OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Colombia (Stage 1)

INCLUSIVE FRAMEWORK ON BEPS: ACTION 14

OECD

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Please cite this publication as:
OECD (2019), *Making Dispute Resolution More Effective – MAP Peer Review Report, Colombia (Stage 1): Inclusive Framework on BEPS: Action 14*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, *https://doi.org/10.1787/7182ca92-en*.

ISBN 978-92-64-75884-1 (print)
ISBN 978-92-64-67487-5 (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 BEPS planning strategies that rely on outdated rules or on poorly co-ordinated domestic measures will be rendered ineffective.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 85 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 Inclusive Framework on BEPS, 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 125 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 BEPS on 8 May 2019 and prepared for publication by the OECD Secretariat.

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Abbreviations and acronyms

APA	Advance Pricing Arrangement
DIAN	Colombian Tax and Customs Administration
MAP	Mutual Agreement Procedure
OECD	Organisation for Economic Co-operation and Development

Executive summary

Colombia has a modest tax treaty network with 14 tax treaties. Colombia has limited experience with resolving MAP cases. It has a small MAP inventory, with a small number of new cases submitted each year and only one MAP case pending on 31 December 2017, which is an attribution/allocation case. Overall Colombia meets fewer than half of the elements of the Action 14 Minimum Standard. Where it has deficiencies, Colombia is working to address most of them.

All but one of Colombia's tax treaties contain a provision relating to MAP. Those treaties generally follow paragraphs 1 through 3 of Article 25 of the *Model Tax Convention on Income and Capital 2017* (OECD, 2017a). Its treaty network is largely consistent with the requirements of the Action 14 Minimum Standard, except mainly for the fact that:

- Approximately 40% of its tax treaties do not contain the equivalent of Article 25(3), second sentence of the OECD Model Tax Convention (OECD, 2015) stating that the competent authorities may consult together for the elimination of double taxation for cases not provided for in the tax treaty
- Approximately 30% 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

In order to be fully compliant with all four key areas of an effective dispute resolution mechanism under the Action 14 Minimum Standard, Colombia needs to amend and update a certain number of its tax treaties. In this respect, Colombia signed the Multilateral Instrument, through which a number of its tax treaties will potentially be modified to fulfil the requirements under the Action 14 Minimum Standard. Where treaties will not be modified, upon entry into force of this Multilateral Instrument for the treaties concerned, Colombia reported that it intends to update all of its tax treaties via bilateral negotiations to be compliant with the requirements under the Action 14 Minimum Standard but it has not yet put in place a plan in relation hereto.

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.

Colombia meets some requirements regarding the availability and access to MAP under the Action 14 Minimum Standard. It provides access to MAP in all eligible cases, although it has since 1 January 2016 not received any MAP request concerning transfer pricing cases or cases where there has been an audit settlement. However, Colombia does not have in place a documented notification process for those situations in which its competent authority considers the objection raised by taxpayers in a MAP request as not justified. Furthermore, Colombia does not have guidance on the availability of MAP and how it applies this procedure in practice.

Colombia did not report MAP statistics for 2016 or for 2017. Based on the information that Colombia provided during the peer review process, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017	Average time to close cases (in months)
Attribution/allocation cases	1	0	0	1	n.a.
Other cases	0	0	0	0	n.a.
Total	1	0	0	1	n.a.

From these statistics it follows that Colombia had one attribution/allocation case in its MAP inventory on 1 January 2016 and that this case was still pending on 31 December 2017. It will be monitored whether this case, and future MAP cases, are resolved in a timely, efficient and effective manner.

Colombia meets 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. Finally, the performance indicators used are appropriate to perform the MAP function.

Lastly, as there was no MAP agreement reached that required implementation by Colombia, it was not yet possible to assess whether it meets the Action 14 Minimum Standard as regards the implementation of MAP agreements.

References

OECD (2015), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-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.

Introduction

Available mechanisms in Colombia to resolve tax treaty-related disputes

Colombia has entered into 14 tax treaties on income (and/or capital), ten of which are in force.[1] These 14 treaties apply to 16 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 14 treaties provide for an arbitration procedure as a final stage to the mutual agreement procedure.[3]

In Colombia, the competent authority consists of four people as well as the head of the Office for International Affairs. Colombia has a two-person APA team that is assigned to 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 position for attribution/allocation cases, while the four-person MAP team will be in charge of discussing Colombia's position during MAP meetings. Colombia has not yet issued guidance on the governance and administration of the mutual agreement procedure ("**MAP**"), although it expects to do so in January 2019.

Recent developments in Colombia

Colombia recently signed new treaties with France, Italy, the United Arab Emirates and the United Kingdom, which have not yet entered into force. These four treaties have not yet been ratified as they are undergoing approval with respect to Colombia's domestic law or are under review by Colombia's constitutional court. Specifically, the treaties with France, Italy and the United Arab Emirates are currently under consideration via the legislative process, and the treaty with the United Kingdom is undergoing a mandatory review by Colombia's constitutional court.

Furthermore, Colombia on 7 June 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 it will submit an updated list of notifications to the Multilateral Instrument no later than March 2019.

Where treaties will not be modified by the Multilateral Instrument, Colombia reported that it strives to update them through future bilateral negotiations. With respect to its treaty

under the Commission of the Andean Community Decision (578) ("**Andean Decision**"), which also does not contain a MAP provision, Colombia reported that it is prioritising the revision of this decision as the three treaty partners are some of Colombia's main and closest economic partners.

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, and the practical application of that framework. The review process performed is desk-based and conducted through specific questionnaires completed by Colombia and its peers. The questionnaires for the peer review process were sent to Colombia and the peers on 31 August 2018.

