

Craig McKune

AmaBhungane and Finance Uncovered first approached MTN in March with questions about their management fees. The correspondence over the months that followed amounted to more than 7 000 words.

Their full response follows.

March 18, 2015

AmaBhungane: In the summarised annual financial results for 2014, the company referred to “the reversal of the management fee in 2013”, in respect of MTN Nigeria. I now see this was also stated in the 2013 report: “The current year reversal of management fee provisions related to prior periods amounted to R1 778 million, while the management fee expense for 2013 was R758-million.” Can you please explain this for me?

MTN: This was a provision created for management fees for prior years and 2013 that was reversed, prior years were not charged.

For example, is my understanding correct that fees worth R1 778m were reversed, while the management fee of R758m was not charged?

Response as is above

Why were the fees reversed and for what financial years?

Response is as above

Were the management fees paid in 2014?

There were no management fees in 2014.

Will MTN Nigeria pay these fees in future?

This will depend on the outcome of legislation around the payment of management fees, which is still under discussion.

And if not, why?

N/A

The 2014 report also states that MTN Ghana’s management fee agreement has expired. Please explain this?

This is a similar situation as in Nigeria.

Will the Ghana fee arrangement be reinstated? When?

N/A

These management fees are important for MTN shareholder returns. What is the impact of the MTN Nigeria reversals and the ending of the Ghana agreement on the group’s consolidated profits?

This is has no bearing on shareholder returns.

Can shareholders expect that the management fees will be reversed/ended in other countries too?

[No answer]

And if so, what is the expected impact be on profits?

[No answer]

March 25, 2015

AmaBhungane: What financial years fall under the R1 778m figure?

MTN: Not publicly disclosed

Your answer implies that the Nigerian government has disputed MTN's management fees. What is in dispute?

This is not a dispute with the Nigerian government. We are awaiting the approval of a new application submitted to NOTAP [National Office for Technology Acquisition and Promotion] upon expiration of the previous management fee agreement. The new agreement was submitted in accordance with the guidelines and is currently under review by NOTAP.

Otherwise, what has changed in Nigeria's legislation that has caused MTN to reverse these fees?

There is no change, and it is not unusual for this process to be lengthy. The reversal was due to an accounting guideline, until such time that the application is approved by NOTAP.

When was this dispute initiated?

As mentioned above, this is not a dispute.

Otherwise, when did it become apparent to MTN that the legislation was at odds with its management fee structure?

Please see answer provided above.

When does MTN anticipate the matter will be resolved?

We are currently engaging NOTAP to have the application approved as soon as practical.

Nigeria's companies income tax act requires companies to obtain ministerial permission for management fees. Has MTN Nigeria had this permission for every year since it entered Nigeria?

NOTAP approval, not ministerial permission. MTN has always complied with all legislative provisions, including NOTAP requirements and guidelines.

If not, for which years did it not have permission and why not?

All management fee payments made previously were appropriately approved under the legislation.

Please explain. Has the Ghanaian government also disputed MTN's management fees?

There is no dispute. The previous agreement expired on 31 March 2014, and we are in the process of getting a new agreement approved.

If so, on what basis?

N/A

Otherwise, what about the legislation is at odds with the management fees?

N/A

When does MTN anticipate this matter will be resolved?

We expect to receive approval on the application as soon as practical. There is no specific time frame within which the Ghana Investment Promotion Centre (GIPC) is obligated to respond.

I see that the Uganda Revenue Authority (URA) disallowed MTN Uganda's management fees for 2003 to 2009. Did MTN challenge this?

Yes we did. This dispute is currently under discussion between South African Revenue Service (Sars) and the URA.

If so, what was the outcome?

Please see above response

If not, why?

N/A

Has MTN Uganda paid management fees for any year since 2009?

Yes

If not, why?

N/A

If so, for which years?

For all the periods from 2010 to date.

Has the Ugandan dispute been resolved?

See above

Does MTN expect similar challenges to its management fee structure in other countries too? Please explain.

In the telecoms industry, it is practice for mobile operators to charge for services rendered to subsidiaries. MTN believes that the fees charged are fair, based on internal and external benchmarks for the services rendered to operations. The services take into account the brand, technical support and know-how. The proposed fee application, where applicable, is made to the relevant authorities, where it is either approved or referred back for further engagement. MTN maintains a constructive process with all authorities.

September 2, 2015

- **MTN International (Mauritius) Ltd:**

AmaBhungane: When was this company registered?

MTN: 1998.

