International Tax Issues Affecting Multinationals

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Taxwise

Agenda

International Tax issues affecting Multinationals

At this point in time when many Kenyan born companies are venturing beyond the national borders to exploit emerging opportunities overseas, it is essential that their tax officers and overseas managers be cognizant of various tax implications of their strategies and changes in the tax laws around the globe. This session therefore will seek to take participants through developments in international tax issues and will provide an analysis of select legislative changes, international treaties affecting multinationals, transfer pricing, and guidance on offshore indirect equity transfers, tax controversies and dispute resolutions for multinationals.

Agenda

- Understanding "International Taxation"
- The problem of double taxation and its resolution
- Key features of international tax planning
- Key concerns in international taxation
- Q+A

“International Taxation”

- A slight misnomer; and there is no such thing as “international tax law”, e.g. There is no equivalent of a **Rome Statute or WTO Rules**
- Globally each country has its own tax system defined by its jurisdiction and national tax laws
- International taxation is about how tax systems of sovereign states interact with each other

“International Taxation”

- OECD MTC is not a law but a “template”
- Signed and ratified DTAs are bilateral “laws” between the contracting states
- EAC Treaty and its protocols constitute “law” for EAC member states – **collectively** and **individually.**

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KENYA'S DTAs

PARTY	YEAR	IN FORCE (F) NOT IN FORCE (NF)
ZAMBIA	1968	F
DENMARK	1972	F
NORWAY	1972	F
SWEDEN	1973	F
UK	1973	F
GERMANY	1977	F
ITALY	1979	NF
CANADA	1983	E
INDIA	1985	F
THAILAND	1997	F
FRANCE	2006	NF
IRAN	2007	NF
SOUTH AFRICA	2009	NF
UAE	2010	NF
MAURITIUS	2011	NF
NIGERIA ?	**2013**	**NF**

National Taxation

- Every sovereign state has the right to tax any economic activity within its jurisdiction;
- Revenue yield depends on the revenue base available;
- States assert their right to tax through tax legislation
- National tax regimes is the revenue base and the tax laws
- Common underlying principle is the <u>ABILITY TO PAY</u>
- A state’s right to tax is restricted by bilateral treaties or international laws and agreements
- A national tax regime may attract investments or discourage investment – regimes do not operate in a vacuum

National Taxation

- The more investments a country attracts the bigger will its revenue base become in the long run
- Therefore a national tax regime can be designed to enable a state compete for investments
- A national tax regime can therefore be harmful to other regimes:(http://www.oecd.org/tax/transparency/44430243.pdf)
- Global trade means national tax regimes get to interact with other regimes;
- This interaction may cause some friction- hence the need for international rules: (http://www.oecd.org/tax/treaties/1914467.pdf)

International Double Taxation

- **Economic Double Taxation:** 2 different taxpayers are taxed in respect of the same income e.g. in transfer pricing adjustments

- **Juridical Double Taxation:** same income is taxed on the same person in two different jurisdictions – total tax is higher than if taxed in one jurisdiction e.g. residence-residence/source-source/residence-source conflict

Double Taxation Relief

- **Under domestic legislation:**
  - **Foreign tax credit** (capital export neutrality- a Kenyan investing in Ug should suffer same tax burden as a Kenyan investing in Kenya)
  - **Exemption method** (capital import neutrality – same tax burden should apply to companies from abroad as are local companies)
  - **Rate differentiation** (lower than the regular tax rate is applied to foreign income
  - **Deduction** (e.g. S.16(2)(c) of Kenya ITA

Foreign Tax Credit

- Residence state allows full set-off of tax on foreign income against domestic tax due on worldwide income
- Residence state allows set-off of tax due on foreign income up to the amount to extent of domestic tax corresponding to the foreign income

Exemption Method

- Income from foreign sources exempted from tax, e.g. foreign dividends earned by Kenya Co under S. 7(2) – “Income Exemption”

Double Taxation Relief

- **Under Tax Treaties:**
- DTAs are agreements between two countries to coordinate the exercise of their taxing rights
- May follow OECD or UN Model
- May be operationalised by mere signing or by ratification by domestic legislature (e.g. Kenya)
- Once signed/ratified they become part of domestic legilsation
- Under international public law, where international treaty and domestic law conflict, the treaty prevails

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Key Features of International Tax Planning

Objectives

- NO or LOWER double taxation – usually found to be acceptable
- NO or LOWER single taxation – usually frowned upon even when not illegal – APPLE CASE

Why does Starbuck Pay so Little Tax?

http://www.youtube.com/watch?feature=player_embedded&v=Th4fxMFRIt0

Why does APPLE Pay NO Tax Anywhere?

