



Tax Alert

July 2025

Finance Act 2025 introduces Advance Pricing Agreements for Taxpayers with related party transactions within scope of transfer pricing.

APAs enable taxpayers to enter into formal agreements with the revenue authority in order to determine appropriate criteria for establishing arm's length prices for related party transactions within scope of transfer pricing.

Background

The Finance Act 2025 has introduced Advanced Pricing Agreements (APAs). APAs enable taxpayers to enter into formal agreements with the tax authority in order to determine the appropriate criteria for determining the arm's length price for related party transactions within the scope of transfer pricing.

Over the last few years, there has been an increase in transfer pricing disputes between taxpayers and the Kenya Revenue Authority (KRA). These disputes have been litigated at both the Tax Appeals Tribunal and the High Court. Transfer pricing disputes are expensive for both the taxpayer and the KRA as they require significant time investment to prepare for the litigation as well as costs of obtaining legal representation at the Tax Appeals Tribunal and the High Court.

In detail

The APA framework will benefit both taxpayers and the KRA in terms of providing certainty over the pricing of transactions and in turn, the tax to be paid by the taxpayer. In addition, it is expected that negotiating an APA will shift the often adversarial relationship between the KRA and the taxpayer, to a more collaborative one that fosters compliance and provides the KRA with the opportunity to gain a deep understanding of the taxpayer's business through the APA negotiation process.

Unilateral APAs are typically faster and more straightforward to negotiate compared to bilateral APAs as they involve only one tax authority. Although unilateral APAs will significantly help mitigate tax risks within Kenya, they do not offer protection against potential

transfer pricing disputes in the tax jurisdiction of the counterparty to the transaction(s). This may result in double taxation if the APA agreement is not recognized by the other tax jurisdiction impacted by the related party transaction.

The Finance Act 2025 Act outlines the following key elements of the APA framework:

- **The eligible taxpayer and scope of APAs** – A person who undertakes a transaction contemplated under section 18(3) or section 18A of the Income Tax Act i.e. transactions with non-resident related parties or transactions with a related resident person operating in a preferential tax regime.
- **Type of APA** – The type of APA envisaged in the Finance Act is a Unilateral APA i.e. between a taxpayer and one revenue authority, in this case the KRA.
- **APA validity period** – The Finance Act provides for an APA period not exceeding five consecutive years.
- **Arm's Length standard** – The Finance Act provides that the price is determined according to the amount which would have been expected to accrue if that business had been conducted by an independent person dealing at arm's length
- **Revocation** – The Finance Act provides an 'opt out' mechanism to the KRA where the

Commissioner determines that the APA was entered into through misrepresentation of facts.

- **Guiding regulations** – The Cabinet Secretary is expected to gazette APA regulations within six months from the commencement of the APA provisions i.e 30 June 2026.

The APA Rules once gazetted are expected to cover aspects such as related party transactions in scope, application process, APA filing fees and periods within scope including whether roll backs of APAs to past periods are applicable.

Conclusion

The Income Tax (transfer pricing) Rules were introduced in 2006 and given that it has now been almost 2 decades since their introduction, it is expected that KRA has had significant time to build technical capacity in transfer pricing and will be open to receiving and reviewing APA applications.

Further, the APA framework will enhance Kenya's attractiveness as a regional hub for multinational enterprises by offering a proactive mechanism for managing transfer pricing risks and avoiding future disputes.

Please feel free to contact your usual PwC (PricewaterhouseCoopers) contact or any of our experts listed herein should you wish to discuss this further.





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