

**Korea Dispute Resolution Profile**  
**(Last updated: 25 September 2019)**

**General Information**

- **Korea tax treaties are available at:**

[www.nts.go.kr/eng](http://www.nts.go.kr/eng): Please see *Resources-Tax Law/Treaty*

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

Anyone in Mutual Agreement Procedure Division of International Taxation Bureau

[Email] [ntsmap@korea.kr](mailto:ntsmap@korea.kr)

[Telephone] +82-44-204-2965, +82-44-204-2819

[Fax] +82-44-216-6069 (Mutual Agreement Procedure Division)

[Address] 8-14, Guksecheong-ro, Sejong City, Republic of Korea

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

*Same as above*

## Korea Dispute Resolution Profile – Preventing Disputes

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 concern, or which may concern, a category of taxpayers published?	See detailed information	Though no competent authority meetings as to the mentioned case have been held for the last 10 years, the Minister of Strategy and Finance may, if necessary, publicly notify the contents of relevant agreements to the public.	Paragraph 2 of the Article 27 of the Adjustment of International Taxes Act (“AITA”)
2.	Are bilateral APA programmes implemented? If yes:	Yes	-	Paragraph 2 of the Article 6 of AITA and Section IV of the APA Annual Report. The APA Annual Report is published on a yearly basis and can be downloaded on NTS website: ( <a href="http://www.nts.go.kr/eng">www.nts.go.kr/eng</a> See <i>Resources-Publication</i> )
a.	• Are roll-back of APAs provided for in the bilateral APA programmes?	Yes	<ul style="list-style-type: none"> <li>- BAPA : up to 5 years</li> <li>- Uni-APA : up to 3 years</li> </ul>	Paragraph 3 of the Article 6 of AITA and, Section IV of the APA Annual Report

### Korea Dispute Resolution Profile – Preventing Disputes

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
b.	<ul style="list-style-type: none"> <li>Are there specific timeline for the filing of an APA request?</li> </ul>	Yes	No later than the end of the first taxable year	Paragraph 1 of the Article 6 of AITA
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>	Yes	-	Article 9 and 11 of the Enforcement Decree of AITA and, Section IV of the APA Annual Report
d.	<ul style="list-style-type: none"> <li>Are there any fees charged to taxpayers for a bilateral APA request?</li> </ul>	No	-	Article 9 of the Enforcement Decree of AITA and, Section IV of the APA Annual Report
e.	<ul style="list-style-type: none"> <li>Are statistics relating to bilateral APAs publicly available?</li> </ul>	Yes	7 types of statistics are provided : <ul style="list-style-type: none"> <li>No. of cases (received, concluded, ongoing)</li> <li>Period for APA completion</li> <li>Covered transactions</li> <li>APA term</li> <li>APAs by Industry</li> <li>TPM</li> <li>APAs by country</li> </ul>	Section VII of the APA Annual Report

### Korea Dispute Resolution Profile – Preventing Disputes

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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	<p>The NTS operates a training program for 80 trainees lasting for consecutive 8 weeks. The program covers almost every topics of international taxation and all kinds of rulings from Korean laws to important judicial precedents. The training also covers important or disputed audit cases in order to give references to field auditors.</p> <p>Its training materials are not publicly available.</p>	-
4.	Is other information available on preventing tax treaty-related disputes?	Yes	Advance Ruling and Q&A programs are provided to taxpayers	<p><a href="http://txsi.hometax.go.kr/docs/main.jsp">http://txsi.hometax.go.kr/docs/main.jsp</a> (Written in Korean language only)</p>

#### 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	-	Paragraph 1(2) of the Article 22 of AITA
6.	Are issues relating to the application of treaty anti-abuse provision covered within the scope of MAP?	Yes	-	Paragraph 1(2) of the Article 22 of AITA
7.	Are issues relating to the application of domestic anti-abuse provision covered within the scope of MAP?	Yes	-	Paragraph 1(2) of the Article 22 of AITA
8.	Are issues where there is already an audit settlement between the tax authority and the taxpayer covered within the scope of MAP?	See detailed information	Korea does not have the “audit settlement” system	Information not available
9.	Are double taxation cases resulting from bona fide taxpayer initiated foreign adjustments covered within the scope of MAP?	Yes	-	Paragraph 1(2) of the Article 22 of AITA

