



Commissioner of Domestic Taxes vs DELMONTE KENYA LIMITED (Income Tax Appeal E504 of 2025)

Judgement Alert Issue No. 1 of 2026

February 2026



Background



The Appellant (Delmonte Kenya Limited), a limited liability company involved in the cultivation, processing and sale of pineapples, fruit juices and related products, was subject to a transfer pricing audit by the Respondent (KRA) for the period 2019–2021.

Following the audit, the Respondent issued additional income tax assessments totaling to Kes 4,863,801,636.

Despite an objection by the Appellant, the Respondent issued an objection decision on March 17, 2025, confirming a total assessment of Kes 4,959,226,516, inclusive of principal tax, penalties, and interest.

The primary dispute is centered on the characterization of the Appellant's functions, the appropriate transfer pricing method for sales to its related party (DMI GmbH), and the disallowance of certain intercompany recharges and interest expenses.

Parties position at the tribunal

1. Appellant's Position

The Appellant contended that the Tax Appeals Tribunal should overturn the KRA's decision on the following grounds:

- **Functional Analysis:** The KRA erred by disregarding the Appellant's functional analysis, which characterized it as a grower and processor, while DMI GmbH was the distributor responsible for quality control, inventory management, and marketing in international markets.
- **TP Methodology:** The Transactional Net Margin Method ("TNMM") using a full-cost mark-up ("FCMU") was the most appropriate method, rather than the "deductive method" (Customs Valuation Method 4) adopted by the KRA.
- **Intercompany Recharges:** Recharges for agricultural inputs, software (Oracle), and administrative charges were at arm's length and supported by documentation.
- **Interest Expense:** Interest on a loan from Del Monte Fund BV ("DMF B.V") was at an arm's length rate (CBR+3%), supported by a bank quotation from Barclays Bank Kenya.
- **Tax Rate:** The KRA incorrectly applied a 30% tax rate for the 2020 financial year instead of the reduced 25% rate introduced by the Tax Laws Amendment Act 2020.

2. Respondent's Position

The Respondent (KRA) maintained that:

- **Value Creation:** The Appellant was the principal value driver and the "more complex party" in the group's operations, performing significant functions such as quality control, demand planning, and logistics.
- **Tested Party:** DMI GmbH, as the least complex party, should have been the "tested party" rather than the Appellant.
- **Methodology:** The Appellant failed to provide sufficient financial data (such as DMI GmbH's audited accounts) to justify the TNMM, necessitating the use of the deductive method based on retail prices at outlets like Carrefour and Walmart.
- **Substance of Loan:** The loan arrangement lacked economic substance. DMF B.V lacked the financial capacity and relied heavily on its parent entity DMI GmbH.

In addition, DMI GmbH owed the Appellant significant trade receivable exceeding the value of the loans, raising concerns over commercial rationality.

Issues for determination & The tribunal's finding

Firstly, the Appellant argued that the Respondent incorrectly applied a 30% tax rate for the financial year ending December 31, 2020.

The Tribunal acknowledged that the correct corporate tax rate for the 2020 year of income was 25%, as established by the Tax Laws Amendment Act, 2020, which took effect on April 25, 2020.

The Tribunal noted that while the Appellant identified the potential error, they failed to provide a detailed computations to verify the error, therefore, the Tribunal was unable to determine whether the correct rate of 25% was applied or not.

Even where the law is on the taxpayer's side (as the 25% rate was legally correct for 2020), the burden of proof remains on the taxpayer to provide the exact computations showing the error.



Issues for determination & the tribunal's finding

1. Whether DMF B.V is wholly owned by DMI GmbH or Fresh Delmonte Inc (“FDMC”)

The Appellant provided different diagrammatic representation of its ownership structure.

As per the Appellant's TP policy, there is no indication that DMF B.V is part of the structure whereas in its statement of facts, the Appellant's diagrammatic expression of its group ownership structure indicated that DMF B.V is wholly owned by FDMC.

