LEGAL NOTICE NO. .....

THE INCOME TAX ACT

(*Cap*. 470)

THE INCOME TAX (MINIMUM TOP UP TAX) REGULATIONS, 2025

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SCHEDULE

EMPLOYEE COSTS AND NET BOOK VALUE OF TANGIBLE ASSETS IN EACH YEAR OF THE TRANSITIONAL PERIOD

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THE INCOME TAX ACT

(Cap. 470)

IN EXERCISE of the powers conferred by Section 130 of the Income Tax Act, the Cabinet Secretary for the National Treasury and Economic Planning makes the following Regulations—

THE INCOME TAX (MINIMUM TOP UP TAX) REGULATIONS, 2025

Citation.	**1.** These Regulations may be cited as the Income Tax (Minimum Top Up Tax) Regulations, 2025.
Interpretation.	**2.** In these Regulations, unless the context otherwise requires - "accrued pension expense" means the difference between the amount of pension liability expense of pension plans that are provided through a pension fund included in the financial accounting net income or loss and the amount contributed to a pension fund for the year of income; "consolidated financial statements" means — (a) a financial statement prepared by an entity in accordance with an Acceptable Financial Accounting Standard, in which the assets, liabilities, income, expenses and cash flows of that entity and other entities in which it has a controlling interest are presented as those of a single economic unit; (b) where an entity meets the definition of a Group, the consolidated financial statement of such entity that is prepared in accordance with an Acceptable Financial Accounting Standard; (c) where the ultimate parent entity has financial statements described in Point a and Point b of this Clause that are not prepared in accordance with an Acceptable Financial Accounting Standard, the consolidated financial statements are those that have been adjusted to prevent any material competitive distortions; (d) where the ultimate parent entity does not prepare financial statements described in (a), (b) and (c), the consolidated financial statements of the ultimate parent entity are those that are prepared in accordance with an authorized financial accounting standard, including

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	Acceptable Financial Accounting Standard or another financial accounting standard that is adjusted to prevent any material competitive distortions. "controlling interest" means an ownership interest in an entity such that the interest holder — (a) is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis in accordance with a recognised financial accounting standard in Kenya; or (b) would have been required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis if the interest holder had prepared consolidated financial statements including a main entity deemed to have the controlling interest of its permanent establishment. (c) a public entity to which paragraph (b)(ii) of the definition of public entity applies will not be considered to own a controlling interest in any entity in which it has an ownership interest. "covered person" has the meaning assigned to it under the Act and includes members of the same multinational group or is a person that is a joint venture of the member's ultimate parent entity or a joint venture subsidiary. "eligible employees" means employees, including part-time employees, of a covered person and independent contractors participating in the ordinary operating activities of the covered person under the direction of the covered person; "employee costs" means employee compensation expenditures (including salaries, wages, and other expenditures that provide a direct and separate personal benefit to the employee, such as health insurance pension contributions and stock based-compensation), payroll and employment taxes, employer social security contributions and payments in respect of services provided by independent contractors; "excluded dividends" means dividends or other distributions received or accrued in respect of an ownership interest, except for a short-term portfolio shareholding;

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	"excluded equity gain or loss" means the gain, profit or loss included in the financial accounting net income or loss of the covered person arising from— (a) gains and losses from changes in fair value of an ownership interest, except for a portfolio shareholding; (b) profit or loss in respect of an ownership interest included under the equity method of accounting; and (c) gains and losses from disposition of an ownership interest, except for a disposition of a portfolio shareholding. "flow-through entity" means an entity to the extent it is fiscally transparent with respect to its income, expenditure, profit or loss in the jurisdiction where it was created unless it is tax resident and subject to a covered tax on its income or profit in another jurisdiction and a flow-through entity shall be deemed to be — (a) a "tax transparent entity" if the domestic tax law of the owners also treats it as fiscally transparent and requires the owner to recognise the income, expenditure, profit or loss of the flow-through entity as if it was income earned or expenditure borne by the owners; or (b) a "reverse hybrid entity" if the domestic tax law of the owners is not treating it as fiscally transparent and therefore, it does not recognise the income, expenditure, profit or loss when earned or incurred by the entity, but until the entity distributes profits or make an equivalent payment to its owners; "GloBE Model Rules" means the model rules published by the Inclusive Framework on Base Erosion and Profit Shifting as "Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS"; "group" means— (a) a collection of entities that are related through ownership or control such that the assets, liabilities, income, expenses and cash flows of

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	those entities are included in the consolidated financial statements of the ultimate parent entity, or are excluded from the consolidated financial statements on the grounds of size, materiality, or that they are held for sale; (b) an entity that is located in one jurisdiction and has one or more permanent establishments located in other jurisdictions provided that the entity is not an entity of another group. "included revaluation method gain or loss" means the net gain or loss, increased or decreased by any associated covered taxes, for the year of income in respect of all property, plant and equipment that arises under an accounting method or practice that— (a) periodically adjusts the carrying value of such property to its fair value; (b) records the changes in value in other comprehensive income; and (c) does not subsequently report the gains or losses recorded in other comprehensive income through profit and loss. "insurance investment entity" means an entity that would meet the definition of an investment fund or a real estate investment vehicle except that it is established in relation to liabilities under an insurance or annuity contract and is wholly-owned by an entity that is regulated in Kenya as an insurance company; "intergovernmental or supranational organisation" means intergovernmental or supranational organisation including a wholly owned agency or organ of the intergovernmental or supranational organisation that meets all of the criteria— (a) it is comprised primarily of governments; (b) it has in effect a headquarters or substantially similar agreement that entitle the organisation offices or establishment in Kenya to privileges and immunities; and (c) law or its governing documents prevent its income inuring to the benefit of private persons.

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	"investment fund" means an insurance investment entity, or an entity that meets all of the criteria— (a) it is designed to pool assets which may be financial and non-financial from a number of investors (some of which are not connected); (b) it invests in accordance with a defined investment policy; (c) it allows investors to reduce transaction, research, and analytical costs, or to spread risk collectively; (d) it is primarily designed to generate investment income or gains, or protection against a particular or general event or outcome; (e) investors have a right to return from the assets of the fund or income earned on those assets, based on the contributions made by those investors; (f) the entity or its management is regulated in Kenya; and (g) it is managed by investment fund management professionals on behalf of the investors. "main entity", in respect of a permanent establishment, is the entity that includes the financial accounting net income or loss of the permanent establishment in its financial statements; "member" means — (a) any Entity that is included in a Group; and (b) any Permanent Establishment of a Main Entity that is within paragraph (a). Provided that a Permanent Establishment that is a Member under paragraph (b) above shall be treated as separate from the Main Entity and any other Permanent Establishment of that Main Entity "multinational group" means any group that includes at least one entity or permanent establishment that is not located in the jurisdiction of the ultimate parent entity; "net taxes expense" means the net amount of— (a) any covered taxes accrued as an expense and any current and deferred covered taxes included in the

