

Tax & Exchange Control



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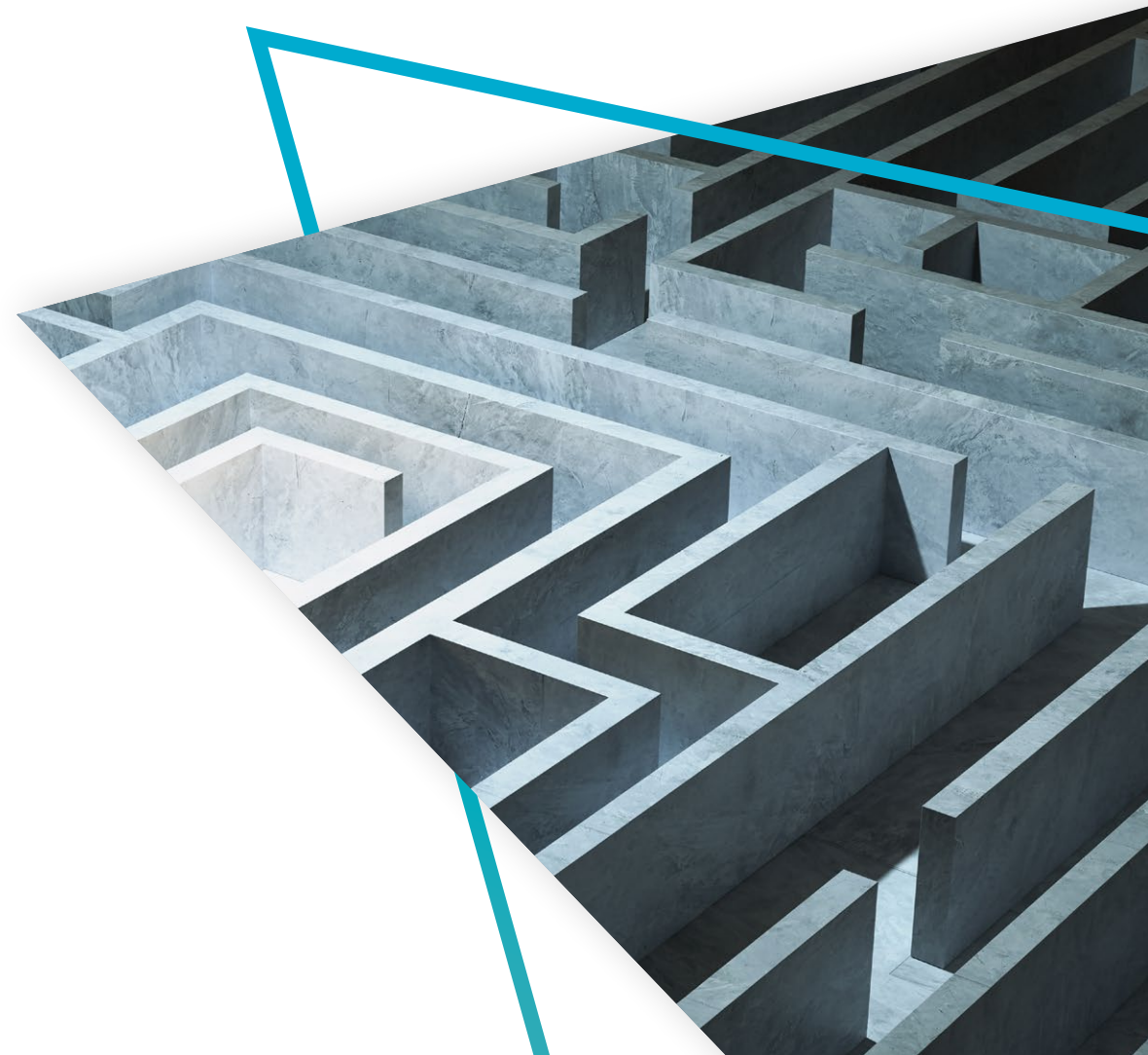
High Court clarifies legal recourse for income tax exemption rejections

SOUTH AFRICA

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High Court clarifies legal recourse for income tax exemption rejections

Tax exemptions are provisions in tax laws that relieve certain individuals, organisations or transactions from paying specific taxes. They are often granted to promote social and economic objectives, such as encouraging investment, supporting charitable activities, or providing relief to specific groups like persons with disabilities.