What led to the decision to have it registered?

MTN International (Mauritius) was set-up in Mauritius to invest in and hold the offshore investments and to raise US\$ funding for such off-shore investments.

How many people does it employ?

No employees – only non-executive directors.

Are business decisions taken by the MTN International (Mauritius) Ltd board or by employees?

Board.

Who are its employees?

No employees.

What is the nature of the business undertaken by MTN International (Mauritius) Ltd?

Holding company for off-shore subsidiaries and assets as well as management thereof.

Are the MTN International (Mauritius) Ltd employees employed by other associated entities too?

No.

What are the commercial benefits of having this company registered in Mauritius?

See [answer] above.

Given the risk to shareholders that there might be an adverse finding by a tax authority in respect of MTN's transfer pricing arrangements, did the MTN group ever canvass this Mauritian holding structure with the South African Revenue Service in terms of its substance and form?

MTN International (Mauritius) is a SA tax resident. SARS is therefore aware of the MTN International (Mauritius) structure.

If not, why?

See [answer] above.

For example, did the group ensure there was an advance tax ruling on this structure, or did the group acquire an external audit view?

ATR's were not available at formation. External advice (not audit) was obtained.

- **MTN Nigeria Communications Ltd:**

You said the management fees were reversed due to "an accounting guideline". What guideline was this?

IFRS.

In March you said MTN was waiting for its management fee agreement with NOTAP to be approved. Has this been approved?

No

If not, why?

Discussions are on-going with NOTAP.

If so, what fees are being/will be paid according to the agreement?

Still subject to discussions with NOTAP.

What is the commercial rationale for these fees?

Provision of IP, Know-How and other expertise to MTN Nigeria.

To which entity/entities are these fees paid?

MTN International (Mauritius) Ltd is the ultimate beneficiary.

MTN reported in 2013 that "the current year reversal of management fee provisions related to prior periods amounted to R1 778 million, while the management fee expense for 2013 was R758 million." And you told me that no fee was paid for 2014. Is this still the case?

Yes.

- **Scancom Ltd [MTN Ghana]:**

You said in March that MTN was waiting for GIPC to approve Scancom's management fee agreement. Has this been approved yet?

No.

If not, why?

Engagement with GIPC is still on-going.

If so, have the management fees resumed and from what year?

N/A. See above.

What fees are being/will be paid according to the agreement?

Discussions with GIPC are still on-going.

What is the commercial rationale for these fees?

Provision of IP rights, Know-How, Technical expertise and back-office support to Scancom Ltd.

To which entity/entities are these fees paid?

MTN Dubai with MTN International (Mauritius) Ltd as the ultimate beneficiary of IP fees.

Scancom's management fee agreement with GIPC expired in 2014. Scancom's subsequent application was found to be non-compliant by GIPC and thus not granted. On what grounds? How was this resolved, if indeed it has been?

MTN is in the process of agreeing factual and legal aspects with GIPC in anticipation of resolving.

- **MTN Uganda Ltd:**

The Uganda Revenue Authority disallowed MTN Uganda's management fees from 2003 to 2009 and you said MTN had challenged this and that "the dispute is currently under discussion between SARS and the URA". Has this dispute been resolved?

No, the matter is still the subject of a mutual agreement procedure between SARS and the URA under the SA/Uganda tax treaty.

What was the outcome?

MAP between SARS and URA still on-going.

- **Globefin:**

I understand that Rubysen Rambocus used to represent the company [MTN International (Mauritius) / MTNI] and more recently it came to be in the care of Globefin. When did Globefin take on MTNI / MTN as a client?

20 May 2010.

What roles and responsibilities did Globefin assume in respect of MTNI and how was this different to how the company was managed/administrated before?

Provision of company secretarial, board and administration services.

How many people does MTNI employ, and in what country do they live?

No employees – only non-executive directors.

Are business decisions taken by the MTNI board or by employees?

Board.

Who are its employees?

No employees.

Who are its directors?

RS Dabengwa, BD Goschen, PD Norman, S Mardemootoo and R Nathoo.

What is the nature of the business undertaken by MTNI?

Holding company for off-shore subsidiaries and assets as well as management thereof.

Am I correct that MTNI's profits are taxed in South Africa and not in Mauritius? Why is this?

MTN International (Mauritius) is an SA tax resident.

Are the MTNI employees employed by other associated entities too?

MTN International (Mauritius) does not have employees.

What are the commercial benefits of having this company registered in Mauritius

See answer to question 2 under MTN International (Mauritius) Ltd above.

