



# KENYA REVENUE AUTHORITY

ISO 9001:2015 CERTIFIED  
INVESTIGATIONS AND ENFORCEMENT DEPARTMENT

Our Ref: KRA/I&E/NBI/DTID/029/017

3<sup>rd</sup> April, 2018.

The General Manager  
Muthaiga Kenya Limited  
P.O. Box 64900-00620  
Muthaiga Plaza, Muthaiga Road  
Nairobi

Attn: Mr. Duncan Murashiki

Dear Sir,

## RE: PRELIMINARY FINDINGS ON THE ONGOING TAX INVESTIGATION

We refer to the ongoing investigative audit on your Company.

The investigation commenced on 27 October 2017 with a meeting held with yourselves on 5 November 2017. Immediately after this meeting, an information request was shared with yourselves via email dated 17 November 2017. This initial information was received though later than the agreed date. You provided piecemeal information despite numerous follow-ups through emails and phone calls.

Upon analysis of the information received, we shared with you our initial findings via email dated 7 March 2018 and invited yourselves for a meeting with us, which was held on 9 March 2018 at KRA offices. During this meeting, the attendees were taken through the initial findings on gains and losses.

During the meeting, it was discussed and agreed that a reconciliation of the purchases made to volume of products taxes have been paid be done and shared with us including all the import entries and COSIS entries. To date, only data for 2015 and 2016 have been provided and numerous follow ups have been done for the outstanding data without any success. We are always told that the information is being retrieved from the archives. It was also discussed and agreed that the information on transfer pricing be forwarded to us but this has not been done to date.

Therefore based on the information available to us in addition to what you provided, we present our initial findings for your attention and action as follows:

### 1. Products Gains and Losses

#### i) Product Gains

An analysis of information available to us including that provided by yourselves, indicates that the company realized products gains for the years 2010-2016 as summarized below: all volumes are in litres.

*Tulipe Ushuru Tujitegeme!*

Times Tower Building  
Haile Selassie Avenue, P.O. Box 48240-00100 Tel: 310900 Fax: 316872





Product/Year	2016	2015	2014	2013	2012	2011	2010	Total
ADO	2,426,547	1,126,277	1,656,415	4,183,913	48,145,479	19,203,215	55,291,195	132,033,040
AGO	-	-	8,461	26,437	8,478,232	440,524	6,547,482	15,501,137
GO	95,459	119,954	1,291,975	245,813	82,199,956	18,276,655	23,576,289	125,806,102
IK	122,551	1,497,689	138,975	32,512,753	13,791,037	14,166,597	15,005,767	78,235,369
JET E	361,982	686,595	266,436	20,455,601	53,972	10,222,203	19,040,139	51,086,928
JET M	192,843	101,290	75,192	1,930,435	3,522,235	203,968	170,230	6,196,192
FO	476,106	590,786	998,222	19,567,542	37,367,107	12,074,933	18,788,200	89,862,896
PMS	-	-	-	26,807	3,427,112	10,980,631	10,278,410	24,712,960
SMS	-	-	-	-	-	-	-	-
TOTAL	3,675,488	4,122,591	4,435,676	78,949,300	196,985,129	85,568,728	149,697,712	523,434,624

The sources of these products gains are as listed below:

- KPC gains
- SGL Terminals gains
- KPRL gains
- Hospitality gains
- Temperature Gains
- Borrow Loans gains
- Rebrands

Further analysis of these gains indicated that taxes were paid under zero manifest as shown below: All volumes are in Litres.

Product/Year	2013	2014	Total
PMS	5,407,311	2,995,432	8,402,743
ADO	906,821	-	906,821
AGO	821,341	1,544,000	2,365,341
IK	-	344,000	344,000
JET E	-	197,000	197,000
JET M	-	96,000	96,000
FO	2,455,888	-	2,455,888
IDO	77,679	-	77,679

Therefore, the variances between total product gains and volumes under zero manifest shall be subjected to taxation. Based on the information presented above the duty payable is estimated at **Kshs9,333,550,899.33 (see attached workings)**

## ii) TOPS

An analysis of information available to us including that provided by yourselves, indicates that the company realized a gain in Tops product for the years 2010-2011 as summarized below:

Description	2010	2011
Opening stock	288,540	608,682
Gain	13,740,000	5,839,500
Total	14,028,540	6,448,182

We note that the company in each of the year these gains were realized transferred out this product. Taxes shall be computed on this product gains. The duty payable on this product is that of PMS as the product is closely associated with PMS. Based on the information presented above the duty payable is **Kshs785,179,905.09 (see attached workings)**



### (ii) Product Losses

Analysis of the information provided by yourselves indicates that the company suffered losses in the years 2010-2016 as shown below:

	2016	2015	2014	2013	2012	2011	2010
KPC	774,143	546,206	1,680,976	1,077,003	13,021,128	24,481,531	27,900,670
SGL	10,696	1,300,000	107,736	705,891	25,984,686	83,041	-
KPRL	-	882,060	2,347,872	1,753,029	42,268,238	39,988,269	26,160,516
Other Costs	-	455,626	5,655,988	1,227,854	24,447,123	54,350,979	69,062,360
Levelling Costs	-	37,099	17,329	533,615	3,578,640	5,364,885	7,229,609
Borrow Loans	-	5,351	126,974	722,792	29,180,960	73,731,858	63,064,167
Rebrands	5,214,498	4,773,634	4,921,340	10,655,191	8,334,968	4,120,943	5,190,624
LPG Fills	-	-	-	3,348,985	2,837,084	11,382,076	14,690,193
Theft/Loss NBT	-	-	-	-	-	-	-
Total	5,999,337	7,999,975	14,858,215	20,824,359	149,652,827	213,503,582	213,298,139

The sources of these losses are as listed below:

- KPC Losses
- SGL Terminals
- KPRL Losses
- Other Costs
- Levelling Costs
- Borrow Loans
- Rebrands
- LPG Fills
- Theft/Loss NBT

### 2. Application under Section 90 (1) of the ITA

We note that the company applied for relief of error under Section 90 (1) of the ITA. The application was based on the forensic audit report by Deloitte & Touche.

Upon review of the forensic report and the application itself, additional information was required and the company was required to provide a reconciliation of the losses written off to the losses suffered in the inventory movement schedules provided but none has been provided to date. A further review of the Deloitte report indicated that products lost were actually throughputters products and not LOKL products.

In the absence of reconciliation of the losses written off to losses in stock movement schedule and evidence of the products actually lost belonging to LOKL, the application stands rejected. The loss included in the 2014 year of income of **Kshs255,810,850** is therefore disallowed. The tax implication of this is estimated as **Kshs76,743,255**.



**Variance between product purchases and COSIS Volumes**  
We reviewed the products purchased by the company vis-à-vis the volumes in which taxes have been paid under COSIS and we noted the following variances:

We reviewed and have been paid under COSIS and we noted the following variances:

Variances for 2016							
Description	PMS	JET	IK	AGO	FO	LPG	
Receipts/Purchases	126,354,314	44,278,714	11,166,153	184,898,045	14,944,404	7,719,953	
Less COSIS Volume	(107,379,635)	(42,790,243)	(10,112,103)	(108,303,630)	(15,120,781)	(7,311,398)	
Variance	18,974,679	1,488,471	1,053,970	10,595,015	(176,377)	407,655	
Variances for 2015							
Description	AGO	HFO	IK	JET	LPG	PMS	
Receipts/Purchases	164,588,599	10,622,899	7,123,790	25,353,819	9,427,945	121,846,037	
Less COSIS Volume	(155,129,764)	(12,648,933)	(5,914,521)	(26,069,184)	(8,025,280)	(109,608,738)	
Variance	9,458,835	(2,026,034)	1,209,269	(716,365)	1,402,665	12,237,299	
Variances for 2014							
Description	AGO	HFO	IK	JET	LPG	PMS	
Receipts/Purchases	164,936,222	20,516,452	16,520,047	7,691,830	7,238,064	100,966,300	
Less COSIS Volume	(140,429,945)	(14,513,489)	(19,289,498)	(6,198,829)	(7,880,601)	(84,113,907)	
Variance	24,506,277	6,002,963	(2,769,451)	1,493,001	(642,537)	16,852,393	
Variances for 2013							
Description	PMS	JET	IK	HFO	IDO/HDO	AGO	LPG
Receipts/Purchases	109,010,805	32,564,299	31,045,549	20,985,335	3,234,744	170,774,818	16,511,700
Less COSIS Volume	(101,122,225)	(33,805,286)	(26,087,941)	(26,003,171)	(3,666,345)	(159,876,290)	(10,778,554)
Variance	7,888,580	(1,240,987)	4,957,608	(5,017,836)	(431,601)	10,898,528	5733146
Variances for 2012							
Description	PMS	JET	IK	HFO	IDO/HDO	AGO	LPG
Receipts/Purchases	71,080,756	13,899,944	19,310,150	21,989,104	1,308,472	160,064,246	15,482,107
Less COSIS Volume	(115,269,549)	(10,164,117)	(16,390,782)	(31,347,539)	(3,632,230)	(119,041,713)	(13,050,422)
Variance	(44,188,793)	3,735,827	2,919,368	(9,358,435)	(2,323,758)	41,022,533	2431685
Variances for 2011							
Description	AGO	HFO/LSFO	IK	JET/AVIATION	LPG	PMS	
Receipts/Purchases	109,433,602.0	4,549,156.0	1,636,819.0	45,438,014.0	8,268,588.0	49,430,593.0	
Less COSIS Volume	(114,499,870.0)	(63,747,707.0)	(1,525,578.0)	(85,725,065.0)	(12,215,000.0)	(95,367,698.0)	
Variance	(5,066,268)	(59,198,551)	111,241	(40,287,051)	(3,946,412)	(45,937,105)	
Variances for 2010							
Description	AGO	HFO/LSFO	IK	JET/AVIATION	LPG	PMS	
Receipts/Purchases	117,475,737	442,411	19,820	142,799,990	13,484,621	62,045,464	
Less COSIS Volume	(138,470,978)	(38,035,981)	(8,460,217)	(132,128,363)	(16,155,261)	(106,394,587)	
Variance	(20,995,241)	(37,593,570)	(8,440,397)	10,671,627	(2,670,640)	(44,349,123)	

Imports for all the purchases made and COSIS volumes were requested for each of the years under review. However, only data for 2015 and 2016 has been provided. Data for 2010-2014 have not yet been provided.

A review of the data already provided indicated that all the variances in 2015 and 2016 are a result of transit products.

In order to carry out a review of these products in transit, we require the following information from 2010-2017:

**Transit sales**

Product	Invoice No.	Date	Customer	Country of customer	Quantity	Entry No.	Invoice value (dollars)



### Export sales

Product	Invoice No.	Date	Customer	Country of customer	Quantity	Entry No.	Invoice value (dollars)

Based on the information presented with explanation of variances being transit products, duty is computed on these transit products. It is clear that these transit products were in the possession of LOKL which is a local company, hence dutiable in Kenya. The estimated duty computed is **Kshs5,122,431,068.84 (see attached workings)**

### 4. Variance between turnover for VAT and Corporation tax

A review of the turnovers declared for corporation tax and VAT revealed the following variances:

Year	IT2C Turnover	VAT3 Turnover	Variance	Tax @ 30%
2010	37,913,943,000	45,310,803,717	7,396,860,717	2,219,058,215.10
2012	38,147,208,000	38,273,813,711	126,605,711	37,981,713.30
2014	32,638,519,000	32,804,652,643	166,133,643	49,840,092.90
2015	28,483,366,000	28,577,370,790	94,004,790	28,201,437.00
Total	137,183,036,000	144,966,640,861	7,783,604,861	2,335,081,458.3

The Corporation tax payable on these variance is **Kshs2,335,081,458.30**

### 5. Transfer pricing

Transfer pricing is one of the issues under investigations. This issue had been reviewed by LTO but it was not concluded by the time I&E took over the investigations.

