KPMG

Tax Alert

The Income Tax (Advance Pricing Agreement) Regulations, 2025

Overview

Kenya has taken a major step toward strengthening its transfer pricing framework with the publication of the **Draft Income Tax (Advance Pricing Agreement) Regulations, 2025 (draft APA regulations).**

An Advance Pricing Agreement (APA) enables a taxpayer and the tax authority to agree in advance on an appropriate transfer pricing methodology for specified controlled transactions, thereby ensuring compliance with the arm's length principle and providing certainty on tax outcomes for a defined period.

The Finance Act, 2025 introduced Section 18(G), a provision that empowers the Commissioner to enter into APAs with taxpayers engaged in cross-border related-party transactions or dealings with entities operating in preferential tax regimes.

To operationalize this framework, the Commissioner General of Kenya Revenue Authority (KRA), on behalf of the Cabinet Secretary for the National Treasury and Economic Planning, published the draft APA regulations on **3 November 2025.**

The Cabinet Secretary, through the Commissioner General, has invited the public and relevant stakeholders to submit their comments and feedback by 2 December 2025 to inform the finalization of the regulations.

APA Application Process and timelines

Under the draft APA Regulations, the APA process begins with a pre-filing meeting request, which must be submitted at least twelve months before the proposed covered period. This stage enables the taxpayer and the Commissioner to discuss the scope of the transactions, the transfer pricing methodology, and the potential suitability of an APA.

The taxpayer is required to provide supporting documentation, including transaction details, financial statements, transfer pricing analyses, and the proposed method for determining arm's length prices. After reviewing the information, the Commissioner may authorize the taxpayer to proceed with a formal APA application, which must be submitted within thirty days of such approval.

APA Filing Process and Timeline

Pre-filing stage

Request for prefiling meeting at least **12 months** before the covered period.

Pre-filing stage

Detailed information about the transactions, parties, proposed methods, assumptions, and financials must be provided.

Commissioners' response

1. Commissioner shall invite a taxpayer for a pre-filing meeting **within 30 days** upon receipt of the required information
2. Commissioner to notify taxpayer **within 30 days** of the pre-filing meeting on whether to proceed with a formal APA application.

Formal application

Taxpayer to submit formal application **30 days** upon receipt of the notification.

Application fees

A non- refundable fee is payable of KES 5,000,000 for new applications.

Evaluation & negotiation

No formal timeline provided in draft regulations.

Evaluation and negotiations

1. For Unilateral APAs, the Commissioner and taxpayer negotiate all terms, including possible revisions, renewals, or terminations.
2. For Bilateral or Multilateral APAs, there will be an exchange of briefs between the Commissioner and the Competent Authorities of the treaty partners, in line with applicable treaties.

Execution and compliance

Signing of APA for a period of 5 years.

Execution and compliance

1. Confirmation and signing of the APA must be made within 30 days
2. Taxpayers must submit an annual compliance report to the Commissioner within six months after the end of each year of income covered by the APA.

Renewal

Taxpayers may renew an APA **at least 6** month before expiry.

Renewal fees

A non- refundable fee is payable of KES 2,500,000.

Analysis of the key provisions

1. Types of APAs available

The Commissioner may conclude unilateral, bilateral, or multilateral Advance Pricing Agreements (APAs). In the absence of a tax treaty, only unilateral APAs would be available.

Where a tax treaty exists, a taxpayer may apply for a unilateral, bilateral, or multilateral APA, and unilateral APAs would also apply to transactions with related resident persons operating in preferential tax regimes.

Our comments

Given Kenya's limited tax treaty network, unilateral APAs will, in practice, be the most common form of agreement with bilateral and multilateral APAs used mainly in cases involving key treaty partners.

2. Pre-filing, Application requirements and timelines

The APA process would begin with a written pre-filing request to the Commissioner, which must be lodged at least twelve months before the first day of the proposed covered period. At this stage, the taxpayer is expected to present detailed information on the covered transactions, parties involved (including names, addresses and PINs), the proposed APA term, existing transfer pricing documentation, the proposed methodology and supporting functional and economic analysis, critical assumptions, as well as financial statements, tax computations, trial balances and intra-group agreements for the previous five years.

