

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



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

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

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Please cite this publication as:

OECD (2021), *Making Dispute Resolution More Effective – MAP Peer Review Report, Colombia (Stage 2): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris,
<https://doi.org/10.1787/01c36574-en>.

ISBN 978-92-64-77867-2 (print)

ISBN 978-92-64-82005-0 (pdf)

OECD/G20 Base Erosion and Profit Shifting Project

ISSN 2313-2604 (print)

ISSN 2313-2612 (online)

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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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 |
| DIAN | Colombian Tax and Customs Administration |
| FTA | Forum on Tax Administration |
| MAP | Mutual Agreement Procedure |
| OECD | Organisation for Economic Co-operation and Development |

Executive summary

Colombia has a modest tax treaty network with 15 tax treaties. Colombia has limited experience in resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and three cases pending on 31 December 2019. Of these cases, two are allocation/attribution cases. The outcome of the stage 1 peer review process was that overall Colombia met fewer than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Colombia worked to address them, which has been monitored in stage 2 of the process. In this respect, Colombia has solved most of the identified deficiencies.

All but one of Colombia's tax treaties contain a provision relating to MAP. Those treaties mostly follow paragraphs 1 to 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 25% 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 40% 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, Colombia signed the Multilateral Instrument. Through this instrument, a number of its tax treaties will be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of the Multilateral Instrument, Colombia 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.

Colombia 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 in all appropriate cases.

Colombia meets almost all 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 transfer pricing cases or the application of anti-abuse provisions. It further has 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, although no such cases have surfaced since 1 September 2018. Colombia

also has clear and comprehensive guidance on the availability of MAP and how it applies this procedure in practice under its tax treaties, although it has not updated its MAP profile with information based on this guidance.

Concerning the average time needed to close MAP cases, the MAP statistics for Colombia 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 | 1 | 0 | 0 | 1 | n.a. |
| Other cases | 0 | 2 | 0 | 2 | n.a. |
| Total | 1 | 2 | 0 | 3 | n.a. |

Although Colombia's MAP inventory went up from one case on 1 January 2016 to three cases on 31 December 2019 and no MAP cases were resolved during this period, the inventory has remained modest. Since Colombia's competent authority has been able to actively discuss MAP cases after the inclusion of enabling legislation under its domestic law allowing its competent authority to do so, Colombia's competent authority is considered adequately resourced.

Furthermore, Colombia meets almost all the other requirements under the Action 14 Minimum Standard in relation to the resolution of MAP cases. Colombia'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. However, Colombia's competent authority does not seek to resolve MAP cases where the taxpayer does not withdraw domestic administrative or judicial remedies within 15 days of the acceptance of the MAP request by the competent authority.

Lastly, Colombia meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

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 Colombia to resolve tax treaty-related disputes

Colombia has entered into 15 tax treaties on income (and/or capital), 11 of which are in force.¹ These 15 treaties apply to 17 jurisdictions.² All but one 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, two of the 15 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.³

Under Colombia’s tax treaties, the competent authority function is assigned to the Minister of Finance and Public Credit and is further delegated to the Office for International Taxation of the Colombian Tax and Customs Administration (“**DIAN**”). The competent authority consists of three staff members as well as the head of the Office for International Taxation. Colombia has a three-member APA team that supports the competent authority in attribution/allocation cases, but this team has not yet been assigned formal competent authority functions. Once the competent authority functions have been assigned, this APA team will be required to assist with preparing Colombia’s positions for attribution/allocation cases, while the three-member MAP team will be in charge of discussing Colombia’s position during MAP meetings.

Colombia has issued guidance on the governance and administration of the mutual agreement procedure (“**MAP**”), initially through Resolution No. 000053 of 2019 in August 2019 and later, rectified and reissued as Resolution No. 000085 of 21 August 2020 (“**MAP guidance**”). This MAP guidance is (in Spanish) available at:

<https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000085%20de%2021-08-2020.pdf>

Developments in Colombia since 1 September 2018

Developments in relation to the tax treaty network

The stage 1 peer review report of Colombia noted that Colombia had signed new treaties with France, Italy, the United Arab Emirates and the United Kingdom, which had not yet entered into force. The treaty with the United Kingdom has now entered into force. For the remaining three treaties, the situation remains the same as all of these treaties are pending administrative or judicial approval in Colombia even though they have been ratified in the treaty partner jurisdictions.

In addition, Colombia reported that since 1 September 2018 it has signed a new tax treaty with Japan (2018), which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty contains 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). This treaty has not entered into force as yet.

Furthermore, on 7 June 2017, Colombia 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. With the signing of the Multilateral Instrument, Colombia also submitted its list of notifications and reservations to that instrument.⁴ In relation to the Action 14 Minimum Standard, Colombia has not made any reservations to Article 16 of the Multilateral Instrument (concerning the mutual agreement procedure). Colombia reported that the Multilateral Instrument will be presented to its Congress in February 2021 and that it expects to deposit its instrument of ratification to the Multilateral Instrument in 2022.

For the four 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, Colombia reported that it intends to update them via bilateral negotiations. In this regard, Colombia shared that for two of these treaties, negotiations are ongoing for an amending protocol to make them in line with the Action 14 minimum standard. For the remaining two treaties, Colombia shared that discussions for negotiations are envisaged.

Other developments

Further to the above, Colombia reported that it has made a few changes to the operation of the MAP in Colombia and that it has introduced MAP guidance. These changes can be summarised as follows:

- *APA programme*: publication of APA guidance that clarifies the procedure applicable for unilateral, bilateral and multilateral APAs under Colombia’s domestic law and tax treaties.
- *Legislative changes relating to MAP*: introduction of Article 869-3 to the Colombian Tax Code in December 2019 that provides that:
 - taxpayers may request for MAP in writing by filing before the DIAN
 - the DIAN is the competent authority for MAP that regulates the procedural aspects of MAP as well
 - MAP agreements would have the same legal nature and effects as a judicial decision and may be implemented notwithstanding domestic time-limits
 - suspension of tax collection would be allowed from the filing of a MAP request.
- *MAP guidance*: the introduction of MAP guidance through Resolution No. 000085 of 21 August 2020 (in place of Resolution 000053 of 2019 based on Law 1943 of 2018 which was made obsolete) that provides *inter alia* for:
 - the contact details of Colombia’s competent authority, including a physical address and telephone number
 - the manner and form in which the taxpayer should submit a MAP request
 - typical cases that would be eligible for MAP including transfer pricing cases and cases concerning the application of domestic or treaty based anti-abuse provisions
 - filing periods for MAP requests
 - the possibility for multilateral MAP requests, the multi-year resolution of recurring issues under MAP and the coverage of *bona fide* foreign-initiated self-adjustments under MAP

- role and rights of taxpayers during MAP discussions
- the coverage of interest and penalties under MAP
- relationship with domestic available remedies
- process for implementation of MAP agreements, including any actions to be taken by taxpayers.
- *Introduction of a temporary settlement mechanism:* the introduction through Law 2010 of 2019 of a temporary settlement mechanism through which taxpayers may request a reduction of the penalties and interest in relation to assessments. Although access to MAP would be granted in relation to such mechanisms, Colombia's competent authority would not be able to deviate from such decisions under MAP.
- *Handling and resolving MAP cases:* some internal steps to improve the MAP, including the addition of a new team member, being an economist, to the competent authority, an additional independent budget being provided to the competent authority as well as strengthened MAP training for staff in charge of MAP as well as for other staff within the DIAN, where needed.

Basis for the peer review process

The peer review process entails an evaluation of Colombia'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 the assessed jurisdiction, its peers and taxpayers. The questionnaires for the peer review process were sent to Colombia 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, Colombia'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 Colombia 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.⁵ 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 Colombia. In this update report, Colombia 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 Colombia 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. Furthermore, the treaty analysis also takes into account the multilateral tax treaty with Bolivia, Ecuador and Peru (“Andean Community Decision”). As it concerns the same tax treaty that is applicable to multiple jurisdictions, it is only counted as one treaty for this purpose. Reference is made to Annex A for the overview of Colombia’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 Colombia was launched on 31 August 2018, with the sending of questionnaires to Colombia and its peers. The FTA MAP Forum has approved the stage 1 peer review report of Colombia in March 2019, with the subsequent approval by the BEPS Inclusive Framework on 8 May 2019. On 8 May 2020, Colombia submitted its update report, which initiated stage 2 of the process.

The period for evaluating Colombia’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 two peers provided input: Spain and Switzerland. Out of these two peers, one had MAP cases with Colombia that started on or after 1 January 2016. However, these cases were started in 2018. Colombia did not report MAP statistics for 2016 or 2017. During stage 2, the same peers provided input. For this stage, these peers represent 100% of post-2015 MAP cases in Colombia’s MAP inventory that started in 2016, 2017, 2018 or 2019. One of the two peers that provided input reported that there was room for improvement as communication with Colombia’s competent authority had been difficult up until recently. The other peer experienced difficulties with respect to concluding a MAP agreement of a general nature with Colombia in an attempt to resolve some difficulties arising from the application of the tax treaty. Specifically with respect to stage 2, all peers that provided input reported that the update report of Colombia fully reflects the experiences these peers have had with Colombia since 1 September 2018 and/or that there was no addition to previous input given. One of these peers specifically noted that the MAP relationship between its competent authority and Colombia’s competent authority has become seamless since the legislative amendments in Colombia.