However, while tax exemptions can stimulate economic growth, attract investment and promote social welfare, they could impact the Government's ability to fund its budget. This delicate balance necessitates continuous oversight from the KRA, which regularly reviews tax exemptions to ensure compliance with tax laws and prevent the tax base being eroded. Additionally, as part of the expenditure reforms highlighted in the fiscal policy for the FY 2024/25 and medium-term budget the government seeks to protect the tax base through the elimination of unproductive tax incentives.

In recent times, the KRA has taken a firmer stance, particularly with non-governmental organisation applications for exemption certificates, often requesting additional documentation to substantiate their claims; a process that can be time-consuming. As a result, taxpayers find themselves frustrated, especially when decisions regarding exemption applications are issued after the expiration of previously granted exemption certificates.

So, what is the recourse if your tax exemption application has been rejected by the KRA?

Recently the High Court issued a judgment that clarifies the legal avenue for such businesses to challenge tax exemption rejections through the Tax Appeals Tribunal (TAT). The High Court, in the case of *Saleh Mohammed Trust v Commissioner of Domestic Taxes* (Income Tax Appeal E221 of 2023) [2025] KEHC 17214 (KLR) (Commercial and Tax) (14 February 2025), held that the KRA's decision to deny a tax exemption application was appealable, classifying it under "any other decision made under a tax law other than (a) a tax decision; or (b) a decision made in the course of making a tax decision."

Background

The dispute in this case arose from the rejection of an application for the renewal of a tax exemption certificate issued to Saleh Mohammed Trust (the Taxpayer) by the KRA of Domestic Taxes (the respondent). The original exemption certificate had been granted on 27 January 2014 and was set to expire on 27 January 2019. The taxpayer applied for renewal on 18 September 2018, but the KRA rejected the application.

Dissatisfied with this rejection, the taxpayer filed an appeal at the TAT. The KRA raised a preliminary objection, arguing that the rejection of a tax exemption renewal was not an appealable decision under the Tax Procedures Act (TPA), and that the taxpayer should have sought judicial review instead. The TAT agreed with the KRA and dismissed the appeal.

Aggrieved by this decision, the taxpayer appealed to the High Court, arguing that the TAT erred in law and fact by failing to recognise the rejection decision as an appealable decision within the meaning of section 3(1) of the TPA.

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Key arguments put forward by the taxpayer

The taxpayer argued that section 3 of the TPA defines an appealable decision to include “*any other decision made under a tax law*,” and therefore, the rejection of its exemption certificate renewal was subject to appeal at the TAT. It contended that the TAT wrongly classified the rejection as a tax decision instead of recognising it as an appealable decision. The taxpayer argued that the rejection did not involve a tax assessment or penalties, making it distinct from tax decisions explicitly listed under the law.

The taxpayer further maintained that the TAT has jurisdiction over all decisions made under tax laws, including those related to exemptions. By dismissing the appeal for lack of jurisdiction, the TAT failed to exercise its mandate to hear the case on its merits.

Further, the taxpayer argued that the doctrine of exhaustion required the TAT to be the first avenue for resolving such disputes before any judicial review. If the TAT declined jurisdiction, the taxpayer would be denied a proper legal remedy, leading to unnecessary litigation.

The respondent’s arguments

The KRA argued that the rejection of the exemption request was not an appealable decision under the TPA, as the impugned decision was not an objection decision since no tax assessment had been issued and no notice of objection had been lodged. It maintained that the appropriate forum for challenging the rejection of the application was judicial review, not the TAT, since the decision involved the exercise of administrative discretion. The KRA further contended that “*any other decision under a tax law*” should be narrowly interpreted, applying only to decisions like objection determinations, which the rejection was not.

