the data from 2023–25 support Michelle's insights and predictions. The evidence confirms her prescience. BAPA completion times have decreased across several major jurisdictions, consistent with the 30-month benchmark she evaluated and the aspirational reduction to 24 months that she endorsed. Arguably, soft law has proven effective through peer pressure, benchmarking, and the gradual incorporation of OECD guidance into domestic legal frameworks, validating her scholarly engagement with non-binding instruments. Multilateral arrangements are increasing, as she anticipated, reflecting a shift from bilateral to multilateral solutions. This article honours Michelle's intellectual legacy by extending her analysis to assess subsequent developments and contributes to ongoing debates about the effectiveness of soft-law instruments in international tax governance.

I. INTRODUCTION

In November 2022 and January 2024, respectively, Professor Michelle Markham published in *Tax Notes International*, as part of a series entitled 'Markham on Managing Disputes', what would be two of her final scholarly contributions to international tax law. The first article, 'Advancing Tax Certainty: The New OECD Bilateral APA Manual',¹ examined the newly released *OECD Bilateral Advance Pricing Arrangement Manual* ('BAPAM'), offering analysis and practical insight that characterised Michelle's work on transfer pricing. That article specifically focused on the global standing of the BAPAM and its alignment with other OECD documentation and investigated the key recommendations and their relevance in the global context. The second article, entitled 'The

[∞] The authors are grateful for the opportunity to honour Professor Michelle Markham's legacy through this tribute article. Michelle was a cherished colleague and friend whose intellectual rigour and generous spirit continue to inspire the international tax community. (In preparing this article, the authors used AI-assisted writing tools such as Grammarly to support drafting and language editing. All substantive analysis, arguments, factual content, citations and conclusions were developed and verified by the authors. The authors take full responsibility for the integrity of the work.)

* Professor of Taxation and ARC Future Fellow, Queensland University of Technology.

† Former Commissioner of Taxation, Australia (2006–12).

¹ Michelle Markham, 'Advancing Tax Certainty: The New OECD Bilateral APA Manual' (2022) 108 *Tax Notes International* 1101 ('Advancing Tax Certainty').

Quest for Tax Certainty: Improving Multilateral Dispute Resolution’,² examined the methods countries use to enhance tax certainty and explored developments in multilateral avenues for resolving international disputes. Again, Michelle brought the analytical rigour and insights for which she was so well known to the topic at hand. Together, these twin articles, published within 14 months and representing Michelle’s scholarly legacy, chart an evolution from bilateral frameworks to multilateral solutions for international tax disputes.

This article focuses primarily on Michelle’s 2022 bilateral APA article, as sufficient time has elapsed to assess its predictions. Michelle’s 2022 analysis of the BAPAM was timely. Writing just two months after the OECD published its manual in September 2022, she recognised its potential significance while maintaining appropriate scholarly scepticism about its non-binding nature. Her article posed several fundamental questions. Would countries implement these best practices? Would completion times decrease? Would the ‘soft law’ approach prove effective? This article draws on Michelle’s 2022 analysis to consider those questions, examining data from 2023–25 to determine whether the international community heeded her insights and the OECD’s recommendations.

We also examine her 2024 multilateral article, though the shorter time since its publication means evidence of developments remains preliminary. As we write this tribute in 2026, Michelle’s absence from the international tax community is deeply felt. However, her scholarship continues to inform policy development. This current article serves two purposes. First, it honours Michelle’s intellectual legacy by extending her analysis to evaluate subsequent developments. Second, it assesses the real-world impact of bilateral and multilateral international tax dispute prevention and resolution, contributing to ongoing debates about the effectiveness of soft law instruments in international tax governance. In doing so, it attempts, where possible, to answer the question ‘Was Michelle right?’

II. 2022 ANALYSIS OF THE BAPAM

The effectiveness of advance pricing arrangements (‘APAs’) was often a focus of Michelle’s work. These agreements are between a taxpayer and one or more tax authorities and determine, in advance, the appropriate transfer pricing methodology to be applied to specified related party transactions over a fixed period. Multinational enterprises must price transactions between their related entities (eg loans, royalties, goods, services) on arm’s length terms. Because transfer pricing involves significant judgment, there is inherent uncertainty about whether the chosen methodology and price will be accepted by tax authorities. An APA substantially reduces that uncertainty prospectively, with a bilateral agreement providing even greater certainty. The BAPAM,³ which is the subject of Michelle’s 2022 article, sets out 29 best practices for competent authorities and taxpayers engaging in BAPAs. It was the result of a collaborative process involving 22 jurisdictions and survey responses from both taxpayers and competent authorities, who overwhelmingly endorsed BAPAs as the preferred dispute-prevention process, noted as being valued for their voluntary, collaborative nature and capacity to reduce double taxation.⁴ The Manual is expressly non-binding and is subordinate to the OECD *Model Tax Convention* (‘OECD Model’), the Transfer

² Michelle Markham, ‘The Quest for Tax Certainty: Improving Multilateral Dispute Resolution’ (2024) 113 *Tax Notes International* 525 (‘The Quest for Tax Certainty’).

