

Kazakhstan Dispute Resolution Profile

(Last updated: 20 March 2018)

General Information

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

<http://kgd.gov.kz/kk/section/nalogooblozhenie-nerezidentov>

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

The State Revenue Committee

Ministry of Finance

Z10H2B2, 11 Zhenis Avenue, Astana, Kazakhstan

Tel: +7 (7172) 71 78 91; +7 (7172) 71 77 52. Email: a.bagibaev@kgd.gov.kz; aid.nurpeisov@kgd.gov.kz

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

Specialized division

The State Revenue Committee

Ministry of Finance

Z10H2B2, 11 Zhenis Avenue, Astana, Kazakhstan

Tel: +7 (7172) 709907; +7 (7172) 709992. Email: sh.kudabaev@kgd.gov.kz; k.dospanov@kgd.gov.kz

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
A. Preventing Disputes				
1.	Are agreements reached by your competent authority to resolve difficulties or doubts arising as to the interpretation or application of your tax treaties in relation to issues of a general nature which concern, or which may concern, a category of taxpayers published?	Yes	Agreements of a general nature not relating to specific taxpayers are published on the website of the State Revenue Committee.	http://kgd.gov.kz/kk/section/nalogoblozhenie-neresidentov
2.	Are bilateral APA programmes implemented? If yes:	Yes	1) According to subparagraph 6) Clause 1 of Article 4 of the Law of the Republic of Kazakhstan dated July 5, 2008 N 67-IV “On Transfer Pricing”, the authorized bodies for the purpose of exercising control have the right to conclude an agreement on the transfer pricing application in the manner approved by the Government of the Republic of Kazakhstan; 2) According to sub-clause 7) of clause 1 of Article 5 of the Law of the Republic of Kazakhstan of July 5, 2008 N 67-IV “On Transfer Pricing”, participants in the transaction and participants in the international group have the right to conclude agreements on transfer pricing application with the authorized bodies.	http://kgd.gov.kz/ru/content/transfertnoe-cenoobrazovanie-1-1
a.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	No	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	Please see the detailed explanation	The time frame is set by the general provision of Article 48 of the Tax Code, which provides for a statute of limitations of 5 years. At the same time, in accordance with the Decree of the Government of the Republic of Kazakhstan of October 24, 2011 No. 1197 “On Approval of the Rules	http://kgd.gov.kz/ru/content/transfertnoe-cenoobrazovanie-1-1

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			for Concluding an Agreement on the Application of Transfer Pricing”, the Agreement concluded between the taxpayer and the Committee cannot exceed 3 years.	
c.	<ul style="list-style-type: none"> Are rules, guidelines and procedures on how taxpayers can access and use bilateral APAs, including the specific information and documentation that should be submitted in a taxpayer’s request for bilateral APA assistance, publicly available? 	Yes	Decree of the Government of the Republic of Kazakhstan of October 24, 2011 No. 1197 On Approval of the Rules for the Conclusion of an Agreement on the Application of Transfer Pricing	http://kgd.gov.kz/ru/content/transfertnoe-cenoobrazovanie-1-1
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	No	-	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	No	-	-
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to ensure that any assessments made by them are in accordance with the provisions of your tax treaties?	Yes	Employees responsible for transfer pricing issues periodically participate in seminars both in the Republic of Kazakhstan and abroad.	-
4.	Is other information available on preventing tax treaty-related disputes?	-	-	-

Notes:

1. An APA is an “arrangement that determines, in advance of controlled transactions, an appropriate set of criteria (e.g. method, comparables and appropriate adjustments thereto, critical assumptions as to future events) for the determination of the transfer pricing for those transactions over a fixed period of time”. (see definition of APA in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (“Transfer Pricing Guidelines”)).

