



Tax Alert

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Kenya gazettes new Transfer Pricing rules, 2026

Kenya has gazetted the Income Tax (Transfer Pricing) rules, 2026 under Legal Notice No. 186 of 2026, revoking the transfer pricing rules that have been in force since 2006. While the new rules retain the traditional transfer pricing methods and the “most appropriate method” approach, they also introduce important changes that will affect how taxpayers price, document and defend related-party transactions.

The most notable changes are the introduction of a specific pricing rule for commodity transactions, the expansion of the categories of transactions expressly covered by the rules, and more detailed documentation requirements. In practical terms, the rules are likely to raise compliance expectations and strengthen the Kenya Revenue Authority’s (“KRA”) position in transfer pricing reviews, particularly for taxpayers with commodity, financing, restructuring and other complex related-party arrangements.

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At a glance

The key takeaways are as follows:

- the 2026 rules replace the 2006 Transfer Pricing rules and provide a more detailed framework for pricing and documenting related-party transactions;
- a new commodity pricing rule introduces a benchmark based on publicly quoted prices using an average price 15 days before and 15 days after shipment;
- the rules expressly cover a wider range of transactions, including financing, insurance and reinsurance, business restructurings, cost distribution arrangements and derivatives;
- the documentation requirements are now more detailed and transaction-specific; and
- despite the added detail, the rules do not fully resolve several issues that commonly arise in transfer pricing disputes, including benchmarking mechanics and broader questions around documentation sufficiency.

Background

Kenya's previous transfer pricing rules were introduced in 2006 and remained largely unchanged for almost two decades. The Income Tax (Transfer Pricing) rules, 2026 update that framework and align it more closely with the current transfer pricing provisions of the Income Tax Act.

Broadly, the transfer pricing framework remains the same. The 2026 rules introduce some notable changes, but do not resolve many of the issues that continue to drive transfer pricing disputes in practice.

1. New commodity pricing rule

The most significant addition in the 2026 rules is a specific pricing rule for commodity transactions, which will be particularly relevant for Kenyan import and export businesses dealing in commodities.

Where a commodity is imported or exported and a price is available from an international or domestic commodity exchange, a recognised price reporting or statistical agency, a governmental price-setting agency, or another public index used by independent parties, that publicly quoted price is to be used in computing taxable income.

The quoted price is determined using an average of prices 15 days before and 15 days after the shipping date, based on the relevant shipping documents. In practice, this means that for qualifying related-party commodity transactions, the publicly quoted price becomes the starting point unless the taxpayer can support an adjustment consistent with the arm's length principle.



The rules also provide that the quoted price is disregarded where the taxpayer enters into a transaction with a third party at a higher price (for exports) or at a lower price (for imports). In effect, the quoted price is disregarded where there is a more favorable Comparable Uncontrolled Price (CUP). This fundamentally goes against the arm's length principle which requires functional and product comparability between related party transactions and third party transactions before a CUP is applied.

It is important to note that the OECD Transfer Pricing Guidelines treat quoted prices as a reference point under the CUP method and give weight to the contractually agreed pricing date and make allowance for comparability adjustments. The provisions in the rules appear to be a key departure from the OECD framework.

This is likely to be one of the most commercially significant changes for taxpayers dealing in products for which quoted market prices exist. Businesses in the extractives, agriculture, energy and trading sectors should review their pricing policies, contractual pricing clauses and supporting evidence to ensure they can defend any departure from the quoted benchmark.

2. Wider scope of transactions covered by the rules

The 2026 rules are framed more broadly than the previous rules and support scrutiny of a wider range of related-party transactions.

In addition to transactions involving tangible property, intangible property and services, the rules now specifically refer to:

- financing transactions, including borrowing, lending, guarantees, marketable securities, advances, deferred payments and receivables;
- insurance and reinsurance transactions;
- business restructuring or reorganisation transactions;
- cost distribution arrangements; and
- transactions involving derivatives.

This is a notable expansion from the 2006 rules and makes it clear that transfer pricing scrutiny is not limited to traditional trading arrangements. It may also extend to treasury activities, changes in operating models and other complex intra-group dealings.