The period for evaluating Colombia implementation of the Action 14 Minimum Standard ranges from 1 January 2016 to 31 August 2018 ("**Review Period"**). In addition to the assessment on its compliance with the Action 14 Minimum Standard, Colombia also asked for peer input on best practices. Furthermore, this report may depict some recent developments that have occurred after the Review Period, which at this stage will not impact the assessment of Colombia's implementation of this minimum standard. In the update of this report, being stage 2 of the peer review process, these recent developments will be taken into account in the assessment and, if necessary, the conclusions contained in this report will be amended accordingly.

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 were taken into account, even if it concerned a modification or a replacement of an existing treaty. Reference is made to Annex A for the overview of Colombia's tax treaties regarding the mutual agreement procedure.

In total two peers provided input: Spain and Switzerland. Out of these two peers, one had a MAP case with Colombia that started on or after 1 January 2016. However, this case was started in 2018. Colombia did not report MAP statistics for 2016 or for 2017. 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.

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.[5] However, it did not submit its MAP statistics according to the MAP Statistics Reporting Framework.

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 2017 ("**Statistics Reporting Period**"). As mentioned above, Colombia did not report MAP statistics for 2016 or for 2017. However, based on the information that Colombia provided during the peer review process, its MAP caseload during this period was as follows:

2016-17	Opening inventory 1/1/2016	Cases started	Cases closed	End inventory 31/12/2017
Attribution/allocation cases	1	0	0	1
Other cases	0	0	0	0
Total	1	0	0	1

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 implementing of the BEPS Action 14 Minimum Standard to make dispute resolution mechanisms more effective ("**Terms of Reference**").[6] Apart from analysing Colombia's legal framework and its administrative practice, the report also incorporates peer input and responses to such input by Colombia. 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 objective of the Action 14 Minimum Standard is to make dispute resolution mechanisms more effective and concerns a continuous effort. Therefore, this peer review report includes recommendations that Colombia continues to act in accordance with a given element of the Action 14 Minimum Standard, even if there is no area for improvement 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.
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 the 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/ctp/dispute/Colombia-Dispute-Resolution-Profile.pdf.
6. 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

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 14 tax treaties, 13 contain a provision equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention 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 one 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.[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, 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.

Anticipated modifications

Multilateral Instrument

4. 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 – 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. 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.

5. In regard of 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, 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.

Bilateral modifications

6. Colombia reported that for the one tax treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention and will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element A.1. Specifically, Colombia reported that it is currently pursuing an internal review of the relevant treaty, which will be prioritised in its plan for bilateral tax treaty negotiations. In addition, Colombia reported it will seek to include Article 25(3), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

7. For the one treaty identified that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

8. Colombia reported that it had one MAP case that was an initiative of both states undertaking to attempt to solve the difficulties that may arise as to the procedure for tax residence certification. Furthermore, Colombia reported that it had one MAP case that was an initiative under the equivalent of Article 25(3) of both states attempting to solve the difficulties that may arise as to the procedure for tax residence certification. The peer with which Colombia undertook this initiative noted that since 2015 its competent authority has 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 provision in its tax treaty with Colombia. The peer explained that it seeks 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 noted the process is not yet achieved and 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. Colombia reported that it expects to conclude this agreement in the first semester of 2019.

Conclusion

	Areas for improvement	Recommendations
[A.1]	One out of 14 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	As the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Colombia should follow its stated intention to include the required provision via bilateral negotiations. In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.

[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.

9. 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

10. Colombia is authorised to enter into bilateral APAs and has implemented an APA programme. The legal basis of Colombia's bilateral APA programme can be found 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. According to article 1.2.2.4.6, a bilateral APA would be applied to the year before the agreement was signed and up to the three years after it was signed.

Roll-back of bilateral APAs

11. Colombia reported that roll-back of bilateral APAs is not available in Colombia.

Practical application of roll-back of bilateral APAs

12. Colombia reported that it received one request for a bilateral APA that did not include a request for roll-back in 2014, which has not yet been finalised.

13. Peers that provided input indicated not having received any request from a taxpayer asking for a rollback of a bilateral APA involving Colombia since 1 January 2016.

Anticipated modifications

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

15. 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

16. Out of Colombia's 14 tax treaties, 11 contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2017a) as it read prior to the adoption of the *Making Dispute Resolution Mechanisms More Effective, Action 14 – 2015 Final Report* (Action 14 final report (OECD, 2015a)), allowing taxpayers to submit a MAP request to the competent authority of the state in which they are resident 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. In addition, two of Colombia's tax treaties contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention (OECD, 2015b), as changed by the Action 14 Final Report and allowing taxpayers to submit a MAP request to the competent authority of either state.

17. The remaining treaty does not contain a MAP provision at all and therefore does not contain 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

18. Out of Colombia's 14 tax treaties, 11 contain a provision equivalent to Article 25(1), second sentence, of the OECD Model Tax Convention 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.

19. 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

Practical application

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

20. 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 at all. Colombia reported that taxpayers always have a right to access MAP but that they may be requested to withdraw their domestic remedy request after a MAP request is accepted in order to prevent contrary resolutions regarding the same case under MAP. Access 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. 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.

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

21. 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. 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.

Anticipated modifications

Multilateral Instrument

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

22. 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 as amended by the Action 14 final report 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 as it read prior to the adoption of the Action 14 final report. 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 as it read prior to the adoption of the Action 14 final report. 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.

23. 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 as amended by the Action 14 final report, 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 14 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 as it read prior to the adoption of the Action 14 final report.

24. 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 as it read prior to the adoption of the Action 14 final report. 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 as amended by the Action 14 final report.

25. In view of the above and in relation to the one treaty identified in paragraph 15 that is considered not to contain the equivalent of Article 25(1), first sentence, of the OECD Model Tax Convention as it read prior to the adoption of the final Action 14 final report, this treaty is not one of the treaties that will be modified via the Multilateral Instrument.

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

26. 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 – 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.

