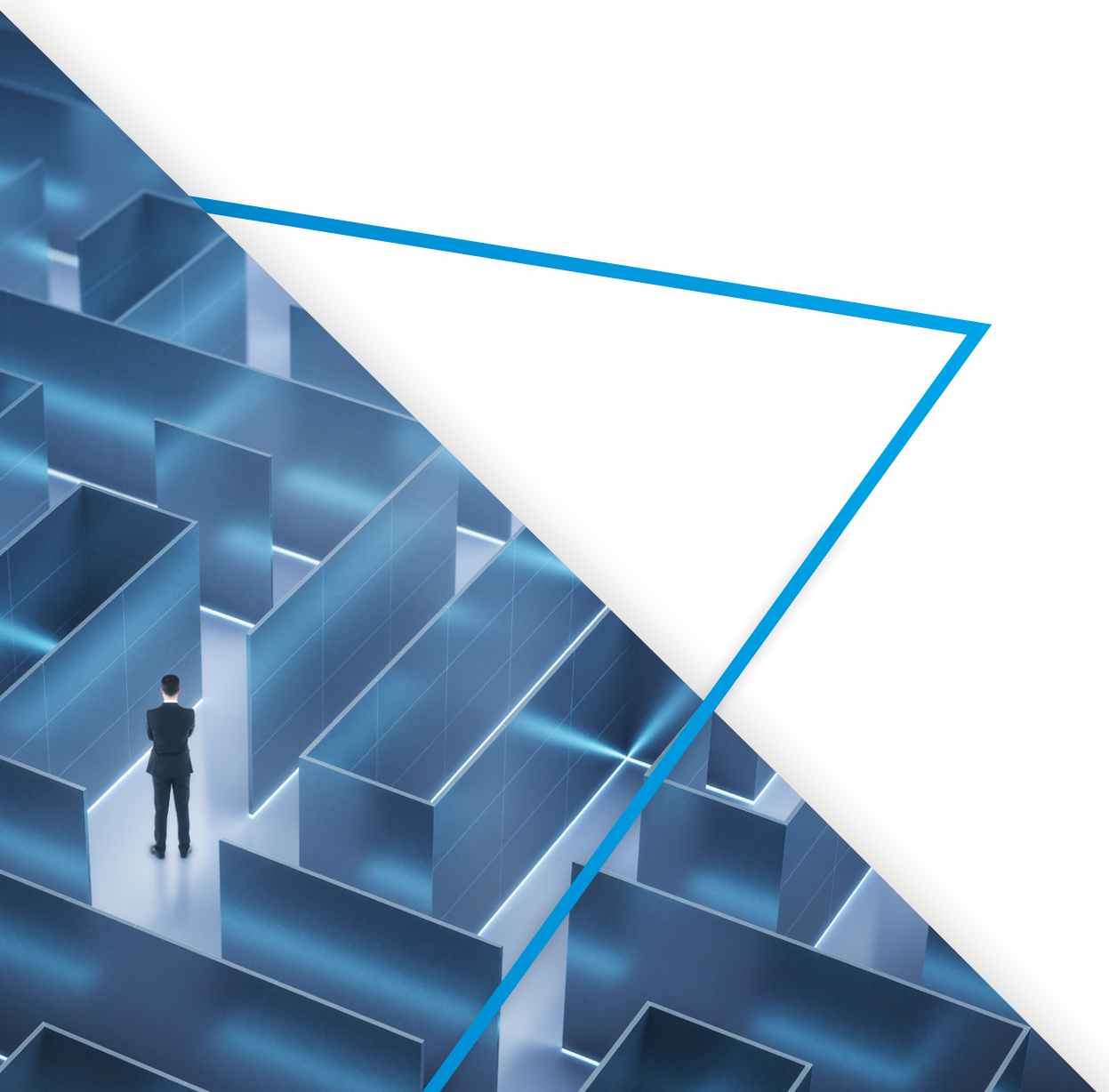
Tax & Exchange Control

ALERT | 8 December 2025



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KRA publishes Draft Advance Pricing Agreement Regulations, 2025

The Kenya Revenue Authority (KRA) has published the Draft Income Tax (Advance Pricing Agreement) Regulations, 2025 (Draft Regulations), accessible here. The Draft Regulations set out a comprehensive framework for taxpayers to enter into advance pricing agreements (APA) with the KRA to determine transfer pricing methodology in advance of controlled transactions.

