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From Retrospective Audit to Prospective Certainty: Domestic Advance Pricing Agreements, Shared Services and VAT Valuation in Kenya

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Abstract

Kenya's introduction of Advance Pricing Agreements (APAs) under section 18G of the Income Tax Act, Cap. 470, represents an important move from retrospective tax controversy towards prospective tax certainty. The development is particularly significant because Kenya's domestic corporate environment increasingly contains related-party transactions involving preferential tax regimes, integrated corporate groups and centralized shared-service arrangements. The emerging framework, however, raises a broader policy question. While transfer-pricing rules seek to ensure that controlled transactions reflect the arm's-length principle, applying that principle in practice can be difficult where the transaction involves highly integrated group services for which no exact uncontrolled comparable exists. Recent Kenyan transfer-pricing disputes show disagreements over the functional characterization of intra-group services, benchmarking, allocation keys, and the choice between one-sided and two-sided transfer-pricing methodologies. The problem is compounded when the same economic transaction is subsequently examined under Value Added Tax (VAT). Section 13 of the VAT Act, 2013 provides that where a supplier and recipient are related, the taxable value is the open market value of the supply. The coexistence of an income-tax transfer-pricing analysis and a VAT open-market-value analysis creates a potential administrative coordination problem, as different valuation assumptions apply to the same transaction. This paper argues that Kenya should use its emerging APA framework to address this uncertainty through a targeted domestic APA mechanism. The proposed framework would not eliminate the Commissioner's anti-avoidance powers under section 23 of the Income Tax Act. Rather, it would establish a clearer relationship between sections 18A, 18G and 23: section 18A identifies qualifying domestic related-party transactions, section 18G provides prospective certainty regarding transfer-pricing methodology, and section 23 preserves the Commissioner's ability to challenge arrangements involving tax avoidance, material misrepresentation, non-disclosure or material departure from agreed critical assumptions. The paper further proposes a "no reliable comparable" pathway within the APA Regulations for transactions involving integrated group/shared services. It recommends that taxpayers and the Commissioner should be able to agree prospectively on the most appropriate transfer-pricing methodology where an exact uncontrolled comparable cannot reasonably be identified. Finally, the paper proposes an amendment to section 13 of the VAT Act requiring the Commissioner to consider an applicable APA's functional analysis, comparability analysis, and methodology and valuation parameters when determining open market value. The proposal does not seek to merge income-tax and VAT valuation or automatically deem an APA price to be the VAT value. Instead, it seeks

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coordinated administration while preserving the distinct statutory purposes of each tax. The paper concludes that Kenya's emerging APA regime should evolve from a primarily transfer-pricing instrument into a broader cooperative-compliance mechanism that provides certainty for genuine commercial transactions while preserving strong safeguards against domestic tax arbitrage and abusive arrangements.

Keywords: *Advance Pricing Agreements; domestic transfer pricing; shared services; intra-group services; VAT; open market value; section 23; section 18A; section 18G; comparability; Kenya Revenue Authority; cooperative compliance; tax certainty.*

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1. Introduction

1.1 From retrospective enforcement to prospective certainty

Tax administration traditionally operates through a retrospective model. A taxpayer enters into transactions, files a return, and is subsequently subjected to verification or audit.

Where transfer pricing is involved, the Commissioner may challenge the taxpayer's pricing methodology after the relevant transactions have already occurred.

This model can effectively detect non-compliance. It can, however, produce significant uncertainty where the transaction involves complex services, limited comparable data or competing interpretations of the appropriate transfer-pricing method.

An Advance Pricing Agreement offers a different approach.

An APA allows the taxpayer and tax authority to agree prospectively on the methodology, comparables, adjustments and critical assumptions that will be applied to specified controlled transactions for an agreed period.

Kenya has now moved into this model through section 18G of the Income Tax Act.

The development is significant because it creates an opportunity to transform transfer pricing from an exclusively adversarial audit issue into a cooperative compliance process.

This paper therefore does not ask whether Kenya should have APAs.

It already does.