How many people are employed by Globefin in Mauritius?

25 people.

How many clients does Globefin handle?

Globefin has about 250 clients.

September 16, 2015

AmaBhungane: Given that MTN International (Mauritius) (MTNI) does not employ staff, are we safe to assume that it is effectively managed from South Africa and that assets and staff in South Africa are used to provide MTN subsidiaries with the services for which they pay management fees? (To the extent that these fees might cover expat salaries, please indicate what proportion is for expat salaries and what proportion is for management fees.)

MTN: MTNI is effectively managed in South Africa. However, staff and assets in both South Africa and Dubai are used to provide services to the MTN subsidiaries. These fees do not include expat salaries.

If so, why are the management fees not paid to the relevant South African office of MTN?

The South African office of MTN is properly remunerated for services provided. Both MTN Dubai and MTNI pay fees to the South African entity for services rendered.

What was the commercial rationale of establishing MTNI in Mauritius and not South Africa in respect of a.) investing in and holding operating subsidiaries?; and b.) raising international finance? Why could each of these functions not have been performed from South Africa?

Exchange control restrictions and funding requirements.

Does or has MTNI pay/paid management, trademark, technical, license or IP fees; royalties; and/or interest to any companies within the MTN group outside of South Africa? Please list these companies?

No management, trademark, technical, license or IP fees; royalties or interest fees are paid by MTNI to any group entities outside South Africa.

By establishing holding and finance structures in Mauritius, the MTN group has access to the jurisdiction's favourable tax treaty network, particularly in respect of African countries; it can raise finance and pay interest in a low- and no-tax environment; had the structure been established in South Africa, interest payments on loans would have been taxed by SARS, but they are not in Mauritius; once earnings have been repatriated to Mauritius, they can easily paid to other companies with low or no tax applied; capital gains tax would have applied in South Africa, but it does not in Mauritius; and MTN's Mauritian companies are not subject to South Africa's comprehensive transfer pricing and thin capitalisation rules and enforcement. Please comment and clarify if you wish.

MTNI is tax resident in South Africa through effective management and is therefore subject to all taxes applicable in South Africa. As a result of its SA tax residency status, MTNI has no access to Mauritius treaties and as such, does not apply them.

Is there any reason why we should not conclude that (even though MTNI's profits are subjected to corporate income tax in South Africa) MTNI was established in Mauritius, not in South Africa, largely to benefit from the jurisdiction's various tax benefits and that, in effect, the group's Mauritian holding structure is a tax avoidance scheme?

There is no reason why you should conclude that MTN I was largely set-up to benefit from the Mauritius tax regime. MTN's Mauritian holding structure is not a tax avoidance scheme.

Last year, Deputy President and former MTN chairman Cyril Ramaphosa told the NCOP: "The most significant form of tax evasion practices are done via ... tax planning strategies that rely on mismatches and gaps that exist between the tax rules of different jurisdictions. These strategies are designed to minimise the corporation tax that is payable overall by either making tax profits "disappear" or by shifting profits to low tax operations where there is little or no genuine activity. In most cases [these] strategies are not illegal. Largely, they exploit differences in tax rules between countries. This is a global problem... Ongoing interaction between [the Reserve Bank and the South African Revenue Service] means that as far as possible attempts to move capital offshore for tax reasons are reduced." Please comment in respect of the money that flows to MTN's offshore structure and the absence of employees in Mauritius.

MTNI is effectively managed in South Africa and thus tax resident in South Africa. MTNI uses the resources of other companies within the group and adequately compensates such group companies for services rendered. The fact that MTNI is tax resident in South Africa means that income is taxed in the country of substance where the economic activity takes place ie. where employees and other resources are located.

In 2012 and 2013, Ghana's National Security Secretariat investigated Scancom's management and technical fees. Correspondence between Scancom and GIPC (2003 to 2007; we are aware that MTN's acquired Investcom toward the end of this period) reflects disagreement over how the fees should be defined, their underlying substance and therefore their magnitude. It is evident that MTN inherited a "contentious" management and technical fee structure which largely persisted to 2014. Please comment if you wish.

The technical and management services agreements between Scancom and Investcom were duly approved by the GIPC.

A preliminary report by the investigators indicated that a large portion of these fees should be disallowed and that MTN might face a tax liability. Please comment if you wish.

No fees have been disallowed by the GRA to date. GIPC approval guaranteed a tax deduction.