³ OECD Forum on Tax Administration, *Bilateral Advance Pricing Arrangement Manual* (OECD, 2022) (‘BAPAM’).

⁴ *Ibid* 17; Markham ‘Advancing Tax Certainty’ (n 1) 1102.

Pricing Guidelines, and the Action 14 Final Report in the hierarchy of OECD instruments. Michelle contextualised her work within the broader understanding of soft law, noting that non-binding OECD standards frequently acquire de facto compliance through peer review and incorporation into domestic frameworks.⁵ Her 2022 article examined the BAPAM from several aspects: its standing within the OECD's hierarchy of guidance documents, its potential influence despite its non-binding status, and its specific recommendations for improving BAPA processes.

Regarding process improvement, the article highlighted several key best practices. Best Practice 5 introduced, for the first time, a 30-month benchmark for signing a BAPA, with an aspirational reduction to 24 months, consistent with the Action 14 Mutual Agreement Procedure ('MAP') standard. Michelle highlighted completion statistics across multiple jurisdictions and found that even 30 months was challenging for most. Best Practice 6 recommended a minimum BAPA term of five years, and Best Practice 7 addressed adequate resourcing and staff training. The article also covered the detailed stages of the BAPA process (from pre-filing through to ongoing monitoring), the interaction between BAPAs and audits, rollback provisions, renewal procedures under Best Practice 29 and the contentious question of fees. Michelle noted the Manual's timely arrival, given that major APA programs, including those in Australia, Canada and the United States, were already under active review at the time of publication.⁶

A. *Hierarchy and Soft Law*

One of Michelle's most insightful observations concerned the BAPAM's status as 'soft law'. She noted the OECD's explicit disclaimer that the manual 'does not, and is not intended to, modify, restrict or expand any rights or obligations contained in the provision of any tax convention'.⁷ Yet she also recognised the power of OECD soft law instruments, quoting former OECD Secretary-General Angel Gurría, when he stated 'Standards do not have to be binding in order to be effective or useful. Many of our standards are "soft law", but they effectively become binding through peer reviews or through their incorporation into other norms, thus giving them a global reach'.⁸

Michelle, drawing on Abbott and Snidal, observed that softer forms of legalisation might actually offer superior institutional solutions when dealing with states 'jealous of their autonomy' and issues that 'challenge state sovereignty'.⁹ This theoretical framework proved particularly apt for BAPAs, in which flexibility enables jurisdictions to adapt commitments to their circumstances while achieving compromise over time. Her analysis suggested that the manual's non-binding nature might paradoxically enhance its effectiveness by allowing countries to learn and adapt rather than face rigid mandates they might resist or ignore.¹⁰ Despite lacking legal force, the BAPAM has arguably influenced jurisdictional practice, with some major jurisdictions revising their guidance, completion times showing promise of narrowing toward OECD benchmarks, regional coordination increasing, and the manual becoming a recognised reference point for practitioners

⁵ Markham 'Advancing Tax Certainty' (n 1) 1103.

⁶ Ibid 1111–12.

⁷ Ibid 1102.

⁸ Ibid 1103, quoting Angel Gurría, 'Plenary Keynote: A Conversation with Angel Gurría' (Speech, Annual Meeting of the American Society of International Law, 25 March 2011).

⁹ Markham 'Advancing Tax Certainty' (n 1) 1103; Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54(3) International Organization 421.

¹⁰ Markham 'Advancing Tax Certainty' (n 1) 1103; Kenneth W Abbott and Duncan Snidal, 'Hard and Soft Law in International Governance' (2000) 54(3) International Organization 421, 421.

and policymakers.¹¹ Rigid mandates might have prompted resistance, whereas the soft law approach encouraged genuine engagement. Michelle's core claim that BAPAM's non-binding nature thereby acting as soft law, has, in this sense, been correct.

B. Completion Time

Perhaps Michelle's most concrete focus was on Best Practice 5's ambitious timeline recommendations. The OECD proposed that jurisdictions and taxpayers should aim for BAPA agreements to be signed within 30 months from receipt of a complete application, with a further aspiration to reduce this to 24 months once jurisdictions had streamlined their processes.¹² Michelle noted that this represented 'the first time in its history that the OECD has set a benchmark for the signing of a BAPA'.¹³ She then provided a sobering empirical context. In 2021, the United States averaged 52.3 months for new BAPAs; Canada averaged 36.9 months (2020) and 49.4 months (2021); Australia averaged 50.26 months; and the United Kingdom averaged 55.5 months.¹⁴ Michelle observed that 'completion times appear to exceed 30 months even in good years',¹⁵ making the OECD's benchmarks clearly aspirational. Yet Michelle recognised the value of setting such benchmarks. She emphasised that this recommendation brought 'welcome uniformity in the OECD's approach to the time taken to prevent or resolve an international tax dispute',¹⁶ aligning BAPA timelines with the 24-month average for MAP cases under Action 14.

