

## Colombia Dispute Resolution Profile

(Last updated: 28 September 2018)

### General Information

- **Colombia's tax treaties are available at:**

<https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx>

<http://apw.cancilleria.gov.co/tratados/sitepages/menu.aspx>

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

General Commissioner  
Dirección de Impuestos y Aduanas Nacionales - DIAN  
[dirgen\\_map@dian.gov.co](mailto:dirgen_map@dian.gov.co)  
Tel:6079999 ext 901060  
Carrera 8 No. 6C-38 piso 6, Bogotá - Colombia

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

General Commissioner  
Dirección de Impuestos y Aduanas Nacionales - DIAN  
[dirgen\\_map@dian.gov.co](mailto:dirgen_map@dian.gov.co)  
Tel:6079999 ext 901060  
Carrera 8 No. 6C-38 piso 6, Bogotá - Colombia

## Colombia Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>A. Preventing Disputes</b>				
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?	See detailed explanation	So far, Colombia has only received two MAP requests, none of which has been solved yet.  On the other hand, the Tax Administration has occasionally issued opinions of general character related to the application and implementation of double tax treaties, which have been published in the tax administrations website.	<a href="https://www.dian.gov.co/normatividad/doctrina/Paginas/DireccionGestionJuridica.aspx">https://www.dian.gov.co/normatividad/doctrina/Paginas/DireccionGestionJuridica.aspx</a>
2.	Are bilateral APA programmes implemented?  If yes:	Yes	The Colombian Tax Administration has the legal authority to subscribe bilateral APAs pursuant to article 260-10 of the Colombian Tax Code and articles 1.2.2.4.1 to 1.2.2.4.10 of the Decree 1625 of 2016.	Decreto Único Reglamentario en Materia Tributaria “ <u>Título 2 Precios de Transferencia – Artículos 1.2.2.4.1 a 1.2.2.4.10</u> ”
a.	<ul style="list-style-type: none"> <li>Are roll-back of APAs provided for in the bilateral APA programmes?</li> </ul>	Yes	According to article 260- 10 mentioned above, the subscription of a bilateral APA may have effects the year in which it is approved, the previous year (rollback), and up to the three following years.	Decreto Único Reglamentario en Materia Tributaria “ <u>Título 2 Precios de Transferencia – Artículos 1.2.2.4.1 a 1.2.2.4.10</u> ”
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	No		-

## Colombia Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
c.	<ul style="list-style-type: none"> <li>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?</li> </ul>	Yes		Decreto Único Reglamentario en Materia Tributaria <u>"Título 2 Precios de Transferencia – Artículos 1.2.2.4.1 a 1.2.2.4.10"</u>
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	No		-
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	See detailed explanation	To date Colombia has received just one bilateral APA request, which is still under review and has not been finalized.	-
3.	Is training provided to your officials involved in the auditing/examination of taxpayers to ensure that any assessments made by them are in	Yes	The Colombian Tax and Customs Authority has a specialized division (" <i>Escuela de la DIAN</i> "), which is in charge of providing continuing training to tax officials. Training is not restricted to domestic law and it also focuses on issues of international taxation, including tax treaties.	-

## Colombia Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	accordance with the provisions of your tax treaties?			
4.	Is other information available on preventing tax treaty-related disputes?	No		-

**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.

## Colombia Dispute Resolution Profile – Availability and access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>B. Availability and Access to MAP</b>				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	<p>All tax treaties signed by Colombia contain paragraphs 1 and 2 of Article 25 of the OECD Model Tax Convention. The text of all of them follow paragraph 1 of Article 25 of the OECD Model Tax Convention, enabling a person who considers that the actions of one or both 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 comes under paragraph of Article 24, to that of the Contracting State of which he is a national.</p> <p>Furthermore, all tax treaties signed by Colombia contain Paragraphs 1 and 2 of Article 9 of the OECD Model Tax Convention.</p>	<p><a href="https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx">https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx</a></p> <p>or</p> <p><a href="http://apw.cancilleria.gov.co/tratados/SitePages/EstadosBilaterales.aspx">http://apw.cancilleria.gov.co/tratados/SitePages/EstadosBilaterales.aspx</a></p>
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	<p>The text of all of tax treaties signed by Colombia follows paragraph 1 of Article 25 of the OECD Model Tax Convention. Therefore, MAP access is provided in cases in which there is disagreement between the taxpayer and the Colombian tax administration as to whether the conditions for the application of a treaty anti-abuse measure have been met.</p>	<p><a href="https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx">https://www.dian.gov.co/normatividad/convenios/Paginas/ConveniosTributariosInternacionales.aspx</a></p> <p>or</p> <p><a href="http://apw.cancilleria.gov.co/tratados/SitePages/EstadosBilaterales.aspx">http://apw.cancilleria.gov.co/tratados/SitePages/EstadosBilaterales.aspx</a></p>

