

The Income Tax (Advance Pricing Agreement) Regulations, 2025

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Background



On 3 November 2025, the Commissioner General of the Kenya Revenue Authority (“KRA”), acting on behalf of the Cabinet Secretary for the National Treasury and Economic Planning, issued the draft Income Tax (Advance Pricing Agreement) Regulations, 2025 (“the Regulations”), for public consultation.

These Regulations have been issued in accordance with Section 18G (5) of the Income Tax Act CAP 470 (“ITA”), which provides for the operational framework for implementing the Advance Pricing Agreement (“APAs”), which came into effect in Kenya on 1 January 2026, through the Finance Act, 2025.

An Advance Pricing Agreement is a formal arrangement between a taxpayer and the tax authority that establishes, in advance, the transfer pricing methodology for controlled transactions over a specified period. It outlines the appropriate pricing methods, comparable data, necessary adjustments, and critical assumptions regarding future events, ensuring compliance and reducing the risk of transfer pricing disputes.

Background

APAs represent a critical tool for multinational enterprises (“MNEs”) navigating transfer pricing uncertainties, and is aligned with Organisation for Economic Cooperation and Development (“OECD”) framework, as well as Action 14 of the OECD Base Erosion Profit Shifting (“BEPS”) in relation to making dispute resolution mechanisms more effective.

The draft Regulations mark a significant step toward establishing a formal APA regime in Kenya. Stakeholders and members of the public have been invited to review the proposed framework and submit their comments and recommendations before the Regulations are finalized. We provide below, a summary of the key highlights contained in the Draft APA Regulations:



Summary

Regulations	Description	Our comments
Regulation 4: Types of APAs	The Regulation provides that a person who undertakes a covered transaction may apply to the Commissioner for an APA in the following forms: • Unilateral APA, where no tax treaty exists. • Unilateral, Multilateral or Bilateral APA, where a tax treaty is in place. • Unilateral APA, for a transaction with related resident persons operating in a preferential tax regime.	The taxpayer has been presented with various APA forms to pursue. Generally, bilateral or multilateral APAs are ideal in reducing the risk of double taxation in the corresponding jurisdictions. However, bilateral and multilateral APAs may take time to conclude, since it involves more than one competent authority, compared to unilateral APAs.
Regulation 5: Pre-filing meeting	The Regulation provides that a person should make a request in writing for a pre-filing meeting with the Commissioner, 12 months prior to the proposed covered period. Further, that the request should be accompanied by: a) Proposed covered transactions; b) Names, addresses and tax PIN of the parties to the APA; c) Proposed period to be covered by the APA; d) Transfer pricing (“TP”) documentation. e) Proposed TP methods, critical assumptions and analysis, and demonstrate compliance with the Arm’s length principle; f) Financial statements, trial balances, tax computations, and all intragroup agreements for the last 5 years prior to APA application;	This implies that APA covered period will not include the current year of lodging an APA application since a person is required to request for a pre-filing meeting with the Commissioner, 12 months prior to the proposed covered period. We note that the Regulation requires a person to submit documentation when making an application for a pre-filing meeting. However, we recommend for pre-filing meeting to be held first, before the submission of documents, to provide a person with the opportunity to discuss with the Commissioner the suitability of an APA, the type and extent of information which may be required, the scope of any analysis required for the completion of a successful APA, and any concerns regarding disclosure and confidentiality of data.