27. In regard of the one tax treaty identified in paragraph 17 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.

Bilateral modifications

28. Colombia reported that when the tax treaties do not contain the equivalent of Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, and will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.1. Specifically, Colombia reported that it is currently pursuing an internal review of the Andean Decision and that if the decision is revoked by consensus, Colombia will prioritise bilateral tax treaty negotiations with each of the three signatories.

29. With respect to the first sentence of Article 25(1), Colombia reported that it will in those bilateral negotiations propose to include the equivalent as it read after the adoption of the Action 14 final report. For the one treaty that does not contain a filing period for MAP requests, Colombia stated that it will be modified by the Multilateral Instrument to incorporate the second sentence of Article 25(1) of the OECD Model Tax Convention. In addition, Colombia reported it will seek to include Article 25(1) of the OECD Model Tax Convention, as it read prior to the adoption of the Action 14 final report, in all of its future tax treaties.

Peer input

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

Conclusion

	Areas for improvement	Recommendations
[B.1]	One out of 14 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	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 in the treaty that currently does not contain such equivalent, Colombia should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.

	Areas for improvement	Recommendations
[B.1]	One out of 14 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 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.
	-	In addition, Colombia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

[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).

3. 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

4. As discussed under element B.1, out of Colombia's 14 treaties, two currently contain a provision equivalent to Article 25(1), first sentence, of the OECD Model Tax Convention as changed by the Action 14 final report, 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 14 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. Where tax treaties will not be amended via the Multilateral Instrument, Colombia declared it will apply its bilateral notification and consultation process once it has been introduced for cases where its competent authority considers the objection raised in a MAP request not to be justified.

5. Colombia reported that it does not yet have a bilateral consultation or notification process in place, which allows the other competent authority concerned to provide its views on the case when Colombia's competent authority considers the objection raised in the MAP request not to be justified.

Practical application

6. Colombia reported that since 1 January 2016 its competent authority has not decided that the objection raised by taxpayers in such request was not justified in any of its MAP cases.

7. All peers that provided input indicated not being aware of any cases for which Colombia's competent authority denied access to MAP since 1 January 2016. 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 since 1 January 2016.

Anticipated modifications

8. Colombia indicated that it will introduce a bilateral notification process for those situations where its competent authority considers an objection raised in a MAP request as being not justified. Colombia reported that its draft MAP guidance states that Colombia will automatically notify the other contracting state in cases where Colombia considers an objection raised as not justified. Colombia also noted that it intends to conduct a workshop at least once for every official that joins its MAP team regarding the internal organisational functions, including the notification process and that such workshops will be replicated for all MAP team members every time Colombia's guidance is changed or updated. Furthermore, Colombia reported that it will accept all bilateral consultation requests from another competent authority within six months of the notification of the denial of MAP access. Colombia expects this MAP guidance to be finalised and publicly available by January 2019.

9. Colombia further reported that its draft MAP guidance notes that such notification letters will contain the following information and attached documents: (i) date of the MAP request (ii) taxpayer identification (iii) type of MAP requested (iv) copy of the denial (v) copy of the request and of any documents included in support of such request.

Conclusion

	Areas for improvement	Recommendations
[B.2]	12 of the 14 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Colombia should without further delay document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Colombia should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.

[B.3] Provide access to MAP in transfer pricing cases

Jurisdictions should provide access to MAP in transfer pricing cases.

10. 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

11. All of Colombia's 14 tax treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention requiring their state to make a correlative adjustment in cases where a transfer pricing adjustment is imposed by the treaty partner.

12. 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.

Application of legal and administrative framework in practice

13. Colombia reported that since 1 January 2016, 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 the Review Period.

14. Peers that provided input indicated not being aware of a denial of access to MAP by Colombia since 1 January 2016 on the basis that the case concerned was a transfer pricing case.

Anticipated modifications

15. As all of Colombia's tax treaties contain a provision equivalent to Article 9(2) of the OECD Model Tax Convention, there is no need for modifications. Regardless, Colombia reported that it will continue to seek to include Article 9(2) in all of its future tax treaties.

Conclusion

	Areas for improvement	Recommendations
[B.3]	Although Colombia reported that it will provide access to MAP in transfer pricing cases, it did not receive any MAP request for such cases during the Review Period. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	

[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.

16. 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

17. None of Colombia's 14 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.

Practical application

18. Colombia reported that since 1 January 2016 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 the Review Period.

19. Peers that provided input indicated not being aware of cases that have been denied access to MAP in Colombia since 1 January 2016 in relation to the application of treaty and/or domestic anti-abuse provisions.

Anticipated modifications

20. Colombia indicated that it does not anticipate any modifications in relation to element B.4.

Conclusion

	Areas for improvement	Recommendations
[B.4]	-	As Colombia has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.

[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.

21. 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

22. Colombia reported that audit settlements are not available in Colombia. However, Colombia also reported that 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 the last time 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. Colombia reported access to MAP would be provided for 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.

23. Additionally 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 and that limits access to MAP.

Practical application

24. 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 since 1 January 2016.

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

Anticipated modifications

26. Colombia reported that its pending financing bill may introduce the possibility of taxpayers to enter into audit settlements. If so, Colombia reported that such settlements will be treated as final judicial rulings, and that Colombia would only provide access to MAP in order to seek relief from its treaty partner to the extent of relieving the double taxation in question.

Conclusion

	Areas for improvement	Recommendations
[B.5]	Colombia reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Colombia is therefore recommended to follow its policy and grant access to MAP when such cases surface.	

[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.

27. 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

28. Colombia reported that there are no specific domestic legislative provisions pertaining to the MAP process. Furthermore, it has not published MAP guidance. Given that Colombia does not currently publish MAP guidance, Colombia reported that previous MAP requests would not be denied on the basis that such information and documentation was not provided. Colombia clarified that prior applicants will be given 90 days to meet the new requirements regarding the information and documentation to be included in a MAP request.

