

# **KENYA - TAX & EXCHANGE CONTROL**



*"The team at Cliffe Dekker Hofmeyr thinks outside of the box and brings innovative solutions by understanding the complexities of each client."*

CHAMBERS GLOBAL 2024

Our Tax & Exchange Control practice provides advice on a wide variety of tax and exchange control matters, both in the local and international context.

## PRACTICE OVERVIEW

**In a complex environment, our specialist lawyers and practitioners provide clear and practical business solutions.**

Tax & exchange control is a highly regulated area, carefully monitored and strictly enforced by the authorities. In this environment, planning, implementing and reporting on significant business transactions is best undertaken with a clear understanding of the tax consequences and under the protection of legal professional privilege.

Our Tax & Exchange Control practice provides advice on a wide variety of tax and exchange control matters, both in the local and international context.

We provide tax planning as well as tax structuring and transaction related services. We work on tax matters on an individual basis, or as part of a team of lawyers from across our firm's practice areas. We are therefore able to provide a commercially integrated service in order to ensure efficiency from inception to implementation. We work closely with the M&A lawyers at the firm to provide a one-stop solution for both legal and tax due diligence and advise on transaction documents.

We are actively involved in tax lobbying and have been instrumental in shaping tax policy and laws in Kenya through submissions to the National Treasury, the National Assembly and the Senate.

We assist our clients to obtain advance tax rulings, including binding private rulings and binding class rulings, and also customs/excise tariff, valuation and origin determinations for clients.

We are also actively involved in tax dispute resolution, and we assist clients in resolving their disputes with the Kenya Revenue Authority (KRA). A number of our client disputes have been resolved through negotiations with KRA and through Alternative Dispute Resolution. Further, our client matters have recently been heard and settled favorably in the Tax Appeals Tribunal, and appellate courts.

We are able to move quickly and seamlessly on cross-border transactions as well as in coordinating information and resources to achieve your corporate objectives in the most tax efficient manner, wherever you do business. We also keep our clients informed of anticipated changes in tax laws and practice to help them manage and take advantage of developments on the tax front.

*"The professionals involved make this practice unique – the team is focused and keeps abreast of all current legislation changes. The team seems to be expanding and is attracting like-minded insightful individuals. Their expertise is unique and thus cannot be compared to other firms."*

THE LEGAL 500 EMEA 2022

*"The team at Cliffe Dekker Hofmeyr is aware of industry constraints and able to think outside the box to provide possible solutions."*

CHAMBERS GLOBAL 2023

## SECTOR EXPERTISE

Industry expertise is essential in order to advise clients effectively.

Our clients include banking and financial institutions, equity investment companies, import and export companies, property developers and investors, government departments and public sector institutions, non-profit organisations and high net-worth individuals. These clients are from a wide range of industries and market sectors.

Our advice takes into account the specific requirements of each industry sector. With this information we exercise our extensive sector knowledge and experience to develop pragmatic and tailored solutions to your tax issues.

*"The team provides, swift, clear, practical, and business-focused advice and guidance to all tax queries raised. This is highly valuable as it provides us with an extremely easy-to-use guide to implement all change and institute any risk factors."*

THE LEGAL 500 EMEA 2023

## SPECIALIST SERVICES



Tax  
Training



Advance Tax  
Rulings



Tax Amnesty  
Programme



Tax Management  
Advisory



Tax Dispute  
Resolution



Independent Tax  
Reviews  
and Tax Due  
Diligence



International Tax  
Advisory



Cross-border  
Exchange Control



Indirect Tax  
Consulting



Customs and  
Excise

## SPECIALIST SERVICES

### TAX ADVISORY

We provide advice on the direct and indirect tax consequences of all business activities:

- Mergers and acquisitions
- Disposals and acquisitions of business or assets
- Remuneration structuring
- Group analysis and restructuring
- Financial services taxation
- Employee share incentive schemes
- New business operations
- Capital allowance reviews
- Private equity

We assist clients by providing detailed tax opinions relating to all direct and indirect tax queries that are associated with the ongoing tax advice required by businesses.

### ADVANCE TAX RULINGS

To provide certainty regarding the tax treatment of proposed transactions, we compile and submit applications to the KRA on behalf of clients. We also liaise with KRA throughout the process.

