

27 March 2026



Court Renders Decision on TP Matters and Applicability of OECD Guidelines

- OECD TP Guidelines held not binding, rather persuasive and aid in interpretation
- Failure to consider a certain version of guidelines declared not a point of law
- Court's jurisdiction on pure points of law in tax matters emphasized
- Interpretation on the applicability of TNMM method provided
- Taxpayer's finance costs added back and taxed
- Taxpayer's appeal dismissed for want of merit

On 24 March 2026, the Court of Appeal of Tanzania (Court) delivered its judgment in Civil Appeal No. 227 of 2025. In this judgment, the Court, among others, interprets the applicability of the Transactional Net Margin Method (TNMM) Transfer Pricing (TP) method; deductibility of finance costs for income tax purposes; the legal weight of OECD TP Guidelines; and the Court's jurisdictional issues around tax matters involving mixed points of law and facts.

Background of the Case

The Respondent (TRA) conducted an audit of the Appellant's tax affairs for the year 2015. Based on the said audit, the Respondent established that the Appellant declared revenue which was lower than the total revenue actually earned in that year of income, which allegedly resulted in under-declaration. The said under-declaration was attributed to finance costs incurred by the Appellant, plus a 5% mark-up. As such, the Respondent issued tax assessments against the Appellant for payment of principal tax, interest and penalties.

The Appellant objected to the said assessments and the objections were rejected. Following the rejection of the objections, the Appellant unsuccessfully appealed to the Tax Revenue Appeals Board (the Board) and Tax Revenue Tribunal (the Tribunal).

Aggrieved by the decision of the Tribunal, the Appellant appealed to the Court advancing 3 grounds of appeal, namely: (i) the Tribunal erred in law by determining the core subject of the appeal based on the issue of whether the finance cost was a service or functional cost; (ii) the Tribunal erred in law by failing to consider the Appellant's Transfer

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Pricing Policy 2015, and the OECD Transfer Pricing Guidelines of 2015, potentially resulting in a flawed decision of including finance costs in the computation of the Appellant's revenue of the year 2015; and (iii) the Tribunal grossly erred in law in holding that the Respondent was correct in computing tax against the Appellant by including the finance costs incurred by the Appellant for the year of income 2015.

In its judgment, the Court started by addressing grounds 2 and 3 of appeal whose main legal contest lies on weight and applicability of the OECD TP Guidelines in Tanzania. While relying on regulation 9(2) of the Income Tax (Transfer Pricing) Regulations, 2014 (GN No. 310 of 2014), the Court observed that this provision does not incorporate the OECD Guidelines as binding statutory law. Instead, it grants the discretion to have regard to them as persuasive and interpretative tools. Consequently, a misapplication or non-consideration of a specific OECD Guidelines' paragraph does not, per se, constitute a point of law equivalent to misconstruing a provision of the Income Tax Act. It may, however, form part of a point of law if the Tribunal, in exercising its discretion to use the Guidelines, acts irrationally, misdirects itself on a principle derived from them, or fails to consider relevant guidance it chose to rely upon.

Further, the Court held that the second ground of appeal transforms from an allegation of non-consideration to a complaint about the weight given to evidence and the Tribunal's preference for the OECD Guidelines 2017. As such, the ground was condemned for essentially raising matters of fact and evidence evaluation contrary to Court's mandate under the law, which is restricted to pure points of law.

On the first ground of appeal, the Court observed that the Tribunal operated within the universe of arguments presented by the application of OECD principles to a disputed cost. Therefore, the issue of the finance costs inclusion was central, and the Tribunal's attributability test was a logical and lawful method to resolve it. As such, no breach of natural justice was occasioned. In the end, the Court maintained that the TNMM, as properly understood under the OECD Guidelines, does not permit the arbitrary exclusion of a class of costs like finance costs, hence the appeal was held to be lacking in merit and was accordingly dismissed with costs.

To read the judgment [click here](#)

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