

Taxation of Carbon Credits in Kenya: Unpacking the Wildlife Works Sanctuary Limited case

28 January 2026



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About CDH

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Cross – border capacity



We believe in empowering our clients



We add value to our clients



We value reputation

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Projects

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Environmental Law

Provide environmental services including:
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Tax and Exchange Control

Provide comprehensive tax services including:
Tax planning, restructuring, tax health checks, transaction support, transfer pricing and dispute resolution with the Kenya Revenue Authority (KRA)





Overview of carbon projects in Kenya



Carbon Projects in Kenya

Carbon projects are interventions including programs, projects, and products designed to remove, reduce, sequester or avoid carbon emissions.

Kenya is a leading participant in the African carbon market. As of late 2023–2024, the country has issued over 52.4 million carbon credits. (*World Bank Group, 2024*)

Land based carbon project

Involve activities related to land use, land management and ecosystem conservation or restoration aimed at reducing greenhouse gas emissions or enhancing carbon sequestration.

A key example is REDD+ (Reducing Emissions from Deforestation and Forest Degradation), projects like the Kasigau Corridor which provides financial incentives for forest conservation.

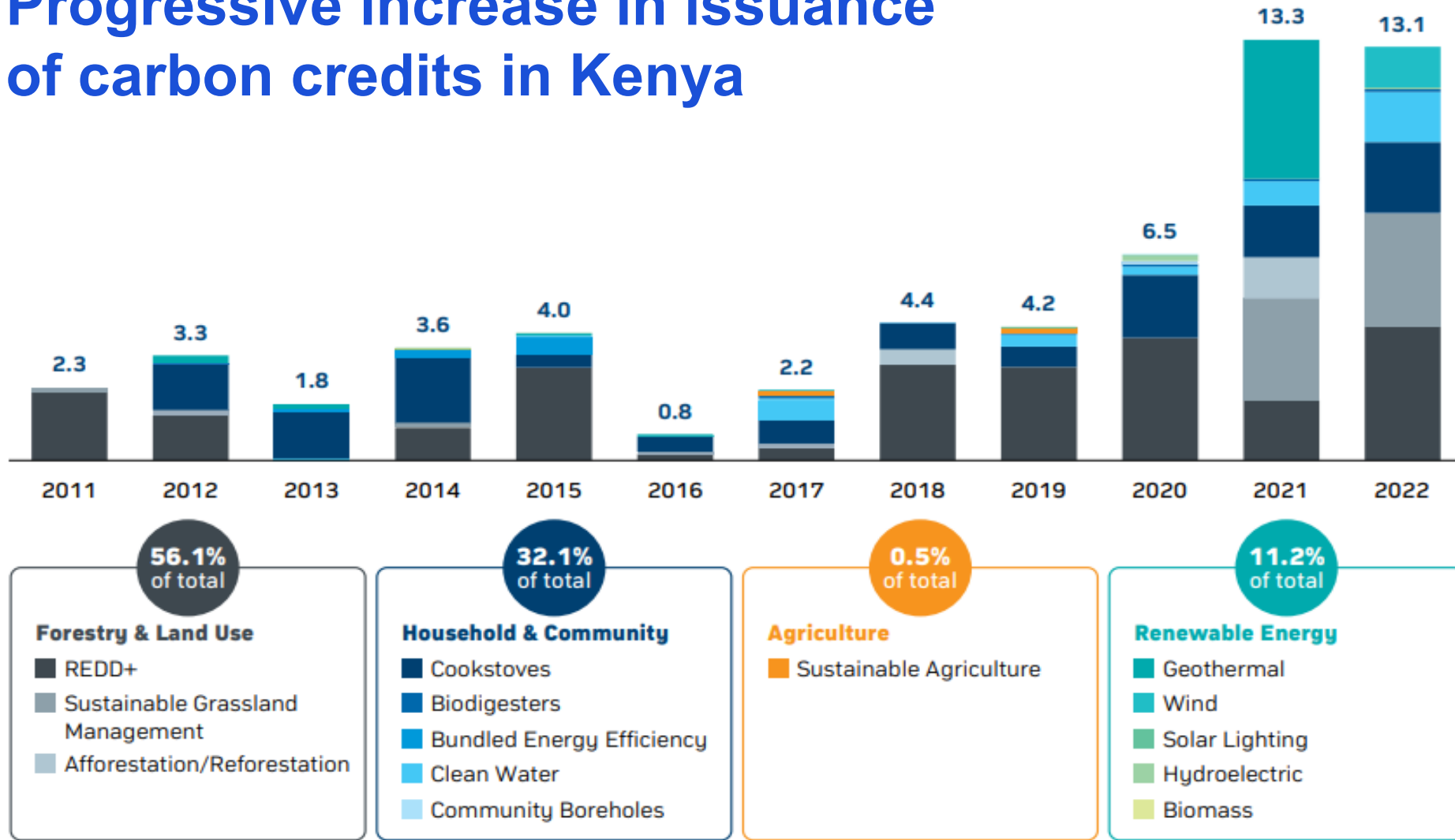
Non-land based carbon project

Projects that reduce greenhouse gas emissions or remove carbon dioxide from the atmosphere and employ technologies that do not require land.

