

Chile Dispute Resolution Profile

(Last updated: 28 September 2018)

General Information

- **Chile tax treaties are available at:**

<http://www.sii.cl/pagina/jurisprudencia/convenios.htm>

- **MAP request should be made to:**

Mr. Fernando Barraza
Director
Servicio de Impuestos Internos,
Teatinos 120, Piso 6,
Santiago, Chile
Tel: +56 2 223951600 / Fax: +56 2 223951669
Email: director.sii@sii.cl

- **APA request should be made to:**

Ms. Paula Acevedo
Jefe Departamento de Análisis Selectivo del Cumplimiento Tributario
Servicio de Impuestos Internos
Oficina de Partes
Teatinos 120, Santiago, Chile
Tel: +56 2 2 2395 1421 / Fax: +56 2 22395 1755
Email: pacevedo@sii.cl

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	Yes	The Chilean Tax Administration (“ <i>Servicio de Impuestos Internos</i> ”) maintains on its website interpretations, instructions and rulings on the application and interpretation of tax legislation (which includes tax treaties in force in Chile).	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830 “, Artículo 26 inciso 2.
2.	Are bilateral APA programmes implemented? If yes:	Yes	-	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm Ley sobre Impuesto a la Renta, Artículo 41E, número 7. http://www.sii.cl/documentos/circulares/2013/indcir2013.htm Circular N° 29 del 14 de Junio del 2013, page 11 to 15. http://www.sii.cl/normativa_legislacion/resoluciones/2013/reso68.pdf “Resolución Exenta N° 68 del 21 de Junio del 2013, página 4, Números 9 al 12.”
a.	• Are roll-back of APAs provided for in the bilateral APA programmes?	No	Bilateral APA provisions in Chilean tax legislation do not expressly provide for roll-back of APAs. However, provided that there is no tax adjustment or tax collection note from the tax authority, taxpayers may amend their tax returns at any time. In this regard, it might be possible that results or conclusions of an accepted APA, where appropriate, could be applied to previous tax years. However, tax consequences that might derive from such an amendment (e.g. tax refund request) will be subject to domestic statute of limitations.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	No	An APA can be requested at any time.	-
c.	<ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer's request for bilateral APA assistance, publicly available? 	Yes	According to paragraphs 2 and 3 of “ <i>Resolución Exenta</i> ” No. 68/2013 issued by the Tax Administration, an APA request must include information such as entities involved, corporate structure, financial statements, contracts of controlled transactions, etc. Additionally, a transfer pricing report must be submitted containing a description of the operations, activities, method chosen, assumptions, assets, risks, etc.	http://www.sii.cl/documentos/resoluciones/2013/reso68.pdf “Resolución Exenta No.68, 2013, página 2, Números 2 y 3.”
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	Free of charge principle applies, according to which no fees are charged to taxpayers for actions of administrative authorities.	http://www.sii.cl/pagina/jurisprudencia/legislacion/complementaria/ley_complementaria.htm “Ley N° 19.880 Establece Bases de los Procedimientos Administrativos que rigen los Actos de los Órganos de la Administración del Estado”, Artículos 4 y 6.
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	To date Chile has received 2 bilateral APA requests. One is under review and the other one has been finalised without reaching an agreement.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	<p>The Chilean tax administration has a specialized division (“<i>Departamento de Formación de la Subdirección de Desarrollo de Personas</i>”) dedicated exclusively to the continuous training and preparation of tax officials. The authority has also contracted courses at universities and qualified tax organizations to complement the internal training.</p> <p>Additionally, there are several internal courses dedicated to tax treaties and international tax planning.</p>	<p>http://www.sii.gob.cl/transparencia/facultades_dn-rrhh.html “Resolución Exenta No. 13, de 10 de marzo de 2016, página 3, Cuarto”.</p>
4.	Is other information available on preventing tax treaty-related disputes?	Yes	<p><u>Art. 6 Tax Code:</u> It establishes a mechanism to obtain clarification on the interpretation of tax legislation (which includes tax treaties in force) from Chilean tax agency’s National Commissioner and Regional Commissioners. Responses obtained from tax administration are binding on it but not on taxpayers.</p> <p><u>Art. 26, par. 1 Tax Code:</u> No retroactive collection proceeds when the taxpayer has availed in good faith to a certain interpretation of the tax laws sustained by the National Commissioner or Regional Commissioners in circulars, rulings, reports or other official documents aimed at providing instructions to the Revenue administration officials or at being known by the taxpayers in general or by one or more of these in particular.</p>	<p>http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830 “: 1) Artículo 6 A): 1), inciso primero y B): 1; y 2) Artículo 26, inciso 1.”</p>

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the ***OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*** (“Transfer Pricing Guidelines”).)
2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

Chile Dispute Resolution Profile – Availability and Access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	The text of all tax treaties signed by Chile follows the first sentence of Article 25(1) of the OECD Model Tax Convention, enabling a person that considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of the Convention, to present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national.	http://www.sii.cl/pagina/jurisprudencia/convenios.htm
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	The text of all tax treaties signed by Chile follows the first sentence of Article 25(1) of the OECD Model Tax Convention, enabling a person that considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, to present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. Therefore, MAP access is provided in cases in which there is a disagreement between the taxpayer and the Chilean tax administration making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met.	http://www.sii.cl/pagina/jurisprudencia/convenios.htm

