

Kenya Dispute Resolution Profile

(Last updated: 6 December 2024)

General Information

- **Kenya's tax treaties are available at:**
www.treasury.go.ke/agreements
- **MAP request should be made to:**
The Commissioner
Domestic Taxes Department
Authorised Competent Authority Representative
Kenya Revenue Authority
P.O. Box 48240-00100
Nairobi, Kenya
KenyaCompetentAuthority@kra.go.ke,
+254709012573/7985
- **APA request should be made to:**
N/A

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?	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 KRA Website.
2.	Are bilateral APA programmes implemented? If yes:	No	The law allowing entering into APA arrangements is not in place.	-
a.	• Are roll-back of APAs provided for in the bilateral APA programmes?	-	-	-
b.	• Are there specific timeline for the filing of an APA request?	-	-	-
c.	• 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?	-	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
d.	<ul style="list-style-type: none"> Are there any fees charged to taxpayers for a bilateral APA request? 	-	-	-
e.	<ul style="list-style-type: none"> Are statistics relating to bilateral APAs publicly available? 	-	-	-
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	The Kenya Revenue Authority conducts periodic refresher courses for its officials on a wide range of issues.	-
4.	Is other information available on preventing tax treaty-related disputes?	No	-	-

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	A taxpayer is at liberty to apply for MAP on any income tax matter.	Kenya's Guidance on MAP is found on the link below: https://www.kra.go.ke/images/publications/Guidance-on-Mutual-Agreement-Procedure.pdf Refer to section 2.1(d) of the MAP Guidance
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.	Refer to section 2.1 9(f) of the MAP Guidance
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.	Refer to section 2.2 of the MAP Guidance.
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. Kenya's audit settlements are provided for under the Alternative Dispute Resolution (ADR) framework. The ADR process can only be accessed once the relevant case has been filed before the Tax Appeals Tribunal or the High Court. The court or tribunal may then permit the tax administration and the taxpayer to endeavour to settle the tax dispute through voluntary and participatory discussion in the presence of an independent facilitator who has no power to	Refer to section 4.1 (viii) of the MAP Guidance.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
			impose any decisions regarding the outcome of the tax dispute. Where parties have reached an agreement within the given time limit, the court or the tribunal will adopt the settlement reached as its decision. Section 59 (3) and (4) of Kenya's Civil Procedure Act provides that the settlement reached is enforceable as a judgement of the court and, therefore, the Kenyan Competent Authority would be bound by this decision during the MAP process.	
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.	Refer to section 4.4 of the MAP Guidance-
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	-	-
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	MAP is available to taxpayers irrespective of the available domestic legal remedies. The usual procedures for objection under the Kenyan tax law will apply.	Refer to sections 2.2 (i) ,4.1 (i) & (vii) of the MAP Guidance.-
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	Yes	MAP is available in cases where the issue under dispute has already been decided via the judicial and administrative remedies. The Kenyan Competent Authority is bound by domestic judicial decision. Any MAP discussions taking place after the	Refer to sections 4.1 (iv), (v), (vi) & (viii) of the MAP Guidance.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	remedies provided by the domestic law of your jurisdiction?		judicial decision has been delivered will be conducted within the constraints of the decision.	
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?	Yes	Rules, guidelines and procedures on how taxpayers can access and use MAP are included within Kenya's MAP Guidance on the KRA website.	Refer to sections 2.3,2.4,2.5 & 2.6 of the MAP Guidance.
14.	Are there specific timeline for the filing of a MAP request?	Yes	The time limits for the filing of MAP request are provided in the relevant tax treaty.	Refer to sections 2.2(i) & 2.8 (iii) of the MAP Guidance.
15.	Are guidance on multilateral MAPs publicly available?	Yes	Where a MAP issue involves more than two jurisdictions, the Kenyan Competent Authority will consider entering into a series of bilateral MAPs.	Refer to section 4.6 of the MAP Guidance.
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	Tax collection may be suspended where the taxpayer has appealed against an assessment and has paid any undisputed amounts.	Refer to section 4.2 of the MAP Guidance.
17.	Are there any fees charged to taxpayers for a MAP request?	No	Access to MAP is free for all taxpayers.	-
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	Kenya has limited MAP experience hence a model timeline is yet to be established.	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Kenya submits annual MAP Statistics to the OECD for publication.	https://www.oecd.org/en/data/datasets/mutual-agreement-procedure-statistics.html
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?	Yes	The mandate of the Treaties and International Policy office is available on the KRA website	www.kra.go.ke/about-kra-footer/treaties-international-policy
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related	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
	disputes in any of your tax treaties? If not:			
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 in your tax treaties? 	No	The decision not to have arbitration in treaties is purely a policy decision.	-
b.	<ul style="list-style-type: none"> Does your treaty policy allow you to include MAP arbitration in your tax treaties? 	No	The policy expressly prohibits inclusion of MAP arbitration.	-
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available? If yes:	Yes	MAP is available to taxpayers irrespective of judicial remedies and the explanation of the relationship between MAP and domestic appeal processes is publicly available.	Refer to Section 4.1 of the MAP Guidance provides for the interaction between MAP and domestic appeal processes.
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? 	Yes	The Kenyan Competent Authority is legally bound by domestic court decisions and cannot deviate from a court's decision.	Refer to section 4.1(iv),(v),(vi)&(viii) of the MAP Guidance.

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	Yes	Taxpayers may submit MAP requests that span several years.	Refer to section 4.5 of the MAP Guidance.
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.	www.treasury.go.ke/agreements/
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	The MAP Guidance provides that reassessment will be done not later than 6 months of the taxpayer presenting the MAP agreement to the relevant tax authority with a view to reflect the MAP agreement.	Refer to section 3.3 (iii)(b)&(c) of the MAP Guidance.
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	Where the implementation of the MAP agreement involves a refund of the tax paid by the taxpayer, the Authority will ensure that the refund or offset is implemented within 6 months.	Refer to section 3.3(iii)(d) of the MAP Guidance.

Kenya Dispute Resolution Profile – Resolution of MAP Cases

11

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?	No	Not all the treaties in force have a provision on the implementation of MAP agreements despite domestic time limits. This hopes to be cured by the MLI.	www.treasury.go.ke/agreements/
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-