Input by Colombia and co-operation throughout the process

Colombia submitted its questionnaire slightly after the deadline as a result of a change of government that occurred at the start of the peer review process, which led to the replacement of the head of the Office for International Affairs who is in charge of MAP functions in Colombia. Colombia was responsive once its peer review was launched and henceforth responded timely and comprehensively to requests for additional information, and provided further clarity where necessary. Colombia provided its MAP profile.⁶ However, it did not submit its MAP statistics according to the MAP Statistics Reporting Framework⁷ for all the years concerned.

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

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

Overview of MAP caseload in Colombia

The analysis of Colombia’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 Colombia, 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 | 1 | 0 | 0 | 1 |
| Other cases | 0 | 2 | 0 | 2 |
| Total | 1 | 2 | 0 | 3 |

General outline of the peer review report

This report includes an evaluation of Colombia’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**”).⁸ Apart from analysing Colombia’s legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Colombia during stage 1 and stage 2. Furthermore, the report depicts the changes adopted and plans shared by Colombia 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 Colombia 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 Colombia 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 Colombia has entered into are available at: <https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx>. The treaties that are signed by Colombia but have not yet entered into force are with France (2015), Italy (2018), Japan (2018) and the United Arab Emirates (2017). These treaties are taken into account in the treaty analysis. Reference is made to Annex A for an overview of Colombia’s tax treaties.
2. Colombia applies the Commission of the Andean Community Decision (578) to Bolivia, Ecuador and Peru.
3. This concerns the treaties with Italy and France. Reference is made to Annex A for an overview of Colombia’s tax treaties.
4. Available at: www.oecd.org/tax/treaties/beps-mli-position-colombia.pdf.
5. Available at: www.oecd.org/colombia/making-dispute-resolution-more-effective-map-peer-review-report-colombia-stage-1-7182ca92-en.htm.
6. Available at: www.oecd.org/ctp/dispute/Colombia-Dispute-Resolution-Profile.pdf.
7. The MAP statistics of Colombia are included in Annex B and C of this report.
8. 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 Colombia's tax treaties

2. Out of Colombia's 15 tax treaties, 14 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. The remaining treaty does not contain a MAP provision at all and therefore does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).¹

3. For the one treaty that does not contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Colombia reported that its competent authority would be able to enter into an interpretative MAP agreement with the treaty partners despite the absence of this provision.

4. For the one treaty identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), the relevant peer did not provide input during stage 1.

5. Colombia reported that it had one case where both parties attempted to solve difficulties that may arise as to the procedure for tax residence certification. The peer with which Colombia undertook this initiative had noted that since 2015 its competent authority had been in contact with Colombia with a view to conclude a mutual agreement in the context of the first sentence of the equivalent of Article 25(3), of the OECD Model Tax Convention (OECD, 2017a) provision in its tax treaty with Colombia. The peer explained that it had sought to conclude such an agreement to enable tax residents of Colombia to obtain relief relating to dividends and/or interests paid in this peer's jurisdiction, as provided under its tax treaty with Colombia. This peer had noted that ultimately concluding

this type of mutual agreement would be useful to prevent future disputes that might arise from the application of its current tax treaty with Colombia.

6. Accordingly, Colombia reported that Colombia and this peer recently concluded and published an agreement entered into under the equivalent of Article 25(3), first sentence of the OECD Model Tax Convention (OECD, 2017a) contained in their tax treaty to clarify the procedure to be applied for the refund of the peer's withholding tax on dividends and interest for residents of Colombia.

Recent developments

Bilateral modifications

7. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. This treaty contains a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

8. Colombia signed the Multilateral Instrument. Article 16(4)(c)(i) of that instrument stipulates that Article 16(3), first sentence – containing the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) – will apply in the absence of a provision in tax treaties that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). In other words, in the absence of this equivalent, Article 16(4)(c)(i) 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)(i), the depositary that this treaty does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

9. With regard to the one tax treaty identified above that is considered not to contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a), Colombia did not list it as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the one tax treaty identified above will not be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a).

Other developments

10. Colombia reported that for the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) and which will not be modified by the Multilateral Instrument, negotiations have already been initiated.

Peer input

11. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Colombia. This peer did not provide input in relation to this element.

Anticipated modifications

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [A.1] | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017a) will not be modified via the Multilateral Instrument, Colombia should continue negotiations with the treaty partners with a view to including the required provision. |

[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.

13. 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.² 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.

Colombia’s APA programme

14. Colombia is authorised to enter into unilateral, bilateral and multilateral APAs and has implemented an APA programme. The legal basis of Colombia’s bilateral and multilateral APA programme can be found, in addition to Article 25(3), first sentence of Colombia’s tax treaties, under article 260-10 of Colombia’s tax code and articles 1.2.2.4.1 to 1.2.2.4.10 and the Decree 2120 of 2017 provides additional guidance on this process. This part of Colombia’s tax code states that the timelines for evaluating, negotiating and finalising a bilateral APA request shall be determined jointly by the relevant competent authorities. In this regard, Colombia noted that as per article 1.2.2.4.6, the starting date for an APA must be the fiscal year in which the agreement is signed and the maximum term covered is five years, including the fiscal year in which the agreement is entered into, the prior year and up to three following years. The provision further states that if Colombia’s competent authority has reached an agreement under MAP on the same issue, such agreement would be the basis for the APA. Once an APA request has been accepted and discussions are initiated with the treaty partner’s competent authority, Colombia noted that its competent authority would keep the taxpayer updated on the status of the bilateral negotiations and communicate any timetable agreed with the other competent authority, as appropriate.

15. In order to clarify the procedure applicable for unilateral, bilateral and multilateral APAs, Colombia issued APA guidance in July 2019, which can be found (in English) at:

<https://www.dian.gov.co/Transaccional/GuaServiciosLinea/CT-GM-0106%20Cartilla%20APA%20Ingles%20v1.pdf>

16. The APA guidance explains the APA process in a simple and accessible manner with details on the definition of an APA in Colombia including types of agreements covered, the benefit granted to taxpayers under APAs, the mutual expectations of the taxpayers and the DIAN in the APA process, eligibility to apply for an APA, the period covered in an APA, the scope of APA requests and issues that may be covered, the right of withdrawal and refusal and details on each stage of the APA process, including possibility of revision, revocation and termination once concluded. The APA guidance also prescribes a questionnaire applicable for the pre-filing meeting, the information required in an APA request and the form of the annual compliance report in its Appendices.

Roll-back of bilateral APAs

17. Colombia reported that since 2013, the maximum term covered for a bilateral APA is five years, including the fiscal year in which the agreement is entered into, the prior year and up to three following years based on Law 1607 of December of 2012. This can be found in article 260-10 of Colombian Tax Code and further details can be found in article 1.2.2.4.6 of Decree 1625 of 2016 (article 4 of Decree 2120 of 2017). This is also noted in Colombia's APA guidance, in paragraph 6.2.

18. Colombia clarified that a taxpayer may request for an APA to cover a shorter term than that provided by the law and even not consider a roll-back to the previous year, being, in any case, subject to the 5 year maximum term as provided by the law.

19. However, a roll-back of APAs is only considered allowed where the term of an APA includes years prior to the covered years relevant to an APA request. Since Colombia's law only allows for inclusion of one year prior to the year in which an APA is finalised and not years prior to the covered years in an APA application, the APA, in some cases, would not cover years prior to the fiscal years applied for in the APA application. Therefore, although Colombia allows the application of the APA to the year prior to the year in which the APA is entered into, Colombia is considered to not allow the roll-back of bilateral APAs in all appropriate cases.

Recent developments

20. There are no recent developments with respect to element A.2.

Practical application of roll-back of bilateral APAs

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

21. Colombia reported that it received one request for a bilateral APA in 2014, which had not yet been finalised. Colombia noted that this request is still pending consideration. Other than that, Colombia reported having not received any requests for bilateral APAs during the period 1 January 2016-31 August 2018.

22. Peers that provided input indicated not having received any request from a taxpayer asking for a rollback of a bilateral APA involving Colombia in the period 1 January 2016-31 August 2018.

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

23. Colombia reported having received one request for a bilateral APA since 1 September 2018. Since this request did not comply with the information required under Colombia’s law in an APA request, the taxpayer was asked for additional information which has not yet been provided.

24. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

25. Colombia 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 all appropriate cases. | Colombia should without further delay introduce the possibility and in practice provide for roll-back of bilateral APAs in all appropriate cases. |

Notes

1. This concerns the Commission of the Andean Community Decision (578) that applies to Bolivia, Ecuador and Peru.
2. 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.

26. 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 Colombia's tax treaties

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

27. Two of Colombia's 15 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, 12 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.

28. The remaining treaty does not contain a provision that is based on or equivalent to Article 25 of the OECD Model Tax Convention and therefore, does not contain the equivalent of Article 25(1), first sentence of the OECD Model Tax Convention.¹

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

29. Out of Colombia's 15 tax treaties, 12 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.

30. The remaining three tax treaties that do not contain such provision can be categorised as follows:

| Provision | Number of tax treaties |
|---|------------------------|
| No MAP provision | 1 |
| No filing period for a MAP request | 1 |
| Filing period less than 3 years for a MAP request (1.5 years) | 1 |

Peer input

31. For the two treaties identified that do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input during stage 1.

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

32. As noted above, taxpayers can file a MAP request irrespective of domestic remedies in all but one of Colombia's tax treaties, as this one treaty does not contain a MAP provision. This is confirmed in Articles 31 and 32 of Colombia's MAP guidance. However, Articles 31 and 32 further provide that if a taxpayer files a MAP request in a situation where the taxpayer has a pending administrative review or judicial claim, the taxpayer is given a time period of 15 days from the notification of acceptance of the MAP request to withdraw such administrative review process or judicial claim. In the event that the taxpayer does not do so, Article 24(4) of the MAP guidance states that Colombia's competent authority would stop proceeding with the MAP case.