The more important question is:

How should Kenya design and implement its emerging APA framework to provide meaningful certainty for material domestic related-party transactions, particularly difficult-to-benchmark shared services, while preserving the Commissioner's powers to protect the tax base and ensuring consistency with VAT administration?

2. The Emergence of Domestic Transfer-Pricing Risk in Kenya

2.1 The traditional international focus

Transfer pricing has historically been associated with multinational enterprises and cross-border transactions.

The principal concern has been allocating taxable profits between jurisdictions.

This remains an important concern.

However, domestic transfer pricing cannot always be dismissed as revenue-neutral.

Where two related domestic entities are taxed at materially different effective rates, the location of taxable profit within the group can affect the amount of tax collected.

2.2 Preferential tax regimes

Kenya's tax system contains preferential regimes, including the Special Economic Zone framework.

Consequently, the economic assumption that shifting profit between two resident entities necessarily produces no change in total domestic tax revenue does not always hold.

Section 18A of the Income Tax Act is important in this context because it expressly addresses certain transactions between related resident persons where one operates in a preferential tax regime.

This statutory recognition provides a strong foundation for a domestic APA discussion.

The policy question becomes how to prevent inappropriate profit allocation while giving compliant businesses certainty concerning legitimate transactions.

3. Kenya's Emerging APA Framework

3.1 Section 18G

Section 18G provides the statutory foundation for APAs in Kenya.

The provision allows the Commissioner to enter into an APA concerning transactions contemplated under section 18(3) and section 18A.

The 2025 Draft Income Tax (Advance Pricing Agreement) Regulations operationalize this framework and define a covered transaction by reference to sections 18(3) and 18A. Kenya Revenue Authority

The Regulations contemplate an APA determining, in advance, criteria including:

- the transfer-pricing method;
- comparable;
- appropriate adjustments; and
- Critical assumptions.

This is a significant shift towards prospective certainty.

3.2 The importance of the 2025 Draft Regulations

KRA published the Draft Income Tax (Advance Pricing Agreement) Regulations, 2025 and invited professionals, stakeholders and members of the public to submit comments. Kenya Revenue Authority.

This makes the present period particularly important for policy development.

The debate is no longer theoretical.

Kenya is determining the institutional architecture through which APAs will actually operate.

This paper therefore proposes amendments and clarifications to the emerging framework rather than advocating an entirely new regime.

4. The Policy Gap: Domestic Certainty and Complex Services

4.1 Why domestic APAs matter

The strongest justification for domestic APAs arises where:

- related parties are both resident;
- one party operates within a preferential regime;
- the transaction is materially significant;
- the transaction involves complex or integrated services;
- comparable data is limited; or
- the transaction creates significant recurring tax uncertainty.

The objective should not be to make every domestic related-party transaction eligible for an APA.

A risk-based approach is preferable.

5. Group Shared Services and the Comparability Problem

5.1 The growth of centralised services

Modern corporate groups frequently centralize functions.

A Kenyan operating company may receive services from a group service center covering:

- information technology;
- accounting;
- finance;
- procurement;
- human resources;
- legal support;
- compliance;
- treasury;
- risk management;
- strategic management; and
- administrative functions.

The commercial rationale is often efficiency and standardization.

The transfer-pricing challenge is determining the appropriate remuneration.

5.2 The absence of an exact comparable

The central problem is that a third-party comparable may not provide precisely the same combination of services.

An independent enterprise might purchase IT services from one provider, legal services from another, and accounting services from a third.

A group company may receive all three services from a single centralized service center.

Consequently, the transaction may not have an exact uncontrolled comparable.

This creates an important distinction:

Absence of an exact comparable does not necessarily mean absence of an arm's-length solution.

The appropriate response may be to select the most appropriate methodology based on the functions, assets, risks, economic circumstances and available evidence.

An APA is well suited to this exercise.

6. Kenyan Case Law as Evidence of the Problem

6.1 ECP Kenya Limited v Commissioner of Domestic Taxes

The decision in *ECP Kenya Limited v Commissioner of Domestic Taxes* illustrates the complexity of determining remuneration for related-party services.

The dispute involved competing views concerning the functions performed by the Kenyan entity and whether the services represented routine administrative support or value-adding activities.

