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## GUIDANCE ON MUTUAL AGREEMENT PROCEDURE

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## **Disclaimer**

This Guidance on Mutual Agreement Procedure (MAP) is for the purpose of setting out the MAP process through which taxpayers can request assistance from the Kenyan Competent Authority to resolve disputes arising from taxation that they consider is not in accordance with the provisions of the relevant Double Taxation Agreement (DTA) between Kenya and another country. The contents of this Guidance may not be reproduced in any form, in whole or in part, without the express written permission of the Authority.

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- a) The Commissioner's approval, and
- b) The document is ISO certified.

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## **Foreword**

This document is issued to provide guidance to taxpayers on the process through which they request for assistance from the Kenya Revenue Authority to resolve disputes arising from taxation that they consider to be contrary to the provisions of Kenya's Double Taxation Agreements (DTAs).

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## Glossary of terms

In this Guidance, unless the context indicates otherwise;

1. **“ADR”** means Alternative Dispute Resolution.
2. **“Article”** means an Article in the Double Taxation Agreement.
3. **“BEPS”** means Base Erosion and Profit Shifting.
4. **“Contracting State”** means a country that is a party to a Double Taxation Agreement that is in force.
5. **“DTA”** or **“tax treaty”** means a Double Taxation Agreement.
6. **“Kenyan Competent Authority”** means the Cabinet Secretary responsible for finance or his authorised representative.
7. **“KRA”** means the Kenya Revenue Authority.
8. **“MAP”** means Mutual Agreement Procedure.
9. **“OECD”** means the Organisation for Economic Co-operation and Development.
10. **“TPA”** means the Tax Procedures Act Cap 469B.
11. **“the Act”** means the Income Tax Act, Cap 470.
12. **“UN”** means the United Nations.
13. Any other word or expression will bear the meaning ascribed to it in a DTA or the domestic law.



## **1. Introduction**

Kenya's Double Taxation Agreements (DTAs) contain an Article on Mutual Agreement Procedure (MAP), typically Article 25, which allows two Contracting States to interact with each other with the intent of resolving international tax disputes. These disputes arise from situations where a taxpayer is of the view that they have been subjected to taxation contrary to the provisions of the DTA or from inconsistencies in the interpretation and application of the DTA. The Article also allows for consultation on the elimination of double taxation in cases not provided for in the DTA.

The purpose of this Guidance is to set out the MAP process through which taxpayers can request assistance from the Kenyan Competent Authority to resolve disputes arising from taxation that they consider not to be in accordance with the provisions of the relevant DTA. Kenya's DTAs define the Competent Authority (CA) as the Cabinet Secretary in charge of finance or his authorised representative.

## **2. Processes**

### **2.1 What is a MAP?**

A MAP is a process between the CAs of the Contracting States pursuant to the provisions of the DTA in force between them. The MAP Article in DTAs provides a remedy for a taxpayer that considers that the actions of one or both of the Contracting States results or will result in taxation not in accordance with the provisions of the DTA. This remedy is available irrespective of the remedies provided under the domestic law of the jurisdictions.

The taxpayer may present its case in the first instance to the CA of the jurisdiction of residence. The taxpayer is not a party to this process but participates informally by providing all required information and responding to the questions of the CA.

The MAP Article allows the CAs from the governments of the Contracting States to interact with the intent of resolving international tax disputes, which are considered not to be in accordance with the relevant DTAs. The CAs are obliged to use their best endeavours to reach an agreement with the view of avoiding taxation which is not in accordance with the DTA.