### TAX MANAGEMENT ADVISORY

We advise on tax management and governance:

- Tax governance reviews and assessments
- Tax risk and control identification workshops
- Tax strategy and tax policy formulation
- Outsourced tax management functions



## SPECIALIST SERVICES...continued

### TAX DISPUTE RESOLUTION

We assist in dispute resolution for all direct and indirect taxes:

- Responding to KRA queries and liaising with KRA to efficiently and effectively resolve matters
- Management of a KRA audit process
- Drafting of objections and appeals
- Representation in alternative dispute resolution reviews
- Representing clients in tax litigation before the Tax Appeals Tribunal and superior courts
- Administration and constitutional tax-related matters

### INDEPENDENT TAX REVIEWS AND TAX DUE DILIGENCE

We perform comprehensive independent reviews:

- Tax due diligence reviews in respect of all direct and indirect taxes
- Income tax risk identification and assessments
- Pay As You Earn (PAYE) risk identification and assessments
- International tax risk reviews and assessments
- Capital gains tax (CGT) risk identification and assessments
- Advise on tax warranties and indemnities on transactions

### INTERNATIONAL TAX ADVISORY

We provide advice on international transactions:

- Inbound and outbound investment
- Treatment of foreign exchange differences
- Thin capitalisation
- Transfer pricing
- Permanent establishments
- Controlled foreign companies
- Foreign tax credits
- Double taxation agreements

### VALUE-ADDED TAX

We advise clients and assist in value-added tax (VAT) services:

- Advice and opinions on all aspects of VAT, including local and
- cross-border transactions
- Advising on the maximising of VAT recovery and cash flow planning
- Application for binding private rulings and binding class rulings
- VAT dispute resolution and litigation
- VAT accounting system reviews and advice
- VAT due diligence and compliance reviews
- VAT refund review and application

*"Their response and turnaround times of written opinions are exceptional."*

CHAMBERS GLOBAL 2024

## SPECIALIST SERVICES...continued

### ENVIRONMENTAL TAXES

- We advise and assist clients on tax implications in climate change projects
- We advise on the tax incentives for investors in climate change initiatives including e-mobility.
- We advise clients on carbon sharing agreements, carbon offsetting agreements and carbon purchase agreements.

### TAX TRAINING

We provide practical, tailor-made training in all tax areas, including:

- Tax law updates
- CGT
- VAT
- International tax
- PAYE
- Share incentive schemes
- Tax management and governance
- Corporate restructuring rules
- Taxation of insurance companies
- Carbon tax
- Tax dispute resolution

### CUSTOMS AND EXCISE

- Assistance with tariff, valuation, origin and other customs and excise disputes
- Assistance with drawing and submission of tariff, valuation and origin determinations
- Assistance with excise and ad valorem excise disputes
- Assistance with obtaining release of goods from customs detentions and return of goods after seizure and/or forfeiture
- Assistance with all customs and excise applications for registrations or licenses
- High level due diligence audits conducted to ensure correct application of the customs legislation
- Training of staff in relation to customs and excise legislation, procedures and processes
- Provision of advice in relation to the above

*"The team works very well together," say sources, appreciating that the group "include their client's opinion in the process."*

CHAMBERS GLOBAL 2022



## SUMMARY PROFILE

### ALEX KANYI

Alex Kanyi is a Partner in our Tax & Exchange Control, Dispute Resolution, and Corporate & Commercial practice areas. Alex has worked in Kenya and Ireland for clients with operations in Europe, Asia and Africa. He has extensive experience in tax structuring, tax dispute resolution, international tax advisory, risk management, restructuring, legal audits, legal due diligence, company secretarial, acquisitions, corporate governance and regulatory compliance.

### CAREER

Alex has worked with KPMG East Africa in various capacities and was its Regulatory Services business lead in East Africa for six years up to 2022. He has also worked in KPMG Ireland in 2019-2020 as Manager, Legal Services. In 2022, Alex joined Kieti Law LLP as a Partner.