During our meeting held on 9 March 2017, additional information (especially soft copy information earlier shared with LTO) was requested but none has been provided to date. The TP issues under review include:

- Provision of professional and international services including training to Oilibya Uganda.
- Provision of management support services to related non-resident affiliates in the Eastern Cluster.
- Purchase of products mainly lubricants from LOSU.
- Sales of products to Oilibya Uganda, Oilibya Ethiopia, Oilibya South Sudan, Oilibya Djibouti, and to other third parties.
- Provision of facilitation services to Oilibya Uganda under throughput arrangement
- Provision of financing facility through extended credit terms for affiliates

In order to conclude this review, you are therefore required to provide for each year under investigations the following information:

#### Provision of professional and international services including training to Oilibya Uganda.

- Costs incurred in providing professional and international services including training to Oilibya Uganda
- Breakdown of the costs incurred e.g. flight costs, accommodation etc.
- Mark up earned for providing professional and international services including training to Oilibya Uganda



- Invoices to Oilibya Uganda for providing professional and international services including training

Provision of management support services to related non-resident affiliates in the Eastern Cluster.

- Costs incurred in provision of management support services to related non-resident affiliates in the Eastern Cluster.
- Breakdown of the costs incurred e.g. flight costs, accommodation etc.
- Mark up earned in provision of management support services to related non-resident affiliates in the Eastern Cluster
- List of employees designated as Coordinators for the region on behalf of ACS
- Job descriptions of these employees
- Remuneration of these employees including hardship allowances paid
- Invoices for reimbursements of costs incurred for management support services to related non-resident affiliates in the Eastern Cluster
- Reimbursements received

Purchase of products mainly lubricants from LOSU.

- Invoices from LOSU on products purchases
- Premiums charges by LOSU on each invoices
- Payments made to LOSU including that of premium charged

Sales of products to Oilibya Uganda, Oilibya Ethiopia, Oilibya South Sudan, Oilibya Libani, and to other third parties.

Invoice No.	Date	Customer	Country of customer	Quantity	Price	Entry No.	Invoice value (dollars)

Provision of facilitation services to Oilibya Uganda under throughput arrangement

- Throughput services contract with Oilibya Uganda
- Throughput fee received from Oilibya Uganda
- Summary of throughput volumes for Oilibya Uganda

Provision of financing facility through extended credit terms for affiliates

- Intercompany balances
- Company's credit policy

Relationship with AOSL

- Breakdown of the joint venture expenses e.g. administration, management, logistics etc.
- Invoices to AOSL and payments received
- Mark up charged and payments received on the same

Bad debts written off

- Schedule of bad debts written off
- Loans advanced to Libya Oil Sudan, Libya Oil Ethiopia, Emirates Airline, AOSL, Oilibya Uganda
- Bad debts policy

You are hereby required to provide the outstanding information/documents and response to the issues raised within seven (7) days from the date of receipt of this letter.

In case of any clarification, you may contact the undersigned on Tel No.0709011747 or John Ekadiah on 0709011763.

*These preliminary investigation findings are limited to the material examined and the Commissioner reserves the right to issue fresh assessments where new information becomes available. Further, this is not a bar to prosecution where it is established that a tax offence has been committed."*

Yours faithfully,



Dr. R. K. Karanja

For: COMMISSIONER INVESTIGATION & ENFORCEMENT

cc:

Partner,  
KPMG Kenya,  
8th Floor, ABC Towers,  
Waiyaki Way,  
Nairobi.



	2014	2015	2016	2017	2018	2019	Total	Zero Month	Total	Duty	Total
1,176,777	1,556,413	4,183,911	48,145,479	19,101,215	55,291,175	132,039,040	1,772,162.00	178,140,878.00	25,688	1,415,855,269.55	
	8,401	26,417	8,978,212	440,574	6,547,482	15,501,137	77,679.00	15,423,458.00	6,532	100,746,017.66	
118,954	1,291,975	235,811	87,199,956	18,278,456	23,576,289	125,806,102	2,455,888.00	123,350,214.00	6,532	875,221,597.85	
1,497,689	138,975	32,512,751	11,791,017	14,166,592	16,009,767	78,235,369	144,000.00	77,091,369.00	7,205	561,797,311.65	
888,595	266,436	20,455,401	51,922	10,272,203	19,040,139	51,086,928	293,000.00	50,793,928.00	7,205	365,970,751.24	
101,290	75,191	1,910,495	1,522,235	203,368	170,230	6,196,197	8,196,197.00	8,196,197.00	0.4	2,478,476.80	
580,786	838,272	19,567,541	37,367,107	12,074,911	18,788,200	89,862,896	8,402,743.00	81,460,153.00	38,145	1,121,589,566.75	
		28,807	1,427,112	10,980,631	10,178,410	24,712,960	24,712,960.00	24,712,960.00	37,955	937,980,396.80	
5,124,591	4,433,676	76,949,300	196,985,129	85,548,728	149,697,712	523,434,624	14,845,472.00	508,589,152.00	110,858	9,311,550,897.13	