Double taxation or taxation not in accordance with the DTAs may arise in some of the following circumstances:

#### **a) Dual residence (Article 4)**

This occurs where a taxpayer is considered to be a resident of the two Contracting States under each jurisdiction's domestic law and each jurisdiction claims that the taxpayer is a resident of its jurisdiction for purposes of the DTA. This could lead to the taxpayer being liable to tax in both countries on the same income.





b) Application of the withholding tax rates

Cases can arise where withholding tax is levied beyond what is allowed in a DTA by one Contracting State on a payment to a resident of the other Contracting State.

c) Existence of a permanent establishment (Article 5)

A taxpayer may be subjected to tax as a resident of one jurisdiction on income from carrying on a business in the other jurisdiction despite not having a permanent establishment in that other jurisdiction.

d) Transfer Pricing adjustments (Article 9)

A taxpayer may be subjected to additional tax in one jurisdiction because of a transfer pricing adjustment to the price of goods or services transferred to or from a related party in the other jurisdiction.

e) Attribution Cases (Article 7)

These cases involve adjustments of profits attributable to the permanent establishment situated in one jurisdiction of an enterprise situated in the other jurisdiction.

f) Anti-Abuse Cases

This may occur where the taxpayer and the tax authority that has made an adjustment do not agree as to whether the conditions for the application of an anti-abuse provision of a DTA have been met or whether the application of a domestic law anti-abuse provision is in conflict with the provision of a DTA.

g) Interpretation and application of the DTA

A taxpayer can also contact the CA for clarification on the interpretation and application of a DTA.

## 2.2 Legal basis for a MAP Request

Kenya's DTAs contain an Article on MAP, typically under Article 25. In summary the MAP Article consists of the following paragraphs:

- i. Paragraph 1 – This paragraph gives taxpayers the right to file a MAP request where taxation not in accordance with the provisions of the DTA has occurred or may occur because of the actions of one or both of the contracting states. This right is available to the taxpayer irrespective of the available domestic legal remedies. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the DTA.
- ii. Paragraph 2 – A MAP request that has been accepted by one jurisdiction will only move to the second bilateral stage if it meets two requirements, namely, that the taxpayer's objection appears to be justified, and that the CA is not able to arrive at a satisfactory unilateral solution. This paragraph also allows for MAP agreements to be implemented notwithstanding any time limits in the domestic law of the Contracting States.



- iii. Paragraph 3 – This paragraph creates an obligation on the Contracting States to endeavour to resolve any difficulties or doubts arising as to the interpretation or application of the DTA by means of mutual agreement. They may also consult with each other for the elimination of double taxation in cases not provided for in the DTA.
- iv. Paragraph 4 – This paragraph determines how the CAs may consult with each other for the resolution of the case by mutual agreement, either in the case of a request or of general problems relating to the interpretation or application of the DTA. It authorises CAs to communicate with each other directly without going through diplomatic channels.

The MAP Article in a DTA does not compel CAs to reach an agreement or to resolve a tax dispute. CAs are obliged only to use their best endeavours to reach an agreement. In seeking mutual agreement, the CAs must first determine their position in light of the rules of their respective taxation laws and the provisions of the DTA.

It is important to note that Kenya does not adopt any mandatory binding arbitration provisions in its DTAs.

MAP is available to the taxpayer in addition to the normal legal remedies under the domestic law. Mutual agreements resolving general difficulties of interpretation or application are binding on tax administrations as long as the CAs agree not to modify or rescind the mutual agreement. If a domestic court has reached a decision in the case at issue, the Kenya CA is bound by the decision of the court.

### **2.3 Filing a MAP request**

A Kenyan resident taxpayer can request for a MAP through the Kenyan CA if they establish that an action of one or both of the Contracting States of Kenya's DTAs will result in taxation which is not in accordance with a tax treaty in force between the two jurisdictions.

- i. The taxpayer shall submit all information as required in section 2.5 below to the Kenyan CA. The Kenyan CA will make a preliminary validation of the taxpayer's request in order to determine whether it qualifies for admission to MAP based on prescribed criteria and whether it is justified.
- ii. Where additional information is required, the Kenyan CA will write to the taxpayer to provide the additional information within 14 days. If no response is provided within 14 days, a further period of 7 days will be given to the taxpayer before the case is then considered closed.
- iii. The Kenyan CA will notify the taxpayer if the MAP request is qualified or not for admission to MAP, stating clearly the reasons for such decisions. The taxpayer will be informed that they may also pursue domestic remedies to resolve the case. The Kenyan CA will also notify the treaty partner of the MAP request.