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	income tax expense, including covered taxes on income that is excluded from the income or loss computation in regulation 4; (b) any deferred tax asset attributable to a loss for the year of income; (c) any qualified domestic minimum top-up tax accrued as an expense; (d) any taxes arising pursuant to a qualified income inclusion rule or qualified under tax profit rule accrued as an expense; "non-operating investment holding company" means an entity— (a) where at least ninety-five percent of the value of the entity is owned by one or more public entities, intergovernmental organisations, insurance investment entities, investment fund, person exempt from tax under paragraph 10 of the first schedule, pensions fund, real estate investment vehicle (together, "excluded person") and where that entity: (i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of the excluded person; and / or (ii) only carries out activities that are ancillary to those carried out by the excluded person; or (b) where at least eighty-five percent of the value of the entity is owned by one or more excluded persons provided that substantially all of the entity's income is excluded dividends or excluded equity gain or loss that is excluded from the computation of the covered person's net income or loss. "other comprehensive income" means items of income and expense that are not recognised in profit or loss as required or permitted by the authorised financial accounting standard used in the consolidated financial statements; "ownership interest" means any equity interest that carries rights to the profits, capital or reserves of an entity, including the

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	profits, capital or reserves of a main entity's permanent establishment; "pension fund" means— (a) an entity that is established and operated in Kenya exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals regulated in Kenya; (b) a pension services entity; "pension services entity" means an entity that is established and operated exclusively or almost exclusively— (a) to invest funds for the benefit of entities referred to in paragraph (a) of the definition of pension fund; or (b) to carry out activities that are ancillary to those regulated activities carried out by the entities referred to in paragraph (a) of the definition of pension fund provided that they are members of the same group; "policy disallowed expenses" means — (a) expenses accrued by the covered person for illegal payments, including bribes and kickbacks; and (b) expenses accrued by the covered person for fines and penalties. "portfolio shareholding" means ownership interests in an entity that are held by the multinational group and that carry rights to less than ten percent of the profits, capital, reserves, or voting rights of that entity at the date of the distribution or disposition; "public entity" means an entity, including a sovereign wealth fund, that meets all of the following criteria— (a) it is part of or wholly-owned by a government (including any political subdivision or local authority thereof); (b) it has the principal purpose of— (i) fulfilling a government function; or (ii) managing or investing that government's or jurisdiction's assets through the making and holding of investments, asset management,

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	and related investment activities for the government's or jurisdiction's assets; and does not carry on a trade or business*;* (c) it is accountable to the government on its overall performance, and provides annual information reporting to the government; and (d) its assets vest in such government upon dissolution and to the extent it distributes net earnings, such net earnings are distributed solely to such government with no portion of its net earnings inuring to the benefit of any private person. "prior period errors and changes in accounting principles" means all changes in the opening equity at the beginning of the year of income of a covered person attributable to— (a) a correction of an error in the determination of financial accounting net income in a previous year of income that affected the income or expenses includible in the computation of income or loss for such year of income, except to the extent such error correction resulted in a material decrease in a liability for covered taxes; or (b) a change in accounting principle or policy that affects income or expenses includible in the computation of income or loss; "real estate investment vehicle" means an entity which achieves a single level of taxation either in its hands or the hands of its interest holders with at most one year of deferral, provided that that person holds predominantly immovable property and is itself widely held; "recognised accounting standard in Kenya" means international financial reporting standards and the generally accepted accounting principles of Australia, Brazil, Canada, the member states of the European Union, member states of the European Economic Area, Hong Kong (China), Japan, Mexico, New Zealand, the People's Republic of China, the Republic of India, the Republic of Korea, Russia, Singapore, Switzerland, the United Kingdom and the United States of America; "short-term portfolio shareholding" means a portfolio shareholding that has been economically held by the covered

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	person that receives or accrues the dividends or other distributions for less than one year at the date of the distribution; "substitute loss carry-forward deferred tax asset" means a deferred tax assets attributable to a carry-forward loss that arises when— (a) it is a requirement that foreign source income offset domestic source losses before foreign tax credits may be applied against tax imposed on foreign source income; (b) the covered person has a domestic tax loss that is fully or partially offset by foreign source income; and (c) the foreign tax credits can be used to offset a tax liability in a subsequent year in relation to income that is included in the computation of the covered person's net income or loss. "tangible assets" means — (a) property, plant, and equipment located in Kenya; (b) natural resources located in Kenya; (c) a lessee's right of use of tangible assets located in Kenya; and (d) a licence or similar arrangement from the Government of Kenya for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets; "tested year of income" means the specific year of income effective 1st January 2025 and the subsequent years of income a covered person determines if they are subject to Section 12G of the Act and these Regulations; "ultimate parent entity" means either— (a) an entity that— (i) owns directly or indirectly a controlling interest in any other entity; and (ii) is not owned, with a controlling interest, directly or indirectly by another entity; or (b) the main entity of a group.

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	"year of income" means an accounting period with respect to which the ultimate parent entity of the multinational group prepares its consolidated financial statements and in the case of consolidated financial statements as defined in paragraph (d) of its definition, year of income means the calendar year.
Scope of Regulations.	**3.** (1) These regulations shall apply to a resident person or a person with a permanent establishment in Kenya who is a member of a multinational group and the group has a consolidated annual turnover of seven hundred and fifty million Euros or more in the consolidated financial statements of the ultimate parent entity in at least two of the four years of income immediately preceding the tested year of income. (2) Where one or more of the years of income of the group is of a period longer or shorter than twelve months, the consolidated annual turnover threshold shall be calculated as follows— €750,000,000 x A/365 where A is the number of days in the year of income concerned. (3) Minimum top-up tax shall be payable by a covered person where the combined effective tax rate in respect of that person for a year of income is less than fifteen percent. (4) Paragraph (1) shall not apply— (a) to a public entity that is not engaged in business; (b) to a person whose income is exempt from tax under paragraph 10 of the First Schedule; (c) to a pension fund and the assets of that pension fund; (d) to a real estate investment vehicle that is an ultimate parent entity; (e) to a non-operating investment holding company; (f) to an investment fund that is an ultimate parent entity; (g) to a sovereign wealth fund; or

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	(h) to an intergovernmental or supranational organisation including a wholly owned agency or organ of the intergovernmental or supranational organisation.
Computation of a covered person's net income or loss.	**4.** (1) The net income or loss of a covered person in a year of income shall be the sum net income or loss for that year of income, after deducting the sum of the losses of that covered person, as determined under a recognised accounting standards in Kenya. (2) For the purposes of paragraph (1) — (a) the net income or loss shall be the financial accounting income or loss of a covered person used in preparing the consolidated financial statements of the ultimate parent entity, determined— (i) before consolidation adjustments eliminating intra-group transactions; and (ii) without adjustments to income or expense attributable to purchase accounting for an acquired business. (b) Where it is not reasonably practicable to determine the financial accounting net income or loss of a covered person based on the recognised accounting standards in Kenya as provided under (a) above, the financial accounting net income or loss of the covered person for the year of income may be determined using another acceptable financial accounting standard or an authorised financial accounting standard provided that, (i) the financial accounts of the covered person are maintained based on that accounting standard; (ii) the information contained in the financial accounts is reliable; and (iii) permanent differences in excess of One million Euros that arise from the application of a particular principle or standard to items of income or expense or transactions, where that principle or

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	standard differs from the financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the accounting standard used in the preparation of the consolidated financial statements. (c) the financial net income or loss of a covered person shall be determined by adjusting the financial accounting net income or loss of that covered person in the following manner— (i) add net taxes expense. (ii) exclude any amount of excluded dividends received or accrued by that covered person; (iii) exclude the amount of the gain and add back the amount of the loss for any excluded equity gain or loss; (iv) add any amount of gain, and subtract any amount of loss, for any included revaluation method gain or loss; (v) include gains or losses from the disposal of assets and liabilities under regulation 15; (vi) exclude gain or loss from asymmetric foreign currency gains or losses; (vii) add policy disallowed expenses; (viii) include accrued pension expense; (ix) include stock based compensation; (x) include prior period errors and changes in accounting principles; (xi) add the movement in the insurance reserves, where a movement in an insurance company's reserves is attributable to a security held on behalf of a policyholder and that either economically matches an excluded dividend (net of the investment

