

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 draft Income Tax (Transfer Pricing) Rules had been published in September 2023, for public participation. However, few changes have been made before passage into law, with the notable change relating to commodity transactions, whereby the publicly quoted price shall be determined by taking an average of the prices 15 days before and after the shipping date.

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

Summary

Rule(s)	Description	Our comments
1. Citation	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. In the absence of an explicit commencement date, legislation ordinarily takes effect on the date of its publication in the Kenya Gazette.
2. Interpretation	Arm’s length price means the price payable in a transaction between independent persons. Commodity includes 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 as described in rule 7 exists. Comparable transactions are transactions with no material differences, or where reasonably accurate adjustments can eliminate material differences. Controlled transaction means any transaction between related persons. Connected person means related persons referred to in, or meeting any of the conditions in, sections 2, 18 and 18A to 18F of the ITA.	The definition of controlled transaction has been updated. The 2006 TP Rules described it as a transaction “monitored” to ensure an arm’s length price; it now means any transaction between related persons. The definition of “related enterprises” has been aligned to the definition contained in the ITA. A definition of “commodity” has been introduced. It covers 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. This underpins the new pricing rules for commodity transactions under rule 6.

Summary

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3. Object and purpose of the Rules	The object and purpose of these Rules are to provide guidelines for determining arm's length prices for transactions between related persons.	The 2006 TP Rules also stated a second purpose: to provide administrative regulations, including the records and documentation to be submitted to the Commissioner. That reference has been dropped, although the documentation requirements are now set out in more detail under rule 8.
4. Scope of Rules	The 2026 TP Rules now apply to all transfer pricing provisions under the ITA.	The 2006 TP Rules applied to transactions between related enterprises within a multinational group where one was in Kenya and the other outside Kenya, and to dealings between a permanent establishment and its head office or related branches. The purpose is to align the 2026 TP Rules with the ITA.

Summary

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5. Transactions subject to the Rules	The transactions subject to adjustment of prices include: (a) the purchase, sale, transfer or use of tangible property; (b) the purchase, sale, transfer or use of intangible property; (c) the provision of services; (d) financing transactions, including any long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities, advance or deferred payments, receivables or any other debt arising in the course of business; (e) insurance and reinsurance transactions; (f) a transaction of 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; (g) cost distribution arrangements; (h) transactions involving derivatives; and (i) any other transaction which may affect the profit or loss of the person involved.	The list of transactions subject to the 2026 TP Rules has been expanded to include the following new categories: • Financing arrangements: in addition to lending and borrowing, guarantees, the purchase or sale of marketable securities, advance or deferred payments, receivables and other trade debts are now covered. Groups will need to benchmark arrangements such as guarantee fees, interest on overdue intercompany balances and cash pooling. • Insurance and reinsurance: premiums, commissions and claims under insurance and reinsurance arrangements with related parties, including captive insurers, must be at arm's length. • Business restructurings: transfers of functions, assets or risks to or from a Kenyan entity may require arm's length compensation, including potential exit payments. • Cost distribution arrangements: shared service and cost contribution arrangements require appropriate allocation keys and evidence that the participating entities derive a benefit. • Derivatives: derivative contracts with related parties, such as foreign exchange forwards, interest rate swaps and commodity hedges, must be priced at arm's length. Banks, insurers and groups with central treasury, shared service or restructuring activity are most affected.

