

Environmental Law and Tax & Exchange Control

15 January 2026



KENYA

- Unpacking the Tax Appeals Tribunal's decision on the tax treatment of income from the sales of carbon credits generated in Kenya

For more insight into our
expertise and services



Unpacking the Tax Appeals Tribunal's decision on the tax treatment of income from the sales of carbon credits generated in Kenya

The Tax Appeals Tribunal (Tribunal) delivered a significant decision in *Wildlife Works Sanctuary Ltd v Commissioner of Legal Services & Board Coordination*, Appeal No. E1290 of 2024, providing guidance on the tax treatment of income from the sales of carbon credits generated in Kenya.

The Tribunal allowed the taxpayer's appeal, setting aside the assessment of KES 6,888,330,444 in relation to corporate income tax and withholding tax. The Tribunal held that the Kenya Revenue Authority (KRA) had erroneously reallocated the functions, assets and risks between related entities and faulted its reliance on estimated carbon credit sales as opposed to actual sales reported by the taxpayer in its financial statements.

Background

The KRA issued a tax assessment claiming that the Kasigau Project was conducted by Wildlife Works Sanctuary Limited (WWS Kenya) and should be taxed on the full carbon credit income. WWS Kenya is a Kenyan resident entity within the global Wildlife Works Group (WWG), an international group of companies involved in generating, purchasing, managing, holding and selling carbon credits, biodiversity credits, and other ecosystem services.

In Kenya, WWG operates the Kasigau Corridor REDD+ (Reducing Deforestation and Forest Degradation) project (Kasigau Project) that aims to protect forests, reduce deforestation and support surrounding communities.



The project is structured such that Wildlife Works Carbon LLC (WWC), a US-based entity, is the project developer whose principal activity is generating and selling carbon credits and ecosystem services. WWS Kenya, on the other hand, provides operational support services, such as forest management and community engagement to WWC, and is remunerated on a cost-plus basis with a 7.5% mark-up on the project costs, applying the Transactional Net Margin Method (TNMM)

Analysis of the main issues for consideration by the Tribunal

The Tribunal's analysis focused on the three key issues, which are discussed below.

Was the Commissioner justified in attributing income based on projected carbon credit sales?

The Tribunal found that WWS Kenya's role in the Kasigau Project was limited to the provision of operational support services and that the KRA erred in recharacterizing the controlled transaction from the provision of operational support services to the sale of carbon credits. Further, the Tribunal held that the documentary evidence presented demonstrated that the revenues from the sale of carbon credits pertained to WWC and not WWS Kenya. Therefore, WWC's income from the sale of carbon credits was taxable in Kenya pursuant to Section 18 (1) and Section 3 (1) of the Income Tax Act (ITA). However, since WWS Kenya had not been appointed as WWC's tax representative, WWS Kenya could not be held liable for WWC's income.

Was the KRA justified in the reallocation of functions, risks and assets between the group entities?

The KRA argued that the Kasigau Project was developed and controlled from Kenya and that WWS Kenya performed the substantive functions that generated the carbon credits. The KRA relied on generic website job descriptions, assumptions about on-the-ground activities, and argued that pre-incorporation functions must have been undertaken through Wildlife Works EPZ Limited. However, WWS Kenya demonstrated that the upstream and core functions of the project were undertaken by WWC.

The Tribunal agreed, finding that WWC owned the carbon rights, funded the project and bore the significant risks associated with the generation and sale of carbon credits. It faulted the KRA's recharacterisation of the related party transaction performed by WWS Kenya from the provision of operational support services to the sale of carbon credits. Consequently, the Tribunal, upheld WWS Kenya's use of the TNMM as the appropriate transfer pricing method, with the mark-up on total cost as the profit level indicator.

Was the KRA justified in assessing withholding tax on deemed dividends?

The KRA argued that WWC's involvement in the Kasigau Project amounted to shareholder activities and that any compensation for those functions should therefore be treated as dividends, giving

rise to withholding tax. Applying the OECD Transfer Pricing Guidelines, the Tribunal rejected this characterisation, finding that the functions that WWC performed constituted substantive operational activities rather than shareholder functions. Having determined that the underlying transfer pricing adjustments were unjustified, the Tribunal consequently held that the KRA was not justified in assessing withholding tax on amounts treated as deemed dividends