The taxpayer must also disclose whether income from the covered transactions is exempt in Kenya or elsewhere. For bilateral or multilateral APAs, equivalent information must be filed simultaneously with all affected competent authorities.

Once the request is received, the Commissioner is required to invite the taxpayer to a pre-filing meeting within **thirty days**, and then, within a further **thirty days**, indicate whether the taxpayer may proceed to submit a formal APA application.

Unilateral APAs are negotiated directly between the taxpayer and the Commissioner, while bilateral and multilateral cases involve an exchange of briefs and negotiations between the Kenyan competent authority and its treaty partners.

If a bilateral negotiation does not succeed, the case may be converted into a unilateral APA, and in a multilateral context the process may continue bilaterally with remaining countries if one partner withdraws.

Our comments

While the draft APA Regulations provide indicative timelines for several stages of the APA process, such as pre-filing, submission, and renewal, there are no specified timelines for the evaluation and negotiation phases.

Introducing clear timeframes for these stages would enhance predictability and provide greater certainty to taxpayers regarding the overall duration of the APA process.

3. Fees and associated costs

The draft APA regulations place the financial responsibility for the APA process squarely on the taxpayer. Under the proposed framework, taxpayers will be required to bear all costs associated with the APA process, including the engagement of any specialist advisers or independent experts.

In addition to these costs, the draft regulations introduce a non refundable application fee of KES 5 million, payable once the Commissioner allows the taxpayer to proceed beyond the pre filing stage. For renewals, a non refundable renewal fee of KES 2.5 million will apply after the Commissioner communicates the decision on renewal.

Given the magnitude of these fees, coupled with the extensive documentation and resource requirements, APAs are likely to be most attractive to large multinationals or taxpayers with significant transfer pricing exposure. Smaller or mid sized taxpayers may find the cost of entry prohibitive, even where an APA could provide valuable certainty and risk management benefits.

Our comments

From a policy perspective, there may be merit in adopting a graduated or tiered fee structure, for example, linking application and renewal fees to the value of the covered transactions, the size of the taxpayer, or the complexity of the APA. In our view such an approach could enhance accessibility and encourage broader participation in the APA programme, supporting the overall objective of improving transfer pricing certainty and compliance in Kenya.

4. APA term and critical assumptions

An APA will cover five consecutive years of income. A key requirement under the draft APA regulations is the inclusion of a clear and well-supported description of the critical assumptions underpinning the proposed transfer pricing method(s).

In line with international practice, these are the factual and economic conditions that are so fundamental that a material change could affect the arm's length outcome or even whether the APA should continue to apply.

5. Execution, withdrawal and rejection of APAs

Once the terms of a unilateral Advance Pricing Agreement (APA) have been agreed, the Commissioner and the taxpayer execute the agreement, which then becomes binding on both parties for the specified transactions and period.

In the case of a bilateral or multilateral APA, the Commissioner first concludes a treaty-based agreement with the relevant competent authority or authorities and subsequently communicates the agreed terms to the taxpayer.

The draft regulations appropriately allow a taxpayer to withdraw an APA application at any stage prior to its conclusion. In addition, an application is deemed withdrawn where the taxpayer fails to submit the required information or a formal application within the prescribed timelines.

The Commissioner may reject an APA request where the transfer pricing rules have not been complied with, the transactions are hypothetical or immaterial, the matter is already under appeal, or where the arrangement involves tax avoidance, treaty abuse, or other reasonable grounds.

A taxpayer who is dissatisfied with a rejection decision may apply for a review within thirty days of receiving the decision.

Our comments

The explicit right for a taxpayer to withdraw an APA application at any time before conclusion and the binding nature of the APA is a positive safeguard for taxpayers. However, the draft APA regulations do not specify the timeframe within which the Commissioner may respond to a review request once a rejection decision has been issued under regulation 14 nor do they clarify whether a response is mandatory.

