

## Kenya Dispute Resolution Profile

(Last updated: 15 February 2018)

### General Information

- **Kenya's tax treaties are available at:**

<http://www.treasury.go.ke/avoidance-of-double-taxation.html>

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

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 Kenya Revenue Authority  
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- **APA request should be made to:**

N/A

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
<b>A. Preventing Disputes</b>				
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	No	Where the agreements are of a general nature and affect a large number of taxpayers, the commissioner may publish them.	Public notices published in the dailies.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	concern, or which may concern, a category of taxpayers published?			
2.	Are bilateral APA programmes implemented? If yes:	No	The law allowing entering into APA arrangements is not in place.	-
a.	<ul style="list-style-type: none"> <li>Are roll-back of APAs provided for in the bilateral APA programmes?</li> </ul>	-	-	-
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	-	-	-
c.	<ul style="list-style-type: none"> <li>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?</li> </ul>	-	-	-
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	-	-	-
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	-	-	-
3.	Is training provided to your officials involved in the auditing /examination of taxpayers to	Yes	The Kenya Revenue Authority conducts periodic refresher courses for its officials on a wide range of issues.	-

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	ensure that any assessments made by them are in accordance with the provisions of your tax treaties?			
4.	Is other information available on preventing tax treaty-related disputes?	No	-	-

**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.

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<b>B. Availability and Access to MAP</b>				
5.	Are transfer pricing cases covered within the scope of MAP?	Yes	A taxpayer is at liberty to apply for MAP on any income tax matter.	-
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	A taxpayer is at liberty to apply for MAP on any income tax matter.	-
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	A taxpayer is at liberty to apply for MAP on any income tax matter.	-
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	Yes	A taxpayer is at liberty to apply for MAP on any income tax matter.	-
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	A taxpayer is at liberty to apply for MAP on any income tax matter.	-
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?	No	A taxpayer may not have two processes going on simultaneously.	-
12.	Are taxpayers allowed to request for MAP assistance in cases where the issue under dispute has already been decided via the judicial and administrative remedies provided by the domestic law of your jurisdiction?	No	A ruling made by a judicial body may only be reviewed by higher courts.	-
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 MAP procedures manual is in the process of being finalised in Kenya and once this is done, the rules, guidelines and procedures will be publicly available.	-
14.	Are there specific timeline for the filing of a MAP request?	Yes	These timelines are guided by the provisions of the treaty relied on to make a MAP request.	-
15.	Are guidance on multilateral MAPs publicly available?	No	These are not in place yet.	-
16.	Are tax collection procedures	Yes	Tax collection procedures are suspended during the resolution of MAP cases.	To be available on the KRA website and

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	suspended during the period a MAP case is pending?			public notices.
17.	Are there any fees charged to taxpayers for a MAP request?	No	Access to MAP is free for all taxpayers.	To be available on the KRA website and public notices.
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
<b>C. Resolution of MAP Cases</b>				
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	Kenya has so far only concluded one MAP cases so a model timeframe is yet to be created.	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	No	Only one MAP cases has been concluded so there isn't enough data to have statistics.	-
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	Yes	This will be determined on a case-by-case basis.	-
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	This will be available once the MAP process manual is ready.	To be available on the KRA website and public notices.
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?	No	Kenya has opted not to have arbitration in all the treaties in force.	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	If not:			
a.	<ul style="list-style-type: none"> <li>Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</li> </ul>	No	The decision not to have arbitration in treaties is purely a policy decision.	-
b.	<ul style="list-style-type: none"> <li>Does your treaty policy allow you to include MAP arbitration in your tax treaties?</li> </ul>	No	The policy expressly prohibits inclusion of MAP arbitration.	-
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	This will be available in the process manual.	To be available on the KRA website and public notices.
a.	<ul style="list-style-type: none"> <li>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?</li> </ul>	No	This guidance will be provided in the process manual.	To be available on the KRA website and public notices.
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with	Yes	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	respect to filed tax years?			
26.	Do all your jurisdiction’s tax treaties contain a provision which would oblige your jurisdiction to make corresponding adjustments or to grant access to the MAP with respect to the economic double taxation that may otherwise result from a primary transfer pricing adjustment (i.e. is paragraph 2 of Article 9 of the OECD Model Tax Convention or the UN Model Double Taxation Convention included in all of your jurisdiction’s tax treaties)?	No	A good majority have this provision and for those without, the Multilateral Instrument shall remedy this.	-
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
<b>D. Implementation of MAP Agreements</b>				
28.	Where the agreement reached by your competent authority through the MAP process leads to additional tax to be paid by your taxpayer, is there publicly available information on the timeframe the taxpayer could expect its tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?	No	This will be provided in the manual as well as through inclusion in the Tax Procedures Act.	-
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	This is dealt with as provided in the law for other refunds.	Available in statute.

**Jersey Dispute Resolution Profile – Resolution of MAP Cases**

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
30.	Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?	Yes	-	To be available on the website once the process manual is complete.
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-