33. Colombia further reported that access to MAP would also be granted if Colombia's domestic remedies have been finalised, even though Colombia is not able to derogate from decisions of its domestic courts and thus will only seek correlative relief at the level of the treaty partner. This is also confirmed in Article 32 of Colombia's MAP guidance. Finally, Colombia 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 its domestic court, even though the efforts of its competent authority would be limited to provide any information the other competent authority would need.

34. Colombia's MAP guidance, under Article 20, notes that Colombia may deny access to MAP if the taxpayer provides incomplete information or if the issue is not covered by the treaty. Colombia noted that the taxpayer would be given additional opportunities to present the information required as noted under element B.6 prior to denial of access to MAP. Article 20 further notes that access to MAP may be denied if the taxpayer undertakes a voluntary adjustment in the treaty partner State, subsequently files a MAP request but did not disclose the adjustment in the MAP request. Colombia clarified that this

would also be treated as a situation where the required information and documentation as part of a MAP request has not been provided along with the MAP request.

35. Colombia’s MAP guidance also provides under Article 20(3) that taxpayers would not be provided access to MAP if they have engaged in “fraud” or have provided “misleading statements” in the information provided. Colombia reported that “fraud” and “misleading statements” in this context refer to the use of falsified documents through any expression, written or otherwise, as defined under Articles 289, 294 and 354 of Colombia’s criminal code and noted that this would apply only where a taxpayer has been convicted for these acts in its criminal Courts. Colombia further confirmed that access to MAP would be denied only in respect of a taxpayer receiving a conviction on fraud or misleading statements related to the MAP request or the information and documentation attached thereto which would also be treated as a situation where the required accurate information and documentation as part of a MAP request has not been provided along with the MAP request.

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

36. Colombia reported that in the absence of a filing period in a tax treaty it would apply the same filing period as the OECD Model Tax Convention, which is three years from the notification of the action resulting in taxation not in accordance with the treaty. This is further confirmed in Article 10 of Colombia’s MAP guidance. Colombia further reported that its one tax treaty that does not currently provide for an express timeline to file a MAP request will be modified by the Multilateral Instrument to incorporate Article 25(1), second sentence, of the OECD Model Tax Convention.

37. Article 11 of Colombia’s MAP guidance states that if the MAP request relates to an adjustment made in Colombia, the taxpayer should file the MAP request as soon as possible after the proposed adjustment is communicated in writing. Article 12 of Colombia’s MAP guidance further states that in case of adjustments in the treaty partner jurisdiction, the request should be presented as soon as the taxpayer feels such presentation is justified based on the actions of that jurisdiction. However, this provision also states that for transfer pricing cases, a MAP request should only be filed if there is a certain probability of taxation. Notwithstanding the wording of these provisions, Colombia reported that MAP requests submitted within three years from the first notification of the action resulting in taxation not in accordance with the tax treaty would be accepted into MAP by its competent authority.

Recent developments

Bilateral modifications

38. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not entered into force. This treaty contains 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 this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

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

39. Colombia signed the Multilateral Instrument. 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.

40. With the signing of the Multilateral Instrument, Colombia opted, pursuant to Article 16(4)(a)(i) of that instrument, to introduce in all of its tax treaties a provision that is 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 contracting state. In other words, where under Colombia's tax treaties taxpayers currently have to submit a MAP request to the competent authority of the contracting state of which it is a resident, Colombia opted to modify these treaties allowing taxpayers to submit a MAP request to the competent authority of either contracting state. In this respect, Colombia listed ten of its 15 treaties as a covered tax agreement under the Multilateral Instrument and made, on the basis of Article 16(6)(a), for all of them the notification that they contain a provision 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).

41. In total, all of the relevant treaty partners are a signatory to the Multilateral Instrument. One treaty partner did not list its treaty with Colombia as a covered tax agreement under that instrument and five reserved, pursuant to Article 16(5)(a), the right not to apply the first sentence of Article 16(1) to its existing tax treaties, with a view to allow taxpayers to submit a MAP request to the competent authority of either contracting state. The remaining four treaty partners listed their treaty with Colombia as having a provision that is 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). Therefore, at this stage, four of the ten tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include 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).

42. In view of the above and in relation to the one treaty identified in paragraph 28 that is considered not to contain 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 final Action 14 final report (OECD, 2015b), this treaty is not one of the four treaties that will be modified via the Multilateral Instrument.

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

43. 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).

44. With regard to the one tax treaty identified in paragraph 30 above that contains a filing period for MAP requests of less than three years, Colombia listed it as a covered tax agreement under the Multilateral Instrument but did not make, pursuant to Article 16(6)(b)(i), a notification that it does not contain a provision described in Article 16(4)(a)(ii). The relevant treaty partner is a signatory to the Multilateral Instrument and also made such notification. Therefore, at this stage, this treaty will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

45. Colombia reported that for the one treaty that does not contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption of or as amended by the Action 14 final report (OECD, 2015b) and which will not be modified by the Multilateral Instrument, negotiations have already been initiated.

Peer input

46. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Colombia. This peer did not provide input in relation to this element.

Anticipated modifications

47. Colombia reported it will seek to include Article 25(1) of the OECD Model Tax Convention (OECD, 2017) as amended by the Action 14 final report (OECD, 2015b), in all of its future tax treaties.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [B.1] | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption or as amended by the Action 14 final report (OECD, 2015b). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As this treaty will not be modified by the Multilateral Instrument to include the 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) in the treaty that currently does not contain such equivalent, Colombia should continue negotiations with the treaty partners with a view to including the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. |

| | Areas for improvement | Recommendations |
|-------|--|---|
| [B.1] | One out of 15 tax treaties provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will be modified by the Multilateral Instrument to include the required provision. | Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. |

[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).

48. 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

49. As discussed under element B.1, out of Colombia's 15 treaties, two 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, four of these 15 treaties will, upon entry into force, be modified by the Multilateral Instrument to allow taxpayers to submit a MAP request to the competent authority of either treaty partner.

50. For the remaining treaties, Colombia reported that it has recently introduced a bilateral notification process based on which Colombia's competent authority has to notify/consult the other competent authority about its decision to accept or reject a MAP request. Colombia clarified that such consultation shall be done in writing and should include the following information: a) date of the request; b) identification of the taxpayer; c) type of MAP requested; d) copy of the administrative decision to deny the assistance; and e) copy of the request and of the documentation filed with it. Colombia further noted that the other competent authority is provided six months to initiate a consultation on this decision, the procedure for which would be bilaterally agreed. This is provided in Article 21 of

Colombia's MAP guidance. Colombia further reported that the staff in charge of MAP has been provided written instructions on how to undertake this process as well.

Recent developments

51. In the stage 1 report, it was noted that Colombia had not yet introduced a bilateral consultation or notification process which allowed the other competent authority concerned to provide its views on the case when Colombia's competent authority considered the objection raised in the MAP request not to be justified.

52. As detailed above, Colombia has, with effect from October 2019, introduced a bilateral notification process that is applicable in situations where its competent authority considers the objection raised in the MAP request not to be justified. Therefore, the recommendation made in stage 1 has been addressed.

53. Further, there is a specific mention of a bilateral notification process in the amending protocol to a treaty which is a newly negotiated treaty with a treaty partner with which there were no treaty yet in place

Practical application

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

54. Colombia reported that in the period 1 January 2016-31 August 2018 its competent authority has not decided that the objection raised by taxpayers in such request was not justified in any of its MAP cases.

55. All peers that provided input indicated not being aware of any cases for which Colombia's competent authority denied access to MAP in the period 1 January 2016-31 August 2018. They also reported not having been consulted/notified of a case where Colombia's competent authority considered the objection raised in a MAP request as not justified, which can be explained by the fact that Colombia did not consider that an objection raised in a MAP request was not justified in the period 1 January 2016-31 August 2018.

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

56. Colombia 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 as being not justified. The 2018 and 2019 MAP statistics submitted by Colombia 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 Colombia'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 explained by the fact that no such instances have occurred in Colombia since that date.

Anticipated modifications

58. Colombia did not indicate that it anticipates any modifications in relation to element B.2.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.2] | - | - |

[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. All of Colombia's 15 tax treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017) requiring their state to make a correlative adjustment in cases where a transfer pricing adjustment is imposed by the treaty partner.

61. Access to MAP should be provided in transfer pricing cases regardless of whether the equivalent of Article 9(2) is contained in Colombia'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, Colombia indicated that it will always provide access to MAP for transfer pricing cases and is willing to make corresponding adjustments as long as the original adjustment was performed in accordance with the arm's length standard. Colombia's MAP guidance, in Article 9, states that transfer pricing cases are including in the cases typically covered by MAP.

Recent developments

Bilateral modifications

62. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. This treaty contains a provision that is equivalent to Article 9(2) of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Application of legal and administrative framework in practice

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

63. Colombia reported that in the period 1 January 2016-31 August 2018, it has not denied access to MAP on the basis that the case concerned a transfer pricing case. However, it did not receive any MAP request for such cases from a taxpayer during this period.

64. Peers indicated not being aware of a denial of access to MAP by Colombia on the basis that the case concerned was a transfer pricing case in the period 1 January 2016-31 August 2018.

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

65. Colombia 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, albeit that no such requests were received.

66. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

67. Colombia reported that it will seek to include Article 9(2) of the OECD Model Tax Convention (OECD, 2017) in all of its future tax treaties.

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.

68. 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

69. None of Colombia's 15 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 Colombia do not contain 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.