The High Court’s analysis and determination

The court held that the rejection of the exemption renewal was indeed an appealable decision. It agreed with the taxpayer that the phrase “*any other decision made under a tax law*” must be given a plain ordinary interpretation.

The court found that the TAT wrongly struck off the case for lack of jurisdiction. It held that the TAT had the mandate to determine the matter on its merits and should not have dismissed it. The court further held that the TAT, not a judicial review, was the appropriate forum for the dispute. The court therefore set aside the TAT’s decision, and the case was remitted back to the TAT for a full hearing on the merits.

What does this mean for taxpayers?

A tax exemption application rejection is no longer the final verdict. Businesses and other taxpayers now have a clear legal recourse to challenge such decisions directly at the TAT. This means they do not need to first lodge a notice of objection with the KRA and wait for an objection decision, before appealing to the TAT. Ultimately, with this judgment, businesses must take a proactive approach to appeal such decisions within the statutory timelines (30 days).

With the matter being referred to the TAT, it will be interesting to see if the tribunal addresses the critical question of whether the taxpayer will be deemed to have enjoyed a tax exemption in the period between the making of the renewal application (18 September 2018) and the determination of the tax dispute.

Alex Kanyi, Denis Maina and Ian Ounoi

New VAT regulations published

On 14 March 2025, National Treasury published three long-awaited value-added tax (VAT) regulations in final format, which were initially released in draft format on 1 August 2024 for public comment. These regulations amend the definition of “*electronic services*”, amend the definition of “*valuable metal*” for the purpose of the application of the domestic reverse charge on supplies of gold containing material, and provide clarification regarding the accounting for VAT in relation to casino table games of chance.

Electronic services

The regulation prescribing electronic services for the purpose of the definition of “*electronic services*” in section 1(1) of the Value Added Tax Act 89 of 1991 (VAT Act) amends the definition to exclude any supplies of electronic services by a non-resident where such supplies are made solely to vendors that are registered in the Republic in terms of section 23 of the VAT Act.

This effectively introduces a business-to-business exclusion to bring South Africa in line with the globally accepted recommendations of the Organisation for Economic Co-operation and Development that such transactions should not be taxed.

The exclusion means that foreign suppliers who make supplies solely to South African customers who are registered vendors are no longer required to be registered for VAT in South Africa. However, the exclusion only applies where the foreign suppliers supply electronic services solely to VAT-registered South African customers. If they supply electronic services to customers who are vendors and non-vendors, the foreign suppliers will still be required to remain VAT registered and to account for VAT on supplies made to all South African customers.

The regulation also introduces new definitions of “*content*”, “*internet*” and “*telecommunication services*”.

The electronic services regulation comes into effect on 1 April 2025 and can be accessed [here](#).

Domestic reverse charge

The regulation regarding VAT on the domestic reverse charge (DRC) relating to valuable metal amends the definition of “*valuable metal*” to delete primary gold producers and contractors to primary gold producers from the exclusion of the definition.

The effect of the amendment is that primary gold producers such as gold mines, and contractors to such primary gold producers, are no longer excluded from the application of the DRC regulations, and they are now required to account for VAT on the supply of their gold containing material in accordance with the DRC regulation.

The amendment to the DRC regulation comes into effect on 1 April 2025 and can be accessed [here](#).

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New VAT regulations published

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Casino table games of chance

The nature of betting transactions in the casino industry, particularly table games of chance, makes it difficult to track individual bets placed by punters and winnings paid. The regulation clarifies the manner in which casinos should account for VAT on bets placed and winnings paid in relation to table games of chance.

The regulation in relation to casino table games of chance came into effect on 1 January 2025 and can be accessed [here](#).

Gerhard Badenhorst and Tersia van Schalkwyk



Chambers Global 2025 Results

Tax & Exchange Control

Chambers Global 2018–2025 ranked our Tax & Exchange Control practice in:
Band 1: Tax.

Emil Brincker ranked by Chambers Global 2003–2025 in Band 1: Tax.

Gerhard Badenhorst was awarded an individual spotlight table ranking in Chambers Global 2022–2025 for Tax: Indirect Tax.