The taxpayer relied on TNMM and a full-cost mark-up, while the Commissioner argued that the operations were sufficiently integrated and value-adding to warrant a profit-split approach. Kenya Law

This is precisely the type of dispute for which an APA can provide value.

The problem was not simply whether a related-party transaction existed.

The dispute involved:

- functional characterization;
- degree of integration;
- value contribution;
- selection of methodology; and
- Allocation of profits.

A retrospective audit necessarily addresses these questions after the transactions have occurred.

An APA can address them prospectively.

6.2 H.P. Gauff Ingenieure

The H.P. Gauff litigation provides another important illustration.

The taxpayer relied upon a shared-services agreement and transfer-pricing policy to support the treatment of regional-office services. The taxpayer argued that the services were supportive and relied upon OECD guidance concerning low-value-adding intra-group services. The Commissioner took a different view of the character and economic significance of the services. Kenya Law

The litigation demonstrates how disputes can arise over the fundamental question:

What exactly is the economic nature of the intra-group service?

That question can determine the transfer-pricing methodology.

The case therefore strengthens the policy case for an APA mechanism that can agree the functional analysis before recurring transactions become the subject of assessment.

The litigation has also continued through subsequent appellate proceedings, making it particularly useful as evidence of the cost and duration associated with retrospective controversy. Kenya Law

7. The "No Reliable Comparable" APA Pathway

The APA Regulations should expressly address circumstances in which no reliable uncontrolled comparable exists.

The following provision is proposed:

Where the Commissioner is satisfied that no reliable uncontrolled comparable exists in respect of a covered transaction, the Commissioner may agree with the taxpayer on the most appropriate transfer-pricing method having regard to the functions performed, assets employed, risks assumed, contractual terms, economic circumstances, expected benefits and other relevant comparability factors.

This provision would recognize an economic reality:

Not every commercially genuine service has a perfect market comparator.

The objective of transfer pricing is not to manufacture an artificial comparable.

It is to determine a defensible arm's-length outcome using the most appropriate available methodology.

8. Section 23 and the Anti-Avoidance Dimension

8.1 Why section 23 matters

Section 23 provides an important anti-avoidance safeguard.

A domestic APA framework should not prevent the Commissioner from challenging arrangements that are abusive or materially different from what was disclosed.

The paper therefore does not advocate limiting section 23 as a substantive anti-avoidance provision.

Instead, it proposes a clear statutory relationship between section 18G and section 23.

8.2 The proposed principle

The proposed principle is:

A taxpayer should be able to rely on an APA where the taxpayer has made full and accurate disclosure and implemented the transaction substantially in accordance with the agreement.

Conversely:

The Commissioner should retain the power to depart from an APA where fraud, material misrepresentation, material non-disclosure or material changes in critical assumptions are established.

This creates an appropriate equilibrium between certainty and revenue protection.

9. Proposed Section 23 Amendment

The following amendment is proposed for consideration:

23(X) Effect of an Advance Pricing Agreement

Where the Commissioner has entered into an Advance Pricing Agreement under section 18G in respect of a transaction, the Commissioner shall not make an adjustment under this section in respect of the pricing methodology or assumptions expressly covered by the agreement unless—

(a) the taxpayer made a material misrepresentation or failed to disclose a material fact in obtaining the agreement;

(b) a critical assumption underlying the agreement has materially changed;

(c) the transaction implemented by the taxpayer materially differs from the transaction described in the agreement; or

(d) the transaction is implemented for a purpose materially different from that disclosed to the Commissioner during the APA process.

A further provision should require written reasons for departure from the APA.

This would strengthen administrative accountability without restricting legitimate anti-avoidance enforcement.

10. VAT Valuation and Section 13

10.1 Separate tax objectives

Income tax and VAT are different taxes.

Transfer pricing is principally concerned with the allocation of income and expenses for purposes of determining taxable profits.

VAT is a consumption tax.

The distinction should therefore be preserved.

However, the same economic transaction can be relevant to both.