70. Article 9 of Colombia’s MAP guidance notes that cases involving the application of domestic or treaty based anti-abuse provisions are typical cases covered by MAP.

Recent developments

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

Practical application

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

72. Colombia reported that in the period 1 January 2016-31 August 2018 it has not denied access to MAP in any 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. Colombia reported that it received one MAP request of this kind during this period.

73. Peers that provided input indicated not being aware of cases that have been denied access to MAP in Colombia 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)

74. Colombia 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.

75. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

76. Colombia 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.

77. 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

78. Colombia reported that audit settlements are, in general, not available in Colombia.

79. However, Colombia also reported that temporary arrangements that are in the nature of settlements between taxpayers and the tax administration have been introduced in its law in the past. Previously its domestic law had allowed taxpayers in exceptional circumstances to temporarily settle their administrative tax disputes if the following three conditions were met: (i) the taxpayer initiated the administrative process before the law allowing for the settlement entered into force (ii) the taxpayer paid the tax under dispute and certain percentages of the penalties and interest that accrued and (iii) the taxpayer filed his request to settle before the deadline. Colombia clarified that Colombia's law provided for this kind of arrangement was under its Law 1819 from 2016, which stated that taxpayers should request such settlements before 30 October 2017. Further, Colombia reported that Law 2010 of 2019 allowed taxpayers, withholding tax agents and users of customs and foreign exchange regimes, having filed claims against official assessments from DIAN before tax courts, to request a reduction of the penalties and interest included in the official assessment through a mediation procedure and to also apply for early termination of ongoing tax proceedings and reduce the payment of tax, penalties and interest determined by DIAN through termination by mutual agreement of administrative tax proceedings. Colombia noted that this mechanism was available until 30 June 2020.

80. Colombia reported access to MAP would be provided for all such cases and further clarified that it treats these cases as final judicial rulings, which means that its competent authority would only seek relief from its treaty partner to the extent of relieving the double taxation in question.

Administrative or statutory dispute settlement/resolution process

81. Colombia further reported that it has no administrative or statutory dispute settlement or resolution process in place that is independent from the audit and examination functions, which can only be accessed through a request by the taxpayer and that limits access to MAP.

Recent developments

82. As noted above, Colombia reported that Law 2101 of 2019 introduced the possibility of settlements between the taxpayer and the DIAN in certain circumstances for a limited period i.e. until 30 June 2020. However, as clarified above, access to MAP would be granted in relation to cases settled using this mechanism, albeit that Colombia's competent authority would not be able to deviate from such settlements.

Practical application

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

83. Colombia reported it has not denied access to MAP in cases where an audit settlement would have been concluded following a tax audit because it has not received any request in relation hereto in the period 1 January 2016-31 August 2018.

84. All peers that provided input indicated not being aware of a denial of access to MAP in Colombia in the period 1 January 2016-31 August 2018 where the issue presented by the taxpayer has already been dealt with in an audit settlement between the taxpayer and the tax authorities.

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

85. Colombia 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.

86. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given. One peer provided additional input and noted that Colombia should clarify the effects of its new settlement mechanism on the access to MAP, address this in its MAP guidance and notify its MAP partners. This peer also requested to be informed whether such settlements can only be requested until 30 June 2020 and that no extension is foreseen. Colombia responded to this input and noted that since these are not administrative or statutory dispute settlement/resolution processes that function independently from the audit and examination function, Colombia is not obliged to notify its treaty partners.

Anticipated modifications

87. Colombia 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.

88. 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 publicly available.

Legal framework on access to MAP and information to be submitted

89. The information and documentation Colombia requires taxpayers to include in a request for MAP assistance are discussed under element B.8.

90. Where a taxpayer has not included all required information in its MAP request, Colombia reported that its competent authority will request the taxpayer to supplement the missing information and/or documentation within a time period agreed with the taxpayer, which would not exceed 45 days. Colombia noted that the same would be applicable where additional information is sought from the taxpayer by its competent authority. Colombia clarified that its competent authority will follow-up with the taxpayer at least once within this 45 day period. This is confirmed in Article 14 of Colombia's MAP guidance. Colombia reported that in case the taxpayer does not provide the required information within the prescribed period, access to MAP would be denied and the case would be closed, as provided in Article 20(3) of its MAP guidance.

Recent developments

91. In the stage 1 report, it was noted that Colombia did not have information and documentation requirements for a MAP request and a documented mechanism to deal with cases where the taxpayer has not provided the required information in a MAP request. As noted above, with the issuance of its MAP guidance, Colombia has introduced information and documentation requirements as well as a mechanism where the taxpayer has not provided the required information in a MAP request.

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

92. Colombia 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.

93. All peers that provided input indicated not being aware of a limitation of access to MAP by Colombia 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)

94. Colombia 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.

95. All peers that provided input during stage 1 stated during stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

96. Colombia indicated that it does not anticipate any modifications in relation to element B.6.

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.

97. 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 Colombia's tax treaties

98. Out of Colombia's 15 tax treaties, nine 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.

99. The remaining six treaties do not contain a provision that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).²

100. For the six treaties identified that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peers did not provide input during stage 1.

Recent developments

Bilateral modifications

101. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. This treaty contains a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

102. Colombia signed the Multilateral Instrument. 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).

103. With regard to the six 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), Colombia listed four treaties 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). All four treaty partners are signatories to the Multilateral Instrument, also listed their treaty with Colombia as a covered tax agreement and made such notification. Therefore, at this stage, four of the six tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for these treaties to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

104. Colombia reported that for the remaining two 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, negotiations have already been initiated or are planned to be initiated.

Peer input

105. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Colombia. This peer did not provide input in relation to this element.

Anticipated modifications

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

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [B.7] | <p>Six out of 15 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these six treaties:</p> <ul style="list-style-type: none"> • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending. | <p>Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two 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), Colombia should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision.</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.

107. 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.

Colombia's MAP guidance

108. Colombia has provided legal basis to the MAP through introduction of Article 869-3 to the Colombian Tax Code by way of Law 1943 of December 28, 2018. Article 896-3 provides that:

- taxpayers may request for MAP in writing by filing before the DIAN
- the DIAN is the competent authority for MAP that regulates the procedural aspects of MAP as well
- MAP agreements would have the same legal nature and effects as a judicial decision and may be implemented notwithstanding domestic time-limits
- suspension of tax collection would be allowed from the filing of a MAP request.

109. Further, Colombia released MAP guidance by way of Resolution 000053 of August 2019 in the form of regulations to Article 896-3. However, in October 2019, Colombia's constitutional court ruled that Law 1943 of 2018 is unconstitutional, removing its legal effect as well as of the regulations published under it.

110. As a consequence, Law 2010 of December 27, 2019 was enacted including Article 869-3 worded the same way as under the previous law. Further, Colombia rectified

and re-issued guidance on the governance and administration of the MAP through Resolution No. 000085 of 21 August 2020. This MAP guidance is (in Spanish) available at: <https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000085%20de%2021-08-2020.pdf>

111. This MAP guidance consists of six chapters, containing several sub-sections. The six chapters and the main sub-sections are:

| Chapter | Content |
|---|--|
| 1. General rules | <ul style="list-style-type: none"> the purpose and scope of MAP as well as key definitions relating to MAP, including the definition of the competent authority. |
| 2. Filing of a MAP request | <ul style="list-style-type: none"> request for MAP before Colombia's competent authority request for MAP before a foreign competent authority MAP requests relating to residence conflicts determinations regarding limitation on benefits in MAP typical cases in MAP. |
| 3. Procedure for filing a MAP request | <ul style="list-style-type: none"> filing period for a MAP request filing where adjustments are initiated in Colombia and/or abroad contact information of the office in charge of MAP cases in Colombia the manner and form of a MAP request in Colombia information and documentation that taxpayers should include in their MAP request the possibility of a) multilateral MAP requests; b) the multi-year resolution of recurring issues through MAP; c) bona fide foreign initiated self-adjustments in MAP role and rights of taxpayers prior to filing a MAP request and during MAP discussions. |
| 4. Action by Colombia's competent authority | <ul style="list-style-type: none"> circumstances where a MAP request may be denied and the notification/consultation procedure applicable on such denial circumstances where the MAP would be terminated by Colombia's competent authority the nature and effect of a MAP agreement the possibility of unilateral relief the possibility of no agreement in MAP and arbitration in some treaties. |
| 5. Relationship with other remedies | <ul style="list-style-type: none"> suspension of tax collection when cases are dealt with in MAP relationship with domestic available remedies possibility of MAP in the case of settlements or final judicial decisions. |
| 6. Collection, penalties and interest | <ul style="list-style-type: none"> suspension of tax collection when cases are dealt with in MAP the treatment of interest and penalties in MAP. |

112. The above-described MAP guidance of Colombia includes detailed information on the availability and the use of MAP and how its competent authority conducts the procedure in practice. This guidance includes 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.³

Information and documentation to be included in a MAP request

113. 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.⁴ This agreed

guidance is shown below. Article 14 of Colombia’s MAP guidance enumerates which items must be included in a request for MAP assistance (if available). These 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.

114. Further to the above, Colombia’s MAP guidance also requires that a MAP request contains inter alia: (i) a statement of when the period of limitations for the years for which relief is sought will expire in Colombia and in the treaty country (ii) a statement of relevant domestic and foreign judicial or administrative proceedings that involve the taxpayer and related persons, including all information related to notification of the treaty country (iii) to the extent known by the taxpayer, a statement of relevant foreign judicial or public administrative proceedings that do not involve the taxpayer or related persons but involve the same issue for which competent authority assistance is requested (iv) disclosure of any issues under audit that will not be submitted to MAP.

