

**OECD/G20 Base Erosion and Profit Shifting
Project**



Making Dispute Resolution More Effective – MAP Peer Review Report, Chile (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Foreword

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

Following the release of the report *Addressing Base Erosion and Profit Shifting* in February 2013, OECD and G20 countries adopted a 15-point Action Plan to address BEPS in September 2013. The Action Plan identified 15 actions along three key pillars: introducing coherence in the domestic rules that affect cross-border activities, reinforcing substance requirements in the existing international standards, and improving transparency as well as certainty.

After two years of work, measures in response to the 15 actions were delivered to G20 Leaders in Antalya in November 2015. All the different outputs, including those delivered in an interim form in 2014, were consolidated into a comprehensive package. The BEPS package of measures represents the first substantial renovation of the international tax rules in almost a century. Once the new measures become applicable, it is expected that profits will be reported where the economic activities that generate them are carried out and where value is created. BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.

Implementation is now the focus of this work. The BEPS package is designed to be implemented via changes in domestic law and practices, and in tax treaties. With the negotiation of a multilateral instrument (MLI) having been finalised in 2016 to facilitate the implementation of the treaty related BEPS measures, over 90 jurisdictions are covered by the MLI. The entry into force of the MLI on 1 July 2018 paves the way for swift implementation of the treaty related measures. OECD and G20 countries also agreed to continue to work together to ensure a consistent and co-ordinated implementation of the BEPS recommendations and to make the project more inclusive. Globalisation requires that global solutions and a global dialogue be established which go beyond OECD and G20 countries.

A better understanding of how the BEPS recommendations are implemented in practice could reduce misunderstandings and disputes between governments. Greater focus on implementation and tax administration should therefore be mutually beneficial to governments and business. Proposed improvements to data and analysis will help support ongoing evaluation of the quantitative impact of BEPS, as well as evaluating the impact of the countermeasures developed under the BEPS Project.

As a result, the OECD established the OECD/G20 Inclusive Framework on BEPS (Inclusive Framework), bringing all interested and committed countries and jurisdictions on an equal footing in the Committee on Fiscal Affairs and all its subsidiary bodies. The

Inclusive Framework, which already has more than 135 members, is monitoring and peer reviewing the implementation of the minimum standards as well as completing the work on standard setting to address BEPS issues. In addition to BEPS members, other international organisations and regional tax bodies are involved in the work of the Inclusive Framework, which also consults business and the civil society on its different work streams.

This report was approved by the Inclusive Framework on 7 May 2021 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
BEPS	Base Erosion and Profit Shifting
FTA	Forum on Tax Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Chile has a modest tax treaty network with over 30 tax treaties. Chile also has a MAP programme with modest experience in resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and two cases pending on 31 December 2019. Both of these cases are other cases. The outcome of the stage 1 peer review process was that overall Chile met most of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Chile worked to address them, which has been monitored in stage 2 of the process. In this respect, Chile has solved some of the identified deficiencies.

All of Chile's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 through 3 of Article 25 of the OECD Model Tax Convention (OECD, 2017). Its treaty network is consistent with the requirements of the Action 14 Minimum Standard, except for the fact that:

- Approximately 85% of its tax treaties neither contain a provision stating that mutual agreements shall be implemented notwithstanding any time limits in domestic law (which is required under Article 25(2), second sentence), nor the alternative provisions for Article 9(1) and Article 7(2) to set a time limit for making transfer pricing adjustments.
- Approximately 90% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2017) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty.

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Chile signed and ratified the Multilateral Instrument. Through this instrument, a number of its tax treaties has been or will be modified to fulfil the requirements under the Action 14 Minimum Standard. Chile is in contact with a few treaty partners to strive to include the required provisions via the Multilateral Instrument. Where treaties will not be modified, upon entry into force and entry into effect of the Multilateral Instrument in spite of this, Chile reported that it intends to update all of its tax treaties to be compliant with the requirements under the Action 14 Minimum Standard via bilateral negotiations. Such bilateral negotiations have already been initiated, or are envisaged to be initiated for all of those treaties.

Chile does not meet the Action 14 Minimum Standard concerning the prevention of disputes. It has in place a bilateral APA programme, but this programme does not allow roll-back of bilateral APAs.

Chile only meets some of the requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in almost all eligible cases, although it has since 1 September 2018 not received any MAP requests concerning the application of anti-abuse provisions. However, access may be denied in

eligible cases on the basis that it was not filed in a timely manner in some circumstances where the MAP request has been submitted within three years from the first notification of a proposed transfer pricing adjustment issued in the treaty partner jurisdiction or within three years from the filing of an amended self-assessment tax return, such action resulting in taxation not in accordance with the tax treaty. Furthermore, Chile does not have in place a documented bilateral consultation or notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Finally, Chile has not yet published its guidance on the availability of MAP and how it applies this procedure in practice.

Concerning the average time needed to close MAP cases, the MAP statistics for Chile for the period 2016-19 are as follows:

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019	Average time to close cases (in months)*
Attribution/allocation cases	0	3	3	0	24.58
Other cases	0	3	1	2	11.44
Total	0	6	4	2	21.30

* The average time taken for resolving MAP cases for post-2015 cases follows the MAP Statistics Reporting Framework. Chile has no pre-2016 cases in its MAP inventory as shown in this table.

The number of cases Chile closed in 2016-19 is slightly more than half of the number of all cases started in those years. During these years, MAP cases were on average closed within a timeframe of 24 months (which is the pursued average for resolving MAP cases received on or after 1 January 2016), as the average time necessary was 21.30 months. Further, Chile's MAP inventory as on 31 December 2019 increased only marginally as compared to 1 January 2016. Therefore, Chile's competent authority is considered adequately resourced.

Furthermore, Chile meets all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Chile's competent authority operates fully independently from the audit function of the tax authorities and adopts a pragmatic approach to resolve MAP cases in an effective and efficient manner. Its organisation is adequate and the performance indicators used are appropriate to perform the MAP function.

Lastly, Chile almost meets the Action 14 Minimum Standard as regards the implementation of MAP agreements. Chile monitors the implementation of such agreements. However, it has a domestic statute of limitation, for which there is a risk that such agreements cannot be implemented where the applicable tax treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and in one case, a potential MAP agreement could not be implemented and thus, no agreement was reached in practice owing to such statute of limitation, although Chile was willing to discuss the case.

Reference

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Introduction

Available mechanisms in Chile to resolve tax treaty-related disputes

Chile has entered into 36 tax treaties on income (and/or capital), 33 of which are in force.¹ These 36 treaties apply to the same number of jurisdictions. All of these treaties provide for a mutual agreement procedure for resolving disputes on the interpretation and application of the provisions of the tax treaty. In addition, ten of the 36 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.²

Under Chile’s tax treaties, the competent authority function is assigned to the Minister of Finance and/or the Commissioner of Chile’s revenue agency (“*Servicio de Impuestos Internos*”) or their authorised representatives and which is further delegated to specific departments within Chile’s tax administration. The competent authority of Chile currently employs 12 employees in total, who also handle other tasks such as Advance Pricing Arrangements (“**APA**”) or tax treaty negotiations. The competent authority function is organised as follows:

- Attribution/allocation cases are dealt with by the Transfer Pricing and Valuation Area within the Department of Selective Analysis of Tax Compliance of the Audit and Compliance Directorate of Chile’s tax administration.
- Other cases are dealt with by the International Taxation Department of the Legal and Regulatory Directorate of Chile’s tax administration.

Chile has not yet issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”) but indicated that it is currently preparing such guidance which it expects to be published in 2021.

Developments in Chile since 1 September 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Chile noted that it was conducting tax treaty negotiations with four jurisdictions and an amending protocol to its existing treaty with one treaty partner. Chile clarified that this situation remains the same apart from with one treaty partner where a new treaty has been signed (see below). Further, the stage 1 report noted that Chile had signed new treaties with the United States and Uruguay which had not yet entered into force. The treaty with Uruguay has now entered into force. The treaty with the United States has up to now only been ratified by Chile and therefore, has not yet entered into force.

In addition, Chile reported that since 1 September 2018 it has signed a new tax treaty with India (2020) and the United Arab Emirates (2019), which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Both treaties contain Article 9(2) and the equivalent of Articles 25(1-3) of the OECD Model Tax Convention

(OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). These treaties have not entered into force as yet.

Furthermore, on 7 June 2017, Chile signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (“**Multilateral Instrument**”), to adopt, where necessary, modifications to the MAP article under its tax treaties with a view to be compliant with the Action 14 Minimum Standard in respect of all the relevant tax treaties. On 26 November 2020, Chile deposited its instrument of ratification, following which the Multilateral Instrument entered into force for Chile on 1 March 2021. With the deposit of the instrument of ratification of the Multilateral Instrument, Chile also submitted its list of notifications and reservations to that instrument.³ In relation to the Action 14 Minimum Standard, Chile reserved, pursuant to Article 16(5)(a), the right not to apply Article 16(1) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to allow the submission of a MAP request to the competent authorities of either contracting state.⁴ Chile also reserved, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the contracting states.⁵ These reservations are in line with the requirements of the Action 14 Minimum Standard.

For the 32 treaties that are considered not to be in line with one or more elements of the Action 14 Minimum Standard and that will not be modified by the Multilateral Instrument, Chile reported that it intends to update them via bilateral negotiations. In this regard, Chile shared the following overview regarding the actions taken or planned to be taken by it:

- *One treaty partner*: Negotiations are ongoing for an amending protocol to make this treaty in line with the Action 14 minimum standard.
- *Two treaty partners*: Negotiations have been initiated for an amending protocol to make these treaties in line with the Action 14 minimum standard.
- *One treaty partner*: As this treaty is not in force owing to ratification being pending at the treaty partner jurisdiction, Chile plans to contact the treaty partner in order to evaluate the time required for that treaty partner to approve the treaty in its Congress following which discussions on the feasibility of renegotiations will be initiated by Chile.
- *Twenty eight treaty partners*: Negotiations are planned to be initiated with these treaty partners through the sending of invitation letters. For treaty partners that respond favourably to Chile’s invitation, Chile reported that those with whom a tax treaty is in force and which cross border transactions are more significant will be prioritised.

Other developments

Further to the above, Chile reported that it has introduced a statutory dispute settlement process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer, in the form of a taxpayer ombudsman (“**DEDECON**”), which process will come into force not later than two years from February 24, 2020. As of now, no policy decision has been taken as regards whether Chile’s competent authority would be able to grant access to MAP in respect to cases that have been resolved by the DEDECON. Apart from this, Chile also reported that the staff in its competent authority participated in the training organised by the FTA MAP Forum in collaboration with IOTA, held in Budapest, Hungary, in November 2018.

Basis for the peer review process

The peer review process entails an evaluation of Chile's implementation of the Action 14 Minimum Standard through an analysis of its legal and administrative framework relating to the mutual agreement procedure, as governed by its tax treaties, domestic legislation and regulations, as well as its MAP programme guidance and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Chile, its peers and taxpayers. The questionnaires for the peer review process were sent to Chile and the peers on 31 August 2018.

The process consists of two stages: a peer review process (stage 1) and a peer monitoring process (stage 2). In stage 1, Chile's implementation of the Action 14 Minimum Standard as outlined above is evaluated, which has been reflected in a peer review report that has been adopted by the BEPS Inclusive Framework on 8 May 2019. This report identifies the strengths and shortcomings of Chile in relation to the implementation of this standard and provides for recommendations on how these shortcomings should be addressed. The stage 1 report is published on the website of the OECD.⁶ Stage 2 is launched within one year upon the adoption of the peer review report by the BEPS Inclusive Framework through an update report by Chile. In this update report, Chile reflected (i) what steps it has already taken, or are to be taken, to address any of the shortcomings identified in the peer review report and (ii) any plans or changes to its legislative and/or administrative framework concerning the implementation of the Action 14 Minimum Standard. The update report forms the basis for the completion of the peer review process, which is reflected in this update to the stage 1 peer review report.

Outline of the treaty analysis

For the purpose of this report and the statistics below, in assessing whether Chile is compliant with the elements of the Action 14 Minimum Standard that relate to a specific treaty provision, the newly negotiated treaties or the treaties as modified by a protocol were taken into account, even if it concerns a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Chile's tax treaties regarding the mutual agreement procedure.

Timing of the process and input received from peers and taxpayers

Stage 1 of the peer review process for Chile was launched on 31 August 2018, with the sending of questionnaires to Chile and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Chile in March 2019, with the subsequent approval by the BEPS Inclusive Framework on 8 May 2019. On 8 May 2020, Chile submitted its update report, which initiated stage 2 of the process.

The period for evaluating Chile's implementation of the Action 14 Minimum Standard for stage 1 ranged from 1 January 2016 to 31 August 2018 and formed the basis for the stage 1 peer review report. The period of review for stage 2 started on 1 September 2018 and depicts all developments as from that date until 30 April 2020.

In total six peers provided input during stage 1: Denmark, Norway, Spain, Sweden, Switzerland and the United Kingdom. Out of these six peers, two had MAP cases with Chile that started in 2016 or 2017. These two peers represented 75% of post-2015 MAP cases in Chile's inventory that started in 2016 or 2017. During stage 2, the same peers provided input. In addition, Australia also provided input during stage 2. For this stage, these peers represent

approximately 83.3 % of post-2015 MAP cases in Chile’s MAP inventory that started in 2016, 2017, 2018 or 2019. Peers generally noted that Chile’s competent authority is responsive and efficient, even though some of them noted having experienced difficulties regarding procedural issues. Specifically with respect to stage 2, all peers that provided input reported that the update report of Chile fully reflects the experiences these peers have had with Chile since 1 September 2018 and/or that there was no addition to previous input given.

Input by Chile and co-operation throughout the process

Chile provided extensive answers in its questionnaire, which was submitted on time. Chile was very responsive in the course of the drafting of the peer review report by responding timely and comprehensively to requests for additional information, and provided further clarity where necessary. In addition, Chile provided the following information:

- a. MAP profile⁷
- b. MAP statistics⁸ according to the MAP Statistics Reporting Framework (see below).

Concerning stage 2 of the process, Chile submitted its update report on time and the information included therein was extensive. Chile was very co-operative during stage 2 and the finalisation of the peer review process.

Finally, Chile is an active member of the FTA MAP Forum and has shown good co-operation during the peer review process.

Overview of MAP caseload in Chile

The analysis of Chile’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019 (“Statistics Reporting Period”). According to the statistics provided by Chile, its MAP caseload during this period was as follows:

2016-19	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2019
Attribution/allocation cases	0	3	3	0
Other cases	0	3	1	2
Total	0	6	4	2

General outline of the peer review report

This report includes an evaluation of Chile’s implementation of the Action 14 Minimum Standard. The report comprises the following four sections:

- A. Preventing disputes
- B. Availability and access to MAP
- C. Resolution of MAP cases
- D. Implementation of MAP agreements.

Each of these sections is divided into elements of the Action 14 Minimum Standard, as described in the terms of reference to monitor and review the implementation of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective (“**Terms of Reference**”).⁹ Apart from analysing Chile’s legal framework and its

administrative practice, the report also incorporates peer input and responses to such input by Chile during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Chile to implement elements of the Action 14 Minimum Standard where relevant. The conclusion of each element identifies areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed.

The basis of this report is the outcome of the stage 1 peer review process, which has identified in each element areas for improvement (if any) and provides for recommendations how the specific area for improvement should be addressed. Following the outcome of the peer monitoring process of stage 2, each of the elements have been updated with a recent development section to reflect any actions taken or changes made on how recommendations have been addressed, or to reflect other changes in the legal and administrative framework of Chile relating to the implementation of the Action 14 Minimum Standard. Where it concerns changes to MAP guidance or statistics, these changes are reflected in the analysis sections of the elements, with a general description of the changes included in the recent development sections.

The objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Where recommendations have been fully implemented, this has been reflected and the conclusion section of the relevant element has been modified accordingly, but Chile should continue to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement and recommendation for this specific element.

Notes

1. The tax treaties Chile has entered into are available at: www.sii.cl/pagina/jurisprudencia/convenios.htm. The treaties that are signed but have not yet entered into force are with India (2020), the United Arab Emirates (2019) and the United States (2010). These treaties are taken into account in the treaty analysis. Reference is made to Annex A for the overview of Chile's tax treaties.
2. These ten treaties concern the treaties with Austria, Canada, Ecuador, Italy, Japan, Mexico, Paraguay, Peru, Poland and Uruguay. Reference is made to Annex A for the overview of Chile's tax treaties.
3. Available at: www.oecd.org/tax/treaties/beps-mli-position-chile-instrument-deposit.pdf.
4. *Ibid.* This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Chile reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and

the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer's objection to be justified”.

5. See note 3. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(c) of the Convention, Chile reserves the right for the second sentence of Article 16(2) not to apply to its Covered Tax Agreements on the basis that for the purposes of all of its Covered Tax Agreements: i) it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS package by accepting, in its bilateral treaty negotiations, a treaty provision providing that:
 - A) the Contracting Jurisdictions shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Jurisdictions after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have been attributable to the permanent establishment (this provision shall not apply in the case of fraud, gross negligence or wilful default); and
 - B) the Contracting Jurisdictions shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but that by reason of the conditions referred to in a provision in the Covered Tax Agreement relating to associated enterprises have not so accrued, after a period that is mutually agreed between both Contracting Jurisdictions from the end of the taxable year in which the profits would have accrued to the enterprise (this provision shall not apply in the case of fraud, gross negligence or wilful default)”.
6. Available at: www.oecd.org/chile/making-dispute-resolution-more-effective-map-peer-review-report-chile-stage-1-43add6b6-en.htm.
7. Available at: www.oecd.org/tax/dispute/country-map-profiles.htm.
8. The MAP statistics of Chile are included in Annexes B and C of this report.
9. Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf

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- OECD (2015a), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264239081-en>.
- OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

Part A

Preventing disputes

[A.1] **Include Article 25(3), first sentence, of the OECD Model Tax Convention in tax treaties**

Jurisdictions should ensure that their tax treaties contain a provision which requires the competent authority of their jurisdiction to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of their tax treaties.

1. Cases may arise concerning the interpretation or the application of tax treaties that do not necessarily relate to individual cases, but are more of a general nature. Inclusion of the first sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017a) in tax treaties invites and authorises competent authorities to solve these cases, which may avoid submission of MAP requests and/or future disputes from arising, and which may reinforce the consistent bilateral application of tax treaties.

Current situation of Chile's tax treaties

2. All of Chile's 36 tax treaties contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) requiring their competent authority to endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the tax treaty.

3. Peers did not provide input relating to this particular element during stage 1.

Recent developments

Bilateral modifications

4. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Peer input

5. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Chile, out of which neither provided input in relation to this element.

Anticipated modifications

6. Chile reported that it will continue to seek to include Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) in all of its future treaties.

Conclusion

	Areas for improvement	Recommendations
[A.1]	-	-

[A.2] Provide roll-back of bilateral APAs in appropriate cases

Jurisdictions with bilateral advance pricing arrangement (“APA”) programmes should provide for the roll-back of APAs in appropriate cases, subject to the applicable time limits (such as statutes of limitation for assessment) where the relevant facts and circumstances in the earlier tax years are the same and subject to the verification of these facts and circumstances on audit.

7. An APA is an arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustment thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time.¹ The methodology to be applied prospectively under a bilateral or multilateral APA may be relevant in determining the treatment of comparable controlled transactions in previous filed years. The “roll-back” of an APA to these previous filed years may be helpful to prevent or resolve potential transfer pricing disputes.

Chile’s APA programme

8. Chile is authorised to enter into bilateral APAs and has implemented an APA programme. Chile’s bilateral APA programme is based on its income tax law and its guidance is found in Circular No. 29 of 14 June 2013 (“**APA guidance**”).

9. The provisions of Chile’s income tax law and its APA guidance prescribe that an APA is applied as from the fiscal year during which the application was filed and for the three following fiscal years.

10. The APA guidance further stipulates that the term of an APA could be extended or renewed when the term of an initial APA expires. Chile further referred to another legal document, being resolution exempt no. 68 of 14 June 2013, which provides that if the taxpayer intends the extension or renewal of an APA agreement, such a request should be submitted in writing six months before the termination of the initial agreement.

11. With regard to the effect of APAs on tax assessments or audits, Chile reported that once an APA is entered into, its tax authority is not entitled to make an adjustment on taxpayers’ positions covered by that APA. However, Chile clarified that a signed APA does not prevent its tax authority from exercising its auditing powers and verifying that the indicated operations in the APA are executed in the manner and based on the conditions established in the APA.

Roll-back of bilateral APAs

12. Chile reported that its APA programme does not provide for roll-back of APAs. Chile noted, however, that under its general tax legislation, a taxpayer can amend its tax return at any time provided that there is no tax adjustment or tax collection note issued by the tax authority. Chile clarified that in practice this could give an opportunity to the taxpayer to apply the results or conclusions of an APA to previous tax years. Nevertheless, Chile confirmed that this will also be subject to its domestic statute of limitation. Chile further reported that according to Law No. 21,210, published on 24 February 2020, the taxpayer may, exceptionally and subject to prior authorisation of the Chilean tax administration, amend its tax return, even if there is a tax assessment or tax collection note, in cases where the taxpayer has sought to resolve the issue under dispute through the administrative remedies provided by the domestic law.

Recent developments

13. There are no recent developments with respect to element A.2, except for the enactment of Law No. 21,210 as discussed above.

Practical application of roll-back of bilateral APAs

Period 1 January 2016-31 August 2018 (stage 1)

14. Chile reported having not received any requests for bilateral APAs during the period 1 January 2016-31 August 2018.

15. One peer reported having discussed an APA case with Chile during the period 1 January 2016-31 August 2018, which was submitted in 2013. This peer specified that the APA process came to an end in 2017 without any agreement with Chile's competent authority even though some progress had been made. Finally, this peer confirmed that it experienced that Chile's domestic law does not provide for roll-back of bilateral APAs.

Period 1 September 2018-30 April 2020 (stage 2)

16. Chile reported having received one request for a bilateral APA since 1 September 2018, which did not include a request for roll-back. This request is presently under consideration.

17. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

18. Chile indicated that it does not anticipate any modifications in relation to element A.2.

Conclusion

	Areas for improvement	Recommendations
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Chile should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.

Note

1. This description of an APA based on the definition of an APA in the OECD Transfer Pricing Guidelines (OECD, 2017b) for Multinational Enterprises and Tax Administrations.

References

OECD (2017a), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

OECD (2017b), *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2017*, <https://dx.doi.org/10.1787/tpg-2017-en>.

Part B

Availability and access to MAP

[B.1] Include Article 25(1) of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a MAP provision which provides that when the taxpayer considers that the actions of one or both of the Contracting Parties result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty, the taxpayer, may irrespective of the remedies provided by the domestic law of those Contracting Parties, make a request for MAP assistance, and that the taxpayer can present the request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty.

19. For resolving cases of taxation not in accordance with the provisions of the tax treaty, it is necessary that tax treaties include a provision allowing taxpayers to request a mutual agreement procedure and that this procedure can be requested irrespective of the remedies provided by the domestic law of the treaty partners. In addition, to provide certainty to taxpayers and competent authorities on the availability of the mutual agreement procedure, a minimum period of three years for submission of a MAP request, beginning on the date of the first notification of the action resulting in taxation not in accordance with the provisions of the tax treaty, is the baseline.

Current situation of Chile's tax treaties

Inclusion of Article 25(1), first sentence of the OECD Model Tax Convention

20. None of Chile's 36 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017), as amended by the Action 14 final report (OECD, 2015b) and allowing taxpayers to submit a MAP request to the competent authority of either state when they consider that the actions of one or both of the treaty partners result or will result for the taxpayer in taxation not in accordance with the provisions of the tax treaty and that can be requested irrespective of the remedies provided by domestic law of either state. Furthermore, 35 tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident.

21. The remaining treaty is considered not to have the full equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), since taxpayers are not allowed to submit a MAP request in the state of which they are a national where the case comes under the non-discrimination article. However, this treaty is considered to be in line with

element B.1 since the non-discrimination provision in this treaty only covers nationals that are resident of one of the contracting states and it is logical to only allow the submission of MAP requests to the state of which the taxpayer is a resident.

Inclusion of Article 25(1), second sentence of the OECD Model Tax Convention

22. Out of Chile’s 36 tax treaties, 23 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing taxpayers to submit a MAP request within a period of no less than three years from the first notification of the action resulting in taxation not in accordance with the provisions of the particular tax treaty. The remaining 13 treaties do not contain a filing period for MAP requests.

Peer input

23. Two peers reported during stage 1 that their treaties with Chile do not meet the requirement under element B.1. However, based on the above analysis, these treaties are in line with element B.1.

Practical application

Article 25(1), first sentence, of the OECD Model Tax Convention

24. As noted in paragraphs 20 and 21 above, all of Chile’s tax treaties allow taxpayers to file a MAP request irrespective of domestic remedies. In this respect, Chile reported that if a taxpayer submits a MAP request and simultaneously initiates domestic available remedies, access to MAP would be granted. However, Chile’s MAP profile provides that if a taxpayer who has initiated judicial remedies in Chile simultaneously submits a MAP request, access to MAP would be granted in eligible cases, but while the judicial claim is pending resolution, Chile’s competent authority would not discuss the case in MAP. However, owing to Law No. 21,210 being passed, Chile is considering whether it would be able to discuss such cases in MAP as well in the future.

25. In addition, Chile also clarified that access to MAP would also be granted if domestic remedies have been finalised, but that Chile would not be able to deviate from decisions of its domestic courts and thus will only seek correlative relief at the level of the treaty partner. Finally, Chile also reported that it would discuss a case that would be submitted to the competent authority of its treaty partner if a decision has already been made by a domestic court of the latter, even where the other competent authority is not able to deviate from such decision, but that correlative relief may be granted in Chile where possible and acceptable to do so.

Article 25(1), second sentence, of the OECD Model Tax Convention

26. Chile reported that in the absence of a provision setting a filing period for the submission of a MAP request in its tax treaties, there is no time limit for such submission under its domestic law. Chile further clarified that in the absence of a filing period in the tax treaty, a MAP request may be submitted by a taxpayer at any time.

27. Chile made two observations in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) with regard to the starting point of the three-year filing period:

- Under the first observation, Chile stated that regarding paragraphs 21 to 24 of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017) in its view the date of the “first notification of the action resulting in taxation not

in accordance with the tax treaty” is the date of the first notification by the tax administration of a proposed adjustment, unless an earlier date is applicable.

- Under the second one, Chile considers that in self-assessment cases discussed where a taxpayer pays additional tax in connection with the filing of an amended return the three-year filing period starts from the filing of the amended return.

28. Chile reported that its policy in relation to granting access to MAP would be in line with the observations.

29. With regard to the application of the filing period specified in the tax treaties, Chile reported that since 1 January 2016 there was one case in which access to MAP was denied by its competent authority as it considered that the three-year filing period to submit a MAP request provided in the relevant tax treaty concerned had already expired.

30. Chile reported that the case at stake was an attribution/allocation case submitted in both jurisdictions in June 2016. Chile further reported that based on the information it was provided with, its competent authority understood that both competent authorities agreed that a proposed adjustment was notified to the taxpayer in the other jurisdiction in May 2012. Therefore, Chile’s competent authority denied access to MAP on the grounds that the request was submitted too late. Chile further reported that, instead of relying only on the Commentary on the OECD Model Tax Convention (OECD, 2017), and as it was a transfer pricing case, it referred to the 2010 OECD Transfer Pricing Guidelines. Chile is of the view that the latter provides more guidance, and referred to the paragraph 4.48 that states:

Another time limit that must be considered is the three year time limit within which a taxpayer must invoke the mutual agreement procedure under Article 25 of the OECD Model Tax Convention. The three year period begins to run from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention, which can be the time when the tax administration first notifies the taxpayer of the proposed adjustment, described as the “adjustment action” or “act of taxation”, or an earlier date as discussed at paragraphs 21-24 of the Commentary on Article 25.

31. Chile specified that its competent authority notified the other competent authority of its decision to deny access to MAP. Chile understood that its treaty partner considered that the filing period commenced on the date of the notification of the final adjustment and not on the date of the first notification of the proposed adjustment. Chile also specified that such proposed adjustment was notified in May 2012 and that the MAP request was submitted after the expiration of the filing period provided under the relevant tax treaty, which is three years starting from the first notification of the action resulting in taxation not in accordance with the provisions of the relevant tax treaty. Chile further specified that the MAP request could have been submitted earlier, and submitting it early after the notification of the final assessment would have been on time according to Chile.

32. In Chile’s view the notification of the proposed adjustment is the first notification of the action resulting in taxation not in accordance with the provisions of the relevant treaty as according to the terms of the proposed adjustment itself if uncontested it becomes final. Chile further indicated that the “first notification” language used in the relevant tax treaty precisely covers a provisional or a proposed adjustment after which other notifications may be issued. In Chile’s view not following this rationale would lead to the absurd conclusion that if the proposed adjustment in the relevant case would not have been contested by the taxpayer it would have become final, and since no other adjustment would have been required to be notified, there would never have been a “first notification” of the action resulting in taxation not in accordance with the provisions of the tax treaty.

33. The relevant peer to this case confirmed that the facts and circumstances described by Chile were correct but it clarified that the date of the proposed adjustment was brought forward by Chile only and not by its competent authority, as the latter considered that this date would not be relevant in relation to a MAP case. On the contrary, to its competent authority the date of the proposed adjustment is irrelevant, both in this case and in any other MAP case based on a primary adjustment in its jurisdiction. This peer further clarified that it does not agree with Chile's understanding of the starting point of the three-year period. According to this peer, it should be referred to the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) that states the following in paragraph 21:

The provision fixing the starting point of the three year time limit as the date of the “first notification of the action resulting in taxation not in accordance with the provisions of the Convention” should be interpreted in the way most favourable to the taxpayer. Thus, even if such taxation should be directly charged in pursuance of an administrative decision or action of general application, the time limit begins to run only from the date of the notification of the individual action giving rise to such taxation, that is to say, under the most favourable interpretation, from the act of taxation itself, as evidenced by a notice of assessment or an official demand or other instrument for the collection or levy of tax. Since a taxpayer has the right to present a case as soon as the taxpayer considers that taxation will result in taxation not in accordance with the provisions of the Convention, whilst the three year limit only begins when that result has materialised, there will be cases where the taxpayer will have the right to initiate the mutual agreement procedure before the three year time limit begins (see the examples of such a situation given in paragraph 14 above).

