



**ZAMBIA REVENUE AUTHORITY (ZRA)
VS.**



**NESTLÉ JUDGMENT
AND
ITS IMPLICATIONS FOR TRANSFER
PRICING IN AFRICA**

*Presentation to ATI members
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ZRA VS NESTLÉ JUDGEMENT

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INTRODUCTIONS



On August 20, 2025, Zambia's Supreme Court delivered a groundbreaking ruling in favor of the Zambia Revenue Authority, reshaping transfer pricing enforcement across Africa.

CASE OVERVIEW

The Parties

Nestlé Zambia Limited (NZL) operates as a distribution company for Nestlé products sourced from related parties globally. The company received support services and loans from related entities.

Tax Assessment: K13.8M

Approximately \$565,000 USD in taxes levied by ZRA

The Trigger

ZRA noted NZL had been loss-making since incorporation (2010-2014), prompting a comprehensive transfer pricing audit that would ultimately reach the Supreme Court.

Profit Adjustment: K56.5M

Adjusted taxable profit following audit

NESTLÉ'S SIX GROUNDS OF APPEAL

01 No Arm's Length Test

ZRA wrongfully assessed liability without performing proper compliance testing

03 Unreasonable Assumptions

ZRA relied on estimates rather than objective testing of related party transactions

05 Incomparable Benchmarks

ZRA used Western world comparables not reflecting Zambian economic conditions

02 Disregarded Loss Reasons

ZRA ignored legitimate business reasons for continuous losses since incorporation.

04 Distributor Characterization

Disputed classification as limited risk distributor versus fully-fledged distributor

06 Foreign Exchange Treatment

ZRA improperly added back unrealized foreign exchange losses

The Tax Appeals Tribunal ruled in Nestlé's favor on five grounds, but sided with ZRA on the critical distributor characterization issue.



THE BATTLE OVER DISTRIBUTOR CLASSIFICATION

Nestlé's Position: Fully-Fledged Distributor

- ☐ Bears credit risk from customer payment failures
- ☐ Assumes full inventory risk with financial capacity
- ☐ Bears marketing and promotion expenses despite strategic direction from head office
- ☐ Assumes all foreign exchange risk from currency fluctuations
- ☐ Manages logistics, builds customer relationships, and conducts advertising

ZRA's Position: Limited Risk Distributor

- ☐ Nestlé Zimbabwe controls and oversees operations
- ☐ Nestlé Ghana performs sourcing and invoicing
- ☐ Manufacturing entities partly assume inventory risk
- ☐ Low investment level indicates limited risk assumption
- ☐ Lean staff complement in marketing, stores, and accounting
- ☐ Customers collect orders using own transportation

THE TRIBUNAL'S CRITICAL FINDINGS

Control & Oversight Evidence

The financial controller from Nestlé Zimbabwe knew more about NZL's operations than NZL's own employees. No witness from Nestlé Zambia testified, revealing the true locus of control.

Extensive Related Party Services

NZL received strategic management, sales support, marketing support, finance, accounting, legal, procurement, supply chain, HR, and IT services from related parties—demonstrating comprehensive external control.

License Agreement Analysis

The General License Agreement showed "know-how" remained exclusive property of Nestlé SA as licensor, meaning ultimate risks in marketing, distribution, storage, and selling stayed with the parent



ZRA'S FIVE SUPREME COURT GROUNDS



Ground One: Burden of Proof

Tribunal improperly shifted burden to ZRA instead of requiring Nestlé to prove arm's length compliance



Ground Two: Transaction Aggregation

Tribunal erred by not aggregating closely linked transactions from common sources



Ground Three: Documentation Requirements

Tribunal wrongly held no legal requirement existed for transfer pricing documentation



Ground Four: Functional Analysis

Tribunal failed to recognize LRD characterization's importance in selecting tested party and method



Ground Five: Comparable Selection

Tribunal contradicted itself on use of foreign comparables versus local economic conditions





SUPREME COURT RULING: ZRA PREVAILS

The Supreme Court accepted ZRA's arguments on four of five grounds, fundamentally reshaping transfer pricing law in Zambia.