10.2 Section 13

Section 13(1) of the VAT Act provides that the taxable value of a supply is the consideration for the supply, or, where the supplier and recipient are related, the open market value of the supply. Kenya Law

The provision therefore creates a valuation question for related-party transactions.

That valuation question may overlap substantially with the economic analysis undertaken under transfer-pricing rules.

11. The Risk of Dual Valuation

A taxpayer may establish that:

- a particular service is commercially required;
- the service provider performs specified functions;

- the recipient receives identifiable benefits;
- a particular transfer-pricing methodology is appropriate; and
- A particular pricing range is supported by available evidence.

The transaction may subsequently be examined for VAT.

If the VAT analysis disregards the economic work already undertaken under an APA, the taxpayer may have to defend essentially the same transaction twice.

This creates:

- compliance costs;
- administrative duplication;
- valuation uncertainty;
- inconsistent positions; and
- Litigation risk.

12. Swift East Africa and the Transfer-Pricing/VAT Connection

The decision in *Commissioner of Domestic Taxes v Swift East Africa Limited* is particularly relevant.

The High Court considered the relationship between the Cost-Plus Method used for transfer-pricing purposes and the open-market-value provisions of section 13 of the VAT Act. Kenya Law

The decision is valuable for this paper because it demonstrates that transfer-pricing methodology can become directly relevant to the VAT valuation question.

This supports the proposition that the two tax functions should communicate where an APA already contains a detailed economic analysis.

The appropriate policy response, however, is not to make the income-tax APA automatically determinative for VAT.

Instead, the VAT administration should be required to consider the APA analysis.

13. Proposed Amendment to Section 13 of the VAT Act

The following provision is recommended:

13(X) Advance Pricing Agreements

Where a taxable supply is made between related persons and the supply is covered by an Advance Pricing Agreement entered into under section 18G of the Income Tax Act, the Commissioner shall take into account the methodology, functional analysis, comparability analysis and valuation parameters contained in the Advance Pricing Agreement when determining the open market value of the supply under this section, to the extent that those matters are relevant to the determination of taxable value under this Act.

The amendment should further provide:

The Commissioner may depart from the methodology or valuation parameters where—

(a) the methodology is not appropriate for determining taxable value under this Act;

(b) a material change has occurred in the facts or circumstances underlying the agreement;

(c) the supply is subject to a specific valuation provision under this Act;

(d) the agreement was obtained through fraud, material misrepresentation or material non-disclosure; or

(e) application of the methodology would be inconsistent with this Act.

The Commissioner should be required to give written reasons where an APA analysis is rejected.

14. A Proposed Domestic APA Model

The proposed domestic APA should be targeted rather than universal.

14.1 Eligibility

An application should generally demonstrate:

- related resident parties;
- materiality;
- commercial substance;
- a genuine transfer-pricing issue;
- sufficient disclosure;
- significant tax risk or valuation uncertainty; and
- Willingness to comply with annual reporting requirements.

14.2 Suggested materiality threshold

A threshold of KES 200 million in annual covered transactions is proposed for policy discussion.

The threshold should be reviewed periodically.

It should be treated as a filtering mechanism rather than as a statement that smaller transactions are unimportant.

14.3 Priority transactions

Priority may be given to:

- transactions involving preferential tax regimes;
- SEZ-related transactions;
- significant group-service arrangements;
- management services;
- centralized procurement;
- IT services;
- treasury services;
- intellectual-property-related transactions;
- intra-group financing; and

- Transactions involving substantial accumulated tax losses.

15. Domestic APA Technical Committee

KRA should consider establishing a technical committee comprising specialists in:

- transfer pricing;
- corporate income tax;
- VAT;
- economics;
- law;
- industry-specific valuation; and
- Tax audit.

The purpose is to ensure that an APA is evaluated from both direct-tax and indirect-tax perspectives.

The committee should not become a separate assessment authority.

Its role should be technical coordination.

16. APA Process

The following process is recommended.

Step 1: Pre-filing consultation

The taxpayer discusses the transaction and proposed methodology with KRA.