34. According to this peer, the proposed adjustment notified in May 2012 is only of a provisional nature and results from the obligation of its tax administration to consult with the taxpayer before issuing a tax adjustment. The relevant peer further clarified that this provisional decision cannot in itself “give rise to taxation” nor is it an “adjustment action” or an “act of taxation” as referred to in paragraph 4.48 of the OECD Transfer Pricing Guidelines. This peer further stated that such a provisional decision must be followed by a tax adjustment decision notice/letter that would incorporate the comments of the taxpayer (if any) in order to start the tax collection process. This peer reported having presented its position in a letter to Chile's competent authority, thereby also offering to discuss the case under the equivalent of Article 25(3), second sentence that is contained in its tax treaty with Chile, but it reported that Chile did not agree to discuss the case. Chile responded that it was willing to discuss the case and that it had several exchanges with the relevant peer. Chile further noted that the relevant peer informed Chile that it had notified the taxpayer and that it considered the case as closed even if it did not agree with Chile's competent authority's views on the case.

35. The Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) clarifies that the three-year time limit only begins when taxation not in accordance with the provisions of the convention has materialised. On the basis of the different views provided by Chile and its peer, it can be concluded that the result of the action not in accordance with the tax treaty has only materialised as from the date of the first notification of the final adjustment, and not of the first notification of the proposed adjustment. – In addition, while the Commentary calls for the interpretation of such a date in the way most favourable to the taxpayer, it is clear that Chile's interpretation did not benefit the taxpayer. However, Chile specified that this most favourable interpretation is to be applied in case of doubt only.

36. In this regard, Chile reported that it retained this interpretation during the period applicable to stage 2 as well. However, Chile clarified that this interpretation is only

applicable as regards a notification of a proposed transfer pricing adjustment by a treaty partner jurisdiction. In this regard, Chile noted that if a notification for a proposed transfer pricing adjustment is issued in a treaty partner jurisdiction, where this notification is followed by a notification for a final adjustment which can still be challenged by domestic appeals in that jurisdiction, it would still consider the notification of the proposed adjustment to be the first notification of the action resulting in taxation not in accordance with the concerned tax treaty. However, Chile noted that it had not denied access to MAP on the grounds that the three-year filing period had elapsed since 1 September 2018.

37. Accordingly, as in the case discussed above, Chile's interpretation of the starting point of the filing period results in a denial of access to MAP even where such case would be eligible according to the Commentary on the OECD Model Tax Convention (OECD, 2017) based on the fact that the starting point of the filing period from Chile's perspective is the date of the first notification of the proposed adjustment (and not of the final adjustment). This is based on Chile's interpretation that a proposed adjustment in a treaty partner jurisdiction would be the first notification of the action resulting in taxation that is not in accordance with the tax treaty even where this notification is followed by a further notification for a final adjustment which can still be challenged by domestic appeals in that jurisdiction.

38. Similarly, in line with Chile's observation in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017), Chile reported that in self-assessment cases, where a taxpayer pays additional tax in connection with the filing of an amended return, it would consider the three-year filing period as starting from the date of filing of the amended return and not where the taxpayer is notified of the assessment resulting from such filing as provided in the Commentary. As above, Chile's interpretation would result in a denial of access to MAP even where such case would be eligible according to the Commentary on the OECD Model Tax Convention (OECD, 2017) based on the fact that the starting point of the filing period from Chile's perspective is the date of the filing of the amended tax return (and not of the notification in relating to such filing).

39. Another peer reported that it experienced difficulties with an attribution/allocation case that was submitted to its competent authority and that involved Chile. This peer reported that Chile's competent authority stated that in the absence of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty, the taxpayer should have requested a refund before the expiration of Chile's statute of limitation. In the case at stake, the peer reported that Chile's competent authority clarified that such statute of limitation had already expired when it notified Chile's competent authority of the MAP request. This peer also reported not having notified Chile's competent authority in a timely manner. However, the peer further specified that even if it would have notified Chile's competent authority immediately after receiving the MAP request, less than six months would have been remaining before the expiration of Chile's domestic time limits, which might have been too short to reach a MAP agreement. Therefore, this peer considers that Chile's domestic statute of limitation might hamper the access to MAP.

40. Chile reported that if the peer would have notified Chile's competent authority immediately after receiving the MAP request, almost five months would have remained before the expiration of Chile's domestic time limits. Chile further specified that after its competent authority received the case from the competent authority of the peer, it sent an email to this peer's competent authority less than a month later, indicating that Chile's competent authority was ready to open discussion on the relevant case, noting the limitations pertaining to the application of Chile's domestic time limits.

Recent developments

Bilateral modifications

41. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

42. Chile signed the Multilateral Instrument and has deposited its instrument of ratification on 26 November 2020. The Multilateral Instrument has entered into force for Chile on 1 March 2021.

Article 25(1), first sentence of the OECD Model Tax Convention

43. Article 16(4)(a)(i) of that instrument stipulates that Article 16(1), first sentence – containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b) and allowing the submission of MAP requests to the competent authority of either contracting state – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this tax treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified the depositary, pursuant to Article 16(6)(a), that this treaty contains the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b). Article 16(4)(a)(i) will for a tax treaty not take effect if one of the treaty partners has, pursuant to Article 16(5)(a), reserved the right not to apply the first sentence of Article 16(1) of that instrument to all of its covered tax agreements.

44. Chile reserved, pursuant to Article 16(5)(a) of the Multilateral Instrument, the right not to apply the first sentence of Article 16(1) of that instrument to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.¹ In this reservation, Chile declared to ensure that all of its tax treaties, which are considered covered tax agreements for purposes of the Multilateral Instrument, contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b). It subsequently declared to implement a bilateral notification or consultation process for those cases in which its competent authority considers the objection raised by a taxpayer in its MAP request as not being justified. The introduction and application of such process will be further discussed under element B.2.

45. In view of the above reservation made by Chile, none of Chile's 36 treaties containing the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of the Action 14 final report (OECD, 2015b), will be modified via the Multilateral Instrument with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. However, all of these treaties are considered to be in line with this part of element B.1, as discussed in paragraphs 20 and 21.

Article 25(1), second sentence of the OECD Model Tax Convention

46. With respect to the period of filing of a MAP request, Article 16(4)(a)(ii) of the Multilateral Instrument stipulates that Article 16(1), second sentence – containing the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply where such period is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provisions of a tax treaty. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(b)(i), the depositary that this treaty does not contain the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

47. Since none of Chile’s tax treaties contains a provision that is not in line with this part of element B.1, the application of the Multilateral Instrument is not further analysed as regards Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Peer input

48. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Chile, out of which neither provided input in relation to this element.

Anticipated modifications

49. Chile reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2015a), as it read prior to the adoption of the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.1]	Access to MAP would be denied in cases where the concerned treaty specifies a filing period of three years from the first notification of the action resulting in taxation not in accordance with the treaty and where a) a MAP request has not been submitted within three years from the first notification of a proposed transfer pricing adjustment in the treaty partner jurisdiction; b) a MAP request has not been submitted within three years from the filing of an amended self-assessed tax return, even though the first notification of the action resulting in taxation not in accordance with the tax treaty according to the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) i.e. the notification of a final transfer pricing adjustment in the treaty partner jurisdiction which can still be challenged by domestic appeals in that jurisdiction or a notification as to the assessment resulting from the filing of the self-assessed tax return respectively, would be communicated to the taxpayer later in time in these cases.	Chile should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention have access to MAP in all eligible cases, in particular when the MAP request was filed within the time period specified in the treaty and as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017).

[B.2] Allow submission of MAP requests to the competent authority of either treaty partner, or, alternatively, introduce a bilateral consultation or notification process

Jurisdictions should ensure that either (i) their tax treaties contain a provision which provides that the taxpayer can make a request for MAP assistance to the competent authority of either Contracting Party, or (ii) where the treaty does not permit a MAP request to be made to either Contracting Party and the competent authority who received the MAP request from the taxpayer does not consider the taxpayer's objection to be justified, the competent authority should implement a bilateral consultation or notification process which allows the other competent authority to provide its views on the case (such consultation shall not be interpreted as consultation as to how to resolve the case).

50. In order to ensure that all competent authorities concerned are aware of MAP requests submitted, for a proper consideration of the request by them and to ensure that taxpayers have effective access to MAP in eligible cases, it is essential that all tax treaties contain a provision that either allows taxpayers to submit a MAP request to the competent authority:

- i. of either treaty partner; or, in the absence of such provision
- ii. where it is a resident, or to the competent authority of the state of which they are a national if their cases come under the non-discrimination article. In such cases, jurisdictions should have in place a bilateral consultation or notification process where a competent authority considers the objection raised by the taxpayer in a MAP request as being not justified.

Domestic bilateral consultation or notification process in place

51. As discussed under element B.1, none of Chile's 36 treaties currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partner. As was also discussed under element B.1, none of these 36 treaties will be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner as Chile reserved the right, as is allowed pursuant to Article 16(5)(a) of the Multilateral Instrument, not to apply the first sentence of Article 16(1) of that instrument to existing treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state.²

52. Chile reported that in cases where access to MAP is denied or where the objection is considered not justified, Chile does use a notification process which allows the other competent authority concerned to provide its views on the case when Chile's competent authority considers the objection raised in the MAP request not to be justified. In those situations, Chile reported having included in the notification: the identity of the parties involved, the date of the submission of the MAP request, a brief summary of the case, and an analysis of the facts and the application of the treaty provision concerned. However, Chile reported that it does not have a documented bilateral consultation or notification process in place in any internal guidance which allows the other competent authority concerned to provide its views on the case when Chile's competent authority considers the objection raised in the MAP request not to be justified.

Recent developments

53. There are no recent developments with respect to element B.2.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

54. Chile reported that in the period 1 January 2016-31 August 2018 its competent authority has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was not justified. The 2016 and 2017 MAP statistics submitted by Chile also show that none of its MAP cases was closed with the outcome “objection not justified”.

55. All peers that provided input indicated not being aware of any cases for which Chile’s competent authority considered an objection in a MAP request not justified in the period 1 January 2016-31 August 2018, which can be clarified by the fact that no such instances have occurred in Chile during this period.

Period 1 September 2018-30 April 2020 (stage 2)

56. Chile reported that since 1 September 2018 its competent authority also has for none of the MAP requests it received decided that the objection raised by taxpayers in such request was being not justified. The 2018 and 2019 MAP statistics submitted by Chile also show that none of its MAP cases was closed with the outcome “objection not justified”.

57. All peers that provided input during stage 1 also indicated in stage 2 that since 1 September 2018 they are not being aware of any cases for which Chile’s competent authority considered an objection in a MAP request not justified. They also reported not having been consulted/notified in such cases, which can be clarified by the fact that no such instances have occurred in Chile since that date. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

58. Chile reported that a documented notification process for cases where Chile’s competent authority considers an objection in a MAP request not justified is included in its forthcoming MAP guidance. Chile indicated that the notification process requires that minimum information related to the case and a brief analysis of the reasons why the objection is considered not justified should be included in the notification. Further, Chile reported that this process also envisages sharing the time within which the other competent authority should give its response. Finally, Chile clarified that according to the process, before Chile’s competent authority decides whether the case should continue or be closed, it must analyse the response, if any, received from the other competent authority.

Conclusion

	Areas for improvement	Recommendations
[B.2]	None of the 36 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer’s objection raised in the MAP request is considered not to be justified.	Chile should without further delay follow up on it stated intention to document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Chile should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).

[B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

59. Where two or more tax administrations take different positions on what constitutes arm's length conditions for specific transactions between associated enterprises, economic double taxation may occur. Not granting access to MAP with respect to a treaty partner's transfer pricing adjustment, with a view to eliminating the economic double taxation that may arise from such adjustment, will likely frustrate the main objective of tax treaties. Jurisdictions should thus provide access to MAP in transfer pricing cases.

Legal and administrative framework

60. Out of Chile's 36 tax treaties, 34 contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a corresponding adjustment in case a transfer pricing adjustment is imposed by the treaty partner. Furthermore, one does not contain a provision based on or equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The remaining treaty contains a provision that is based on Article 9(2) of the OECD Model Tax Convention (OECD, 2017), but deviates from it since corresponding adjustments can be only granted in accordance with the mutual agreement procedure under this provision.

61. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Chile's tax treaties and irrespective of whether its domestic legislation enables the granting of corresponding adjustments. In accordance with element B.3, as translated from the Action 14 Minimum Standard, Chile indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments when an agreement is reached. Although Chile has not yet published MAP guidance, this practice is confirmed in Chile's MAP profile.

Recent developments***Bilateral modifications***

62. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

63. Chile signed the Multilateral Instrument. Article 17(2) of that instrument stipulates that Article 17(1) – containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017) – will apply in place of or in the absence of a provision in tax treaties that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument. Article 17(2) of the Multilateral Instrument does for a tax treaty not take effect if one or both of the treaty partners to the tax treaty have, pursuant to Article 17(3), reserved the right not to apply Article 17(2) for those tax treaties that already contain the equivalent

of Article 9(2) of the OECD Model Tax Convention (OECD, 2017), or not to apply Article 17(2) in the absence of such equivalent under the condition that: (i) it shall make appropriate corresponding adjustments or (ii) its competent authority shall endeavour to resolve the case under mutual agreement procedure of the applicable tax treaty. Where neither treaty partner has made such a reservation, Article 17(4) of the Multilateral Instrument stipulates that both have to make a notification whether the applicable treaty already contains a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). Where such a notification is made by both of them, the Multilateral Instrument will modify this treaty to replace that provision. If neither or only one treaty partner made this notification, Article 17(1) of the Multilateral Instrument will supersede this treaty only to the extent that the provision contained in that treaty relating to the granting of corresponding adjustments is incompatible with Article 17(1) (containing the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017)).

64. Chile has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument for those tax treaties that already contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). With regard to the two treaties identified in paragraph 60 above that are considered not to contain a provision such equivalent, Chile listed both of them as a covered tax agreement under the Multilateral Instrument and included one of them in the list of treaties for which Chile has, pursuant to Article 17(3), reserved the right not to apply Article 17(2) of the Multilateral Instrument.

65. For the remaining treaty, Chile did not make, pursuant to Article 17(4), a notification that this treaty does not contain such an equivalent. For this treaty, the relevant treaty partner is not a signatory to the Multilateral Instrument.

66. Therefore, at this stage, none of the two tax treaties identified above will be modified by the Multilateral Instrument to include the equivalent of Article 9(2) of the OECD Model Tax Convention (OECD, 2017).

Application of legal and administrative framework in practice

Period 1 January 2016-31 August 2018 (stage 1)

67. Chile reported that in the period 1 January 2016-31 August 2018, it has received four MAP requests, three of which are transfer pricing cases, and it has not denied access to MAP to these cases on the grounds that they were transfer pricing cases.

68. Peers indicated not being aware of a denial of access to MAP by Chile on the basis that the case concerned was a transfer pricing case.

Period 1 September 2018-30 April 2020 (stage 2)

69. Chile reported that also since 1 September 2018, it has for none of the MAP requests it received denied access to MAP on the basis that the case concerned was a transfer pricing case.

70. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

71. Chile reported that it is in favour of including Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties where possible and that it will seek to include this provision in all of its future tax treaties. Other than this, Chile did not indicate that it anticipates any modifications in relation to element B.3.

Conclusion

	Areas for improvement	Recommendations
[B.3]	-	-

[B.4] Provide access to MAP in relation to the application of anti-abuse provisions

Jurisdictions should provide access to MAP in cases in which there is a disagreement between the taxpayer and the tax authorities making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty.

72. There is no general rule denying access to MAP in cases of perceived abuse. In order to protect taxpayers from arbitrary application of anti-abuse provisions in tax treaties and in order to ensure that competent authorities have a common understanding on such application, it is important that taxpayers have access to MAP if they consider the interpretation and/or application of a treaty anti-abuse provision as being incorrect. Subsequently, to avoid cases in which the application of domestic anti-abuse legislation is in conflict with the provisions of a tax treaty, it is also important that taxpayers have access to MAP in such cases.