Stephan Spamer ranked by Chambers Global 2019–2025 in Band 3: Tax.

Jerome Brink ranked by Chambers Global 2024–2025 as an "Up & Coming" tax lawyer.

Alex Kanyi ranked by Chambers Global 2025 as an "Up & Coming" tax lawyer.

Lena Onyango ranked by Chambers Global 2024–2025 as an "Up & Coming" tax lawyer.

The impact of the VAT rate change on property and related transactions

On 1 May 2025, the value-added tax (VAT) rate will increase by a 0,5 percentage point to 15.5%, followed by an increase of another 0,5-percentage point on 1 April 2026 to bring the standard rate to 16% from that date.

The Value-Added Tax Act 89 of 1991 (VAT Act) contains time of supply rules and specific provisions addressing the supply of certain goods and services in the event of a VAT rate increase. Below, we explain the impact of the VAT rate increase on property and property related transactions.

Residential property rentals

The supply of a dwelling to a person under an agreement for the letting and hiring thereof is exempt from VAT. Consequently, the VAT rate increase will not impact residential rentals, although utility charges such as water, electricity, sanitation and refuse removal charges will increase as a result of the VAT rate change.

Commercial property rentals

Section 67 of the VAT Act allows landlords to recover the additional VAT payable as a result of the VAT rate increase from tenants, unless the lease agreement stipulates otherwise.

Rental charges for periods of rental prior to 1 May 2025 are subject to VAT at 15%, while rental charges for periods commencing on or after 1 May 2025 will be subject to VAT at 15,5%. This applies irrespective of whether the lessor issues an invoice for the rental charges before or after 1 May 2025.

Where rental payable spans the effective date of 1 May 2025, the lessor is required to apportion the rental on a fair and reasonable basis between the period before 1 May 2025, and

the period thereafter. The portion of the rental payable which is attributable to the period before 1 May 2025 will be subject to VAT at 15%, whereas the portion of the rental payable for the period thereafter will attract VAT at 15,5%. The lessor will be required to substantiate that the apportionment was done on a fair and reasonable basis.

Property rates

Property rates charged by municipalities to landlords are subject to VAT at the rate of 0%. However, when landlords recover these charges from tenants as part of the rental consideration for the use of commercial property, VAT applies at the standard rate. The same VAT rules applicable to commercial property rentals apply to property rates recovered from tenants.

Construction contracts

Where a construction contract in which the construction price is stated is concluded before 1 May 2025 for the construction of a new dwelling, the construction services will attract VAT at 15% irrespective of when the construction services are rendered or completed. A "dwelling" in this context means a building or structure which is used, or which is intended to be used, predominantly as the residence of a natural person.

Where construction services are performed or goods delivered in relation to properties other than the construction of new dwellings before 1 May 2025, such goods or services are subject to VAT at 15%. Charges for construction services performed or goods delivered on or after 1 May 2025 will be subject to VAT at 15,5%.

The impact of the VAT rate change on property and related transactions

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Where construction activities (other than in relation to a new dwelling) commence before, and end after 1 May 2025, the contractor is required to apportion the value of goods delivered and services performed on a fair and reasonable basis between the period before 1 May 2025 and the period thereafter. The portion of the consideration payable for construction supplies which is attributable to the period before 1 May 2025 will be subject to VAT at 15%, whereas the portion of the consideration payable for the construction supplies for the period thereafter will attract VAT at 15,5%.

Sale of residential property

The VAT Act provides for a concession for the sale of residential property by a vendor, covering various types of transactions. This includes the sale of a dwelling along with the land it is built on, any real right of occupation of a dwelling, sectional title units that constitute a dwelling, and shares in a share block company that provide a right to or interest in using a dwelling. Additionally, it applies to the sale of land intended primarily for the construction of a dwelling under a written agreement. If the sale agreement is signed before the VAT rate increase but transfer and payment occur after the increase, VAT remains payable at the rate of 15%.

