

TAT emphasizes that Transfer Prices (TP) must follow where value is created in a KES 6.7 billion TP assessment

On 16th January 2026, the Tax Appeals Tribunal (TAT) delivered its decision in **Tax Appeal No. E1263 of 2024** and **Tax Appeal No. E504 of 2025** – *Del Monte Kenya Limited (“DMK”) vs. Commissioner, Legal Services and Board Coordination*. The decisions together validated an additional tax liability (including penalties and interest) of approximately **KES 6.72 billion**.

Background and Context

Based on the facts of the case, DMK is engaged in the cultivation, processing, and sale of fresh and processed pineapple products, which it sells predominantly to its related distributor, Del Monte International GmbH (“DMI GmbH”) based in Switzerland for distribution in Europe and other international markets. This controlled transaction formed a substantial part of the company’s revenue streams during the audit.

DMK applied a full cost-plus markup of 4.83% for the intercompany transaction based on its TP policy and benchmarking study.

KRA conducted TP audits covering the 2018 year of income (Tax Appeal E1263 of 2024) and the 2019–2021 years of income (Tax Appeal E504 of 2025), focusing on the arm’s length nature of DMK’s pricing policies, documentation, tested party selection, and the commercial substance of intra group charges and financing arrangements.

In both cases, KRA rejected DMK’s TP approach that was based on full cost-plus mark-up of 4.83%, concluding that DMK understated its taxable income by allocating substantial functions, assets, and risks to DMI –contrary to the economic reality.

DMK objected to the two separate assessments from KRA but KRA confirmed the assessment in its objection decisions. This prompted DMK to appeal at the TAT.

Arguments by the Parties on Key Issues

Key Issue	DMK’s Argument	KRA’s Argument
Characterization of DMK	DMK argued that it operated as a grower and processor of pineapples, performing routine functions, while DMI GmbH acted as a fully-fledged distributor responsible for sales, marketing, and assuming related distribution and market risks	KRA contended that DMK was mischaracterized and in fact performed core value-creating activities, including planning, production, quality control, inventory management and customer-related functions
Functions Undertaken	DMK maintained that key commercial functions such as sales, marketing, and customer management, logistics coordination, quality control and inventory planning were performed by DMI GmbH. DMK only undertook growing and processing of the pineapples for sale	KRA argued that the said DMI GmbH functions are in substance undertaken by DMK based on the fact that: <ul style="list-style-type: none"> DMK actually has personnel who perform quality control functions in Kenya Employee files show a dedicated team handling demand planning, forecasting and warehousing functions in Kenya DMK failed to demonstrate DMI GmbH’s direct involvement in ordering, shipping, warehousing, or logistics. DMK incurred advertising, promotion, and marketing expenses (0.41% of revenue) No evidence was provided to show the extent of DMI GmbH’s customer management activities
Asset Utilized	DMK asserted that significant intangibles, including customer relationships and the Del Monte brand, were owned by DMI GmbH, with DMK owning mainly agricultural and processing assets	KRA contended that DMK employed critical tangible assets (farms, processing facilities, warehouses, cold storage) and significantly contributed to the value enhancement of the brand, justifying higher returns

Key Issue	DMK's Argument	KRA's Argument
Risk Assumed	DMK argued that it bore limited routine risks by virtue of selling its output to DMI GmbH on a cost-plus basis, guaranteeing a return irrespective of downstream market conditions. DMI GmbH bore the principal commercial risks, such as market, credit, inventory, and logistical risks	KRA asserted that DMK bore material operational, inventory, production and product liability risks, given its control over cultivation, processing and supply continuity. It also incurred market risk from its investments in production and marketing, and transportation risk to the port of delivery
TP method adopted and benchmarking analysis conducted	DMK applied the Transactional Net Margin Method (TNMM) using a full cost mark-up, supported by benchmarking studies showing a mark-up of 4.83%, which was within an arm's length range established by the benchmarking study	<p>KRA rejected the TNMM as unreliable, arguing that DMK was the more complex entity and therefore unsuitable as the tested party</p> <p>DMI GmbH ought to have been the tested party given it's least complex functions, earning a routine return. (That even the safe harbor for low-value adding services is 5%)</p> <p>KRA noted deficiencies in benchmarking studies, i.e., lack of corresponding financial data and companies not comparable in terms of size, functionality, and geographical setting</p> <p>KRA applied the deductive method (Customs Valuation Method 4) as per customs valuation in accordance with Paragraph 1.137 of the OECD guidelines, which recognizes the usefulness of customs valuations and the provisions of Rule 7(f) of Kenya's Transfer Pricing Rules (such other method as may be prescribed by the Commissioner from time to time)</p>

Other Issues

Disallowance of Intercompany Recharges

KRA disallowed intercompany recharges paid by DMK for inputs, materials, and software costs from related entities, citing insufficient source documentation to prove that the costs were incurred by related parties that directly benefited DMK. DMK maintained that the costs were legitimate business expenses recharged at cost. However, KRA held that the documentation provided did not substantiate the nature, occurrence or commercial justification of the charges.