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	-	Information not available
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	<p>Taxpayers are allowed to request MAP even where administrative remedies has been provided (e.g. Tax Tribunal decision, etc.)</p> <p>Taxpayers are not allowed to request MAP where the final juridical decision has been made by a domestic or foreign court</p> <p>Taxpayers are allowed to request MAP where the court decision has not yet been finalized</p>	Paragraph 2 of the Article 22 of AITA
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?	See detailed explanation	<p>Taxpayers are allowed to request MAP even where administrative remedies has been provided (e.g. Tax Tribunal decision, etc.)</p> <p>Taxpayers are not allowed to request MAP where the final juridical decision has been made by a domestic or foreign court</p> <p>Taxpayers are allowed to request MAP where the court decision has not yet been finalized</p>	<p>Paragraph 2(1) of the Article 22 and</p> <p>Paragraph 4 of the Article 23 of AITA</p>

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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	Within 3 years from the date on which the taxation became known to taxpayer.	Chapter 6 of the AITA/Enforcement Decree of AITA
14.	Are there specific timeline for the filing of a MAP request?	Yes	-	Paragraph 2(4) of the Article 22 of AITA
15.	Are guidance on multilateral MAPs publicly available?	No	-	Information not available
16.	Are tax collection procedures suspended during the period a MAP case is pending?	Yes	Deferment of Collection in Korea is only applicable where a contracting state also allows the deferment of tax collection.	Paragraph 2 & 3 of the Article 24 of AITA
17.	Are there any fees charged to taxpayers for a MAP request?	No	N/A	Information not available
18.	Is there any other information available on availability and access to MAP?	No	-	Information not available

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	-	-
20.	Are statistics relating to the time taken to resolve MAP cases publicly available?	Yes	Can be found on the OECD website	<a href="http://www.oecd.org/ctp/dispute/map-statistics-2006-2014.htm">www.oecd.org/ctp/dispute/map-statistics-2006-2014.htm</a>
21.	Is interest or penalties resulting from adjustments made pursuant to a MAP agreement waived or dealt with as part of the MAP procedure?	See detailed information	Tax penalties are waived under certain conditions indicated in Korea Tax Law.	Article 13 of AITA
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	-	-



s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
23.	Is MAP arbitration a mechanism currently available for the resolution of tax treaty related disputes in any of your tax treaties?  If not:	No	-	-
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	-	-
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	-	-
24.	Is the explanation of the relationship between the MAP and domestic law administrative and judicial remedies publicly available?  If yes:	Yes	Taxpayers should file a complaint on a tax assessment to Tax Tribunal (administrative remedy stage) before they seek juridical relief. Until the final decision is made by a court, MAP procedure is available to taxpayers. Once the court decision is finalized, the date of final decision will be the closing date of MAP.	Paragraph 2(1) of the Article 22,  Paragraph 4 of the Article 23 and  Paragraph 1 of the Article 24 of AITA

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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>	Yes	-	Paragraph 2(1) of the Article 22 of AITA
25.	Are taxpayers allowed to request for multi-year resolution through the MAP of recurring issues with respect to filed tax years?	See detailed information	<p>In practice, NTS enters into MAP discussion only for the filed period by taxpayers among the years for which any assessment was made by tax authority</p> <p>In AITA, it is stipulated that taxpayers can request for multi-year resolution where any taxation is likely to be assessed by tax authorities that are not in accordance with related tax treaty</p>	Paragraph 1(2) of the Article 22 of AITA

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
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)?	See detailed information	49 among 85 countries contain the provision However, the NTS allows corresponding adjustment to most of its tax treaty partners according to the result of CA meeting	<a href="https://txsi.hometax.go.kr/docs/customer/law/statutePact.jsp?gubun=3">https://txsi.hometax.go.kr/docs/customer/law/statutePact.jsp?gubun=3</a>
27.	Is there any other information available on resolution of MAP cases?	Yes	When mutual agreement is not reached, the date of five years from the start date shall be the end date of MAP cases. Despite the above, if the competent authorities agree to continue discussion, the mutual agreement procedure shall not be terminated. The end date of the MAP cases shall not exceed eight years from the start date.	Paragraph 2 of the Article 23 of AITA, Paragraph 3 of the Article 23 of AITA

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?	Yes	-	Paragraph 2 of the Article 27 and Paragraph 1 of the Article 25 of AITA
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	-	Paragraph 2 of the Article 27 and Paragraph 1 of the Article 25 of AITA
30.	Are all mutual agreements	Yes	Even where the closing date of MAP exceeds the statute of limitation,	Article 25 of AITA

s/n		Response	Detailed explanation	Where publicly available information and guidance can be found
	reached through MAP implemented notwithstanding any time limits in your domestic law?		one more additional year is given to implement the MAP conclusion. Details of the statute of limitation are prescribed in the paragraph 1 of the Article 26-2 of the Framework Act on National Taxes.	
31.	Is there any other information available on the implementation of MAP agreements?	No	-	-