



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

LEGAL NOTICE NO. _____ OF 2025

THE INCOME TAX ACT

(CAP. 470)

**THE INCOME TAX (ADVANCE PRICING AGREEMENT)
REGULATIONS, 2025**

Regulation

- 1. Citation**
- 2. Interpretation**
- 3. Scope of Regulations**
- 4. Application**
- 5. Pre-filing**
- 6. Submission of an application for an advance pricing agreement**
- 7. Fees and other payments**
- 8. Time frame of an advance pricing agreement**
- 9. Negotiation of an Advance Pricing Agreement**
- 10. Execution of an advance pricing agreement**
- 11. Failure of Negotiations**
- 12. Opinion of an independent expert**
- 13. Withdrawal of an application**
- 14. Rejection of an Advance Pricing Agreement application**
- 15. Critical assumptions**
- 16. Annual Compliance Report**
- 17. Renewal of the Advance Pricing Agreement**
- 18. Revision of an Advance Pricing Agreement**
- 19. Cancellation of an Advance Pricing Agreement**



**KENYA REVENUE
AUTHORITY**

ISO 9001:2015 CERTIFIED

- 20. Revocation of an Advance Pricing Agreement**
- 21. Record keeping**
- 22. Tax Compliance Audit**
- 23. Rollback**
- 24. Compensating Adjustments**
- 25. Penalties**
- 26. Legal effect**
- 27. Confidentiality of information**

DRAFT

THE INCOME TAX ACT	
(Cap. 470)	
IN EXERCISE of the powers conferred by Section 18G (5) of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations-	
Citation	1. These regulations may be cited as the Income Tax (Advance Pricing Agreement) Regulations 2025.
Interpretation	2. In these Regulations, unless the context otherwise requires– “Act” means the Income Tax Act of Kenya, Cap. 470; “Advance Pricing Agreement” means an agreement that determines, in advance of controlled transactions, an appropriate set of criteria including method, comparables and appropriate adjustments thereto, and critical assumptions as to future events, for the determination of the transfer pricing for those transactions over a fixed period of time; “Bilateral advance pricing agreement” means an advance pricing agreement between a person, the Commissioner and the competent authority of a country with which Kenya has a special arrangement under section 41 of the Act; “Commissioner” means the Commissioner as per section 2 of the Income Tax Act, Cap. 470; “Compensating adjustments” means the adjustments made in the self-assessment returns filed by a person, for years of income, including rollback years, along with the corresponding books and records as to comply with the terms of an advance pricing agreement; “Covered transaction” means a transaction contemplated under section 18(3) and 18A of the Act. “Critical assumptions” means the underlying business conditions and assumptions relied on for

	purposes of the advance pricing agreement analysis which, if significantly changed, would affect the substantive terms of the advance pricing agreement and may potentially invalidate the advance pricing agreement; “independent expert” means a person with specialized skills or knowledge relevant to an advance pricing agreement; “Multilateral advance pricing agreement” means an advance pricing agreement between the person, Commissioner and the competent authorities of two or more countries with which Kenya has a special arrangement under section 41 of the Act; “Rollback year(s)” means retrospective years of income, which are not time barred as per the provisions of Section 31 of the Tax Procedures Act, Cap. 469B where the facts and circumstances are substantially the same as those of the advance pricing agreement years; “Transfer Pricing Method” means the basis for establishing an arm’s length transfer price or allocation under Section 18 of the Act; “Tax Treaty” means special arrangement which Kenya has entered into under section 41 of the Act; “Tax treaty partner” means a country with which Kenya has a special arrangement under section 41 of the Act; “Unilateral advanced pricing agreement” means an advance pricing agreement between only the Commissioner and the person covering the tax treatment of controlled transactions with the person’s related party or parties.
Scope of Regulations	3. These Regulations shall apply to transactions contemplated by sections 18(3) and 18A of the Act.
Application	4. Subject to these Regulations, a person who undertakes a covered transaction may apply to the Commissioner for —



	(i) a Unilateral Advance Pricing Agreement where there is no tax treaty; (ii) a Unilateral Advance Pricing Agreement, Multilateral Advance Pricing Agreement or Bilateral Advance Pricing Agreement where there are tax treaties; or (iii) a Unilateral Advance Pricing Agreement where the person undertakes a transaction with a related resident person operating in a preferential tax regime.
Pre-filing	5. (1) A person shall make a request in writing to the Commissioner for a pre-filing meeting in respect of an advance pricing agreement twelve months prior to the first day of the proposed covered period. (2) A request made under sub-regulation (1) shall be accompanied by— (a) Proposed covered transaction(s); (b) names, addresses and tax PIN of the person or parties to the proposed Advance Pricing Agreement; (c) proposed period to be covered by the Advance Pricing Agreement; (d) transfer Pricing Documentation in accordance with the Act; (e) proposed Transfer Pricing Method(s) with explanation of compliance with arm's length principle; (f) description of critical assumptions under which the Transfer Pricing Method(s) will operate, with relevant analysis; (g) financial statements, trial balances, tax computations and all intra group agreements, available for the last 5 years prior to application; (h) written indication whether income related to covered transactions is tax-exempt in