Were Scancom's Ghanaian taxes reassessed in respect of its management and technical fees? What tax liability was claimed by Ghana? Did Scancom pay, challenge and/or settle? Please explain the outcome.

No revised assessments have been issued to date.

The Ghana investigators blamed GIPC for allowing the fee agreements and for the "distressing situation as we find with Scancom". They reported: "There is need to investigate issues of matters after 2005, and with [MTN] as well". They proposed "all technology transfer and management service agreements currently held by GIPC" be reviewed, and said there was a need for skills training in state institutions. Please comment if you wish.

This is a matter between the GIPC and Ghana's National Security Secretariat.

Was MTN or Scancom aware of this investigation and its outcomes?

Yes, both MTN and Scancom were aware of the investigations. The investigations have since been finalised with no outcome / finding against MTN or Scancom.

The investigators reported that Scancom paid the following management and technical fees: 2008: GHC 81.2m, 2009: GHC 99.6m. 2010: GHC 112,1m, 2011: GHC 29.2m, 2012: GHC 157.4m, 2013: GHC 178.6m. Please can you confirm or correct these figures?

2011: GHC 129,2

Are we safe in concluding that these fees were paid to MTN Dubai as you stated in your previous response?

Yes

In 2013, the North Gauteng High Court handed down judgment in a matter between MTNI and the SARS commissioner (23201/11). This was essentially a technical case that went on appeal (275/2013), but it was based on an underlying dispute being heard in the special tax court. The high court judgment gives some insight into the underlying case: It was a dispute over MTNI's interest expenditure in respect of loans made to it by MTN in South Africa. SARS was of the view that this was "unproductive interest" which does not qualify for deduction under SA's tax laws. MTNI had challenged the merits of SARS's assessment. Is this underlying tax case ongoing? If so, what is the current status? If not, what was the outcome? Will you share the court papers?

This matter is the subject of on-going confidential discussions with SARS.

It is evident from the high court judgment that SARS was investigating other matters in respect of MTN's global operations, including "issues around the management and royalty fees situation in MTN Nigeria; the failure to submit the management / royalty agreements in respect of Investcom; questions on the arrangement or relationship regarding management I royalty fees between applicant, MTN Nigeria and MTN Dubai." Can you explain?

We are not aware of any investigations by SARS connected to or flowing from the high court judgment mentioned above.

In 2011, the Uganda Revenue Authority issued MTN Uganda with a notice of assessment, which questioned the substance and scale of management fees. It told the company: "There is no evidence that the services purported to have been provided to MTN subsidiaries were needed by MTN Uganda. If MTN Uganda did not need those services then it should not pay for them." It said the Ugandan company "had the skills and capacity to the work for itself" without having to pay for "duplicate" assistance. "We have repeatedly asked for evidence of specific work performed by MTN group for MTN Uganda for each of the tax years 2003 to 2009. We have only been provided with very little information relating to 2009 and the latter years. This information is very far from justifying a payment of 3% of MTN Uganda's turnover as management fees." We note that MTN has challenged this assessment and it is being discussed by URA and SARS. Would you like to comment further?

The matter is the subject of MAP [mutual agreement procedure] discussions between the URA and SARS. We do not want to pre-empt the outcome of these discussions

MTN Nigeria's 2009 and 2011 audited accounts disclose that "approximately" 1.75% of "network revenue" is paid as a fee to MTN International (Dubai). Applying this percentage to the revenues reported in those accounts, we calculate that, this infers that just under NGN 44-million was paid as fees from 2008 to 2011. Please clarify or correct.

Approximately NGN28 million was paid by MTN Nigeria from 2007 to 2010 in line with approvals granted by NOTAP.

MTN Nigeria reported that it paid "technical service fees" of the same total amount. Are we safe in assuming that the "technical service fees" were the same fees that were paid to Dubai?

Yes. However, these fees are on-paid to MTN I by MTN Dubai and are subject to tax in South Africa.

Assuming that MTN Nigeria paid a 1.75% fee every year, and applying this rate to the Nigerian revenues that have been reported by the group, we calculate that a ballpark R6-billion would have been due as management fees from 2002 to 2014. We note that MTN has disclosed that R2.5-billion in fee allocations were "reversed" for 2013 and "prior years"

which might offset the ballpark calculation, but we don't know which are the "prior years", and we are uncertain whether or not MTN anticipates that the reversed fees will ultimately be paid. Please comment, correct and clarify.