Practical application

29. Colombia reported that it provides access to MAP in all cases where taxpayers have complied with the information or documentation requirements as set out in its draft MAP guidance, provided that the case meets the substantive requirements for access to MAP, such as having a situation that is covered by the treaty. It further reported that since 1 January 2016 its competent authority has not denied access to MAP for cases where the taxpayer did not provide the required information or documentation.

30. All peers that provided input indicated not being aware of a limitation of access to MAP by Colombia since 1 January 2016 in situations where taxpayers complied with information and documentation requirements.

Anticipated modifications

31. Colombia reported that its draft MAP guidance currently under consideration will contain specific information on what a taxpayer needs to include in his request for MAP to Colombia. This draft MAP guidance states that Colombia's competent authority has 45 calendar days from the initial date of receipt of the taxpayer's materials to request further information or documentation. According to the draft MAP guidance, the taxpayer should provide this information no later than 45 calendar days from the date the request for further information or documentation was made. Colombia further reported that it would follow up with the taxpayer at least once before the expiration of this 45-day limit.

Conclusion

	Areas for improvement	Recommendations
[B.6]	-	As Colombia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Colombia's information and documentation requirements for MAP requests, it should continue this practice.

[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.

32. 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, 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

33. Out of Colombia's 14 tax treaties, eight contain a provision equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention allowing their competent authorities to consult together for the elimination of double taxation in cases not provided for in their tax treaties.

34. The remaining six treaties do not contain any provision at all that is based on or equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention.[2]

Anticipated modifications

Multilateral Instrument

35. 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 – 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. 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.

36. In regard of 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, Colombia listed four treaties of them as a covered tax agreement under the Multilateral Instrument and for all four of them did it make, 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 a signatory to the Multilateral Instrument and also listed their

treaty with Colombia as a covered tax agreement. All four treaty partners also 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.

Bilateral modifications

37. Colombia reported that when the tax treaties that do not contain the equivalent of Article 25(3), second sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element B.7. Specifically, Colombia reported that it is currently pursuing an internal review of one of the relevant treaties, which will be prioritised in its plan for bilateral tax treaty negotiations. In addition, Colombia reported it will seek to include Article 25(3), second sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

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

Conclusion

	Areas for improvement	Recommendations
[B.7]	Six out of 14 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Four of these treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	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 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. 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, Colombia should follow its stated intention to include the required provision for one treaty and request the inclusion of the required provision via bilateral negotiations for the other.
		In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.

[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.

39. 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

40. Colombia has not published MAP guidance. In particular, 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, is not publicly available.[3]

Information and documentation to be included in a MAP request

41. 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. Although not publicly available yet, the items to be included in a request for MAP assistance in Colombia 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.

Anticipated modifications

42. Colombia indicated that it released its draft MAP guidance for public comments in October 2018. Colombia reported that this guidance will reflect pending domestic financing bill if such draft legislation end up becoming law. Once Colombia has incorporated any relevant public comments received into its MAP guidance, Colombia reported that it will publish the final version of its guidance on DIAN's website in January 2019.

43. Colombia's draft MAP guidance currently contains information on:

a. contact information of the competent authority or the office in charge of MAP cases

b. the manner and form in which the taxpayer should submit its MAP request

c. the specific information and documentation that should be included in a MAP request (see also below)

d. how the MAP functions in terms of timing and the role of the competent authorities

e. information on availability of arbitration

f. relationship with domestic available remedies

g. access to MAP in transfer pricing cases, anti-abuse provisions, cases of multilateral MAPs and for multi-year resolution of cases

h. rights and role of taxpayers in the process

i. suspension of tax collection

j. interest charges, refunds and penalties

44. The draft MAP guidance of Colombia described above also contains detailed information on the availability and the use of MAP and how its competent authority would conduct the procedure in practice. This draft guidance contains the information that the FTA MAP Forum agreed should be included in a jurisdiction's MAP guidance, which, as previously described, 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.

45. Further to the above, Colombia's draft 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.

Conclusion

	Areas for improvement	Recommendations
[B.8]	There is no published MAP guidance.	Colombia should, without further delay, introduce guidance 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 and publish such guidance. Additionally, although not required by the Action 14 Minimum Standard, Colombia could also follow its stated intention to include the items identified above.

[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.

46. 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

47. As discussed under element B.8, Colombia has not published MAP guidance.

MAP profile

48. The MAP profile of Colombia is published on the website of the OECD; however, this profile was submitted in August 2018, which was two years past the deadline under the Action 14 Minimum Standard. This MAP profile is complete and contains detailed information. This profile also contains external links that provide extra information and guidance where appropriate.

Anticipated modifications

49. Colombia indicated that it is in the process of finalising MAP guidance, which it expects to publish in January 2019.

Conclusion

	Areas for improvement	Recommendations
[B.9]	There is no MAP guidance publicly available.	Colombia should make MAP guidance publicly available and easily accessible once it is introduced, and should ensure that its MAP profile published on the shared public platform is updated accordingly.

[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.

50. 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

51. As previously discussed under B.5, Colombia reported that it was possible for taxpayers and the tax administration to enter into audit settlements until October 2017 under Colombia's domestic law. However, there is no MAP guidance available on this process as it is currently not legally possible for taxpayers to enter into audit settlements in Colombia.

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

52. 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.

53. All peers that provided input indicated not being aware of the existence of an administrative or statutory dispute settlement/resolution process in Colombia since 1 January 2016, 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

54. 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

55. Colombia indicated that its draft MAP guidance will clarify that it gives access to MAP in cases of audit settlements. Colombia further reported that its MAP guidance to be published will also address the effect of the outcome of such audit settlements on the MAP process.

