



Nexus
Business Advisory

Transfer pricing



Emerging issues in T.P

Handling KRA audits regarding T.P

Resolving T.P disputes

Emerging issues...

BEPS

Effects of BEPS:

- ✓ **Loss of revenue by governments and increase in tax administration costs**
- ✓ **Increased tax burden to individuals when MNEs shift their profits**
- ✓ **Loss of reputation by MNEs due to non-compliance with tax rules**



Emerging issues...

New T.P documentation requirements

MNEs now required to create 3 tiered documentation

- ✓ **Master file**
- ✓ **Local file**
- ✓ **Country by country report**

Emerging issues...

ALP for Intangibles

- ✓ **Difficult to evaluate transactions involving intangibles because:**
 - **Difficult to find comparables;**
 - **Normally transferred along with tangible assets;**
and
 - **Difficult to be detected**

- ✓ **Determination of the ALP is a major issue when dealing with intangibles**

ALP for Intangibles...

- ✓ **Incorrect valuation** of intangible assets to attract higher compensation
- ✓ **Transfer of intangibles outside Kenya i.e. Mauritius** to attract **preferential tax rates**

Emerging issues...

ALP for Intragroup services

- ✓ Allocation of costs using **allocation keys**
- ✓ Challenge of whether its necessary for the services provider to make a profit
- ✓ Its **tedious** to determine a percentage of mark up and to fix the benchmark of markup.

Emerging issues...

ALP for Intragroup services

- ✓ Allocation of costs using **allocation keys**
- ✓ Challenge of whether its necessary for the services provider to make a profit
- ✓ Its **tedious** to determine a percentage of mark up and to fix the benchmark of markup.

Emerging issues...

Valuation of IP

- ✓ **Appropriate adjustments** have been made to address issues of compensation or valuation of I.P
- ✓ The new cost sharing regulations allow companies to use the **income method** to value IP



Special considerations for IP

✓ The considerations include

- Who **developed** the intangible property?
- Who **enhances** the intangible property?
- Who **maintains** the intangible property?
- Who **protects** the intangible property?
- Who **exploits** the intangible property?

Emerging issues...

ALP for intragroup management services

- ✓ The ALP is determined through **3 tests**
 - Were the services rendered?
 - What is the correct value of services rendered?
 - How were those services benchmarked?

- ✓ Two methods used to determine value of services rendered are **direct charge and indirect charge.**

Emerging issues...

Mutual Agreement Procedure (MAP)

- ✓ Allows **designated representatives** from the governments of the contracting states to interact with the intent to **resolve international tax disputes**.

Common Reporting Standard(CRS)

- ✓ Its an international framework developed by the OECD for the automatic exchange of information.

Emerging issues...

- ✓ **Increased scrutiny** of related party transactions.
- ✓ **Training** of KRA staff to handle TP audits.
- ✓ KRA has contracted the services of **international consultants** to help in handling these **TP investigations**.

Managing T.P Audits



What triggers a T.P audit?

- ✓ **Inconsistency** in tax remittances.
- ✓ **Benchmarking** against sector and industry statistics.
- ✓ **Intelligence gathering** through KRA information reward scheme.
- ✓ **Industry/sector peculiarities** e.g. transactions, offshore activities



Triggers...

- ✓ Special consideration like **large investment deductions** or transfer pricing for multinationals.
- ✓ **Persistent losses**
- ✓ **Scientific selection**
- ✓ **Compliance record through past audits**



Resolving Transfer Pricing Disputes



Resolving T.P disputes

- ✓ Applies where a taxpayer disputes an assessment
- ✓ Conditions for successful objection
 - ✓ Objection must be received **within 30 days** of the date of issue of an assessment;
 - ✓ **grounds** for objection must be stated;
 - ✓ Objection must be accompanied by relevant **supporting evidence.**

Resolving T.P disputes

- ✓ If dissatisfied with the objection outcome taxpayer may appeal to:
 - ✓ **Local Committee** (Income Tax cases) or **Tribunal** (VAT cases) **within 30 days** after the date of communication of the outcome; and
 - ✓ Further appeals made to **the High Court** for those still dissatisfied.



Resolving T.P disputes

Alternative Dispute Resolution(ADR)

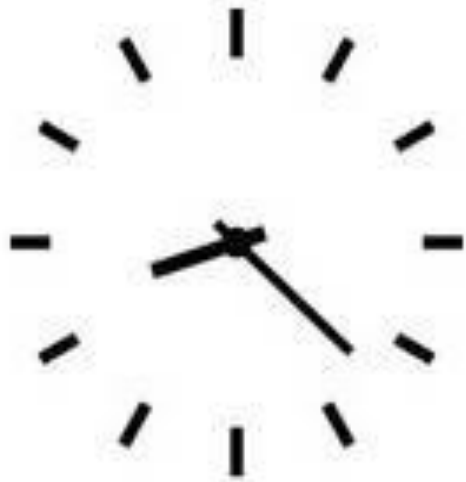
What is ADR?

- ✓ It is a **voluntary, participatory and facilitated** discussion over a tax dispute between a taxpayer and the KRA
- ✓ Applicable upon the **mutual consent** of both the **Commissioner and the tax payer.**

ADR...

- ✓ Encourages **out of court dispute** resolution.
- ✓ Delivers settlement of objection within **60 days**
- ✓ Any party to a dispute before the local committee ,tax tribunal, or the high court can apply to refer the dispute to ADR





Q & A time



© Presentation-Process.com

Philip Muema

Managing Director

Nexus Business Advisory Limited

2nd Floor, Block A

51 Lenana Road

+254 20 2199064/ 20 5100263

pmuema@nexusafrica.co.ke

www.nexusafrica.co.ke