To enhance transparency and provide greater certainty to taxpayers, it would be beneficial for the final Regulations to include a defined timeline and process for handling such review requests.

6. Annual compliance and record-keeping

Once an APA is in place, the taxpayer must demonstrate continued compliance through an Annual Compliance Report (ACR) to be filed within six months of the end of each covered year of income. This report is expected to include audited financial statements (for both parties in a bilateral or multilateral APA), the group ownership structure and local organisation chart, detailed descriptions and amounts of controlled transactions, a narrative of transaction flows (including goods, invoicing and payments), any changes in accounting or tax methods, and an analysis of any compensating adjustments made.

Our comments

The scope of information required for the ACR is extensive, particularly considering that it must be prepared and submitted every year. To enhance practicality and reduce administrative burden for both taxpayers and the Kenya Revenue Authority (KRA), the final APA regulations could adopt a more streamlined approach.

Specifically, the draft APA Regulations could prescribe a standardised annual APA compliance template focused on key indicators of adherence to the agreed APA terms, such as confirmation of the transfer pricing method applied, key financial ratios, and any changes in critical assumptions.

Detailed supporting documentation could then be requested only where these indicators suggest potential deviations from the agreed parameters or where material changes are reported.

This risk-based reporting model would maintain the Commissioner's ability to verify compliance and invoke revocation under Regulation 20 in cases of material non-compliance, while promoting efficiency and certainty for compliant taxpayers.

It would also align Kenya's APA administration with international best practice by balancing effective oversight with reduced compliance costs.

7. Roll back provisions

A notable feature of the Regulations is the possibility of "rollback," whereby the agreed transfer pricing methodology under an APA may be applied to prior, non-time-barred years of income.

Rollback is available where the methodology is relevant to resolving earlier transfer pricing issues, the underlying facts and circumstances are consistent with those of the APA period and all tax returns for the rollback years have been filed.

The Regulations also recognise compensating adjustments, which are required where actual results deviate materially from the outcomes anticipated under the APA. Adjustments relating to rollback years may attract penalties and interest in line with the Tax Procedures Act

Our comments

In our view, the rollback provisions are drafted in a tax-neutral manner and do not expressly restrict their application to situations where additional tax is payable.

In principle, this suggests that the agreed APA method could be applied consistently to earlier years whether this results in an increase or a decrease in taxable income.

This approach enables both the taxpayer and the KRA to align on a mutually accepted pricing method, facilitating efficient closure of outstanding audit matters and promoting administrative efficiency. The rollback provisions are particularly valuable for taxpayers seeking to resolve open audit years as this would provide a structured and cooperative mechanism for settling historical transfer pricing disputes.

8. Legal effect, audits and confidentiality

An APA is binding on both the Commissioner and the taxpayer for the specified covered transactions and period, but it does not create a legal precedent for other years, other taxpayers or other proceedings.

Conclusion

The APA framework represents a significant step toward greater transfer pricing certainty in Kenya. By providing for unilateral, bilateral and multilateral arrangements, as well as rollback to prior years, the Regulations have the potential to reduce dispute risk and foster a more cooperative relationship between taxpayers and the KRA.

However, the process is rigorous. The extensive documentation requirements, long lead times and high non refundable fees mean that APAs will likely be most suitable for high value or high risk transactions.

With a validity of up to five consecutive years, APAs allow companies to engage in long-term planning with confidence, knowing that the agreed methodology will apply consistently throughout the covered period.

Taxpayers considering an APA should ensure that their transfer pricing governance, systems and record keeping are robust enough to support both the initial application and ongoing compliance.

KPMG remains available to support taxpayers in evaluating the suitability of an APA, preparing pre-filing documentation, and navigating the application and negotiation process once the final Regulations come into effect.

KPMG is happy to assist on any issues arising from this alert. You can contact our tax and regulatory team for assistance on **taxandregulatory@kpmg.co.ke**

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