An APA determines, in advance and over a fixed period, the appropriate transfer pricing methodology, comparables, appropriate adjustments and critical assumptions for related-party transactions, ensuring compliance with the arm's length principle. You can access our detailed analysis of what an APA is here.

The framework seeks to improve tax certainty, eliminate disputes arising due to transfer pricing, and harmonise Kenya's tax regime with global standards, particularly the Organisation for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) Action 14 on dispute prevention.

Eligibility

The Draft Regulations apply to controlled transactions under sections 18(3) and 18A of the Income Tax Act, Cap. 470 (ITA). Any person engaged in such transactions may apply for:

- A unilateral APA between the taxpayer and the KRA Commissioner (Commissioner) only: A unilateral APA is easier and faster to get because it only involves the KRA.
- A bilateral APA involving the taxpayer, the KRA and the competent authority of a treaty partner country: A bilateral APA guarantees stronger protection because both countries agree on the pricing. However, it takes more time and resources because it involves treaty processes and two revenue authorities. It is the most practical option for most multinational groups, but only if both sides have capacity.
- A multilateral APA involving the KRA and two or more foreign competent authorities: A multilateral APA covers several countries at once and gives the highest level of certainty. It is helpful for businesses with complex regional or global value chains. However, it is the hardest to negotiate, takes the longest and may not be realistic unless all tax authorities involved are well-prepared and willing to cooperate.

Pre-filing and application process

Applicants must request a pre-filing meeting with the Commissioner at least 12 months before the start of the proposed covered period. The request must include details such as:

- proposed covered transactions, related parties and period;
- transfer pricing documentation;
- proposed transfer pricing methods;
- description of the critical assumptions under which the transfer pricing methods will operate; and
- financial statements, trial balances, tax computations and intra-group agreements for the five years prior to application.

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For bilateral or multilateral APAs, the same documentation must also be shared with the other tax authorities involved.

The KRA is required to invite the taxpayer to a pre-filing meeting within 30 days to review the proposal and assess its feasibility, and within 30 days after that meeting, notify the taxpayer whether to proceed with a formal application.

If approved, the taxpayer must submit the full APA application within 30 days using the prescribed form. Upon receiving the application, the KRA may accept the proposed method, suggest alternative transfer pricing methods, adjust the scope or reject the application entirely. Additionally, the taxpayer must disclose any ongoing tax audits, investigations or disputes, as these may affect eligibility.

The taxpayer shall bear all costs related to an APA. In addition, a non-refundable application fee of KES 5 million is payable to the KRA after the pre-filing meeting. For APA renewals, a non-refundable fee of KES 2,5 million is payable after the notification.

Duration and scope

An APA covers only up to five consecutive years and is subject to renewal.

In our previous commentary, which can be accessed here, we proposed that the KRA include a provision for a rollback period. We are pleased to note that this has now been incorporated.

A taxpayer may request a rollback provision if the proposed transfer pricing methodology is relevant to resolving transfer pricing issues in prior years' assessments, the facts and circumstances of those years are the same as those of the covered period and all relevant tax returns for the rollback years have been filed. If an APA application results in adjustments to rollback years of assessment, such revisions may attract penalties under the Tax Procedures Act.

Negotiation and execution

The KRA may reject an APA application for reasons including:

- non-compliance with transfer pricing rules;
- hypothetical transactions
- inefficient use of resources;
- matters under appeal;
- tax avoidance schemes; and
- treaty abuse or any other reasonable grounds.

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Where the KRA rejects an application, it must inform the person in writing of the decision and reasons, and the person may request a review within 30 days of receiving the rejection decision.

Where an independent expert's opinion is necessary at any stage of the APA process, either the taxpayer or the KRA may engage the expert at the taxpayer's cost. If bilateral APA negotiations fail, the person may convert the application to a unilateral APA with the KRA's concurrence. In the case of a multilateral APA, if one competent authority's negotiation fails, the taxpayer may proceed with a bilateral or multilateral APA with the remaining countries.

A taxpayer may withdraw their application at any time before the agreement is concluded by submitting a written notice to the Commissioner. Withdrawal is deemed to occur where the person fails to submit a formal application within the stipulated time for renewal or fails to provide the requested information within the stipulated timelines.

