

**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, 6th Annual Nairobi Legal Awards, 2023
- 1st Runners up, Pupil Master of the Year, 5th Annual Nairobi Legal Awards, 2022
- Gold Standard Award for Young People, President's Award
- Silver Standard Award for Young People, President's Award



SUMMARY PROFILE

LENA ONYANGO

Lena is a Partner in our Tax & Exchange Control and Corporate & Commercial practice areas. Lena is a distinguished expert in law and taxation with an extensive record spanning over a decade in both domestic and international tax advisory and tax dispute resolution. She has deep experience in negotiations with the Kenya Revenue Authority and advocacy before the Tax Appeals Tribunal. Lena was recognised as a 'Leading Woman in Tax in Kenya' during the commemoration of International Women's Day in 2021 and 2022 by KRA.

CAREER

Lena started off her career in 2012 as a Tax Consultant at Viva Africa Consulting LLP. She later joined Oraro and Company Advocates as a Senior Associate in 2015 where she was promoted to Partner. Lena also worked at ANL Law from 2020 as a Partner prior to joining Kieti Law LLP in 2024 as a Partner in the Tax and Exchange Control Practice.

EDUCATION

- LLM in International and European Tax law from University of Maastricht, The Netherlands.
- Diploma in law from the Kenya School of Law.
- Bachelor of Laws, LLB (Second Class, Upper) Catholic University of East Africa.
- Certified Public Accountant (K).

MEMBERSHIPS

- Law Society of Kenya (LSK)
- East Africa Law Society (EALS)
- Institute of Certified Public Accountants Kenya (ICPAK)

EXPERIENCE

REPRESENTATIVE TAX LITIGATION

- Successfully represented an international petroleum company and its related companies in an income tax appeal that involved a trademark dispute at the High Court resulting in a saving of Kshs. 800 Million.
- Successfully represented Vivo Energy (Kenya) Ltd in a Constitutional Petition that involved a Customs Duty assessment at the High Court resulting in a saving of around Kshs. 170 Million.
- Successfully represented a logistics company in an Income Tax Appeal assessment in the Tax Appeals Tribunal resulting in a saving of around Kshs. 800 Million.
- Successfully represented Braeburn Schools in an Income Tax Appeal assessment in the High Court resulting in a saving of around Kshs. 60 Million.
- Successfully negotiated with the KRA in a VAT and Excise Duty tax assessment on behalf of a manufacturing company resulting in a tax saving of around Kshs. 500 Million.
- Successfully represented Mastermatch limited in an appeal at the Court of Appeal against a Customs Duty assessment amounting to Kshs. 40 Million.
- Successfully represented a real estate company in an appeal against a Judicial Review decision with an income tax aspect to it in the Court of Appeal resulting in a saving Kshs. 600 Million.
- Successfully represented KRA in an appeal against a manufacturing company for Excise Duty assessment, at the Court of Appeal amounting to Kshs. 440 Million.



SUMMARY PROFILE

- Successfully represented a mining company in an appeal against VAT, Withholding Tax and Corporation Tax (resulting from an intercompany transaction) assessment at the Tax Appeals Tribunal resulting in a saving of more than Kshs. 1 Billion.
- Successfully represented a manufacturing company in a Customs Duty dispute in the Court of Appeal.
- Successfully represented a logistics company in an appeal against VAT assessment at the High Court resulting in a saving of more than Kshs. 150 Million.
- Successfully Represented a logistics company in an appeal against a Customs Duty assessment at the Tax Appeals Tribunal resulting in a saving of more than Kshs. 30 Million.
- Successfully represented an international agricultural organisation in a customs dispute.
- Represented a Kenyan investment company in numerous arbitration disputes on breach of commercial contracts
- Successfully negotiated with the KRA in a VAT assessment on behalf of an international social enterprise resulting in a saving of Kshs. 180 Million.
- Successfully negotiated with the KRA in a VAT and Corporation Tax assessment on behalf of two related textile manufacturing companies resulting in a saving of around Kshs. 50 Million.
- Successfully represented an FMCG, in an appeal against an Income Tax assessment at the High Court resulting in a saving of around Kshs. 200 Million.

