

Pre-Budget Considerations: Transfer Pricing Priorities for South Africa in 2026

As South Africa approaches the 2026 Budget Presentation, transfer pricing remains firmly in the spotlight for both policymakers and multinational enterprises (MNEs). The 2025 Budget Speech emphasised government's commitment to addressing persistent revenue shortfalls, where transfer pricing enforcement can serve as a key part of the strategy for additional revenue collection. In this context, and as we have noted in our experience, the South African Revenue Service (SARS) has been increasing transfer pricing audit activity, intensified its engagement in tax disputes and is expected to commence with a pilot phase of the long-awaited Advance Pricing Agreement (APAs) programme.

APAs: A Strategic Tool for Certainty

SARS has made significant strides in developing its APA programme, recognising the value of APAs in reducing disputes and providing certainty for both taxpayers and the South African fiscus, particularly in respect of certain complex or high-value cross-border transactions, where the risk of double taxation, and therefore the economic impact on the taxpayer, is material. The pilot phase of the APA programme will initially only accept bilateral APA applications.

The proposed South African APA process is aligned more closely with the Organisation of Economic Cooperation and Development (OECD) best practices, including the potential for bilateral and multilateral agreements that offer relief from double taxation through competent authority procedures. Efforts to streamline application procedures, clarify documentation requirements, and improve turnaround times are expected to make APAs a more attractive and accessible risk management tool for MNEs operating in South Africa.

For taxpayers, the strategic use of APAs can offer significant benefits such as certainty by locking in transfer pricing methodologies and outcomes for future years, reduced risk of unexpected adjustments, minimised likelihood of prolonged audits and litigation, and greater alignment with global standards.

Given the increased audit activity and scrutiny from SARS, MNEs should identify transactions that may benefit from the APA programme, ensure robust supporting documentation, and consider early engagement with SARS, to explore the feasibility of an agreement.



Enhanced Transfer Pricing Audit Activity: A New Era of Enforcement and Heightened Scrutiny

The 2025 Budget Speech and subsequent SARS communications make it clear that enhanced transfer pricing audit activity is a cornerstone of SARS's revenue collection strategy. SARS has increased its specialist transfer pricing teams, investment in advanced data analytics, and expanded participation in international information exchange networks. We have observed that this has resulted in a more targeted, risk-based approach, with a noticeable increase in both the frequency and depth of audits, as well as the volume and complexity of transfer pricing adjustments.

It has been our observation, that key areas of scrutiny include the pricing of intellectual property and other intangibles, the terms and pricing of intragroup loans and guarantees, the allocation and documentation of management fees, technical services and shared costs, as well as the transfer of functions, assets and risks between group entities, especially in the context of business restructurings. There is also closer alignment between transfer pricing and other tax compliance activities, including corporate income tax, customs and value-added tax (VAT).

SARS's approach, based on our experience, increasingly emphasises that the economic substance of transactions and the quality of benchmarking studies are what the focus comes down to. Taxpayers, particularly MNEs with complex or high-value cross-border transactions, are expected to maintain contemporaneous, robust documentation that clearly demonstrates arm's length pricing and the rationale for their transfer pricing positions. Where SARS identifies non-arm's length outcomes, adjustments may be imposed, often with significant tax, secondary adjustments and interest implications and in some cases penalties may also arise.

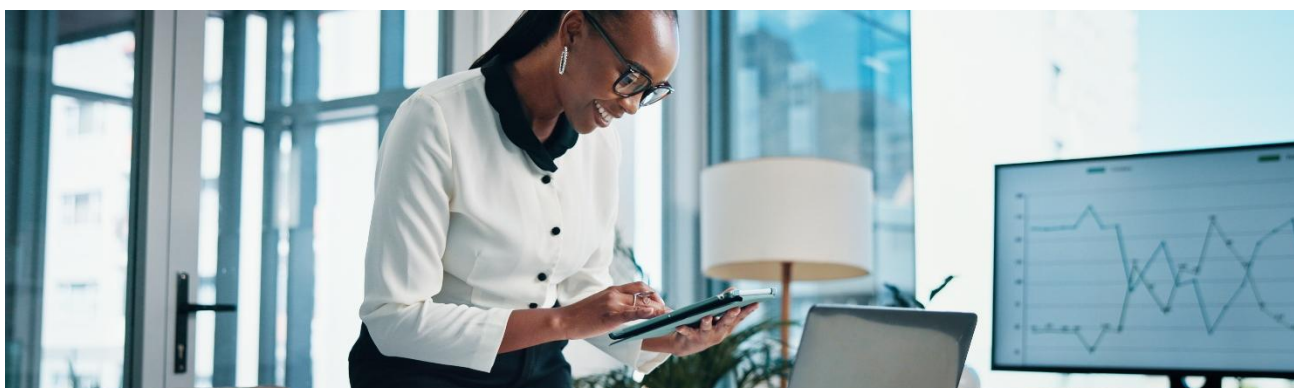
In this environment, proactive risk assessment and robust documentation are essential. Taxpayers should be prepared to respond to detailed information requests and ensure they have sufficient, supportable evidence to defend their positions. Early engagement with SARS, including the use of APAs, can help manage risk and achieve certainty.

Tax Disputes

SARS has become increasingly assertive in litigating transfer pricing disputes, as seen in recent cases such as *ABD Limited v Commissioner for the South African Revenue Service* and *SC (Pty) Ltd v SARS*. In the *ABD* case, SARS challenged the arm's length nature of a flat 1% royalty rate on intellectual property charged to subsidiaries. The court ultimately ruled in favour of the taxpayer, and highlighted the necessity for comprehensive, well-supported transfer pricing documentation. More recently, in the *SC (Pty) Ltd* matter, SARS scrutinised the compensation for trademarks and related intangibles, arguing that the Mauritian group company holding the trademarks lacked real substance, as the key functions and decision-making were performed in South Africa. These cases underscore SARS's focus on both the pricing and the economic substance of intragroup arrangements, signal the importance for taxpayers to maintain robust documentation and ensure that their transfer pricing positions are defensible in the face of heightened audit and litigation activity.

Outlook

The 2026 Budget is expected to reinforce the central role of transfer pricing in South Africa's revenue collection strategy. SARS's focus on APAs, enhanced audit activity and the resulting potential transfer pricing adjustments, reflect both global tax trends and local fiscal imperatives. MNEs operating in South Africa should take this opportunity to review their transfer pricing arrangements, ensure robust, supportable documentation, and engage proactively with SARS. By doing so, taxpayers can mitigate risk, achieve greater certainty, and contribute to a more stable and predictable tax environment.



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