

THE INCOME TAX ACT

(Cap. 470)

THE INCOME TAX (TRANSFER PRICING) RULES, 2026

ARRANGEMENT OF RULES

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THE INCOME TAX ACT

(Cap. 470)

IN EXERCISE of the powers conferred by section 18(8) as read with section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury, makes the following Rules—

THE INCOME TAX (TRANSFER PRICING) RULES, 2026

1. These Rules may be cited as the Income Tax (Transfer Pricing) Rules, 2026. Citation.
2. In these Rules, unless the context otherwise requires— Interpretation.
 - “arm’s length price” means the price payable in a transaction between independent persons;
 - “commodity” includes agricultural produce, fisheries product, solid or liquid or gas mineral, a hydrocarbon and derivatives thereof, any other product or natural mineral or mineraloid obtained from the land or water and, in general, any good where publicly quoted price as described in rule 7 exists;
 - “comparable transactions” means transaction between which there are no material differences or in which reasonable accurate adjustments can be made to eliminate material differences;
 - “controlled transaction” means any transaction between related persons; and
 - “connected person” means related persons referred to, or meet any of the conditions outlined, in sections 2, 18, 18A, 18B, 18C, 18D, 18E and 18F of the Act.
3. The object and purpose of these Rules are to provide guidelines for determining arm’s length prices for transactions between related persons. Object and purpose of the Rules.
4. These Rules shall apply to transactions contemplated by sections 18, 18A, 18B, 18C, 18D, 18E and 18F of the Act. Scope of Rules.
5. The transactions subject to adjustment of prices under these Rules include— Transactions subject to the Rules.
 - (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 type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities, or any type of advance payment or deferred payment, or receivable, or any other debt arising during the course of business;
 - (e) insurance and reinsurance transactions;
 - (f) a transaction of business restructuring or reorganisation 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 at 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.

6. (1) A person shall choose the most appropriate method of any of the following transfer pricing methods when determining an arm's length price—

Choice of transfer pricing method.

- (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 as 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 paragraphs (a), (b), (c), (d) or (e):

Provided that for the purposes of 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.

(2) Notwithstanding sub-rule (1), 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.

7. (1) 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 Act.

Application of methods.

(2) 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.

8. (1) 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.

Power of Commissioner to request information.

(2) 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.

(3) For each category of controlled transaction in which the person is involved, the person shall provide the Commissioner with the following information—

- (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;
- (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.
- (4) In addition to the documents under sub-rule (2) and information under sub-rule (3), the person shall provide the Commissioner with the following additional information—
- (a) audited financial statements of the person for each accounting year;
 - (b) financial statements for the parties to the controlled transaction including where the tested party has been selected as a party outside the country;
 - (c) 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;
 - (d) a summary of the financial information used in applying the transfer pricing method;
 - (e) information and allocation schedules showing how the financial data used in applying the transfer pricing method may be related to the annual financial statements;
 - (f) summary schedules of relevant financial data for comparables used in the analysis and the sources from which the data was obtained; and
 - (g) such other background information as may be necessary regarding the transaction.

(5) 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).

(6) 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.

9. Where a person avers the application of arm's length pricing, such person shall—

Application of
arm's length
pricing.

- (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.

10. The provisions of the Tax Procedures Act relating to fraud, failure to furnish returns and underpayment of tax shall apply to transfer pricing.

Cap. 469B to
apply.

11. 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.

Unpaid tax to be
deemed additional
tax.
Cap. 469B.

12. The Income Tax (Transfer Pricing) Rules are revoked.

Revocation.
Sub. Leg.

Made on the 12th August, 2026.

JOHN MBADI NG'ONGO,
Cabinet Secretary for the National Treasury.