REPRESENTATIVE TAX ADVISORY

- Part of a team that undertook a legal audit of a leading telecommunications group in lieu of significant capital investment by global private equity investors
- Part of a team that advised a leading investment company on a securities restructuring and CMA licensing process.
- Part of a team that reviewed and advised a domestic hospitality company's construction and management contracts in an intended regional expansion.
- Advised an international alternative energy company on residency issues revolving around its holding company.
- Part of a team that undertook a legal and tax due diligence of a group involved in logistics and civil construction company.
- Part of a team that undertook a tax and legal due diligence of a leading telecommunications group in lieu of significant capital investment by global private equity investors
- Part of a team that undertook a tax and legal due diligence of a pharmaceutical chain on a Merger and Acquisition transaction by a private equity firm.
- Reviewed the contracts and was involved in the negotiation of a Private Public Partnership (PPP) between a county and an international company.
- Advised an international organisation on the tax aspects and structuring of a water project.
- Advised an international telecommunications company in a VAT dispute with a parastatal.



SUMMARY PROFILE

- Advised an international construction company in respect of a project with a parastatal.
- Advised and assisted a start-up manufacturing company register a trademark in Kenya.
- Advised a Kenyan company on the tax aspects of their shares, restructuring and group reorganisations in regard to significant capital investment by global private equity investors.
- Advised an international alternative energy company on residency issues revolving around its holding company.
- Advised an international company on the tax aspects of a merger and acquisition of a food and beverage company.
- Advised a Kenyan company on the tax aspects of their shares, restructuring and group reorganisations in regard to significant capital investment by global private equity investors.

MARKET RECOGNITION

- Chambers Global 2022, 2023 and 2024 ranking as an "Up and Coming" figure, celebrated for her advocacy in tax-related disputes.
- "Leading Woman in Tax in Kenya" during the commemoration of International Women's Day in 2021 and 2022 by KRA.

PUBLICATIONS AND SPEAKING ENGAGEMENTS

- Speaker, Top 3 finalist in Africa "Tariff Revenue Implications of the AFCFTA: Tax Reform as a Remedy to Revenue Loss", Africa Tax Administrators Forum, 7th ATRN Conference, 5th -7th September, 2022 Accra, Ghana
- Speaker "VAT Reforms in Kenya" Africa Tax Dialogue, 2015, Maputo, Mozambique.
- Speaker, 'Analysis of the 2018 Budget, KNCCI- Post Budget Analysis, Grand Regency June, 2018.
- Moderator, IBFD – International Tax Conference, Mombasa Kenya, May 2018
- On Taxation: The Common Reporting Standards and Automatic Exchange of Information
- A Tale of Two Countries: A Comparative Look at Trusts in Mauritius and New Zealand
- New in the Market: Share Buybacks Under the Companies Act, 2015
- Even More Changes: A Look at the New Tax Procedures Act, 2015
- Walking a Tight Rope: Thin Line Between Tax Planning and Tax Abuse
- 'Tax-Acious': When Tax Collection Becomes Rather Taxing
- Conference Paper "The Arm's Length Principle, A blessing or Curse to Developing Countries?" Tax Justice Network Africa Tax Research Seminar, 25th -26th March 2013, Tunis, Tunisia.

MARKET RECOGNITION

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

Chambers Global 2018–2024 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 2009–2022* recommended us in Tier 2, and Tier 1 in 2023 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 2003–2024* has consistently ranked him in Band 1 for tax. *The Legal 500 EMEA 2017–2023* recommended Emil as a leading individual for tax and named him Lawyer of the Year for tax in 2021.

Sammy Ndolo is the Kenya Managing Partner. *Chambers Global 2021–2024* ranked Sammy in Band 4 for corporate/M&A. *Chambers Global 2023–2024* ranked him in Band 4 for banking & finance. *The Legal 500 EMEA 2022–2023* recommended him for banking, finance & capital markets. *The Legal 500 EMEA 2023* also recommended Sammy for corporate, commercial/M&A. *IFLR1000 2021–2023* ranked Sammy as a notable practitioner.

Gerhard Badenhorst was awarded an individual Spotlight Table ranking in *Chambers Global 2022–2024* 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* recommended him as a leading individual for tax.

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

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

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

The Legal 500 EMEA 2021–2023 recommended **Howmera Parak** for tax.

Chambers Global 2019–2024 ranked **Stephan Spamer** in Band 3 for tax. *The Legal 500 EMEA 2021–2023* recommended him for tax.



OUR TEAM

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



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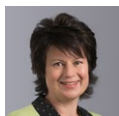
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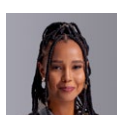
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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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