Legal and administrative framework

73. None of Chile's 36 tax treaties allows competent authorities to restrict access to MAP for cases where a treaty anti-abuse provision applies or where there is a disagreement between the taxpayer and the tax authorities as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. In addition, the domestic law and/or administrative processes of Chile do not include a provision allowing its competent authority to limit access to MAP for cases in which there is a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

74. Chile reported that its competent authority does not limit access to MAP for cases concerning the application of anti-abuse provisions. Chile's MAP profile clarifies that such cases are covered by the scope of MAP.

Recent developments

75. There are no recent developments with respect to element B.4.

Practical application*Period 1 January 2016-31 August 2018 (stage 1)*

76. Chile reported that in the period 1 January 2016-31 August 2018 it did not deny access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty.

77. Peers indicated not being aware of cases that have been denied access to MAP in Chile in the period 1 January 2016-31 August 2018 in relation to the application of treaty and/or domestic anti-abuse provisions.

Period 1 September 2018-30 April 2020 (stage 2)

78. Chile reported that since 1 September 2018, it has also not denied access to MAP in cases in which there was a disagreement between the taxpayer and the tax authorities as to whether the conditions for the application of a treaty anti-abuse provision have been met, or as to whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a tax treaty. However, no such cases in relation hereto were received since that date.

79. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

80. Chile indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	-

[B.5] Provide access to MAP in cases of audit settlements

Jurisdictions should not deny access to MAP in cases where there is an audit settlement between tax authorities and taxpayers. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, jurisdictions may limit access to the MAP with respect to the matters resolved through that process.

81. An audit settlement procedure can be valuable to taxpayers by providing certainty on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing on such settlements, taxpayers should have access to the MAP in such cases, unless they were already resolved via an administrative or statutory disputes settlement/resolution process that functions independently from the audit and examination function and which is only accessible through a request by taxpayers.

Legal and administrative framework

Audit settlements

82. Chile reported that there are no audit settlements available in Chile. This is also clarified in Chile’s MAP profile.

Administrative or statutory dispute settlement/resolution process

83. Chile reported it has recently introduced a statutory dispute settlement/resolution process, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer that may limit access to MAP when it comes into force. This process was introduced through Article 23 of Law No. 21,210, published in the Official Gazette on 24 February 2020, and involves the Taxpayer’s Ombudsman office (“DEDECON”), an independent public body with its own legal personality and funding, supervised by the President of the Republic through the Ministry of Finance.

84. Chile reported that the DEDECON was established to ensure the protection and safeguard of taxpayers’ rights in matters of taxation. Chile noted that for this purpose, DEDECON would *inter alia* undertake mediation procedures for taxpayers, intended to resolve disputes between taxpayers and the Chilean tax administration in a non-adversarial and extra-judicial manner. Chile clarified that such a mediation procedure could be initiated when, *inter alia*, a taxpayer disagrees legally or factually with the audits issued by the Chilean tax administration at any time provided that no judicial claim has been filed. If during the mediation procedure the parties reach an agreement, Chile reported that DEDECON will prepare a draft settlement that needs to be approved by both parties and once approved, it will be executed. Chile further clarified that the settlement deed concluded under the mediation procedure shall have the status of a public instrument for all legal purposes and shall apply only to the specific case with legal binding effect.

85. Chile reported that the DEDECON is yet to come into force, which should occur no later than two years from 24 February 2020.

86. Chile noted that since the settlement agreement with the DEDECON would be a binding instrument, the Chilean tax administration is still evaluating whether to deny access to MAP in those cases that have been resolved through such procedure. Where access to MAP will be denied, Chile reported that this will be indicated in its MAP Profile and in its forthcoming MAP guidance as well as in its public guidance on such process. However, Chile also noted that if access to MAP is granted and since the settlement deed will have legal binding effect, Chile’s competent authority will not be able to deviate from such settlement, allowing only for correlative relief in the other jurisdiction through MAP.

Recent developments

87. The stage 1 report noted that Chile has no administrative or statutory dispute settlement/resolution process in place, which is independent from the audit and examination functions and which can only be accessed through a request by the taxpayer that limits access to MAP. As noted above, Chile has now established such a process, a mediation procedure through the DEDECON.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

88. Chile reported that in the period 1 January 2016-31 August 2018 it has not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through an audit settlement between the taxpayer and the tax administration, as audit settlements are not available in Chile. Further, Chile reported it has in the period 1 January 2016-31 August 2018 not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through its statutory dispute resolution/settlement process, as such a process was not available in Chile during this period.

89. All peers that provided input indicated not being aware of a denial of access to MAP by Chile in the period 1 January 2016-31 August 2018 in cases where there was an audit settlement between the taxpayer and the tax administration or in cases that were already resolved via its statutory dispute resolution/settlement process.

Period 1 September 2018-30 April 2020 (stage 2)

90. Chile reported that since 1 September 2018 it has also not denied access to MAP for cases where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax administration since such settlements are still not possible in Chile. Further, Chile reported it has since 1 September 2018 also not denied access to MAP for cases where the issue presented by the taxpayer in a MAP request has already been resolved through its statutory dispute resolution/settlement process, since such a process was not available during this period.

91. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

92. Chile indicated that it does not anticipate any modifications in relation to element B.5.

Conclusion

	Areas for improvement	Recommendations
[B.5]	-	-

[B.6] Provide access to MAP if required information is submitted

Jurisdictions should not limit access to MAP based on the argument that insufficient information was provided if the taxpayer has provided the required information based on the rules, guidelines and procedures made available to taxpayers on access to and the use of MAP.

93. To resolve cases where there is taxation not in accordance with the provisions of the tax treaty, it is important that competent authorities do not limit access to MAP when taxpayers have complied with the information and documentation requirements as provided

in the jurisdiction’s guidance relating hereto. Access to MAP will be facilitated when such required information and documentation is made publically available.

Legal framework on access to MAP and information to be submitted

94. Currently, there are no specific domestic legislative provisions or guidance pertaining to the MAP process published in Chile. Chile reported that this subject will be addressed in its forthcoming MAP guidance.

95. Chile reported that in the absence of any MAP guidance, a MAP request is regarded as an administrative request that has to be submitted in accordance with Form 2117 commonly used for every kind of administrative requests to Chile’s tax administration. Under this form, the following items at least should be provided:

- identification, address and contact information of the taxpayer covered by the request
- matter of the request
- grounds of the request.

96. Chile further reported that if additional information is necessary for a MAP request, the taxpayer will always be given a reasonable time period (approximately two months) to provide such information. If the requested information is not submitted within the period indicated to the taxpayer, Chile reported that if such a case had happened the MAP request would have been considered as not submitted, noting that it may be presented again. However, Chile reported that for MAP statistics purposes it would close the case with the outcome “objection not justified”.

Recent developments

97. There are no recent developments with respect to element B.6.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

98. Chile reported that in the period 1 January 2016-31 August 2018 its competent authority has not denied access to MAP for cases where the taxpayer had provided the required information or documentation. Chile also noted that during the Review Period, Chile did not consider any MAP request as not submitted.

99. All peers that provided input indicated not being aware of a limitation of access to MAP by Chile in the period 1 January 2016-31 August 2018 in situations where taxpayers complied with information and documentation requirements.

Period 1 September 2018-30 April 2020 (stage 2)

100. Chile reported that since 1 September 2018 its competent authority has also not denied access to MAP for cases where the taxpayer had provided the required information or documentation.

101. All peers that provided input during stage 1 stated during stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

102. As described above, Chile reported that its forthcoming MAP guidance will describe the information and documentation that taxpayers are expected to provide when submitting a MAP request.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	-

[B.7] Include Article 25(3), second sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision under which competent authorities may consult together for the elimination of double taxation in cases not provided for in their tax treaties.

103. For ensuring that tax treaties operate effectively and in order for competent authorities to be able to respond quickly to unanticipated situations, it is useful that tax treaties include the second sentence of Article 25(3) of the OECD Model Tax Convention (OECD, 2017), enabling them to consult together for the elimination of double taxation in cases not provided for by these treaties.

Current situation of Chile's tax treaties

104. Out of Chile's 36 tax treaties, four contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties. The remaining 32 treaties do not a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

105. For the 32 treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), four relevant peers reported during stage 1 that their treaty with Chile does not contain the provision, but will be modified by the Multilateral Instrument, which is in line with the above analysis. The other relevant peers did not provide input.

Recent developments

Bilateral modifications

106. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

107. Chile signed the Multilateral Instrument and deposited its instrument of ratification on 26 November 2020. The Multilateral Instrument has entered into force for Chile on 1 March 2021.

108. Article 16(4)(c)(ii) of that instrument stipulates that Article 16(3), second sentence – containing the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(c)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both notified, pursuant to Article 16(6)(d)(ii), the depositary that this treaty does not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

109. With regard to the 32 tax treaties identified above that are considered not to contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Chile listed all of them as a covered tax agreement under the Multilateral Instrument and made for all, pursuant to Article 16(6)(d)(ii), a notification that they do not contain a provision described in Article 16(4)(c)(ii). Of the relevant 32 treaty partners, five are not a signatory to the Multilateral Instrument and one did not list their treaty with Chile as a covered tax agreement. All the remaining 26 treaty partners made such notification.

110. Of the 26 treaty partners mentioned above, 20 have already deposited their instrument of ratification, following which the Multilateral Instrument has entered into force for the treaty between Chile and these treaty partners. Therefore, at this stage, the Multilateral Instrument has modified 20 treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). For the remaining six treaties, the instrument will, upon entry into force for these treaties, modify them to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

111. Chile further reported that for the remaining six tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument in this regard, the following actions are being taken or planned:

- For one treaty, it would encourage the concerned treaty partner to sign the Multilateral Instrument to bring this treaty in line with the requirements under the Action 14 minimum standard. Chile noted that the concerned treaty partner has indicated publicly that it intends to sign the Multilateral Instrument.
- For four treaties, bilateral negotiations have already been initiated with three and is envisaged to be initiated with one.
- For the remaining treaty, as this treaty is not in force owing to ratification being pending at the treaty partner jurisdiction, Chile plans to contact the treaty partner in order to evaluate the time required for that treaty partner to approve the treaty in its Congress following which, discussions on the feasibility of renegotiations will be initiated by Chile.

Peer input

112. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Chile. Both of these peers concern treaty partners to treaties that are not in line with this element and noted that these treaties would be modified by the Multilateral Instrument, which is confirmed by the above analysis.

Anticipated modifications

113. Chile reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.7]	<p>32 out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Out of these 32:</p> <ul style="list-style-type: none"> • 20 have been modified by the Multilateral Instrument to include the required provision. • Six are expected to be modified by the Multilateral Instrument to include the required provision. • Six will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one, the relevant treaty partner has been or will be contacted by Chile with a view to have the treaty modified by the Multilateral Instrument. - For five, negotiations are envisaged, scheduled or pending. 	<p>For five of the remaining six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Chile should:</p> <ul style="list-style-type: none"> • for one treaty, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for four treaties, continue (the initiation of) negotiations with the treaty partner with a view to including the required provision. <p>With regard to the remaining treaty that was signed but not in force as yet, Chile should, following approval of the treaty by the treaty partner, enter into bilateral negotiations with the concerned treaty partner to make this treaty in line with element B.7.</p>

[B.8] Publish clear and comprehensive MAP guidance

Jurisdictions should publish clear rules, guidelines and procedures on access to and use of the MAP and include the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance.

114. Information on a jurisdiction's MAP regime facilitates the timely initiation and resolution of MAP cases. Clear rules, guidelines and procedures on access to and use of the MAP are essential for making taxpayers and other stakeholders aware of how a jurisdiction's MAP regime functions. In addition, to ensure that a MAP request is received and will be reviewed by the competent authority in a timely manner, it is important that a jurisdiction's MAP guidance clearly and comprehensively explains how a taxpayer can make a MAP request and what information and documentation should be included in such request.

Chile's MAP guidance

115. Apart from the information available in Chile's MAP profile the rules, guidelines and procedures are not publicly available yet. In particular, the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which concerns

(i) contact information of the competent authority or the office in charge of MAP cases and (ii) the manner and form in which the taxpayer should submit its MAP request is not publically available.

Information and documentation to be included in a MAP request

116. To facilitate the review of a MAP request by competent authorities and to have more consistency in the required content of MAP requests, the FTA MAP Forum agreed on guidance that jurisdictions could use in their domestic guidance on what information and documentation taxpayers need to include in request for MAP assistance.³ This agreed guidance is shown below. The items to be included in a MAP request in Chile are listed in the general form number 2117 applicable for every administrative request. These items are checked in the following list:

- identity of the taxpayer(s) covered in the MAP request
- the basis for the request
- facts of the case
- analysis of the issue(s) requested to be resolved via MAP
- whether the MAP request was also submitted to the competent authority of the other treaty partner
- whether the MAP request was also submitted to another authority under another instrument that provides for a mechanism to resolve treaty-related disputes
- whether the issue(s) involved were dealt with previously
- a statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner.

Recent developments

117. There are no recent developments with respect to element B.8.

Anticipated modifications

118. As discussed above, Chile reported that its MAP guidance, in the form of a draft Circular that gives instructions regarding the provisions on the MAP established in the tax treaties signed by Chile, has been finalised but is undergoing further reviews and approvals prior to publication. Chile clarified that its forthcoming MAP guidance will address the following items:

- contact information of the competent authority or the office in charge of MAP cases
- the manner and form in which the taxpayer should submit its MAP request
- the specific information and documentation that should be included in a MAP request (in addition to what is currently requested, Chile specified that it would require the taxpayer to state whether the MAP request was also submitted to the competent authority of the other treaty partner, whether the issue(s) involved were dealt with previously and a statement confirming that all information and

documentation provided in the MAP request is accurate and that the taxpayer will assist the competent authority in its resolution of the issue(s) presented in the MAP request by furnishing any other information or documentation required by the competent authority in a timely manner)

- how the MAP functions in terms of timing and the role of the competent authorities
- relationship with domestic available remedies
- access to MAP in (i) transfer pricing cases and (ii) anti-abuse provisions
- rights and role of taxpayers in the process
- the possibility of suspension of tax collection during the course of a MAP
- the steps of the process and the timing of such steps for the implementation of MAP agreements, including any actions to be taken by taxpayers (if any).

Conclusion

	Areas for improvement	Recommendations
[B.8]	There is no published MAP guidance.	Chile should introduce and publish, without further delay, guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request.

[B.9] Make MAP guidance available and easily accessible and publish MAP profile

Jurisdictions should take appropriate measures to make rules, guidelines and procedures on access to and use of the MAP available and easily accessible to the public and should publish their jurisdiction MAP profiles on a shared public platform pursuant to the agreed template.

119. The public availability and accessibility of a jurisdiction’s MAP guidance increases public awareness on access to and the use of the MAP in that jurisdiction. Publishing MAP profiles on a shared public platform further promotes the transparency and dissemination of the MAP programme.⁴

Rules, guidelines and procedures on access to and use of the MAP

120. As discussed under element B.8, Chile has not published any MAP guidance.

MAP profile

121. The MAP profile of Chile is published on the website of the OECD and was last updated in May 2020. This MAP profile is complete and often with detailed information. This profile includes external links which provide extra information and guidance where appropriate.

Recent developments

122. There are no recent developments with respect to element B.9.

Anticipated modifications

123. Chile reported that its forthcoming MAP guidance has been finalised but is undergoing further reviews and approvals prior to publication, which is expected in 2021.

