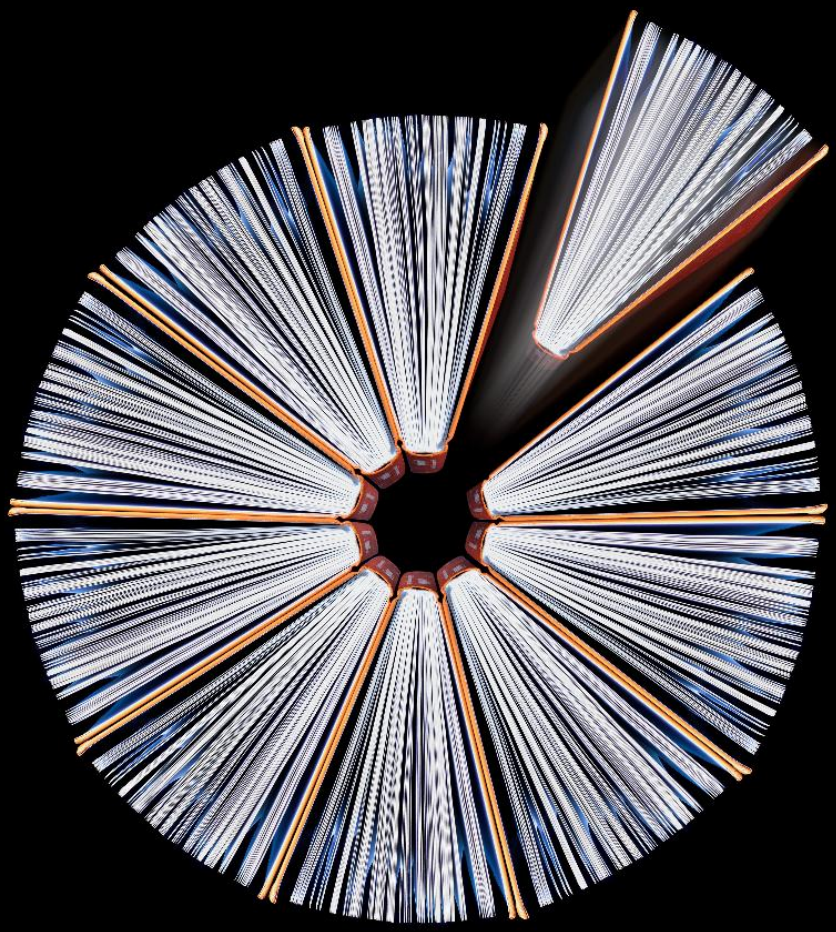
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Tax Alert

The Income Tax (Transfer Pricing) Rules, 2026

The Cabinet Secretary for the National Treasury and Economic Planning has gazetted the Income Tax (Transfer Pricing) Rules, 2026 (the 2026 TP Rules), which revokes and replaces the Income Tax (Transfer Pricing) Rules, 2006, introduced in 2006.

The 2026 TP Rules came into effect on 12 August 2026, expanding taxpayers' obligations regarding supporting documentation, broadening the scope of controlled transactions, and introducing specific pricing rules for commodity transactions.

The 2026 TP Rules are broadly similar to the 2006 Rules with a greater emphasis on the supporting documentation that taxpayers are required to maintain.

What are the key changes introduced by the 2026 Transfer Pricing rule?

Introduction of Commodity Pricing Rules

The 2026 TP Rules define Commodities to include *"...agricultural produce, fisheries product, solid or liquid or gas mineral, a hydrocarbon and derivates thereof, any other product or natural mineral or mineraloid obtained from the land or water and, in general, any good where publicly quoted price exists*."

The 2026 TP Rules require taxpayers engaged in exports and imports of commodities to use publicly quoted commodity price to determine the arm's length price. The quoted prices may be sourced from:

- an international or domestic commodity exchange market, or
- a recognised and transparent price reporting or statistical agency, or
- 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.

The quoted price is determined using an average of prices 15 days before and after the shipping date and supported with relevant shipping documents.

Quoted prices shall apply unless the taxpayer provides sufficient evidence to demonstrate that the adjustments made to the quoted price are appropriate and arm's length.

Additionally, where a commodity is exported to a related entity and subsequently sold by that party to an independent third party, the taxpayer will be required to maintain the third-party sales agreement and corresponding invoice as supporting documentation.