The Tribunal held that its decision is majorly supported by Section 56 (1) of the TPA and Section 30 of the Tax Appeals Tribunal Act, CAP 469A of the Laws of Kenya (hereinafter “TATA”) which speaks to the burden of proof resting with the taxpayer in this case the Appellant.

The Tribunal noted that had the Appellant provided copies of official searches or registry records to evidence their claims, the above dispute would have been settled. The Respondent did sought for information from registry records and confirmed the ownership.

The tribunal held that DMF B.V is wholly owned by DMI GmbH.

2. Whether the (Functions, Assets, and Risks) (“FAR”) analysis by the Appellant was accurate

The Tribunal ruled that the Appellant's FAR analysis was inaccurate and unreliable based on the following:

- **Quality Control:** The Tribunal found this was an exclusive function of the Appellant. Since the product is a crop (pineapples), quality is determined at the place of cultivation.
- **Inventory & Logistics:** Evidence (emails) showed DMI GmbH played only a "supportive role." The Tribunal noted that proof provided by the Appellant that DMI GmbH owned the ships was website print-outs as opposed to official ship registration documents which is not supportive and costs were recharged to the Appellant anyway.
- **Intellectual Property (“IP”):** The Tribunal agreed with the Respondent that the relevant IP was the product itself (the cultivated pineapple), which belongs to the Appellant, rather than the global brand name.
- **Risk Allocation:** Risks like crop failure and market fluctuations were found to sit primarily with the Appellant because they had invested heavily in the infrastructure and production.

Issues for determination & the tribunal's finding

3. Whether the TP method and employed by the Appellant in determining arm's length price was appropriate?

The Tribunal found that the Appellant's FAR analysis was inaccurate and that the Appellant was indeed the more complex party, therefore DMI GmbH (providing low-value supportive services) was the correct tested party.

Under OECD guidelines, DMI GmbH's services were categorized as "low-value-adding intra-group services." These typically attract a standard 5% mark-up and therefore benchmarking is unnecessary.

Consequently, the TNMM (FCMU) was inappropriately applied because it did not adequately reward the Appellant for its functions and risks hence, The Tribunal upheld the Respondent's right to apply a different, more appropriate valuation method.

This was triggered specifically because the Appellant failed to provide segmented financial data and audited accounts for DMI GmbH.

4. Whether the Appellant provided supporting documentation for the re-charged costs?

The Appellant's intercompany expenses in dispute primarily consist of re-charged costs for agricultural inputs, production materials and spare parts procured through DMFC, administration costs incurred by Del Monte Spain and DMI GmbH and recharged to the Appellant in relation to the payroll costs for expatriates expediting functions in the capacity of security manager, plantation director, managing director, production director and plantation manager and lastly, software expenses for "Project Oracle" re-charged by DMI GmbH to the Appellant.

The Tribunal found that the Appellant failed to satisfy the evidentiary standards of Section 56(1) of the TPA and Section 30 of the TATA.

Specifically, the Appellant relied on internal bookkeeping records, such as reconciliations and schedules, rather than providing the necessary source documents such as; commercial invoices required to substantiate the re-charged costs.

Therefore, the Tribunal upheld the disallowance of these recharges.

Issues for determination & the tribunal's finding

5. Whether the terms of the loan granted by the DMF B.V to the appellant were at arm's length?

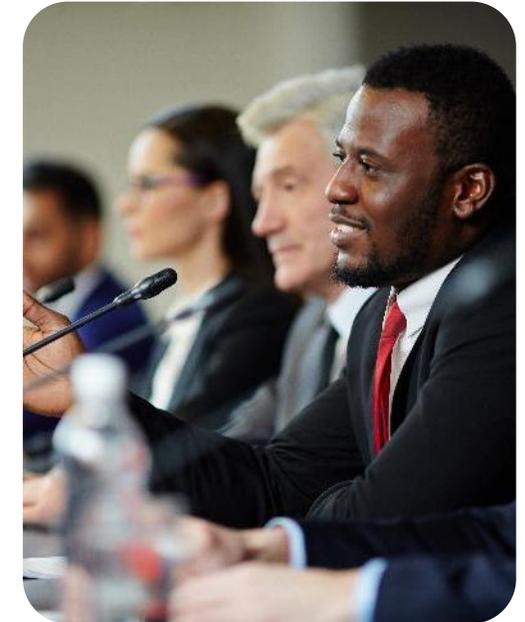
In the first issue under determination, the Appellant failed to provide evidence regarding the ownership of DMF B.V and consequently, the Tribunal upheld the Respondent's view that DMF B.V. is wholly owned by DMI GmbH.