- iv. On receipt of all information required by the taxpayer, the Kenyan CA shall assess the MAP request to determine whether the action complained of is due wholly or in part to a measure taken in Kenya and whether it can be resolved domestically without moving beyond the unilateral stage.
- v. If the Kenyan CA determines that it cannot resolve the case unilaterally, it will set in motion a bilateral stage of MAP and submit a case to the CA of the other treaty partner.
- vi. The two CAs will consult each other and share positions on the issue in an endeavour to arrive at an agreement on how the treaty should be applied or interpreted.
- vii. If the two CAs reach an agreement, the Kenyan CA will notify the taxpayer of the outcome of the MAP request. Implementation of the resulting mutual agreement will then follow. The taxpayer has a right to reject the agreement presented.
- viii. If the CAs do not reach an agreement in terms of the interpretation or application of the treaty, the MAP request will be terminated and the taxpayer will be notified of the MAP outcome. The taxpayer will be informed of their right to pursue other domestic legal remedies.
- ix. A taxpayer may also file a **protective MAP request**. This is a MAP request submitted by the taxpayer in order to ensure that the request is made within the time frame permitted under the relevant tax treaty. However, in such cases, the taxpayer indicates to the CA or agrees with the CA that the request should not be examined until further notification is received from the taxpayer to do so. Once such notification is received by the CA, the MAP request shall be regarded as received by a CA in line with Guidance 2.7 below.

## 2.4 Circumstances in which a MAP request may be accepted or denied

- i. A MAP request will be accepted or denied based on the taxpayer's submission. Taxpayers are required to avail documentation as listed under section 2.5 herein and any other information that is deemed to be relevant to the Kenyan CA.
- ii. A taxpayer can access MAP where they consider that the actions in one or both Contracting States result, or will result, in taxation that is contrary to the tax treaty. It is not a requirement that the action has resulted or will result in double taxation, but the request must establish that the action presents a risk, which is possible or probable. The request must be reasonable and based on facts. In the case of transfer pricing adjustments, the request will be deferred until the Kenyan CA has established that the case has resulted or may result in double taxation.
- iii. MAP will not be available to the taxpayer if the request is presented outside the timeline provided in the relevant DTA. The timeline for submitting a MAP request is counted from the date of the legal notification of the tax assessment or action of the tax authority. Where a time limit is not specified in the relevant DTA, the Kenya CAs will follow the time limit specified under Article 25 of the United Nations Model





Tax Convention, that is, within three years of the first notification of an action which results in taxation considered not in accordance with the DTA.

- iv. If the CA in Kenya comes to a conclusion that the objection raised by the taxpayer is not justified, access to MAP will be denied. However, before making a decision to deny access to MAP in such situations, the Kenyan CA will discuss their findings with the taxpayer and the CA of the treaty partner. Such discussions shall not be interpreted as discussions on how to resolve the case but rather admissibility of a MAP request.

## **2.5 Contents of a MAP Request**

The taxpayer is not a party to the MAP process but is invited to participate informally by providing all required documentation or additional information. The taxpayer can request for termination of a MAP case at any time. A taxpayer must provide all of the following applicable information:

- i. Taxpayer details:
  - a. Full names of the individual or company name.
  - b. Identification number or company registration number.
  - c. Physical address.
  - d. Contact details.
  - e. Personal Identification Number (PIN) of the Kenyan resident person.
  - f. Relationship between the taxpayers covered in the MAP request (where applicable).
  - g. Company organisation structure showing the tax residency or registration of each entity (if applicable).
  - h. If a representative is acting on behalf of a taxpayer, a signed statement from a taxpayer that the representative is authorised to act for the taxpayer.
- ii. The basis for the request:
  - a. Specific tax treaty applicable to the case.
  - b. Applicable Article(s) in the treaty which the taxpayer considers is not being correctly applied.
  - c. Confirmation that the request is submitted within the specified time limit under the MAP Article or domestic time limits for filing objections.
- iii. Facts of the case:
  - a. All the facts of the case.
  - b. Documentation to support these facts including correspondence, agreements, contracts, tax certificates, receipts etc.
  - c. Taxation years involved.
  - d. Amounts involved (in both the local currency and foreign currency).
- iv. Analysis of the issue(s) requested to be resolved via MAP:



- a. Analysis of the issue(s) involved, including the taxpayer's interpretation of the application of the specific treaty provision(s) or transfer pricing guidelines, to support its basis for the MAP request.
- b. Supporting documents for analysis, for example, documentation required under transfer pricing legislation or published guidance, copies of tax assessments, relevant correspondence etc.
- c. An identification of the domestic and DTA time limits in the relevant jurisdictions in respect of the years for which relief is sought.
- d. Any other facts that the taxpayer may consider relevant.
- v. A statement indicating whether the taxpayer has submitted the request to another authority, for example, tax tribunal or court. If so, the taxpayer should provide a copy of the relevant applications, rulings or decisions.
- vi. Where a taxpayer has initiated other legal domestic remedies at the tribunal or court, the MAP request must include information on whether the taxpayer wants these processes carried out before starting the MAP. In this case, the taxpayer may submit a protective MAP request.
- vii. A statement confirming that all information and documentation provided in the MAP request is accurate and that the taxpayer will assist the CA in its endeavours to resolve the MAP request by furnishing any other information or documentation required by the CA in a timely manner.
- viii. In addition to the information mentioned above, in cases relating to pricing of transactions between associated enterprises and cases regarding the attribution of profits to a permanent establishment, the taxpayer must also provide the following information:
  - a. Details regarding the adjustment (or proposed adjustment) in addition to the facts provided above.
  - b. Calculations setting out the adjustment or proposed adjustment translated in both currencies.
  - c. State how effect was given to the adjustment in practice including an explanation of the accounting treatment.
  - d. State clearly whether any portion of the adjustment relates to secondary adjustments.
  - e. State clearly whether any portion of the adjustment relates to interest on unpaid taxes or statutory penalties.
  - f. State whether any previous or subsequent years are to be audited where there is a prospect of similar issues arising.
  - g. An indication of any specific issues raised by the foreign CA. Set out those elements of the transfer pricing policy that the other jurisdiction did not agree with and why and how the associated enterprise sought to rebut the other jurisdiction's findings, including copies of all relevant correspondence.
  - h. Statements indicating whether the taxpayer has:
    - (i) Filed a refund claim; or





- (ii) Entered into a settlement agreement in either of the jurisdictions related to the relief sought.
- i. Supporting documents in addition to the documents listed above should include the following:
  - (i) Copies of the relevant related party agreements.
  - (ii) Copies of the Kenyan and foreign-related parties' transfer pricing policies or documentation and benchmarking studies whether at a group level or at a company level.
  - (iii) Copies of the financial statements of both related parties.
  - (iv) Copies of the tax return disclosure of the Kenyan taxpayer involved.
- j. Any other information that the Kenyan CAs may require.

## 2.6 How to Submit a MAP Request

- i. A taxpayer shall submit a MAP request to the CA where they are resident. Residence shall be determined in accordance with the Residence Article of the relevant DTA as well as the domestic law's definition of a resident.
- ii. All formal requests for MAP should be made in writing and addressed to:  
**The Commissioner,  
Domestic Taxes Department,  
Kenya Revenue Authority,  
Times Tower, 19th Floor,  
P.O. Box 48240 - 00100,  
Nairobi.**

## 2.7 Receipt and review of the MAP Request

- i. Upon receiving a request for MAP, the Kenyan CA will evaluate the request.
- ii. Where there are gaps in the request, the Kenyan CA may request the taxpayer to take remedial action. In the case where additional information is to be provided by the taxpayer, the process in 2.3 (ii) will apply.
- iii. Where the Kenyan CA is of the opinion that the deficiency in the request has not or cannot be remedied or where the taxpayer has failed, neglected or refused to remedy such deficiencies, the CA may decline the request and notify the taxpayer in writing with explanations.
- iv. In any case, the CA of the treaty partner will be notified before any case is closed.