Burden of Proof Confirmed

Once ZRA makes an assessment, taxpayer must prove arm's length compliance. Sections 106 and 97(A) of Income Tax Act support this position.

Documentation Power Affirmed

ZRA has authority to request transfer pricing documentation. Sections 55(1) and 58(a) empower Commissioner General to demand books and documents.

Aggregation Upheld

Transactions from common sources can be aggregated. Products from related parties, management services, and royalties all flow from related party agreements.

LRD Classification Stands

Nestlé correctly characterized as Limited Risk Distributor. Less complex party should be tested party per OECD Guidelines 3.18 and 2.59.



KEY TRANSFER PRICING PRINCIPLES ESTABLISHED

The Supreme Court's 2025 ruling reinforced foundational international transfer pricing principles from OECD Guidelines, providing clarity for African jurisdictions.



Burden of Proof

Once tax authority makes assessment, burden shifts to taxpayer to prove transactions comply with arm's length principle.



Use of Comparables

Foreign comparables permitted when local data unavailable, but must be adjusted to reflect local economic conditions.



Functional Characterization

Nestlé Zambia correctly classified as Limited Risk Distributor, as strategic functions and key risks controlled by related parties abroad.



Transaction Aggregation

Distinct but closely linked transactions can be aggregated for benchmarking if they flow from common source.

IMPLICATIONS FOR AFRICA



Strengthened Authority

The ruling confirms revenue authorities' power to make transfer pricing adjustments with burden of proof shifting to taxpayers. This legal clarity empowers authorities in audit disputes across the continent.

Legal Precedent

As one of the first substantial transfer pricing precedents from a Zambian Supreme Court, this case provides robust framework for other African countries to cite and follow.

Revenue Mobilization

By successfully challenging a major multinational's structure, ZRA demonstrated capability to protect tax base, aligning with broader African efforts to combat illicit financial flows.



ATI ACTION 3 IMPLEMENTATION IN PRACTICE

The ZRA vs Nestlé case represents a practical implementation of principles championed by ATI Action 3, demonstrating how a partner country takes concrete steps to combat tax-related illicit financial flows (IFFs) and enhance Domestic Revenue Mobilisation (DRM) through rigorous transfer pricing enforcement.

ATI ACTION 3 OBJECTIVE	MANIFESTATION IN ZRA VS NESTLE CASE	SIGNIFICANCE / OUTCOME
Combat Tax-Related IFFs	ZRA challenged Nestle's reporting of continuous losses and conducted transfer pricing audit to prevent artificial profit shifting	Direct action against potential TIFF, protecting Zambia's tax base
Foster Domestic Revenue Mobilisation (DRM)	Successful audit adjusted Nestle's taxable income, securing additional tax liability of ~USD 3.5 million	Direct increase in government tax revenue, directly supporting DRM
Enhance fair & transparent tax systems & build capacity	Supreme Court provided clarity on complex transfer pricing rules (aggregation, foreign comparables, LRD classification), building judicial and administrative capacity	Creates transparent legal precedent, guiding other taxpayers and strengthening ZRA's future audit capabilities

AMOUNT B FRAMEWORK VS. TRADITIONAL RULES

While the ZRA vs. Nestlé case was decided based on traditional transfer pricing rules, applying the OECD's Amount B framework would have significantly altered the dispute's complexion by providing a more standardized and predictable approach. However, it is not certain that Nestlé Zambia would have qualified for its application.

The table below contrasts the core issues in the actual case with how Amount B would approach them.

Aspect of Dispute	In the ZRA vs. Nestlé Case (Traditional Rules)	Under the Amount B Framework
 Pricing Methodology	Complex, disputed benchmarking study. ZRA used foreign comparables; Nestlé challenged their appropriateness.	A standardized pricing matrix based on industry and financial ratios, aiming for consistency and reducing subjectivity.
 Functional Characterization	Central point of contention. Courts upheld ZRA's classification of Nestlé as a "Limited Risk Distributor".	A key scoping criterion. If Nestlé assumed significant risks, it might have been excluded from using Amount B.
 Outcome Certainty	High uncertainty, leading to lengthy litigation and a case-specific outcome.	Designed to enhance tax certainty and reduce disputes and administrative costs for qualifying transactions.
 Use of Comparables	Major ground for appeal. Nestlé objected to ZRA's use of Western-market comparables over local data.	Relies on a global dataset, explicitly moving away from the need for hard-to-find local comparables.