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Regulation 5: Pre-filing meeting	g) Written indication whether income related to the covered transaction is exempt from tax in any jurisdiction; h) Name, telephone number, and email of the tax representative; and i) Any other information that the Commissioner may request for. The Regulation further provides that: a. The Commissioner will convene a pre-filing meeting within thirty days after receipt of the above-mentioned documentation. b. The Commissioner will notify the person within 30 days from the date of the pre-filing meeting, whether they may proceed to submit an APA application.	We recommend that the required documentation should be submitted in the subsequent pre-filing meetings, and for the Regulations to be amended to require the Commissioner to notify the person within 30 days from the date of submitting the required documentation, whether they can lodge an APA application. Further, we note that a person will be required to provide a transfer pricing document. This clarifies that the pursuit of an APA process will not remove the obligation for a taxpayer to maintain a TP documentation in line with the Kenya TP rules and regulations.
Regulation 6: Submission on an APA application	The Regulation provides as follows: a. A person to submit an APA application in a prescribed form, within 30 days of receipt of Commissioners notification. b. The person to inform the Commissioner of any tax investigation, tax audit or facts that may affect the outcome of the application. c. The Commissioner to consider the application, may propose alternative methodologies, restrict or expand the scope of the APA, or decline the application.	There is certainty on when a person can submit an APA application. However, we recommend the following: a) The Commissioner to share the prescribed form for APA application. b) A person should not be denied an APA application where they are undergoing an investigation, before a tax assessment has been issued.

Summary

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Regulation 10: Critical assumptions	The regulation requires a person to identify the assumptions made in developing the proposed transfer pricing methodology that are critical to the reliability of the methodology under the arm's length principle, when lodging the APA application.	We note that this requirement is already captured under Regulation 5(2) (f), and should therefore be deleted under Regulation 10, to avoid repetition.
Regulation 7: Fees payable	The Regulation stipulates as follows: a. A person shall meet all the costs of an APA. b. A person shall pay a non-refundable application fee of KES 5,000,000, after the pre-filing meeting, and upon receipt of the Commissioners notification under regulation 5(4). c. A person shall pay a non-refundable APA renewal fee of KES 2,500,000, upon receipt of the Commissioners decision on the application for the renewal of the APA.	There is ambiguity with the statement that ‘A person shall meet all the costs of an APA’, whereas the person is still required to pay application and renewal fees. It is therefore important for the Commissioner to clarify the purpose of the application and renewal fees. The application and renewal fee is prohibitive for many enterprises, particularly small and medium-sized multinationals who may wish to access the APA framework. We recommend that the Commissioner may consider implementing a tiered fee structure based on taxpayer turnover or transaction value. We also recommend that the application or renewal fees should only be payable once the Commissioner has approved an APA application to safeguard taxpayers interest.

Summary

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Regulation 14: Rejection of an APA application	Per the Regulation, the Commissioner may reject an APA application under the following circumstances: a) Failure to comply with the requirements stipulated under the Income Tax (Transfer Pricing) Rules. b) The covered transaction is based on a hypothetical situation. c) Where it appears to be an inefficient use of resources to pursue an APA due to the limited nature and value of the proposed transaction. d) Where the matter on which the APA sought is subject to an appeal under the Tax Procedures Act, 2015. e) Where the proposed covered transaction involves a tax avoidance scheme. f) Arrangements that involve treaty abuse. g) Any other reasonable grounds. The Regulation further provides that: a) The Commissioner shall notify a person in writing of the decision to reject an APA application, and the grounds thereof. b) A person may make an application for the review of the rejection decision within 30 days from the date of receipt of the rejection decision.	These rejection criteria protect the integrity of the regime by excluding arrangements that lack commercial substance, involve aggressive tax planning, or would unnecessarily consume limited administrative resources. However, clarity on what constitutes "limited nature and value" would be helpful to manage taxpayer expectations and ensure consistent application of this criterion. A timeline should be stipulated, stating the number of days that it should take the Commissioner to communicate the decision to reject an APA application. Further, we recommend that where an APA application has been rejected, the Commissioner should not rely on non-factual assumption or negotiation terms in carrying out a tax audit.
Regulation 8: Timeframe of an APA	The Regulation stipulate that an APA is valid for a period of 5 years.	This is a welcome move, since the 5-year term strikes a reasonable balance between providing meaningful certainty for taxpayers, and allowing flexibility to adapt to changing business circumstances.

