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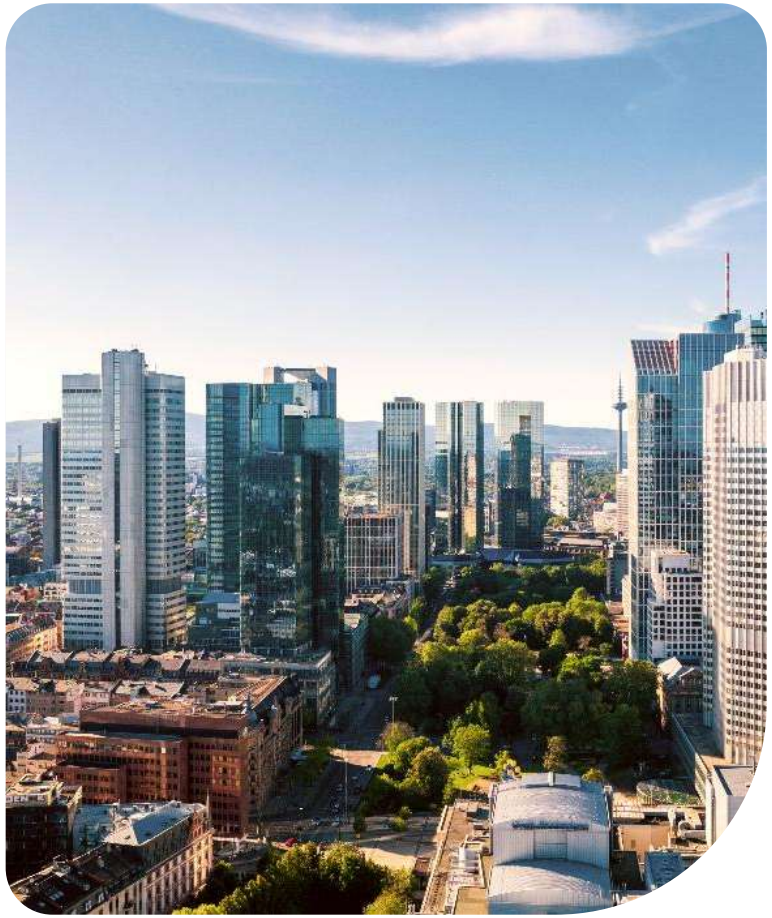
The Income Tax (Transfer Pricing) Rules, 2026

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Background



The Cabinet Secretary for the National Treasury has, under Section 18(8) as read together with section 130 of the Income Tax Act, issued the Income Tax (Transfer Pricing) Rules, 2026 through Legal Notice No. 186 of 2026.

The Income Tax (Transfer Pricing) Rules, 2026 ("2026 TP Rules") have replaced the Income Tax (Transfer Pricing) Rules, 2006 ("2006 TP Rules") which were issued under Legal Notice No. 67 of 2006.

The notable changes introduced through the 2026 TP Rules include transfer pricing for commodity transactions, and the additional information that may be requested for in relation to controlled transactions.

Our summary and comments on the key provisions of the 2026 TP Rules are presented below.

Summary

Rule(s)	Description	Our comments
1. Effective date	The Income Tax (Transfer Pricing) Rules, 2026 ("2026 TP Rules") were gazetted on 18 September 2026.	The 2026 TP Rules are silent on the commencement date. However, in the absence of an explicit commencement date, legislation takes effect on the date of its publication in the Kenya Gazette. The transfer pricing template per 2026 TP Rules are aligned to the OECD template, and taxpayers who have been preparing their TP files per OECD template will not be impacted. However, the notable change is with regard to the pricing of commodity transactions, and the additional information that may be requested for in relation to controlled transactions.
2. Definition of commodity	The definition of "commodity" has been introduced to include agricultural produce, fisheries products, solid, liquid or gas minerals, hydrocarbons and their derivatives, other products or natural minerals obtained from land or water and, in general, any good for which a publicly quoted price exists.	The notable businesses impacted include those trading in flowers, coffee, tea, oil, petroleum, minerals etc.

Summary

Rule(s)	Description	Our comments
5. Additional transactions subject to TP	The additional transactions subject to TP include: • Guarantee. • Purchase or sale of marketable securities. • Advance or deferred payments. • Receivables or any other debt arising in the course of business. • Insurance and reinsurance transactions. • Business restructuring or reorganization entered into by a person with a related person irrespective of the fact that the transaction has a bearing on the profit, income, loss or assets of such person at the time of the transaction or a future date. • Cost distribution arrangements. • Transactions involving derivatives.	Businesses should take note of these changes and structure the affected transactions accordingly. This will include minimizing the TP impact.
6(1). Choice of transfer pricing method	Under the 2006 TP Rules, a taxpayer had the election to choose a TP method. However, the 2026 TP Rules require a person to choose the most appropriate method, in line with the OECD Transfer Pricing Guidelines, 2022 ("OECD TP Guidelines").	Taxpayers are required to select the most appropriate TP method and justify why the selected method is the most appropriate.