Summary

Rule(s)	Description	Our comments
6(1). Choice of transfer pricing method	A person shall choose the most appropriate of the following methods when determining an arm's length price: (a) the comparable uncontrolled price method in which the transfer price in a controlled transaction is compared with the price in an uncontrolled transaction and accurate adjustments made to eliminate material price differences; (b) the resale price method, in which the gross margin earned in a transaction involving the purchase from a related party and subsequent sale to an independent person is compared with the gross margin earned by a reseller buying products from an unrelated person for sale to an unrelated person under comparable circumstances; (c) the cost-plus method in which costs are assessed using the costs incurred by the supplier of a product in a controlled transaction with a mark-up added to make an appropriate profit in light of the functions performed, and assets used and risks assumed by the supplier; (d) the profit split method, in which the profits earned in very closely interrelated controlled transactions are split among the related enterprises depending on the functions performed by each enterprise in relation to the transaction, and compared with a profit split among independent enterprises in a joint venture; (e) the transactional net margin method, in which the ratio of the operating profit to an appropriate base such costs, sales, assets attained by a multinational enterprise in a controlled transaction is compared to a similar ratio that would have been earned in a comparable transaction between unrelated persons; (f) such other method as may be prescribed by the Commissioner where, in the opinion of the Commissioner and in view of the nature of the transactions, the arm's length price cannot be determined using any of the methods prescribed in paragraph (a), (b), (c), (d) or (e):	Under the 2006 TP Rules a taxpayer “may choose a method”. The 2026 TP Rules require the person to choose the most appropriate method, in line with the OECD Transfer Pricing Guidelines, 2022 (“OECD TP Guidelines”). Taxpayers must now be able to justify why the selected method is the most appropriate. The descriptions of the resale price method and TNMM have been refined. TNMM now refers to the ratio of operating profit to an appropriate base, such as costs, sales or assets, in place of the general “net profit margin” used in the 2006 TP Rules. The Commissioner retains the power to prescribe another method where, in the Commissioner’s opinion, the arm’s length price cannot be determined using methods (a) to (e). In practice, this allows KRA to depart from the taxpayer’s method during an audit, for example where reliable comparables are not available, and to apply an alternative approach. The 2026 TP Rules do not set out how such a method would be prescribed or communicated. Taxpayers should therefore clearly document why their selected method is the most appropriate, to reduce the risk of KRA substituting its own method.

Summary

Rule(s)	Description	Our comments
6(1) Proviso. Commodity transactions	For the purposes of the CUP method, under paragraphs (a) and (f) 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. For instance, a Kenyan tea exporter sells 1,000,000 kg to a related trader in Dubai at USD 2.80/kg. The average quoted price around the shipping date is USD 3.10/kg. Unless the exporter can support adjustments (for example for grade or freight), KRA will tax the sale at USD 3.10/kg, adding USD 300,000 to taxable income. The rule also applies to imports, that is, a fuel importer buying from a related supplier above the average quoted price may have its purchase cost limited to the quoted price. Tea, coffee, horticulture, mining and petroleum businesses are most affected.
6(2). Prices agreed with non-related persons	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).

Summary

Rule(s)	Description	Our comments
7(1). Application of methods	The methods specified in rule 6(1) shall be applied in determining the price payable for goods and services in transactions contemplated under sections 18, 18A, 18B, 18C, 18D, 18E or 18F of the ITA.	The 2006 TP Rules applied the methods only for the purposes of section 18(3) of the ITA. The extension to sections 18A to 18F is consistent with the wider scope under rule 4.
7(2). Most appropriate method	A person shall apply the method most appropriate for that person's enterprise, having regard to the nature of the transaction, or class of transaction, or class of related persons, or functions performed by such persons in relation to the transaction.	This is consistent with the 2006 TP Rules. Read with rule 6(1), the choice of method should be supported by the functional analysis and the nature of each transaction.
8(1). Power of Commissioner to request information	The Commissioner may, where necessary, request a person to whom these Rules apply for information, including books of accounts and other documents relating to transactions where transfer pricing is applied.	This is consistent with the 2006 TP Rules.
8(2). Documents to be provided	The documents referred to in sub-rule (1) include documents relating to: (a) the selection of the most appropriate transfer pricing method and reasons for the selection; (b) the application of the most appropriate transfer pricing method, including the calculations made and price adjustment factors considered; (c) the global organisation structure of the enterprise; (d) the details of the transaction under consideration; and (e) the assumptions, strategies and policies applied in selecting the method.	Largely consistent with the 2006 TP Rules, but the documents now refer to the most appropriate method, in line with rule 6(1). Taxpayers should document why the selected method is the most appropriate, as KRA may otherwise substitute its own method.