115. In addition to this, the taxpayer must also provide a statement that the negotiations of the competent authorities in MAP is a Government-to-Government activity that does not include participation of the taxpayer in the negotiations and disclose all voluntary foreign adjustments that it has undertaken. Colombia reported that the taxpayer may also request a pre-filing meeting with the competent authority or a hearing in relation to a MAP request in particularly complex cases. Once a MAP request is filed, Colombia noted that a taxpayer should provide any updates to both competent authorities.

Recent developments

116. The stage 1 report noted that Colombia did not have a published MAP guidance and Colombia was recommended to introduce a MAP guidance, including the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance and to publish such guidance. As noted above, Colombia has now published MAP guidance that contains: (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.

117. Therefore, the recommendation made in stage 1 has been addressed.

Anticipated modifications

118. Colombia indicated that it does not anticipate any modifications in relation to element B.8.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [B.8] | - | - |

[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.⁵

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

120. As discussed under element B.8, Colombia’s MAP guidance was published in August 2019, republished in August 2020 and is (in Spanish) available at:

<https://www.dian.gov.co/normatividad/Normatividad/Resoluci%C3%B3n%20000085%20de%2021-08-2020.pdf>

121. As regards the accessibility of its MAP guidance, it is uploaded on the website of the DIAN. The MAP guidance is easily accessible on the website of the DIAN under the section covering regulations issued by the DIAN or by searching for “Resolución MAP DIAN” on a search engine platform.

MAP profile

122. The MAP profile of Colombia is published on the website of the OECD and was last updated in September 2018. This MAP profile is complete and contains detailed information. This profile also contains external links that provide extra information and guidance where appropriate. However, the MAP profile has not been updated with the most recent information since the publication of Colombia’s MAP guidance.

Recent developments

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

Anticipated modifications

124. Colombia indicated that it intends to update its MAP profile in the coming months.

Conclusion

| | Areas for improvement | Recommendations |
|-------|--|---|
| [B.9] | The MAP profile contains outdated information. | Colombia should update its MAP profile to include the most up to date information and align the content of its MAP profile with its MAP guidance. |

[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.

125. 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

126. As previously discussed under B.5, Colombia reported that it was possible for taxpayers and the tax administration to enter into settlement agreements until October 2017 and later until June 2020 under Colombia's domestic law.

127. Article 33 of Colombia's MAP guidance addresses such settlements and states that although access to MAP would be granted, Colombia's competent authority would not be able to deviate from such settlements and would only be able to allow correlative adjustments in the treaty partner jurisdiction. Accordingly, the recommendation made in the stage 1 report has been addressed.

128. Most peers raised no issues with respect to this element concerning audit settlements. One peer requested that Colombia address the effects of their new settlement mechanism on MAP in their MAP guidance. As noted above, Colombia's MAP guidance addresses this issue in Article 33.

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

129. As previously mentioned under element B.5, Colombia 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.

In that regard, there is no need to address in Colombia’s pending MAP guidance the effects of such process with respect to MAP.

130. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Colombia, which can be clarified by the fact that such process is not in place in Colombia.

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

131. As Colombia does not have an internal administrative or statutory dispute settlement/resolution process in place, there is no need for notifying treaty partners of such process.

Anticipated modifications

132. Colombia indicated that it does not anticipate any modifications in relation to element B.10.

Conclusion

| | Areas for improvement | Recommendations |
|--------|-----------------------|-----------------|
| [B.10] | - | - |

Notes

1. This concerns the Commission of the Andean Community Decision (578) that applies to Bolivia, Ecuador and Peru.
2. These six treaties include the Commission of the Andean Community Decision (578) that applies to Bolivia, Ecuador and Peru.
3. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
4. *Ibid.*
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

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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 Colombia's tax treaties

134. Out of Colombia's 15 tax treaties, 14 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. The remaining treaty does not contain a MAP provision and therefore does not contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).¹

135. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), the relevant peer did not provide input during stage 1.

Practical application

136. As was discussed under element B.1, Article 24 of Colombia's MAP guidance states that Colombia's competent authority would not proceed with handling and resolving a MAP case in certain circumstances:

- a. The taxpayer does not agree that the negotiations between the competent authorities is a government-to-government activity that does not include participation of the taxpayer.

- b. The taxpayer does not deliver the requested information or documentation in a timely manner or delivers such information only to the competent authority of the treaty partner.
- c. If it is confirmed that the taxpayer had provided different information to both competent authorities.
- d. The taxpayer: (i) does not comply with the MAP guidance, including the obligation to withdraw from administrative and judicial remedies within fifteen (15) business days of acceptance of the MAP request; (ii) does not co-operate by providing the competent authority the information requested from the periods in question and such omission makes it difficult for the competent authority to negotiate and conclude an agreement; (iii) does not co-operate with the competent authority or (iv) otherwise significantly impedes the competent authority's ability to negotiate and conclude an agreement.
- e. The taxpayer does not reimburse the expenses generated during the process within the term granted by the competent authority for it. The costs of the process here does not refer to the human and material resources incurred by the competent authority to carry out the MAP discussions by the ACC but to other particular expenses arising during the process.

137. Colombia clarified with regard to situation a) that it only covers situations where the taxpayer acts in a way that obstructs the continuation of MAP discussions. Colombia noted that this situation may occur for example, when additional information from the taxpayer is necessary to continue the MAP process, but where the taxpayer refuses to co-operate. Colombia further clarified that situations d (iii) and d (iv) also relate to situations where the taxpayer actively obstructs the continuation of MAP discussions through misconduct or dilatory strategies. Finally, Colombia noted that the expenses covered in situation e) do not cover ordinary expenses related to MAP cases, but situations where specific extraordinary expenses may arise, such as technical evidence or hiring of experts during the course of MAP.

138. In relation to this policy and practical experience, Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) clearly stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to come to taxation that is in accordance with the provisions of the convention. In this respect paragraph, 5.1 of the Commentary to Article 25 of the OECD Model Tax Convention (OECD, 2017) notes that this obligation entails that competent authorities are obliged to seek to resolve the case in a fair and objective manner, on its merits, in accordance with the terms of the convention and applicable principles of international law on the interpretation of treaties. Further, paragraph 42 of the Commentary on Article 25 of the OECD Model Tax Convention (OECD, 2017) allows competent authorities to take the position that where a taxpayer has judicial remedies ongoing in a State as to the issue relating to a MAP request, discussions of any depth in MAP may be suspended till a court decision is obtained. However, it cannot be extrapolated from this paragraph that competent authorities can cease MAP discussions where the taxpayer does not withdraw from domestic administrative or judicial proceedings within a stipulated time. Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) stipulates that competent authorities have an obligation to endeavour to resolve MAP cases with a view to come to taxation that is in accordance with the provisions of the convention.

139. It is acknowledged that competent authorities may under some circumstances not be able to proceed with a MAP case where a taxpayer does not co-operate with the progress

of the case after repeated follow-ups, such as those specified in situations a), b), c), d (ii), (iii) and (iv) above. However, Colombia's policy reflected above to stop discussions in MAP cases in situation d (i) above may also cause that a MAP case cannot be resolved where an administrative or judicial claim is not withdrawn within a short time period (15 days). To bind Colombia's competent authority in a way that they are not able to resolve cases in this situation is not in line with the obligations placed on the competent authorities under Article 25(2) of the OECD Model Tax Convention (OECD, 2017).

140. Additionally, situation e) above may also be relevant to the ability of the competent authorities to resolve cases where some expenses relating to the MAP are not borne by the taxpayer. Further discussion and analysis is required on whether this position is in line with the Action 14 Minimum Standard.

Recent developments

Bilateral modifications

141. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. This treaty contains a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

142. Colombia signed the Multilateral Instrument. Article 16(4)(b)(i) of that instrument stipulates that Article 16(2), first sentence – containing the equivalent of Article 25(2), first 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), first sentence, of the OECD Model Tax Convention (OECD, 2017). In other words, in the absence of this equivalent, Article 16(4)(b)(i) 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)(c)(i), the depositary that this treaty does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

143. With regard to the one tax treaty identified above that is considered not to contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017), Colombia did not list it as a covered tax agreement under the Multilateral Instrument. Therefore, at this stage, the one tax treaty identified above will not be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

144. Colombia reported that for the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, negotiations have already been initiated.

Peer input

145. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Colombia. This peer did not provide input in relation to this element.

Anticipated modifications

146. Colombia 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 |
|-------|---|---|
| | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified via the Multilateral Instrument, Colombia should continue negotiations with the treaty partners with a view to including the required provision. |
| [C.1] | The competent authority does not seek to resolve MAP cases where the taxpayer does not withdraw domestic administrative or judicial remedies within 15 days of the acceptance of the MAP request by the competent authority. | Colombia should seek to resolve all MAP cases that were accepted into the MAP and that meet the requirements under Articles 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Colombia's tax treaties. Specifically, Colombia should seek to resolve MAP cases in particular where the taxpayer does not withdraw domestic administrative or judicial remedies within 15 days of the acceptance of the MAP request by the competent authority. |

[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).

147. 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

148. 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.

149. Colombia did not report its MAP statistics for 2016 and 2017 till during the course of this peer review. Colombia provided its MAP statistics for 2018 and 2019 pursuant to the MAP Statistics Reporting Framework within the given deadline, including all cases involving Colombia 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 Colombia.

150. With respect to post-2015 cases, Colombia 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, Colombia indicated that it could match its statistics with all of them.

