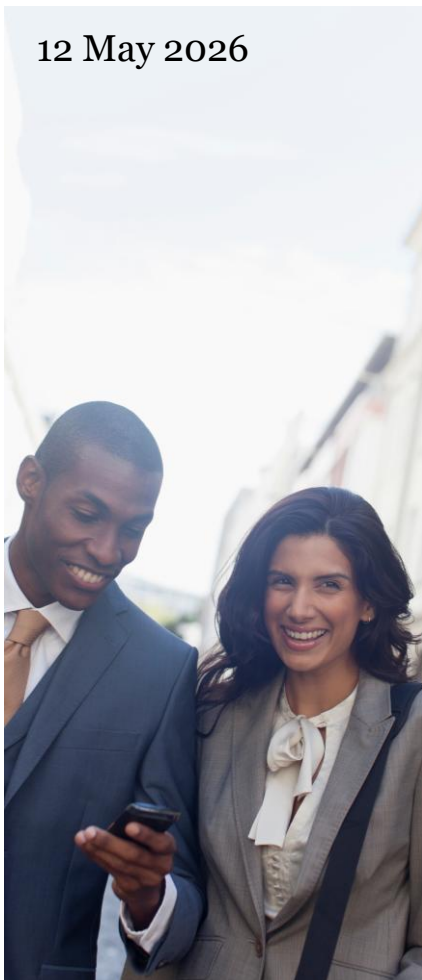




# Tax Alert

## SARS releases draft Public Notices on Advance Pricing Agreements

12 May 2026



### In brief

On 30 April 2026, SARS released six draft Public Notices setting out details of the proposed Advanced Pricing Agreement ('APA') programme. APAs are a regime whereby taxpayers can get upfront approval for their transfer pricing policy from SARS (and where there is a bilateral APA, the corresponding Revenue Authority) to achieve tax certainty. Amongst other things, the proposals included commentary on which taxpayers can qualify for the APA programme, which transactions are excluded, and the proposed fee structure. Public comments on the draft Public Notices must be submitted by the close of business on 29 May 2026. This represents a significant milestone in the operationalisation of the APA regime.

### In detail

#### **Legislative background**

The Tax Administration Laws Amendment Act, 2023 inserted Part IA (sections 76A–76P) into the Income Tax Act, 1962, establishing the statutory framework for the APA programme. The stated purpose of the programme is to promote tax certainty in respect of affected transactions and to prevent or minimise double taxation and associated dispute resolution procedures. We understand that the pilot programme will initially be limited to bilateral Double Tax Agreement ('DTA') APAs only, and SARS is expected to begin accepting applications from mid-2026, subject to finalisation of the Public Notices.

A pre-application meeting is compulsory and only once SARS has confirmed that the APA application can proceed, can an APA application be submitted.

## Summary of the draft subordinate legislation

- **Eligibility**

The applicant/taxpayer must have a turnover in excess of R50 billion in the year of assessment preceding the year in which the pre-application consultation is requested. Eligible affected transactions are limited to distribution, manufacturing, and imported intragroup services, with minimum values of R1 billion (for distribution and manufacturing, respectively) or R300 million (for services). Transactions constituting financial assistance or resulting in the creation of intangible property are excluded. The applicant/taxpayer also needs to be tax compliant.

- **Fees**

A non-refundable pre-application consultation fee of R100,000 is payable to SARS within seven days of invoice. Once SARS has confirmed that an APA application can be submitted, a cost-recovery fee of R1,000,000 applies (comprising a R200,000 deposit and eight quarterly instalments of R100,000). An annual maintenance fee of R100,000 is payable during the APA term. Extension fees are determined on a case-by-case basis.

- **Processing requirements**

Once the pre-application process is approved an application is submitted. The process then includes that SARS must develop a project plan with milestones in consultation with the applicant and foreign competent authority. Upon conclusion of the project plan, SARS must take such steps as necessary to form a position for discussions with the competent authority of the other country. This may include information gathering (including functional analysis interviews and benchmarking), coordination with the foreign competent authority, preparation of a position paper, and competent authority negotiations.

- **Preliminary APA content**

The preliminary APA must contain the prescribed information including party details, competent authority contact details, transaction background, financial information, the applicable transfer pricing method, critical assumptions, arm's length price, duration, and compliance report deadlines.

- **Procedures and guidelines**

All correspondence must be in English. Rollback requests are to be raised during the pre-application consultation.

- **Rejection criteria**

SARS may reject an application on various grounds including where the APA would not reflect the economic reality, form vs substance criteria, misalignment between economic activities and profit outcomes in South Africa, lack of commercial substance, anti-avoidance concerns, overlap with existing dispute resolution or VDP matters, non-payment of fees, and where the foreign competent authority does not want to be party to the DTA APA.





## Key takeaways and observations

- **A very high turnover threshold**

The R50 billion turnover threshold is very high and is likely to exclude all but a tiny fraction of South African taxpayers. This is also not a criterion commonly seen in leading APA jurisdictions internationally. The OECD's Bilateral Advance Pricing Arrangement Manual notes that there should be equitable access to APAs for all taxpayers, and that significant fees or barriers may act as a disincentive. It remains to be seen whether this threshold will be retained during this consultation process and if so if it will be relaxed once SARS has completed the pilot phase.

- **Narrow transactional scope**

Eligible transactions are limited to distribution, manufacturing, and imported intragroup services. Outbound services, financial assistance and intangible property (including royalties) are excluded—removing some of the most contentious transfer pricing areas from the programme's reach. For taxpayers with complex royalty or financing arrangements, where they would benefit from the certainty of an APA, the current scope may be disappointing. The exclusion of transactions that “result in the creation of intangible property” may also require further clarification, particularly regarding where the boundary lies between such transactions and standard royalty arrangements. This is an area that will likely benefit from further engagement during the public comment process.

In summary, these Public Notices represent a significant and welcome milestone, signalling that SARS is moving towards accepting applications from mid-2026 and that the APA regime is progressing from legislative enactment to practical implementation; however, the R50 billion requirement is a very expensive ticket for entry.

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