Summary

Rule(s)	Description	Our comments
8(3). Information for each category of controlled transaction	For each category of controlled transaction, the person shall provide the Commissioner with: (a) a detailed description of the controlled transactions stating the parties involved, timing, transaction value, settlement currency, contractual terms and conditions, trading models of the controlled transactions and explanations of how the transactions are similar to or different from uncontrolled transactions; (b) the amount of intra-group payments and receipts for each category of controlled transactions involving the person broken down by tax jurisdiction of the foreign payer or recipient; (c) the identities of any connected persons involved in each category of controlled transaction, and the relationships among them; (d) copies of contracts or agreements relating to the controlled transactions; (e) detailed functional analysis showing the functions performed, risks assumed and assets used by the person and the person's connected persons for each category of controlled transactions; (f) detailed comparability analysis in respect of each category of the controlled transaction with potential uncontrolled comparable transactions including the search process for comparables, data sources, selection criteria and rationale for rejecting potential comparables including any potential internal comparables; (g) a list and description of selected comparable uncontrolled transactions, if any, and the relevant information of those comparables including financial data and agreements in case of license fees; (h) an explanation of the selection of the transfer pricing method by the person;	The information requirements mirror the local file content set out in Annex II to Chapter V of the OECD TP Guidelines. Local files prepared by Grant Thornton have been, and continue to be, prepared in line with the OECD local file template and are compliant with these requirements.

Summary

Rule(s)	Description	Our comments
8(3). Information for each category of controlled transaction	(i) an explanation of the selection of the tested party by the person, where relevant; j) the key factors affecting the pricing of controlled transactions, including intangibles involved in the transactions and the impact of the factors on pricing, and location-specific factors including cost savings and market premiums; k) a summary of the important assumptions made in applying the transfer pricing method; l) an explanation of the reasons for performing a multi-year analysis, where applicable; m) details of any industry analysis, economic analysis, budgets or projections relied on by the person; n) a description of any comparability adjustments performed, and an indication of whether adjustments have been made to the results of the tested party, the comparable uncontrolled transaction, or both; o) any conclusions as to the consistency of the conditions of the controlled transactions with the arm's length principle, including details of any adjustment made to ensure compliance; p) details of any advance pricing agreements or similar arrangements in other countries that are applicable to the controlled transactions; q) in case of transactions involving commodities 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; and r) any other documentation or information that is necessary for determining if the person has complied with the arm's length principle with respect to the controlled transactions.	The information requirements mirror the local file content set out in Annex II to Chapter V of the OECD TP Guidelines. Local files prepared by Grant Thornton have been, and continue to be, prepared in line with the OECD local file template and are compliant with these requirements.

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8(4). Additional information	In addition, the person shall provide the Commissioner with: - audited financial statements of the person for each accounting year; - financial statements for the parties to the controlled transaction including where the tested party has been selected as a party outside the country; - 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; - a summary of the financial information used in applying the transfer pricing method; - information and allocation schedules showing how the financial data used in applying the transfer pricing method may be related to the annual financial statements; - summary schedules of relevant financial data for comparables used in the analysis and the sources from which the data was obtained; and - such other background information as may be necessary regarding the transaction.	Where a Kenyan entity carries out more than one activity, such as distribution and contract manufacturing, segmented profit and loss statements with documented allocation keys will be required, and the figures used in the benchmarking must reconcile to the audited accounts. Where a foreign related party is selected as the tested party, its financial statements must be provided. This is aligned with the OECD TP Guidelines, which provide that financial information on the tested party is needed “irrespective of whether the tested party is a domestic or foreign entity” (paragraph 3.22). Paragraphs 3.20 and 3.21 further require information on all parties to the controlled transaction, including foreign associated enterprises. The 2026 TP Rules have expanded the information that may be requested by the Commissioner to include the financial statements of parties to a controlled transaction, even where the foreign party is not the tested party. MNEs should take note of this requirement, which will lead to the sharing of financial information of foreign related parties. The volume of information required is significant. Taxpayers should build these schedules into the year-end close rather than prepare them only when KRA issues a request, as such requests often carry short response timelines.