NOTAP approval expired in October 2010. The R2.5 billion reversal related to the period Nov 2010 to June 2013 as this fell outside NOTAP's approval. Discussions are on-going with NOTAP to secure new approvals.

MTN Uganda disclosed to the Uganda Revenue Authority that it paid US\$ 17.5-billion in management fees to MTN in Mauritius in 2009. Please confirm.

We're not sure what the source of M&G's US\$ 17.5 billion is. US\$ 22.4 billion were paid in respect of FY2009 (as disclosed in MTN Uganda AFS and per correspondence with the URA).

In 2014, MTN's Cote d'Ivoire staff gave a presentation that included a bar graph showing opex. This depicted that management fees in the ballpark of XOF 13-billion and XOF 15-billion were paid in 2012 and 2013. Please confirm. To which entity were these fees paid?

2012: XOF 12-billion; 2013: XOF 14 - billion; Fees were paid to MTNI

September 22, 2015

amaBhungane: The discussion in parliament two days back demands I understand the tax credit better: <http://www.bdlive.co.za/business/technology/2015/09/17/mtn-warns-against-removing-african-tax-incentive>. I am happy to do this over the phone if it is easier for your team. Please can you explain how this tax credit on international services works in practice for MTN?

MTN: MTN claims tax credits in line with the laws and regulations of the relevant countries, taking into account the relevant sourcing rules, limitations and applicable DTAs, if any.

My understanding, for example, is that when a subsidiary pays a management fee to MTNI/MTN Dubai, a withholding tax is paid in the source country. This withholding tax is applied at that country's standard rate, ie. NOT according to Mauritius-Africa [bilateral double taxation agreements]. Then in South Africa, MTN Group Ltd is able to claim a tax benefit of the same amount. Is that correct?

See above. MTN does not claim credits in South Africa for amounts paid to MTN Dubai. The South African tax laws do not permit such.

For example, in 2009, MTN Uganda paid US\$ 22.4 billion management fee to MTNI. 15% withholding tax applies (NOT 10% as per Mauritius-Uganda DTA), which is US\$ 3.4-billion. But MTN Group Ltd in SA claims a tax credit from SARS of the same amount. That correct?

See above. MTN applies the SA/Uganda DTA rate in this regard (which reduces the withholding tax to 10%)

Point of clarification: In my q18 [of September 16], you and I spoke of amounts of NGN 44m and NGN 28m - these should be 44bn and 28bn, not million. Please stop me if I am wrong.

[no response]

You said: "The South African office of MTN is properly remunerated for services provided. Both MTN Dubai and MTN I pay fees to the South African entity for services rendered." But, for example:

*** from 2008 to 2013, MTN Group Ltd received management fees from the international group averaging R83m annually. But we know that Scancom alone paid management fees averaging in excess of R600m every year during that period.**

*** from 2009 to 2011, MTN Group Ltd received management fees from the international group averaging R85m annually. But we see in MTN Nigeria's accounts that it alone paid management fees averaging nearly R600m every year during that period.**

*** Or, to rule out the lapsing of MTN Nigeria's NOTAP approval at the end of 2010 (which I assume was only realised in 2013, so my above figures would be correct anyway), we can look only at 2008 and 2009 when MTN Nigeria paid fees totaling R1 200-million, yet MTN Group received fees totalling only R210-million.**

It is clear that across MTN's international operations, there is an enormous discrepancy between management fees paid and management fees received by MTN's SA office. This appears to suggest that the international subsidiaries are paying too much for services purported to have been rendered. Please comment and explain this discrepancy.

There is no discrepancy. The fee receipts quoted by M&G pertain to receipt by MTN Group Ltd, the stand-alone company, and not the Group as a whole. Management fees are received by various companies within the Group.

How many people does MTN Dubai employ?

+115 employees

What functions do MTN Dubai's staff perform? Please explain what happens at the Dubai office?

The following group functions are based in Dubai:

- Group Network and Transformation
- Group Information Systems
- Group Information Security
- Group Roaming and Carrier Services
- Group Procurement
- Part of Group Finance, Group Legal and Group HR
- Group Mobile Financial Services

What proportion of the management fees paid by African and Middle Eastern subsidiaries are allocated to functions performed in Dubai and South Africa?

+45% of fees received are allocated to Dubai.

When MTNI pays interest on borrowed funds, are these payments subject to withholding tax in South Africa?]

Yes, if required by law.

Is MTNI subject to capital gains tax in South Africa?

Yes.

Is MTNI subject to South Africa's transfer pricing and thin capitalisation laws?

