TRANSFER PRICING MANIPULATION
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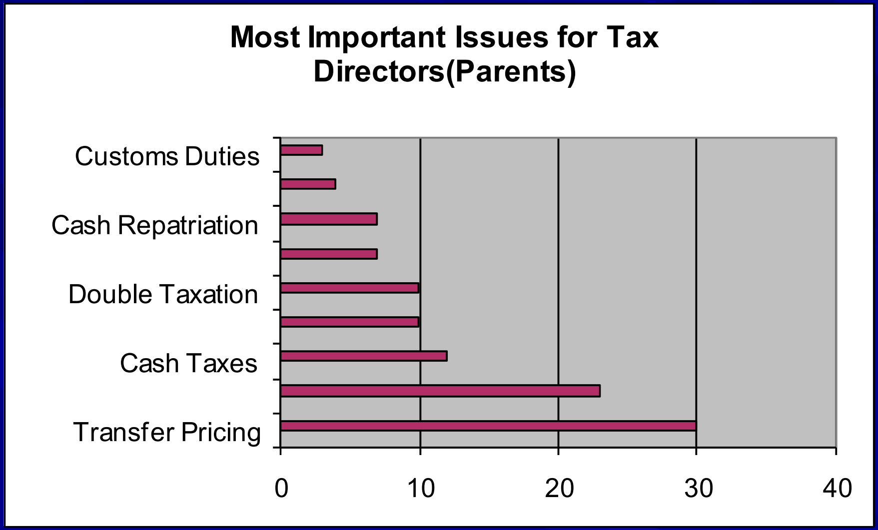
Introduction

- Transfer pricing (TP) is a key international tax issue (Ernst & Young, 2010 Global Transfer Pricing Survey)
- Estimated losses to developing countries $ 98bn- $107bn annually between 2002-2006 (Global Financial Integrity-2010), Christian Aid - $ 160 bn



Introduction

- The pricing of transfer of goods, services and other assets within a MNCs/TNC network or related companies.
- TP issues have gained importance due to global integration and increasing role of TNCs/MNCs (about 60 percent of world trade)

Some Key issues for Developing Countries/SSA

- Legislation and guidelines - in many countries it is a recent development. Deficiencies include scope of coverage especially coverage of intangible assets, documentation requirements and penalties for non-compliance.
  - Kenya's TP Guidelines became operational from 2006. Amendments proposed in 2010 budget
- Various tax incentives such as Export Processing Zones, Special Economic Zones – to attract FDI and value additional –may delay the need for regulations

Some Key issues for Developing Countries/SSA

- TP requires skilled and /or experienced staff to analyze complex transfer pricing cases. Capacity limitations is an area of concern. – 2010 budget GOK committed to enhance skills in Transfer pricing
- Advanced Pricing Agreements (APAs)- advance approval/agreement between tax authority and tax payer on transfer price and method could help enhance certainty.

Some Key issues for Developing Countries/SSA

- Regional and International cooperation: Effective combating of TP requires sound information sharing. Tax Treaty agreements may help.
- Given the ongoing regional integration – monitoring of TP and negotiations can be undertaken at a regional level e.g. EAC. However, tax issues are not yet harmonized.

Some Key issues for Developing Countries/SSA

- Sharing of information between the income and customs departments/authorities – may be useful to detect cases where the same transaction may be given a lower value for customs purposes and a higher value to income tax purposes so that less tax is paid on profits.

Some Key issues for Developing Countries/SSA

- A sound Macroeconomic environment may help stem transfer pricing/capital flight arising from economic risks – such as exchange rate risks.