Step 2: Application

The taxpayer provides detailed information concerning:

- transaction;
- group structure;
- agreements;
- FAR analysis;
- proposed method;
- comparables;
- financial information;
- critical assumptions;
- tax consequences; and
- VAT implications.

Step 3: Technical analysis

KRA evaluates the economic and legal position.

Step 4: Negotiation

The parties agree on:

- covered transactions;
- methodology;
- comparables;
- adjustments;
- pricing parameters;
- critical assumptions; and
- Compliance obligations.

Step 5: Execution

The APA becomes binding within its statutory scope.

Step 6: Annual compliance

The taxpayer demonstrates continued compliance.

Step 7: Revision

The APA is reviewed where critical assumptions materially change.

17. Critical Assumptions and Legal Certainty

Critical assumptions should be central to the APA.

Examples include:

- business model;
- group structure;
- transaction volumes;
- functions;
- assets;
- risks;
- applicable tax law;
- economic conditions;
- accounting treatment;
- cost structure; and
- Availability of comparable data.

The agreement should clearly state what happens if an assumption changes.

This prevents both sides from treating the APA as either permanently binding or completely discretionary.

18. Comparative Perspective

18.1 United Kingdom

The UK provides a mature example of advance agreement mechanisms.

The important lesson for Kenya is institutional rather than mechanical.

An APA needs:

- clear scope;
- agreed methodology;
- critical assumptions;
- monitoring;
- revision;
- cancellation; and
- Appropriate safeguards.

18.2 India

India is particularly relevant because domestic transfer pricing has developed alongside its APA regime.

Its experience demonstrates the possibility of combining domestic transfer-pricing enforcement with advance certainty.

Kenya should, however, adapt international experience to its own statutory and administrative circumstances.

19. Economic Rationale For Domestic APAs: Tax Losses, Cash-Flow Timing and Domestic Related-Party Transactions

The economic rationale for domestic Advance Pricing Agreements (APAs) should not be limited to situations where related resident companies operate under different statutory tax rates or preferential regimes. Domestic transfer pricing may also have significant fiscal implications where related companies have materially different tax positions, particularly where one entity is profitable while another is experiencing substantial tax losses.

Consider a Kenyan corporate group comprising two related resident companies. Company A is profitable, while Company B has accumulated tax losses. Company A subsequently pays Company B KES 100 million for genuine management, technical, or shared services.

Assuming the payment is otherwise deductible, Company A's taxable income may be reduced by the amount of the service charge, while the corresponding income received by Company B may be absorbed, in whole or in part, by its accumulated tax losses. The immediate effect may therefore be to reduce or defer the group's current cash tax liability, even though both companies are resident and subject to the same nominal corporate tax rate.

This does not, by itself, establish tax avoidance. A loss-making company may legitimately provide valuable services to a related company, and the resulting payment may be commercially justified. The policy concern arises where the amount charged is influenced by the recipient's tax-loss position rather than by the functions performed, benefits received, assets employed and risks assumed.

The issue can therefore be framed as one of tax-base allocation and revenue timing. Where related-party charges move substantial taxable income from a profitable entity to an entity with accumulated losses, the Commissioner may need to determine whether the resulting pricing reflects an arm's-length outcome. Retrospective determination of this question can result in

prolonged transfer-pricing disputes, particularly where the transaction involves integrated group services for which no exact uncontrolled comparable exists.

A domestic APA offers a prospective solution. Before the transactions occur, the taxpayer and Commissioner can agree on the nature of the services, the functional analysis, the appropriate transfer-pricing methodology, the relevant cost base, the applicable mark-up or pricing range, and the critical assumptions supporting the arrangement. This allows KRA to assess the potential tax-base risk in advance while providing the taxpayer with greater certainty concerning recurring transactions.

The proposed framework should not prevent transactions involving loss-making related companies. Rather, it should ensure that material transactions are supported by transparent economic analysis and an appropriate arm's-length methodology.

This also reinforces the proposed relationship between section 18G and section 23 of the Income Tax Act. Section 18G can provide certainty where a taxpayer makes full and accurate disclosure and obtains an APA, while section 23 should continue to protect the revenue where there is material misrepresentation, non-disclosure, a material change in critical assumptions, or conduct falling within the statutory anti-avoidance framework.