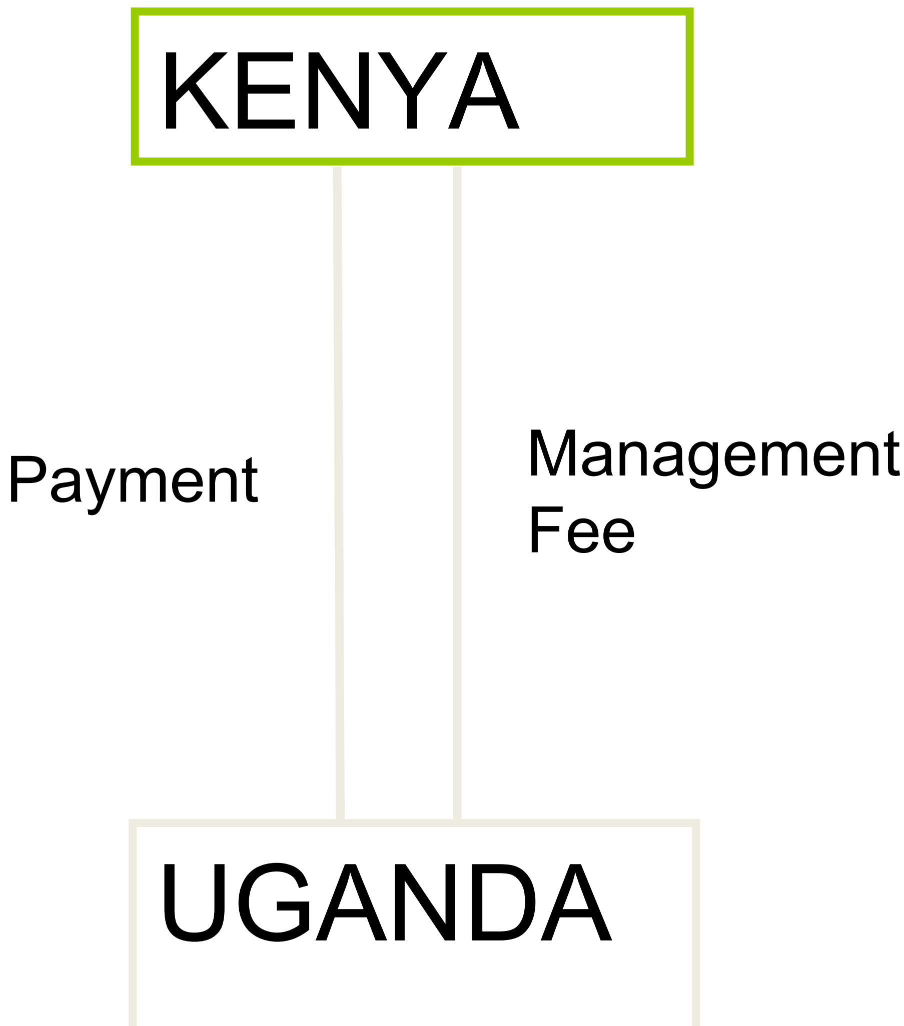
http://www.theguardian.com/technology/video/2013/may/29/apples-dirty-little-tax-secret-video

Key Features of International Tax Planning

Key steps

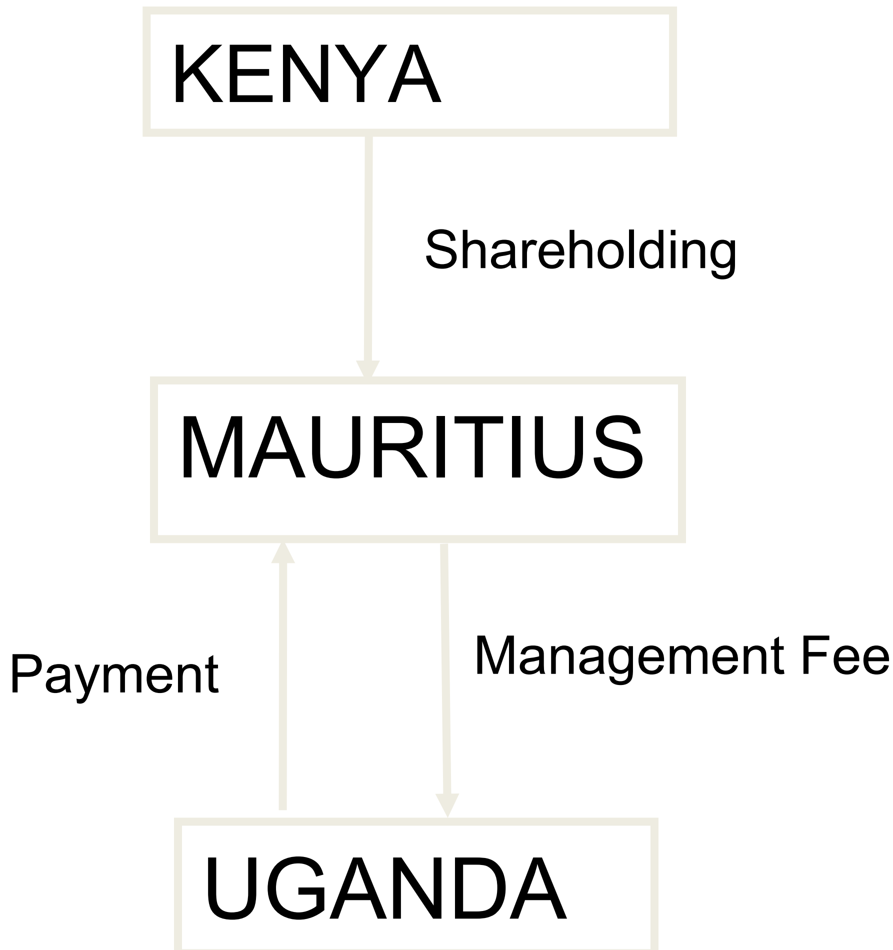
- Benchmarking:
  - What is your ETR? What should it be?
  - The higher the ETR the lower the EPS
  - What are your profit drivers?
  - What are your ETR drivers?
  - What are your key tax risks and opportunities?