Summary

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6(1) Pricing of commodity transactions	The 2026 TP Rules provides that for the purposes of the CUP method, or any other transfer pricing method: (i) any export or import of commodities, where prices can be obtained at the date of the transaction from an international or domestic commodity exchange market, or from a recognised and transparent price reporting or statistical agency, or from a governmental price-setting agency, or from any other index that is used as a reference by unrelated persons to determine prices in transactions between them, **that publicly quoted price on the date on which the goods are shipped**, regardless of the means of transport, shall be, without considering the price that was agreed upon with the related person, the sale price used for computing the taxable income of that person unless the person provides all the evidence needed to show that adjustments are appropriate to that quoted price and consistent with the arm's length principle; and (ii) the publicly quoted price shall be determined by taking an average of the prices fifteen days before and after the shipping date as evidenced by relevant shipping documents.	The 2026 TP Rules provide that commodity prices will be referenced to the publicly quoted price on the date on which the goods are shipped, without considering the price agreed upon with the related person. This disregards the fact that the agreed sales price may differ from the price at the shipping date. However, using an average of the prices fifteen days before and after the shipping date as the publicly quoted price mitigates the effect of price fluctuations. Per the OECD TP Guidelines, where the taxpayer can provide reliable evidence of the pricing date agreed by the associated enterprises in the controlled commodity transaction at the time the transaction was entered into, and this is consistent with the actual conduct of the parties or with other facts of the case, tax administrations should determine the price for the commodity transaction by reference to the pricing date agreed by the associated enterprises. The OECD TP Guidelines only recommend for the tax administration to determine a different pricing approach, where the taxpayer is not able to support the pricing approach adopted. Further, the OECD TP Guidelines recommend for the pricing approach selected by the tax administration to be subject to any appropriate comparability adjustments. We therefore recommend for the approach to be followed by KRA to be aligned to the OECD approach.

Summary

Rule(s)	Description	Our comments
6(2). Price adjustments	The 2026 TP Rules provide that where the price agreed upon between a person and a non-related person is higher (for exports) or lower (for imports) than the publicly quoted price at the shipping date, the agreed price in this case shall be considered as the sale price or purchase price for the purposes of computing the seller's taxable income in Kenya.	This provision disregards the effect of volume and other comparability factors that may affect pricing, and the fact that the price agreed between a person and a third party may not be an appropriate internal comparable uncontrolled price (CUP). Further, this provision will have customs impact where the price declared for import is higher, and KRA performs a downward price adjustment for income tax purposes.
8(3 and 4). Additional documents to be provided	A person shall be required to share the following information with the KRA, amongst other documentation: a) Copies of contracts or agreements relating to the controlled transactions. b) In case of commodity transactions, where the commodities are exported to a connected person who subsequently sells the commodities to an unconnected person, the third-party agreements and sales invoices relating to the sale. c) Financial statements for the parties to the controlled transaction including where the tested party has been selected as a party outside the country.	The 2026 TP Rules have expanded the information that may be requested by the Commissioner to include the financial statement of a foreign related party, even when the foreign related party is not the tested party. This is a deviation from the OECD TP Guidelines which provides for such financial information to be provided, when the foreign party is the tested party.

Summary

Rule(s)	Description	Our comments
8(3 and 4). Additional documents to be provided	d) Where the controlled transactions relate to a part of the overall business of the tested party, the segment reports showing turnover, costs and expenses including details of selection of the appropriate allocation keys and the rationale of selecting the allocation keys; e) A summary of the financial information used in applying the transfer pricing method. f) Information and allocation schedules showing how the financial data used in applying the transfer pricing method may be related to the annual financial statements. g) Summary schedules of relevant financial data for comparables used in the analysis and the sources from which the data was obtained.	Further, the 2026 TP Rules require for third party data to be provided for commodity transactions, which opens up the whole chain of transaction for transparency purpose. MNEs should take note of the magnitude of additional information that they shall be required to provide to support the arm's length nature of controlled transactions.

Key Takeaways

The Income Tax (Transfer Pricing) Rules, 2026 replace the 2006 TP Rules and align Kenya's TP framework to the OECD TP Guidelines.

Detailed information is now required with respect to controlled transactions, and the Commissioner may request the financial data of foreign related parties to the controlled transaction, regardless of whether the foreign party is the tested party.

The in-scope transactions have been expanded to include guarantees, insurance, business restructurings, cost distribution arrangements, derivatives, purchase or sale of marketable securities, advance or deferred payments, receivables, or any other debt arising in the course of business.

The 2026 TP Rules provide guidance on the pricing of commodities, and MNEs engaged in commodity trading should take note of the changes, which will impact their pricing arrangements.



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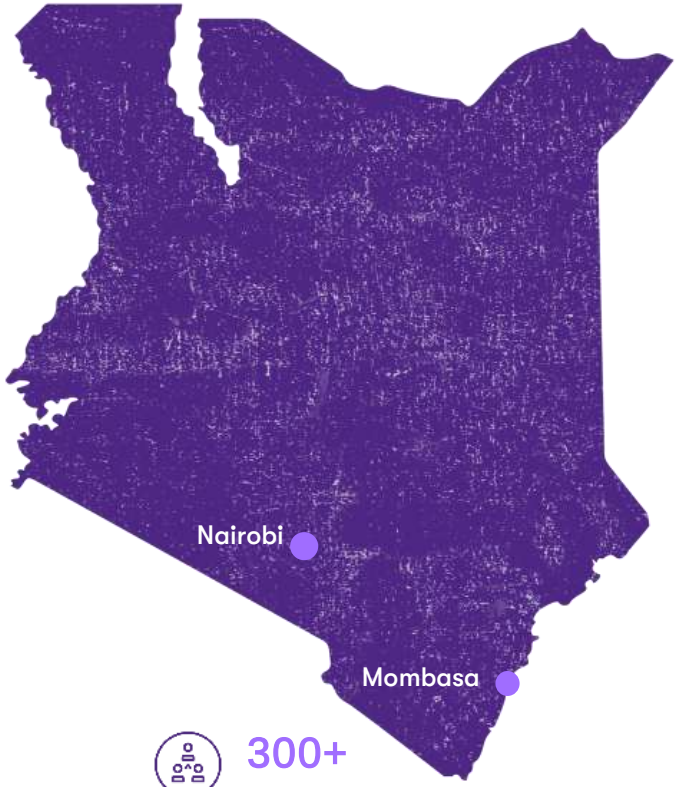
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