OECD and country data reveal progress in major jurisdictions, though with important variations. Improvements occurred in the United States in 2024, but these were somewhat reversed in 2025. The median completion time for all APAs decreased from 42.0 months in 2023 to 33.5 months in 2024, representing a reduction of more than eight months and approaching the OECD's aspirational 30-month benchmark; however, it increased again to 41.6 months in 2025.¹⁷ Specifically for bilateral APAs, the median time decreased from 42.6 months in 2023 to 34.8 months in 2024, but in 2025 rose to 41.8 months.¹⁸ New APAs initially showed similar improvement, with average completion times falling from 49.4 months in 2023 to 45.3 months in 2024, rising again to 49.8 months in 2025.¹⁹ These improvements correlate with increased staffing

¹¹ OECD, 'Tax Certainty: OECD Releases New Statistics on Tax Disputes, Showing Positive Outcomes But with Challenges Remaining' (OECD, 31 October 2025) <https://www.oecd.org/en/about/news/announcements/2025/10/tax-certainty-oecd-releases-new-statistics-on-tax-disputes-showing-positive-outcomes-but-with-challenges-remaining.html>. ('OECD Tax Certainty 31 October 2025').

¹² BAPAM (n 3) 28.

¹³ Markham 'Advancing Tax Certainty' (n 1) 1105.

¹⁴ Ibid 1105-06; Canada Revenue Agency, *Advance Pricing Arrangement Program Report 2024* (Report, 2025) ('Canada Revenue Agency Report 2025').

¹⁵ Markham 'Advancing Tax Certainty' (n 1) 1106.

¹⁶ Ibid 1105.

¹⁷ Internal Revenue Service, *Announcement 2025-13: Announcement and Report Concerning Advance Pricing Agreements* (APMA Report No 26, 27 March 2025); Internal Revenue Service, *Announcement 2026-8: Announcement and Report Concerning Advance Pricing Agreements* (APMA Report No 27, 30 March 2026) ('Announcement 2026-8').

¹⁸ Amanda Worcester Martin, Wenham Shen and Christine Kim, 'IRS's Successful APA Program Faces New Obstacles, Opportunities', *Bloomberg Tax* (online, 23 April 2025) <https://news.bloombergtax.com/tax-insights-and-commentary/irss-successful-apa-program-faces-new-obstacles-opportunities> ('Martin, Shen and Kim'); *Announcement 2026-8* (n 17).

¹⁹ 'IRS's Annual Report Shows Significant Decrease in Time to Complete APAs', BDO (Article, 2 April 2025) < <https://www.bdo.com/insights/tax/irs-annual-report-shows-significant-decrease-in-time-to-complete-apas> > ('BDO Article on IRS Annual Report 2 April 2025'); *Announcement 2026-8* (n 17).

in the Advance Pricing and Mutual Agreement (APMA) Program, which grew from 114 personnel in 2023 to 126 in 2024, then declined to 108 in 2025.²⁰ Commentary from practitioners attributes the success in 2024 to both increased resources and APMA's concerted efforts to improve efficiency, such as by working closely with taxpayers to better negotiate and finalise cases.²¹

Canada also demonstrated improvement. The average completion time for bilateral APAs in 2024 was 40.8 months, down from 49.4 months in 2021, itself potentially a COVID-influenced spike. This improvement is consistent with the improvement Michelle identified, with the 2024 figure also representing marked progress from the 51.1-month peak Michelle cited for 2019,²² driven that year by the closure of several long-pending cases. The trend from 2022 to 2024 (37.0, 38.9 and 40.8, respectively) shows a slight upward drift; however, it indicates that Canada has not yet fully stabilised below the OECD's 30-month benchmark.²³ Australia, however, achieved perhaps the most impressive results. For 2021–22, the average time for completed cases was approximately 25 months for both unilateral and bilateral APAs,²⁴ which is well below the OECD's 30-month target and a remarkable improvement from the 50.26 months Michelle reported for 2020–21. Australia's success is arguably linked to its APA program review in January 2022,²⁵ which Michelle noted in her original article. The UK presents a more mixed picture. While average completion times improved from 58.3 months in 2021–22 to 45.5 months in 2022–23,²⁶ they remained substantially above His Majesty's Revenue and Customs's own 30-month target. However, demand for APAs remained strong, with 45 new applications in 2023–24, the joint-highest on record.²⁷

Michelle's prediction that the benchmarks were 'aspirational for many jurisdictions' proved accurate.²⁸ However, the direction of change supports the BAPAM's impact. Completion times have decreased significantly in major jurisdictions and the 24–30-month benchmarks have become meaningful targets even where not yet achieved.

The most recent global data, released by the OECD on 31 October 2025 as part of its 7th Tax Certainty Day, supports the trend Michelle identified.²⁹ The 2024 MAP statistics, covering 141 jurisdictions, show that the average MAP resolution time remained broadly stable at 27.4 months (compared to 27.3 months in 2023).³⁰ Transfer pricing cases improved slightly to 30.9 months

²⁰ BDO Article on IRS Annual Report 2 April 2025 (n 19); Announcement 2026-8 (n 17).

²¹ Martin, Shen and Kim (n 18).

²² The Canada Revenue Agency cautions in every annual report that small case numbers create high volatility. In 2019, three of the 11 cases took more than 80 months, significantly distorting that year's average.

²³ Canada Revenue Agency Report 2025 (n 14).

