

Practical Considerations **for MNEs Post TP Rules 2026**

Introduction

The introduction of the Income Tax (Transfer Pricing) Rules, 2026 heralds a new era of compliance, reflective of evolving commercial realities and the increasing complexity of cross-border transactions. Whilst the arm's-length principle remains central to controlled transactions, nearly two decades after, Multinational Enterprises now have more work to do to conform and comply.

Below, we analyse the key features of the TP Rules, 2026 and the practical considerations they present for MNEs.

**1**

Reliance on Quoted Prices for Commodity Transactions



A notable feature of the TP Rules, 2026 is the reliance on publicly quoted prices in determining the arm's-length price of controlled transactions involving commodities. The definition of "commodity" is broad, encompassing agricultural produce, fisheries products, minerals, hydrocarbons and their derivatives, products obtained from land or water and, generally, any good for which a publicly quoted price exists.

Whilst this provides a reference point for benchmarking commodity transactions, the application of quoted prices is not without practical considerations. Consistent with the OECD Transfer Pricing Guidelines, the economically relevant characteristics of the transaction, including the physical characteristics and quality of the commodity, volumes traded, pricing date, delivery terms, transportation, insurance and foreign exchange, remain important in determining whether adjustments to the quoted price are warranted.

MNEs dealing in commodities will consequently need to place greater emphasis on contemporaneous documentation supporting their pricing policies, quoted prices, pricing dates, volume considerations, discounts, premiums and other adjustments. The commercial price agreed between related parties may remain relevant; however, taxpayers will need to demonstrate why that price, or an appropriately adjusted quoted price, reflects an arm's-length outcome.

This is particularly relevant where volume-based discounts arise. An MNE may centralise procurement and negotiate more favourable prices by purchasing in bulk on behalf of several group entities, with the procuring entity subsequently reselling the goods at cost. In such circumstances, applying a quoted price without due consideration of the volume differential could result in a price that does not reflect the underlying commercial realities. Taxpayers will therefore need to substantiate any adjustments by reference to supplier negotiations, contractual terms, prevailing market practices and other relevant factors.

A further consideration is the potential reliance on information available to the Commissioner but not necessarily accessible to the taxpayer, including customs data. We have seen instances where customs data has been used in determining the value of imported goods. Whilst such information may provide useful benchmarks, its application in transfer pricing raises questions around transparency, comparability and the taxpayer's ability to independently verify and challenge the information relied upon. It will therefore be important to see how the Commissioner applies these provisions in practice and whether taxpayers are afforded sufficient information to understand and respond to the benchmarks used.

**2**

Intercompany Balances: From Trade Credit to Financing Transactions

The TP Rules, 2026 expressly encompass financing transactions, extending beyond conventional borrowing, lending and guarantees to include advance payments, deferred payments, receivables and other debt arising in the course of business. From experience, KRA has previously invoked the interpretation of the term "all loans" under Section 16 of the Income Tax Act to support withholding tax assessments on deemed interest, on the basis that independent parties would ordinarily not allow amounts due to remain outstanding without compensation for the financing provided.

The express inclusion of intercompany payables, receivables and other debt under the new Rules now brings these balances into sharper focus from a transfer pricing perspective. Whether or not the underlying intercompany transactions have been benchmarked, the resulting outstanding balances may themselves require a separate assessment. Historically, taxpayers may have considered the benchmarking of the underlying related-party transactions sufficient, leaving the resulting payables and receivables outstanding in their books without separately evaluating the financing implications.

Under the new framework, taxpayers will need to assess the nature and duration of these balances, the commercial rationale for delayed settlement and whether the terms reflect those that independent parties would have agreed under comparable circumstances. Where an outstanding balance constitutes a financing arrangement, an appropriate arm's-length interest charge may be warranted, with the resulting interest appropriately recognised in the books and accounted for in accordance with the applicable tax rules.

The distinction between benchmarking the underlying transaction and assessing the financing implications of the resulting balance will consequently become an important consideration in managing transfer pricing risk.



**3***Business Restructurings:***Bringing Group Reorganisations Within the Transfer Pricing Framework**

Another notable feature of the TP Rules, 2026 is the express inclusion of business restructurings and reorganisations involving related parties, irrespective of whether the transaction has a bearing on the profits, income, losses or assets of the parties at the time of the transaction or at a future date. This broadens the scope of transfer pricing scrutiny beyond routine intercompany transactions, bringing group restructuring arrangements into focus even where the immediate tax implications may not be apparent.

For instance, where a parent entity or a related party converts an outstanding intercompany debt into equity, the transaction will need to be assessed from an arm's-length perspective, taking into consideration the commercial rationale, the terms of the conversion and the valuation applied. Such arrangements can no longer be viewed merely as internal group decisions without considering their transfer pricing implications.



Taxpayers will therefore need to demonstrate that the restructuring reflects the underlying economic circumstances and that the terms adopted are consistent with the arm's-length principle. This is particularly important in ensuring that the resulting tax treatment appropriately reflects the substance of the transaction and that the correct taxes are accounted for.



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Expanded Documentation Requirements: **The Need to Substantiate the Transfer Pricing Analysis**

The TP Rules, 2026 introduce more detailed information and documentation requirements, expanding the scope of information that taxpayers may be required to provide to the Commissioner. In addition to the Commissioner's existing powers under Section 59 of the Tax Procedures Act (TPA), which provides for the production of records and furnishing of information, Rule 8 sets out more specific requirements for transfer pricing documentation. These include detailed transaction descriptions, contractual agreements, functional and comparability analyses, financial information and the rationale underlying the selection and application of the transfer pricing method.

Of particular significance is the express requirement for taxpayers to explain the selection of the tested party, where relevant. This is an important consideration in applying certain transfer pricing methods, yet the rationale underpinning the selection may not always receive sufficient attention. Taxpayers will need to demonstrate why the selected party is appropriate, taking into account the functions performed, assets employed, risks assumed and the availability of reliable data.

Merely identifying a tested party may not be sufficient without a defensible explanation of the choice made.

The broader implication is that taxpayers will need to place greater emphasis on the quality, depth and consistency of their transfer pricing documentation. The analysis must not only demonstrate an arm's-length outcome but also provide a clear and supportable explanation of the methodology, assumptions, comparables and judgments underpinning that outcome.

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Looking Ahead: **From Compliance to Defensibility**

The TP Rules, 2026 signal a more demanding transfer pricing landscape for MNEs operating in Kenya. Beyond pricing related-party transactions, taxpayers will need to scrutinise intercompany balances, group restructurings and the commercial substance of their arrangements. Robust contemporaneous documentation, supported by sound commercial rationale and consistent tax treatment, will be critical in managing transfer pricing risk and defending tax positions.



Contact Us

info@ravachconsulting.com | 0722702305