Accordingly, domestic APAs should be viewed not as a mechanism for reducing tax enforcement, but as a means of enabling KRA to identify and address significant domestic transfer-pricing risks prospectively. This would allow the Commissioner to distinguish legitimate commercial transactions from arrangements that materially distort the timing or allocation of taxable income, while reducing unnecessary retrospective disputes.

20. The Proposed Policy Balance

The proposed framework can be expressed as follows:

Policy Objective	**Proposed Mechanism**
Protect revenue	Sections 18A and 23
Provide certainty	Section 18G APA
Address difficult comparable	No-reliable-comparable pathway
Manage domestic tax asymmetry	Risk-based eligibility
Prevent excessive administrative burden	Materiality threshold
Coordinate VAT	Amendment to section 13
Prevent abuse	Fraud/non-disclosure/material-change exceptions
Improve administration	Joint technical review
Maintain accountability	Written reasons for departure

This is the central architecture proposed by the paper.

21. Proposed Legislative Amendment Schedule

Amendment 1: Section 18G — Income Tax Act

Add an express domestic unilateral APA pathway for qualifying related resident transactions.

The provision should authorize regulations prescribing:

- eligibility;
- materiality;
- methodology;
- critical assumptions;
- compliance;
- revision;
- cancellation; and
- Interaction with other tax provisions.

Amendment 2: Section 23 — Income Tax Act

Insert an APA protection provision establishing that the Commissioner shall not depart from an agreed methodology except in defined circumstances.

Those circumstances should include:

- fraud;
- material misrepresentation;
- material non-disclosure;
- material change in critical assumptions; and
- Material divergence between the transaction implemented and the transaction disclosed.

Amendment 3: Section 13 — VAT Act

Require the Commissioner to consider the methodology and economic analysis contained in an applicable APA when determining open market value.

The provision should preserve VAT-specific valuation powers.

22. Proposed Amendments to the APA Regulations

The 2025 Draft Regulations should be supplemented or clarified to address:

1. domestic unilateral APAs;
2. qualifying resident-to-resident transactions;
3. materiality thresholds;
4. preferential tax regimes;
5. integrated group services;
6. absence of reliable comparable;
7. methodology selection;

8. critical assumptions;
9. VAT coordination;
10. section 23 interaction;
11. annual compliance;
12. revision;
13. cancellation;
14. confidentiality; and
15. Written reasons for material departure.

23. Original Contribution of this Paper

This paper's principal contribution is the proposition that Kenya's APA regime should not be viewed solely as an international transfer-pricing mechanism.

The emerging framework can become an important domestic cooperative-compliance instrument.

The paper makes four connected contributions.

First, it identifies **comparability uncertainty** in integrated group/shared services as a practical reason for domestic APA access.

Second, it proposes a **no-reliable-comparable mechanism** rather than requiring taxpayers to manufacture an artificial uncontrolled comparable.

Third, it establishes a proposed statutory relationship between **sections 18A, 18G and 23**, preserving anti-avoidance enforcement while providing certainty to taxpayers that have made full disclosure.

Fourth, it proposes a coordinated relationship between **income-tax APA methodology and VAT open-market-value determination**, without collapsing the two tax systems into one.

The contribution is therefore not merely to advocate "more APAs."

It proposes an integrated institutional architecture for prospective certainty.

24. Policy Implications

The proposed framework has implications for several stakeholders.

Kenya Revenue Authority

KRA would be able to allocate specialised resources to material and high-risk transactions.

National Treasury

Treasury would have a clearer policy mechanism for balancing investment certainty with protection of the domestic tax base.

Taxpayers

Taxpayers would gain greater certainty concerning recurring material transactions.

Tax practitioners

The framework would encourage more rigorous prospective transfer-pricing analysis.

Tax Appeals Tribunal and Courts

Fewer methodological disputes may ultimately reduce litigation concerning transactions that could have been resolved prospectively.

25. Conclusion

Kenya's transition towards Advance Pricing Agreements presents an opportunity to modernise the administration of transfer pricing.