²⁴ 'APA and MAP Statistics', Australian Taxation Office (Web Page, 27 July 2023) <<https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/in-detail/pricing/advance-pricing-arrangements/apa-and-map-statistics>>.

²⁵ Markham 'Advancing Tax Certainty' (n 1) 1111.

²⁶ Jason Collins et al, 'Insight into HMRC's Latest Transfer Pricing and Diverted Profits Tax Statistics', DLA Piper (Insight, 8 February 2024) <<https://www.dlapiper.com/en-au/insights/publications/2024/02/insight-into-hmrcs-latest-transfer-pricing-and-diverted-profits-tax-statistics-covering>>.

²⁷ Randall Fox et al, 'Key Insights from HMRC's 2023–2024 Transfer Pricing and Diverted Profits Tax Statistics', DLA Piper (Insight, 4 February 2025) <https://www.dlapiper.com/en-au/insights/publications/2025/01/key-insights-from-hmrcs-2023-2024-transfer-pricing-and-diverted-profits-tax-statistics>.

²⁸ Markham 'Advancing Tax Certainty' (n 1) 1107.

²⁹ OECD Tax Certainty 31 October 2025 (n 11)

³⁰ Ibid.

(down from 32 months in 2023), getting closer to the Action 14 target of 24 months. Notably, 76% of MAP cases in 2024 reached full resolution through a competent authority agreement, unilateral relief or domestic resolution, which was up from 74% in 2023.³¹ Only 4% of cases were closed without agreement, which the OECD suggested as demonstrating the dedication with which competent authorities seek agreement in most cases.³² Long-pending cases also continued to be cleared, with only 3.3% of the total matters comprising pre-2016 cases, with 56% of the cases under two years old.³³ Michelle's 2022 insight that the Action 14 peer-review process creates genuine accountability pressure on jurisdictions continues to be supported by these figures.

The 2024 statistics did, however, identify renewed pressures consistent with Michelle's caution against overoptimism. New transfer pricing MAP cases rose by 29.1%, and the number of closed cases fell by 2.8% following a record-high year of closures in 2023, driven by a 5.5% drop in closed transfer pricing cases.³⁴ This is partly attributed to the fading impact of COVID-19 on case flows and a return to trend. The figures highlight the continued importance of the broader tax certainty agenda, of which Michelle was such a prominent advocate, encompassing both dispute prevention and resolution. Additional resources and process streamlining, the OECD noted, could help move closer to the 24-month average, particularly for transfer pricing cases.³⁵

The OECD's October 2025 release of the 2024 APA statistics also flagged some challenges that temper the optimism. The average time to grant APAs increased to 39.6 months in 2024, up from 36.8 months in 2023, reversing the downward trend observed in some jurisdictions in prior years.³⁶ APAs granted were down slightly by 2%, while rejections or closures without agreement rose from just under 12% in 2023 to over 19% in 2024.³⁷ However, the OECD noted that these aggregate figures mask significant variation. For example, several jurisdictions significantly enhanced their APA programme performance, exceeding past bilateral APA approval records, with a growing number entering into multilateral APAs.³⁸

C. *The Five-Year Term Recommendation*

Michelle examined Best Practice 6's recommendation that BAPA terms 'should generally be a minimum of five years, including at least two prospective taxation years'.³⁹ She noted that the IRS had already been 'forward-thinking on this issue', typically proposing at least five prospective years, with 2021 statistics showing an average APA length of six years and agreements lasting up to 15 years.⁴¹ By contrast, most other jurisdictions remained committed to three to five-year terms. The UK, for instance, stated that longer terms 'will only be considered in exceptional

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ '2024 Advance Pricing Arrangement Statistics', OECD (Dataset) <<https://www.oecd.org/en/data/datasets/advance-pricing-arrangement-statistics.html>> ('2024 APA Statistics').

³⁷ Ibid.

³⁸ OECD Tax Certainty 31 October 2025 (n 11).

³⁹ BAPAM (n 3) 31.

⁴⁰ Markham 'Advancing Tax Certainty' (n 1) 1107.

⁴¹ Ibid.

circumstances'.⁴² Michelle argued that encouraging longer APA terms represented 'a relevant and appropriate innovation' that would increase certainty, efficiency, and resource optimisation.⁴³ However, Michelle also noted that Best Practice 6 recognised that longer terms were not always suitable, for example, in volatile industries or markets with limited comparables.⁴⁴

The practice of the IRS to require compelling reasons for terms shorter than five years appears unchanged and is consistent with OECD best practice. In other jurisdictions, the traditional three- to five-year framework remains the norm. The UK continues to state that the terms 'typically' cover three to five years, with longer periods considered only in 'exceptional circumstances'.⁴⁵ Canada and Australia similarly enter into APAs within the three- to five-year range.⁴⁶ Consequently, Best Practice 6 has not led to a broader shift toward five-year minimum terms. Michelle's observation that longer terms are an 'appropriate innovation' in some circumstances remains valid, even if implementation occurs gradually. Longer APA terms unquestionably provide greater certainty for taxpayers, a benefit Michelle endorsed, though her argument was based on gains in resource efficiency and reductions in compliance costs rather than certainty alone.