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

	any other jurisdiction or in Kenya; (i) name, telephone number and email of the tax representative(s), if any; and (j) any other information as determined by the Commissioner. (3) For Bilateral Advance Pricing Agreement or Multilateral Advance Pricing Agreement, the person shall ensure the same set of information is provided simultaneously to all relevant Competent Authorities. (4) Upon receipt of the information under sub-regulation (2), the Commissioner shall invite the person for a Pre-Filing meeting within thirty days. (5) The Commissioner shall notify the person within thirty (30) days from the pre-filing meeting of the decision on whether the person may proceed to submit an application for an advance pricing agreement.
Submission of an application for an advance pricing agreement	6. (1) Subject to regulation 5, a person shall submit to the Commissioner an application for an advance pricing agreement in a prescribed form within thirty (30) days of receipt of notification. (2) Upon receipt of the application under sub-regulation (1), the Commissioner shall consider the application and may propose alternative methodologies, restrict or expand the scope of the proposed advance pricing agreement or decline the application. (3) A person shall inform the Commissioner of any tax investigation, tax audit, or any other relevant facts that may affect the outcome of the application.
Fees and other payments	7. (1) A person shall meet all the costs of an advance pricing agreement. (2) Notwithstanding sub-regulation (1), the person shall pay to the commissioner a non-refundable application fee of five million Kenya shillings. (3) In case of an application for a renewal of an

	advance pricing agreement, the person shall pay a non-refundable fee of Kenya Shillings two million five hundred thousand. (4) A person shall pay the fee referred to in— (a) sub-regulation (2) after the pre-filing meeting and the notification under regulation 5(4). (b) sub-regulation (3) after the notification under regulation 17(3).
Time frame of an advance pricing agreement	8. The covered period of an advance pricing agreement shall not exceed five (5) consecutive years.
Negotiation of an Advance Pricing Agreement	9. (1) Where the Commissioner agrees to pursue a Unilateral Advance Pricing Agreement, the Commissioner will negotiate with the person all aspects of the Advance Pricing Agreement process, including possible subsequent revisions, terminations, and renewal. (2) In the case of a Bilateral Advance Pricing Agreement or Multilateral Advance Pricing Agreement, there will be a mutual exchange of briefs between the Commissioner and the Competent Authorities of the tax treaty partners concerning the Advance Pricing Agreement process, including possible subsequent revisions, terminations, and renewal, in accordance with the relevant tax treaties. (3) For Unilateral Advance Pricing Agreements, where the Advance Pricing Agreement negotiation breaks down, a request may be made to Commissioner by a person for a review of the decision of the Commissioner on the processing of the Advance Pricing Agreement, (4) Where it is recognised that an agreement which differs from the initial position of Commissioner may be reached with the Competent Authority of the tax treaty partner(s), Commissioner shall communicate the fact to the person. (5) The person shall confirm acceptance of the

	agreed terms and conditions of the Advance Pricing Agreement in writing not later than 30 days after the receipt of the communication from Commissioner, failure of which the Advance Pricing Agreement application may be rejected. (6) After the confirmation, Commissioner and the tax treaty partner(s) shall finalise the terms and conditions of the Advance Pricing Agreement.
Critical assumptions	10. A person shall, in his application for an advance pricing agreement, identify the assumptions made in developing the proposed transfer pricing methodology which are critical to the reliability of the methodology under the arm's length principle.
Opinion of an independent expert	11. Where at any stage of the advance pricing agreement process the opinion by an independent expert may be necessary for the application of an Advance Pricing Agreement, the person or the Commissioner may engage the expert at the cost and expense of the person.
Failure of Negotiations	12. (1) If a Bilateral Advance Pricing Agreement negotiation fails, the person may convert to a Unilateral Advance Pricing Agreement with the Commissioner's concurrence. (2) In a Multilateral Advance Pricing Agreement, if one Competent Authority negotiation fails, the person may proceed with Bilateral Advance Pricing Agreement or Multilateral Advance Pricing Agreement with the remaining countries.
Withdrawal of an application	13. (1) A person may withdraw their application at any time before the agreement is concluded by submitting a notice in writing to the Commissioner. (2) An application for withdrawal shall be deemed to be withdrawn by the person under the following circumstances— (a) Failure to submit a formal application within stipulated time as mentioned in regulation 5 in case of Advance Pricing