2. Situations may arise in which the issues resolved through an APA are relevant with respect to previous filed tax years not included within the original scope of the APA. The concept of “roll-back” is further elaborated in paragraph 4.136 of Section F (Advance pricing arrangement) of Chapter IV of the Transfer Pricing Guidelines and in paragraph 69 of Section D.4.2 (Possible retrospective application (“Roll back”)) of the Annex to Chapter IV (Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure (“MAP APAs”)) of the Transfer Pricing Guidelines. Simply put, the “roll-back” of the APA is understood to mean that the outcome of the APA is applied to previous filed tax years not included within the original scope of the APA.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
B. Availability and Access to MAP				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	The legislation of the Republic of Kazakhstan does not provide for any restrictions on this issue. Consequently, the MAP procedure is carried out in all cases, subject to compliance with the necessary provisions of a specific agreement.	-
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	The legislation of the Republic of Kazakhstan does not provide for any restrictions on this issue. Consequently, the MAP procedure is carried out in all cases, subject to compliance with the necessary provisions of a specific agreement.	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	The legislation of the Republic of Kazakhstan does not provide for any restrictions on this issue. Consequently, the MAP procedure is carried out in all cases, subject to compliance with the necessary provisions of a specific agreement.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Please see the detailed explanation	The legislation of the Republic of Kazakhstan does not provide for provisions on the audit settlement.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	The legislation of the Republic of Kazakhstan does not provide for any restrictions on this issue. Consequently, the MAP procedure is carried out in all cases, subject to compliance with the necessary provisions of a specific agreement.	-
10.	Are there any other treaty related issues not covered under s/n 5 to 9 which are not within the scope of MAP?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
11.	Are taxpayers allowed to request MAP assistance in cases where the taxpayer has sought to resolve the issue under dispute via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	The taxpayer's appeal to the judicial and administrative bodies of legal protection suspends the process of conducting the MAP until a decision is made by a judicial or administrative body of legal protection.	-
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	Yes	A court decision that has entered into force is binding on the competent authority. In this connection, the conclusion of an agreement within the framework of the MAP, contrary to a court decision, is not allowed.	Clause 3 of Article 76 of the Constitution of the Republic of Kazakhstan. Article 1 of the Constitutional Law of the Republic of Kazakhstan "On the Judicial System and the Status of Judges of the Republic of Kazakhstan"
13.	Are rules, guidelines and procedures on how taxpayers can access and use MAP, including the specific information and documentation that should be submitted in a taxpayer's request for MAP assistance, publicly available?	No	The procedure for applying to the MAP is regulated by Article 221 of the Tax Code. In addition, the Order of the Chairman of the SRC MF RK dated 06.25.2015 No. 354 "On approval of methodological recommendations on the application of Conventions (Agreements) on avoidance of double taxation and prevention of tax evasion on income and capital (property) concluded between the Republic of Kazakhstan and foreign states". The methodological recommendations also list the procedure for submitting a MAP appeal.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk http://kgd.gov.kz/ru/section/nalogooblozhenie-neresidentov
14.	Are there specific timeline for the filing of a MAP request?	Yes	Article 48 of the Tax Code provides for a statute of limitations of 5 years. In addition, separate conventions for the avoidance of double taxation also provide for restrictive terms.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
15.	Are guidance on multilateral MAPs publicly available?	No	The legislation of the Republic of Kazakhstan does not provide for these provisions. Meanwhile, such provisions are being drafted by the competent authority.	-
16.	Are tax collection procedures suspended during the period a MAP case is pending?	No	-	-
17.	Are there any fees charged to taxpayers for a MAP request?	No	There are no fees of this kind.	-
18.	Is there any other information available on availability and access to MAP?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
C. Resolution of MAP Cases				
19.	Are there any model timeframes for the steps taken by your competent authority from the receipt of a MAP case to the resolution of the case provided to taxpayers?	No	Meanwhile, some terms for consideration of the taxpayer's application to the MAP are provided for in article 221 of the Tax Code.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	No	This kind of statistics is not publicly available.	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	Please see the detailed explanation.	In cases of fines or penalties, they are considered in the framework of the MAP. If, according to the results of the MAP, the assessment of the competent authority is withdrawn or reduced, then the corresponding fine or penalty is also withdrawn or reduced. This provision is based on general rules of the Tax Code.	-
22.	Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the <i>annual</i> report of the organisation?	No	-	-
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties? If not:	No	Some existing agreements contain arbitration clauses. For example, such provisions are contained in the Agreements with France and the United States.	Available at: http://kgd.gov.kz/ru/section/nalogoblozhenie-nerezidentov
a.	<ul style="list-style-type: none"> Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration 	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	in your tax treaties?			
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	Yes	-	-
24.	<p>Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?</p> <p>If yes:</p>	No	To date, this kind of explanation is missing.	-
a.	<ul style="list-style-type: none"> Does the guidance specifically address whether the competent authority considers that it is legally bound to follow a domestic court decision in the MAP or will not deviate from a domestic court decision as a matter of administrative policy or practice? 	-	-	-
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	The legislation of the Republic of Kazakhstan does not provide for any restrictions on this issue. Consequently, the MAP procedure is carried out in all cases, subject to compliance with the necessary provisions of a specific agreement.	-
26.	Do all your jurisdiction's tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is	Yes	Such provisions are contained in 39 of the existing double tax agreements of the Republic of Kazakhstan.	http://kgd.gov.kz/ru/section/nalogooblozhenie-nerezidentov

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction's tax treaties)?			
27.	Is there any other information available on resolution of MAP cases?	No	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
D. Implementation of MAP Agreements				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	Yes	Paragraph 12 of Article 221 of the Tax Code provides for a period of 7 working days for sending information to the taxpayer about the decision taken on the results of the MAP.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk
29.	Where the agreement reached by your competent authority through the MAP process leads to a refund of the tax due or paid by your taxpayer, are there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for a refund of the tax paid?	Yes	Paragraph 12 of Article 221 of the Tax Code provides for a period of 7 working days for sending information to the taxpayer about the decision taken on the results of the MAP. Therefore, in case of need to refund the tax paid, the decision on the refund should be provided within the above term.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	Paragraph 12 of Article 221 of the Tax Code provides for a period of 7 working days for sending information to the taxpayer about the decision taken on the results of the MAP. Therefore, in case of need to refund the tax paid, the decision on the refund should be provided within the above term.	http://kgd.gov.kz/ru/content/nalogovyy-kodeks-rk
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-