

Peru Dispute Resolution Profile

(Last updated: 1 October 2020)

General Information

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

<https://www.mef.gob.pe/es/convenio-para-evitar-la-doble-imposicion>

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

Correlative adjustment MAPs

Peruvian competent authority: Mr. Luis Enrique Vera Castillo, National Superintendent of the National Superintendence of Customs and Tax Administration (SUNAT) | E-mail: lvera@sunat.gob.pe | Phone number: +511 6343300 – Ext: 53306

Point of contact at SUNAT: Mr. Carlos David Marroquin Lozada, Strategies Professional | E-mail: cmarroqu@sunat.gob.pe | Phone number: +511 6343300 – Ext: 51414

Other MAPs

Peruvian competent authority: Ms. María Antonieta Alva Luperdi, Minister of the MEF | E-mail: ministro@mef.gob.pe | Phone number: +511 311-9901 / +511 428-4664

Point of contact at MEF: Mr. Marco Antonio Camacho Sandoval, General Director of the Public Income Policy General Directorate | E-mail: mcamachos@mef.gob.pe | Phone number: +511 610-5936

Peru Dispute Resolution Profile – Preventing Disputes

| 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? | No | - | - |
| 2. | Are bilateral APA programmes implemented? If yes: | No | - | - |
| a. | <ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? | - | - | - |
| b. | <ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? | - | - | - |
| 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? | - | - | - |
| d. | <ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? | - | - | - |
| e. | <ul style="list-style-type: none"> Are statistics relating to bilateral APAs | - | - | - |

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| | publicly available? | | | |
| 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 Peruvian Tax Administration (SUNAT) has a training plan for tax officials that include courses of international taxation, transfer pricing and double taxation conventions (DTC).</p> <p>These courses can be contracted with qualified tax institutions or could be taught by officials of the Tax Administration.</p> | - |
| 4. | Is other information available on preventing tax treaty-related disputes? | See detailed explanation | <p>SUNAT has attended various consultations on topics related to the implementation of the DTC's signed, through Reports.</p> <p>These reports have established binding criteria for the Tax Administration and are public knowledge, according to article 94 of the Tax Code.</p> | <p>The mentioned reports can be found in the following website: http://www.sunat.gob.pe/legislacion/tributaria/</p> <p>Article 94 of the Consolidated Text of Tax Code establishes:</p> <p>Consultations must be presented in writing before the competent body of the Tax Administration, which in turn must give a response to the consultant in a period no longer than ninety (90) working days counted from the working day following the presentation date. Failure to respond in said timeframe will not implicate the acceptance of the criteria contained in the consultation paper.</p> <p>The decision issued will be binding for the different bodies of the Tax Administration.</p> |

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| | | | | <p>Whenever consultations, due to their significance, may require the body of the Tax Administration to issue a Superintendence Resolution or regulation of similar hierarchy, in respect to the issue under consultation, which in turn will be published in the Official Gazette.</p> <p>The term referred to in the first paragraph of this article will not apply to those cases in which the opinions of other entities other than the Tax Administration are needed</p> <p>The procedure to attend written consultation, including other exceptions to the term referred to in paragraph one of this article, will be established by means of a Supreme Decree.</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.

Peru Dispute Resolution Profile – Availability and access to MAP

| s/n | | Response | Detailed explanation | Where publicly available information and guidance can be found |
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| B. Availability and Access to MAP | | | | |
| 5. | Are transfer pricing cases covered within the scope of MAP? | See detailed explanation | Except for the DTC with Brazil which does not contain paragraph 2 of article 9 of the OECD Model Tax Convention, all others contain paragraph 1 and 2 of the article 9. Furthermore, the text of all DTC signed by Peru follows paragraph 1 of article 25 of the OECD Model Tax Convention, enabling a person that considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provision 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 national. | Article 109 of the Regulation of the Income Tax Law regulates transfer pricing MAP cases: http://www.sunat.gob.pe/legislacion/renta/regla/cap19.htm |
| 6. | Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP? | See detailed explanation | MAP access is provided in cases in which there is a disagreement between the taxpayer and the Peruvian Tax Administration making the adjustment as to whether the conditions for the application of a treaty anti-abuse provision have been met. | - |
| 7. | Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP? | See detailed explanation | Only when the taxation (application of domestic anti abuse provision) is not in accordance with a provision of the DTC. | - |
| 8. | Are issues where there is already an audit settlement between the tax authority and | See detailed | We understand that an "audit settlement" involves a case in which the taxpayer and the | - |