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

	Agreement renewal. (b) Failure to submit information requested at any stage of the Advance Pricing Agreement process within stipulated time as mentioned in regulations 5 and 6.
Rejection of an Advance Pricing Agreement application	14. (1) The Commissioner may reject the application under any of the following circumstances— (a) Failure to comply with the requirements under the Income Tax (Transfer Pricing) Rules. (b) The covered transaction is based on a hypothetical situation. (c) Where it appears to be an inefficient use of resources to pursue an Advance Pricing Agreement due to the limited nature and value of the proposed transaction. (d) Where the matter on which the Advance Pricing Agreement is sought is subject to an appeal under the Tax Procedures Act, CAP 469B. (e) Where the proposed covered transaction involves a tax avoidance scheme. (f) Arrangements which involve treaty abuse. (g) Any other reasonable grounds. (2) Where the application is rejected, the Commissioner shall inform the person in writing of the decision to reject the application and the grounds thereof. (3) The person may make an application for review of the decision under sub regulation (2), within 30 days from receipt of rejection decision.
Execution of an advance pricing agreement	15. The Commissioner shall prepare a draft of the negotiated terms of the Advance Pricing Agreement— (a) In the case of a Unilateral Advance Pricing Agreement, where the person accepts the



	negotiated terms, the Commissioner and the person shall execute the Advance Pricing Agreement. (b) In the case of a bilateral or multilateral Advance Pricing Agreement, where the person(s) accepts the negotiated terms, the Commissioner will enter into a bilateral or multilateral agreement with the tax treaty partner(s) and communicate the agreed terms of the Advance Pricing Agreement to the person in writing.
Annual Compliance Report	16. (1) The person shall file an Annual Compliance Report with the Commissioner in a prescribed form within six months from the close of the year of income covered by the Advance Pricing Agreement. (2) The Annual Compliance Report referred to in sub regulation (1) shall include— (a) audited financial statements for that year of income of the person, and in the case of Multilateral Advance Pricing Agreement/Bilateral Advance Pricing Agreement, audited financial statements of the other person in the covered transaction; (b) a detailed report and analysis by the person which shall include— (i) ownership structure of the local and foreign persons involved in the controlled transactions; (ii) local person's organisation chart; (iii) details of controlled transactions including nature of transactions, quantum and percentage, entities involved and their location; (iv) details of transaction flow consisting of physical flow of goods, flow of invoice and



	payment; (c) a report of the relevant controlled transaction and the amount required to be reported by the person and, in the case of Bilateral Advance Pricing Agreement or Multilateral Advance Pricing Agreement, a similar report by the other person involved in the covered transaction; (d) a description of any material changes in financial or tax accounting methods or principles employed in respect covered transaction that differs from methods or principles stated in the Advance Pricing Agreement, and where there are no such material changes, an affirmative statement to that effect; (e) an analysis of any compensating adjustments or subsequent compensating adjustments required under the Advance Pricing Agreement with the relevant tax computations and relevant supporting documents and (f) any other relevant documents as determined by the Commissioner. (3) The documents referred to sub-regulation (2) shall be kept in accordance with Tax Procedures Act CAP 469B.
Renewal of the Advance Pricing Agreement	17. (1) A person may request the Commissioner for renewal of an Advance Pricing Agreement not later than 6 months before the expiration of the existing Advance Pricing Agreement by submitting updated information and supporting documents similar to those required for submission for the written request for pre-filing meeting. (2) The advance pricing agreement may be renewed under similar terms and conditions if— (a) there has been no change in the facts and circumstances underlying the advance pricing agreement;

	(b) the critical assumptions as identified by the person under regulation 16 remain valid and relevant; and (c) the person has complied with the terms and conditions of the previous advance pricing agreement. (3) The Commissioner shall inform the person of the decision in respect of the request in writing and the grounds for the decision within 30 days from the date of receipt of request. (4) Subject to sub-regulation (3), a person may submit to the Commissioner an application for renewal of an advance pricing agreement in the form prescribed in regulation 6 within 30 days of receipt of the Commissioner's written decision. (5) The Commissioner and the person shall execute the Advance Pricing Agreement in accordance with regulation 11. (6) Where a formal application for renewal is not submitted within 30 days upon receipt of the Commissioner's decision under sub regulation 3, the application shall be deemed to have been withdrawn. (7) A person may make a written request for a new Advance Pricing Agreement in the event that the person does not qualify for renewal of the expiring Advance Pricing Agreement due to the following conditions— (a) the covered transaction has changed; (b) there are material and anticipated changes in the fact and circumstances of the covered transaction; (c) a different transfer pricing method is proposed; or (d) there has been a change in the law.
Revision of an Advance Pricing Agreement	18. The Parties may revise an advance pricing agreement under any of the following circumstances— (a) failure to meet critical assumptions as



