BDO

Major changes in Kenya transfer pricing rules



What the 2026 Rules mean for businesses

Kenya's Income Tax (Transfer Pricing) Rules, 2026, issued under Legal Notice No. 186 of 2026, replace the 2006 Rules and introduce more detailed requirements for pricing and documenting transactions within their scope. The key changes concern wider statutory coverage, expressly identified in-scope transactions, commodity pricing between related parties and the records businesses must be able to produce to the Kenya Revenue Authority (KRA) to support their transfer pricing policies.

The arm's length principle remains the foundation: transactions should be priced on terms comparable to those that independent parties would agree.

For businesses, the priority is to demonstrate how their policies operate in practice, using agreements, reliable pricing evidence and financial records that support the results reported.

Wider statutory coverage

The 2006 Rules focused on cross-border transactions between related enterprises and dealings between permanent establishments and their head offices or related branches. The 2026 Rules expressly refer to sections 18 and 18A to 18F of the Income Tax Act, aligning the framework with legislative changes introduced in the Income Tax Act since 2006. These include the extension of arm's length requirements to transactions involving preferential tax regimes and the introduction of the three-tier documentation framework comprising the local file, master file and country-by-country report.

Quoted prices for commodity transactions

Commodity pricing represents a significant substantive change under the 2026 Rules. The commodity definition covers agricultural and fisheries products, minerals, hydrocarbons and their derivatives, other natural products, and goods for which a publicly quoted price exists. The Rules introduce publicly quoted prices as a benchmark for determining taxable income from commodity imports and exports between connected persons, subject to evidence supporting appropriate arm's length adjustments, where applicable. Accepted sources for publicly quoted prices include commodity exchange markets, recognised price-reporting or statistical agencies, government price-setting agencies and other reference indices used by independent parties.

The benchmark is calculated by averaging quoted prices for the 15 days before and the 15 days after the shipping date, as evidenced by the relevant shipping documents.

Commodity businesses should establish a consistent process for selecting price sources, confirming shipment dates, calculating the averaging window and approving any applicable adjustments with high coordination needed between the Finance, procurement and logistics teams because much of this evidence sits outside the tax function.

More transactions expressly identified

The Rules retain coverage of goods, tangible and intangible property and services, while giving more explicit treatment to financing and other arrangements. The following areas merit particular attention.

Transaction category	Areas to review
Financing	Borrowing, lending, guarantees, marketable securities, advance or deferred payments, receivables and other business debts.
Insurance and reinsurance	Related-party insurance and reinsurance arrangements.
Restructurings	Business restructurings or reorganisations with related persons, including arrangements whose financial effects arise later.
Cost distribution	Group cost distribution arrangements, including a review of the basis on which costs are allocated.
Derivatives	Controlled transactions involving derivative instruments.

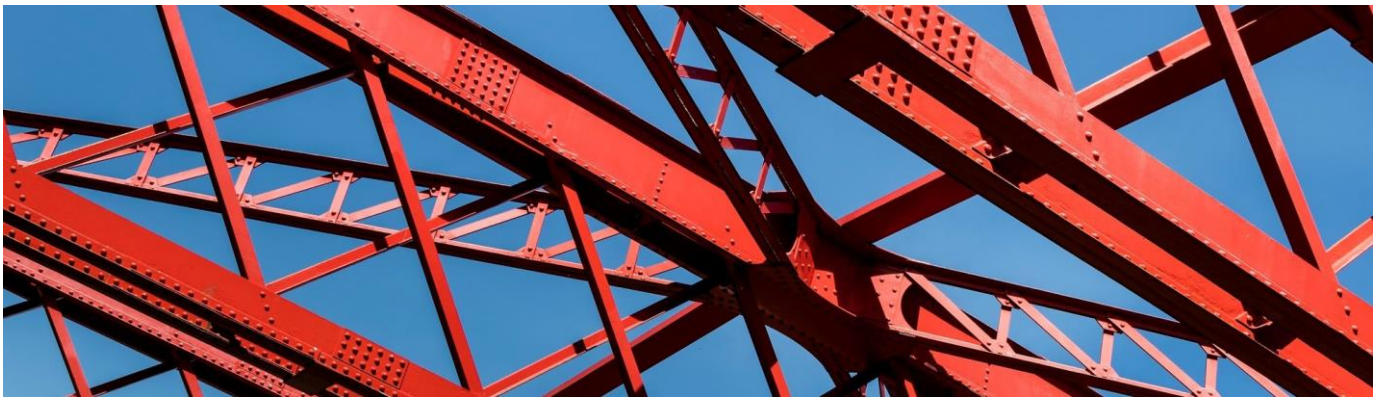
The 2006 Rules already contained a broad catch-all provision, so the change is greater specificity rather than proof that these arrangements were previously outside transfer pricing.