151. No peer input was provided on the matching of MAP statistics with Colombia.

152. Based on the information provided by Colombia'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

153. Owing to its modest MAP inventory, Colombia reported that it does not have a monitoring system in place. However, Colombia reported that it communicates with its treaty partners to monitor and manage its MAP caseload.

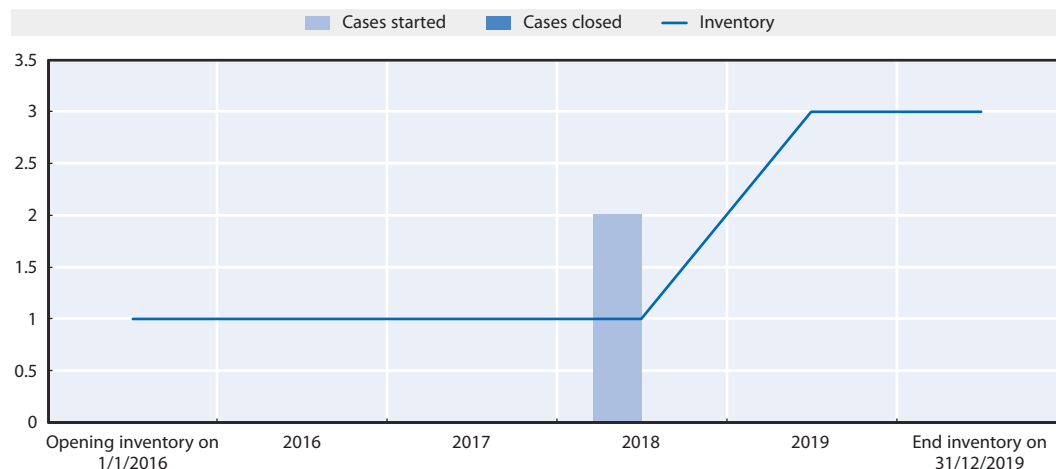
Analysis of Colombia's MAP caseload

Global overview

154. The analysis of Colombia's MAP caseload relates to the period starting on 1 January 2016 and ending on 31 December 2019.

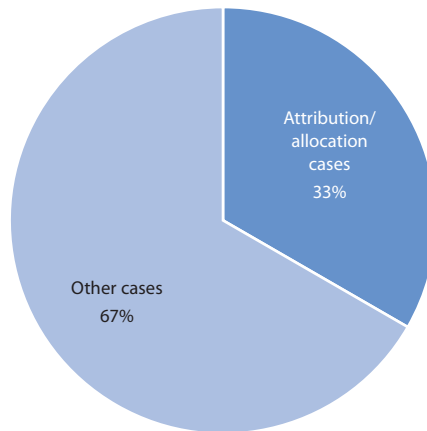
155. Figure C.1 shows the evolution of Colombia's MAP caseload over the Statistics Reporting Period.

Figure C.1. Evolution of Colombia's MAP caseload



156. At the beginning of the Statistics Reporting Period, Colombia had one pending MAP case, which was an attribution/allocation case. At the end of the Statistics Reporting Period, Colombia had three MAP cases in its inventory, comprising one attribution/allocation case and two other MAP cases. Colombia's MAP caseload has increased from one to three during the Statistics Reporting Period. The breakdown of the end inventory can be shown as in Figure C.2.

Figure C.2. End inventory on 31 December 2019 (3 cases)



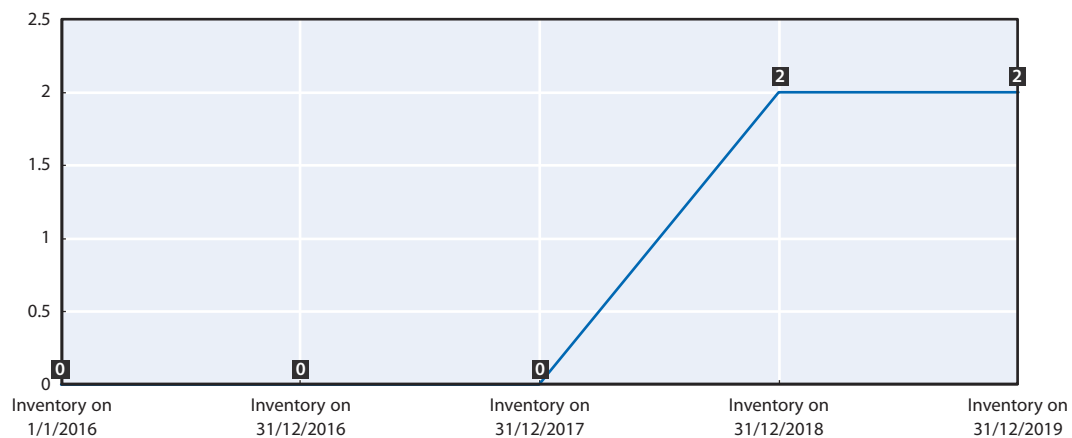
Pre-2016 cases

157. At the beginning of the Statistics Reporting Period, Colombia's MAP inventory of pre-2016 MAP cases consisted of one case, which was an attribution/allocation case and it did not have any other cases. This case remained unresolved at the end of the Statistics Reporting Period.

Post-2015 cases

158. Figure C.3 shows the evolution of Colombia's post-2015 MAP cases over the Statistics Reporting Period.

Figure C.3. Evolution of Colombia's MAP inventory: Post-2015 cases



159. In total, two MAP cases started during the Statistics Reporting Period, both of which concerned other cases. Both cases remained unresolved at the end of the Statistics Reporting Period.

Overview of cases closed during the Statistics Reporting Period

160. Colombia has not closed any MAP cases during the Statistics Reporting Period.

Average timeframe needed to resolve MAP cases

161. Colombia has not closed any MAP cases during the Statistics Reporting Period.

Peer input

162. The peer input regarding the timely resolution of MAP cases is discussed under element C.3. Specifically, one peer reported experiencing many difficulties in reaching Colombia's competent authority during the period 1 January 2016-31 August 2018, even though communication has started very recently.

163. Colombia responded that its competent authority is striving to resolve its pending MAP cases efficiently. With respect to the case with the peer that provided input, Colombia reported that it had exchanges with the relevant peer at the time of the request and has made contact recently. Furthermore, Colombia clarified that it notified the relevant peer that it was awaiting enabling legislation so that it has the authority to implement all MAP agreements in Colombia, and that it expects such legislation to be approved by December 2018. Colombia also reported that it was expecting to prepare its position paper relating to that case by the first quarter of 2019.

164. Following the passing of such enabling legislation, this peer has reported having seen a great improvement in its relationship with Colombia in the handling and resolving of MAP cases since 1 September 2018. This peer input will be discussed in detail under element C.3 as well.

Recent developments

165. Colombia was in the stage 1 peer review report under element C.2 recommended to report its MAP statistics in accordance with the MAP Statistics Reporting Framework. As Colombia has submitted its MAP statistics within the specified deadline for 2018 and 2019, this recommendation has been addressed.

166. 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 Colombia concerning the resolution of MAP cases since that date. This input is further discussed under element C.3.

Anticipated modifications

167. Colombia reported that it is considering using an existent internal system for the handling, management and control of tax audit files for the monitoring of MAP cases.

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.

168. 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 Colombia's competent authority

169. Under Colombia's tax treaties, the competent authority function is assigned to Colombia's Minister of Finance and Public Credit or his authorised representative. Colombia reported that the competent authority function is further delegated to the Office for International Taxation of the DIAN. Recently, Article 869-3 was added to Colombia's Tax Code and this provision along with Colombia's MAP guidance has established the Office for International Tax Affairs of the DIAN as its competent authority and provides it legal authority to act in MAP and APA cases.

170. The Office for International Tax Affairs comprises three employees as well as the head of the office. Colombia further reported that this team is in charge of discussing Colombia's position during MAP meetings, although Colombia's competent authority's positions will be approved by Colombia's general Commissioner.

171. In addition, Colombia reported that a three-person APA team also located in the Office for International Taxation, within DIAN is tasked with handling attribution/allocation MAP cases although they have not been assigned formal competent authority functions. Colombia reported that this APA team is required to assist with preparing Colombia's position for attribution/allocation MAP cases.

172. Colombia reported that its staff in charge of MAP are all experts in international taxation, and have prior experience with negotiating treaties as well as with assisting taxpayers as counsel. Colombia further reported that some of its officials have experience in negotiating APAs.

173. Colombia reported that it seeks out MAP training opportunities for its staff, as well as other alternative dispute resolution and supplementary dispute resolution tools to enhance the MAP resolution process in Colombia. Colombia further reported that it provides general tax treaty and transfer pricing training to staff, in addition to hands-on workshops for specific areas such as permanent establishment determination and profit attribution. Colombia noted that it also engages in trainings with the Inter-American Development Bank as well as the OECD's Tax Inspectors Without Borders programme and that its competent authority attends internal and external MAP trainings organised by the OECD and the United Nations.

174. Finally, Colombia noted that the Office for International Taxation has an independent budget for acting as the competent authority, but that funding for face-to-face competent authority meetings is determined on a case-by-case basis by the Ministry of Finance.

Monitoring mechanism

175. Colombia reported that it does not yet have a mechanism in place for monitoring its MAP resources.

Recent developments

176. As described above, Article 869-3 was added to Colombia’s Tax Code in December 2019 that established the Office for International Taxation as the competent authority for Colombia and gave it powers to act in MAP cases. In addition, an independent budget was also provided for the office to act as competent authority.

177. In addition, Colombia reported that a new staff member was added to its competent authority staff, who is an economist and that its competent authority staff and other staff, where needed, attended internal MAP trainings as well as external MAP trainings organised by the OECD and the United Nations.