AMOUNT B: SIGNIFICANT IMPLICATIONS FOR AFRICAN JURISDICTIONS

The OECD's Amount B framework, designed to standardize transfer pricing for routine baseline marketing and distribution activities, holds significant potential for African tax jurisdictions. By offering a predictable, simplified approach to pricing straightforward distribution functions, it aims to address common transfer pricing challenges faced across the continent, including limited access to reliable comparables, capacity constraints in conducting complex economic analyses, and frequent disputes arising from subjective benchmarking.

Price Certainty

Amount B provides standardized pricing matrices that eliminate lengthy negotiations over appropriate profit margins for qualifying distributors. This certainty benefits both taxpayers through reduced compliance costs and revenue authorities through predictable assessments, fostering a more stable tax environment.

1

Administrative Efficiency

Revenue authorities with limited transfer pricing expertise can apply Amount B without requiring specialized economic consultants or extensive databases. This democratizes transfer pricing enforcement, allowing smaller jurisdictions to effectively audit multinational enterprises without substantial resource investment in capability development.

3

Dispute Reduction

By removing subjectivity from routine distribution pricing, Amount B significantly reduces the likelihood of transfer pricing disputes reaching litigation. Both parties can reference the same standardized framework, minimizing disagreements over methodology and comparable selection that characterized the Nestlé case.

2

Comparable Debates Resolved

Amount B eliminates the persistent challenge African jurisdictions face in locating appropriate local comparables. The framework's global dataset approach sidesteps arguments about geographic comparability that dominated the Nestlé litigation, providing a standardized benchmark acceptable to all parties regardless of data availability constraints.

4



STRATEGIC RECOMMENDATIONS FOR ATI MEMBERS



Audit & Enforcement

Develop aggregation policies and train auditors on applying transaction aggregation. Create guidance for using foreign comparables with appropriate economic adjustments.



Legal & Regulatory

Clarify burden of proof in tax laws, explicitly placing it on taxpayers. Bolster documentation powers to request necessary documents during audits.



Taxpayer Engagement

Promote robust transfer pricing documentation through campaigns. Provide clear guidance on functional analysis and LRD classification.



Amount B Adoption

ATI members in low capacity jurisdictions should consider adopting OECD Amount B and build capacity to understand its implementation, as it can simplify transfer pricing compliance and reduce disputes.





DEEPENING STRATEGIC IMPLEMENTATION

Master Functional Analysis

1

Use Nestlé case as blueprint for auditors. Examine strategic control, risk assumption versus bearing, and economic substance beyond contracts. Look at staff levels and investment as indicators.

Scrutinize Thin Capitalization

Integrate financial analysis into transfer pricing audits. Examine debt-to-equity ratios closely. Treat persistent losses in limited-function entities as major red flags per OECD guidelines.

2

Refine Comparables Approach

Prioritize economic similarity over geographic proximity. Search emerging markets with similar profiles before developed markets. Develop expertise in robust comparability adjustments.

CONCLUSION

The ZRA vs. Nestlé judgment marks a transformative moment, signaling that African Tax Authorities are increasingly sophisticated and willing to litigate to ensure profits are taxed where economic activities occur.



\$3.5M

**Direct increase in Tax Revenue
supporting domestic mobilization**

Revenue Secured



100%

**Comprehensive precedent on
Transfer Pricing principles**

This ruling provides a strategic blueprint for ATI members to build stronger, more resilient tax systems that effectively combat profit shifting and secure vital domestic revenues. By systematically implementing these principles, African nations can protect their tax bases and enhance revenue mobilization for sustainable development.



**ZAMBIA REVENUE
AUTHORITY**

My Tax, Your Tax, Our Destiny

Thank You



Questions and Discussion



As businesses are increasingly sophisticated and willing to litigate to ensure profits are taxed where economic activities occur. We believe this ruling provides a strategic blueprint for ATI members to build stronger, more resilient tax systems that effectively combat profit shifting and secure vital domestic revenues. Thank you for your attention, and we now welcome any questions you may have.