To this extent, jurisdictions have not embraced Michelle's view that longer terms are more appropriate than shorter ones. Further, nearly four years on from the release of the BAPAM, it is logical to ask whether a minimum five-year term is appropriate in the current commercial environment. The pace of technological change, the emergence of new intellectual property, evolving supply chains and shifting production processes mean that the arm's length conditions agreed upon at the commencement of an APA may become progressively detached from economic reality. Transfer pricing cases involve high-value, high-risk related party transactions that require regulatory attention. Where resource efficiency is a concern, a more appropriate response is for countries to adopt Best Practice 29, to streamline the renewal process, which Michelle herself also endorsed.⁴⁷

D. Procedural Improvements and Transparency

Throughout her analysis, Michelle highlighted the BAPAM's focus on transparency, communication and collaboration, rather than revenue raising. She noted the principle in Best Practice 1 that 'competent authority positions on particular issues should not be determined by the position that produces the most revenue'.⁴⁸ This is consistent with the Base Erosion and Profit Shifting ('BEPS') Action 14 minimum standard, which prohibits performance indicators based on sustained audit adjustments.⁴⁹ Michelle also discussed recommendations for embracing technology, managing the audit/BAPA interface, implementing rollbacks and streamlining renewals.

⁴² Ibid.

⁴³ Ibid 1108.

⁴⁴ Ibid 1107.

⁴⁵ Joseph Hage Aaronson LLP, 'Advance Pricing Agreements in United Kingdom' Lexology (Snapshot, 7 August 2023) <<https://www.lexology.com/library/detail.aspx?g=47964e72-4890-449e-a1da-2974309326a0>>.

⁴⁶ Canada Revenue Agency Report 2025 (n 14); Australian Taxation Office, PS LA 2015/4 Advance Pricing Arrangements (at 30 September 2021).

⁴⁷ Markham 'Advancing Tax Certainty' (n 1) 1110.

⁴⁸ Ibid 1104.

⁴⁹ Ibid.

Direct evidence of new BAPA agreements is somewhat limited, but OECD data suggests that countries are engaging in bilateral negotiations.⁵⁰ Further, regional cooperation arguably continues. For example, the former association of the Pacific Association of Tax Administrators ('PATA') issued operational guidance for BAPA processes, with Japanese⁵¹ and Canadian⁵² revenue authorities still promoting the approach agreed to, which suggests an ongoing coordinated approach. The OECD's publication of consolidated APA statistics states that 860 APAs were granted globally in 2023, with an average completion time of 36.8 months.⁵³ The UK updated its APA guidance explicitly referencing the BAPAM.⁵⁴ Improved completion times despite high demand suggest that there is likely better coordination among competent authorities. The broader pattern of faster completions, sustained demand and regional coordination also suggests that the BAPAM successfully promoted cooperation and coordination.

The OECD's October 2025 release of the 2024 APA statistics provides greater detail on the bilateral APA processes that Michelle described. Eighty jurisdictions reported allowing bilateral APAs, which was up from 73 in 2023, with 49 actively managing cases.⁵⁵ The number of bilateral APAs filed rose by 3%, and approximately a quarter of the cases were closed, consistent with 2023, indicating stable caseload management.⁵⁶ Several jurisdictions reported that APAs account for more than half of their bilateral transfer pricing cases, with 11 jurisdictions achieving ratios exceeding 50%, with the overall average APA-to-MAP ratio standing at 37.8%.⁵⁷ This provides some evidence of the shift toward dispute prevention that Michelle anticipated, with jurisdictions actively prioritising APAs over reactive MAP engagement.

Two new APA award categories were introduced with the 2024 statistics, released in October 2025. Ireland received the most improved jurisdiction award, and Denmark was recognised for the most effective caseload management, institutionalising the kind of accountability-through-transparency process that Michelle had identified as central to soft law efficacy.⁵⁸ Michelle's analysis of procedural improvements and her emphasis on transparency and coordination are reflected in the statistics presented, indicating her focus on these rather than revenue raising was the correct approach and one that jurisdictions have adopted.

⁵⁰ OECD Tax Certainty 31 October 2025 (n 11); 2024 APA Statistics (n 36).

⁵¹ National Tax Agency (Japan), *BAPA Operational Guidance for Member Countries of the Pacific Association of Tax Administrators (PATA)* (Guidance) <<https://www.nta.go.jp/english/taxes/others/03.htm>>.

⁵² 'Pacific Association of Tax Administrators (PATA) Transfer Pricing Documentation Package', *Government of Canada* (Web Page, 30 April 2026) <<https://www.canada.ca/en/revenue-agency/services/tax/international-non-residents/information-been-moved/transfer-pricing/pacific-association-tax-administrators-pata-transfer-pricing-documentation-package.html>>.

⁵³ Kashif Javed, 'Prevention and Cure: The OECD's APA and MAP Statistics', *KPMG UK* (Insight, 21 November 2024) <<https://kpmg.com/uk/en/insights/tax/tmd-prevention-and-cure-the-oecd-apa-and-map-statistics.html>>.

⁵⁴ 'HMRC Guidance on Advance Pricing Agreements: Important Updates', *KPMG UK* (Insight, 4 September 2023) <<https://kpmg.com/uk/en/insights/tax/tmd-hmrc-guidance-on-advance-pricing-agreements-important-updates.html>>.