### EDUCATION

- Master of Laws (LL.M), International Trade and Investments Law, University of Nairobi (ongoing)
- Postgraduate Diploma in Law, Kenya School of Law
- Bachelor of Laws (LL. B) (2nd Class Honours, Upper), Moi University
- Certified Public Secretary
- Certified Public Accountant
- Certificate, Legal Audit, Kenya School of Law
- Certified Trainer, Africa Facilitators Accreditation Program, KPMG

### MEMBERSHIPS

- Law Society of Kenya
- Institute of Certified Secretaries
- Institute of Certified Public Accountants of Kenya

### EXPERIENCE

#### TAX DISPUTE RESOLUTION

- Advised a client on a customs dispute in conjunction with a Big 4 audit firm and the dispute was resolved through Alternative Dispute Resolution at the High Court.
- Successfully negotiated a tax assessment on behalf of a client in the tourism industry and reduced the assessment by 93.75%.
- Successfully assisted a client to have agency notices lifted after intense negotiations with KRA.
- Successfully represented an Australian mining company at the Tax Appeals Tribunal to defend an Income Tax assessment claim of USD 9.4 million
- Successfully represented a French based company at the Tax Appeals Tribunal and at the High Court to defend a VAT assessment of USD 2.1 million
- Successfully represented a Kenyan manufacturing company at the Tax Appeals Tribunal to defend a VAT assessment of USD 2.5 million
- Successfully represented an American multinational technology corporation to defend a VAT assessment at the Tax Appeals Tribunal.
- Successfully represented an agricultural processing company to negotiate with the Kenya Revenue Authority and resolve an Income Tax assessment of USD 7 million
- Successfully represented a multinational beverage company to negotiate with the Kenya Revenue Authority and resolve an Income Tax assessment of USD 67,000.





## SUMMARY PROFILE

### TAX AND LEGAL STRUCTURING

- Advised a US investor on structuring their fintech business in Kenya and Uganda.
- Advised an investor in acquisition of insurance companies in Kenya, Tanzania and Uganda. We advised on the due diligence reports prepared by Big 4 audit firm and supported a US based law firm in reviewing tax warranties and indemnities in the transaction documents.
- Advised several PE funds on tax implications on their carried interest and ESOPs and possible tax structuring solutions.
- Advised a leading electric bus company in Kenya on conversion of loans to redeemable preference shares and tax optimization on the same.
- Advised a local insurance company on the tax structuring for the carve-out of their life insurance business. Specifically advised on the tax considerations in the Portfolio Transfer Agreement, Business Transfer Agreement and the Business Separation Agreement and Corporate Restructuring Agreement.
- Advised a Japanese company on the tax structuring of an EPC contract to build a 165 MW geothermal power plant. The project was sponsored by JICA and was commissioned in 2022.
- Advised another Japanese company on the tax structuring of an EPC contract to build an 83 MW geothermal power plant. The project was sponsored by JICA and was commissioned in 2022.
- Advised a global motor vehicle assembling company based in France on optimising the tax implications on restructuring their operations in East Africa through an asset transfer deal.
- Advised a US based company on the tax structuring for their investment in a local company through conversion of a USD 15 million loan to preference shares.
- Advised a tier one bank with presence in 11 African countries on the optimal tax structure for their Employment Share Ownership Plan across its group.
- Advised a UK company on a group restructure for its operations in Ireland, UK and Africa.
- Advised a Portuguese company on setting up a motor vehicle assembly plant in Kenya
- Advised a private equity firm on setting up their regional office in Kenya. The Firm's investments are dedicated to Africa and Europe, with an investment capacity exceeding EUR 800 million.
- Advised a South African agricultural processing company on setting up a regional office in East Africa.
- Advised as Irish company on setting up and operating a foreign company in Kenya for construction of a Biomass plant of EUR 30 million in Kenya.





## SUMMARY PROFILE

### MERGERS AND ACQUISITIONS

- Advised a tier one regional bank in Africa on the acquisition of a fund management and trustee firm
- Conducted a buyer due diligence and advised an Australian based company on acquisition of shares in a local dating company.
- Advised a UK company on acquisition of an international group of schools in Kenya.
- Conducted buyer legal due diligence and advised on acquisition of a solar plant by a company based in Eastern Europe.

### TAX LOBBYING

- Lobbied for the new tax amnesty programme under Finance Act, 2023.
- Represented the East Africa Venture Capital Association and made its submissions on the National Tax Policy to the National Assembly Departmental Committee on Finance and National Planning (Committee).
- Represented the Law Society of Kenya at the Committee to present submissions on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS.
- Lobbied for changes to the new Affordable Housing Act, 2024.