**Colombia Dispute Resolution Profile – Availability and access to MAP**

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	Only when the taxation resulting from the application of the domestic anti-abuse provision is not in accordance with a provision of the tax convention.	-
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	<p>As a general rule, Colombian law does not provide for “audit settlements” (understood as instances where the tax authority and the taxpayer give up part of their rights in order to reach an agreement).</p> <p>Exceptionally, in the past, some Colombian law provisions have allowed, taxpayers to settle their on-going administrative tax disputes, as a temporary measure, provided (i) the taxpayer had initiated the administrative process before the law allowing for the settlement entered into force, (ii) he paid the tax under dispute and certain percentage of the penalties and interest accrued, and (iii) he filed for having the dispute settled before certain date. Last time Colombian law provided for this kind of arrangements was by means of Law 1819 of 2016, according to which, in order to settle their on-going tax disputes, taxpayers should request for the settlement before 30 of October, 2017. Pursuant to Law 1819 of 2016, the aforementioned settlement agreements were definite and could not be challenged after having been executed.</p> <p>In any case, if settlements or equivalent agreements are reached, they will be treated as final judicial rulings and thus access to MAP is provided only to relief any remaining double taxation.</p>	-

**Colombia Dispute Resolution Profile – Availability and access to MAP**

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	See detailed explanation	Colombian current domestic legal framework does not deal expressly with this issue. However, in the Colombian tax authority's opinion, there is nothing in Colombian current tax law that would prevent the Colombian competent authority to give access to MAP in double taxation cases resulting from bona fide taxpayer initiated foreign adjustments, following the guidance and interpretation set for on the issue in the Commentaries on Article 25 of the OECD Model Tax Convention, and provided the taxation resulting in such cases "is not in accordance with the provisions" of the Convention.	-
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		-
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	Upcoming MAP guidance provides for the possibility of requesting MAP assistance at any time after the taxpayer has been notified of a proposed adjustment in writing, provided the filing period for the treaty has not expired. The guidance will be released for public comments in October, 2018.	"Estatuto Tributario", Articles 720 and 829

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s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	Upcoming MAP guidance provides that taxpayers may request MAP assistance, but when a final judicial ruling has been delivered, the Colombian Competent Authority will only provide MAP assistance to obtain a correlative adjustment in the foreign treaty partner to relieve double taxation.	“Código General del Proceso”, Article 303, and “Estatuto Tributario”, Articles 720 and 829
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	Colombia is in the process of implementing the BEPS Action 14 Minimum Standard, so it is still working on the guidelines and procedures related to the access and use of MAP. The Guidance will be released for public comment in October, 2018.	-
14.	Are there specific timeline for the filing of a MAP request?	Yes	MAP requests must be filed within the timeframe provided for in the relevant tax treaty. The only tax treaty that does not currently provide for an express timeline to file a MAP request is the one entered into with Chile (please note, however, that the application of this tax treaty is to be modified by means of the MLI)	-



**Colombia Dispute Resolution Profile – Availability and access to MAP**

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
15.	Are guidance on multilateral MAPs publicly available?	No	<p>Currently, there are no rules and/or procedures in Colombia –other than those contained in the existing treaty network– with respect to the handling of MAP requests.</p> <p>The Guidance will be released for public comment in October, 2018.</p>	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	<p>Currently, there are no rules and/or procedures in Colombia –other than those contained in the existing treaty network– with respect to MAP. However, upcoming MAP guidance will provide for a suspension of the tax collection during a MAP case. The Guidance will be released for public comment in October, 2018.</p>	-
17.	Are there any fees charged to taxpayers for a MAP request?	No	-	-
18.	Is there any other information available on availability and access to MAP?	No	<p>Colombia is in the process of implementing the BEPS Action 14 Minimum Standard, so it is still working on the guidelines and procedures related to the access and availability of MAP. The Guidance will be released for public comment in October, 2018.</p>	-