The central policy challenge is no longer whether the country should introduce APAs.

It is how the emerging framework should be designed to produce meaningful certainty without weakening revenue protection.

Domestic related-party transactions deserve particular attention because Kenya's tax system includes preferential regimes that can create genuine domestic tax differentials.

The challenge is even more pronounced where corporate groups centralise services.

An integrated group service may be commercially genuine but difficult to benchmark because an independent enterprise may not purchase an identical bundle of services under comparable circumstances.

Kenyan transfer-pricing disputes demonstrate that disagreements can arise over the functional characterisation of such services, the degree of integration and the appropriate transfer-pricing methodology. The ECP and H.P. Gauff disputes provide useful illustrations of these difficulties. Kenya Law+1

A retrospective audit is not always the most efficient way to resolve these questions.

An APA allows the taxpayer and Commissioner to address them prospectively.

Section 23 should remain an essential safeguard.

The proposed reform therefore does not seek to restrict legitimate anti-avoidance enforcement.

Instead, it establishes a principle of reciprocal certainty:

Where the taxpayer provides complete and accurate information and implements the transaction consistently with the APA, the taxpayer should be able to rely on the agreement.

Where there is fraud, material misrepresentation, material non-disclosure, a material change, or a material departure from the agreed transaction, the Commissioner should retain the ability to act.

The VAT dimension requires a similar but carefully calibrated solution.

Section 13 of the VAT Act expressly provides for open-market valuation where the supplier and recipient are related. Kenya Law

The Swift East Africa litigation demonstrates that transfer-pricing methodology can intersect with the VAT valuation question. Kenya Law

The appropriate reform is therefore not to automatically make an income-tax APA determinative for VAT.

Rather, the Commissioner should be required to consider the APA's economic analysis when determining VAT open market value, subject to VAT-specific statutory requirements.

This would reduce unnecessary duplication while preserving VAT's distinct character.

The broader policy objective is a shift:

from retrospective audit to prospective certainty.

That shift does not mean weaker enforcement.

It means better-targeted enforcement.

It does not mean that taxpayers receive immunity.

It means that compliant taxpayers who disclose their transactions fully can obtain reasonable certainty.

It does not mean that VAT and income tax become one system.

It means that different KRA functions should not unnecessarily develop conflicting valuation positions concerning the same economic transaction.

Kenya's emerging APA framework provides the foundation.

The next stage should strengthen that foundation through clearer domestic eligibility, a practical response to difficult comparability, an explicit relationship with section 23, and a coordinated approach to VAT valuation.

Such reform would advance cooperative compliance, reduce avoidable litigation, improve administrative efficiency and contribute to a more predictable Kenyan tax environment.

26. Recommended Policy Action Plan

The following sequence is proposed for policymakers.

Immediate

1. Finalise the APA Regulations after stakeholder consultation.
2. Clarify the domestic scope of unilateral APAs.
3. Define the treatment of integrated group services.
4. Introduce the no-reliable-comparable provision.
5. Define critical assumptions and material changes.

Legislative

6. Clarify the relationship between sections 18A and 18G.
7. Introduce an express section 23 APA safeguard.
8. Amend section 13 of the VAT Act to require consideration of applicable APA analysis.

Administrative

9. Establish a Domestic APA Technical Committee.
10. Develop standard application templates.
11. Develop shared Income Tax/VAT technical-review procedures.

12. Introduce annual APA compliance reporting.

Evaluation

13. Publish anonymized aggregate APA statistics.
14. Review the materiality threshold periodically.
15. Conduct a formal review of the domestic APA programme after three years.

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Author's Declaration

This paper presents an independent policy and professional analysis of Kenya's emerging Advance Pricing Agreement framework. The proposed legislative language is intended for policy discussion and should undergo formal legislative drafting, constitutional review, stakeholder consultation, and compatibility assessment against the complete body of Kenyan tax legislation and applicable international obligations before enactment.

The author acknowledges that the purpose of the proposed reforms is not to reduce legitimate tax enforcement but to improve prospective certainty, administrative consistency and the efficient allocation of tax-administration resources.