56. As discussed under element B.5, Colombia reported that its pending financing bill may introduce the possibility of taxpayers to enter into audit settlements. If so, Colombia reported that such settlements will be treated as final judicial rulings, and that Colombia would only provide access to MAP in order to seek relief from its treaty partner to the extent of relieving the double taxation in question.

Conclusion

	Areas for improvement	Recommendations
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Colombia should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.

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. Available at: www.oecd.org/tax/beps/beps-action-14-on-more-effective-dispute-resolution-peer-review-documents.pdf.
5. The shared public platform can be found at: www.oecd.org/ctp/dispute/country-map-profiles.htm.

References

OECD (2015a), *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 (2015b), *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris, https://dx.doi.org/10.1787/9789264239081-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 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.

57. 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, 2017a), 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

58. Out of Colombia's 14 tax treaties, 13 contain a provision equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention 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 one treaty does not contain a MAP provision at all and therefore does not contain Article 25(2), first sentence, of the OECD Model Tax Convention.[1]

Anticipated modifications

Multilateral Instrument

59. 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 – 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. 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.

60. In regard of 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, 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.

Bilateral modifications

61. Colombia reported that for the tax treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention and which will not be modified by the Multilateral Instrument, it intends to update it via bilateral negotiations with a view to be compliant with element C.1. Specifically, Colombia reported that it is currently pursuing an internal review of the relevant treaty, which will be prioritised in its plan for bilateral tax treaty negotiations. In addition, Colombia reported it will seek to include Article 25(2), first sentence, of the OECD Model Tax Convention in all of its future tax treaties.

Peer input

62. For the one treaty identified that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention, the relevant peers did not provide input.

Conclusion

	Areas for improvement	Recommendations
[C.1]	One out of 14 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Colombia should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.
		In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.

[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).

63. 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

64. 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.

65. Colombia did not report its MAP statistics for 2016 and 2017. However, during the peer review process Colombia informed that it had one case opened in 2013 that is still pending at the end of the Review Period. The discussion below concerns one pre-2016 case as should have been reported by Colombia, based on the information it provided during its peer review.

Monitoring of MAP statistics

66. Colombia does not have a system in place with its treaty partners that communicates, monitors and manages with its treaty partners the MAP caseload.

Analysis of Colombia's MAP caseload

Global overview

67. At the beginning of the Statistics Reporting Period, Colombia had one pending MAP case, which was an attribution/allocation case. It did not have any other cases. At the end of the Statistics Reporting Period, Colombia had one MAP case in its inventory, which was an attribution/allocation case. Colombia's MAP caseload remained the same throughout the Statistics Reporting Period.

Pre-2016 cases

68. 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. At the end of the Statistics Reporting Period, the total inventory of pre-2016 cases remained the same, consisting of one attribution/allocation case.

Post-2015 cases

69. Colombia reported that it did not have any post-2015 cases in 2016 and 2017. The only post-2015 case involving Colombia started in March 2018.

Overview of cases closed during the Statistics Reporting Period

Reported outcomes

70. During the Statistics Reporting Period Colombia did not close any attribution/allocation MAP cases nor did it close any other cases.

Average timeframe needed to resolve MAP cases

All cases closed during the Statistics Reporting Period

71. As Colombia did not close any MAP cases during the Statistics Reporting Period, the average timeframe for both pre-2016 cases and post-2015 cases is not applicable in this regard.

Peer input

72. 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 Review period, even though communication has started very recently.

73. 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 is 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 is expecting to prepare its position paper relating to that case by the first quarter of 2019.

Anticipated modifications

74. Colombia indicated that it intends to implement an annual monitoring process that will take place every first quarter of each calendar year, beginning in 2019.

Conclusion

	Areas for improvement	Recommendations
[C.2]	MAP statistics for 2016 and 2017 were not submitted.	Colombia should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Colombia's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	

[C.3] Provide adequate resources to the MAP function

Jurisdictions should ensure that adequate resources are provided to the MAP function.

75. 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

76. 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 a group of four people as well as the head of the Office for International Affairs, which is located within DIAN.

Colombia further reported that this MAP 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.

77. In addition, Colombia reported that a two-person APA team also located in the Office for International Affairs, within DIAN is tasked with handling attribution/allocation MAP cases but these people have not yet 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.

78. 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 transfer pricing APAs.

79. 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.

80. Finally, Colombia noted that funding for face-to-face competent authority meetings will be determined on a case-by-case basis by the Ministry of Finance.

Monitoring mechanism

81. Colombia reported that it does not yet have a monitoring mechanism in place.

Practical application

MAP statistics

82. As discussed under element C.2 Colombia did not close any MAP cases during the Statistics Reporting Period.

Peer input

83. 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 expects such legislation to be approved by December 2018.

84. 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.

Anticipated modifications

85. Colombia reported that it will monitor its MAP cases on an annual basis to keep track of how long it takes to resolve MAP cases as well as the number of MAP cases in its inventory. Colombia noted that the first such monitoring meeting will begin in the first trimester of 2019. Colombia further reported that it will also monitor how many face-to-face meetings occur each year, as well as the time taken to process MAP requests.

Conclusion

	Areas for improvement	Recommendations
[C.3]	No MAP cases were closed and the only pending MAP case was initiated in October 2013.	While the level of resources seems sufficient as compared to the number of pending MAP cases, Colombia should ensure that the reasons why the only pending MAP case initiated in 2013 has not yet been closed will not act as an obstacle to resolving current pending and future MAP cases in a timely, efficient and effective manner.

[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.

86. 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

87. 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.

88. 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.

Practical application

89. 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.

Anticipated modifications

90. Colombia noted that its anticipated internal MAP regulations will ensure that the staff in charge of MAP cases are fully independent and are not influenced by policy considerations. Colombia reported that this independence will be monitored annually during the first trimester of every year. Furthermore, Colombia reported that it would assign the two people working with Colombia's APA team competent authority status once its MAP guidance has been finalised.