⁵⁵ OECD Tax Certainty 31 October 2025 (n 11) OECD, '2024 Advance Pricing Arrangement Statistics' (OECD, 31 October 2025) <<https://www.oecd.org/en/data/datasets/advance-pricing-arrangement-statistics.html>>.

⁵⁶ '2024 APA Statistics' (n 36).

⁵⁷ *Ibid.*

⁵⁸ OECD Tax Certainty 31 October 2025 (n 11).

III. 2024 ANALYSIS OF THE MOMA

While Michelle's November 2022 article focused on bilateral APAs, her January 2024 article, 'The Quest for Tax Certainty: Improving Multilateral Dispute Resolution', indicated that the future of international tax certainty may be in multilateral frameworks. Published approximately a year after the OECD's February 2023 release of the *Manual on the Handling of Multilateral Mutual Agreement Procedures and Advance Pricing Arrangements* ('MoMA'), Michelle's analysis proved timely. Michelle identified several factors that made the MoMA more effective than its broader 2007 predecessor, such as the peer-review process introduced by BEPS Action 14, the public availability of peer-review outcomes, the OECD's focus on both prevention and resolution and the recognition that multilateral approaches better reflect how multinational enterprises actually operate. The limited time since the MoMA's February 2023 publication means we have only early evidence of implementation. However, the pattern mirrors what we observed with the BAPAM, that soft law guidance influences practice through peer pressure, benchmarking and practical frameworks that competent authorities can adapt to their circumstances.

A. *The MoMA's Soft Law Framework*

Like the BAPAM, Michelle applied her understanding of soft law theory to the MoMA, and recognised that its non-binding status was both a potential weakness and a strategic strength. She noted that the MoMA constituted 'soft law' rather than legally binding 'hard law', drawing on academic literature to argue that flexibility is a primary advantage in a fast-changing international environment.⁵⁹ Chaisse and Ji, whom Michelle cited, viewed flexibility as enabling 'innovation and experiment' and as an 'essential preparatory phase before people are ready for hard law commitments'.⁶⁰ Michelle also cited Ruth Mason's observation that OECD instruments in international tax, though soft law, achieve widespread adherence among both OECD and non-OECD countries through what Mason referred to generally as 'coordinated unilateralism'.⁶¹

In contrast to the *Manual on Effective Mutual Agreement Procedures* ('MEMAP'), the MoMA's 2007 predecessor, whose non-binding best practices were rarely adopted by competent authorities, Michelle argued that the OECD's BEPS project had fundamentally changed the compliance landscape. The peer review process under Action 14, with outcomes publicly available to all stakeholders, including taxpayers, had a 'salutary effect' on adherence to the minimum standards.⁶² Crucially, an ongoing monitoring process was introduced, requiring jurisdictions with meaningful MAP experience to undergo a full peer review every four years starting in 2024, thereby exposing inclusive framework members to continuous accountability.⁶³ Michelle concluded that the MoMA was therefore likely to have 'a significant effect as a soft law tool'.⁶⁴ This analysis parallels her 2022

⁵⁹ Markham 'The Quest for Tax Certainty' (n 2) 532.

⁶⁰ Ibid 533, citing Julien Chaisse and Xueliang Ji, "'Soft Law' in International Lawmaking: How Soft International Taxation Law Is Reshaping International Economic Governance' (2018) 13(2) Asian Journal of WTO & International Health Law and Policy 463, 478.

⁶¹ Markham 'The Quest for Tax Certainty' (n 2) 533, citing Ruth Mason, 'The Transformation of International Tax' (Virginia Public Law and Legal Theory Research Paper No 2020-36, School of Law, University of Virginia, July 2020) 28.

⁶² Ibid 533.

⁶³ Ibid 534.

⁶⁴ Ibid.

account of the BAPAM's soft law effectiveness and evidences a consistent theoretical thread running through her final scholarly contributions.

Developments since Michelle wrote her article reinforce this analysis. In February 2026, the OECD released a comprehensively revised MEMAP featuring 59 aspirational best practices developed directly by competent authorities in the Forum on Tax Administration MAP Forum and grounded in more than a decade of experience administering the Action 14 minimum standard peer reviews.⁶⁵ Essentially, the very manual she had contrasted with the MoMA has been renewed and reinvigorated. The OECD chose to revitalise, rather than discard, a soft law instrument whose 2007 iteration had achieved only limited traction. It confirms Michelle's insight that soft law in international tax does not fail for want of binding force, but rather matures over time, as the accountability generated through peer review and the steady accumulation of practical experience gradually transform non-binding guidance into a genuine influence on competent authority behaviour.