Summary

Regulations	Description	Our comments
Regulation 9: Negotiation of APAs	The Regulation stipulates that: a) For unilateral APAs, the Commissioner will negotiate directly with the taxpayer on all aspects of the agreement, including terms, potential revisions, termination conditions, and renewal procedures. b) For bilateral or multilateral APAs, the Commissioner will engage in mutual exchanges with the competent authorities of relevant tax treaty jurisdictions. These discussions will cover all elements of the APA process, including subsequent revisions, terminations, and renewals, in accordance with the applicable tax treaty provisions and mutual agreement procedures. c) Where APA negotiations break down in the case of unilateral APAs, a person may make an application with the Commissioner for a review of the decision of the Commissioner. d) The Commissioner shall notify a person where a different agreement has been arrived at, with the competent authority of a tax treaty partner. e) A person shall confirm acceptance of the agreed terms of the APA in writing, within 30 days. Failure upon which, the APA application may be rejected. f) Following a person's confirmation, the Commissioner in coordination with relevant tax treaty partners will finalize the terms and conditions of the Advance Pricing Agreement.	Based on the Regulation, the Commissioner will be at the forefront of negotiating all forms of the APA. It is expected that prior to the Commissioner entering into negotiations with the competent authority of the treaty partners, in the case of bilateral or multilateral APAs, the Commissioner would have had deliberations with the taxpayer. Clarity should be provided regarding any timelines or procedures for a person to lodge an application for review of the decision following the breakdown of an APA. We recommend for a timeframe to be provided for the Commissioner to finalize the terms of the APA, once a person has confirmed acceptance of the terms of the APA to provide certainty.

Summary

Regulations	Description	Our comments
Regulation 11: Opinion of an independent expert	The Regulation provides that where the opinion of an independent expert is required at any stage of the APA process, either the taxpayer or the Commissioner may engage such an expert, at the costs and expenses of the person.	The involvement of an independent expert is a welcome move. A person may therefore consider engaging their tax advisor in the APA negotiations.
Regulation 12: Failure of bilateral or multilateral APA negotiations	The Regulation provides as follows: a) A person may convert to a unilateral APA where a bilateral APA negotiation fails, with the Commissioner's concurrence. b) A person may proceed with bilateral APAs or multilateral APA with the remaining treaty partners, where multilateral APA negotiations fail with one treaty partner.	These proposals are a welcome move, since they provide a person with a fall-back.
Regulation 13: Withdrawal of an APA application	The Regulation provides as follows: a) A person may withdraw their APA application at any time before the agreement is finalized, by submitting a written notice to the Commissioner. b) An application will be deemed automatically withdrawn in the following circumstances: • Failure to submit a formal application within stipulated time as mentioned in Regulation 5 in case of APA renewal. • Failure to submit information requested at any stage of the APA process within stipulated time as mentioned in Regulations 5 and 6.	This Regulation gives the taxpayer the option to opt-out of the APA process before conclusion of the APA, which provides flexibility to the taxpayer. The condition 'Failure to submit a formal application within stipulated time as mentioned in Regulation 5 in case of APA renewal' to be replaced to read as follows 'Failure to submit a formal application within stipulated time as mentioned in Regulation 17(1) in case of APA renewal' since Regulation 5 speaks on pre-filing meeting. However, withdrawal from the APA process without a good cause, especially at a late stage should be discouraged to prevent the waste of resources caused by such action.