Practical application

MAP statistics

178. As discussed under element C.2 Colombia did not close any MAP cases during the Statistics Reporting Period. However, in the stage 1 report, Colombia was recommended under element C.2 to ensure that the reasons why the only pending MAP case initiated in 2013 has not yet been closed would not act as an obstacle to resolving current pending and future MAP cases in a timely, efficient and effective manner.

179. Although this case remained pending as of 31 December 2019, Colombia clarified in this regard that it was unable to act on the case until there was enabling legislation giving powers to the Office of International Taxation to act as competent authority. Since the enabling legislation was enacted, Colombia noted that it actively pursued the case by submitting its position to the treaty partner’s competent authority in 2019 and that the relationship with the treaty partner has been fluent ever since. This was confirmed by the peer in question, as described in paragraph 184 below, which peer noted the great improvement in the relationship with Colombia’s competent authority since 1 September 2018. Colombia noted that the long-pending case was closed with the treaty partner in 2020 through the withdrawal of the MAP request by the taxpayer and that its two remaining pending cases had been pending for less than 24 months as of 31 December 2019.

180. Although its MAP inventory went up from one case on 1 January 2016 to three cases on 31 December 2019, the inventory has remained modest. Since Colombia’s competent authority has been able to actively discuss MAP cases after the inclusion of enabling legislation under its domestic law allowing its competent authority to do so, the competent authority is considered adequately resourced.

Peer input

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

181. One of the two peers that provided input noted that its relationship with Colombia’s competent authority has room for improvement. This peer reported that its efforts to reach Colombia by email and ordinary mail did not receive a reply or acknowledgement for quite some time and that it had only recently received a response to a position paper it had sent. The peer also noted that the contact details of Colombia’s competent authority are not available and that Colombia had still not published its MAP profile at the time that it was searching for such contact information. This peer concluded that after finally hearing back from Colombia that it expects its relationship with them will be better moving forward. As mentioned under element C.2 Colombia responded that its competent authority is striving

to resolve its pending MAP cases efficiently and that it notified the relevant peer that it is awaiting enabling legislation so that it has the authority to implement MAP agreements in Colombia. Colombia further clarified that it expected such legislation to be approved by December 2018.

182. The second peer noted that it did not have any cases with Colombia during the Review Period and therefore did not provide any input on Colombia's competent authority.

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

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

184. This peer is the same peer that had provided input as to having experienced difficulties in its MAP relationship with Colombia's competent authority in the past. This peer noted that they have two pending MAP cases with Colombia as of 31 December 2019 and that since 1 September 2018, the relationship between the two competent authorities has been extremely seamless although the taxpayer has decided to withdraw one MAP request. The peer further reported that this great change in relationship has been following the legislative amendments in Colombia and that the competent authorities of both jurisdictions now have smooth communications with the aim of reaching an agreement.

Anticipated modifications

185. Colombia reported that it expected that its competent authority will increase the number of staff in charge of MAPs and APAs within the following two years in order to enhance its capacity.

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.

186. 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

187. Colombia reported that its MAP staff does not consult or involve personnel outside of the MAP office, except when it handles attribution/allocation cases. The APA staff who has not yet been delegated competent authority status is consulted for these cases, as described previously.

188. Colombia reported that the resolution of MAP cases by its competent authority is not influenced by policy considerations. In particular, staff working with the competent authority department and handling attribution/allocation cases is not involved in treaty negotiations or policy work. Colombia also indicated that staff in charge of other MAP cases will take into consideration the actual terms of a tax treaty as applicable for the relevant year and that it is committed to not being influenced by policy considerations that Colombia would like to see reflected in future amendments to the treaty.

189. Further, as explained under element C.3, the newly added Article 869-3 of Colombia's Tax Code gives its competent authority the authority to act in MAP cases and has given it an independent budget as well.

Recent developments

190. There are no recent developments with respect to element C.4, except for the fact that Article 869-3 of Colombia's Tax Code has now given its competent authority to authority to handle and resolve MAP cases independently.

Practical application

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

191. Peers that provided input generally reported no impediments in Colombia 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)

192. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

193. Colombia 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.

194. 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 Colombia

195. Colombia reported that its staff are evaluated based on weighted qualitative criteria such as the time taken to resolve each case (80%), behavioural skills, such as independence from tax treaty policy considerations (10%) and evaluation of management (10%). With respect to behavioural skills, Colombia reported that staff are specifically evaluated on learning ability, research and communication skills as well as analytical thinking. These evaluative criteria are enumerated in Resolution No. 59/2017 issued by DIAN that follows the guidelines of Colombia's National Civil Service Commission, which is the governmental body in charge of evaluating public officials' performance. Article 10 of this resolution requires that the annual evaluation for staff cover the time period from 1 February to 31 January of the following year.

196. Colombia further reported that employee targets are agreed upon annually and that for the years 2017-18 in particular, staff of the Office for International Affairs at DIAN are required to support the General Commissioner in its efforts to comply with the OECD BEPS minimum standards.

197. The Action 14 final report (OECD, 2015b) 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).

198. Further to the above, Colombia 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 are not evaluated on the basis of the material outcome of MAP discussions.

Recent developments

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

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

200. All peers that provided input indicated not being aware that Colombia 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)

201. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

202. Colombia 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.

203. 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

204. Colombia reported that Law 1563 of 2012 expressly forbids arbitration on tax matters, but that it can be overridden by any ordinary law including a law to approve a double taxation agreement. As a clarification, Colombia noted that this prohibition on arbitration was in accordance with a very well established opinion in Colombia's judiciary, according to which only the judiciary itself is able to rule on tax disputes. Colombia reported that its constitutional court is reviewing the constitutionality of Colombia's arbitration clause for one treaty that has not yet come into effect. This position is clarified in Colombia's MAP profile as well.

Recent developments

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

Practical application

206. Despite Colombia’s domestic law limitations regarding arbitration with respect to tax matters, Colombia has incorporated an arbitration clause in two of its 15 treaties as a final stage to the MAP. One of these two treaties contains a provision based on Article 25(5) of the OECD Model Tax Convention (OECD, 2017) and is not yet in force and ratification will remain pending until the constitutional court issues its decision. Colombia reported that the other treaty contains a voluntary arbitration provision and is also undergoing the ratification process in Congress.

Anticipated modifications

207. Colombia indicated that it does not anticipate any modifications in relation to element C.6.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [C.6] | - | - |

Notes

1. This concerns the Commission of the Andean Community Decision (578) that applies to Bolivia, Ecuador and Peru.
2. For post-2015 cases, if the number of MAP cases in Colombia’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, Colombia reports its MAP caseload on a jurisdiction-by-jurisdiction basis. This rule applies for each type of cases (attribution/allocation cases and other cases).

References

- 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>.
- 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.

208. 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

209. Colombia reported that although it has a domestic statute of limitations, it does not apply to the implementation of MAP agreements irrespective of whether the concerned tax treaty contains the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or not. This position is clarified in Article 869-3 of Colombia's Tax Code, which gives a MAP agreement the same status as a final judicial ruling as well. This is also confirmed in Article 22 of Colombia's MAP guidance.

210. Article 22 of Colombia's MAP guidance further provides that the taxpayer may request the implementation of a MAP agreement by submitting a copy of the same. However, no further details are provided as to the procedure for implementation of MAP agreements or as regards the monitoring of the same.

Recent developments

211. It was noted that in the stage 1 report that the implementation of MAP agreements was subject to Colombia's domestic statute of limitations. However, as noted above, this position has been overruled by the enactment of Article 869-3 of Colombia's tax code and now MAP agreements may be implemented irrespective of domestic time limits. Therefore, the recommendation made in the stage 1 report has been addressed.

Practical application

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

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

213. 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 Colombia.

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

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

215. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

216. Colombia indicated that it does not anticipate any modifications in relation to element D.1.

Conclusion

| | Areas for improvement | Recommendations |
|-------|-----------------------|-----------------|
| [D.1] | - | - |

[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.

217. 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

218. Colombia reported that no timeframe currently exists for Colombia to implement MAP agreements.

Recent developments

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

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

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

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

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

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

223. All peers that provided input during stage 1 stated in stage 2 that the update report provided by Colombia fully reflects their experience with Colombia since 1 September 2018 and/or there are no additions to the previous input given.

Anticipated modifications

224. Colombia 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.

225. 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 Colombia's tax treaties

226. As discussed under element D.1, Colombia's domestic legislation does not contain a statute of limitations for implementing MAP agreements, irrespective of whether the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) is contained in its tax treaties.

227. Out of Colombia's 15 tax treaties, 11 contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) providing that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty does not contain such equivalent, but only the alternative provision in Article 9(1). The remaining three treaties contain neither such equivalent nor the alternative provisions.¹

228. For the four treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), or both alternatives,

one peer provided input during stage 1 and noted that while its tax treaty with Colombia does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention (OECD, 2017), it does contain a provision limiting the time period for making an adjustment to five years.

Recent developments

Bilateral modifications

229. Colombia signed a new tax treaty, which is a newly negotiated treaty with a treaty partner with which there was no treaty yet in place. This treaty has not yet entered into force. This treaty contains a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017). The effects of this newly signed treaty have been reflected in the analysis above where they have relevance.

Multilateral Instrument

230. Colombia signed the Multilateral Instrument. 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.

231. With regard to the four tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) or both alternative provisions for Articles 9(1) and 7(2), Colombia listed three of them as covered tax agreements under the Multilateral Instrument and made for all, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). All three treaty partners are a signatory to the Multilateral Instrument, but one of them did not list its treaty with Colombia as a covered tax agreement and two made a reservation on the basis of Article 16(5)(c). Therefore, at this stage, none of the four tax treaties identified above will be modified by the Multilateral Instrument upon its entry into force for this treaty to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017).

