

Kenya

Kenya has met all aspects of the terms of reference (OECD, 2021^[3]) (ToR) for the calendar year 2020 (year in review) that can be met in the absence of rulings being issued in practice, and no recommendations are made.

Kenya can legally issue four types of rulings within the scope of the transparency framework.

In practice, Kenya issue no rulings within the scope of the transparency framework.

As no exchanges were required to take place, no peer input was received in respect of the exchanges of information on rulings received from Kenya.

A. The information gathering process (ToR I.A)

701. Kenya can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes;¹ (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

702. For Kenya, past rulings are any tax rulings within scope that are issued either: (i) on or after 1 January 2016 but before 1 April 2018; or (ii) on or after 1 January 2014 but before 1 January 2016, provided they were still in effect as at 1 January 2016. Future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

703. In the prior years' peer review reports, it was determined that Kenya's undertakings to identify past and future rulings and all potential exchange jurisdictions were sufficient to meet the minimum standard in the absence of rulings being issued. In addition, it was determined that Kenya's review and supervision mechanism was sufficient to meet the minimum standard. Kenya's implementation remains unchanged, and therefore continues to meet the minimum standard.

704. Kenya has met all of the ToR for the information gathering process and no recommendations are made.

B. The exchange of information (ToR II.B)

705. Kenya has international agreements permitting spontaneous exchange of information, including being a party to (i) the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) ("the Convention") and (ii) bilateral agreements in force with 15 jurisdictions.² Kenya is encouraged to continue its efforts to expand its international exchange of information instruments to be able to exchange rulings. It is noted, however, that jurisdictions are assessed on their compliance with the transparency framework in respect of the exchange of information network in effect for the year of the particular annual review.

706. As no rulings are issued in practice, no data on the timeliness of exchanges can be reported.

707. In the prior year peer review report, it was determined that Kenya's process for the completion and exchange of templates were sufficient to meet the minimum standard in the absence of rulings being issued. With respect to past rulings, no further action was required. Kenya's implementation in this regard remains unchanged and therefore continues to meet the minimum standard.

708. Kenya has the necessary legal basis for spontaneous exchange of information and a process for completing the templates in a timely way. Kenya has met all of the ToR for the exchange of information process in the absence of rulings being issued and no recommendations are made.

C. Statistics (ToR IV)

709. As no rulings were issued, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.A.1.3)

710. Kenya does not offer an intellectual property regime for which transparency requirements under the Action 5 Report (OECD, 2015^[1]) were imposed.

Summary of recommendations on implementation of the transparency framework

| Aspect of implementation of the transparency framework that should be improved | Recommendation for improvement |
|--|--------------------------------|
| | No recommendations are made. |

References

- OECD (2021), *BEPS Action 5 on Harmful Tax Practices - Terms of Reference and Methodology for the Conduct of the Peer Reviews of the Action 5 Transparency Framework*, OECD Publishing, Paris, <http://www.oecd.org/tax/beps/beps-action-5-harmful-tax-practices-peer-review-transparency-framework.pdf>. [3]
- OECD (2015), *Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264241190-en>. [1]
- OECD (ed.) (2017b), *Harmful Tax Practices - 2017 Progress Report on Preferential Regimes*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264283954-en>. [2]
- OECD/Council of Europe (2011), *The Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264115606-en>. [4]

Notes

¹ With respect to the following preferential regimes: 1) Export processing zone and 2) Special economic zone.

² Participating jurisdictions to the Convention are available here: www.oecd.org/tax/exchange-of-tax-information/convention-on-mutual-administrative-assistance-in-tax-matters.htm. Kenya also has bilateral agreements with Canada, Denmark, France, Germany, India, Iran, Korea, Norway, Qatar, Seychelles, South Africa, Sweden, United Arab Emirates, United Kingdom and Zambia.



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