Conclusion

	Areas for improvement	Recommendations
[B.9]	The MAP guidance is not publically available.	Chile should make its MAP guidance currently in preparation publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.

[B.10] Clarify in MAP guidance that audit settlements do not preclude access to MAP

Jurisdictions should clarify in their MAP guidance that audit settlements between tax authorities and taxpayers do not preclude access to MAP. If jurisdictions have an administrative or statutory dispute settlement/resolution process independent from the audit and examination functions and that can only be accessed through a request by the taxpayer, and jurisdictions limit access to the MAP with respect to the matters resolved through that process, jurisdictions should notify their treaty partners of such administrative or statutory processes and should expressly address the effects of those processes with respect to the MAP in their public guidance on such processes and in their public MAP programme guidance.

124. As explained under element B.5, an audit settlement can be valuable to taxpayers by providing certainty to them on their tax position. Nevertheless, as double taxation may not be fully eliminated by agreeing with such settlements, it is important that a jurisdiction's MAP guidance clarifies that in case of audit settlement taxpayers have access to the MAP. In addition, for providing clarity on the relationship between administrative or statutory dispute settlement or resolution processes and the MAP (if any), it is critical that both the public guidance on such processes and the public MAP programme guidance address the effects of those processes, if any. Finally, as the MAP represents a collaborative approach between treaty partners, it is helpful that treaty partners are notified of each other's MAP programme and limitations thereto, particularly in relation to the previously mentioned processes.

MAP and audit settlements in the MAP guidance

125. As previously discussed under B.5, under Chile's domestic law, audit settlements are not available. In that regard, there is no need for Chile to address in its forthcoming MAP guidance whether taxpayers can have access to MAP in such a situation.

126. Peers raised no issues with respect to this element concerning audit settlements.

MAP and other administrative or statutory dispute settlement/resolution processes in available guidance

127. As previously mentioned under element B.5, Chile has a new statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer and that once in force may limit access to MAP. Since this new process is not yet in force, Chile does not have either MAP guidance or public guidance on such process that clarifies whether

taxpayers have access to MAP in such cases as yet. However, Chile reported that if the position taken is to limit access to MAP in such cases, this position would be included in its forthcoming MAP guidance as well as its public guidance on such process and MAP Profile.

128. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Chile, which can be clarified by the fact that such process had not yet come into force in Chile. One peer requested further information from Chile on the DEDECON's functioning, organisation, the type of disputes covered, independence of the members of the DEDECON, decision making powers and possible relationship with access to MAP.

129. In this regard, Chile clarified that apart from the description provided under element B.5, mediation under the DEDECON will proceed when the taxpayer disagrees with a) the legal or factual qualification of the elements contained in the acts issued by the Chilean tax administration during an audit procedure; b) in all or part of the elements of a tax assessment, tax collection note or resolution, which affect the payment of taxes, or c) in the elements that serve as a basis for determining it. Chile further clarified that the DEDECON will have an appointed Ombudsman, a Deputy Director and a Taxpayer's Defense Council. The Ombudsman will be appointed by the President of the Republic of Chile in accordance with a procedure established by law. The Ombudsman will serve for four years and may be renewed once. Chile noted that the Ombudsman must hold a degree in law, accounting, auditing or engineering and have recognised and extensive academic or work experience in tax law. Chile reported that the Deputy Director will be responsible for advising and supporting the Ombudsman in the exercise of his duties and shall be appointed by the Ombudsman. Further, Chile clarified that the Taxpayer Defense Council is a technical and collegiate body, composed of three independent Counsellors appointed by the Minister of Finance in accordance with a procedure established by law, shall serve for two years and may be re-elected once. Further, DEDECON officials will also be appointed by the Ombudsman. Chile noted in this regard that all officials and functionaries of the DEDECON are thus, independent of Chile's tax administration. As regards access to MAP, Chile also noted in this regard, that since decisions of the DEDECON are legally binding, it could be that access to MAP would not be granted in respect of cases where the DEDECON has already issued decisions.

Notification of treaty partners of existing administrative or statutory dispute settlement/resolution processes

130. Chile has a new internal statutory dispute settlement/resolution process in place that may limit access to MAP and has updated its MAP profile in May 2020 to indicate that it is verifying whether access to MAP may be limited in such cases.

Recent developments

131. In the stage 1 report, it was noted that Chile does not have an administrative or statutory dispute settlement/resolution process in place that is independent from the audit and examination functions and that can only be accessed through a request by the taxpayer and that may limit access to MAP. As noted above, this position has changed since 1 September 2018 when Chile included such a process, even though it is not in force yet.

Anticipated modifications

132. As noted above, Chile indicated that once it takes a final position as regards the granting of MAP access in relation to its new internal statutory dispute settlement/resolution process, and if access to MAP is limited it will update its MAP profile to refer to this and if required, include an analysis of the same in its forthcoming MAP guidance as well as in the guidance in relation to the dispute settlement/resolution process.

Conclusion

	Areas for improvement	Recommendations
[B.10]	-	-

Notes

1. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Chile reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the taxpayer’s objection to be justified”. An overview of Chile’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-chile-instrument-deposit.pdf.
2. This reservation on Article 16 – Mutual Agreement Procedure reads: “Pursuant to Article 16(5)(a) of the Convention, the Republic of Chile reserves the right for the first sentence of Article 16(1) not to apply to its Covered Tax Agreements on the basis that it intends to meet the minimum standard for improving dispute resolution under the OECD/G20 BEPS Package by ensuring that under each of its Covered Tax Agreements (other than a Covered Tax Agreement that permits a person to present a case to the competent authority of either Contracting Jurisdiction), where a person considers that the actions of one or both of the Contracting Jurisdictions result or will result for that person in taxation not in accordance with the provisions of the Covered Tax Agreement, irrespective of the remedies provided by the domestic law of those Contracting Jurisdictions, that person may present the case to the competent authority of the Contracting Jurisdiction of which the person is a resident or, if the case presented by that person comes under a provision of a Covered Tax Agreement relating to non-discrimination based on nationality, to that of the Contracting Jurisdiction of which that person is a national; and the competent authority of that Contracting Jurisdiction will implement a bilateral notification or consultation process with the competent authority of the other Contracting Jurisdiction for cases in which the competent authority to which the mutual agreement procedure case was presented does not consider the

taxpayer’s objection to be justified.” An overview of Chile’s positions on the Multilateral Instrument is available at: www.oecd.org/tax/treaties/beps-mli-position-chile-instrument-deposit.pdf.

3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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OECD (2015b), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.

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Part C

Resolution of MAP cases

[C.1] Include Article 25(2), first sentence, of the OECD Model Tax Convention in tax treaties

Jurisdictions should ensure that their tax treaties contain a provision which requires that the competent authority who receives a MAP request from the taxpayer, shall endeavour, if the objection from the taxpayer appears to be justified and the competent authority is not itself able to arrive at a satisfactory solution, to resolve the MAP case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with the tax treaty.

133. It is of critical importance that in addition to allowing taxpayers to request for a MAP, tax treaties also include the equivalent of the first sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), which obliges competent authorities, in situations where the objection raised by taxpayers are considered justified and where cases cannot be unilaterally resolved, to enter into discussions with each other to resolve cases of taxation not in accordance with the provisions of a tax treaty.

Current situation of Chile’s tax treaties

134. All of Chile’s 36 tax treaties contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) requiring its competent authority to endeavour – when the objection raised is considered justified and no unilateral solution is possible – to resolve by mutual agreement with the competent authority of the other treaty partner the MAP case with a view to the avoidance of taxation which is not in accordance with the tax treaty.

135. Peers did not provide any particular input related to element C.1 during stage 1.

Recent developments

Bilateral modifications

136. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Peer input

137. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Chile, out of which neither provided input in relation to this element.

Anticipated modifications

138. Chile reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[C.1]	-	-

[C.2] Seek to resolve MAP cases within a 24-month average timeframe

Jurisdictions should seek to resolve MAP cases within an average time frame of 24 months. This time frame applies to both jurisdictions (i.e. the jurisdiction which receives the MAP request from the taxpayer and its treaty partner).

139. As double taxation creates uncertainties and leads to costs for both taxpayers and jurisdictions, and as the resolution of MAP cases may also avoid (potential) similar issues for future years concerning the same taxpayers, it is important that MAP cases are resolved swiftly. A period of 24 months is considered as an appropriate time period to resolve MAP cases on average.

Reporting of MAP statistics

140. Statistics regarding all tax treaty related disputes concerning Chile are published on the website of the OECD as from 2006.¹

141. The FTA MAP Forum has agreed on rules for reporting of MAP statistics (“**MAP Statistics Reporting Framework**”) for MAP requests submitted on or after 1 January 2016 (“**post-2015 cases**”). Also, for MAP requests submitted prior to that date (“**pre-2016 cases**”), the FTA MAP Forum agreed to report MAP statistics on the basis of an agreed template. Chile provided its MAP statistics pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Chile and of which its competent authority was aware. The statistics discussed below include both pre-2016 and post-2015 cases and the full statistics are attached to this report as Annex B and C respectively² and should be considered jointly for an understanding of the MAP caseload of Chile.

142. With respect to post-2015 cases, Chile reported that for the years 2016-19, it has reached out to all of its MAP partners with a view to have their MAP statistics matching. In that regard, Chile indicated that it could match its statistics with all but three of them where Chile did not receive a response.

143. Three peers provided input on the matching of MAP statistics with Chile and stated that they were able to successfully match statistics with Chile.

144. Based on the information provided by Chile’s MAP partners, its post-2015 MAP statistics for the years 2016-19 actually match those of its treaty partners as reported by the latter.

Monitoring of MAP statistics

145. Chile reported that it uses the MAP Statistics Monitoring Template prepared by the FTA MAP Forum in order to communicate, monitor and manage the MAP caseload with its treaty partners.

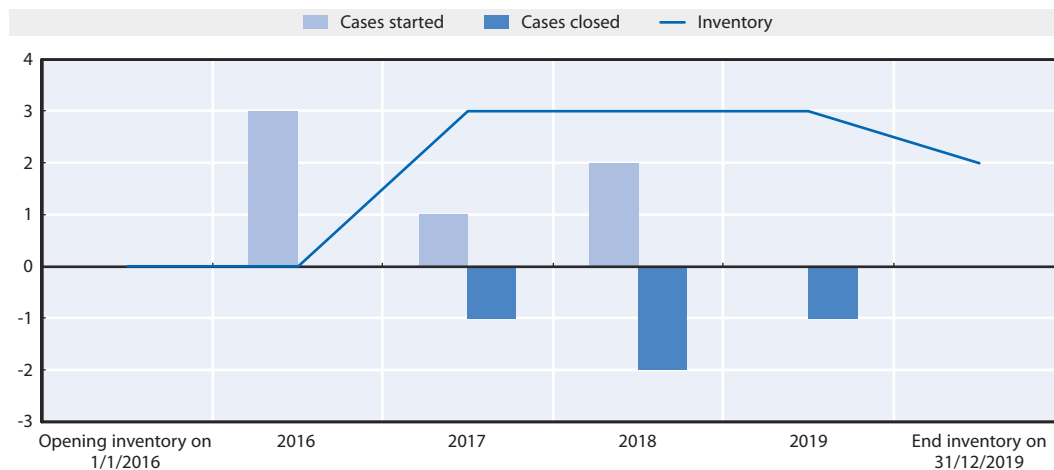
Analysis of Chile’s MAP caseload

Global overview

146. The analysis of Chile’s MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

147. Figure C.1 shows the evolution of Chile’s MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Chile’s MAP caseload



148. At the beginning of the Statistics Reporting Period Chile had no MAP cases.³ At the end of the Statistics Reporting Period, Chile had two MAP cases in its inventory, both of which are other MAP cases. Chile’s MAP caseload has increased from none to two during the Statistics Reporting Period.

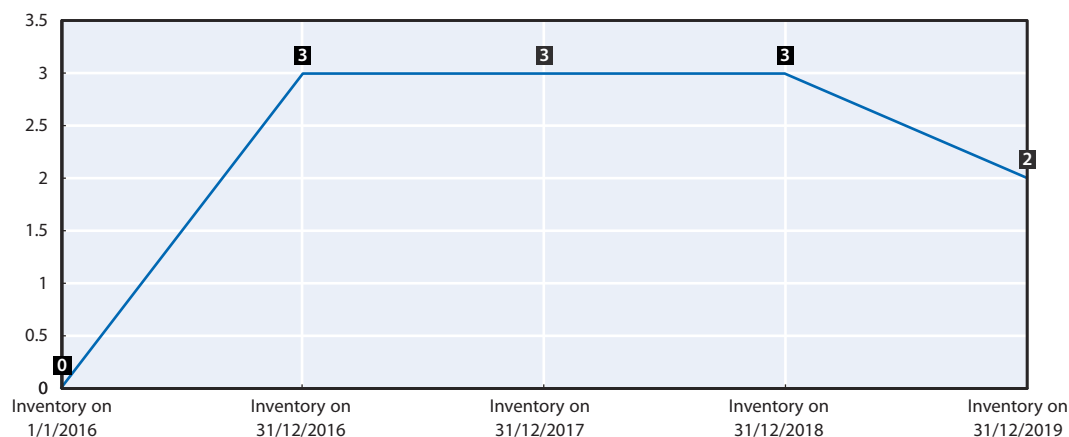
Pre-2016 cases

149. As mentioned above, Chile did not have any pre-2016 MAP cases over the Statistics Reporting Period.

Post-2015 cases

150. Figure C.2 shows the evolution of Chile’s post-2015 MAP cases over the Statistics Reporting Period.

Figure C.2. Evolution of Chile’s MAP inventory: Post-2015 cases



151. In total, six MAP cases started during the Statistics Reporting Period, three of which concerned attribution/allocation cases and three other cases. At the end of this period the total number of post-2015 cases in the inventory was two other MAP cases. Accordingly, Chile closed four post-2015 cases during the Statistics Reporting Period, comprising three attribution/allocation cases and one other MAP case. The total number of closed cases represents 67% of the total number of post-2015 cases that started during the Statistics Reporting Period.

152. The number of post-2015 cases closed as compared to the number of post-2015 cases started during the Statistics Reporting Period is shown in the table below.

Post-2015 cases	% of cases closed in 2016 compared to cases started in 2016	% of cases closed in 2017 compared to cases started in 2017	% of cases closed in 2018 compared to cases started in 2018	% of cases closed in 2019 compared to cases started in 2019	Cumulative evolution of total MAP caseload over the four years (2016-19)
Attribution/allocation cases	0%	(no cases started)	(no cases started)	(no cases started)	100%
Other cases	(no cases started)	0%	50%	(no cases started)	33%

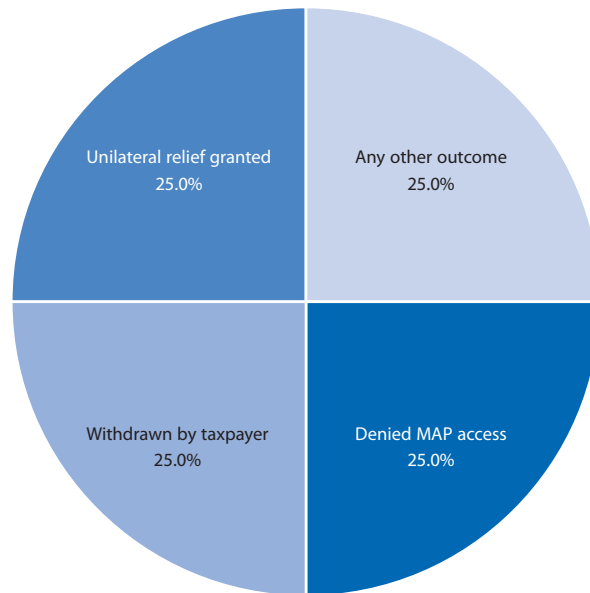
Overview of cases closed during the Statistics Reporting Period

Reported outcomes

153. During the Statistics Reporting Period, Chile in total closed four MAP cases for which the outcomes shown in Figure C.3 were reported.