The Tribunal found that DMF B.V. had no substantive operations and was effectively a "shell." entity without independent financial capacity, relying entirely on DMI GmbH.

DMI GmbH held significant trade receivables belonging to the Appellant without paying interest; the Tribunal ruled it irrational for a parent company to charge interest on a "loan" while simultaneously holding the borrower's interest-free funds and similarly, the Appellant failed to provide evidence of intercompany payables to refute the Respondent's position.

A loan quote from Barclays Bank Kenya Limited was dismissed as irrelevant because the underlying commercial arrangement was deemed fundamentally irrational and the quote lacked specific loan terms.

Therefore, the Tribunal ruled that the associated interest expenses were correctly disallowed by the Respondent.



Tribunal's Final Decision

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The Tribunal found that the appeal failed in its entirety.

It dismissed the appeal and upheld the Respondent's objection decision dated March 17, 2025.

Implication of the judgement

Transfer pricing documentation must be evidence-driven, not merely descriptive.

This judgement reinforces the heavy burden of proof placed on taxpayers to substantiate their transfer pricing policies with granular documentary evidence.

It also confirms that KRA may depart from the five traditional transfer pricing methods where a taxpayer's analysis does not withstand scrutiny.

It highlights the Tribunal's willingness to look beyond formal agreements to the "substance" of intercompany loans and the actual "value creation" within a group's functional analysis. Multinational groups must reassess their structures to ensure alignment between economic reality and reported tax positions.

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We note that this position is subject to change if the taxpayer proceed to High Court. However, we remain ready to communicate the same with our clients if the position changes.



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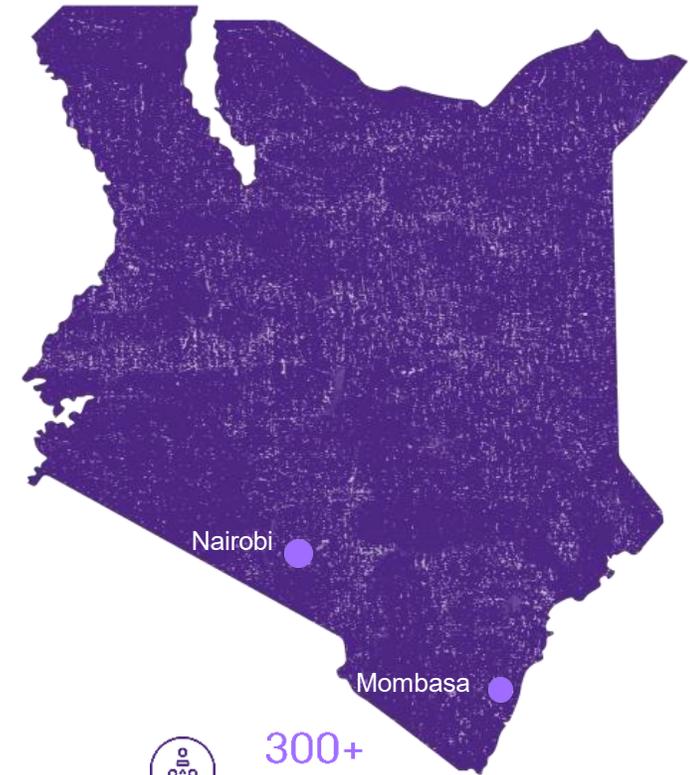
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