Transfer pricing, yes. Thin cap no, as that only applied when a more than 25% foreign shareholder in a South African company injects loan capital into the SA co.

Why did Nigeria management fee allocations continue after NOTAP approval lapsed?

With the hope that the NOTAP approval would be backdated to the day following the expiry of the previous approval.

September 29, 2015

MTN preamble: MTN has provided extensive answers to all previous questions put forward by the M&G in the interest of enhancing transparency and accountability concerning our operations.

The questions that we have previously responded too, in our view fully address the enquiries that have currently been put forward for our attention by the M&G. In this regard, It appears that the latest round of questions predominantly appear to be asking the very same questions which we responded to earlier. These same questions which we have already addressed, seem to be posed in this current round of questions in a different way.

Nevertheless, in addition to the provided direct responses to your questions (please see below), we wish to put the following record:

As MTN, we take serious exception to any suggestion that we are involved in a tax avoidance scheme. Such suggestions lack facts or merit and could be very damaging to our brand.

MTN complies with all regulations in the countries where we operate, including South Africa, Nigeria and Uganda. All regulatory matters in our markets are always addressed directly with local authorities, and where applicable, duly reported in our Annual Financial Statements as per our JSE listing requirements.

Owing to the evolving nature of our business operations and compliance frameworks in our markets, MTN continually engages authorities to find mutually agreeable ways to meet our obligations.

As indicated in our responses, wherein the relevant authorities have queried our practices or structures, MTN has always been accessible to engage on such matters. At no point has MTN ever been found to be involved in any scheme that seeks to help the company avoid its tax or legal responsibilities in any jurisdiction where we operate, including South Africa.

AmaBhungane: Thanks again to MTN for the details that have been provided. In light of these, we set out the following to get final clarification. In our correspondence, it has been said that management fees are paid to a variety of MTN companies, that MTNI remits management fees to SA for services rendered and that MTNI is the ‘ultimate beneficiary’ of the fees. These explanations are not consistent with one another.

MTNI sources services from various companies SA companies in the Group. It is the company in the Group that licences the use of the MTN brand to the offshore companies, and also earns management fees from subsidiaries.

The position that MTNI is the final and ultimate beneficiary within the MTN group of the management fees is supported by the bond prospectus published by MTN that states clearly that MTNI relies on the management fees, royalties and other remittances from operating companies in order to make the interest payments on its external debt.

We have seen accounts for MTNI in which the company records zero cost of sales. This further supports that MTNI is the ultimate beneficiary of these fees.

See previous comment on sourcing of services. We also assume that you have a copy of the IFRS audited accounts. We don't classify the expenses as "cost of sales" but we do have management and other professional fees of 77% of revenue. With IFRS one can either classify expenses by function or nature – in this case it was classified by nature and therefore we did not show cost of sales.

We will be reporting that in a presentation to MPs this month, the company claimed that withholding taxes imposed by foreign governments on management fees risked making the delivery of management services from SA uneconomical and that companies with centralised management services require a tax credit from the South African tax payer to retain jobs in South Africa.

This is a major point of debate in the current legislative cycle. This issue was raised by most of those present at the parliamentary hearing, which included SAICA, SAITP, SA CFO. In MTN's context, the proposed amendment imposes an additional tax cost on a shared services centre that MTN elected to house in South Africa. The availability of the credit was a material consideration.

However, it is our understanding from your responses to our questions that MTN is claiming a tax credit under 6quin [of the Income Tax Act] for management fees paid to MTNI in Mauritius, that MTNI in Mauritius has no employees and that it has recorded zero cost of sales in years that it earned management fee income.

See previous comment on sourcing and IFRS treatment.

In this context it is difficult to understand MTN's position that 6quin tax credits support South African jobs.

See comment on shared service centre.

Would you be able to provide any further comment as to the justification for the SA taxpayer to provide a tax credit in relation to these fees?

In order to avoid double taxation.

In the light of the above, could you please tell us

- 1) The quantity of fee payments that end up in MTNI Mauritius?[] Not publicly disclosed.**
- 2) The amount of tax credits claimed by MTN on withholding taxes on management fees where MTNI is the ultimate beneficiary of those fees?**

Not publicly disclosed.

As you are aware, the Ugandan, Nigerian and Ghanaian authorities have all questioned the management fees paid by MTN operating companies in their jurisdictions. Could you clarify whether tax credits under 6quin are claimed for any of these jurisdictions?

No section 6quin credits are claimed by MTNI for any of these jurisdictions.