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	management fee) or is an expense related to excluded equity gain or loss. (3) A transaction between a covered person and a related person shall be consistent with the arm's length principle. (4) Any expense relating to an intra-group financing arrangement shall be excluded in computing the net income or loss of a covered person if the following conditions are met— (a) it can reasonably be anticipated that, the intra-group financing arrangement will, over its expected duration, increase the amount of expenses taken into account in the computation of the income or loss of that covered person; (b) it can reasonably be anticipated that the intra-group financing arrangement would not result in a commensurate increase in the taxable income of the high tax counterparty; (c) the counterparty is located in a jurisdiction that is not a low-tax jurisdiction or in a jurisdiction that would not have been low-taxed if the income related to the expense had not been accrued by the counterparty; and (d) the covered person's combined effective tax rate is less than fifteen per cent or the combined effective tax rate would have been less than fifteen per cent if the expense had not been accrued by the covered entity. (5) An insurance company shall– (a) exclude from the computation of its net income or loss any amount charged to policyholders for taxes paid by the insurance company in respect of returns to the policyholders; (b) include in the computation of its income or loss any returns to policyholders that are not recorded in its financial accounting net income or loss to the extent that the corresponding increase or decrease in liability to the policyholders is recorded in its financial accounting net income or loss.

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	(6) The financial accounting net income or loss of a permanent establishment shall be the net income or loss recorded in the separate financial accounts of that permanent establishment, provided that – (a) where a permanent establishment does not have separate financial accounts, its financial accounting net income or loss shall be the amount that would have been recorded in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity; (b) a permanent establishment's financial accounting net income or loss shall be adjusted to reflect only the amounts and items of income and expense that are attributable to it in accordance with the applicable tax treaty or of the Act, regardless of the amount of income subject to tax and the amount of deductible expenses; (c) the financial accounting net income or loss of a permanent establishment shall not be taken into account in determining the income or loss of the main entity, except as provided under these Regulations; (d) a loss of a permanent establishment shall be treated as an expense of the main entity (and not of the permanent establishment) for purposes of computing its qualifying income or loss to the extent that the loss of the permanent establishment is treated as an expense in the computation of the taxable income of such main entity and is not set off against an item of income that is subject to tax under the laws of both the jurisdiction of the main entity and the jurisdiction of the permanent establishment; (e) where subparagraph (d) applies, income as defined in these regulations subsequently arising in the permanent establishment shall be treated as income of the main entity (and not the permanent

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	establishment) up to the amount of the loss that previously was treated as an expense for purposes of computing the income or loss of the main entity under this paragraph. (7) The allocation of net income or loss from a flow-through entity shall be determined as provided under regulation 5. (8) Where– (a) an amount recognised as a decrease to the equity of a covered person attributable to distributions paid or payable in respect of additional tier one capital or restricted tier one capital issued by the covered person shall be treated as an expense in the computation of its net income or loss. (b) an amount recognised as an increase to the equity of a covered person attributable to distributions received or receivable in respect of additional tier one capital or restricted tier one capital held by the covered person shall be included in the computation of its net income or loss (9) Where the financial accounting net income or loss of a covered person for a year of income includes any international shipping income or ancillary international shipping income, its financial accounting net income or loss for that year of income shall be adjusted as follows– (a) where the computation of a covered person's international shipping income and qualified ancillary international shipping income results in a loss, such loss shall be excluded from the computation of the covered person's income or loss; (b) the aggregated qualified ancillary international shipping income of all covered persons that are members of the same multinational group shall not exceed fifty per cent of those covered persons' international shipping income;

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	(c) the costs incurred by a covered person that are directly attributable to its international shipping income and qualified ancillary international shipping income shall be allocated to such activities for the purpose of computing the net international shipping income and the net qualified ancillary international shipping income of the covered person; (d) the costs incurred by a covered person that indirectly result from its international shipping activities and qualified ancillary international shipping activities shall be deducted from the covered person's revenues from such activities to compute the international shipping income and qualified ancillary international shipping income of the covered person on the basis of its revenues from such activities in proportion to its total revenues; (e) all direct and indirect costs attributed to a covered person's international shipping income and qualified ancillary international shipping income in accordance with this paragraph shall be excluded from the computation of its income or loss. (10) The international shipping income and the qualified ancillary international shipping income of a covered person shall be excluded from the computation of its qualifying income or loss, provided that the covered person demonstrates that the strategic or commercial management of all ships concerned is effectively carried on from within Kenya. (11) In this regulation — "additional tier one capital" means an instrument issued by a covered person pursuant to prudential regulatory requirements applicable to the banking sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis; "high tax counterparty" means a covered person that is located in a jurisdiction that is not a low-tax jurisdiction or

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	that is located in a jurisdiction that would not be a low-tax jurisdiction if its effective tax rate were determined without regard to any income or expense accrued by that entity in respect of an intragroup financing arrangement; "international shipping income" means the net income obtained by a covered person from— (a) the transportation of passengers or cargo by ships that it operates in international traffic, whether the ship is owned, leased or otherwise at the disposal of the covered person; (b) the transportation of passengers or cargo by ships operated in international traffic under slot-chartering arrangements; (c) leasing a ship, to be used for the transportation of passengers or cargo in international traffic, on charter fully equipped, crewed and supplied; (d) leasing a ship on a bare boat charter basis, for the use of transportation of passengers or cargo in international traffic, to another member; (e) the participation in a pool, a joint business or an international operating agency for the transportation of passengers or cargo by ships in international traffic; and (f) the sale of a ship used for the transportation of passengers or cargo in international traffic provided that the ship has been held for use by the covered person for a minimum of one year. Provided that international shipping income shall not include net income obtained from the transportation of passengers or cargo by ships via inland waterways within the same jurisdiction; "intragroup financing arrangement" means any arrangement entered into between two or more members of the multinational group whereby a high tax counterparty directly or indirectly provides credit or otherwise makes an investment in a low tax entity; "low-tax entity" means a member located in a low tax jurisdiction or a jurisdiction that would be a low-tax

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	jurisdiction if the effective tax rate for the jurisdiction were determined without regard to any income or expense accrued by that entity in respect of an intragroup financing arrangement; "low-tax jurisdiction", in respect of an multinational group in any year of income, means a jurisdiction where the multinational group has net income and is subject to an effective tax rate in that period that is lower than fifteen percent; "restricted tier one capital" means an instrument issued by a covered person pursuant to prudential regulatory requirements applicable to the insurance sector that is convertible to equity or written down if a pre-specified trigger event occurs and that has other features which are designed to aid loss absorbency in the event of a financial crisis; "qualified ancillary international shipping income" means net income obtained by a covered person from the following activities that are performed primarily in connection with the transportation of passengers or cargo by ships in international traffic— (a) leasing a ship on a bare boat charter basis to another shipping enterprise that is not a member, provided that the charter does not exceed three years; (b) sale of tickets issued by other shipping enterprises for the domestic leg of an international voyage; (c) leasing and short-term storage of containers or detention charges for the late return of containers; (d) provision of services to other shipping enterprises by engineers, maintenance staff, cargo handlers, catering staff, and customer services personnel; and (e) investment income where the investment that generates the income is made as an integral part of the carrying on the business of operating the ships in international traffic.