Conclusion

	Areas for improvement	Recommendations
[C.4]	-	As it has done thus far, Colombia should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Colombia would like to see reflected in future amendments to the treaty.

[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.

91. 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

92. 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.

93. 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.

94. The Action 14 Final Report (OECD, 2015) 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).

95. 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.

Practical application

96. Peers that provided input generally provided no specific input relating to this element of the Action 14 Minimum Standard.

Anticipated modifications

97. Colombia indicated that it will include consistency as a performance indicator as part of its 2019 evaluations for the staff in charge of MAP in Colombia.

Conclusion

	Areas for improvement	Recommendations
[C.5]	-	As it has done thus far, Colombia should continue to use appropriate performance indicators.

[C.6] Provide transparency with respect to the position on MAP arbitration

Jurisdictions should provide transparency with respect to their positions on MAP arbitration.

98. 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

99. Colombia's MAP profile states that Colombia's 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 embedded opinion among 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 gone into effect.

Practical application

100. Despite Colombia's domestic law limitations regarding arbitration with respect to tax matters, Colombia has incorporated an arbitration clause in two of its 14 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 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

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

Conclusion

	Areas for improvement	Recommendations
[C.6]	-	-

Note

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

References

OECD (2015), *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.

102. 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

103. Colombia reported that currently MAP agreements are subject to Colombia's domestic statute of limitations. According to Article 588 of Colombia's tax code, the domestic statute of limitations for upwards adjustment is two years as counted from the expiration of the deadline to file a return. For downwards adjustments, Article 589 of Colombia's tax code stipulates that the domestic statute of limitations is one year as counted from the expiration of the deadline to file a tax return. Colombia noted that its current domestic law does not provide for a rule regarding the legal status of MAP agreements and that no exception is made to extend the statute of limitation even if such an extension would be necessary to implement a MAP agreement. However, Colombia reported that there are currently no rules and/or procedures regarding the implementation of a MAP agreement.

Practical application

104. Colombia has not yet concluded any MAP agreements, although two are currently under consideration.

105. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not implemented by Colombia, which can be explained by the fact that Colombia has not yet concluded any MAP agreements.

Anticipated modifications

106. Colombia reported that it intends to include a new title in Colombia's tax code relating to MAP, and that this draft law provides that MAP agreements will have the same status as final judicial rulings. Colombia further reported that its domestic financing bill will, once enacted, contain a provision allowing all MAP agreements to be implemented irrespective of Colombia's domestic statute of limitations. Colombia reported that this financing bill will also establish that MAP agreements are implemented using the same procedure

currently used to implement Colombia's final judicial decisions. Finally, Colombia reported that its internal procedure under preparation will require that MAP staff follow up on the implementation of any agreement reached.

Conclusion

	Areas for improvement	Recommendations
[D.1]	As there was no MAP agreement reached during the Review Period that required implementation by Colombia, it was not yet possible to assess whether Colombia would have implemented all MAP agreements thus far.	
	As will be discussed under element D.3 not all of Colombia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits of one/two years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Colombia's relevant tax treaty, prevent the implementation of a MAP agreement, Colombia should follow its stated intention to put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Colombia should for clarity and transparency purposes notify the treaty partner thereof without delay.

[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.

107. 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

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

Practical application

109. Colombia has not yet concluded any MAP agreements.

110. All peers that provided input reported that they were not aware of any MAP agreement reached on or after 1 January 2016 that was not timely implemented by Colombia, which can be explained by the fact that Colombia has not yet concluded any MAP agreements.

Anticipated modifications

111. Colombia reported that under its expected domestic financing bill, the timeframe to implement a MAP agreement would be the same as that for a final judicial ruling. Colombia clarified that the timing for MAP implementation will be the same as the one provided for judicial rulings. Colombia further reported that the implementation of MAP

agreements would be subject to the rules provided under Article 863 of Colombia's Tax Code stipulating that interest will be paid to the taxpayer from the day after the act or ruling that confirms the outstanding refund for the taxpayer is enforceable.

Conclusion

	Areas for improvement	Recommendations
[D.2]	As there was no MAP agreement reached during the Review Period that required implementation by Colombia, it was not yet possible to assess whether Colombia would have implemented all MAP agreements thus far.	

[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.

112. 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

113. As discussed under element D.1, Colombia's domestic legislation contains a statute of limitations of one/two years for implementing MAP agreements, unless overridden by tax treaties.

114. Out of Colombia's 14 tax treaties, ten contain a provision equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention providing that any mutual agreement reached through MAP shall be implemented notwithstanding any time limits in their domestic law. Furthermore, one tax treaty contains such equivalent and also the alternative provision in Article 9(1), setting a time limit for making adjustments. Additionally, two neither contain such equivalent nor the alternative provisions and a third treaty[1] does not contain a MAP provision at all.

Anticipated modifications

Multilateral Instrument

115. 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 – 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. 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. 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.

116. In regard of the three tax treaties identified above that are considered not to contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or the alternative provisions for Articles 9(1) and 7(2), Colombia listed two treaties as covered tax agreements under the Multilateral Instrument and for both of them did it make, pursuant to Article 16(6)(c)(ii), a notification that they do not contain a provision described in Article 16(4)(b)(ii). Both are a signatory to the Multilateral Instrument, but one made a reservation on the basis of Article 16(5)(c) while the other listed Colombia under Article 16(6)(c)(ii). Therefore, at this stage, one of the three 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.