### MARKET RECOGNITION

- Commercial Practitioner of the Year, 6<sup>th</sup> Annual Nairobi Legal Awards, 2023
- 1<sup>st</sup> Runners up, Pupil Master of the Year, 5<sup>th</sup> Annual Nairobi Legal Awards, 2022
- Gold Standard Award for Young People, President's Award
- Silver Standard Award for Young People, President's Award
- 2025 ITR World Tax Rankings ranked Alex Kanyi as 'Highly Regarded' in general corporate tax and tax controversy in Kenya.

## MARKET RECOGNITION

Our Tax & Exchange Control team is externally praised for its depth of resources, capabilities and experience.

*Chambers Global 2018–2025* ranked our Tax & Exchange Control practice in Band 1 for tax. *Chambers Global 2011–2017* ranked our Tax & Exchange Control practice in Band 2 for tax. *The Legal 500 EMEA 2023–2024* recommended us in Tier 1, and Tier 2 in 2009–2022 for tax. *The International Tax Review 2011* ranked our practice in Tier 3 for tax. *World Tax 2011–2012* ranked our practice in Tier 3 for tax. *The Tax Directors Handbook 2012 and 2014* ranked our practice in Tier 2 for tax. *World Finance Legal Awards 2012* awarded our practice the Best Tax Firm accolade.

The way we support and interact with our clients attracts significant external recognition.

**Emil Brincker** is the Practice Head of our Tax & Exchange Control team. *Chambers Global 2003–2025* has consistently ranked him in Band 1 for tax. *The Legal 500 EMEA 2017–2024* recommended Emil as a 'Leading Individual' for tax and named him Lawyer of the Year for tax in 2021. *The 2025 ITR World Tax release* ranked Emil as 'Highly Regarded' in tax controversy in South Africa.

**Sammy Ndolo** is the Kenya Managing Partner. *Chambers Global 2025* ranked Sammy Ndolo in Band 3 for Fintech. *Chambers Global 2021–2025* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2025* ranked him in Band 3 for banking & finance and in Band 4 from 2023–2024. *The Legal 500 EMEA 2024* recommended Sammy as a 'Leading Individual' for banking, finance & capital markets. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023–2024* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2024* ranked him as a 'Notable Practitioner'.

**Gerhard Badenhorst** was awarded an individual 'Spotlight Table' ranking in *Chambers Global 2022–2025* for tax: indirect tax. *Chambers Global 2009–2021* ranked him in Band 1 for tax: indirect tax. *The Legal 500 EMEA 2012–2022* recommended Gerhard for tax. *The Legal 500 EMEA 2023–2024* recommended him as a 'Leading Individual' for tax. *The 2025 ITR World Tax release* ranked Gerhard as 'Highly Regarded' in indirect tax in South Africa.

*Chambers Global 2024–2025* ranked **Jerome Brink** as an 'Up & Coming' tax lawyer. *The Legal 500 EMEA 2023–2024* recommended Jerome as a 'Next Generation' lawyer for tax. *The Legal 500 EMEA 2022* recommended him for tax.

*The Legal 500 EMEA 2023* recommended **Petr Erasmus** for tax.

*The Legal 500 EMEA 2017–2018, 2020* recommended **Dries Hoek** for tax.

*Chambers Global 2025* ranked **Alex Kanyi** as an 'Up & Coming' tax lawyer. *The 2025 ITR World Tax release* ranked him as 'Highly Regarded' in general corporate tax and tax controversy in Kenya.

*The Legal 500 EMEA 2021–2024* recommended **Howmera Parak** for tax.

*Chambers Global 2019–2025* ranked **Stephan Spamer** in Band 3 for tax. *The Legal 500 EMEA 2021–2024* recommended him for tax. *The 2025 ITR World Tax release* ranked Stephan as 'Highly Regarded' in general corporate tax and transaction tax in South Africa.



## OUR TEAM

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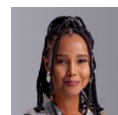
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**BBBEE STATUS: LEVEL ONE CONTRIBUTOR**

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.

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