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Allocation of net income or loss from a flow-through entity.	**5.** (1) The financial accounting net income or loss of a covered person that is a flow-through entity shall be reduced by the amount allocable to its owners that are not covered persons and that hold their ownership interest in such flow-through entity directly or through one or more of the tax transparent entities, unless — (a) the flow-through entity is an ultimate parent entity; or (b) the flow-through entity is held, directly or through a tax transparent structure by an ultimate parent entity referred to in paragraph (a). (2) The financial accounting net income or loss of a covered person that is a flow-through entity shall be reduced by the financial accounting net income or loss that is allocated to another covered person. (3) Where a flow-through entity wholly or partially carries out business through a permanent establishment, its financial accounting net income or loss which remains after applying the formulae referred to in paragraph (1) shall be allocated to that permanent establishment. (4) Where a flow-through entity is a tax transparent entity that is not the ultimate parent entity, the financial accounting net income or loss of the flow through entity which remains after applying the formulae set out in paragraph (1) and (3) shall be allocated to its owners in accordance with their ownership interests in the flow-through entity. (5) Where a flow-through entity is a tax transparent entity that is the ultimate parent entity, any financial accounting net income or loss of the flow-through entity which remains after applying the allocation to any permanent establishment shall be allocated to the ultimate parent entity. (6) Where a flow-through entity is a reverse hybrid entity, any financial accounting net income or loss of the flow-through entity which remains after applying the formulae set out in paragraph (1) and (3) shall be allocated to the reverse hybrid entity.

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	(7) Paragraphs (3), (4) and (5) shall be applied separately with respect to each ownership interest in the flow-through entity.
Election for company in distress.	**6.** (1) This regulation applies to a covered person of an multinational group for a year of income where— (a) it is released from an obligation to pay a debt; (b) an amount of income is recorded in the financial net income or loss of the covered person for that year of income in respect of the debt release; (c) the debt release— (i) is made pursuant to insolvency, bankruptcy or similar proceedings in Kenya; (ii) is made pursuant to an arrangement with a creditor who is not connected with the covered person, and the covered person has obtained an independent expert opinion that it will not be able to meet payments due within the next twelve months to persons who are not connected with it; or (iii) is made in a case where sub-paragraphs (i) and (ii) do not apply and by a creditor who is not connected with the covered person, and, at the time of the release, the liabilities of the covered person exceed the fair market value of the assets of the covered person; (d) the covered person makes an election in a GloBE information return in that year of income. (2) Where this regulation applies to a covered person, and paragraph (1)(c)(i) or (ii) applies, its financial net income or loss shall be adjusted to exclude any income recognised in respect of the release. (3) Where this regulation applies to a covered person, and paragraph (1)(c)(iii) applies, its financial net income or loss shall be adjusted by deducting the lowest of— (a) the amount of income recognised in respect of the release;

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	(b) the amount by which its liabilities exceed the fair market value of its assets before the release; and (c) the amount of any tax attributes of the covered person reduced as a result of the release. (4) In paragraph (3)(c), "tax attributes" means any loss, deduction, allowance, credit or similar attribute for the reduction of tax recognised in Kenya.
Adjusted covered taxes.	**7.** (1) For the purposes of these Regulations, taxes recorded in the financial accounts of a covered person shall take into account — (a) the current tax expense accrued in financial accounting net income or loss with respect to covered taxes for the year of income; (b) the deferred tax expense as determined under these regulations; and (c) any increase or decrease in covered taxes recorded in equity or other comprehensive income relating to amounts included in the computation of financial income or loss which is subject to tax in Kenya. (2) In determining the adjusted covered taxes of a covered person, the current tax expense recorded in the financial accounts shall be adjusted as follows— (a) additions to covered taxes for the year of income shall be the sum of— (i) any amount of covered taxes accrued as an expense in the profit before taxation in the financial accounts; (ii) any amount of net loss deferred tax assets recognised under these Regulations; and (iii) any amount of covered taxes that is paid in the year of income and relates to uncertain tax position where the amount was excluded for a previous year of income; (b) reductions to covered taxes for the year of income shall be the sum of—

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	(i) any amount of current tax expense that relates to income or gains that are excluded from the computation of the net income or loss of the covered person for the year of income; (ii) any amount of current tax expense that relates to an uncertain tax position for the covered person for the year of income; (iii) any amount of current tax expense that is not expected to be paid by the covered person within three years of the last day of the year of income; and (iv) any current tax expense relating to a previous year of income. (c) covered taxes shall not include any amount of— (i) top up tax accrued by a parent entity under a qualified income inclusion rule; (ii) top up tax accrued by a covered person under a qualified domestic minimum top up tax; (iii) taxes attributable to an adjustment made by a covered person as a result of an application of a qualified under-taxed profits rule; (iv) taxes paid by an insurance company in respect of returns to policy holders. (3) In determining the adjusted covered taxes of a covered person, the deferred tax expense recorded in the financial accounts shall be adjusted as follows— (a) any amount of that expense in respect of an item excluded from the computation of the net income or loss for that year of income shall be excluded; (b) any amount of that expense that reflects a disallowed or unclaimed accrual for the year of income shall be excluded, except that the amount of any such accrual paid during the year of income shall be added; (c) the impact in the year of income of a valuation adjustment or accounting recognition adjustment with respect to a deferred tax asset shall be excluded;

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	(d) any amount of that expense in the year of income arising from a re-measurement with respect to a change in the rate of tax shall be excluded; (e) any amount of that expense in the year of income that reflects the generation or use of tax credits shall be excluded other than a substitute loss carry-forward deferred tax asset; (f) any recaptured deferred tax liability under regulation 8 that is paid in the year of income shall be added; (4) Where the deferred tax expense of a covered person for a year of income relates to covered taxes imposed at a rate greater than fifteen percent, that expense shall be adjusted to the amount that would have been incurred if the rate of tax had been fifteen percent. (5) Where a deferred tax asset has been recorded at a rate lower than fifteen per cent, the asset may be adjusted to fifteen percent in the year of income where— (a) the covered person demonstrates that the deferred tax asset is attributable to a net income or loss; and (b) the total deferred tax adjustment amount is reduced by the amount of the increase in the deferred tax asset resulting from the adjustment under this paragraph. (6) No amount of covered taxes may be taken into account more than once. (7) In this regulation— "disallowed accrual" means— (a) any movement in deferred tax expense accrued in the financial accounts of a covered person which relates to an uncertain tax position; and (b) any movement in deferred tax expense accrued in the financial accounts of a covered person which relates to distributions from that person. "unclaimed accrual" means any increase in a deferred tax liability recorded in the financial accounts of a covered person for a year of income that is not expected to be paid within the five subsequent years of income and for which the covered person makes an annual election not to include

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	in total deferred tax adjustment amount for such year of income.
Recaptured deferred tax liabilities.	**8.** (1) A covered person shall be regarded as having a recaptured deferred tax liability if the person has a deferred tax liability, other than an excluded liability, that is taken into account in its deferred tax expense for a year of income and that is not reversed within the five years of income immediately following the year of income in which the liability first arose. (2) The amount of the recaptured deferred tax liability determined for the current year of income shall be treated as a reduction to covered taxes in the fifth preceding year of income and the effective tax rate and top-up tax for that year of income shall be recalculated in accordance with these Regulations. (3) In this regulation, "excluded liability" means a tax expense attributable to changes in deferred tax liabilities in respect of— (a) cost recovery allowances on tangible assets; (b) the cost of a licence or similar arrangement from the government for the use of immovable property or exploitation of natural resources that entails significant investment in tangible assets; (c) research and development expenses; (d) de-commissioning and remediation expenses; (e) fair value accounting on unrealised net gains; (f) foreign currency exchange net gains; (g) insurance reserves and insurance policy deferred acquisition costs; (h) gains from the sale of tangible property located in Kenya that are reinvested in tangible property located in Kenya; or (i) additional amounts accrued as a result of accounting principle changes with respect to anything falling within sub-paragraphs (a) to (h).
Other adjustments to covered taxes.	**9.** (1) An adjustment to a covered person's liability for covered taxes for a previous year of income recorded in the financial accounts shall be treated as an adjustment to covered