Bilateral modifications

117. Colombia further reported that when tax treaties that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives provided for in Articles 9(1) and 7(2) will not be modified by the Multilateral Instrument, it intends to update them via bilateral negotiations with a view to be compliant with element D.3. Specifically, Colombia reported that it is currently pursuing an internal review of one of the relevant treaties, which will be prioritised in its plan for bilateral tax treaty negotiations. Colombia also reported that intends to enter into discussions with one of the other three treaty partners to include the alternatives provided for in Articles 9(1) and 7(2). In addition, Colombia reported it will seek to include Article 25(2), second sentence, of the OECD Model Tax Convention or both alternatives in all of its future tax treaties.

Peer input

118. For the three treaties identified that do not contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention, or both alternatives the relevant peers did not provide input. A different peer confirmed that while its tax treaty with Colombia does not contain the second sentence of Article 25(2) of the OECD Model Tax Convention, it does contain a provision limiting the time period for making an adjustment to five years.

Conclusion

	Areas for improvement	Recommendations
[D.3]	Three out of 14 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions provided for in Article 9(1) and Article 7(2). Out of these three: • One of these treaties is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaty concerned. • Two will not be modified by the Multilateral Instrument.	Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention 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 treaty concerned. For the remaining two 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, Colombia should follow its stated intention to enter into negotiations with one of its treaty partners and request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions with the other treaty partner.
		In addition, Colombia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Note

1. This concerns 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 14 tax treaties does not contain a provision that is equivalent to Article 25(3), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	As the one treaty that does not contain the equivalent of Article 25(3), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Colombia should follow its stated intention to include the required provision via bilateral negotiations.
		In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.
[A.2]	Roll-back of bilateral APAs is not provided for in appropriate cases.	Colombia should without further delay introduce the possibility and in practice provide for roll-back of bilateral APAs in appropriate cases.
Part B: Availability and access to MAP		
[B.1]	One out of 14 tax treaties does not contain a provision that is equivalent to Article 25(1), first sentence of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	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 in the treaty that currently does not contain such equivalent, Colombia should follow its stated intention to request the inclusion of the required provision via bilateral negotiations, either a. as amended in the Action 14 final report; or b. as it read prior to the adoption of Action 14 final report, thereby including the full sentence of such provision.
	One out of 14 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 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.
	-	In addition, Colombia should maintain its stated intention to include Article 25(1) of the OECD Model Tax Convention as amended in the Action 14 final report in all future tax treaties.

	Areas for improvement	Recommendations
[B.2]	12 of the 14 treaties do not contain a provision equivalent to Article 25(1) of the OECD Model Tax Convention as changed by the Action 14 final report, allowing taxpayers to submit a MAP request to the competent authority of either treaty partners. For these treaties no documented bilateral consultation or notification process is in place, which allows the other competent authority concerned to provide its views on the case when the taxpayer's objection raised in the MAP request is considered not to be justified.	Colombia should without further delay document its bilateral notification process and provide in that document rules of procedure on how that process should be applied in practice, including the steps to be followed and timing of these steps. Furthermore, Colombia should apply its notification process for future cases in which its competent authority considered the objection raised in a MAP request not to be justified and when the tax treaty concerned does not contain Article 25(1) of the OECD Model Tax Convention as amended by the Action 14 final report.
[B.3]	Although Colombia reported that it will provide access to MAP in transfer pricing cases, it did not receive any MAP request for such cases during the Review Period. It was therefore not possible at this stage to evaluate the effective implementation of this element in practice.	
[B.4]	-	As Colombia has thus far granted access to MAP in eligible cases concerning whether the conditions for the application of a treaty anti-abuse provision have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provisions of a treaty, it should continue granting access for these cases.
[B.5]	Colombia reported it will give access to MAP in cases where the tax authority and the taxpayer have entered into an audit settlement. Its competent authority, however, did not receive any MAP requests of this kind from taxpayers during the Review Period. Colombia is therefore recommended to follow its policy and grant access to MAP when such cases surface.	
[B.6]	-	As Colombia has thus far not limited access to MAP in eligible cases when taxpayers have complied with Colombia's information and documentation requirements for MAP requests, it should continue this practice.
[B.7]	Six out of 14 tax treaties do not contain a provision that is equivalent to Article 25(3), second sentence, of the OECD Model Tax Convention. Four of these treaties are expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaties concerned.	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 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. 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, Colombia should follow its stated intention to include the required provision for one treaty and request the inclusion of the required provision via bilateral negotiations for the other.
		In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.
[B.8]	There is no published MAP guidance.	Colombia should, without further delay, introduce guidance 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 and publish such guidance. Additionally, although not required by the Action 14 Minimum Standard, Colombia could also follow its stated intention to include the items identified above.

	Areas for improvement	Recommendations
[B.9]	There is no MAP guidance publicly available.	Colombia should make MAP guidance publicly available and easily accessible once it is introduced, and should ensure that its MAP profile published on the shared public platform is updated accordingly.
[B.10]	There is no published MAP guidance and access to MAP in cases where the outcome of an audit reflects an understanding between the auditors and the taxpayer is not described in any publicly available information.	Colombia should follow its stated intention to clarify in its MAP guidance to be published that taxpayers have access to MAP in cases of audit settlements.
Part C: Resolution of MAP cases		
[C.1]	One out of 14 tax treaties does not contain a provision that is equivalent to Article 25(2), first sentence, of the OECD Model Tax Convention. This treaty will not be modified by the Multilateral Instrument to include the required provision.	As the one treaty that does not contain the equivalent of Article 25(2), first sentence, of the OECD Model Tax Convention will not be modified via the Multilateral Instrument, Colombia should follow its stated intention to request the inclusion of the required provision via bilateral negotiations.
		In addition, Colombia should maintain its stated intention to include the required provision in all future tax treaties.
[C.2]	MAP statistics for 2016 and 2017 were not submitted.	Colombia should report its MAP statistics in accordance with the MAP Statistics Reporting Framework.
	As there were no post-2015 MAP cases to resolve it was therefore at this stage not possible to evaluate whether Colombia's competent authority seeks to resolve MAP cases within an average time frame of 24 months.	
[C.3]	No MAP cases were closed and the only pending MAP case was initiated in October 2013.	While the level of resources seems sufficient as compared to the number of pending MAP cases, Colombia should ensure that the reasons why the only pending MAP case initiated in 2013 has not yet been closed will not act as an obstacle to resolving current pending and future MAP cases in a timely, efficient and effective manner.
[C.4]	-	As it has done thus far, Colombia should continue to ensure that its competent authority has the authority, and uses that authority in practice, to resolve MAP cases without being dependent on approval or direction from the tax administration personnel directly involved in the adjustment at issue and absent any policy considerations that Colombia would like to see reflected in future amendments to the treaty.
[C.5]	-	As it has done thus far, Colombia should continue to use appropriate performance indicators.
[C.6]	-	-