## Colombia Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>C. Resolution of MAP cases</b>				
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	<p>There are currently no rules and/or procedures in Colombia regarding timeframes for the steps taken by the competent authority from the receipt of a MAP case to its resolution—other than those contained in the existing treaty network.</p> <p>Colombia is in the process of implementing BEPS Action 14 Minimum Standards, so it is currently working on the issue.</p>	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	See detailed explanation	As Colombia has only received two MAP requests, which have not yet been resolved, it has 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?	See detailed explanation	There are currently no domestic tax rules and/or procedures regarding MAP cases, other than those provided for in the existing treaty network. Therefore, the current view of the tax authority is that interest and penalties resulting from adjustments made pursuant to a MAP agreement may be waived or dealt with as part of a MAP procedure, along the lines of what is set for in paragraphs 49 and 49.1 of the Commentary on Article 25 of the OECD Model, and provided such interest and penalties are directly connected to taxes covered under Article 2 of the Convention.	-
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP	No	Due to the few MAP requests Colombia has received so far (i.e. 2), no specific MAP office regulations are currently in place. However, Colombia is working on drafting and implementing the regulations and procedures applicable to a MAP office, in accordance with the BEPS Action 14	-

## Colombia Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	office available in the <i>annual</i> report of the organisation?		Minimum Standard and Best Practices. The Guidance will be released for public comment in October, 2018.	
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?  If not:	See detailed explanation	Only two of the tax treaties entered into by Colombia include an arbitration clause. However, such clause provides for voluntary arbitration (as opposed to mandatory binding arbitration). On the other hand, none of the tax treaties that contain such clause have entered into force, as the internal procedures for their ratification are still on going. Said internal procedures include a review by the Constitutional Court, who will then have the opportunity to issue a decision on the conformity of the voluntary arbitration clause with the Colombian Constitution.	-
a.	<ul style="list-style-type: none"> <li>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</li> </ul>	See detailed explanation	<p>The Colombian Constitution does not contain a provision expressly prohibiting to solve tax cases by means of arbitration. Law 1563 of 2012 (which is the Statute on National and International Arbitration) expressly forbid arbitration in tax matters, but it can be overridden by any ordinary law including a law to approve a double taxation agreement.</p> <p>Such prohibition was in accordance with a very well embedded opinion among the judiciary, according to which the judiciary itself could only solve tax disputes. The decisions issued so far by the Constitutional Court on the matter are not conclusive.</p>	-
b.	<ul style="list-style-type: none"> <li>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</li> </ul>	See detailed explanation	Colombia has not agreed to provide for mandatory binding arbitration in its tax treaties. It has concluded, though, a couple of treaties that include voluntary arbitration clauses. However, with respect to this last couple of tax treaties,	-

## Colombia Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			Colombia is awaiting for the Constitutional Court to issue its decision on the conformity of such arbitration provisions with the Colombian Constitution.	
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?  If yes:	No	Colombia is working on this issue as a part of the work it has undertaken in order to implements the BEPS Action 14 Minimum Standards and Best Practices. The Guidance will be released for public comment in October, 2018.	-
a.	<ul style="list-style-type: none"> <li>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?</li> </ul>	N/A	The guidance will provide that once a final judicial decision has been issued, Colombia will only be able to seek relief from double taxation without worsening the situation of the taxpayer in Colombia. The Guidance will be released for public comment in October, 2018.	-
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	See detailed explanation	There are currently no rules and/or procedures in Colombia regarding MAP –other than those contained in the existing treaty network.  The Guidance will be released for public comment in October, 2018.	-
26.	Do all your jurisdiction’s tax treaties contain a provision which would oblige your	Yes	All tax treaties entered into by Colombia provide for paragraph 2 of Article 9 of the OECD Model Tax Convention.	-

## Colombia Dispute Resolution Profile – Resolution of MAP cases

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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)?			
27.	Is there any other information available on resolution of MAP cases?	No	-	-

## Colombia Dispute Resolution Profile – Implementation of MAP Agreements

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>D. Implementation of MAP Agreements</b>				
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?	No	Colombia is working on this issue as a part of the work it has undertaken in order to implements the BEPS Action 14 Minimum Standards and Best Practices.	-
29.	Where the agreement reached by your competent authority through the MAP process 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	No	Colombia is working on this issue as a part of the work it has undertaken in order to implements the BEPS Action 14 Minimum Standards and Best Practices.	-

## Colombia Dispute Resolution Profile – Implementation of MAP Agreements

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?			
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	No	All, but for the tax treaties entered into by Colombia with Chile, Switzerland and Mexico does not include such provision. However, pursuant to the Notifications provided by Colombia in connection with the MLI, Colombia is intending to adopt the second sentence of Article 16(2) of the MLI in all of the abovementioned three DTTs.	-
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-