Summary

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Regulation 15: Execution of an APA	The Regulation provides that the Commissioner shall prepare a draft of the negotiated terms of the APA in the following circumstances: a) In the case of a Unilateral APA, where the person accepts the negotiated terms, the Commissioner and the person shall execute the APA. b) In the case of a bilateral or multilateral APA, where the person(s) accepts the negotiated terms, the Commissioner will enter into a bilateral or multilateral agreement with the tax treaty partner(s) and communicate the agreed terms of the APA to the person in writing.	This implies that the Commissioner will be responsible for drafting the APA, subject to review, discussions and agreement by the parties involved.
Regulation 16: Requirement to file an annual compliance report	The Regulation requires a person to file an annual compliance report with the Commissioner in a prescribed form, within 6 months from the close of the year of income covered by the APA. The annual compliance report shall include: a. Audited financial statements for that year of income of the person, and in the case of multilateral or bilateral APAs, audited financial statements of the other person in the covered transaction; b. Ownership structure of the local and foreign persons involved in the controlled transactions; c. Local person's organisation chart; d. Details of controlled transactions including nature of transactions, quantum and percentage, entities involved and their location;	The Regulation provides for several documents to be filed with the Commissioner. However, we note that the documentation requirement does not deviate from the documents that can be requested for during a tax examination by the Commissioner. The documentation serves to demonstrate a person's compliance with the terms and conditions of the APA, including the information necessary to decide if the critical assumptions, or other safeguards, have been met.

Summary

Regulations	Description	Our comments
Regulation 16: Requirement to file an annual compliance report	e. Details of transaction flow consisting of physical flow of goods, flow of invoice and payment; f. A report of the relevant controlled transaction and the amount required to be reported by the person and, in the case of bilateral or multilateral APA, a similar report by the other person involved in the covered transaction; g. A description of any material changes in financial or tax accounting methods or principles employed in respect of the covered transaction that differs from methods or principles stated in the APA, and where there are no such material changes, an affirmative statement to that effect; h. An analysis of any compensating adjustments or subsequent compensating adjustments required under the APA with the relevant tax computations and relevant supporting documents; and i. Any other relevant documents as determined by the Commissioner. There is also a requirement for the above-mentioned documents to be maintained in accordance with the requirements under the Tax Procedures Act, 2015.	The requirement to maintain documentation under the Tax Procedures Act, 2015 has already been captured under Regulation 21, and we recommend for this requirement to be deleted under Regulation 16 to avoid repetition.

Summary

Regulations	Description	Our comments
Regulation 17: Renewal of APAs	The Regulation provides as follows: a. A person may request the Commissioner for renewal of an APA, not later than 6 months, before the expiration of the existing APA, by submitting updated information and supporting documents similar to those required for submission for the written request for pre-filing meeting. b. An APA may be renewed under similar terms and conditions if: • there has been no change in the facts and circumstances underlying the APA; • the critical assumptions as identified by the person under regulation 16 remain valid and relevant; and • the person has complied with the terms and conditions of the previous APA. The Regulation further provides that: a) the Commissioner shall inform the person of the decision in respect of the request in writing and the grounds for the decision within 30 days from the date of receipt of request. b) subject to sub-regulation (3), a person may submit to the Commissioner an application for renewal of an APA in the form prescribed in regulation 6 within 30 days of receipt of the Commissioner’s written decision. c) The Commissioner and the person shall execute the APA in accordance with Regulation 11.	This provides certainty for taxpayers in term of APA renewal procedures. We expect the renewal process to be efficient compared to first time applications. We recommend for timelines for renewal approval by the Commissioner to be provided, especially, where the terms and conditions of an APA has not changed.

Summary

Regulations	Description	Our comments
Regulation 17: Renewal of APAs	d) Where a formal application for renewal is not submitted within 30 days upon receipt of the Commissioner's decision under sub regulation 3, the application shall be deemed to have been withdrawn. e) A person may make a written request for a new APA in the event that the person does not qualify for renewal of the expiring APA due to the following conditions: ▪ the covered transaction has changed; ▪ there are material and anticipated changes in the fact and circumstances of the covered transaction; ▪ a different transfer pricing method is proposed; or ▪ there has been a change in the law.	
Regulation 18: Revision of APAs	The Regulation provides that parties may revise the APA under the following circumstances: a) failure to meet critical assumptions as provided in the APA, such as when a business activity has been changed or drastic changes in the economic environment; or b) a change in the law or the agreement under Section 41 of the Act that affects the APA.	This Regulation takes into consideration that factors may change which affect the terms and conditions of an APA. We recommend the following: a) Inclusion of a requirement for a person to notify the Commissioner within 30 days of occurrence of a change that may affect the terms and conditions of APAs. b) The inclusion of the timelines and procedures for revision of APAs This will provide certainty on the process to be followed by a person.