## **2.8 Acceptance of a MAP Request**

The Kenyan CA will accept the MAP case only if:

- i. The issue or transaction relates to a jurisdiction with which Kenya has a Tax Treaty in force;
- ii. It is evident that the actions of one or both countries have resulted or will result in taxation not in accordance with the tax treaty;
- iii. The taxpayer notifies the Kenyan CA within the acceptable time limit provided in the relevant tax treaty.

## **2.9 Notification of request to the Competent Authority of the treaty partner**

- i. Where the Kenyan CA receives a MAP request and considers that the objection is not justified, a notification will be sent to the CA of the relevant treaty partner giving an explanation for that finding and asking for the treaty partner's views on the case.
- ii. Where the Kenyan CA finds the case to be justified but is unable to resolve the issue unilaterally, a notification will be sent to the CA of the relevant treaty partner giving details of the case and inviting them for bilateral consultations.

## **2.10 Commencement of bilateral consultations**

Where the Kenyan CAs has accepted the case for MAP, the taxpayer shall be notified of the commencement of MAP discussions.

## **2.11 Notifying the Taxpayer**

The Kenyan CA will notify the taxpayer in writing in the following circumstances:

- i. To confirm receipt of the MAP request and to request for additional information, if required.
- ii. If the MAP request was rejected, provide the basis for the decision.
- iii. Upon request or when necessary, update the taxpayer on the status of the MAP to the extent that the update does not jeopardise the MAP process.
- iv. Upon conclusion of the case, to inform the taxpayer of the outcome and any subsequent processes.





## **2.12 Confirmation by taxpayer before agreement**

- i. Where it is recognised that an agreement will be reached with the CA of the treaty partner, the Kenyan CA shall inform the taxpayer of the contents of the proposed agreement in writing within 30 days of the proposed agreement.
- ii. The communication to the taxpayer shall contain a request that the taxpayer includes a statement in writing confirming the acceptance of the proposed agreement and a commitment not to initiate any further domestic remedy in respect of the case. Where the taxpayer had already initiated other domestic remedies, the taxpayer will be asked to withdraw any such applications before accepting the proposed agreement between the CAs.
- iii. The taxpayer shall confirm acceptance of the agreement in writing no later than 30 days after the receipt of the communication, and shall include a confirmation that no further domestic remedy would be pursued in respect of the case and/or attach evidence of withdrawal of the dispute from other domestic remedies sought.
- iv. The Kenyan CA shall reach an agreement with the CA of the treaty partner after confirmation of the taxpayer's acceptance of the proposed agreement.
- v. Each MAP request will be considered and determined based on existing laws, the merits of the facts and circumstances at the time of consideration. As such, a MAP agreement will not create precedent for either the taxpayer or the relevant tax authority in Kenya concerning re-assessments relating to subsequent years or for MAP negotiations on similar issues. Re-assessment of subsequent periods shall be based on the particular law, circumstances, facts and documentary evidence existing for those years.
- vi. Where the request involves multiple years or multiple issues, the taxpayer cannot accept the terms of an agreement for only a part of the issues or assessment years involved, since the original request by the taxpayer would have asked for assistance in respect of all issues and assessment years involved and the CAs would have considered all the issues and years together in the negotiations.
- vii. Where the taxpayer is not satisfied with the agreement negotiated by the CAs, the taxpayer may reject it in writing. Where this occurs, the Kenyan CA shall notify the counterpart CA accordingly. The case shall be considered closed, and this shall be conveyed in writing to the taxpayer.