Examples include household or institutional green technologies such as solar lights, energy-efficient cookstoves, water purification devices, and electric or green transport solutions.



Progressive increase in issuance of carbon credits in Kenya



(World Bank Group, 2024)

Legal and Regulatory Framework for Participation in Global Carbon Markets



Climate Change Act, Cap 387A: Introduced provisions on carbon markets following amendments in 2023.



Climate Change (Carbon Markets) Regulations, 2024: Provide the framework for implementation of carbon projects.



The Draft Climate Change (Carbon Trading) Regulations, 2025: Seek to provide a framework for carbon trading in Kenya.



The Draft Climate Change (Carbon Registry) Regulations, 2025: Intended to establish the legal and operational framework for Kenya's national carbon registry system.

Taxation Regime for Carbon Projects in Kenya

Taxation of carbon credits follows the provisions of the Income Tax Act as follows:

Item	Basis
Income Tax (CIT)	Applicable at 30% for-profit activity Applicable at 15% for a company operating a carbon-market exchange or emission-trading system certified by the Nairobi International Financial Centre Authority (NIFCA). Carbon project expenses and fees may be allowable tax expenses.
VAT (Export of good /services)	Zero-rated supply

While the Income Tax Act governs taxation of revenue, it does not expressly determine dealings with carbon credits and makes no special provision for the taxation of carbon revenue, other than the reduced tax rate for carbon-related companies operating in NIFCA.

A practical gap lies in how tax assessments for carbon credit revenues are being applied, especially where multiple entities, local and foreign, are involved in project development, implementation of the carbon projects, and ownership of the carbon revenue.