Summary

Regulations	Description	Our comments
Regulation 19: Cancellation of APAs	The Regulation provides that the Commissioner may cancel an APA in the following circumstances: a) failure to comply with the terms and conditions of the APA by the person or any other person involved in the covered transaction; b) error or mistake in the APA application, annual compliance reports or renewal submissions of the covered transactions by the parties to the APA; c) failure to provide information, documentation and compliance report as required by the APA Regulations in force; d) failure to conclude a revised unilateral, bilateral or Multilateral APA; or e) the APA of the participating foreign competent authority has been cancelled. The Regulation further provides that the Commissioner shall inform the person, and, or the competent authorities of the other jurisdictions of the cancellation in writing specifying: a) grounds for the cancellation; and b) the effective date of the cancellation.	Cancellation of APAs would be costly to the taxpayer considering the resources invested. Taxpayers should therefore, be keen to observe the timelines and requirements of the APA process. Taxpayers should also perform internal reviews to ascertain whether the terms and conditions of the APA are being followed. However, we recommend that a person should be notified of the intention by the Commissioner to pursue cancellation measures to avoid costly surprises.

Summary

Regulations	Description	Our comments
Regulation 20: Revocation of APAs	The Regulation provides that the Commissioner may revoke an APA if it is established that any person in the covered transaction made any of the following: a) misrepresentation of facts; b) fraud; c) omission of material facts; d) failure to disclose any ongoing tax investigation or tax audit; or e) the APA of the participating foreign competent authority has been revoked. The Regulation further provides that the Commissioner shall inform the relevant parties of the revocation in writing, specifying the following: a) grounds for the revocation; and b) the effective date of the revocation which is from the first day of the covered period.	Taxpayers should be keen to observe compliance with APA disclosure requirements to minimise risks of revocation of APAs. We recommend that the Commissioner should only revoke an APA after a careful and thorough evaluation of the relevant facts and should inform and consult with the affected persons and other tax treaty partners on a timely basis.
Regulation 21: Record keeping	The Regulation requires a person to retain all records relied upon in concluding the APA, including those used in applying for the APA, as well as documentation or supporting information provided in the annual compliance report, in accordance with the requirements under the Tax Procedures Act, 2015.	This is aligned to record keeping requirements that affect all taxpayers in line with the Tax Procedures Act, 2015.

Summary

Regulations	Description	Our comments
Regulation 22: Tax compliance audit	The Regulation provides as follows: a) The Commissioner may undertake a tax compliance audit or an investigation on a person for transactions not covered under the APA. b) A person's application for an APA shall not result in the discontinuation or postponement of an audit.	It is notable that transactions that are not covered under an APA will still be subject to a KRA audit, even for the covered period. The condition that the application for an APA shall not result in the discontinuation or postponement of an audit, aims at reducing the risks of taxpayers pursuing an APA where an intention of audit has been issued, to stop or delay the tax audit process. However, we recommend where the APA process is ongoing, concurrently with a tax audit, the Commissioner to take necessary measures not to lock out a person from the APA framework.
Regulation 23: Rollback	The Regulation provides that a person may request the Commissioner for a rollback of an APA if: a) The proposed TP methodology is relevant to resolving transfer pricing issues in those prior years. b) The facts and circumstances in the prior years are similar to those of the APA. c) All tax returns for the proposed rollback years have been filed. The Regulation further provides that: a) Rollback will only apply to years that have not been audited by the Commissioner, and for which the controlled transactions have taken place. b) Rollback shall not apply to transactions on which a court or tribunal has issued a ruling, or which is subject to ongoing judicial proceedings. c) A person should submit amended tax computations for the rollback years within 30 days, from the date of signing the APA.	This is a welcome move since it will help in resolving issue that would have arose for the years which are open for a tax audit, and therefore, saves taxpayers time and resources. The Commissioner to consider entering into tax payment plan options with persons who have additional tax liability as a result of the compensating adjustments.