154. Figure C.3 shows that during the Statistics Reporting Period, the four cases that were closed were closed with the outcomes “unilateral relief granted”, “denied MAP access”, “withdrawn by taxpayer” and “any other outcome” respectively.

Figure C.3. Cases closed in 2016, 2017, 2018 or 2019 (four cases)



Reported outcomes for attribution/allocation cases

155. In total, three attribution/allocation cases were closed during the Statistics Reporting Period. The reported outcomes for these cases are:

- unilateral relief granted (33%)
- denied MAP access (33%)
- any other outcome (33%).

Reported outcomes for other cases

156. In total, one other MAP case was closed during the Statistics Reporting Period with the outcome “withdrawn by taxpayer”.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

157. The average time needed to close MAP cases during the Statistics Reporting Period was 21.30 months. This average can be broken down as follows:

	Number of cases	Start date to End date (in months)
Attribution/Allocation cases	3	24.58
Other cases	1	11.44
All cases	4	21.30

Pre-2016 cases

158. As discussed above, Chile did not have any pre-2016 cases during the Reporting Period.

Post-2015 cases

159. For post-2015 cases Chile reported that on average it needed 24.58 months to close three attribution/allocation cases and 11.44 months to close one other case. This resulted in an average time needed of 21.30 months to close four post-2015 cases.

Peer input

160. Most of the peers that provided input reported having very few MAP experience (or none) with Chile's competent authority. Overall, as will be discussed under element C.3, the peers that provided input reported that the communication with Chile has been good and that no unnecessary delays have occurred.

161. One peer reported that during the Review Period two other cases have been initiated and not closed yet, but this peer observes that the duration of the cases are still within the timeframe of 24 months. Chile confirmed that these cases remain pending at the end of the Statistics Reporting Period.

Recent developments

162. Chile was in the stage 1 peer review report under element C.2 recommended to seek to resolve the remaining 75% of its post-2015 MAP cases that were pending on 31 December 2017 (three cases), within a timeframe that results in an average timeframe of 24 months for all post-2015 cases.

163. With respect to this recommendation, Chile reported that it has been able to manage its MAP inventory with its current resources.

164. In view of the statistics discussed above, it also follows that Chile was able to close four out of six cases started during the Statistics Reporting Period, wherein all attribution/allocation cases started have been closed. Further, the statistics also show that Chile has in the period 2016-19 closed its MAP cases within the pursued average of 24 months. Element C.3 will further consider these numbers in light of the adequacy of resources.

165. All peers that provided input during stage 1 confirmed that this input holds equal relevance for the period starting on 1 September 2018, albeit that one peer commented on its experience with Chile concerning the resolution of MAP cases since that date. This input is further discussed under element C.3.

Anticipated modifications

166. Chile indicated that it does not anticipate any modifications in relation to element C.2.

Conclusion

	Areas for improvement	Recommendations
[C.2]	-	-

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

167. Adequate resources, including personnel, funding and training, are necessary to properly perform the competent authority function and to ensure that MAP cases are resolved in a timely, efficient and effective manner.

Description of Chile's competent authority

168. Chile reported that under Chile's tax treaties, the competent authority is generally defined as the Minister of Finance, the Commissioner of Chile's tax administration or their authorised representatives.

169. The competent authority function is exercised with advice and assistance provided by the following bodies within Chile's tax administration:

- for attribution/allocation cases: the Transfer Pricing and Valuation Area within the Department of Selective Analysis of Tax Compliance of the Audit and Compliance Directorate
- for other cases: the International Taxation Department of the Legal and Regulatory Directorate.

170. Chile reported that six people are working with the Transfer Pricing and Valuation Area, and their average experience in transfer pricing matters is six years. Chile further specified that these staff also deal with APA requests, risk analyses in transfer pricing and provisions of advice in those matters for other bodies of Chile's tax administration. Chile specified that the head of the Department of Selective Analysis of Tax Compliance of the Audit and Compliance Directorate participates in the meetings of Working Party number 6 on taxation of multinational enterprises of the OECD.

171. Chile further reported that six people are working with the International Taxation Department, and that all of them have a vast experience in international tax matters, overall exceeding 15 years of experience on average. Chile further specified that these staff are also involved in providing advice on international taxation issues for the purpose of negotiation, application and interpretation of tax treaties. Chile specified that the head of the International Taxation Department participates in the meetings of Working Party number 1 on tax conventions and related questions of the OECD and that another staff member participates in the FTA MAP Forum meetings.

172. Chile noted a Training Department within Chile's tax administration is dedicated to the training of the tax administration's staff. Chile further specified that such training includes courses on tax treaties, transfer pricing and international tax planning. In addition, Chile reported that staff, among which the staff in charge of MAP cases, may participate in courses provided by universities or qualified tax agencies, seminars given by private sector and international seminars of tax administrations, workshops and distant courses, including OECD workshops. Chile further reported that its competent authority staff participated in the 5-day training organised by the FTA MAP Forum in collaboration with IOTA, held in Budapest, Hungary, in November 2018.

Monitoring mechanism

173. In terms of resource available to MAP, Chile reported that it considers the current resources as sufficient, given the fact that its MAP inventory in the Review Period did not exceed six cases. In order to assess the adequacy of its resource, Chile monitors, for example, the number of MAP cases in inventory, the number of new cases presented each year and the time incurred to solve cases.

Recent developments

174. In the stage 1 report, Chile was recommended to continue to closely monitor whether it has adequate resources in place to ensure that future MAP cases are resolved in a timely, efficient and effective manner.

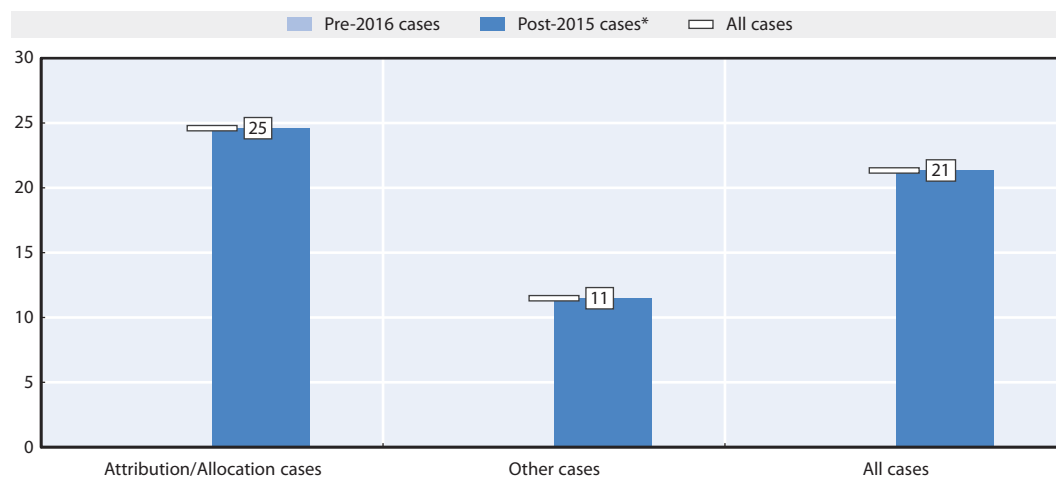
175. Chile clarified in this regard that since it has been able to close four out of six MAP cases that started during the Statistics Reporting Period, it considers that its current resources are adequate.

Practical application

MAP statistics

176. As discussed under element C.2, Chile has closed its MAP cases during the Statistics Reporting Period within the pursued 24-month average, as it needed 21.30 months to close MAP cases. This concerns other MAP cases where the time needed was 11.44 months, although the time needed to resolve attribution/allocation cases was 24.58 months. The average time to resolve MAP cases in 2016, 2017, 2018 and 2019 can be illustrated by Figure C.4.

Figure C.4. Average time (in months) to close cases in 2016-19



*Note that post-2015 cases only concern cases started and closed during 2016, 2017, 2018 or 2019.

177. The stage 1 peer review report of Chile analysed the 2016-17 MAP statistics and showed an average of 6.90 months, which concerned one attribution/allocation case that was closed. It was on that basis concluded that as the overall average was below the pursued average of 24 months, Chile was considered to be adequately resourced.

178. For stage 2, the 2018 and 2019 MAP statistics are also taken into account. The average time to close MAP cases for these years are as follows:

	2018	2019
Attribution/Allocation cases	28.37	38.47
Other cases	11.44	0
All cases	19.91	38.47

179. The 2018 and 2019 statistics of Chile show that the average completion time of MAP cases increased from 6.90 months (2016-17) to 19.91 months (2018) and 38.47 months (2019), which in 2019 was higher than the pursued 24-month average, owing to the time taken to resolve one attribution/allocation case in 2019. The details of how this case was prolonged are discussed below in paragraphs 187-189.

180. However – as analysed in element C.2 – the MAP inventory of Chile has remained modest since 1 January 2016. This can be shown as follows:

	Opening Inventory on 1/1/2016	Cases started	Cases closed	End inventory on 01/01/2019	Increase in %
Attribution/allocation cases	0	3	3	0	0%
Other cases	0	3	1	2	(increase of two cases)
Total	0	6	4	2	(increase of two cases)

181. The figures in the above table show that the number of closed cases is two-thirds of the number of all cases started in the period 2016-19.

182. In view of the available resources for the MAP function, the fact that Chile has managed to ensure that a large portion of cases started have been closed during this period, it can be inferred that future MAP cases may also be resolved in a timely, efficient and effective manner. Like is concluded in its stage 1 peer review report, also during stage 2 Chile is considered to be adequately resourced.

Peer input

Period 1 January 2016-31 August 2018 (stage 1)

183. Most of the peers that provided input reported having very little MAP experience (or none) with Chile's competent authority. Most peers also did not formulate any suggestion for improvement for Chile's competent authority.

184. One peer reported that its relationship with Chile's competent authority has been fluent and that it considered Chile's competent authority as dealing with MAP cases in a professional and efficient manner. One other peer has experienced difficulties in communicating with Chile as mails that were sent via regular post did not reach Chile's competent authority, but it reported that Chile's competent authority suggested to use e-mails, to which it reacts promptly.

185. One last peer reported that relations have been cordial and communication has been good with Chile’s competent authority, specifying that language has not been an issue in its dealing with Chile’s competent authority.

Period 1 September 2018-30 April 2020 (stage 2)

186. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by one peer that only provided input during stage 2. One of these peers provided additional input in this regard.

187. This peer reported that its competent authority closed a MAP case with Chile’s competent authority with the outcome “any other outcome” in October 2019 since Chile’s competent authority, due to internal legislation in Chile, would not have been able to implement a MAP agreement. However, Chile provided additional clarifications with respect to this case.

188. Chile noted that the case in question is an attribution/allocation case, where in December 2018, Chile’s competent authority reached out to the peer’s competent authority to note that it was open to discuss the case, but reiterated its position communicated in March 2018 that as Chile’s domestic time limits had expired and no corresponding tax refund could be made, Chile would not reach a MAP agreement in the case. Chile clarified that the peer’s competent authority opted to not discuss the case but rather gave the taxpayer some more time to bring material that could allow them to adjust taxation in the peer’s jurisdiction, which Chile found acceptable. Chile reported in this regard that the peer’s competent authority also expressed its preference to keep the MAP case open in the meantime for statistical purposes.

189. However, Chile noted that its competent authority was informed by the peer’s competent authority that the taxpayer had not provided any further evidence by July 2019 and that it thus, proposed to close the case unless the taxpayer objected by September 2019. Accordingly, Chile reported that the case was closed in October 2019 with an agreement between the competent authorities on the dates relevant for statistical purposes.

Anticipated modifications

190. Chile indicated that it does not anticipate any modifications in relation to element C.3.

Conclusion

	Areas for improvement	Recommendations
[C.3]	-	-

[C.4] Ensure staff in charge of MAP has the authority to resolve cases in accordance with the applicable tax treaty

Jurisdictions should ensure that the staff in charge of MAP processes have the authority to resolve MAP cases in accordance with the terms of the applicable tax treaty, in particular without being dependent on the approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy that the jurisdictions would like to see reflected in future amendments to the treaty.

191. Ensuring that staff in charge of MAP can and will resolve cases, absent any approval/direction by the tax administration personnel directly involved in the adjustment and absent any policy considerations, contributes to a principled and consistent approach to MAP cases.

Functioning of staff in charge of MAP

192. Chile explained that the personnel in charge of MAP is under the supervision of the respective head of the departments and remains independent over all the stages of MAP process. Chile further clarified the other responsibilities of the departments within which staff in charge of competent authority function are as follows:

- the Department of Selective Analysis of Tax Compliance of the Audit and Compliance Directorate (in charge of attribution/allocation cases) is responsible for ensuring the characterisation of tax risks arising from specific taxpayer's behaviour and sharing the knowledge of these matters with the other areas of Chile's tax administration in charge of audits (see also below). In certain instances, the department may provide technical assistance to these other areas with respect to selective actions and identification of risks. Chile further specified that they may provide technical support to auditors in transfer pricing cases under the responsibility of regional directions, even though Chile emphasised that the latter remain the only decision makers with respect to the approach taken during the relevant audit.
- the International Taxation Department (in charge of other cases) is also responsible for providing advice on international taxation issues for the purpose of negotiation, application and interpretation of tax treaties, as discussed under element C.3. Chile further clarified that this Department is technically involved in treaty negotiations under the policy responsibility of Chile's Ministry of Finance.

193. Chile further reported that any position taken by its competent authority must be approved by the Commissioner of Chile's tax administration and that the Commissioner does not sign off tax audits. With regard to the interaction between Chile's competent authority and the audit function, Chile further reported that it is possible that the personnel in charge of MAP cases request information and documentation from tax administration personnel who made the adjustment at issue to have a better understanding of the case at stake even though Chile noted that in any case, the staff in charge of MAP does not need any approval from the personnel in charge of audits.

194. Finally, Chile reported that the resolution of MAP cases by the competent authority is not influenced by policy considerations that Chile would like to see reflected in future amendments to the respective tax treaty. In this respect, Chile clarified that the staff in charge of attribution/allocation cases is not involved any treaty negotiations. As described above, Chile further reported that although the International Taxation Department that is in charge of other MAP cases is involved in treaty negotiations, it does not make any policy decisions as the latter are made by the tax policy officials of the Ministry of Finance, not by the *Servicio de Impuestos Internos*.

Recent developments

195. There are no recent developments with respect to element C.4.

Practical application*Period 1 January 2016-31 August 2018 (stage 1)*

196. Peers generally reported no impediments in Chile to perform its MAP function in the absence of approval or the direction of the tax administration personnel who made the adjustments at issue or being influenced by considerations of the policy in the period 1 January 2016-31 August 2018.

Period 1 September 2018-30 April 2020 (stage 2)

197. All peer that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

198. Chile indicated that it does not anticipate any modifications in relation to element C.4.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	-

[C.5] Use appropriate performance indicators for the MAP function

Jurisdictions should not use performance indicators for their competent authority functions and staff in charge of MAP processes based on the amount of sustained audit adjustments or maintaining tax revenue.

199. For ensuring that each case is considered on its individual merits and will be resolved in a principled and consistent manner, it is essential that any performance indicators for the competent authority function and for the staff in charge of MAP processes are appropriate and not based on the amount of sustained audit adjustments or aim at maintaining a certain amount of tax revenue.