B. The Countries Surveyed and Multilateral Readiness

One of Michelle's most instructive contributions in the 2024 article was her careful examination of the 19-jurisdiction focus group that informed the MoMA. Her analysis revealed significant disparities in multilateral readiness. Several jurisdictions, notably Colombia, China and Thailand, had minimal or no experience with multilateral dispute resolution when surveyed. Michelle observed that their willingness to participate nonetheless indicated a preparedness to venture into multilateral territory in future. By contrast, jurisdictions such as the United States, United Kingdom, Australia, France, Germany, Spain, Japan and Canada brought substantial practical experience to the table.⁶⁶

Michelle highlighted the Internal Revenue Service's ('IRS') execution of 22 multilateral APAs between 1991 and 2022, with 30 pending as of December 2022, as particularly clear evidence of growing interest in multilateral controversy management.⁶⁷ She also drew attention to the world's first five-party multilateral APA, negotiated with the Frank Russell Company and concluded in 2000 by Australia, the United States, Canada, Japan and New Zealand, which was successfully renewed in 2005, as a landmark in multilateral dispute resolution.⁶⁸ Michelle identified what she characterised as a structural gap, in that jurisdictions with the most experience in multilateral APAs, such as the United States and Australia, were paradoxically the best placed to provide model guidance for others, but provided limited published frameworks.⁶⁹

C. Legal Basis for a Multilateral MAP: Article 25

Michelle's 2024 article provided a doctrinal analysis of the two legal approaches available for multilateral MAP cases under the OECD Model. Under Article 25(1) of the OECD Model, taxpayers must file MAP requests under each applicable treaty, or submit a single consolidated request identifying all relevant jurisdictions, with the advantage that any resulting agreement is

⁶⁵ OECD, Manual on Effective Mutual Agreement Procedures (2026 Edition) (2 February 2026). The revised manual comprises 59 best practices, 9 directed at taxpayers and 50 at competent authorities.

⁶⁶ Markham 'The Quest for Tax Certainty' (n 2) 530 –1.

⁶⁷ Ibid 530.

⁶⁸ Ibid 531.

⁶⁹ Ibid 537.

implemented notwithstanding domestic time limits.⁷⁰ Alternatively, under the Article 25(3) approach, competent authorities have broad discretion to consult among themselves without necessarily requiring a taxpayer filing, with discussions proceeding either multilaterally or through coordinated bilateral discussions. Michelle noted the emerging consensus that Article 25(3) also provides the legal basis for both bilateral and multilateral APAs. However, some jurisdictions may require specific domestic legislation to give effect to these arrangements.⁷¹

Michelle observed that the MoMA's new definition of a 'multilateral case', where two competent authorities cannot fully resolve taxation not in accordance with a treaty without resolving taxation under other treaties involving third jurisdictions, was more appropriate to MAP than to APA scenarios, as it addressed an ex post facto situation rather than a prospective arrangement.⁷² She recommended that the OECD develop a definition specifically tailored to multilateral APAs, identifying this as an oversight in an otherwise comprehensive manual.⁷³ She further noted a potentially useful extension. The second sentence of Article 25(3) enables competent authorities to address double taxation that is not strictly within the OECD Model's scope, thereby allowing multilateral consultations even when treaty relationships among all jurisdictions are incomplete. This is a nuance with practical significance for complex multinational fact patterns.

D. Procedural Approaches

Michelle's treatment of procedural aspects highlighted two distinct approaches to multilateral discussions. First, a genuinely multilateral approach, in which all competent authorities negotiate simultaneously with a view to a single multilateral agreement, and second, a sequential bilateral approach, in which separate bilateral discussions proceed under each concerned treaty before being coordinated into a final multilateral outcome. The MoMA endorsed the fully multilateral approach as the preferred methodology, and Michelle agreed, referencing her earlier research showing that pragmatic, solution-oriented engagement by all parties simultaneously tended to produce better outcomes.⁷⁴ She noted, drawing on her own prior research into the Airbus quadrilateral APA, that the company's commitment to fully transparent communications, with all four jurisdictions' tax administrations seated at the same conference table, had enabled the agreement to be concluded within a very reasonable timeframe of 10 months.⁷⁵

Michelle also examined the MoMA's recommendation that a coordinating competent authority be appointed to act as a liaison among all jurisdictions involved, maintain the project plan and ensure procedural coherence.⁷⁶ She analysed the MoMA's guidance on taxpayers' rights and obligations in multilateral cases and noted that taxpayers may need to be more engaged than in bilateral cases.⁷⁷ Taxpayers may need to provide comprehensive information to all competent authorities involved, but they are also entitled to regular updates from the coordinating competent authority.⁷⁸ She further noted the MoMA's recommendation that multilateral MAPs should be accepted even where domestic remedies are pending or finalised in any jurisdiction, and that the commencement of a

⁷⁰ Ibid 535–6.

⁷¹ Ibid 535.

⁷² Ibid 536.

⁷³ Ibid.

⁷⁴ Ibid 538.

⁷⁵ Ibid 540.

⁷⁶ Ibid 539.

⁷⁷ Ibid 540.