Summary

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Regulation 24: Compensating adjustments	The Regulation provides that a person should make a compensating adjustment, where the results of the covered transaction is materially different from the APA.	This is aimed at complying with the terms and conditions of the APA.
Regulation 25: Penalties	The Regulation provides that the compensating adjustment because of the APA may attract penalties and surcharges as provided for under the Tax Procedures Act, 2015.	Penalties/ surcharges applicable have been aligned to the Tax Procedures Act, 2015. We recommend that the Commissioner should consider granting a relief or amnesty for penalties and interest, arising from compensating adjustments made as a result of rollback applied though the APA process. This will encourage the uptake of the APA, and result into a win-win situation for both the taxpayers and the KRA.
Regulation 26: Legal effect	The Regulation further provides that: a) An APA shall be binding on both the Commissioner and the taxpayer. b) That an APA does not establish precedent for: • Other years of income outside the APA covered period. • Administrative or judicial proceedings involving the taxpayer. • Other persons or transactions not specifically covered by the APA.	This implies that where both parties have agreed the APA on, the APA will be binding to both parties. It is therefore expected that the Commissioner will not carry out a TP audit in relation to covered transactions during the covered period, as long as the taxpayer complies with the terms and conditions of the APA, except for checking whether the terms of the APA have been complied with. The Regulation reinforces the need for a person to apply for a renewal or an application for an APA following lapse of an APA. Similarly, taxpayers should not rely on another entity's APA as authority for their own transfer pricing positions.

Summary



Regulations	Description	Our comments
Regulation 27: Confidentiality of information	The Regulation provides that all information obtained by the Commissioner or in respect of the APA process is subject to the confidentiality provisions of the Tax Procedures Act, 2015, and the articles on exchange of information of the special arrangements, under Section 41 of the Income Tax Act.	This reinforces a taxpayer's trust by providing assurance that the information exchanged will be handled in a confidential manner.

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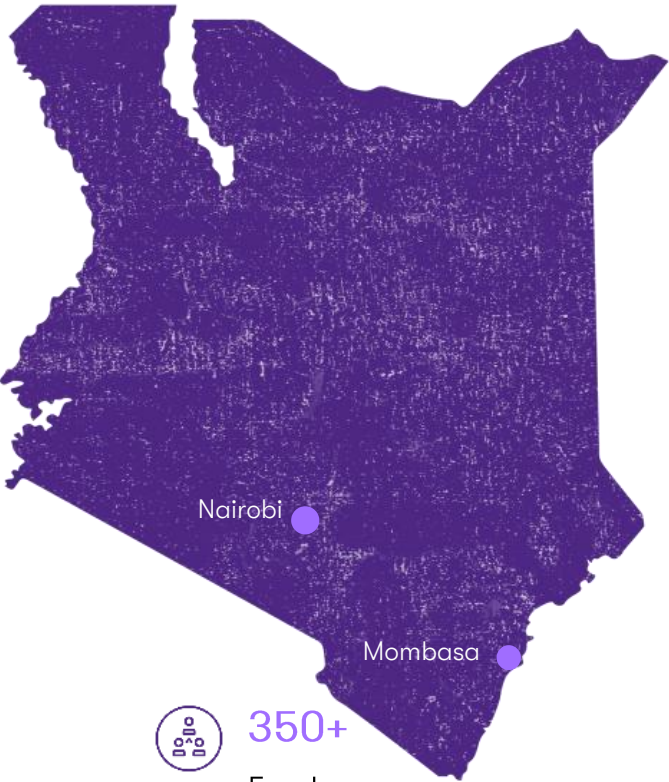
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