

Kenya Dispute Resolution Profile

(Last updated: 13 June 2022)

General Information

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

<https://www.treasury.go.ke/agreements/>

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

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Authorised Competent Authority Representative
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
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.	<ul style="list-style-type: none"> Are roll-back of APAs provided for in the bilateral APA programmes? 	-	-	-
b.	<ul style="list-style-type: none"> Are there specific timeline for the filing of an APA request? 	-	-	-
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? 	-	-	-
d.	<ul style="list-style-type: none"> Are there any fees charged to 	-	-	-

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	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	-	-

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	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	There is no restriction on access to MAP.	-
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 Guidelines will be uploaded on the KRA Website once approved.	To be available on the KRA Website
14.	Are there specific timeline for the filing of a MAP request?	Yes	The MAP Guidelines will be uploaded on the KRA Website once approved.	To be available on the KRA Webiste
15.	Are guidance on multilateral MAPs publicly available?	No	These are not in place yet.	-
16.	Are tax collection procedures	Yes	This is determined on a case by case basis.	To be available on the KRA website.

Jersey Dispute Resolution Profile – Availability and Access to MAP

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	suspended during the period a MAP case is pending?			
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
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	www.oecd.org/tax/dispute/
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.	To be available on the KRA website
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 Polciy 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 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"> 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.	<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	<p>The MAP Guidelines will be uploaded on the KRA website once approved</p>	To be available on the KRA website.
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	Yes	There are no restrictions against multi-year resolutions	MAP Guidelines to be available on the KRA website

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.	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?	No	The MAP Guidelines will be uploaded on the KRA website once approved	To be available on the KRA website
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?	No	The MAP Guidelines will be uploaded on the KRA website once approved.	To be available on the KRA website

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?	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	-	-