	Areas for improvement	Recommendations
Part D: Implementation of MAP agreements		
[D.1]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Colombia would have implemented all MAP agreements thus far. [To ensure that all MAP agreements are implemented if the conditions for such implementation are fulfilled, Colombia could introduce a tracking system.]	
	As will be discussed under element D.3 not all of Colombia's tax treaties contain the equivalent of Article 25(2), second sentence, of the OECD Model Tax Convention. Therefore, there is a risk that for those tax treaties that do not contain that provision, not all MAP agreements will be implemented due to time limits of one/two years in its domestic law.	When, after a MAP case is initiated, the domestic statute of limitation may, in the absence of the second sentence of Article 25(2) of the OECD Model Tax Convention in Colombia's relevant tax treaty, prevent the implementation of a MAP agreement, Colombia should follow its stated intention to put appropriate procedures in place to ensure that such an agreement is implemented. In addition, where during the MAP process the domestic statute of limitations may expire and may then affect the possibility to implement a MAP agreement, Colombia should for clarity and transparency purposes notify the treaty partner thereof without delay.
[D.2]	As there was no MAP agreement reached during the Review Period, it was not yet possible to assess whether Colombia has timely implemented all MAP agreements thus far.	
[D.3]	Three out of 14 tax treaties contain neither a provision that is equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention nor any of the alternative provisions provided for in Article 9(1) and Article 7(2). Out of these three: One of these treaties is expected to be modified by the Multilateral Instrument to include the required provision upon entry into force for the treaty concerned Two will not be modified by the Multilateral Instrument	Colombia should as quickly as possible ratify the Multilateral Instrument to incorporate the equivalent to Article 25(2), second sentence, of the OECD Model Tax Convention 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 treaty concerned. For the remaining two 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, Colombia should follow its stated intention to enter into negotiations with one of its treaty partners and request the inclusion of the required provision via bilateral negotiations or be willing to accept the inclusion of both alternative provisions with the other treaty partner.
		In addition, Colombia should maintain its stated intention to include the required provision, or be willing to accept the inclusion of both alternatives provisions, in all future tax treaties.

Annex A

Tax treaty network of Colombia

		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	B.7	C.6
Column 1	Column 2	Column 3	Column 4		Column 5	Column 6	Column 7	Column 8	Column 9	Column 10	Column 11
Treaty partner	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?
		If yes, submission to either competent authority? (new Art. 25(1), first sentence)	If no, please state reasons			If no, will your CA accept a taxpayer's request for MAP in relation to such cases?		If no, alternative provision in Art. 7 & 9 OECD MTC? (Note 4)			
	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	if ii, specify period	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 N = no	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	i	N	N	N	N	N
Canada	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Chile	Y	O	i	N/A	Y	i	Y	N*	Y	N*	N

Czech Republic	Y	O*	Y	N/A	Y	i	Y	Y	Y	Y	N
Ecuador	Y	N	iv	N/A	Y	i	N	N	N	N	N
France	N	O*	Y	N/A	Y	i	Y	Y	Y	Y	Y
India	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Italy	N	O	Y	N/A	Y	i	Y	Y	Y	Y	Y
Korea	Y	O*	Y	N/A	Y	i	Y	Y	Y	N*	N
Mexico	Y	O*	ii*	1.5-years	Y	i	Y	N	Y	N*	N
Peru	Y	N	iv	N/A	Y	i	N	N	N	N	N
Portugal	Y	O	Y	N/A	Y	i	Y	Y	Y	N*	N
Spain	Y	O	Y	N/A	Y	i	Y	Y	Y	Y	N
Switzerland	Y	O	Y	N/A	Y	i	Y	ii	Y	Y	N
United Arab Emirates	N	E	Y	N/A	Y	i	Y	Y	Y	N	N
United Kingdom	N	E	Y	N/A	Y	i	Y	Y	Y	Y	N

Annex B

MAP Statistics pre-2016 cases

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
		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
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

Note: There are no published statistics for Colombia as it did not submit its 2016 and 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
		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
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

Notes: There are no published statistics for Colombia as it did not submit its 2016 and 2017 MAP statistics.

Annex C

MAP Statistics post-2015 cases

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	N/A
Others	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	N/A

Notes: There are no published statistics for Colombia as it did not submit its 2016 and 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	N/A
Others	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	N/A

Notes: There are no published statistics for Colombia as it did not submit its 2016 and 2017 MAP statistics.

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 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
Review Period	Period for the peer review process that started on 1 January 2016 and ended on 31 December 2017
Statistics Reporting Period	Period for reporting MAP statistics that started on 1 January 2016 and ended on 31 December 2017
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 Invalid source specified.

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ISBN 978-92-64-75884-1 – 2019

OECD/G20 Base Erosion and Profit Shifting Project

Making Dispute Resolution More Effective – MAP Peer Review Report, Colombia (Stage 1)

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 1 peer review of the implementation of the Action 14 Minimum Standard by Colombia.

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ISBN 978-92-64-75884-1

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