An overview of the Wildlife Works Sanctuary Limited Case



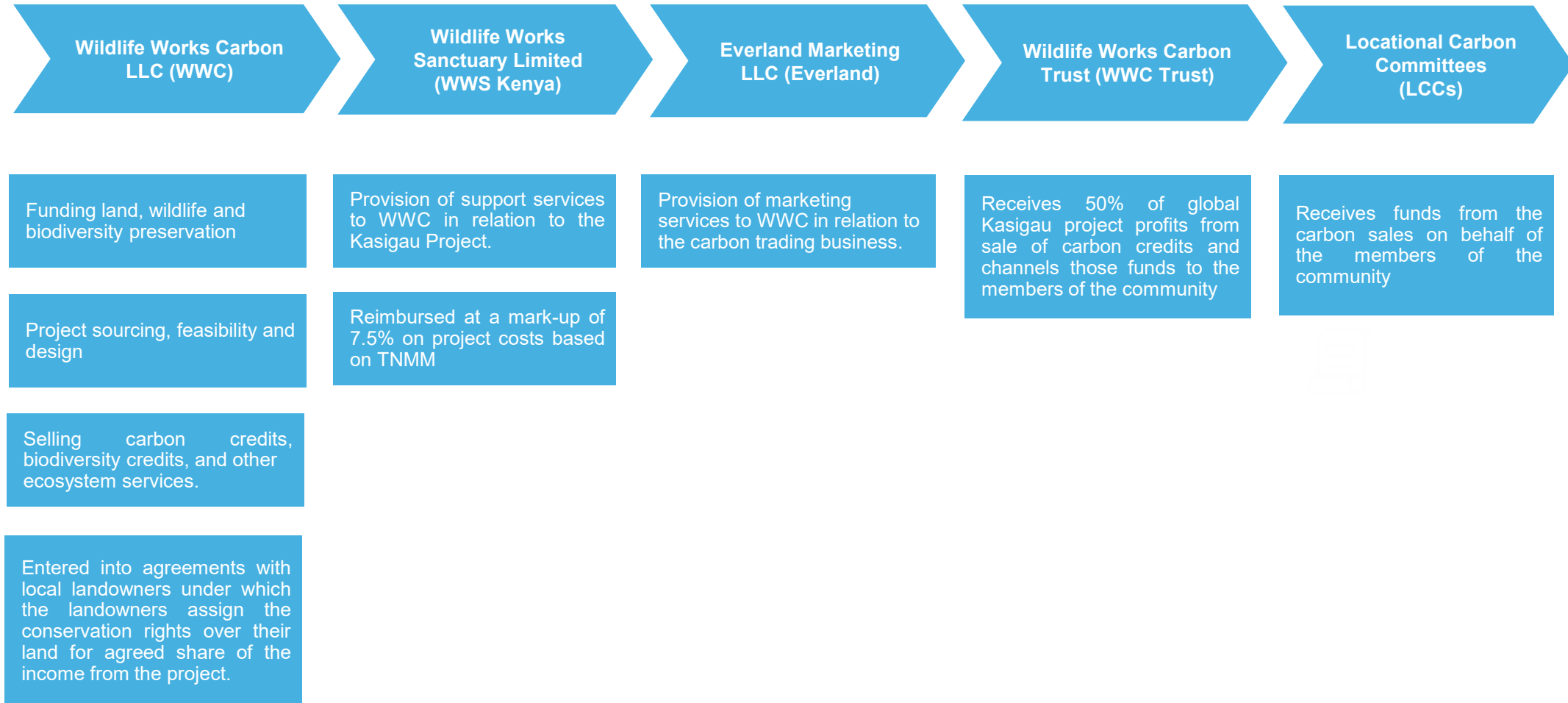
Case Background

- This appeal concerns a transfer pricing dispute between Wildlife Works Sanctuary Limited (the Appellant) and the Commissioner of Legal Services and Board Coordination (the Respondent) over the taxation of carbon credit income from the Kasigau Corridor REDD+ Project in Kenya.
- Following a tax review for 2018-2021, the Respondent issued assessments of KES 6,888,330,444 asserting that the carbon credits were accrued and derived in Kenya, that the Appellant performed the core project functions, and that Wildlife Works Carbon LLC (WWC) undertook only shareholder or ancillary roles.
- The Respondent therefore made transfer pricing adjustments using estimated figures, treated the adjustments as deemed dividends, and assessed corporation tax and withholding tax. The appellant disputed the assessment stating that it ignored audited financials and verified project data.



Overview of Kasigau Corridor REDD+ project process

(end-to-end supply chain)



Key issues in dispute

The Tribunal framed the issues as:



Whether the Respondent was justified in attributing carbon credit revenues to the Appellant and in assessing corporation tax.