3. Updated linkage to the Tax Procedures Act

The new rules also expressly provide that the provisions of the Tax Procedures Act relating to fraud, failure to furnish returns and underpayment of tax apply to transfer pricing matters. They further provide that unpaid tax arising from a transfer pricing arrangement is deemed to be additional tax for purposes of section 38 of the Tax Procedures Act.

Rule 8(4) also requires taxpayers to provide detailed financial information, including financial statements of counterparties to the controlled transaction, segmental reports, allocation keys and schedules showing how the financial data used in the transfer pricing analysis ties to the annual financial statements. In practice, this may be challenging in a number of cases. A Kenyan taxpayer may not always have access to counterparty financial statements or transaction-specific segmented financial information, and in some groups this information may not exist in the form contemplated by the rules.

The rules therefore appear to set a high documentation threshold, including in relation to information that may not be readily available to the Kenyan entity. To the extent taxpayers are expected to provide information outside their possession or control, this may create tension with the broader Tax Procedures Act framework and may become a further area of controversy in transfer pricing audits.

4. More detailed documentation requirements

The 2026 rules significantly expand the information that taxpayers may be required to maintain and provide in support of their transfer pricing positions.

Compared to the 2006 rules, the new rules prescribe more detailed information for each category of controlled transaction, including:

- transaction details, values, timing, currencies and contractual terms;
- details of the parties involved and their relationships;
- intra-group payments and receipts by jurisdiction;
- copies of agreements;
- functional and comparability analyses;
- reasons for selecting the transfer pricing method and, where relevant, the tested party;
- pricing assumptions and economic analysis;
- comparability adjustments;
- relevant financial information, including audited accounts, counterparty financial statements, segmental data and allocation schedules; and
- any relevant advance pricing agreements or similar arrangements in other jurisdictions.



In practice, taxpayers should expect greater scrutiny of the technical support for their transfer pricing positions. High level policy documents alone are unlikely to be sufficient where the rules now call for transaction-specific support.

5. Broader use of “related persons” and “connected persons”

The 2026 rules move away from the older “related enterprises” wording and instead define controlled transactions by reference to related persons, while also defining connected persons by reference to the Income Tax Act.

This change appears intended to align the rules more closely with the current statutory naming terminology.

What remains unclear?

Although the 2026 rules are more detailed than the 2006 rules, they do not fully resolve several issues that have historically driven transfer pricing disputes in Kenya.

For example, the rules do not provide detailed guidance on:

- acceptable comparables for benchmarking purposes given the difficulties in obtaining African comparables;
- the use of interquartile ranges to narrow down the arm’s length range;
- the evidential burden in transactions such as the provision of shared services, where disputes often arise over the level of supporting documentation required; or
- how KRA will assess documentation sufficiency in practice beyond the listed information requirements.

What this means for taxpayers

Taxpayers with related-party transactions in Kenya should consider taking action now. In particular, businesses should:

- identify whether all transactions potentially falling within the expanded scope of the rules have been captured, including financing, guarantees, restructurings, insurance, cost distribution arrangements and derivatives;
- review commodity pricing arrangements against the new quoted-price rule and ensure any adjustments are well supported;
- revisit intercompany agreements to confirm that they reflect the actual conduct of the parties and the pricing model being applied;
- refresh transfer pricing documentation to address the more detailed information now expected under the rules;
- ensure that financial data used in transfer pricing analyses can be reconciled to statutory accounts and, where relevant, segmental reporting; and
- strengthen internal governance frameworks around transfer pricing documentation in readiness for more detailed information requests from KRA.

How we can help

We can help you assess the impact of the 2026 rules, including by:

- reviewing whether your related-party arrangements fall within the expanded scope of the rules;
- assessing your commodity pricing policies and supporting evidence;
- refreshing your transfer pricing documentation in line with the new requirements;
- reviewing your intercompany agreements and implementation against actual conduct; and
- supporting your transfer pricing audit readiness and controversy management.