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8(5). Request of Information	The Commissioner may, where necessary, request a person to whom these Rules apply for information other than or in addition to the information provided under sub rule (1).	This is consistent with the 2006 TP Rules.
8(6). Language	The books of accounts and other documents shall be prepared in, or be translated into, the English language at the time the transfer price is arrived at.	This is consistent with the 2006 TP Rules.
9. Application of arm's length pricing	A person avers the application of arm's length pricing, such person shall: a) develop an appropriate transfer pricing policy; b) determine the arm's length price in accordance with these Rules; and c) avail to the Commissioner documentation to evidence that person's analysis upon request.	A documented transfer pricing policy remains a baseline requirement. KRA usually requests the group policy at the start of an audit, so groups should ensure their policy is current and covers the expanded transactions in rule 5.
10. Cap. 469B to apply	The provisions of the Tax Procedures Act ("TPA") relating to fraud, failure to furnish returns and underpayment of tax shall apply to transfer pricing.	The 2006 TP Rules referred to provisions of the ITA on fraud, failure to furnish returns and underpayment of tax, most of which have since moved to the TPA. The TPA provisions on record keeping, assessments, objections, appeals, penalties and interest now clearly apply to transfer pricing matters.

Summary

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11. Unpaid tax to be deemed additional tax	Any tax due and unpaid in a transfer pricing arrangement shall be deemed to be additional tax for purposes of section 38 of the Tax Procedures Act.	Tax arising from a transfer pricing adjustment will attract late payment interest of 1% per month under section 38 of the TPA, together with any applicable penalties.
12. Revocation	The Income Tax (Transfer Pricing) Rules, 2006 (Legal Notice No. 67 of 2006) are revoked.	The revocation confirms that the 2026 TP Rules are now the operative transfer pricing rules. Taxpayers with ongoing audits, objections or appeals should consider which version of the Rules applies to each year in dispute, since the law in force at the time of the transaction would ordinarily govern it.

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 cover guarantees, insurance, business restructurings, cost distribution arrangements and derivatives.

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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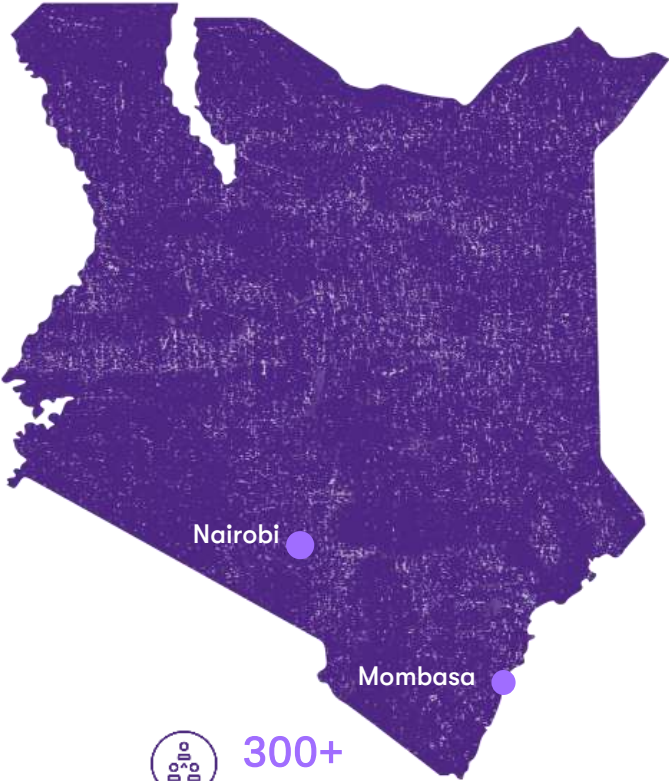
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