Whether the transfer pricing adjustment was proper



Whether withholding tax was correctly imposed on deemed dividends

TAT's determination of the issues

1. Whether the Respondent was justified in attributing carbon credit revenues to the Appellant and in assessing corporation tax:

- The Tribunal held that the Appellant proved, that its role in the Kasigau Project was limited to operational support services, and that the KRA wrongly recharacterized the related party transaction as sale of carbon credits.
- It found that the risks, funding, marketing, and revenue recognition relating to the carbon credits rested with Wildlife Works Carbon LLC (WWC), and therefore the carbon credit revenues did not pertain to the Appellant.
- Although carbon credit income from the Kenyan-based project was deemed taxable in Kenya under Section 3 (1) and 18 (1) of the Income Tax Act, the Respondent had no legal basis to assess that income on the Appellant, and the corporation tax assessment therefore failed.

TAT's determination of the issues

2. Whether the transfer pricing adjustment was proper

- The Tribunal upheld the Appellant's characterization of the controlled transaction as provision of operational support services, and accepted its functional analysis, choice of tested party, and selection of the Transactional Net Margin Method (TNMM) as the most appropriate transfer pricing method.
- Benchmarking showed an arm's length markup range of 2.64%–10.78%, and the Appellant's actual markups (as reflected in audited financial statements) fell within or slightly above this range, supported by consistent contracts, the TP policy, invoices, and verification reports hence consistent with the arm's length principle.
- The Tribunal therefore held that the Appellant's service fees were at arm's length and the KRA was not justified in making a transfer pricing adjustment or assessing additional corporation tax.

TAT's determination of the issues

3. Whether withholding tax was correctly imposed on deemed dividends

- The Tribunal held that the KRA lacked legal authority to recover WHT not deducted for the period 1 January-6 November 2019, following the repeal of Section 35(6) of the Income Tax Act and the High Court's decision in *Pevans East Africa Ltd*.
- Further, since the Tribunal had already found that the transfer pricing adjustment itself was incorrect, the basis for deeming any amounts as a dividend distribution under Section 7(1)(b)(v) collapsed.
- The WHT assessment on the deemed dividend distributions was therefore entirely unjustified, and the assessment for 2019–2022 could not stand.

Key takeaways



Why the WWS Kenya Case Matters to Carbon Market Participants

Lessons

1

Documentation Matters: WWS Kenya's success hinged on thorough records, providing strong evidence to meet its burden of proof.

2

Taxability of Carbon Revenue: Based on the TAT and KRA interpretation, income from carbon projects physically carried out in Kenya is taxable in Kenya, regardless of where the carbon credits are sold; the KRA assessment failed due to procedural errors and not non-taxability of the income.


3

Evidence-Based Assessments: Tax assessments must rely on actual, verifiable income and not projections. Hypothetical data cannot justify adjustments.


4

Audit Readiness: Need for carbon market participants to assess their project structures, and contractual arrangements to ensure that the generation, allocation, and documentation of carbon credit income is defensible in the event of a tax audit





Further lessons based on global trends on the taxation of carbon revenue



Lessons from key global trends in the taxation of carbon revenue

Tax treatment of carbon credit revenues: gaps in international guidance

- The OECD Model Tax Convention does not have provisions on the treatment of income derived from the trading of carbon credits.
- Similarly, the UN Tax Committee has issued guidance largely focused on carbon taxes and environmental fiscal measures, rather than the taxation of income arising from carbon credit transactions.
- **Due to the absence of international guidance on taxation of carbon credit revenues, WWS Kenya case underscores the source-based taxation and hence income from carbon credits generated within Kenya are taxable.**

Different classification of revenue from carbon credits in different jurisdictions

- In some jurisdictions like India, they are classified as capital assets as opposed to revenue receipts that would be chargeable to corporate tax. This was seen in the *My Home Power Ltd v DCIT (2014)* and in *Mayur Dyechem Intermediates LLP Vs DCIT (ITAT Ahmedabad, 2025)*.
- **In Kenya, the WWS Kenya case demonstrates that revenue from the sale of carbon credits is chargeable to corporate tax.**



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