## **2.13 Notification of an agreement**

- i. Where an agreement has been reached in a MAP, the Kenyan CA shall notify the taxpayer in writing of the date and contents of the said agreement within 30 days. Likewise, where the CAs are unable to reach an agreement (agree to disagree) under MAP, the Kenyan CA shall also notify the taxpayer accordingly within 30 days.





- ii. The Kenyan CA and the relevant department of KRA shall take all necessary steps to put into effect the results as required by the agreement, in accordance with the applicable tax treaty.

### 3. Termination of MAP

The Kenyan CA reserves the right to propose to the counterpart CA that the MAP process be terminated where:

- i. the subject for the MAP is not within the scope of MAP under the applicable tax treaty;
- ii. the application for MAP or the attachments contain incorrect information;
- iii. the taxpayer failed to provide all information necessary for MAP;
- iv. retrieval of documents necessary for MAP is not possible due to lapse of time;
- v. the taxpayer has written to withdraw the MAP request or indicated that it would not accept any agreement reached by the CAs;
- vi. it is recognised by either CA that the MAP process would not result in an agreement; and
- vii. any other reason exists that is sufficient for the Kenyan CA to terminate the MAP process.

Where the CA of the treaty partner accepts a proposal to terminate the MAP, the Kenyan CA shall notify the taxpayer in writing within 30 days that the MAP has been terminated.

#### 3.1 Outcome of a MAP request

There are a number of potential outcomes of a MAP request which include the following:

- i. Case denied MAP access.
- ii. Objection is not justified.
- iii. Case withdrawn by taxpayer.
- iv. Case closed with unilateral relief granted.
- v. Case resolved via domestic remedy.
- vi. Agreement fully eliminating double taxation/fully resolving taxation considered not in accordance with tax treaty.
- vii. Agreement partially eliminating double taxation/partially resolving taxation considered not in accordance with the tax treaty.
- viii. Agreement that there is no taxation not in accordance with the tax treaty.
- ix. No agreement including agreement to disagree.

#### 3.2 Withdrawal of a MAP request

A taxpayer may withdraw his request for MAP at any time before an agreement has been reached. Withdrawal of a request for MAP shall be made in writing to the Kenyan CA. After receiving the written confirmation for a withdrawal, the Kenyan CA shall notify the

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counterpart CA within 60 days of the withdrawal and the MAP process shall be terminated accordingly.

### **3.3 Implementation of a MAP decision**

- i. Once a mutual agreement has been reached between the Kenyan CA and the other CA, the Kenyan CA will notify the taxpayer in writing of the outcome within 30 days of the agreement being reached.
- ii. The taxpayer will be requested to confirm in writing whether they accept or reject the mutual agreement within 30 days of receipt of the letter from Kenyan CA.
- iii. Where the taxpayer confirms in writing its acceptance of the agreement, the Kenyan CA shall effect the agreement without delay. The agreement will be implemented as follows:
  - a. Where the agreement has resulted in the reduction of the amount of income taxable or tax payable by the taxpayer in Kenya, whether or not the MAP originated from Kenya, the applicant shall present the MAP agreement to the relevant tax authority for re-assessment.
  - b. Where the agreement requires an amendment of the taxpayer's filed tax returns to reflect the decision reached, the taxpayer must file amended returns to the relevant tax authority.
  - c. Upon presentation of the MAP agreement, pursuant to clause (a) above, or the amended returns in clause (b), the relevant tax authority, shall not later than 6 months thereafter, reassess the taxpayer, with a view to reflecting or giving effect to the MAP agreement.
  - d. Where the implementation of the MAP agreement involves the refund of the whole or part of the tax already paid by the taxpayer, the relevant tax authority will ensure that the refund or offset procedure is implemented.

### **3.4 Time Limit for Implementation of MAP Agreement**

Section 31(4) of the Tax Procedures Act provides that the Commissioner may amend an assessment within five years of the assessment.