	JET	IK	JET	AGO	LPG	
2015	44,278,714	11,168,153	164,898,845	14,944,624	7,719,063	
2014	(42,798,243)	(10,112,183)	(168,303,830)	(15,120,781)	(7,211,398)	
2013	1,482,471	1,055,970	16,595,915	(178,377)	407,665	
	HFO	IK	JET	LPG	PMS	
2015	10,622,899	7,121,790	25,353,819	9,437,945	121,846,937	
2014	(12,648,933)	(5,914,521)	(26,069,184)	(8,075,280)	(109,608,718)	
2013	(2,026,034)	1,209,269	(715,365)	1,492,865	12,277,299	
	HFO	IK	JET	LPG	PMS	
2015	20,516,452	16,520,047	7,691,830	7,238,064	100,965,300	
2014	(14,513,489)	(19,289,198)	(6,198,879)	(7,880,601)	(94,113,907)	
2013	6,002,963	(2,769,451)	1,493,801	(642,537)	16,852,293	
	JET	IK	HFO	IDO/HO	AGO	LPG
2015	33,564,799	11,044,149	20,985,335	3,234,744	170,774,818	16,511,700
2014	(33,805,286)	(26,087,941)	(26,983,171)	(3,666,345)	(159,876,290)	(10,278,154)
2013	(1,240,887)	4,957,668	(5,017,836)	(431,601)	10,889,528	5733146
	JET	IK	HFO	IDO/HO	AGO	LPG
2015	13,899,164	19,310,140	21,989,154	1,408,472	160,764,246	13,492,107
2014	(10,164,117)	(16,940,762)	(41,347,370)	(3,632,280)	(119,041,713)	(13,050,422)
2013	3,735,827	2,919,368	(9,358,435)	(2,323,758)	41,022,533	2431685
	HFO/LFO	IK	JET/AVIATION	LPG	PMS	
2015	4,549,156.0	1,636,819.0	43,438,264.0	8,268,588.0	29,430,593.0	
2014	(61,747,307.0)	(1,323,274.0)	(80,723,963.0)	(12,213,000.0)	(93,367,678.0)	
2013	(59,196,551)	111,241	(40,287,851)	(3,944,412)	(45,937,185)	
	HFO/LFO	IK	JET/AVIATION	LPG	PMS	
2015	442,411	19,820	142,799,990	13,484,621	62,045,844	
2014	(38,015,281)	(8,860,217)	(112,128,363)	(16,133,251)	(106,394,387)	
2013	(37,283,570)	(8,440,397)	10,871,627	(2,670,640)	(44,349,123)	

Product	2015
AGO	5,684
DO	6,532
HFO	6,532
IK	7,205
JET	7,205
LPG	0.4
PMS	18,145
PMS	17,951

2015  
727,884,064.26  
12,891,203.96  
7,593,853.85  
442,621,380.26  
543,062  
1,198,843,565.92 Total

2015  
252,399,553.14  
1,712,783.15  
561,866.00  
469,239,230.16  
730,912,632.44 Total

2014  
653,925,495.47  
29,211,354.32  
10,757,072.21  
648,205,809.59  
1,350,098,931.57 Total

2013  
302,487,609.10  
35,719,565.64  
298,816,321.15  
229,325.4  
631,316,745.29 Total

2012  
26,916,633.54  
21,034,043.56  
1,094,645,278.58  
972674  
1,143,568,629.67 Total

2011  
801,491.41 Total

2010  
76,889,072.54 Total

Overall total  
5,122,431,068.84