

Kenya

Kenya has met all aspects of the terms of reference (ToR) for the calendar year 2018 (year in review) that can be met in the absence of rulings being issued.

This is Kenya's first review of implementation of the transparency framework.

Kenya can legally issue four types of rulings within the scope of the transparency framework. In practice, Kenya has issued 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.

Introduction

This peer review covers Kenya's implementation of the BEPS Action 5 transparency framework for the year 2018. The report has four parts, each relating to a key part of the ToR. Each part is discussed in turn. A summary of recommendations is included at the end of this report.

A. The information gathering process

Kenya can legally issue the following four types of rulings within the scope of the transparency framework: (i) preferential regimes¹; (ii) rulings providing for unilateral downward adjustments; (iii) permanent establishment rulings; and (iv) related party conduit rulings.

Past rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1, I.4.2.2)

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; and (ii) on or after 1 January 2014 but before 1 January 2016, provided still in effect as at 1 January 2016.

In Kenya, rulings are issued by the centralised policy and tax advisory division. The International Tax Office policy unit (ITO) is then responsible for identifying the rulings in order to establish whether they are in scope of the transparency framework. The ITO has performed a manual review of individual files, which were referenced according to the topic and relevant section of the tax legislation (such as transfer pricing or permanent establishment), which facilitated this manual search. The ITO is currently in the process of developing an electronic register with specific files for each ruling issued.

All rulings are further organised according to date of issue. This allowed the ITO to identify whether a certain ruling would fall within the past or future rulings categories. To date no rulings have been issued. As such there was no need to identify potential exchange jurisdictions.

Future rulings (ToR I.4.1.1, I.4.1.2, I.4.2.1)

For Kenya, future rulings are any tax rulings within scope that are issued on or after 1 April 2018.

The process for identifying future rulings and potential exchange jurisdictions is similar to the process regarding the past rulings. The ITO is planning to introduce an electronic repository with search filters, which will help in increasing efficiency in terms of identifying relevant rulings. In order to identify potential exchange jurisdictions, Kenya would manually review the ruling and the taxpayer file, if necessary. Kenya confirms that if information on any potential exchange jurisdiction was not contained in the file, it would exercise its information gathering powers to require this information to be provided by the taxpayer.

Review and supervision (ToR I.4.3)

The review and supervision mechanism in Kenya is handled by an officer working on the specific file who then forwards it to the manager for review. The centralised policy and tax advisory department also reviews the rulings. There is continuous training of staff on the subject area, including a technical forum established by the Commissioner of domestic taxes to discuss ruling matters. In addition, a user manual is in the process of being developed and which would document the required steps for the transparency framework.

Conclusion on section A

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

B. The exchange of information

Legal basis for spontaneous exchange of information (ToR II.5.1, II.5.2)

Kenya has the necessary domestic legal basis to exchange information spontaneously. Kenya notes that there are no legal or practical impediments that prevent the spontaneous exchange of information on rulings as contemplated in the Action 5 minimum standard.

Kenya (i) has signed the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters: Amended by the 2010 Protocol* (OECD/Council of Europe, 2011^[4]) (the “Convention”) which is currently in undergoing internal process before being sent for ratification and (ii) has international agreements permitting spontaneous exchange of information, including double tax 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 however noted 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.

Completion and exchange of templates (ToR II.5.3, II.5.4, II.5.5, II.5.6, II.5.7)

A ruling subject to exchange is identified by ITO from the list of rulings issued by the policy tax and advisory division. The ruling is then forwarded to the Competent Authority for onward exchange to the relevant jurisdiction. This process is envisaged to be completed within seven days after issue of the ruling. Kenya affirms it would complete the template (Annex C of the Action 5 Report (OECD, 2015^[5])), with the summary section of the template completed in line with the internal FHTP suggested guidance. The competent authority function has been delegated to an officer within the Intelligence and Strategic Operation unit who ensures that there is no delay in exchanging the rulings, taking place no later than three months after receipt from the ITO.

As no rulings within the scope of the transparency framework have been issued in practice, Kenya was not required to complete any exchanges of information and there is no data to report on the timeliness of exchanges.

Conclusion on section B

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

C. Statistics (ToR IV)

As there was no information on rulings exchanged by Kenya for the year in review, no statistics can be reported.

D. Matters related to intellectual property regimes (ToR I.4.1.3)

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

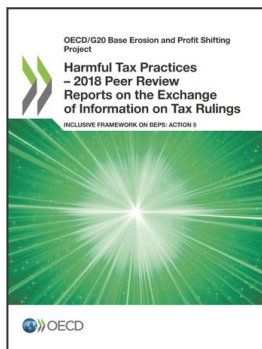
Summary of recommendations on implementation of the transparency framework

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

Notes

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

² Kenya 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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