

Chile Dispute Resolution Profile

(Last updated: 31 July 2023)

General Information

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

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

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

Mr. Hernan Frigolett
Director
Servicio de Impuestos Internos,
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Tel: +56 2 223951600
Email: director.sii@sii.cl

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

Mr. Manuel Saavedra
Jefe Departamento de Análisis de Riesgos Internacionales
Servicio de Impuestos Internos
Oficina de Partes
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Email: manuel.saavedra@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).	https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N° 830”, Artículo 26 inciso 2.
2.	Are bilateral APA programmes implemented? If yes:	Yes	Article 41 E number 7° of Income Tax Law, establishes the possibility of the subscription of bilateral and multilateral APAs.	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, página 11 a 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.”

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
a.	<ul style="list-style-type: none"> 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. Under Law 21,210, published in 2020, the taxpayer may, exceptionally and prior authorization of the Chilean tax administration, amend its tax return, even if there is a tax assessment or tax collection note, in cases where the taxpayer has sought to resolve the issue under dispute through the administrative remedies provided by the domestic law.	https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N°830”, Artículo 36 bis.
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.”

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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.	https://www.bcn.cl/leychile/navegar?idNorma=210676&idParte=8512586&idVersion=Diferido “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? 	Yes	On the Chilean Tax Administration website there is a menu of APAs where general information on the procedure including statistics on the resolution status and the type of the request (Unilateral or Bilateral) can be found.	https://www.sii.cl/servicios_online/1044-conoce_mas-4430.html Option “Estadísticas”
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>	http://www.sii.gob.cl/transparencia/facultades_dn-rrhh.html “Resolución Exenta No. 13, de 10 de marzo de 2016, página 3, Cuarto”.

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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 applies 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 tax administration officials or at being known by the taxpayers in general or by one or more of these in particular.</p>	<p>https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html</p> <p>“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	<p>The text of all tax treaties signed by Chile follows the first sentence of Article 25(1) of the OECD Model Tax Convention (as it read prior to the adoption of the final report on Action 14), 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.</p> <p>Additionally, transfer pricing cases are expressly among the ones within the scope of MAP in Chile’s MAP guidelines</p>	<p>http://www.sii.cl/pagina/jurisprudencia/convenios.htm</p> <p><u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> <u>“Circular N°13 de 18 marzo 2022, página 2, párrafos 2.2. y 2.3”</u></p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	<p>The text of all tax treaties signed by Chile follows the first sentence of Article 25(1) of the OECD Model Tax Convention (as it read prior to the adoption of the final report on Action 14), 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.</p> <p>Additionally, access to MAP when there is a disagreement as indicated above is expressly among the cases within the scope of MAP in Chile's MAP guidelines.</p>	<p>http://www.sii.cl/pagina/jurisprudencia/convenios.htm</p> <p><u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> “Circular N°13 de 18 marzo 2022, página 3, párrafos 2.7.”</p>
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	<p>The Chilean tax authority has not received any request for MAP in this situation. If the request is that the domestic anti-abuse provision is in conflict with tax treaties, Chile's MAP guidance expressly considers it among the cases within the scope of 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.</p>	<p>https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N° 830”, Artículos 4 bis and 160 bis.</p> <p><u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> “Circular N°13 de 18 marzo 2022, página 3, párrafos 2.7.”</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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>1. 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 during the course of an audit or after it is finalized but prior a judicial 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.</p> <p>2. By virtue of Law 21,210, published in the Official Gazette on 24 February 2020, currently Chile has a statutory dispute settlement process in place (through a mediation procedure), independent from the audit and examination functions, which involves the Taxpayer's Ombudsman office "DEDECON" (which operation started by the end of February 2022) and which could only be accessed through a request from the taxpayer. Since the agreement reached under the mediation procedure produces res judicata, access to MAP is granted in those cases that have been resolved through the mediation procedure to seek correlative relief at the level of the treaty partner.</p>	<p>-</p> <p>https://www.leychile.cl/Navegar?idNorma=1142667</p> <p><u>Ley Núm. 21.210, Artículo 23 y Artículo 34 Transitorio</u></p>
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. However, while such case is pending, the Chilean competent authority would not be able to discuss the MAP case with the other competent authority. If a decision is issued by the Court in the meantime, the Chilean competent authority would not be able to deviate from such decision in MAP but will seek correlative relief at the level of the treaty partner.	https://www.bcn.cl/leychile/navegar?idNorma=210676&idParte=8512586&idVersion=Diferido “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	<p>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.</p> <p>Law No. 21,210, published in the Official Gazette on 24 February, 2020, amended Article 6, letter B, No. 5, of the Tax Code, establishing that the competent authority may not resolve administrative petitions containing the same cause of request and based on the same background previously presented by the taxpayer in a jurisdictional or administrative venue. Therefore, a dispute already decided via the administrative remedies provided by the domestic law may be entitled to MAP assistance, but the Chilean competent authority may not be able to substantively discuss such case in MAP and will seek correlative relief at the level of the treaty partner.</p>	https://www.leychile.cl/Navegar?idNorma=242302 “Constitución Política de la República de Chile”, Artículo 76, inciso primero. https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N°830”, Artículo 6, letra B, N°5.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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?	Yes	Guidance on access to MAP has been given by Circular N°13 dated March 18, 2022 and Circular N°19 dated April 19, 2023, both of the Chilean Tax Administration .	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> https://www.sii.cl/normativa_legislacion/circulares/2023/circu19.pdf
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
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.	https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “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.	https://www.bcn.cl/leychile/navegar?idNorma=210676&idParte=8512586&idVersion=Diferido “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	-	-

