



APA & MAP Country Guide 2019 – Colombia

CONNECTING THE DOTS OF INTERNATIONAL TAX CONTROVERSY



Colombia

APA Program

KEY FEATURES	
Competent authority	Colombian Tax Administration (DIAN) and the General Director of DIAN delegated by the Finance Minister (Tax authorities).
Relevant provisions	Article 260-10 of the Colombian Tax Code, modified by Article 112 Law 1819 of 2016; Decree 1625 of 2016; and Decisión 578 CAN.
Types of APAs available	Unilateral, bilateral, and multilateral APAs are available.
Acceptance criteria	Requests are more likely to be successful if: <ul style="list-style-type: none"> • transfer pricing issues are complex and uncertainty exists as to how the arm's length standard should be applied; and/or • there is a high probability of double taxation without an APA.
Key timing requests, deadlines	The Tax authorities must respond to the Taxpayer within nine months from the date of filing the APA application, and two years to put an agreement to the Taxpayer.
APA term limits	There is a five-year maximum term for an APA.
Filing fee	There is no filing fee.

Rollback availability	APAs may only cover the fiscal year in which they are requested and the immediately preceding year.
Collateral issues	No specific guidance.

PRE-FILING REQUIREMENTS

Overview	No specific guidance.
Anonymous pre-filing availability	No specific guidance.

APPLICATION REQUIREMENTS

Content of application	<p>The application should set out general information, including:</p> <ul style="list-style-type: none"> • the Taxpayer's name, business address, tax identification number and country of residency; • a description of the principal activities of the group, including the place(s) where the activities are carried out; • a description of the transaction(s) between the Taxpayer and related business; • financial and profit and loss statements, including the costs and expenses incurred by the Taxpayer or related parties that have a contractual or business relationship with the Taxpayer; • the currency used in the principal transactions between the Taxpayer and related parties; • the transaction(s) the Taxpayer seeks to cover in the proposed APA;
-------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<ul style="list-style-type: none"> • a detailed description of the functions and activities carried out by the Taxpayer and the Colombian or non-resident related parties that maintain a contractual or business relationship with the Taxpayer, including a description of the assets held and the risks borne by each of the parties; • the TP method proposed by the Taxpayer to determine the transfer price, including the criteria and other objective elements used to demonstrate that the method is appropriate for the covered transaction(s) for which the Taxpayer is requesting an APA (the Taxpayer must submit financial information corresponding to the fiscal years to be covered and apply the proposed TP method to its intercompany transactions); • information on comparable transactions or companies, indicating the reasonable adjustments made to eliminate differences; and • any other information or documentation necessary for as required by the Tax authorities.
Language	The documentation should be submitted in Spanish.
SME provisions	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS	
General	The Tax authorities follow a standard application and monitoring process. There are no unique procedural aspects.
Monitoring & compliance	<p>Either the Tax authority or the Taxpayer can modify the terms of the agreement:</p> <ul style="list-style-type: none"> • The Taxpayer must notify the Tax authorities whether a critical assumption has been realized and submit supporting documentation with a proposed course of action (e.g. revision of the APA) within two months and the Tax authorities may, within two months as from the notification date, in a reasoned ruling approve or reject the amendment. • If the Tax authorities determine that significant changes have arisen in the assumptions considered in the initial APA, it may notify the Taxpayer accordingly. The Taxpayer shall have one month as from the notification date to prepare a duly supported amendment or to explain and verify the reasons for considering that there have been no substantial changes justifying the amendment of the APA. If by the end of this period the Taxpayer has not submitted the relevant amendment or has not explained in writing and sufficiently verified the reasons for not doing so, the Tax authorities will cancel the APA by means of a duly reasoned ruling, leaving it ineffective as from the taxable year in which the change in circumstances occurred. • The Tax authorities may cancel a unilateral APA where the Taxpayer fails to comply with one or more of the provisions of the APA.
Renewal procedure	No specific guidance.

MAP Program

KEY FEATURES

Competent authority	No specific guidance.
Relevant provisions	There are no specific provisions for the MAP procedure in domestic law. Taxpayers must rely on the MAP provisions under DTTs.
Acceptance criteria	No specific guidance.
Key timing requests, deadlines	There are no prescribed time limits to request a MAP under domestic law. Taxpayers must refer to the relevant DTT for the applicable time limits in which to request a MAP.

APPLICATION REQUIREMENTS

Content of application	No specific guidance.
Language	No specific guidance.

OTHER PROCEDURAL CONSIDERATIONS

Interaction with domestic proceedings	No specific guidance.
Arbitration	No specific guidance.

STATISTICS

APA	Statistics have not been made publicly available.
MAP	Statistics have not been made publicly available.

Double Taxation Treaty Network

The following treaties include MAP provisions which are the basis for bilateral and multilateral APA negotiations:

Bolivia	Ecuador	Peru
Canada	India ^(IV)	Portugal
Chile	Korea (Republic of) ^(IV)	Spain
Czech Republic ^(IV)	Mexico ^(IV)	Switzerland

NOTES

- I denotes treaties with MAP arbitration provisions.
- II denotes treaties with the USSR that remain applicable until a separate tax treaty is concluded.
- III denotes treaties between the countries' representative office in Taipei and the Taipei Economic and Cultural Office in the relevant country.
- IV denotes treaties that became effective within the last five years.
- V denotes treaties that are awaiting ratification.
- VI denotes MAP provisions identical to para 3, art 25 of the OECD Model Convention with respect to Taxes on Income and on Capital.
- VII arbitration is to be conducted under the statutes of the ECJ.
- VIII arbitration is to be conducted under the statutes of the ICJ.

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com. This publication is intended as a general overview and discussion of the subjects dealt with, and does not create a lawyer-client relationship. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation. DLA Piper will accept no responsibility for any actions taken or not taken on the basis of this publication. This may qualify as "Lawyer Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.

Copyright © 2019 DLA Piper. All rights reserved. | APR19 | A00091