Sale of commercial property

No special transitional rules apply to the sale of commercial property. The normal time of supply rules determine the applicable VAT rate. If the transfer registration and payment occur after 1 May 2025, the new VAT rate applies, regardless

of when the sale agreement was concluded. The seller may recover the additional VAT payable as a result of the VAT rate increase from the purchaser unless the agreement states otherwise.

Commission

Estate agent commission is subject to the general VAT rules. If services are rendered and concluded before 1 May 2025, the rate of 15% VAT applies, regardless of when payment is received, or an invoice is issued. However, if the agent commenced performing services before 1 May 2025 and the services are only concluded thereafter, the value of the services must be apportioned fairly between the period before and after 1 May 2025. The value of services performed prior to 1 May 2025 will be subject to VAT at 15%, whereas the value of the services performed on or after 1 May 2025 will be subject to VAT at 15,5%.

Conveyancing fees

Conveyancing services involve multiple activities rendered over time. When services span the effective date of the VAT rate increase, the value of the services supplied must be apportioned fairly between the period before and after 1 May 2025. The value of services performed before 1 May 2025 is subject to 15% VAT, while services performed thereafter are subject to VAT at 15,5%. Conveyancers may recover from the purchaser any additional VAT payable due to the rate increase.

Gerhard Badenhorst and Tersia van Schalkwyk

OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa, Kenya and Namibia, please contact:



Emil Brincker

Practice Head & Director:
Tax & Exchange Control
T +27 (0)11 562 1063
E emil.brincker@cdhlegal.com



Gerhard Badenhorst

Director:
Tax & Exchange Control
T +27 (0)11 562 1870
E gerhard.badenhorst@cdhlegal.com



Jerome Brink

Director:
Tax & Exchange Control
T +27 (0)11 562 1484
E jerome.brink@cdhlegal.com



Petr Erasmus

Director:
Tax & Exchange Control
T +27 (0)11 562 1450
E petr.erasmus@cdhlegal.com



Dries Hoek

Director:
Tax & Exchange Control
T +27 (0)11 562 1425
E dries.hoek@cdhlegal.com



Alex Kanyi

Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E alex.kanyi@cdhlegal.com



Heinrich Louw

Director:
Tax & Exchange Control
T +27 (0)11 562 1187
E heinrich.louw@cdhlegal.com



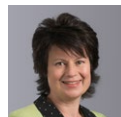
Howmera Parak

Director:
Tax & Exchange Control
T +27 (0)11 562 1467
E howmera.parak@cdhlegal.com



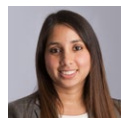
Stephan Spamer

Director:
Tax & Exchange Control
T +27 (0)11 562 1294
E stephan.spamer@cdhlegal.com



Tersia van Schalkwyk

Tax Consultant:
Tax & Exchange Control
T +27 (0)21 481 6404
E tersia.vanschalkwyk@cdhlegal.com



Varusha Moodaley

Senior Associate:
Tax & Exchange Control
T +27 (0)21 481 6392
E varusha.moodaley@cdhlegal.com



Nicholas Carroll

Associate:
Tax & Exchange Control
T +27 (0)21 481 6433
E nicholas.carroll@cdhlegal.com



Mariska Delpport

Associate:
Tax & Exchange Control
T +27 (0)11 562 1574
E mariska.delpport@cdhlegal.com



Puleng Mothabeng

Associate:
Tax & Exchange Control
T +27 (0)11 562 1355
E puleng.mothabeng@cdhlegal.com



Sophie Muzamhindo

Associate:
Tax & Exchange Control
T +27 (0)11 562 1729
E sophie.muzamhindo@cdhlegal.com



Savera Singh

Associate:
Tax & Exchange Control
T +27 (0)11 562 1575
E savera.singh@cdhlegal.com

BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.
Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

Merchant Square, 3rd floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114
E cdhkenya@cdhlegal.com

NAMIBIA

1st Floor Maerua Office Tower, Cnr Robert Mugabe Avenue and Jan Jonker Street, Windhoek 10005, Namibia
PO Box 97115, Maerua Mall, Windhoek, Namibia, 10020
T +264 833 730 100 E cdhnamibia@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdh Stellenbosch@cdhlegal.com

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