Once negotiations are complete, the KRA will prepare a draft of the agreed terms. For unilateral APAs, the agreement is executed upon acceptance by both parties. For bilateral or multilateral APAs, the KRA will enter into agreements with the relevant treaty partners and communicate the agreed terms to the taxpayer in writing.

An APA is binding on both the KRA and the taxpayer once executed by both parties. However, it does not serve as a precedent for other years of income, nor for any administrative or judicial proceedings involving years, transactions or persons not covered by the APA.

Compliance obligations

Taxpayers must file an annual compliance report within six months after each year of income covered by the APA. The report must include:

- Audited financial statements for the year of income, and for bilateral or multilateral APAs, the audited financial statements of the other parties involved.
- A detailed analysis report covering the ownership structure of local and foreign entities in the controlled transactions, the local entities' organisation charts, details of controlled transactions, including their nature, value and percentage, and the entities involved and their locations and transaction flow, including physical movement of goods, invoicing and payment flows.
- A report on the relevant controlled transactions and amounts, including similar reports from other parties in bilateral or multilateral APAs.
- A description of any material changes in financial or tax accounting methods compared to those stated in the APA, or a statement confirming no changes.
- An analysis of compensating adjustments, including tax computations and supporting documents.
- Any other documents required by the KRA.

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Renewal

A taxpayer that wishes to renew an existing APA must apply at least six months before its expiry and provide updated information similar to that required at the pre-filing stage. Renewal will only be granted if the underlying facts remain unchanged, the critical assumptions identified originally are still valid, and the taxpayer has fully complied with the terms and conditions of the existing APA.

The KRA is required to notify the taxpayer in writing of its decision on the renewal request, including the reasons, within 30 days of receiving the request. If approved, the taxpayer will submit the formal renewal application in the prescribed form within 30 days of receiving the KRA's decision; otherwise, the request will be deemed withdrawn.

If renewal conditions are not met, such as changes in transactions, assumptions, methods or applicable law, the taxpayer must apply for a new APA instead.

Revision, cancellation and revocation

An APA may be revised if the taxpayer fails to meet critical assumptions stated in the APA or if changes in the law or in any related agreement impact the APA.

The KRA may cancel an APA for non-compliance with the terms and conditions of the APA, errors or mistakes in the APA application, failure to provide required information, documentation or compliance reports, failure to conclude a revised unilateral, bilateral or multilateral APA, or cancellation of the APA by a foreign competent authority involved.

The KRA may revoke an APA if it is established that any party involved in the covered transaction has misrepresented facts, committed fraud, omitted material facts or failed to disclose any ongoing tax investigation or audit, or if the APA of a participating foreign competent authority has been revoked. Revocation is effective from the first day of the covered period. Revoking an APA nullifies it from the start of its covered period, exposing the taxpayer to retrospective transfer pricing reassessments, penalties and interest as if the agreement had never existed.

Audit

The KRA may conduct a tax compliance audit or investigation on transactions not covered under an APA. Submitting an APA application does not result in the discontinuation or postponement of any ongoing audit or investigation.

Confidentiality

All APA-related information is protected under the confidentiality provisions of the Tax Procedures Act.

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Summary of the APA process

PRE-FILING MEETING		
Request a pre-filing meeting at least 12 months before the start of the proposed covered period.	The KRA will invite the taxpayer to a pre-filing meeting within 30 days to review the proposal and assess its feasibility.	Within 30 days after that meeting, the KRA must notify the taxpayer whether to proceed with a formal application.

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FORMAL APPLICATION	
The taxpayer will submit the APA application within 30 days using the prescribed form.	Make payment of a non-refundable application fee of KES 5 million.

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NEGOTIATION AND EXECUTION			
No specific timeframe for the negotiation of the terms with the KRA. Negotiations may include expert opinion.	Taxpayer has 30 days to accept the terms of the APA after the KRA's communication.	Rejection must be in writing with reasons, but the taxpayer may request a review within 30 days.	Once negotiations are complete, the KRA will prepare a draft of the agreed terms.

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ANNUAL COMPLIANCE
Taxpayers must file an annual compliance report within six months after year end for the period covered by the APA.

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RENEWAL APPLICATION		
Renewal applications should be at least six months before the APA's expiry and provide updated information similar to that required at the pre-filing stage.	A renewal decision should be made within 30 days of receiving the request.	For APA renewals, a non-refundable fee of KES 2,5 million is payable after the application.