In our previous correspondence we stated that the accounts of MTN Group Ltd appeared to show that a very small amount of fees were paid to the South African office. Your response was that MTN Group Ltd produced standalone accounts. We were aware of this. MTN Group Ltd are the only standalone accounts the company publishes for a South African resident company. Are you able to provide any details of which other South African companies receive management fees, if any, and the level of those remittances?

As per previous correspondence, MTNI, and other SA based group companies.

October 5, 2015

MTN preamble: Please find attached the latest responses to the questions that you sent to us on Tuesday 29 September.

We have attempted to be as detailed as possible in all our responses to you.

As you can imagine this has been a time consuming and rigorous process that has required a number of my colleagues to dedicate their time to answering your questions.

We understand and respect the important work that you are doing in the public interest, that often requires you in the pursuit of probity, to seek out, without fear or favour, the ultimate facts. MTN believes that we have done our best to support your efforts aimed at shedding more light on our operations in the interest of transparency and accountability. In participating willingly and fully in this exercise, we have also been able to satisfy ourselves that MTN has acted in full compliance with the law, in all the jurisdictions that it operates in, and that MTN has not actively engaged in any unlawful activities.

This is why it gives me no pleasure to have to inform you that we now consider this to be the last round of questions that we will respond to related to this matter and that it is our intention to bring this process to a close, as we believe that we have been as detailed and open as possible in answering all your queries.

I hope that you will understand our position and that you will give our responses the full and due consideration that we believe they deserve in any publication that you may be planning.

This being said, I hope that we will continue to build a strong professional relationship built on trust and mutual understanding. I hope you shall find this to be in order.

AmaBhungane: When an MTN operating company pays management fees for the “ultimate benefit” of MTNI, does MTNI then pay 100% of that amount as management fees (not dividends) to an entity/entities physically located in South Africa that provide/s a management service?

No.

To elaborate on this question in case it is not clear: Our various questions have tried to get to a simple point. It is obvious that MTNI does not perform any management or brand management services itself as it has no employees. Therefore what we want to know is of the management fees collected by MTN Mauritius and MTN Dubai, how much is then paid to companies owned by MTN and physically located in South Africa for the provision real management services. A clear explanation would be appreciated.

+/- 45% of the fees received from MTN operating companies remain in MTN Dubai. This is to compensate MTN Dubai for the services provided by the company. All other fees are subjected to taxes in SA. Any excess cash left in MTNI and MTN Dubai is paid as dividends to SA holding companies.

Why do operating companies pay any management fees paid to MTNI at all, instead of paying directly to the SA-located entities that you say are responsible for services rendered?

MTNI was formed to facilitate the group's offshore expansion and funding requirements. At the time, there were exchange control limitations on ZAR funding that could be raised locally for offshore expansion. As a non-SA exchange control entity, MTNI was established primarily to raise the required funding offshore.

MTNI has been a registered South African tax resident from inception and is subject to all applicable South African taxes. There is therefore no tax benefit enjoyed by MTN as a result of the Mauritius entity, MTNI.

Does MTN claim/has it claimed 6quin credits in respect of Ghana, Uganda and Nigeria? (Your response in respect of MTNI appears not to have answered our question, which was in respect of the MTN group).

MTN does not claim any 6quin credits in respect of Ghana, Nigeria and Uganda.

Given that South African taxpayers' money is being used to compensate MTN for taxes paid in countries where it operates, this is clearly a matter that is in the public interest. That being the case, please can MTN disclose the total amount of money that MTN has claimed in tax credits? You previously declined to answer this: we beg you to reconsider.

The claiming of foreign tax credits is a recourse available to all SA based companies and is not unique to MTN. All tax credits claimed by MTN were legitimately claimed within the ambits of the law.

There are no legal requirements (JSE, IFRS, tax or otherwise) for MTN to publicly disclose information on tax credits claimed. As such, MTN does not disclose this information publicly.

A comment: It is our understanding that the insertion of s 6quin into the Income Tax Act was a policy shift from National Treasury in order to incentivise SA based taxpayers to base their HQ investment companies in SA and export skills to the rest of Africa.

We are aware that IFRS distinguishes between “nature” and “function”, but it is not clear to us how this is applied to MTN’s management fees. We would be grateful if you could provide a clear explanation.

The classification of expenses by their nature or by their function in the Statement of Comprehensive Income (Income Statement) is a means to aggregate the expenses incurred by an entity.