	provided in the Advance Pricing Agreement such as when a business activity has been changed or drastic changes in the economic environment; or (b) a change in the law or the agreement under section 41 of the Act that affects the Advance Pricing Agreement.
Cancellation of an Advance Pricing Agreement	19. (1) The Commissioner may cancel an Advance Pricing Agreement as a result of the following circumstances— (a) failure to comply with the terms and conditions of the Advance Pricing Agreement by the person or any other person involved in the covered transaction; (b) error or mistake in the Advance Pricing Agreement application, annual compliance reports or renewal submissions of the covered transactions by the parties to the Advance Pricing Agreement; (c) failure to provide information, documentation and compliance report as required by the Advance Pricing Agreement Regulations in force; (d) failure to conclude a revised Unilateral Advance Pricing Agreement, Bilateral Advance Pricing Agreement or Multilateral Advance Pricing Agreement; or (e) the Advance Pricing Agreement of the participating foreign competent authority has been cancelled. (2) The Commissioner shall inform the person and or the competent authorities of the other jurisdictions of the cancellation in writing specifying— (a) grounds for the cancellation; and (b) the effective date of the cancellation.



Revocation of an Advance Pricing Agreement	20. (1) The Commissioner may revoke an Advance Pricing Agreement if it is established that any person in the covered transaction made any of the following— (a) Misrepresentation of facts; (b) fraud; (c) omission of material facts; (d) failure to disclose any ongoing tax investigation or tax audit; or (e) the Advance Pricing Agreement of the participating foreign competent authority has been revoked. (2) The relevant parties will be informed of the revocation in writing specifying the following— (a) grounds for the revocation; and (b) the effective date of the revocation which is from the first day of the covered period.
Record keeping	21. The person shall retain all records relied upon in concluding the Advance Pricing Agreement, including those used in applying for the Advance Pricing Agreement, as well as documentation or supporting information provided in the Annual Compliance Report in accordance with the Tax Procedures Act CAP 469B.
Tax Compliance Audit	22. (1) The Commissioner may undertake a tax compliance audit or an investigation on a person for transaction(s) not covered under the Advance Pricing Agreement. (2) A person's application for an Advance Pricing Agreement shall not result in the discontinuation or postponement of an audit.
Rollback	23. (1) Subject to sub regulation (3), a person may request the Commissioner for a rollback of an advance pricing agreement if— (a) the proposed transfer pricing methodology is relevant to the resolution of the transfer pricing



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

	issues in the prior years' assessment; (b) the particular facts and circumstances surrounding the prior years' assessment are the same as that of the covered period; and (c) All relevant tax returns for the relevant rollback years have been filed. (2) A rollback shall only cover years not audited by the Commissioner and for which the controlled transactions have taken place. (3) A person shall submit the amended tax computation for rollback years within 30 days from the date of signing the Advance Pricing Agreement. (4) A rollback shall not apply to controlled transactions on which a court or tax tribunal has issued a ruling or which is subject to judicial proceedings.
Compensating Adjustments	24. Where the results of the covered transaction is materially different from the advance pricing agreement, the person shall make a compensating adjustment.
Penalties	25. Where as a result of the application for an Advance Pricing Agreement there is a need to revise the rollback years of assessment, such adjustments may be subject to relevant penalty/surcharge provisions under the Tax Procedures Act CAP 469B.
Legal effect	26. (1) An Advance Pricing Agreement shall be binding on the Commissioner and the person. (2) An Advance Pricing Agreement shall not be a precedent for other years of income for any person, or any administrative or judicial proceeding in relation to any person's years of income, transaction or persons not covered by the Advance Pricing Agreement.
Confidentiality of information	27. All information obtained by the Commissioner or in respect of the advance pricing arrangement



KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED

	process is subject to the confidentiality provisions of the Tax Procedures Act CAP 469B and the articles on exchange of information of the special arrangements under section 41 of the Act.
--	--

Made on the, 2025

JOHN MBADI NG'ONGO,
*Cabinet Secretary for the
National Treasury and Economic Planning.*

DRAFT