Disallowance of Intercompany Loan Interest Expenses

DMK stated that it had an intercompany loan of Ksh 3.5 billion with its related entity, arising from the conversion of intercompany payables of approximately USD 34.38 million in 2018, and that the interest rate of CBR + 3% was arm's length based on a Bank quotation. KRA challenged the substance of the loan, questioning the existence of the underlying payables, the financial capacity and ownership of the lender, and the absence of verifiable third-party support for the interest rate, and accordingly disallowed the interest expense.

Key Issue for Determination

- Whether the FAR analysis conducted and documented by DMK was accurate.
- Whether the TP method employed in determining the arm's length price was appropriate.
- Whether DMK provided enough supporting documentation for the re-charged costs.
- Whether the terms of the loan granted by the related entity to DMK were at arm's length rate.



Ruling by the Tribunal

a) The FAR Analysis

The Tribunal held that DMK's FAR analysis was inaccurate, finding that it did not reflect the actual functions performed, assets employed and risks assumed. It confirmed that cultivation, planning, processing, and warehousing were exclusively performed by DMK as it was a producer. For the disputed functions i.e. quality control, inventory management, logistics, sales support, and customer management, the Tribunal found that DMK failed to prove that DMI performed or shared these functions.

The Tribunal found that personnel, production equipment, warehouses, and cold storage facilities were mainly employed by DMK. DMK failed to show proof of assets owned by DMI.

Regarding risks assumed, the Tribunal found that crop failure, inventory, product liability and production risks were borne by DMK. Throughout, the Tribunal emphasized that the burden of proof lay with DMK, and that DMK failed to adduce sufficient documentary evidence to displace KRA's analysis.

b) TP Method

Having found that the FAR analysis was flawed, the Tribunal concluded that DMI GmbH was the less complex party and therefore ought to have been the tested party. As a result, the Tribunal found that the TNMM and Full Cost-Plus Markup were wrongly applied, since applying a cost-plus mark-up to DMK did not properly reward it for its significant functions, assets, and risks.

The Tribunal further noted that although DMK produced benchmarking ranges to justify the 4.83% mark-up, it failed to demonstrate how unit costs were computed or how the mark-up was reliably applied at the product level. Consequently, the reliability of TNMM was undermined by the absence of documentation requested, including segmented financials and functional details for DMI. In the absence of reliable data, KRA was entitled to apply an alternative method.

c) Intercompany Recharges

The Tribunal found that the DMK failed to provide source documentation for re-charged costs from its related entities. Reconciliations, schedules, and commercial invoices were insufficient, including software and administration charges. Therefore, re-charged costs could not be verified.

d) Intercompany Loan

While DMK focused on the arm's length interest rate, the Tribunal agreed with KRA that the more fundamental issue was the lack of substance of the loan arrangement. The Tribunal found that DMK failed to prove the related lender's place in the group structure and its financial capacity to lend. DMK could not provide evidence of the intercompany payables or loan documentation. DMK also failed to provide the comparable third-party loan evidence from the Bank quotation to support its claimed interest rate. Accordingly, the tribunal found that KRA was correct to disallow the interest expenses relating to the loans.

Our Comments on Implications for Businesses

This decision reinforces the fundamental principle that transfer pricing outcomes must be anchored in actual conduct, economic substance, and real value creation, rather than relying solely on contractual wording or policy statements.

In practice, a transfer pricing policy is only as strong as its day to day implementation. Where the written policy does not match how the business operates, tax authorities always look beyond formal documents and scrutinize the substance of the intercompany dealings, assessing whether the functions performed, assets employed, and risks assumed genuinely align with the profit allocated to each entity. This places an increased premium on verifiable evidence that substantiates the economic reality described in the taxpayer's documentation.

The ruling also underscores the importance of accurate functional characterization, tested party selection, and the reliability of the transfer pricing method applied. When a transfer pricing analysis is based on an incorrect or incomplete FAR profile, the resulting method selection—and ultimately the pricing outcome—may be invalid. In such cases, the Commissioner would set aside the taxpayer's chosen method and apply an alternative approach that better reflects the underlying economic activity and value drivers.

Additionally, the Tribunal's findings highlight the critical need for robust, contemporaneous source documentation. The burden of proof in tax disputes rests squarely with the taxpayer. Where intercompany pricing, management fees, cost allocations, or financing arrangements are challenged, taxpayers must be prepared to provide clear, consistent, and fully substantiated evidence supporting their positions.

High level summaries, explanations, or policy descriptions—without backing records, data, and proof of actual execution—will not be sufficient to meet this burden. Comprehensive documentation demonstrating alignment between policy, conduct, and financial outcomes is essential to withstand scrutiny in an environment of heightened transfer pricing enforcement.

As the KRA continue to intensify scrutiny, multinationals must ensure that their value chains, internal processes, and supporting evidence consistently reflect the realities of their operations. **Strengthening functional analyses, validating method application, and maintaining defensible, contemporaneous documentation are no longer best practices — they are essential safeguards.** In today's environment, the most resilient transfer pricing positions are those built on transparency, substance, and a demonstrable link between value creation and profit allocation.



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.

Jilna Shah
Tax Director
jshah@ke.rsm-ea.com

Samuel Maina
Transfer Pricing Senior Manager
smaina@ke.rsm-ea.com

Jacob Otieno
Transfer Pricing Specialist
jotieno@ke.rsm-ea.com

Irvine Mukabane
Transfer Pricing Specialist
imukabane@ke.rsm-ea.com

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