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	taxes in the year of income in which the adjustment is made, unless paragraph (2) applies. (2) In the case of a decrease in covered taxes that was included in the covered person's adjusted covered taxes for a previous year of income, the combined effective tax rate and top-up tax for such year of income must be recalculated and the adjusted covered taxes determined for the prior year of income shall be reduced by the amount of the decrease in covered taxes and income determined for the year of income and any intervening year of income shall be adjusted as necessary and appropriate. (3) Paragraph (2) shall also apply where the tax rate in Kenya is reduced below fifteen percent in respect of any deferred tax expense that was claimed as a covered tax in a previous year of income and that has not been reversed. (4) The amount of deferred tax expense, when paid, that has resulted from an increase to the tax rate in Kenya shall be treated as an adjustment under this regulation to a person's liability for covered taxes claimed under regulation 7 for a previous year of income when such amount was originally recorded at a rate less than fifteen percent and the adjustment shall be limited to an amount that is equal to an increase of deferred tax expense up to such deferred tax expense recast at fifteen percent. (5) Where an amount accrued by a covered person as current tax expense and included in adjusted covered taxes for a year of income is not paid within three years of the last day of such year, the combined effective tax rate and top-up tax for the year of income in which the unpaid amount was claimed as a covered tax shall be recalculated by excluding such unpaid amount from adjusted covered taxes. (6) A deferred tax expense attributable to a substitute loss carry-forward deferred tax asset shall be included in the covered person's total deferred tax adjustment amount in the year of income that it arises and in the year of income (or years) it reverses, but only to the extent the foreign tax credit that gave rise to the substitute loss carry-forward deferred tax asset is used to offset tax liability on income included in the covered person's income or loss.

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	(7) The amount of a substitute loss carry-forward deferred tax asset is equal to lesser of — (i) the amount of the foreign tax credit in respect of the foreign source income inclusion that the tax regime allows to be carried forward from the year in which the covered person had a tax loss (before taking into account any foreign source income) to a subsequent year; and (ii) the amount of the covered person's tax loss for the tax year (before taking into account any foreign source income) multiplied by the applicable tax rate. (8) The substitute loss carry-forward deferred tax asset shall be recast at the fifteen percent.
Net loss election.	**10.** (1) A covered person that has a net loss in a year of income may elect to carry forward that loss to subsequent years of income. (2) Where an election is made under paragraph (1) — (a) the deferred tax asset for that year of income shall be deemed to be equal to the net loss for that year multiplied by fifteen percent; and (b) the balance carried forward to subsequent years of income shall be reduced by the amount of the net loss deferred tax asset utilised in a year of income. (3) An election under paragraph (1) shall cease to apply if— (a) the covered person revokes the election in the prescribed form; or (b) the Commissioner issues a notice of revocation to the covered person. (4) Where an election ceases to apply under paragraph (3), any remaining net loss deferred tax asset shall be reduced to zero with effect from the first day of the first year of income in which the election ceases to apply. (5) The election shall be lodged with the first GloBE information return of the covered person and a net loss election

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	applies for all Covered Persons that belong to the same multinational group
Combined effective tax rate.	**11.** The combined effective tax rate of a covered person for a year of income shall be calculated by dividing the sum of all the adjusted covered taxes of that person for the year of income by the sum of all net income or loss of that person for the same year of income and multiplying by one hundred, in accordance with the following formula: $$\text{Combined effective tax rate} = \frac{\text{sum of all adjusted covered taxes}}{\text{sum of all net income or loss}} \times 100$$
Computation of minimum top-up tax.	**12.** (1) The minimum top-up tax payable by a covered person for a year of income shall be calculated as the difference between fifteen percent and the combined effective tax rate for that year of income, multiplied by the excess profit of the covered person, in accordance with the following formula: Minimum top up tax = (15% - combined effective tax rate) × excess profit + any additional top-up tax calculated under regulations 8, 9 and 14 Where "excess profit" means the net income or loss of the covered person for the year of income, reduced by the substance-based income exclusion. (2) Where two or more covered persons are members of the same group in Kenya, the minimum top-up tax payable under paragraph (1) shall be determined on a group basis and allocated among the covered persons in proportion to the net income attributable to each covered person after taking into account the substance-based income exclusion. (3) Notwithstanding paragraph (2), a covered person may elect the manner in which the minimum top-up tax liability is allocated amongst the covered persons for the year of income. (4) The substance-based income exclusion shall be calculated as the sum of— (a) ten per cent of the employee costs; and (b) eight per cent of the net book value of tangible assets.

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	(5) The applicable rate for employee cost and the net book value of tangible asset under paragraph (3) shall be adjusted for each year of income in accordance with the Schedule.
Substance-based income exclusion.	**13.** (1) In determining the substance-based income exclusion of a covered person, the computation of the net book value of tangible assets for each covered person shall not include the net book value of property (including land or buildings) that is held for sale, lease, or investment. (2) Notwithstanding paragraph (1), in the case of an operating lease, the lessor shall be allowed to take into account a portion of the net book value of an asset that is under an operating lease in determining its tangible asset, provided the asset is located in Kenya, subject to the following conditions— (a) the amount allowed shall be equal to the excess, if any, of the lessor's average net book value of the asset determined at the beginning and end of the year of income over the average amount of the lessee's right of use of the asset determined at the beginning and end of the year of income; and (b) if the lessor leases a part of a tangible asset, the net book value of the asset attributable to the residual part of the asset shall be allocated on a reasonable basis. (3) Where — (a) an employee performs more than fifty per cent of the employee's activities for the multinational enterprise group within Kenya during the relevant period in respect of the covered person that is the employer, or where a tangible asset is located in Kenya for more than fifty per cent of the relevant period in respect of the covered person that is the owner or, where applicable, the lessee, that covered person shall be entitled to the full employee costs or net book value of tangible assets, as the case may be, in respect of that employee or tangible asset; (b) an employee performs fifty per cent or less of the employee's activities for the multinational enterprise group within Kenya during the relevant period in respect of the covered person that is the

	employer, or where a tangible asset is located in Kenya for fifty per cent or less of the relevant period in respect of the covered person that is the owner or, where applicable, the lessee, that covered person shall be entitled only to a proportionate employee costs or net book value of tangible assets, corresponding to— (i) the proportion of time that the employee performed the employee's activities within Kenya; or (ii) the proportion of time that the tangible asset was located within Kenya, as the case may be. (4) The eligible employee costs and eligible net book value of tangible assets of a permanent establishment shall not be taken into account for the eligible employee costs and eligible net book value of tangible assets of the main entity. (5) Eligible employee costs of eligible employees paid by, and eligible net book value of tangible assets owned by, a flow-through entity that are not allocated under paragraph (4) shall be allocated to — (a) the owners of the flow-through entity, in proportion to the amount allocated to them pursuant to regulation 5, provided that the eligible employees and eligible tangible assets are located in Kenya; and (b) the flow-through entity if it is the ultimate parent entity, reduced in proportion to the income excluded from the computation of the qualifying income of the flow-through entity, provided that the eligible employees and eligible tangible assets are located in Kenya. (6) The computation of net book value of tangible assets for purposes of regulation 12 shall be based on the average of the net book value at the beginning and ending of the year of income as recorded in the person's financial accounts and the computation shall exclude– (a) any increase in the value of an asset; and