Performance indicators used by Chile

200. Chile reported that it applies the same performance system as the one for other officers of the revenue agency (“*Servicio de Impuestos Internos*”). The evaluation system is established in the General Evaluation Regulations (Decree 1,825 of 1998) and in the Special Regulation of the *Servicio de Impuestos Internos* (Decree 964 of 2008).

201. Chile explained that the final evaluation score is given by the system that computes an overall grade, based on grades given for factors and sub-factors, combining weighted averages and arithmetic averages.

202. Chile further reported that Article 16 of the General Evaluation Regulations contains the list of evaluation factors and sub-factors, including the following:

- Efficiency: this factor measures the work executed during the period, in relation to the tasks entrusted.
 - Compliance of the work executed: it evaluates the completion of the tasks entrusted and the speed and timeliness of their execution.
 - Quality of the work executed: it evaluates the characteristics of the work executed and the absence of errors in the work and the skill in its execution.
- Personal Conditions: this factor evaluates the official’s attitude in his/her relationship with others.
 - Interest in the work executed: it measures the official’s desire to improve himself/herself in the compliance of his/her obligations, to propose the execution of activities and solutions to the problems that arise and to propose new objectives or procedures for the better execution of the work assigned.
 - Ability to perform teamwork: it measures the official’s ease of integration in work teams, as well as the effective collaboration he/she provides when working with groups of people is required.
- Official Behaviour: this factor evaluates the official’s behavior in the completion of his/her obligations.
 - Norms and instructions compliance: it measures compliance with the regulations and instructions of the institution and other statutory duties.
 - Attendance and punctuality: it measures the official’s presence or absence at his/her workplace and the compliance correctness with the working hours.

203. Chile reported that when evaluating performance by officials in charge of MAP, the following items will be taken into account in evaluating the factor of “efficiency”:

- the number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)
- the time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters outside of the control of the competent authority may have a significant impact on the time needed to resolve a case)

204. Chile added that performance targets can be also agreed on in relation to a specific project (e.g. prepare MAP guidelines), which will be evaluated in accordance with the above factors.

205. The Action 14 final report (OECD, 2015) includes examples of performance indicators that are considered appropriate. These indicators are shown below and presented in the form of a checklist:

- number of MAP cases resolved
- consistency (i.e. a treaty should be applied in a principled and consistent manner to MAP cases involving the same facts and similarly-situated taxpayers)

- ☑ time taken to resolve a MAP case (recognising that the time taken to resolve a MAP case may vary according to its complexity and that matters not under the control of a competent authority may have a significant impact on the time needed to resolve a case).

206. Further to the above, Chile also reported that it does not use any performance indicators for staff in charge of MAP that are related to the outcome of MAP discussions in terms of the amount of sustained audit adjustments or maintained tax revenue. In other words, staff in charge of MAP is not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

207. There are no recent developments with respect to element C.5.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

208. All peers that provided input indicated not being aware that Chile used performance indicators based on the amount of sustained audit adjustments or maintaining tax revenue in the period 1 January 2016-31 August 2018.

Period 1 September 2018-30 April 2020 (stage 2)

209. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

210. Chile indicated that it does not anticipate any modifications in relation to element C.5.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	-

[C.6] Provide transparency with respect to the position on MAP arbitration

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

211. The inclusion of an arbitration provision in tax treaties may help ensure that MAP cases are resolved within a certain timeframe, which provides certainty to both taxpayers and competent authorities. In order to have full clarity on whether arbitration as a final stage in the MAP process can and will be available in jurisdictions it is important that jurisdictions are transparent on their position on MAP arbitration.

Position on MAP arbitration

212. Chile reported that its tax treaty policy is not to include a mandatory and binding arbitration provision in its bilateral tax treaties. In this regard, Chile reserved its right not to include Article 25(5) of the OECD Model Tax Convention (OECD, 2017) in its tax treaties.

Practical application

213. Chile has incorporated an arbitration clause in several treaties as a final stage to the MAP, which is also mentioned in its MAP profile. Ten of its 36 treaties contain an arbitration provision, all of them being voluntary binding provisions.

Recent developments

214. There are no recent developments with respect to element C.6.

Anticipated modifications

215. Chile reported that it has included in several tax treaties an arbitration provision that is subject to the condition that both competent authorities accept such a procedure. Chile anticipates that at a point in the future, it will be able to undertake arbitration under those treaties once such a procedure is introduced in domestic laws.

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Notes

1. Available at: www.oecd.org/tax/dispute/mutual-agreement-procedure-statistics.htm. These statistics are up to and include fiscal year 2019.
2. For post-2015 cases, if the number of MAP cases in Chile’s inventory at the beginning of the Statistics Reporting Period plus the number of MAP cases started during the Statistics Reporting Period was more than five, Chile reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).
3. For pre-2016 and post-2015 cases, Chile follows the MAP Statistics Reporting Framework for determining whether a case is considered an attribution/allocation MAP case. Annex D of MAP Statistics Reporting Framework provides that “an attribution/allocation MAP case is a MAP case where the taxpayer’s MAP request relates to (i) the attribution of profits to a permanent establishment (see e.g. Article 7 of the OECD Model Tax Convention); or (ii) the determination of profits between associated enterprises (see e.g. Article 9 of the OECD Model Tax Convention), which is also known as a transfer pricing MAP case”.

References

- OECD (2015), “Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report”, in *OECD/G20 Base Erosion and Profit Shifting Project*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241633-en>.
- OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Part D

Implementation of MAP agreements

[D.1] Implement all MAP agreements

Jurisdictions should implement any agreement reached in MAP discussions, including by making appropriate adjustments to the tax assessed in transfer pricing cases.

216. In order to provide full certainty to taxpayers and the jurisdictions, it is essential that all MAP agreements are implemented by the competent authorities concerned.

Legal framework to implement MAP agreements

217. Chile reported that when the relevant tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Chile will implement all MAP agreements reached notwithstanding any time limits in its domestic law. In the absence of such an equivalent, the implementation of MAP agreements in Chile will be subject to its domestic statute of limitation.

Statute of limitation applicable for upward adjustments

218. Article 200 of Chile's Tax Code No. 830 stipulates that Chile's tax administration may adjust a tax, review any deficiency on its tax adjustment and issue the tax collection note of the taxes derived thereon, within three years from the legal term in which the payment should have been made.

Statute of limitation applicable for downward adjustments

219. Specifically with respect to the implementation of MAP agreements that imply a downward adjustment in Chile, Chile reported that Article 126 of Tax Code No. 830 stipulates that refund requests must be submitted within a period of three years from the act or fact that serves as the basis for refund requests. For attribution/allocation cases initiated by other tax authorities, Chile further clarified that the tax refund request should state the scope of the request which would be the primary adjustment or the final adjustment if an objection was filed by the taxpayer in the other country.

220. The starting point of this three-year period depends on the circumstances at stake and can be summarised as follows:

- for all types of cases (attribution/allocation cases and other cases) initiated further to an adjustment made in Chile: the starting point of the three-year period for implementation is the date of the notification of the MAP agreement to the taxpayer

- for attribution/allocation cases that were initiated further to an adjustment made in the other jurisdiction: the starting point of the three-year period for implementation is either the date of the notification of the primary adjustment made in the other jurisdiction or, if an objection was filed by the taxpayer in the other jurisdiction, the date of the resolution of such procedure
 - for other cases that were initiated further to an adjustment in the other jurisdiction: the starting point of the three-year period for implementation is either the date of the payment of the tax or the date of the notification of the MAP agreement. The latter would apply only in case the tax for which refund is requested was paid by the taxpayer based on an interpretation (or an adjustment) issued by Chile’s tax administration (“*Servicio de Impuestos Internos*”).
221. Specifically, it would be impossible to implement a MAP agreement under the following circumstances:
- for attribution/allocation cases that were initiated further to an adjustment made in the other jurisdiction, if the taxpayer did not make the refund request in Chile within the relevant timeline, for instance if a MAP request was only submitted in the other jurisdiction, and a MAP agreement is reached after the expiration of the relevant time period
 - for other cases that were initiated further to an adjustment in the other jurisdiction, if the tax for which refund is requested was paid voluntarily by the taxpayer based on its own interpretation of the tax legislation and not based on an interpretation or adjustment made by the *Servicio de Impuestos Internos*.
222. Chile reported that the above analysis setting the starting point for the three-year period as from the notification of the MAP agreement reached is based on its interpretation of the ruling No. 2,573/2009 of the Commissioner of the *Servicio de Impuestos Internos*, which is publicly available in the administrative jurisprudence but does not specifically refer to MAP cases.
223. Chile further reported that once a MAP agreement is reached, taxpayers are not required to give their consent to have such an agreement implemented, but taxpayers have to submit the refund requests required with respect to the implementation of MAP agreements that imply a downward adjustment. Specifically with respect to attribution/allocation cases, taxpayers must submit an amended tax return as well to enable the implementation of the MAP agreement.
224. Further to the above, Chile reported that the actual implementation of MAP agreements is not performed by Chile’s competent authority but by other departments within Chile’s tax administration (“*Direcciones Regionales*” and “*Direccion de Grandes Contribuyentes*” as the case may be).
225. Chile further noted that in those MAP cases where the domestic statute of limitation may, in the absence of Article 25(2) second sentence of the OECD Model Tax Convention (OECD, 2017) in the relevant tax treaty, prevent the implementation of a MAP agreement, for clarity and transparency purposes, its competent authority would notify the treaty partner of the situation without further delay.

Recent developments

226. There are no recent developments with respect to element D.1.

Practical application*Period 1 January 2016-31 August 2018 (stage 1)*

227. Chile reported that it has not reached any MAP agreements in the period 1 January 2016-31 August 2018.

228. All peers that provided input reported that they were not aware of any MAP agreement reached in the period 1 January 2016-31 August 2018 that was not implemented by Chile.

229. One peer reported that it was informed by Chile's competent authority that Chile's domestic statute of limitations had already expired for the years at stake when it notified Chile of the MAP case, which caused that the implementation of MAP agreement would not have been possible and therefore the case was not discussed. This situation is further described under element B.1.

Period 1 September 2018-30 April 2020 (stage 2)

230. Chile reported that also since 1 September 2018 no MAP agreements were reached with another competent authority.

231. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2. One peer provided additional input and noted that a MAP case was closed with Chile without discussions since Chile's competent authority could not reach a MAP agreement as Chile's domestic time-limits had expired and the implementation of a MAP agreement would not have been possible. This refers to the same case as discussed in relation to this peer's previous input in paragraph 229 and this case is discussed in more detail under element C.3 in paragraphs 187-189.

Anticipated modifications

232. Chile indicated that it intends to clarify in its forthcoming MAP guidance the steps and timing of the steps for the implementation of MAP agreements, which will also clarify the potential effect of domestic time limits on the implementation of MAP agreements, as summarised above.

233. In addition, to mitigate the risk that MAP agreements cannot be implemented in attribution/allocation cases that were initiated further to an adjustment made in the other jurisdiction and for which the taxpayer has submitted its MAP request in the other jurisdiction, Chile reported that its competent authority would notify the taxpayer in Chile to inform him of the case and of the relevant time limit to submit a refund request. Chile further specified that it intends to document such a procedure in its forthcoming MAP guidance.

234. Chile indicated that no other actions are intended at this point.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As will be discussed under element D.3 not all of Chile's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three-year time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Chile's relevant tax treaty, prevent the implementation of a MAP agreement, Chile should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Chile should for clarity and transparency purposes notify the treaty partner thereof without delay.

[D.2] Implement all MAP agreements on a timely basis

Agreements reached by competent authorities through the MAP process should be implemented on a timely basis.

235. Delay of implementation of MAP agreements may lead to adverse financial consequences for both taxpayers and competent authorities. To avoid this and to increase certainty for all parties involved, it is important that the implementation of any MAP agreement is not obstructed by procedural and/or statutory delays in the jurisdictions concerned.

Theoretical timeframe for implementing mutual agreements

236. Chile reported that there are no specific legislation and/or administration instructions in Chile that define a term within which MAP agreements must be implemented. Chile further reported that the general term established in the law for the duration of an administrative procedure would be relevant, whereby a six-month period applies from the time the necessary documentation and background for the implementation of the agreement reached have been submitted.

Recent developments

237. There are no recent developments with respect to element D.2.

Practical application

Period 1 January 2016-31 August 2018 (stage 1)

238. As discussed under element D.1, Chile has not reached any MAP agreements in the period 1 January 2016-31 August 2018.

239. All peers that provided input indicated not having experienced any problems with Chile regarding the implementation of MAP agreements in the period 1 January 2016-31 August 2018, which can be explained by the fact that Chile has not reached any MAP agreements during this period.

Period 1 September 2018-30 April 2020 (stage 2)

240. Chile reported that also since 1 September 2018 no MAP agreements were reached with another competent authority.

241. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Chile fully reflects their experience with Chile since 1 September 2018 and/or there are no additions to the previous input given. The same input was given by the one peer that only provided input during stage 2.

Anticipated modifications

242. Chile indicated that it does not anticipate any modifications in relation to element D.2.

Conclusion

	Areas for improvement	Recommendations
[D.2]	-	-

[D.3] Include Article 25(2), second sentence, of the OECD Model Tax Convention in tax treaties or alternative provisions in Article 9(1) and Article 7(2)

Jurisdictions should either (i) provide in their tax treaties that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law, or (ii) be willing to accept alternative treaty provisions that limit the time during which a Contracting Party may make an adjustment pursuant to Article 9(1) or Article 7(2), in order to avoid late adjustments with respect to which MAP relief will not be available.

243. In order to provide full certainty to taxpayers it is essential that implementation of MAP agreements is not obstructed by any time limits in the domestic law of the jurisdictions concerned. Such certainty can be provided by either including the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in tax treaties, or alternatively, setting a time limit in Article 9(1) and Article 7(2) for making adjustments to avoid that late adjustments obstruct granting of MAP relief.

Legal framework and current situation of Chile's tax treaties

244. As discussed under element D.1, Chile's domestic legislation contains a statute of limitations for implementing MAP agreements, depending on the types of cases and unless overridden by tax treaties.

245. Out of Chile's 36 tax treaties, five contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. The remaining 31 treaties can be categorised as follows:

- 27 treaties neither contain such equivalent nor any of the alternative provisions under Articles 7 or 9.
- Three treaties only contain an alternative provision setting a time limit in Article 9(1).

- One treaty stipulates that any agreement reached shall be implemented notwithstanding any time limits in domestic laws only if, in the case of Chile, a case is presented within three years from the determination of the Chilean tax liability to which the case relates.

246. These 31 treaties are considered as not in line with the Action 14 Minimum Standard.

247. Until the 2014 update of the OECD Model Tax Convention, Chile had reserved its position on Article 25(2), second sentence, of the OECD Model Convention (OECD, 2017). This reservation expressed that Chile considered that implementation of reliefs and refunds following a mutual agreement ought to remain linked to time limits prescribed by (its) domestic laws. Chile has withdrawn this reservation under the 2017 update of the Convention. Chile's current position is to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) together with a provision limiting the time during which a primary adjustment or an assessment can be made.

248. Among the 31 treaties identified that neither contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), nor both alternatives, five peers provided input during stage 1 and referred to the absence of such an equivalent. Four out of these five peers also reported that their treaty provision would have been modified by the Multilateral Instrument to become in line with element D.3. This situation has changed now as described below.