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?	Yes	As explained under question 13 above, guidance on access to MAP has been given by Circular N°13 dated March 18, 2022 and by Circular N°19 dated April 19, 2023, both of the Chilean Tax Administration, which also include the steps and timing to be taken by Chile's competent authority from the receipt of a MAP case to the resolution of it.	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> https://www.sii.cl/normativa_legislacion/circulares/2023/circu19.pdf
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. However, Chile reports every year to the OECD its MAP statistics in accordance with the MAP Statistics Reporting Framework.	-
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?	Yes	Circular N°13 dated March 18, 2022 referred further above expressly indicates the departments within the Chilean Tax Administration that advise and assist the Chile's competent authority in the exercise of its functions.	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> Circular N°13 del 18 de marzo de 2022, página 4, número 1.1.2.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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
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.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	Explanation of the relationship between the MAP and domestic law administrative and judicial remedies has been established by Circular N°13 dated March 18, 2022.	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> “Circular N°13, del 18 de marzo 2022, página 10, número 2.2.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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? 	See detailed explanation	Such an issue is expressly stated in the Constitution of Chile, according to which 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.	https://www.leychile.cl/Navegar?idNorma=242302 “Constitución Política de la República de Chile”, Artículo 76, inciso primero.
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.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
27.	Is there any other information available on resolution of MAP cases?	Yes	Circular N°13, dated March 18, 2022, referred further above instructs on the Development of the mutual agreement procedure and on the end of it.	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u> Circular N°13 del 18 de marzo de 2022, página 8 y 9, números 1.3 y 1.4

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.	https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N° 830 “, Artículo 200.”
29.	Where the agreement reached by your competent	Yes	-	https://www.sii.cl/normativa_legislacion/legislacion_tributaria_basica.html “Código Tributario N°830 “, Artículo 126, inciso 1 N°2 e inciso 2. https://www.bcn.cl/leychile/navegar?idNorma=210676&idParte=8512586&idVersion=Diferido

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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?			“Ley N°19.880 Establece Bases de los Procedimientos Administrativos que rigen los Actos de los Órganos de la Administración del Estado”, Artículo 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	Yes	Circular N°13, dated March 18, 2022, and	<u>CIRCULAR N°13, DEL 18 DE MARZO DE 2022 (sii.cl)</u>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	available on the implementation of MAP agreements?		Circular N°19, dated 19 April 2023, instruct on the implementation of the agreement reached.	<p>Circular N°13 del 18 de marzo de 2022, página 12, número 3</p> <p>https://www.sii.cl/normativa_legislacion/circulares/2023/circu19.pdf</p> <p>Circular N°19 del 19 de abril de 2023, páginas 1 y 2</p>