Our view

This change increases the compliance burden on commodity taxpayers by requiring more robust documentation to substantiate the pricing of commodities.

Expansion of the controlled transactions

The 2026 TP Rules provide that a '*connected person' means related persons referred to, or meeting any of the conditions outlined, in sections 2, 18, 18A, 18B, 18C, 18D, 18E and 18F of the Income Tax Act*.

The new definition expands the scope of covered persons beyond direct and indirect shareholding by incorporating arrangements involving guarantees, financing, significant levels of supply and purchases as well as other relationships that the Commissioner considers to constitute control.

In addition, the 2026 TP Rules expressly cover the following transactions:

- Purchase, sale, transfer or use of tangible/intangible property;
- Provision of services;
- Financing arrangements including; borrowings and loans, guarantees, purchase and sale of marketable securities; advance payments; deferred payments; receivables and other debt instruments;
- Insurance and reinsurance transactions;
- Cost distribution arrangements; and
- Derivative transactions.

Our view

Taxpayers should review their business operations and commercial arrangements to identify relationships and transactions that may fall within the scope of the 2026 TP Rules.



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Enhanced documentation requirements

A major feature of the 2026 TP Rules is the significant expansion of documentation obligations. Taxpayers must maintain information supporting:

- The related parties involved broken down by jurisdiction and the relationship among them.
- Transaction timing, values, settlement currencies, contractual terms and conditions.
- Trading models of the controlled transactions and explanations of how the transactions are similar to or different from uncontrolled transactions.
- Copies of agreements and contracts.
- Detailed analysis of the functions performed, risks assumed and assets utilised.
- For comparability analysis; the search process, databases used, selection criteria, rejected potential comparables with rationale for rejection and internal comparables where available.
- For economic analysis; the selected comparables, comparable financial information, benchmarking outcomes, tested-party selection rationale, industry analysis, economic analysis, forecasts and budgets relied upon.
- Documents affecting the pricing of controlled transactions including intangibles used, cost savings, market premium considerations, location-specific advantages.
- TP assumptions made including multi-year analyses, comparability adjustments and final arm's length conclusions.
- Advance Pricing Agreements and Similar arrangements in other jurisdictions, where applicable.

Additional financial information requirements

The 2026 TP Rules further require taxpayers to provide:

- Audited financial statements.
- Financial statements for the counterparties 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.
- Information and allocation schedules showing how the financial data used in applying the TP method may be related to the annual financial statements.
- Financial information relating to comparables used in the analysis and the sources from which the data was obtained.

Further, the Commissioner may request any additional information beyond the prescribed documentation requirements when necessary.

Our view

Although the 2026 TP rules enhance the supporting documentation requirements, they do not sufficiently address the specificity and relevance of the documents required to support each category of the intercompany transactions.

Consequently, uncertainty persists regarding the nature and level of documentation taxpayers are required to maintain to prove that the transactions are at arm’s length.

A clearly defined transaction specific framework would provide taxpayers with greater certainty regarding their compliance requirements, promote consistency in the application of the Rules and support more focused and efficient TP audits thus reducing disputes arising from documentation gaps.

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Penalties and tax consequences

The 2026 TP Rules provide that provisions of the Tax Procedures Act (TPA) relating to fraud, failure to furnish returns; and underpayment of tax apply to transfer pricing matters.

Further, any tax arising from transfer pricing adjustments and remaining unpaid will be treated as additional tax subject to penalty at 5% and interest at 1% per month or part thereof.

Conclusion

Although the 2026 TP Rules are an improvement to the 2006 framework, particularly on commodity pricing and documentation requirements, the guidelines remain relatively limited in addressing the complexities of modern transfer pricing arrangements.

For instance, the 2026 TP Rules provide insufficient detail on treatment of intangible assets, digital assets and emerging TP issues including allocation of value within multinational enterprises. This is particularly relevant given the continued disputes surrounding the application of the profit split method, particularly in determining when the method is appropriate and how the combined profit should be allocated among related parties.

Transfer pricing remains a key area of concern for multinationals involved in related party transactions in Kenya. Companies should therefore review their related party arrangements, assess the potential impact of the 2026 TP Rules and strengthen their transfer pricing compliance.



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