	(b) any subsequent incremental increase in depreciation resulting from revaluation when applying the revaluation model. (7) In this regulation— (a) the employee costs and net book value of tangible assets of covered person that is a permanent establishment shall be those included in its separate financial accounts as determined by regulation 12, provided the employees and tangible assets are situated in Kenya; (b) "operating lease" means a lease of a property that does not transfer substantially the obsolescence, risks and rewards incidental to ownership of the property to the lessee.
Additional top up tax.	**14.** (1) An additional top-up tax shall arise in a year of income if— (a) the sum of the net income of the covered persons for that year of income is nil or results in a net loss; and (b) the sum of the adjusted covered taxes of the covered persons for that year of income are less than zero; and (c) the sum of the adjusted covered taxes of the covered persons for that year of income are less than the amount obtained by multiplying the loss referred to in sub-paragraph (a) by fifteen percent (in this regulation referred to as the "expected adjusted covered taxes amount"). (2) The amount of the additional top-up tax referred to in paragraph (1) shall be equal to the difference between— (a) the sum adjusted covered taxes of the covered persons; and (b) the expected adjusted covered taxes amount.
Special Rules for Corporate Restructuring.	**15.** (1) In the determination of the consolidated annual turnover for multinational group mergers and demergers, the following shall apply—

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	(a) where two or more multinational groups merge to form a single multinational group, in any of the four years of income prior to the tested year of income, the consolidated annual turnover of the multinational group for any year of income prior to the merger shall be deemed to have been met if the sum of the annual turnover included in each of their consolidated financial statements for that year of income is equal to or greater than seven hundred and fifty million Euros; (b) where an entity that is not a member of any multinational group merges with an entity or multinational group in the tested year of income and the target or acquirer does not have consolidated financial statements in any of the four years of income prior to the tested year of income where it was not a member of any multinational group in that year, the consolidated annual turnover of the multinational group shall be deemed to have been met if the sum of the annual turnover included in each of their financial statements or consolidated financial statements for that year of income is equal to or greater than seven hundred and fifty million Euros; (c) where a single multinational group within the scope of these Regulations demerges into two or more multinational groups, the consolidated annual turnover shall be deemed to have been met by a demerged multinational group, if — (i) in the first tested year of income ending after the demerger, the demerged multinational group has annual turnover of seven hundred and fifty million Euros or more in that year of income; (ii) with respect to the second to fourth tested year of income ending after the demerger, the demerged multinational group has annual revenues of seven hundred and fifty million Euros or more in at least two of the years of income following the year of the demerger. (2) The following provisions shall apply where an entity becomes or ceases to be a member of a multinational group as a

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	result of a transfer of direct or indirect ownership interests in such entity during the year of income— (a) where the target joins or leaves a multinational group or the target becomes the ultimate parent entity of a new multinational group, the target shall be treated as a member of the multinational group for the purposes of these Regulations if any portion of its assets, liabilities, income, expenses or cash flows is included on a line-by-line basis in the consolidated financial statements of the ultimate parent entity in the acquisition year; (b) in the acquisition year, a multinational group shall take into account only the financial accounting net income or loss and adjusted covered taxes of the target that are recorded in the consolidated financial statements of the ultimate parent entity for purposes of applying these Regulations; (c) in the acquisition year and each succeeding year, the target shall determine its net income or loss and adjusted covered taxes using its historical net book value of the assets and liabilities; (d) the computation of the target's employee costs under regulation 12(4) shall take into account only those costs recorded in the consolidated financial statements of the ultimate parent entity; (e) the computation of net book value of the target's tangible assets for purposes of regulation 12(4) shall be adjusted proportionally to correspond with the length of the relevant year of income that the target was a member of the multinational group; (f) the deferred tax assets and deferred tax liabilities of a member that are transferred between multinational groups shall be taken into account under these Regulations by the acquiring multinational group in the same manner and extent as if the acquiring multinational group controlled the member when such assets and liabilities arose; (g) deferred tax liabilities of a target that have previously been included in its total deferred tax adjustment

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	amount shall be treated as reversed for purposes of applying regulation 8 by the disposing multinational group and treated as arising in the acquisition year for purposes of applying regulation 8 by the acquiring multinational group, except that in such cases any subsequent reduction to covered taxes under regulation 8 shall have effect in the year in which the amount is recaptured. (3) Where the transfer of assets and liabilities is part of a GloBE reorganisation — (a) the transferor shall exclude any gain or loss on the transfer from the computation of its net income or loss; and (b) the transferee shall determine its net income or loss after the transfer using the transferor's carrying values of the acquired assets and liabilities upon transfer. (4) Where a transfer of assets and liabilities is part of a GloBE reorganisation in which the transferor recognises a non-qualifying gain or loss — (a) the transferor shall include the gain or loss in the computation of its net income or loss to the extent of the non-qualifying gain or loss; and (b) the transferee shall determine its net income or loss after the transfer using the transferor's carrying value of the acquired assets and liabilities upon transfer, adjusted in accordance with the Act and these Regulations to account for the non-qualifying gain or loss. (5) In the case of a transfer of assets and liabilities other than in a GloBE reorganisation— (a) the transferor shall include the gain or loss on the transfer in the computation of its net income or loss; and (b) the transferee shall determine its net income or loss using the net book value of the acquired assets and liabilities as determined under the accounting standard used in the preparation of consolidated financial statements of the ultimate parent entity.

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	(6) In this regulation— "demerger" means any arrangement where the entities of a single multinational group are separated into two or more multinational groups that are no longer consolidated by the same ultimate parent entity; "GloBE reorganisation" means a transformation or transfer of assets and liabilities including a merger, demerger, liquidation, or similar transaction where— (a) the consideration for the transfer is, in whole or in significant part, equity interests issued by the transferee connected with the transferor, or, in the case of a liquidation, equity interests of the target including issuance of an equity interest with no economic significance which does not give rise to a consideration; (b) the transferor's gain or loss on those assets is not subject to tax, in whole or in part; and (c) the tax laws of the jurisdiction in which the transferee is located require the transfer or to compute taxable income after the transfer using the transferee tax basis in the assets, adjusted for any non-qualifying gain or loss on the transfer. "merger" means any arrangement where— (a) all or substantially all of the multinational group entities of two or more separate multinational groups are brought under common control such that they constitute multinational group entities of a combined multinational group; or (b) an entity that is not a member of any multinational group is brought under common control with another entity or multinational group such that they constitute multinational group entities of a combined multinational group. "non-qualifying gain or loss" means the lesser of —

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	(a) the gain or loss of the transferor arising in connection with a covered reorganisation that is subject to tax in the transferor's jurisdiction; and (b) the financial accounting gain or loss arising in connection with the covered reorganisation.
Ultimate parent entity that is a flow-through entity.	**16.** (1) The net income of a flow-through entity that is an ultimate parent entity shall be reduced, for the fiscal year, by the amount of net income that is attributable to the ownership holder, provided that— (a) the ownership holder is subject to tax on such income for a taxable period that ends within twelve months after the end of that year of income at a nominal rate that equals or exceeds fifteen percent; or (b) it can be reasonably expected that the aggregated amount of adjusted covered taxes of the ultimate parent entity and taxes paid by the ownership holder on such income within twelve months after the end of the year of income equals or exceeds an amount equal to that income multiplied by fifteen percent. (2) The net income of a flow-through entity that is an ultimate parent entity shall also be reduced, for the year of income, by the amount of income that is allocated to the ownership holder in the flow-through entity provided that the ownership holder is— (a) a natural person that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to five percent or less of the profits and assets of the ultimate parent entity; or (b) a governmental entity, an international organisation, a non-profit organisation or a pension fund that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to five percent or less of the profits and assets of the ultimate parent entity.