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Commentary

Kenya's Draft Regulations introduce a detailed regime that closely mirrors OECD best practices and aligns with the structures adopted in Nigeria and India, though it remains more prescriptive in its procedural timelines and cost requirements.

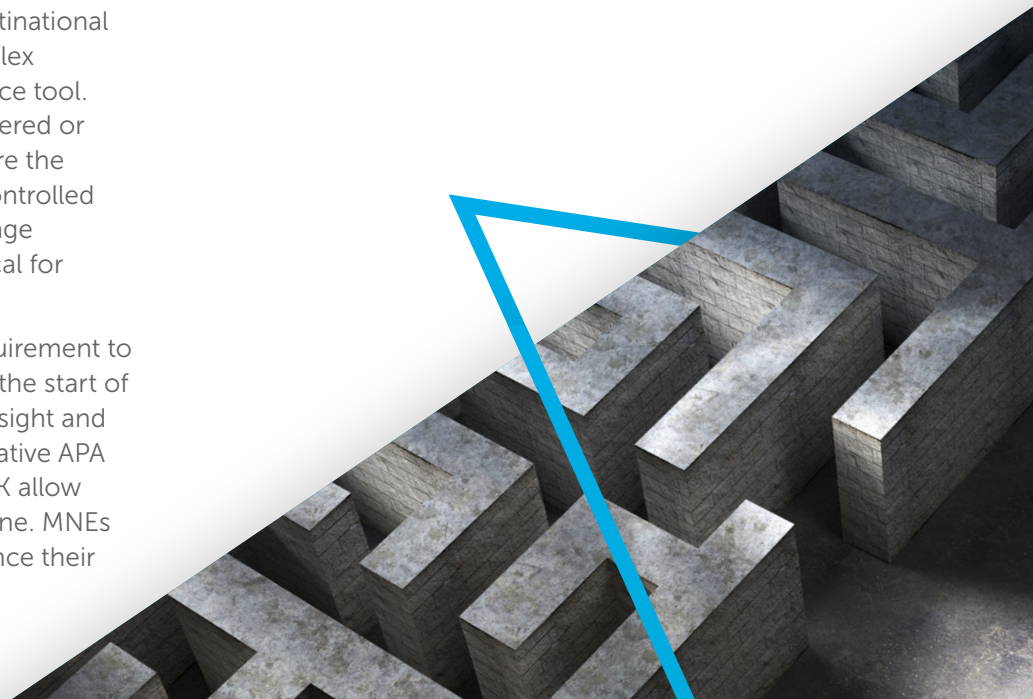
Our key observations include:

- **High-cost barrier:** The proposed fees discussed above exceed the relative costs in both comparable jurisdictions like Nigeria and India, even before accounting for differences in currency and market size. In comparison, Nigeria charges approximately KES 1,9 million for a unilateral APA and around KES 2,8 million for a bilateral or multilateral APA. India's fees are tiered based on transaction size, ranging from approximately KES 1,6 million to KES 3,2 million. The high fixed fee in Kenya suggests that the KRA is positioning the APA as a premium dispute-resolution service for multinational enterprises (MNEs) with high-value and complex transactions, rather than as a broad compliance tool. We, however, propose that the KRA adopt a tiered or value-based fee model similar to India's, where the application fee scales with the value of the controlled transactions to broaden accessibility, encourage compliance and make the APA regime practical for smaller and mid-sized MNEs as well.
- **The 12-month pre-filing constraint:** The requirement to submit a pre-filing request 12 months before the start of the covered period necessitates extreme foresight and accelerated internal documentation. Comparative APA jurisdictions like India, South Africa and the UK allow six months, adopting a more facilitative timeline. MNEs targeting the 2027 fiscal year should commence their preparatory analysis immediately in 2025.
- **Enhanced due diligence will be critical:** The grounds for revocation are severe, as revocation is effective retrospectively to the first day of the APA period. Absolute transparency and meticulous documentation are non-negotiable from the outset.
- **APA application form:** Currently, there is no prescribed form for an APA application. The Commissioner needs to publish the prescribed form for an APA application because it gives taxpayers a clear and consistent understanding of what is required from the outset.

Next steps

The KRA has invited stakeholders and interested parties to submit their input and comments for consideration, and the submissions are currently being considered as we await the final APA Regulations.

Alex Kanyi, Denis Maina and Prince Kiptoo



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR
Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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