Recent developments

Bilateral modifications

249. Chile signed new tax treaties with two treaty partners which are newly negotiated treaties with treaty partners with which there were no treaties yet in place. Neither of these treaties have entered into force. Both of these treaties contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of these newly signed treaties have been reflected in the analysis above where it has relevance.

Multilateral Instrument

250. Chile signed the Multilateral Instrument and deposited its instrument of ratification on 26 November 2020. The Multilateral Instrument has entered into force for Chile on 1 March 2021.

251. Article 16(4)(b)(ii) of that instrument stipulates that Article 16(2), second sentence – containing the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(ii) of the Multilateral Instrument will modify the applicable tax treaty to include such equivalent. However, this shall only apply if both contracting parties to the applicable tax treaty have listed this treaty as a covered tax agreement under the Multilateral Instrument and insofar as both, pursuant to Article 16(6)(c)(ii), notified the depositary that this treaty does not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Article 16(4)(b)(ii) of the Multilateral Instrument will for a tax treaty not take effect if one or both of the treaty partners has, pursuant to Article 16(5)(c), reserved the right not to apply the second sentence of Article 16(2) of that instrument for all of its covered tax agreements

under the condition that: (i) any MAP agreement shall be implemented notwithstanding any time limits in the domestic laws of the contracting states, or (ii) the jurisdiction intends to meet the Action 14 Minimum Standard by accepting in its tax treaties the alternative provisions to Article 9(1) and 7(2) concerning the introduction of a time limit for making transfer pricing profit adjustments.

252. Chile has, pursuant to Article 16(5)(c), reserved the right not to apply Article 16(2), second sentence, of the Multilateral Instrument. Therefore, at this stage the Multilateral Instrument will not modify any of the 31 treaties identified above to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

253. For the 31 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternatives and which will not be modified by the Multilateral Instrument in this regard, Chile reported that for all of these treaties, bilateral negotiations have already been initiated, or are envisaged to be initiated

Peer input

254. Of the peers that provided input during stage 2, two provided input in relation to their tax treaty with Chile. Both of these peers concern treaty partners to treaties that are not in line with this element and noted that these treaties would be modified by the Multilateral Instrument. However, Chile responded to this input and stated that once it deposits its instrument of ratification of the Multilateral Instrument, it intends to reserve, pursuant to Article 16(5)(c), the right not to apply the second sentence of Article 16(2) of the Multilateral Instrument (concerning the mutual agreement procedure) that modifies existing treaties to provide that mutual agreements shall be implemented notwithstanding any time limits in the domestic law of the contracting states – which is confirmed by the above analysis. In this regard, Chile clarified that it would now seek to modify these treaties to bring them in line with the Action 14 Minimum Standard via bilateral negotiations.

Anticipated modifications

255. Chile reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) together with a provision limiting the time during which a primary adjustment or an assessment can be made.

Conclusion

	Areas for improvement	Recommendations
[D.3]	31 out of 36 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both of the alternative provisions provided for in Article 9(1) and Article 7(2). None of these 31 treaties are expected to be modified by the Multilateral Instrument. With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the 31 treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument to include such provision, Chile should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept both alternative provisions.

Reference

OECD (2017), *Model Tax Convention on Income and on Capital 2017 (Full Version)*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/g2g972ee-en>.

Summary

	Areas for improvement	Recommendations
Part A: Preventing disputes		
[A.1]	-	-
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Chile should without further delay introduce the possibility of and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	Access to MAP would be denied in cases where the concerned treaty specifies a filing period of three years from the first notification of the action resulting in taxation not in accordance with the treaty and where a) a MAP request has not been submitted within three years from the first notification of a proposed transfer pricing adjustment in the treaty partner jurisdiction; b) a MAP request has not been submitted within three years from the filing of an amended self-assessed tax return, even though the first notification of the action resulting in taxation not in accordance with the tax treaty according to the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) i.e. the notification of a final transfer pricing adjustment in the treaty partner jurisdiction which can still be challenged by domestic appeals in that jurisdiction or a notification as to the assessment resulting from the filing of the self-assessed tax return respectively, would be communicated to the taxpayer later in time in these cases.	Chile should ensure that taxpayers that meet the requirements of paragraph 1 of Article 25 of the OECD Model Tax Convention have access to MAP in all eligible cases, in particular when the MAP request was filed within the time period specified in the treaty and as interpreted in the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017).
[B.2]	None of the 36 treaties contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Chile should without further delay follow up on its stated intention to document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Chile should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b).
[B.3]	-	-
[B.4]	-	-
[B.5]	-	-
[B.6]	-	-

	Areas for improvement	Recommendations
[B.7]	<p>32 out of 36 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). Out of these 32:</p> <ul style="list-style-type: none"> • 20 have been modified by the Multilateral Instrument to include the required provision. • Six are expected to be modified by the Multilateral Instrument to include the required provision. • Six will not be modified by that instrument to include the required provision. With respect to these treaties: <ul style="list-style-type: none"> - For one, the relevant treaty partner has been or will be contacted by Chile with a view to have the treaty modified by the Multilateral Instrument. - For five, negotiations are envisaged, scheduled or pending. 	<p>For five of the remaining six treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), Chile should:</p> <ul style="list-style-type: none"> • for one treaty, continue to work in accordance with its plan to strive to include the required provision via the Multilateral Instrument and where this is not possible, request via bilateral negotiations the inclusion of the required provision • for four treaties, continue (the initiation of) negotiations with the treaty partner with a view to including the required provision. <p>With regard to the remaining treaty that was signed but not in force as yet, Chile should, following approval of the treaty by the treaty partner, enter into bilateral negotiations with the concerned treaty partner to make this treaty in line with element B.7.</p>
[B.8]	There is no published MAP guidance.	Chile should introduce and publish, without further delay, guidance on access to and use of the MAP and include the contact information of its competent authority as well as the manner and form in which the taxpayer should submit its MAP request, including the documentation/information that it should include in such a request.
[B.9]	The MAP guidance is not publically available.	Chile should make its MAP guidance currently in preparation publicly available and easily accessible. Its MAP profile, published on the shared public platform, should be updated if needed.
[B.10]	-	-
Part C: Resolution of MAP cases		
[C.1]	-	-
[C.2]	-	-
[C.3]	-	-
[C.4]	-	-
[C.5]	-	-
[C.6]	-	-
Part D: Implementation of MAP agreements		
[D.1]	As will be discussed under element D.3 not all of Chile's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to the three-year time limits in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017) in Chile's relevant tax treaty, prevent the implementation of a MAP agreement, Chile should put appropriate procedures in place to ensure that such an agreement is implemented and follow its stated intention to inform taxpayers in order to mitigate the risk that an agreement cannot be implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Chile should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	-	-

	Areas for improvement	Recommendations
[D.3]	31 out of 36 tax treaties neither contain a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor both of the alternative provisions provided for in Article 9(1) and Article 7(2). None of these 31 treaties are expected to be modified by the Multilateral Instrument. With respect to these treaties, negotiations are envisaged, scheduled or pending.	For the 31 treaties that that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and will not be modified via the Multilateral Instrument to include such provision, Chile should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision or be willing to accept both alternative provisions.

Treaty partner	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11		
	DTC in force?	Article 25(1) of the OECD Model Tax Convention ("MTC")	B.1	B.1	Article 9(2) of the OECD MTC	B.4	Article 25(2) of the OECD MTC	C.1	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 1)	Inclusion Art. 25(2) second sentence? (Note 2)	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)	Article 25(3) of the OECD MTC	A.1	A.1	B.7	B.7	Arbitration
China (People's Republic of)	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Colombia	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	N*	Y	Y	Y	N*	Y	N
Croatia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Czech Republic	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Denmark	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Ecuador	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	N	Y	Y	Y	N	Y	Y
France	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
India	N	3/11/2020	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N
Ireland	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Italy	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	N	Y	Y	Y	N	Y	Y
Japan	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Korea	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Malaysia	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Mexico	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	li	li	Y	N*	Y	Y	Y	N*	Y	Y
New Zealand	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Norway	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Paraguay	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	N	Y	Y	Y	N	Y	Y
Peru	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	N*	Y	Y	Y	N*	Y	Y
Poland	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	Y
Portugal	Y	N/A	O	Y	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N
Russia	Y	N/A	O	i	N/A	Y	Y	i	Y	Y	Y	N	N	Y	Y*	Y	Y	Y	Y*	Y	N

Column 1	Column 2		Column 3		Column 4		Column 5		Column 6		Column 7		Column 8		Column 9		Column 10		Column 11	
	Article 25(1) of the OECD Model Tax Convention ("MTC")		Article 9(2) of the OECD MTC		Anti-abuse		Article 25(2) of the OECD MTC		Article 25(3) of the OECD MTC		Arbitration									
	B.1	B.1	B.3	B.4	C.1	D.3	A.1	B.7	C.6											
Treaty partner	DTC in force?	Inclusion Art. 25(1) first sentence?	Inclusion Art. 25(1) second sentence? (Note 1)	Inclusion Art. 9(2) (Note 2) If no, will your CA provide access to MAP in TP cases?	Inclusion provision that MAP Article will not be available in cases where your jurisdiction is of the assessment that there is an abuse of the DTC or of the domestic tax law?	Inclusion Art. 25(2) first sentence? (Note 3)	Inclusion Art. 25(2) second sentence? (Note 4)	Inclusion Art. 25(3) first sentence? (Note 5)	Inclusion Art. 25(3) second sentence? (Note 6)											
South Africa	Y	N/A	O	Y	N/A	Y	N	Y	N*	N	N									
Spain	Y	N/A	O	Y	N/A	Y	N	Y	N*	N	N									
Sweden	Y	N/A	O	i	N/A	Y	N	Y	Y*	N	N									
Switzerland	Y	N/A	O	Y	N/A	Y	ii	Y	Y*	N	N									
Thailand	Y	N/A	O	Y	N/A	Y	N	Y	N	N	N									
United Arab Emirates	N	12/31/2019	O	Y	N/A	Y	Y	Y	Y	Y	Y									
United Kingdom	Y	N/A	O	i	N/A	Y	N	Y	Y*	N	N									
United States	N	2/4/2010	O	Y	N/A	Y	Y	Y	N	Y	Y									
Uruguay	Y	N/A	O	Y	N/A	Y	N	Y	Y*	N	N									

Legend

- E* The provision contained in this treaty was already in line with the requirements under this element of the Action 14 Minimum Standard, but has been modified by the Multilateral Instrument to allow the filing of a MAP request in either contracting state.
- E** The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this standard.
- O* The provision contained in this treaty is already in line with the requirements under this element of the Action 14 Minimum Standard, but will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then allow the filing of a MAP request in either contracting state.
- Y* The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been modified by the Multilateral Instrument and is now in line with this element of the Action 14 Minimum Standard.
- Y** The provision contained in this treaty already included an arbitration provision, which has been replaced by part VI of the Multilateral Instrument containing a mandatory and binding arbitration procedure.

Y***	The provision contained in this treaty did not include an arbitration provision, but part VI of the Multilateral Instrument applies, following which a mandatory and binding arbitration procedure is included in this treaty
i*/i1*/iv*/N*	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be modified by the Multilateral Instrument upon entry into force for this specific treaty and will then be in line with this element of the Action 14 Minimum Standard.
i**/iv***/N**	The provision contained in this treaty is not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty will be superseded by the Multilateral Instrument upon entry into force for this specific treaty only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.
i***	The provision contained in this treaty was not in line with the requirements under this element of the Action 14 Minimum Standard, but the treaty has been superseded by the Multilateral Instrument only to the extent that existing treaty provisions are incompatible with the relevant provision of the Multilateral Instrument.

Annex B

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) for pre-2016 cases

2016 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2016	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

2017 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2017	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

2018 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2018	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

2019 MAP Statistics													
Category of cases	No. of pre-2016 cases in MAP inventory on 1 January 2019	Number of pre-2016 cases closed during the reporting period by outcome										No. of pre-2016 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing pre-2016 cases during the reporting period
		Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12		
		Denied MAP access	Objection is not justified	Withdrawn by taxpayer	Unilateral relief granted	Resolved via domestic remedy	Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty	Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty	Agreement that there is no taxation not in accordance with tax treaty	No agreement, including agreement to disagree	Any other outcome	Column 13	Column 14
Attribution/Allocation	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	0	0	0	0	0	0	0	0	0	0	0	n.a.

Annex C

MAP Statistics Reporting for the 2016, 2017, 2018 and 2019 Reporting Periods (1 January 2016 to 31 December 2019) for post-2015 cases

2016 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2016	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2016	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	0	3	0	0	0	0	0	0	0	0	0	0	3	n.a.
Others	0	0	0	0	0	0	0	0	0	0	0	0	0	n.a.
Total	0	3	0	0	0	0	0	0	0	0	0	0	3	n.a.

2017 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2017	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome							No. of post-2015 cases remaining in on MAP inventory on 31 December 2017	Average time taken (in months) for closing post-2015 cases during the reporting period			
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10			Column 11	Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	3	0	1	0	0	0	0	0	0	0	0	0	2	6.9
Others	0	1	0	0	0	0	0	0	0	0	0	0	1	n.a.
Total	3	1	1	0	0	0	0	0	0	0	0	0	3	6.9

2018 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2018	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2018	Average time taken (in months) for closing post-2015 cases during the reporting period		
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	2	0	0	0	0	1	0	0	0	0	0	0	1	28.37
Others	1	2	0	0	1	0	0	0	0	0	0	0	2	11.44
Total	3	2	0	0	1	1	0	0	0	0	0	0	3	19.91

2019 MAP Statistics														
Category of cases	No. of post-2015 cases in MAP inventory on 1 January 2019	No. of post-2015 cases started during the reporting period	Number of post-2015 cases closed during the reporting period by outcome								No. of post-2015 cases remaining in on MAP inventory on 31 December 2019	Average time taken (in months) for closing post-2015 cases during the reporting period		
			Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11			Column 12	Column 13
	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11	Column 12	Column 13	Column 14	Column 15
Attribution/Allocation	1	0	0	0	0	0	0	0	0	0	0	1	0	38.47
Others	2	0	0	0	0	0	0	0	0	0	0	0	2	n.a.
Total	3	0	0	0	0	0	0	0	0	0	0	1	2	38.47

Glossary

Action 14 Minimum Standard	The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective
APA guidance	Circular No. 29 of 14 June 2013
MAP Statistics Reporting Framework	Rules for reporting of MAP statistics as agreed by the FTA MAP Forum
Multilateral Instrument	Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting
OECD Model Tax Convention	OECD Model Tax Convention on Income and on Capital as it read on 21 November 2017
OECD Transfer Pricing Guidelines	OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations
Pre-2016 cases	MAP cases in a competent authority’s inventory pending resolution on 31 December 2015
Post-2015 cases	MAP cases received by a competent authority from the taxpayer on or after 1 January 2016
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2019
Terms of Reference	Terms of reference to monitor and review the implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Chile (Stage 2)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

Under Action 14, countries have committed to implement a minimum standard to strengthen the effectiveness and efficiency of the mutual agreement procedure (MAP). The MAP is included in Article 25 of the OECD Model Tax Convention and commits countries to endeavour to resolve disputes related to the interpretation and application of tax treaties. The Action 14 Minimum Standard has been translated into specific terms of reference and a methodology for the peer review and monitoring process. The peer review process is conducted in two stages. Stage 1 assesses countries against the terms of reference of the minimum standard according to an agreed schedule of review. Stage 2 focuses on monitoring the follow-up of any recommendations resulting from jurisdictions' stage 1 peer review report. This report reflects the outcome of the stage 2 peer monitoring of the implementation of the Action 14 Minimum Standard by Chile.



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