Where the expenses are analysed/aggregated based on their function, they are allocated to a function (or activity) within the entity. Examples of functions are cost of sales, administration costs, distribution costs etc. The expense does not retain its nature in this presentation, but is allocated to the activity to which it relates. Functions (and more specifically cost of sales) are not defined in IFRS and each entity determines its own definitions for these functions. Cost of sales is generally understood to refer to a production process or costs incurred to acquire goods and are more often used by manufacturing entities and retailers.

If the classification by nature is used, expenses are aggregated according to their nature e.g. depreciation, staff costs or advertising costs. Here each expense retains its nature when it is classified in the Statement of Comprehensive Income. This method is often used by entities providing services.

An entity selects the most relevant and reliable method depending on the industry within which the entity operates and the nature of the entity. IFRS requires an entity to consistently apply the aggregation method selected for the presentation of expenses.

MTNI is a service organisation and consequently, it does not present cost of sales but rather presents its expenses (including management fees) based on their nature.

The MTNI financial information we referred to, showing cost of sales, is quoted from the 2004 and 2005 financial extract contained in the URA 2011 notice of assessment for MTN. The URA did not detect the management fees paid by MTNI to SA that you referred to. Were these fees reflected in the MTNI financials from which URA quoted?

We confirm that management fees paid by MTNI were reflected in both the 2004 and 2005 MTNI AFS.

Are you willing to share MTNI’s audited financials for those years and for the years 2012 - 2014 so that we can see these fees for ourselves? This would go a long way to clarifying most of these issues.

There are no legal requirements (JSE, IFRS, tax or otherwise) for MTN to publicly disclose MTNI’s financial statements. As such, MTN does not disclose this information publicly however we reiterate that management fees paid by MTN I were reflected in both the 2004 and 2005 MTNI AFS.

You said MTNI pays 77% of its revenue to SA entities as management fees. For which years does this apply? Can you please give actual amounts for 2004, 2005 and 2012 to 2014?

77% applies to the 2014 financial years. The information requested is too detailed. MTN has no legal requirement to and does not disclose such detailed information publicly.

MTN’s South African Shared Service Centre is MTN Group Management Services. The 2014 MTN Bond Prospectus is clear that only South African management fees are paid to MTN Group Management Services, and the company has declined to tell us which companies physically located in SA receive the management fees from abroad. We would be grateful if you would reconsider.

MTN International (Pty) Ltd, MTN Group Management Services Pty Ltd and MTN Group Ltd.

We have interpreted “companies” physically located in SA” to mean companies incorporated in SA and have thus excluded MTN I which, while effectively managed in SA, is incorporated in Mauritius.

Management fees from foreign operations (with the exception of Swaziland, which is received by MTN SA) are received either by MTN Dubai or MTN I.

MTN Dubai pays royalty fees to MTN I for the use of MTN IP by its subsidiaries. MTN Dubai also pays a management fee to MTN Group Management Services for support services.

MTN I pays management fees to MTN International (Pty) Ltd and MTN Group Ltd.

Besides MTN Group Ltd, there is no requirement to disclose the amount of fees received by any of these companies. MTN, therefore, does not publicly disclose management received and paid by its group companies.

We would be grateful if you would share records that reflect this.

We only disclose publicly the information which is disclosed in the stand-alone and consolidated accounts of MTN Group Ltd.

You have told us that MTN Nigeria and MTN Ghana management fees paid to MTN Dubai are for the “ultimate benefit” of MTN Mauritius. Why are those fees paid to Dubai first, not Mauritius (or, in fact, South Africa, as per question 2)?

The Ghana fees were paid to the Investcom Group at acquisition. That structure was left intact with the expansion of the regional presence in the Middle East with the integration of the Investcom and MTN Group. The Nigeria fees were routed through Dubai as the plan at the time was to establish a group marketing team in Dubai. That never materialised. It proved to the detriment of the Group, as the withholding tax suffered in Nigeria was no longer claimable as a full credit in MTNI, whilst the fees are fully taxable in MTNI.

You have told us that MTNI “is the company in the MTN Group that licenses the use of the MTN brand to the offshore companies”. But the MTN Nigeria financials state that it pays its trademark license fee to MTN Dubai.

Correct.

Why is the fee paid to Dubai if the license is in Mauritius?

See previous response dated 16/09/2015. There is a licence fee arrangement in place between MTN Dubai (Old Investcom) and MTNI. As stated in our previous responses, the Nigeria fees are on-paid to MTNI by MTN Dubai and are subject to tax in South Africa.”