⁷⁸ Ibid.

domestic audit should not automatically terminate APA discussions, both of which were designed to ensure that multilateral certainty procedures remain accessible in practice.⁷⁹

E. Timeline Ambitions and the Rise of Multilateral Arrangements

Central to Michelle's 2024 article was the assessment of the MoMA's proposed 36-month ideal timeline for a multilateral case, which was critical to her research. She described this as a 'laudable aim' while cautioning that it may be overly optimistic given the available data.⁸⁰ Australian Taxation Office ('ATO') statistics she cited placed the average cycle time for multilateral APAs at 61.6 months in 2017–18 and 93.43 months in 2021–22, far exceeding the MoMA's benchmark.⁸¹ IRS data similarly showed average APA completion times of 53 months for bilateral cases, with no separate statistics maintained for multilateral APAs.⁸² Michelle recommended encouraging multilateral dispute resolution without applying undue pressure on turnaround times, proposing that a new MAP award could instead recognise the number of jurisdictions involved in a multilateral case.⁸³

Michelle provided compelling evidence that interest in multilateral arrangements was on the rise. While only 37 multilateral APAs were filed with the IRS over the 22 years from 2000 to 2021, 7 were filed in 2022 alone.⁸⁴ IRS official Nicole Welch confirmed in April 2023 that the United States had several multilateral APAs in place and expected that number to grow.⁸⁵ Australia similarly reported three multilateral APA applications in 2021–22, indicating rising interest.⁸⁶ Michelle concluded her 2024 article by noting the cost-efficiency of multilateral arrangements relative to sequential bilateral APAs, a point the ATO had itself acknowledged as a powerful additional incentive for both taxpayers and revenue authorities to embrace multilateral frameworks.⁸⁷

The OECD's October 2025 statistics bear out Michelle's multilateral forecast. The 2024 APA data, released as part of only the second year of the new APA Statistics Reporting Framework that Michelle discussed in her 2024 article, show that a growing number of jurisdictions are entering into multilateral APAs. The OECD specifically noted that several jurisdictions have exceeded records for bilateral APA approvals while also expanding into multilateral arrangements. The statistics as a whole, including the dedicated APA awards, support the transparency and accountability infrastructure that Michelle identified as the distinguishing feature of the post-BEPS era.

The MAP awards announced alongside the 2024 statistics further vindicate the institutional accountability framework Michelle endorsed. For example, Switzerland and New Zealand received awards for the shortest resolution times in transfer pricing and other MAP cases, respectively, while the United States received recognition as the most improved jurisdiction.⁸⁸ Paired jurisdiction awards were granted to India-Japan and Australia-New Zealand for efficient joint case handling, reinforcing that multilateral and bilateral collaboration is now embedded in the competitive

⁷⁹ Ibid.

⁸⁰ Ibid 541.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid 532.

⁸⁷ Ibid 542.

⁸⁸ OECD Tax Certainty 31 October 2025 (n 11).

landscape of international tax administration.⁸⁹ Together, the 2024 statistics confirm that the international tax dispute prevention and resolution regime is evolving along the lines that Michelle charted in her two scholarly contributions discussed here. To this extent, she was correct.

IV. CONCLUSION

Subsequent to the OECD's release of its BAPAM and three years after Michelle published her analysis, evidence suggests progress toward the manual's goals. BAPA completion times have decreased in several major jurisdictions, approaching or achieving the OECD's aspirational benchmarks, although, as evidenced by US data, the trajectory is sensitive to resourcing. Transparency and coordination between competent authorities have improved. Regional cooperation has deepened. Demand for APAs remains strong, suggesting taxpayer confidence in the process. These developments are consistent with Michelle's insights in her 2022 article. Her analysis of the potential effectiveness of soft law, with an emphasis on transparency and communication, was prescient. Stakeholders in international tax appear to have taken notice of the OECD's recommendations, and Michelle's article helped explain why and how this would occur. Recent evidence also supports Michelle's insights in her 2024 analysis of multilateral dispute resolution. The growth of multilateral APA activity, the expansion of APA programmes, the introduction of dedicated APA awards and the OECD's continued emphasis on both prevention and resolution are consistent with the pattern she suggested.

Michelle concluded her 2022 article on a cautiously optimistic note. She recognised that 'all revenue authorities should benefit from these innovative and flexible best practices',⁹⁰ particularly those focusing on collaborative relationships and resource optimisation. She noted that several major jurisdictions were already reviewing their APA programs, suggesting the timing was right for reform. Yet Michelle did not overstate the case. She acknowledged that implementation would be challenging, that results would vary across jurisdictions and that the manual's impact would unfold gradually. This measured approach of combining empirical rigour with practical wisdom exemplified Michelle's scholarly style. Michelle's 2024 article concluded with a similarly measured tone. She acknowledged that the MoMA's non-binding character meant that competent authorities might support the guidance without following it.

As demonstrated in the analysis here, many of Michelle's predictions have borne out, while others are too soon to tell. Michelle understood that improving international tax administration requires persistence. The BAPAM's gradual impact on BAPA processes worldwide demonstrates how this can occur. As we continue working to improve international tax certainty and dispute resolution, Michelle's scholarship remains an essential guide. This article's tribute lies not merely in honouring Michelle's memory but also in demonstrating that, while still in its early days, her analysis was largely correct. Jurisdictions have implemented BAPAM recommendations, and completion times have decreased. Soft law in this context has arguably proven effective. While we deeply miss her presence in our professional community, her intellectual legacy continues to inform and inspire our work.

⁸⁹ Ibid.

⁹⁰ Markham 'Advancing Tax Certainty' (n 1) 1112.