

The changing approach to Transfer Pricing documentation

From narrative driven to evidence based compliance

Traditionally, transfer pricing (TP) documentation in Kenya and across many jurisdictions globally has largely been a narrative exercise. Taxpayers focused on drafting TP policies that explained their Functions, Assets, and Risks (FAR), justified their pricing, and narrated business models in a manner intended to align with the OECD Guidelines. The emphasis was on storytelling, articulating why the group's structure and intercompany arrangements made commercial sense.

However, the landscape has fundamentally changed. TP audits have become more forensic and evidence driven. The Tax Appeals Tribunal (TAT) and Courts have made it unequivocally clear that narratives are no longer enough – only verifiable, contemporaneous proof can substantiate a taxpayer's TP position.

In *Omondi v Anzofu* (Civil Appeal 04 of 2020), the High Court emphasized that – "It is trite that where a party does not give evidence in a case, its statements remain mere assertions that are of little probative value."

CMC Aviation Ltd v Cruisair Ltd (1978) KLR 103

The court held that pleadings are merely statements of the parties' assertions. They are not evidence and cannot form the basis of a decision until they are proved, disproved, or admitted. Evidence consists of the means of how facts are established. Until the truth of the pleadings is demonstrated through evidence, the averments remain unproven and cannot satisfy the definition of evidence.

This principle applies directly to TP compliance, **assertions in a FAR analysis – no matter how well written – cannot substitute for documented proof.**

Revenue authority now treats a taxpayer's TP documentation as **advocacy, and not fact.** During audits, they systematically interrogate every statement in the TP file and test whether each claim is verifiable through real operational and financial proof.

To withstand scrutiny, the mantra is: **Show, don't tell.**

Framework of the evidence required across the three FAR components

A sound FAR analysis requires structured evidence across **functions performed, assets employed, and risks assumed or controlled** to accurately demonstrate each entity's real economic activity and decision making.

1. Evidence supporting functional analysis ("show what you do")

A functional analysis establishes **what each entity actually does**, who performs activities, and the level of decision-making authority involved. To prove functions, evidence is required in the following three categories among others:

Organizational & Governance Evidence	People and Role Evidence	Operational Execution Evidence
<ul style="list-style-type: none"> Organizational charts Delegation of Authority (DoA) documents Board and management committee minutes SOPs and process maps Internal audit reports Policy documents (procurement, HR, finance, quality assurance, IT) Budget approval documentation Committee charters (e.g., risk committee) Group reporting guidelines or operating manuals 	<ul style="list-style-type: none"> JDs and employment contracts KPIs, appraisal reports and performance scorecards Activity logs, timesheets or work planners CVs and professional qualification records Interviews with functional heads Email correspondence or memos showing decision involvement Team meeting minutes, project stand-up notes, and staff briefings 	<ul style="list-style-type: none"> Sales, procurement, production, or service delivery records Workflow logs and system transaction trails Customer service reports Operational dashboards Field activity reports, site visit logs, and monitoring templates Invoices, purchase orders, and delivery notes R&D records, testing documentation, and technical workpapers System-generated approval logs (e.g., procurement, expense, credit approval)

These materials show how responsibilities and decisions are structured—not just claimed.

This evidence demonstrates who performs key activities and how their performance is measured.

*These documents show the **actual conduct** of functions, ensuring the FAR analysis reflects real operations rather than aspirational descriptions*

2. Evidence supporting asset analysis (“show what you own and control”)

Asset analysis requires proof of **ownership, control, use, and economic benefit** – especially for intangible assets.

Legal ownership evidence	<ul style="list-style-type: none"> ▪ Purchase agreements and transfer deeds ▪ Title deeds, vehicle registrations, equipment certificates ▪ IP registrations (patents, trademarks, copyrights) ▪ Software ownership or licensing agreements ▪ To show who legally owns an asset. 	Evidence of asset records	<ul style="list-style-type: none"> ▪ Fixed asset registers ▪ Depreciation schedules ▪ Capex approvals and budgets ▪ Payment records demonstrating who funded acquisition ▪ To verify recognition and economic responsibility for assets 	Evidence of control and use (economic ownership)	<ul style="list-style-type: none"> ▪ Insurance policies naming the entity as insured ▪ Maintenance and usage logs ▪ IT system admin rights (for digital assets) ▪ Output measures showing asset contribution to value creation ▪ R&D documentation ▪ IP protection and enforcement records
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3. Evidence supporting risk analysis (“show who controls and bears risk”)

Risk analysis must move beyond contractual allocation to demonstrate real control, financial exposure, and mitigation capability.



Evidence required to demonstrate the results of the transaction (“show the outcome”)

Beyond demonstrating the functions performed, assets used, and risks assumed, a defensible transfer pricing position must also provide clear, verifiable evidence of the actual results of the controlled transaction. This evidence confirms that:

- the transaction occurred as described,
- the value exchanged is consistent with arm’s length expectations, and
- the financial impact is reflected in the books of both the local and foreign entities.

To substantiate transaction outcomes, the following categories of evidence are required.

Commercial transaction evidence	Pricing & costing evidence	Financial accounting evidence
<ul style="list-style-type: none"> ▪ Purchase orders (POs) confirming quantity, price, and terms ▪ Sales orders or order confirmations ▪ Invoices issued and received ▪ Delivery notes or shipping documents or goods received notes ▪ Intercompany contracts and pricing agreements ▪ Statements of work (SOWs) or service delivery confirmations 	<ul style="list-style-type: none"> ▪ Costing sheets or bill of materials (BOM) ▪ Internal pricing sheets or TP calculators ▪ Margin/markup computations (for cost plus or resale minus) ▪ Comparable pricing files (internal or external) ▪ Approved discount or exception authorisation records 	<ul style="list-style-type: none"> ▪ General ledger (GL) extracts of the transaction ▪ Trial balance and financial statements (local & foreign entity) ▪ AR/AP schedules showing intercompany balances ▪ Bank statements or payment confirmations ▪ Intercompany reconciliation statements ▪ Segmental or management accounts

The evidence above verifies the actual outcomes of the controlled transaction. Because transfer pricing must be assessed from both sides, the financial results of the foreign entity may be required to confirm that the transaction was executed, priced, and recorded consistently across both parties.

Conclusion

A well supported TP analysis relies on systematic collection and documentation of evidence across functional activities, asset ownership and control, and risk allocation and management. Maintaining a clear, organized evidence trail not only ensures compliance but also strengthens audit defensibility and supports consistent TP positions over time. As reinforced in *Omondi v Anzofu*, **assertions without evidence carry little probative value.**



Should you need further specific guidance on how the above changes impact your business, kindly feel free to contact any of the below or your usual RSM contact who will be always available to offer guidance and assistance that you need.

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