Other developments

232. Colombia reported that for the four treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) and which will not be modified by the Multilateral Instrument, negotiations have already been initiated or are planned to be initiated.

Peer input

233. Of the peers that provided input during stage 2, one provided input in relation to their tax treaty with Colombia. This peer did not provide input in relation to this element.

Anticipated modifications

234. Colombia reported that it will continue to seek to include Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) in all of its future treaties.

Conclusion

| | Areas for improvement | Recommendations |
|-------|---|--|
| [D.3] | Four out of 15 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions provided for in Article 9(1) and Article 7(2). None of these three treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending. | For the four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Colombia 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. |

Note

1. This includes the Commission of the Andean Community Decision (578) that applies to Bolivia, Ecuador and Peru.

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] | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified via the Multilateral Instrument, Colombia should continue negotiations with the treaty partners with a view to including the required provision. |
| [A.2] | Roll-back of bilateral APAs is not provided for all appropriate cases. | Colombia should without further delay introduce the possibility and in practice provide for roll-back of bilateral APAs in all appropriate cases. |
| Part B: Availability and access to MAP | | |
| [B.1] | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) as it read prior to the adoption or as amended by the Action 14 final report (OECD, 2015b). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As this treaty will not be modified by the Multilateral Instrument to include the 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) in the treaty that currently does not contain such equivalent, Colombia should continue negotiations with the treaty partners with a view to including the required provision. This concerns a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention (OECD, 2015a) either a. as amended by the Action 14 final report (OECD, 2015b); or b. as it read prior to the adoption of Action 14 final report (OECD, 2015b), thereby including the full sentence of such provision. |
| | One out of 15 tax treaties provides that the timeline to file a MAP request is shorter than three years from the first notification of the action resulting in taxation not in accordance with the provision of the tax treaty. This treaty will be modified by the Multilateral Instrument to include the required provision. | Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent of Article 25(1), second sentence, of the OECD Model Tax Convention (OECD, 2017) in the one treaty that currently does not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned. |
| [B.2] | - | - |
| [B.3] | - | - |
| [B.4] | - | - |
| [B.5] | - | - |
| [B.6] | - | - |

| | Areas for improvement | Recommendations |
|---|---|--|
| [B.7] | <p>Six out of 15 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). With respect to these six treaties:</p> <ul style="list-style-type: none"> • Four are expected to be modified by the Multilateral Instrument to include the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017). • Two will not be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending. | <p>Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention (OECD, 2017) in those four treaties that currently do not contain such equivalent and that will be modified by the Multilateral Instrument upon its entry into force for the treaties concerned.</p> <p>For the remaining two 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), Colombia should continue (the initiation of) negotiations with the treaty partners with a view to including the required provision.</p> |
| [B.8] | - | - |
| [B.9] | The MAP profile contains outdated information. | Colombia should update its MAP profile to include the most up to date information and align the content of its MAP profile with its MAP guidance. |
| [B.10] | - | - |
| Part C: Resolution of MAP cases | | |
| [C.1] | One out of 15 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017). This treaty will not be modified by the Multilateral Instrument to include the required provision. With respect to this treaty, negotiations are pending. | As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention (OECD, 2017) will not be modified via the Multilateral Instrument, Colombia should continue negotiations with the treaty partners with a view to including the required provision. |
| | The competent authority does not seek to resolve MAP cases where the taxpayer does not withdraw domestic administrative or judicial remedies within 15 days of the acceptance of the MAP request by the competent authority. | Colombia should seek to resolve all MAP cases that were accepted into the MAP and that meet the requirements under Articles 25(1) and (2) of the OECD Model Tax Convention (OECD, 2017) as incorporated in Colombia's tax treaties. Specifically, Colombia should seek to resolve MAP cases in particular where the taxpayer does not withdraw domestic administrative or judicial remedies within 15 days of the acceptance of the MAP request by the competent authority. |
| [C.2] | - | - |
| [C.3] | - | - |
| [C.4] | - | - |
| [C.5] | - | - |
| [C.6] | - | - |
| Part D: Implementation of MAP agreements | | |
| [D.1] | - | - |
| [D.2] | - | - |
| [D.3] | Four out of 15 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017) nor the alternative provisions provided for in Article 9(1) and Article 7(2). None of these three treaties will be modified by the Multilateral Instrument to include the required provision. With respect to these treaties, negotiations are envisaged, scheduled or pending. | For the four treaties that will not be modified by the Multilateral Instrument to include the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention (OECD, 2017), Colombia 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. |

Annex A

Tax treaty network of Colombia

| Treaty partner | 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 | | | C.1 | D.3 | A.1 | B.7 | | C.6 |
| | Column 3 | Column 4 | | | Column 7 | Column 8 | Column 9 | Column 10 | | Column 11 |
| | | Inclusion Art. 25(1) first sentence? If yes, submission to either competent authority? (new Art. 25(1), first sentence) | Inclusion Art. 25(1) second sentence? (Note 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? If no, will your CA accept a taxpayer’s request for MAP in relation to such cases? | Inclusion Art. 25(2) first sentence? (Note 3) | Inclusion Art. 25(2) second sentence? (Note 4) If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4) | Inclusion Art. 25(3) first sentence? (Note 5) | Inclusion Art. 25(3) second sentence? (Note 6) | Inclusion arbitration provision? | |
| | Y = yes N = signed pending ratification | E = yes, either CAs O = yes, only one CA N = No | Y = yes i = no, no such provision ii = no, different period iii = no, starting point for computing the 3 year period is different iv = no, other reasons | Y = yes i = no, but access will be given to TP cases ii = no and access will not be given to TP cases | Y = yes i = no and such cases will be accepted for MAP ii = no but such cases will not be accepted for MAP | Y = yes i = no, but have Art. 7 equivalent ii = no, but have Art. 9 equivalent iii = no, but have both Art. 7 & 9 equivalent N = no and no equivalent of Art. 7 and 9 | Y = yes N = no | Y = yes N = no | Y = yes N = no | |
| Bolivia | Y | N | iv | N/A | Y | N | N | N | N | |
| Canada | Y | O | Y | N/A | Y | Y | Y | Y | N | |
| Chile | Y | O | i | N/A | Y | N | Y | N* | N | |
| Czech Republic | Y | O* | Y | N/A | Y | Y | Y | Y | N | |
| Ecuador | Y | N | iv | N/A | Y | N | N | N | N | |
| France | N | O* | Y | N/A | Y | Y | Y | Y | Y | |

| Treaty partner | 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 |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 |
| | 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) | Inclusion arbitration provision? |
| India | Y | O | Y | Y | i | Y | Y | Y | Y | N |
| Italy | N | O | Y | Y | i | Y | Y | Y | Y | Y |
| Japan | N | O | Y | Y | i | Y | Y | Y | Y | N |
| Korea | Y | O* | Y | Y | i | Y | Y | Y | N* | N |
| Mexico | Y | O* | ii* | Y | i | Y | N | Y | N* | N |
| Peru | Y | N | iv | Y | i | N | N | N | N | N |
| Portugal | Y | O | Y | Y | i | Y | Y | Y | N* | N |
| Spain | Y | O | Y | Y | i | Y | Y | Y | Y | N |
| Switzerland | Y | O | Y | Y | i | Y | ii | Y | Y | N |
| United Arab Emirates | N | E | Y | Y | i | Y | Y | Y | N | N |
| United Kingdom | N | E | Y | Y | i | Y | Y | Y | Y | 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*/ii*/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 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | n.a. |
| Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Total | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 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 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | n.a. |
| Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Total | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 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 | | |
| Attribution/Allocation | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | n.a. |
| Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Total | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 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 | | |
| Attribution/Allocation | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | n.a. |
| Others | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Total | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 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 | | | | |
| | | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | | | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 | |
| Attribution/Allocation | 0 | 0 | 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 | 0 | 0 | n.a. |
| Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 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 | | | | |
| | | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | | | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 | |
| Attribution/Allocation | 0 | 0 | 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 | 0 | 0 | n.a. |
| Total | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |

| 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 | | | | |
| | | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | | | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 | |
| Attribution/Allocation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Others | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. | |
| Total | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. | |

| 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 | | | | |
| | | | Denied MAP access | Objection is not justified | Withdrawn by taxpayer | Unilateral relief granted | Resolved via domestic remedy | Agreement fully eliminating double taxation/ fully resolving taxation not in accordance with tax treaty | Agreement partially eliminating double taxation/partially resolving taxation not in accordance with tax treaty | | | Agreement that there is no taxation not in accordance with tax treaty | No agreement, including agreement to disagree | Any other outcome | |
| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 | Column 6 | Column 7 | Column 8 | Column 9 | Column 10 | Column 11 | Column 12 | Column 13 | Column 14 | Column 15 | |
| Attribution/Allocation | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | n.a. |
| Others | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. | |
| Total | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | n.a. | |

Glossary

| | |
|---|---|
| Action 14 Minimum Standard | The minimum standard as agreed upon in the final report on Action 14: Making Dispute Resolution Mechanisms More Effective |
| MAP Guidance | Resolution No. 000085 of 21 August 2020 |
| 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, Colombia (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 minimum standard is complemented by a set of best practices. 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 Colombia, which is accompanied by a document addressing the implementation of best practices.



PRINT ISBN 978-92-64-77867-2
PDF ISBN 978-92-64-82005-0



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