New Zealand Dispute Resolution Profile

(Updated on 19 July 2019)

General Information

- **New Zealand tax treaties are available at:** [http://taxpolicy.ird.govt.nz/tax-treaties](http://taxpolicy.ird.govt.nz/tax-treaties)

- **MAP and bilateral/multilateral APA requests should be made to:**

  *Taxpayer specific cases (including transfer pricing)* –
  Mr John Nash - Manager (International Revenue Strategy)
  Inland Revenue Department
  55 Featherston Street
  PO Box 2198
  Wellington 6140
  New Zealand
  Tel 64 4 890 3290
  Fax 64 4890 4503
  john.nash@ird.govt.nz

  *Treaty interpretation and other treaty issues cases* –
  Ms Carmel Peters - Policy Manager
  Inland Revenue Department
  55 Featherston Street
  PO Box 2198
  Wellington 6140
  New Zealand
  Tel 64 4 890 6139
  Fax 64 4 978 1626
  carmel.peters@ird.govt.nz
New Zealand Guidance is available as follows:

### New Zealand Dispute Resolution Profile – Preventing Disputes

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<tr>
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<th>Response</th>
<th>Detailed explanation</th>
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<tbody>
<tr>
<td><strong>A. Preventing Disputes</strong></td>
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<tr>
<td>1.</td>
<td>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?</td>
<td>Yes</td>
<td>These are published on Inland Revenue’s tax policy website when completed with agreement from the treaty partner concerned (e.g. US/NZ mutual agreement on fiscally transparent entities of 8 February 2005, superseded by subsequent protocol).</td>
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<tr>
<td>a.</td>
<td>Are roll-back of APAs provided for in the bilateral APA programmes?</td>
<td>Yes</td>
<td>If the APA has been made pursuant to a treaty that contains a specific time limit override then there is no restriction on rolling back the agreed transfer pricing methodology.</td>
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<td>b.</td>
<td>No</td>
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<td>d.</td>
<td>No</td>
<td>If any overseas travel is involved in completing an APA, Inland Revenue will seek to recover “out of pocket” costs (transport, accommodation and meals) on an actual and reasonable basis.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html">http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html</a></td>
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<td>e.</td>
<td>Yes</td>
<td>The names of countries with whom bilateral APAs have been concluded are published.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html">http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html</a></td>
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<td>3.</td>
<td>Yes</td>
<td>Inland Revenue employs a number of subject matter experts, including technical specialists that focus solely on transfer pricing and international tax matters. These specialists provide advice and assistance to our auditors/examiners to ensure assessments are in accordance with OECD Transfer Pricing Guidelines and New Zealand’s double taxation agreements.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html">http://www.classic.ird.govt.nz/international/business/transfer-pricing/transfer-pricing/practice/transfer-pricing-practice-apas.html</a></td>
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<td>4.</td>
<td>Yes</td>
<td>A comprehensive series of Practice Notes on transfer pricing issues is published on the Inland Revenue website.</td>
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**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.
### New Zealand Dispute Resolution Profile – Availability and Access to MAP

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<td>8.</td>
<td>Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?</td>
<td>Yes</td>
<td>A request for MAP assistance can be made even if an audit settlement has been agreed domestically.</td>
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<td>11.</td>
<td>Yes</td>
<td>Taxpayers can request MAP assistance and seek to resolve the same matter under the domestic disputes’ process simultaneously.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>12</td>
<td>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?</td>
<td>Yes</td>
<td>The New Zealand competent authority is legally bound to follow a domestic court decision in MAP cases but is willing to enter into dialogue with other competent authorities to explain the New Zealand position in any case where double taxation may have arisen as a consequence.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>13</td>
<td>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?</td>
<td>Yes</td>
<td>Information required to facilitate a MAP request is set out in published MAP guidance at paragraph 18.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>14</td>
<td>Are there specific timeline for the filing of a MAP request?</td>
<td>Yes</td>
<td>New Zealand generally follows a three-year time limit but there are variations depending on the particular treaty.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>15</td>
<td>Are guidance on multilateral MAPs publicly available?</td>
<td>Yes</td>
<td>In an appropriate case, where the relevant double taxation agreements allow, the New Zealand competent authority will engage with other competent authorities to work the case multilaterally.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>16</td>
<td>Are tax collection procedures suspended during the period a MAP case is pending?</td>
<td>No</td>
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<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>18</td>
<td>Is there any other information available on availability and access to MAP?</td>
<td>Yes</td>
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<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>19.</td>
<td>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?</td>
<td>Yes</td>
<td>The overall aim is to complete MAP cases within 12 months of receiving a request for assistance.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>21.</td>
<td>Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?</td>
<td>No</td>
<td>Penalties and interest can be deferred if the assessment is challenged through either the domestic disputes process in the Tax Administration Act or the New Zealand Courts.</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>22.</td>
<td>Are the roles and responsibility of the MAP office publicly available, for example, is the mission statement of the MAP office available in the</td>
<td>Yes</td>
<td>-</td>
<td><a href="http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html">http://www.classic.ird.govt.nz/international/business/international-obligations/mutual-agreement-procedure/mutual-agreement-procedure-guidance.html</a></td>
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<td>a.</td>
<td>• Are there any legal limitations in your domestic law (for example in your constitution) to include MAP arbitration in your tax treaties?</td>
<td>N/A</td>
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<td>b.</td>
<td>• Does your treaty policy allow you to include MAP arbitration in your tax treaties?</td>
<td>N/A</td>
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### New Zealand Dispute Resolution Profile – Resolution of MAP Cases

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<td>judicial remedies publicly available? If yes:</td>
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<td>a.</td>
<td>● 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?</td>
<td>Yes</td>
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<td>26.</td>
<td>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)?</td>
<td>No</td>
<td>Article 9(2) is excluded in 12 of New Zealand’s older treaties agreed by 1988. New Zealand’s current policy is to include Article 9(2) as and when treaties are (re)negotiated.</td>
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## D. Implementation of MAP Agreements

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<td>28.</td>
<td>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?</td>
<td>Yes</td>
<td>Assessments for additional tax are processed as soon as possible and generally within one month of concluding a MAP case.</td>
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<tr>
<td>29.</td>
<td>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 the tax position to be amended to reflect the agreement reached by the competent authority and/or for the additional tax to be paid?</td>
<td>Yes</td>
<td>Tax refunds are processed as soon as possible and generally within one month of concluding a MAP case.</td>
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<td>30.</td>
<td>Are all mutual agreements reached through MAP implemented notwithstanding any time limits in your domestic law?</td>
<td>Yes</td>
<td>This applies to any mutual agreement made pursuant to a treaty that contains a specific time limit override.</td>
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