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	(3) The net loss of a flow-through entity that is an ultimate parent entity shall be reduced, for the year of income, by the amount of loss that is attributable to the ownership holder. (4) Paragraph (3) shall not apply to the extent the ownership holder is not allowed to use such loss for the computation of its taxable income. (5) Paragraphs (1) to (4) shall apply to a permanent establishment through which a flow-through entity that is an ultimate parent entity wholly or partly carries out its business or through which the business of a tax transparent entity is wholly or partly carried out, provided that the ultimate parent entity's ownership interest in that tax transparent entity is held directly or through one or more tax transparent entities. (6) For the purposes of this section, "ownership holder" means the holder of an ownership interest in the flow-through entity.
Minority-owned covered persons.	**17.** (1) The computation of the effective tax rate and the top-up tax applicable to members of a minority-owned subgroup shall apply as if each minority-owned subgroup were a separate multinational group. (2) The adjusted covered taxes and net income or loss of members of a minority-owned subgroup shall be excluded from — (a) the determination of the residual amount of the effective tax rate of the covered person computed in accordance with regulation 11; (b) the net income computed in accordance with regulation 4. (3) The effective tax rate and top-up tax of a minority-owned covered person that is not a member of a minority-owned subgroup shall be computed on an entity basis. (4) The adjusted covered taxes and net income or loss of the minority owned covered person shall be excluded from the determination of the residual amount of the effective tax rate of the covered person computed in accordance with regulation 11 and from the net income computed in accordance with regulation 4.

	(5) For the purposes of this regulation— "minority-owned covered person" means a covered person in which the ultimate parent entity has a direct or indirect ownership interest of thirty percent less; "minority-owned parent entity" means a minority-owned covered person that holds, directly or indirectly, the controlling interests of another minority-owned covered person, except where the controlling interests of the former entity are held, directly or indirectly, by another minority-owned covered person; "minority-owned subgroup" means a minority-owned parent entity and its minority-owned subsidiaries; and "minority-owned subsidiary" means a minority-owned covered person whose controlling interests are held, directly or indirectly, by a minority-owned parent entity.
Joint Venture.	**18.** (1) These Regulations shall apply in the determination and computation of minimum top-up tax in respect of a joint venture and its joint venture subsidiaries as if they were covered persons of a separate multinational group and as if the joint venture was the ultimate parent entity of that group. (2) In this regulation— "joint venture" means an entity whose financial results are recorded under the equity method in the consolidated financial statements of the ultimate parent entity provided that the ultimate parent entity holds directly or indirectly at least fifty percent of its ownership interests and does not include— (a) an ultimate parent entity of an multinational group that is subject to these Regulation; (b) an entity whose ownership interest is held by the multinational group directly through an entity excluded under section 12G of the Act and the entity— (i) operates exclusively or almost exclusively to hold assets or invest funds for the benefit of its investors;

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	(ii) carries out activities that are ancillary to those carried out by the entity excluded under section 12G(4) of the Act; or (iii) substantially all of its income is excluded from the computation of net income or loss in accordance with regulation 4. (iv) an entity that is held by an multinational group composed exclusively of entities excluded under section 12G(4) of the Act; or (c) a joint venture subsidiary. "joint venture subsidiary" means an entity whose assets, liabilities, income, expenses and cash flows are consolidated by the joint venture under an a recognised accounting standard in Kenya and a permanent establishment whose main entity is the joint venture or a joint venture subsidiary shall be treated as a separate joint venture subsidiary.
Multi-Parented Groups.	**19.** (1) Where a covered person is a member of a multi-parented multinational group— (a) the covered person shall be treated as a member of a single multinational group if it is consolidated on a line-by-line basis by the multi-parented multinational group or if its controlling interests are held by entities in the multi-parented multinational group; (b) the consolidated financial statements of the multi-parented multinational group shall be the consolidated financial statements prepared under a recognised accounting standard in Kenya of the ultimate parent entity; (c) the ultimate parent entities of the separate groups that comprise the multi-parented multinational group shall be regarded as the ultimate parent entities of that group; (d) each covered person shall submit a return in accordance with regulations 22, unless a single designated filing entity is appointed and the return

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	shall include the information concerning each of the groups that comprise the multi-parented multinational group. (2) In this regulation— "dual-listed arrangement" means an arrangement entered into by two or more ultimate parent entities of separate groups, under which— (a) the ultimate parent entities agree to combine their business by contract alone; (b) the ultimate parent entities pursuant to contractual arrangements make distributions with respect to dividends and in liquidation to their shareholders based on a fixed ratio; (c) the activities of the ultimate parent entities are managed as a single economic entity under contractual arrangements while retaining their separate legal identities; (d) the ownership interests in the ultimate parent entities comprising the agreement are quoted, traded or transferred independently in different capital markets; and (e) the ultimate parent entities prepare consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups are presented together as those of a single economic unit. "multi-parented multinational group" means two or more groups where — (a) the ultimate parent entities of those groups enter into an arrangement that is a stapled structure or a dual-listed arrangement; and (b) at least one entity or permanent establishment of the combined group is located in a different jurisdiction from that of the other entities of the combined group.

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	"stapled structure" means an arrangement entered into by two or more ultimate parent entities of separate groups, under which— (a) fifty per cent or more of the ownership interests in the ultimate parent entities of the separate groups are by reason of form of ownership, restrictions on transfer, or other terms or conditions combined with each other, and cannot be transferred or traded independently and where the combined ownership interests are listed, they are quoted at a single price; and (b) one of those ultimate parent entities prepares consolidated financial statements in which the assets, liabilities, income, expenses and cash flows of all the entities of the groups are presented together as those of a single economic unit.
Currency Conversion.	**20.** (1) Every amount relevant to the computation of the net income or loss of a covered person for a year of income shall be consistent with the reporting currency under these Regulations. (2) Where an amount that is relevant to the computation of the net income or loss of a covered person for a year of income is denominated in a currency other than the reporting currency of the consolidated financial statements of the ultimate parent entity of the covered person and is not converted to the relevant reporting currency in the course of preparing the consolidated financial statements, that amount is to be converted to the relevant reporting currency using the foreign currency translation principles of the financial accounting standard that would have been used to convert the amount to the relevant reporting currency if that conversion were undertaken in the course of preparing the consolidated financial statements. (3) Notwithstanding the generality of paragraph (1), in the determination of any materiality or other threshold in these Regulations that is denominated in the currency of the European Monetary Union is satisfied or exceeded by an amount in respect of a group, entity or jurisdiction for a particular year of income, the amount is to be converted from that currency to the currency of the European Monetary Union using the average of the daily