Peru Dispute Resolution Profile – Availability and access to MAP

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| | the taxpayer covered within the scope of MAP? | explanation | tax authority give up part of their rights to reach an agreement: This kind of agreement does not exist in the Peruvian legal framework, therefore it would be beyond the scope of MAP. | |
| 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 legal framework. | - |
| 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? | No | <p>Our legal framework has not yet provided for the procedure to be followed in the event that the taxpayer wants to start a MAP when an administrative procedure is in progress.</p> <p>Likewise, our legislation establishes that the competent authority must refrain from continuing any administrative procedure, if the same controversy is under discussion in the judicial process.</p> | <p>Articles 1 and 4 of Consolidated Text of the Organic Law of the Judicial Branch – Supreme Decree N° 017-93-JUS, can be found in page 28, in the Section “Principios Generales”, in the following website:</p> <p>https://www.minjus.gob.pe/wp-content/uploads/2014/09/DGDOJ-Ley-Org%C3%A1nica-Poder-Judicial-y-Ministerio-P%C3%BAblico.pdf</p> <p>Articles 3(1) and 64 of Law N° 27444 – Law of General Administrative Procedure, can be found in the following website:</p> <p>http://spij.minjus.gob.pe/CLP/contenidos.dll/CLPlegcargen/coleccion00000.htm/tomo00431.htm/a%C3%B1o114385.htm/mes119898.htm/</p> |

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| | | | | dia120341.htm/sector120342.htm/sumilla120343.htm |
| 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? | No | Our legal framework establishes the binding nature of judicial decisions, so any controversy that has already decided through judicial remedies would not be eligible for a MAP request. | <p>Political Constitution of 1993, Articles 138 y 139 (13), can be found in the following website: http://www4.congreso.gob.pe/ntley/Imagenes/Constitu/Cons1993.pdf</p> <p>Articles 1 and 4 of Consolidated Text of the Organic Law of the Judicial Branch – Supreme Decree N° 017-93-JUS, can be found in page 28, in the Section “Principios Generales”, in the following website: https://www.minjus.gob.pe/wp-content/uploads/2014/09/DGDOJ-Ley-Org%C3%A1nica-Poder-Judicial-y-Ministerio-P%C3%ABablico.pdf</p> |
| 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 | - | - |
| 14. | Are there specific timeline for the filing of a MAP request? | See detailed explanation | In the case of DTC with Canada, a MAP request must be file within the next 2 years from the notification of the action resulting in taxation not in accordance with the convention. In DTC with Portugal, Korea, | - |

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| | | | Mexico and Switzerland a MAP request must be file within the next 3 years. There is no specific timeline for filing a MAP in the DTC with Chile. | |
| 15. | Are guidance on multilateral MAPs publicly available? | No | - | - |
| 16. | Are tax collection procedures suspended during the period a MAP case is pending? | No | - | - |
| 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 | - | - |

Peru Dispute Resolution Profile – Resolution of MAP cases

| 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 | - | - |
| 20. | Are statistics relating to the time taken to resolve MAP cases publicly available? | No | - | - |
| 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 | - | - |
| 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 | In DTC with Chile and Canada, the competent authorities can agree to submit a case under arbitration. The procedure will be established in an exchange of notes between the Contracting States. | Provisions of the DTC with Chile and Canada can be found in paragraphs 5 and 6 of article 25, irrespectively in the followings websites: https://www.mef.gob.pe/contenidos/tributos/cv_dbl_imp/Convenio_Peru_Chile_DT.pdf https://www.mef.gob.pe/contenidos/tributos/cv_dbl_imp/Convenio_Peru_Canada_Engl.pdf |
| a. | • Are there any legal limitations in your domestic law (for example in your | - | - | - |

Peru Dispute Resolution Profile – Resolution of MAP cases

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| | 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? | - | - | - |
| 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 | See detailed explanation | All DTC except for the one with Brazil, contain a paragraph 2 of article 9 of the OECD Model Tax Convention. | https://www.mef.gob.pe/es/convenio-para-evitar-la-doble-imposicion |

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| | 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 | - | - |

Peru Dispute Resolution Profile – Implementation of MAP Agreements

| 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? | No | - | - |
| 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 to reflect the agreement reached by the competent authority and/or for a refund of the tax paid? | No | - | - |
| 30. | Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law? | See detailed explanation | <p>The mutual agreements reached will be implemented irrespective of the time limits set in the domestic law only when the applicable treaty includes the last sentence of paragraph 2 of article 25 of the OECD Model Tax Convention.</p> <p>Currently, treaties signed by Peru, containing that sentence are Korea and Portugal.</p> | - |

Peru Dispute Resolution Profile – Implementation of MAP Agreements

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| 31. | Is there any other information available on the implementation of MAP agreements? | No | Peru is in process of adopting BEPS Action 14 minimum standard in its legal and regulatory framework for the resolution of a MAP request. | - |