- i. Where the tax treaty specifies that the agreement shall be implemented notwithstanding the time limits in the domestic law, the tax authority shall implement the MAP decision irrespective of the time limit specified in the domestic law.
- ii. Where the tax treaty does not contain the provision that allows a MAP agreement to be implemented notwithstanding the time limits in the domestic law, the taxpayer must present the MAP agreement to the tax authority where he is resident for assessment of the case.





## 4. Other Relevant Guidance

### 4.1 Interaction between MAP and domestic appeal processes

- i. A person can pursue the MAP and domestic legal remedies simultaneously. The usual procedures for objection under the Kenyan tax laws shall apply.
- ii. When a taxpayer has initiated other legal domestic remedies at the Courts, Tax Appeal Tribunal or Independent Review Objections, the taxpayer shall inform the Kenyan CA of such proceedings indicating whether there is already any court or administrative decision concerning issues covered by the MAP request.
- iii. Depending on the circumstances, the CA may suspend the MAP until a decision has been reached on the objection in the domestic remedy process or settlement procedure. This is as guided by the commentaries to Article 25 of the United Nations Model Double Taxation Convention which reads as follows (*under paragraph 12(42)*):

*‘Also, a view that competent authorities might reasonably take is that where the taxpayer’s suit is ongoing as to the particular issue upon which mutual agreement is sought by that same taxpayer, discussions of any depth at the competent authority level should await a court decision.’*

- iv. A MAP agreement cannot override a judicial decision made by the Tax Appeals Tribunal or the domestic Courts. The Kenyan CA is bound by domestic judicial decisions based on the doctrine of judicial precedent which provides that subordinate courts are bound by the decisions of the superior courts.
- v. Where a decision concerning any issue covered by a MAP request becomes final before the conclusion of the MAP, the Kenyan CA shall inform the CA of the other state about such a decision and that it is bound by it.
- vi. Any MAP discussions taking place after a judicial decision has been delivered would thus have to be conducted within the constraints of the decision.
- vii. The Kenyan CA can suspend the MAP pending the hearing of the case at the Tribunal or domestic Courts in order to avoid reaching an agreement that would conflict with the binding judicial decision.
- viii. Where a taxpayer pursues a case through an administrative panel as provided under Section 55 of the Tax Procedures Act (Alternative Dispute Resolution) and Section 51 of the Tax Procedures Act (Independent Review of Objection), the taxpayer will not be denied access to MAP. However, the MAP discussions will be conducted within the constraints of the settlement.
- ix. Where a taxpayer first pursues a MAP and an agreement is reached between the CAs, the taxpayer and other parties affected can reject the agreement and pursue domestic remedies.



#### **4.2 Relief from collections**

Tax collection may be suspended where the taxpayer has appealed against the assessment and has paid any undisputed amounts.

#### **4.3 Audit settlements**

Audit settlement agreements between tax authorities and taxpayers do not preclude access to MAP. However, the MAP discussions will be conducted within the constraints of the settlement.

#### **4.4 Taxpayer-initiated foreign adjustments**

Access to MAP will be available for issues arising from bona fide taxpayer-initiated foreign adjustments.

#### **4.5 Multiple years**

Taxpayers may submit MAP requests that span multiple years, subject to the time limit in the relevant DTA.

#### **4.6 Multilateral MAP**

Where a MAP issue involves more than two jurisdictions, the Kenyan CA will consider entering into a series of bilateral MAPs.

### **5. Kenya's MAP Profile and Competent Authority Details**

- i. Information regarding MAP and the contact details of the authorised persons dealing with MAP can be found on the KRA website through the following link:

<https://www.kra.go.ke/about-kra-footer/treaties-international-policy>

- ii. Kenya's MAP profile, including details of the Authorised CA Representative and other specific information regarding the MAP process, can be found on the OECD website through the following link:

<https://www.oecd.org/tax/dispute/kenya-dispute-resolution-profile.pdf>

- iii. For further enquiries or clarifications on MAP, taxpayers can direct the queries to the following email:

[KenyaCompetentAuthority@kra.go.ke](mailto:KenyaCompetentAuthority@kra.go.ke)