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	The Chilean tax authority has not received any request for MAP in this situation. If the request is that the domestic anti-abuse provision violates the treaty we are of the opinion that such a request should be available for a MAP. As to the general anti abuse rule provided in the domestic tax legislation, that has a specific procedure before tax court, according to which a judge decides whether the general anti abuse rule can be applied or not to the relevant issue; therefore, if the same issue is submitted to MAP, although access to MAP will be granted, Chilean competent authority cannot review it again and therefore, it will not be able to reach any agreement on the same issue.	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830”, Artículos 4 bis and 160 bis.
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	See detailed explanation	Although we are not clear on what is understood as an audit settlement we can advise that in any case there is no limit as to the scope of a MAP in an audit procedure. In our understanding however, an audit settlement understood as an instance where the taxpayer and the tax authority give up part of their rights in order to reach an agreement does not exist in Chile.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	See detailed explanation	We have at present not dealt with this issue in our regulations.	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	If in respect of an administrative act, a judicial action is filed by the taxpayer who simultaneously submits a MAP request, access to MAP would be granted.	http://www.sii.cl/pagina/jurisprudencia/legislacion/complementaria/ley_complementaria.htm “Ley N° 19.880 Establece Bases de los Procedimientos Administrativos que rigen los Actos de los Órganos de la Administración del Estado”, Artículo 54, inciso 3.
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	Access to MAP will be granted, however according to the Constitution of Chile, an issue under dispute already decided via the judicial remedies cannot be reviewed again, this is, Chilean competent authority is not able to reach any other solution or agreement on the same issue. A dispute already decided via the administrative remedies provided by the domestic law is entitled to MAP assistance, as it is not correct to speak about administrative “res judicata” regarding administrative acts.	https://www.leychile.cl/Navegar?idNorma=242302 “Constitución Política de la República de Chile”, Artículo 76, inciso primero.
13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer’s request for MAP assistance, publicly available?	No	Chile is in the process of adopting BEPS Action 14 Minimum Standard in its domestic regulations.	-
14.	Are there specific timeline for the filing of a MAP request?	Yes	A MAP request must be filed according to the relevant timeline in the relevant tax treaty.	http://www.sii.cl/pagina/jurisprudencia/convenios.htm

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
15.	Are guidance on multilateral MAPs publicly available?	No.	Multilateral MAPs programmes are not implemented.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	See detailed explanation	General rules under domestic law apply pursuant to which tax collection procedures may be suspended during an administrative procedure.	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830 “: Artículo 147 inciso 4 y 5.
17.	Are there any fees charged to taxpayers for a MAP request?	No	Free of charge principle applies, according to which no fees are charged to taxpayers for actions of administrative authorities, unless otherwise provided.	http://www.sii.cl/pagina/jurisprudencia/legislacion/complementaria/ley_complementaria.htm “Ley N° 19.880 Establece Bases de los Procedimientos Administrativos que rigen los Actos de los Órganos de la Administración del Estado”, Artículos 4 y 6.
18.	Is there any other information available on availability and access to MAP?	No	Chile is in the process of adopting BEPS Action 14 Minimum Standard in its domestic regulations.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	No	Chile is in the process of adopting BEPS Action 14 Minimum Standard in its domestic law.	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	See detailed explanation	Due to our low MAP case inventory, we have not published any statistics.	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	No	-	-
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	No	Due to the low requests for MAP's in Chile, no specific MAP office regulations are in place. However, Chile is working on implementing this standard.	-
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	Yes	Some tax treaties stipulate an arbitration clause that is subject to the condition that both competent authorities accept such a procedure. Chile anticipates that at a point in the future, it will be able to undertake arbitration under those treaties once such a procedure is introduced in domestic laws.	http://www.sii.cl/pagina/jurisprudencia/convenios.htm

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties? 			-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 		-	-
24.	<p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p>	No	-	-
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? 	-	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	No	-	-
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?	Yes	All tax treaties except for the one with Brazil, contain paragraph 2 of Article 9 of the OECD Model Tax Convention.	-
27.	Is there any other information available on resolution of MAP cases?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	Yes	The Chilean tax administration may adjust a tax, review any deficiency in its tax adjustment and issue the tax collection note of the taxes derived thereon, within three years counted from the expiration of the legal term in which the payment should have been made. The indicated period will be of six years for the review of taxes subject to a tax return, when this has not been filed or the filed one is maliciously false. For these purposes, taxes subject to a tax return are those that must be paid prior declaration by the taxpayer or by the responsible of the tax. The indicated terms may be extended up to five months.	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830 “, Artículo 200.”
29.	Where the agreement reached by your competent authority through the MAP process	Yes	-	http://www.sii.cl/pagina/jurisprudencia/legislacion/basica/basica.htm “Código Tributario N° 830 “, Artículo 126, inciso 1 N°2 e inciso 2. http://www.sii.cl/pagina/jurisprudencia/legislacion/complementaria/ley_complementaria.htm

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?			“Ley N° 19.880 Establece Bases de los Procedimientos Administrativos que rigen los Actos de los Órganos de la Administración del Estado”, Artículos 27.
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	No	Mutual agreements reached through MAP are implemented notwithstanding any time limits in domestic law, only when the second sentence of Article 25(2) of the OECD Model Tax Convention is included in the corresponding treaty.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-