MANAGEMENT SERVICES



Management Fee	**100**
WHT 15%	**(15)**
	85
Kenya CorpTax 30%	**(25.5)**
	59.5
Kenya Div WHT 5%	**(2.9)**
Net income	**56.6**
Effective tax rate	**43.4%**

MANAGEMENT SERVICES



Management fee	**100**
WHT (10%)	**(10)**
	90
Mauritius WHT	**(0)**
	90
Kenyan Corporate tax	**(0)**
	90
Dividend WHT (5%)	**(4.5)**
	85.5
Effective tax rate	**14.5%**

Issues

http://www.youtube.com/watch?v=B9-BZ4TeAg0&feature=player_detailpage

Key Features of International Tax Planning

Key steps

- Planning & Strategy:
  - Profit extraction/migration strategy
  - Cash extraction/pooling strategy
  - Jurisdictional strategy

Key Features of International Tax Planning

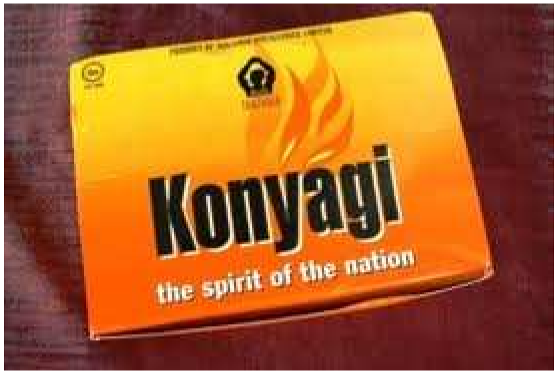
Key features/considerations

- Holding Activity/corporate structure & location – pay attention to Residence/PE rules
- Financing Activity – debt v equity
- IP management – ownership and location
- TESCM- manufacturing/distribution
- Anti-avoidance regimes – domestic/treaty
- Interaction between types of taxes – duty, VAT, W/tax, etc.
- Transfer Pricing

Current EA Scenario

EQUITY Bank The Listening, Caring Financial Partner

M-Shwari



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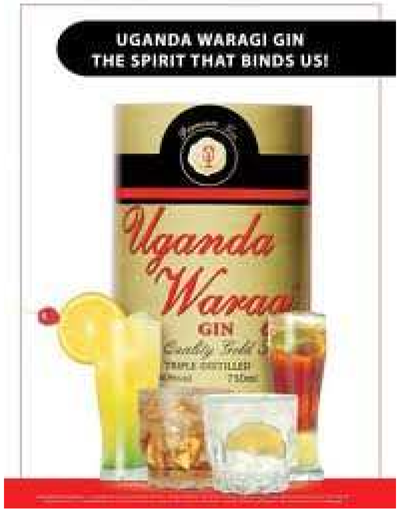
SAFARI LODGES • HOTELS • RESORTS

NAKUMATT



KCB

Issues

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http://www.youtube.com/watch?v=gy2RgjIIZyA&feature=player_detailpage

Issues

http://www.theguardian.com/technology/video/2013/may/29/apples-dirty-little-tax-secret-video

Issues

KRA audit recovers Sh4 billion from tax cheats

ax collector
een pursuing
national firms
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By JACKSON OKOTH

"These firms strangely remain in operation instead of closing shop as