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	rates of exchange, in respect of the 2 currencies for the month of December included in the year of income, one year immediately preceding the particular year of income, as determined by the Central Bank. (4) For the purposes of these regulations "reporting currency" means the relevant reporting currency utilised in the course of the preparation of a consolidated financial statement.
Notification to the Commissioner. *Cap. 469B*	**21.** (1) A person to whom these Regulations apply shall notify the Commissioner in the prescribed form— (a) within sixty days from date of publication of these Regulations; or (b) within six months from the first day of the year of income for any subsequent years. (2) Where there is any change to the information provided under this regulation, the person shall notify the Commissioner in accordance with the Tax Procedures Act.
Top –up tax return and GloBe information return.	**22.** (1) A covered person shall submit a top up tax return in the manner prescribed by the Commissioner not later than the last day of the sixth month following the end of the year of income. (2) A covered person or a designated local entity on its behalf shall file a GloBe information return for the year of income, in the form and with such content and in the manner specified by the Commissioner taking into account the GloBE Model Rules on filing obligation, on or before the specified return date. (3) A covered person is not obligated to file a GloBe information return where — (a) The ultimate parent entity located in jurisdiction that has a qualifying competent authority agreement in effect with Kenya for the year of income; (b) The designated filing entity located in a jurisdiction that has a qualifying competent authority agreement in effect with Kenya for the year of income;

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Cap 469B	(4) A GloBE information return shall be filed— (a) not later than eighteen months after the end of the first year of income in which the covered person becomes subject to Section 12G of the Act; and (b) not later than fifteen months after the end of the subsequent years of income. (5) The GloBE information return shall include the following— (a) common information about the multinational group including tax identification number and the jurisdiction in which they are located; (b) its organizational structure including the controlling interests in the covered persons entities held by other covered person; (c) calculation of effective tax rate and top-up tax payable by covered person in Kenya; (d) any other information that the commissioner may require. (5) A return required to be submitted under this regulation may be amended in accordance with the Act or the Tax Procedures Act.
Safe Harbours.	**23.** (1) Notwithstanding these Regulations, until a year of income that commences on or after 1st July 2028, a covered person may elect the Transitional CbCR Safe Harbour as set out in the GloBE Rules. (2) Notwithstanding these Regulations, a covered person may elect the Non-material Constituent Entity simplified calculations as set out in the GloBE Rules
Payment of minimum top-up tax.	**24.** (1) The top-up tax in respect of a covered person for a year of income shall be equal to the top-up tax for that year of income as determined in accordance with section 12G of the Act and these Regulations. (2) The minimum top-up tax payable by a covered person in respect of a year of income shall be due and payable to the Commissioner by the end of the fourth month after the end of the year of income.

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Cap. 469B	(3) Payment of the minimum top-up tax shall be in Kenya Shillings, converted from the presentation currency of the Consolidated Financial Statements based on the average foreign exchange rate for year of income. (3) Where the amount of top-up tax paid exceeds the actual tax payable under these Regulations and the Act, the provisions of the Tax Procedures Act relating to overpaid tax shall apply.
Record-keeping. *Cap 469B*	**25.** A person subject to minimum top-up tax shall be required to maintain records necessary for determining and ascertaining the tax in accordance with the Act and the Tax Procedures Act.
Automatic exchange of information.	**26.** The Cabinet Secretary may notify the public of an agreement made for the automatic exchange of information in accordance with the Multilateral Competent Authority Agreement on the Exchange of GloBE Information for the purpose of supporting the administration of top-up tax under these Regulations.
Offences and Penalties. *Cap. 469B*	**27.** A person who fails to comply with any provision of these Regulations commits an offence and shall be liable to the applicable sanctions under the Tax Procedures Act.
Transition.	**28.** (1) The transition year for a covered person is the first year of income in which the person becomes subject to the Act. (2) These Regulations shall apply for the years of income beginning 1st January 2025 and subsequent periods. (3) When determining the effective tax rate in a transition year, and for each subsequent year, the covered person shall take into account all of the deferred tax assets and deferred tax liabilities recorded in the financial accounts of the covered person for the transition year. (4) The following shall apply for the purposes of paragraph (3) — (a) if the applicable corporate tax rate at which the deferred tax asset is recorded in the financial accounts is less than the fifteen percent and paragraph (5) does not apply, the deferred tax

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	asset shall be taken into account at that corporate tax rate; (b) if the applicable corporate tax rate at which the deferred tax liability is recorded in the financial accounts is less than the fifteen percent, the deferred tax liability shall be taken into account at that corporate tax rate; (c) if the applicable corporate tax rate at which the deferred tax asset or deferred tax liability is recorded in the financial accounts is equal to or greater than the fifteen percent, the deferred tax asset or deferred tax liability shall be taken into account at the fifteen percent; (d) when taking into account the deferred tax asset, the impact of any valuation adjustment or accounting recognition adjustment with respect to the deferred tax asset shall be excluded. (5) For purposes of paragraph (4)(a), a deferred tax asset that has been recorded at a rate lower than the fifteen percent may be taken into account at the fifteen percent if the covered person can demonstrate that the deferred tax asset is attributable to a net loss. (6) Deferred tax assets arising from items excluded from the computation of net income or loss under regulation 4 shall be excluded from paragraph 3 when such deferred tax assets are generated in a transaction that takes place after 30th November 2021. (7) In the case of a transfer of assets between covered persons or other related parties after 30th November 2021 and before the commencement of a transition year, the basis in the acquired assets other than inventory shall be based upon the disposing entity's carrying value of the transferred assets upon disposition with the deferred tax assets and liabilities brought into net income of loss determined on that basis.
Interpretation and elections.	**29.** (1) The GloBE Rules shall be a relevant source of interpretation of section 12G and these Regulations. (2) The covered persons may apply any relevant elections permitted in the GloBE Rules not otherwise provided in section

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12G of the Act or these Regulations and such elections shall be exercised in accordance with the conditions set out in the GloBE Rules, including making any required consequential adjustments.

(3) Notwithstanding paragraph (2), elections made pursuant to paragraph (2) shall also be made for the purpose of a Qualified Income Inclusion Rule or Qualified Undertaxed Profits Rule, where applicable.

(4) Notwithstanding paragraphs (2) and (3), the covered persons shall not make the De Minimis Exclusion election under Article 5.5 of the GloBE Rules.

SCHEDULE

EMPLOYEE COSTS AND NET BOOK VALUE OF TANGIBLE ASSETS IN EACH YEAR OF THE TRANSITIONAL PERIOD

For the purposes of applying Regulation 12(4), the applicable rate shall be replaced with the rate set out in the table below for each year of income beginning in each of the following calendar years—

Year Beginning	Employee costs (%)	Net book value of tangible assets (%)
2023	10%	8.0%
2024	9.8%	7.8%
2025	9.6%	7.6%
2026	9.4%	7.4%
2027	9.2%	7.2%
2028	9.0%	7.0%
2029	8.2%	6.6%
2030	7.4%	6.2%
2031	6.6%	5.8%

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	2032	5.8%	5.4%
	2033 and subsequent years	5.0%	5.0%

Made on the_____, 2025

JOHN MBADI NG'ONGO
Cabinet Secretary for
The National Treasury and Economic Planning.

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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
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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

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20. Revocation of an Advance Pricing Agreement

21. Record keeping

22. Tax Compliance Audit

23. Rollback

24. Compensating Adjustments

25. Penalties

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27. Confidentiality of information

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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

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	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 —

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	(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

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	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

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	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

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	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

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	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

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	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

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	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;

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	(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

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	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.

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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

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	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

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	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.

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