Key takeaways

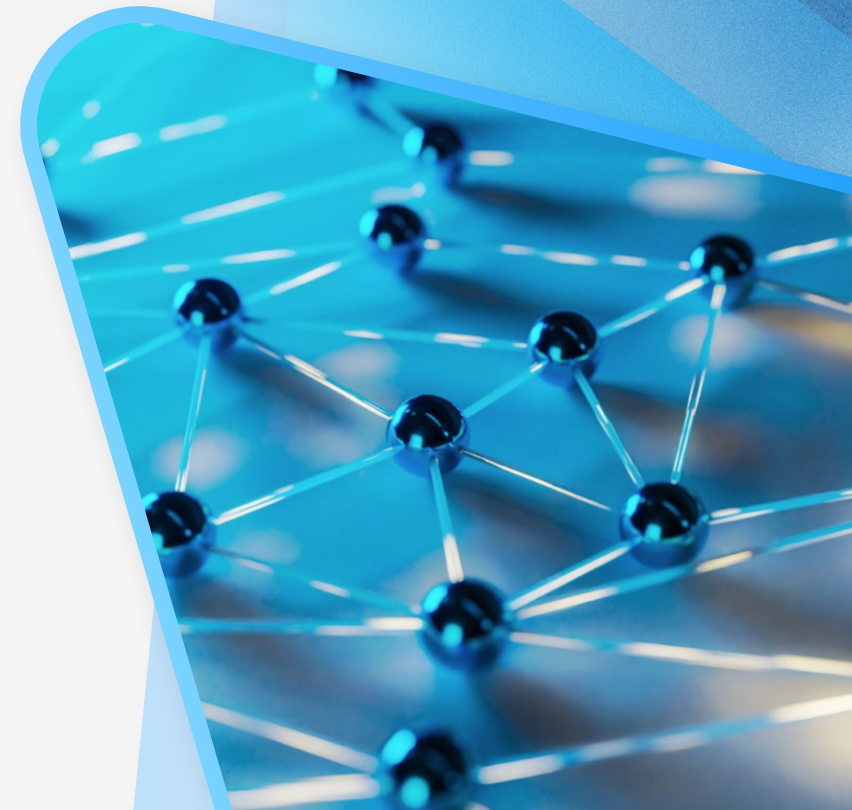
Firstly, WWS Kenya's success is attributable to proper documentation, which provided substantial evidence to discharge its burden of proof and rebut the KRA's assertions.

Secondly, from the decision, carbon revenues from projects physically located and carried out in Kenya may be regarded as having accrued and derived from Kenya, and hence are taxable in Kenya irrespective of where the carbon credits are marketed, contracted or sold. In this case, the assessment failed on procedural grounds as it was raised against the wrong taxpayer, not because the income was non-taxable.

Thirdly, tax assessments must be grounded in actual, verifiable income rather than projections. The Tribunal rejected the KRA's reliance on historical monitoring reports and hypothetical carbon credit volumes. Any income attribution or transfer pricing adjustment must have a clear statutory and evidentiary basis.

Lastly, notwithstanding the Tribunal's findings, the decision may be subject to appeal. The KRA retains the right to challenge the ruling before the High Court on matters of law.

**Alex Kanyi, Clarice Wambua, Denis Maina
and Prince Kiptoo**



OUR TEAM

For more information about our Environmental Law practice and services in South Africa, Kenya and Namibia, please contact:



Allan Reid

Executive Consultant:
Corporate & Commercial
T +27 (0)11 562 1222
E allan.reid@cdhlegal.com



Alistair Young

Director:
Corporate & Commercial
T +27 (0)11 562 1258
E alistair.young@cdhlegal.com



Clarice Wambua

Consultant | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E clarice.wambua@cdhlegal.com



Alecia Pienaar

Counsel:
Environmental Law
M +27 (0)82 863 6279
E alecia.pienaar@cdhlegal.com



James Ross

Director:
Corporate & Commercial
T +27 (0)21 481 6424
E james.ross@cdhlegal.com



Lauriene Maingi

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E lauriene.maingi@cdhlegal.com

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 Delpoort**

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

**Denis Maina**

Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E denis.maina@cdhlegal.com

**Puleng Mothabeng**

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

**Charity Muindi**

Associate | Kenya
T +254 731 086 649
+254 708 562 546
+254 710 560 114
E charity.muindi@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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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

ONGWEDIVA

Shop No A7, Oshana Regional Mall, Ongwediva, Namibia.
T +264 (0) 81 287 8330 E cdhnamibia@cdhlegal.com

STELLENBOSCH

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

WINDHOEK

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

©2026 15214/JAN