Clearer method descriptions

The five recognised transfer pricing methods remain unchanged: comparable uncontrolled price, resale price, cost-plus, profit split and transactional net margin.

However, the 2026 Rules clarify that the resale price method applies to goods purchased from a related party for subsequent sale to an independent third party. They also specify that the transactional net margin method compares operating profit against an appropriate base, such as sales, costs or assets.

Although not expressly stated in the 2006 Rules, these principles are reflected in the OECD Transfer Pricing Guidelines. The clarifications therefore align the application of both methods with internationally accepted transfer pricing standards.



Powers of the Commissioner

The 2026 Rules strengthen the Commissioner's ability to request detailed supporting documentation for each category of controlled transaction. This includes the parties involved, timing, values, settlement currency, contractual terms, and payments and receipts by tax jurisdiction. Businesses must also support their analysis of the functions performed, assets used and risks assumed by each party, addressing pricing factors such as intangibles, local cost savings and market premiums where relevant.

Benchmarking analyses must document the search process, data sources, selection criteria and reasons for rejecting potential comparables, including internal comparables. Taxpayers must explain material assumptions, the use of multiple years of data, comparability adjustments and their conclusions on arm's length pricing. Relevant budgets, projections and foreign advance pricing agreements or similar arrangements must also be available to support the analysis.

The Rules expressly require audited financial statements and financial information for the parties to controlled transactions, including a foreign tested party where one is selected. Where the analysis relates to only part of a business, segment reports must identify turnover, costs and expenses, together with the allocation keys applied and the reasons for selecting them. Supporting schedules must reconcile the financial data used in the transfer pricing analysis to the annual financial statements.

Accordingly, every element of a transfer pricing policy should be supported by reliable evidence and reflect the business's actual operations. Finance and tax teams should maintain transaction-level reconciliations and justified cost allocations, as an overall company margin may not adequately demonstrate arm's length pricing for individual controlled activities, particularly where a business has several divisions or transaction types.



Enforcement aligned with the Tax Procedures Act

The 2026 text replaces the old Income Tax Act references with the Tax Procedures Act provisions concerning fraud, failure to furnish returns and underpayment of tax which aligns the Rules with the current tax-administration framework.

Practical steps for businesses

Businesses should undertake a gap assessment covering their policies, transaction population, agreements, pricing methods and supporting records. The assessment should result in clear actions and named owners across tax, finance and the relevant operational teams. Priorities include:

1	Confirming all transactions within scope, including intercompany balances, guarantees, restructurings and dealings involving preferential tax regimes.
2	Updating intercompany agreements and functional analyses so they reflect actual conduct and the responsibilities of each party.
3	Reviewing benchmarks and establishing shipment-based controls for commodity pricing where applicable.
4	Obtaining group financial information, preparing reliable segment results and reconciling transfer pricing calculations to the financial statements.
5	Maintaining a compliance calendar and reviewing pricing outcomes during the year so that differences are investigated promptly.





BDO can guide businesses through this process by assessing their exposure to the new Rules, identifying compliance gaps and developing a practical implementation plan.

We can review and update transfer pricing policies and documentation, assess pricing methods, undertake benchmarking analyses and help align intercompany agreements with actual operations.

By working with local finance teams and group tax functions, we help businesses build evidence that supports their pricing positions and manage their ongoing compliance obligations.