

Tax Alert

Tithes and offerings are not subject to income tax



Summary

This Alert brings to your attention the High Court's judgment in the case of **Kenya Revenue Authority (KRA) vs Thika Road Baptist Church Ministries (Church) (Case NO. HCCOMMITA/EO24/2021)**.

In 2018, the KRA assessed the Church on the tithes and donations it received. The Church objected to the assessment and KRA subsequently confirmed the assessment in its objection decision.

The Church appealed against the objection decision at the Tax Appeals Tribunal (Tribunal). The Church argued that tithes and donations are not subject to income tax. The Tribunal issued a decision in favour of the Church on 19 February 2020.

KRA appealed against the decision of the Tribunal at the High Court. The High Court upheld the Tribunal's decision in a judgment dated 31 May 2022.

Background

The KRA sent a letter to the Church on 23 October 2018 demanding tax arrears of **KES 5,516,070** for the period 2015 to 2017.

The Church objected to the assessment on the grounds that the Church is a religious organization which does not engage in business. The Church further argued that the income it derives from tithes and offerings is exempted from income tax under paragraph 10 of the First Schedule of the Income Tax Act (Chapter 470 of the Laws of Kenya).

After exchanging correspondence on this issue, the KRA rendered its objection decision on 27 November 2018, confirming the tax assessment. The basis of the KRA decision was the fact that the Church did not have a tax exemption certificate.

The dispute was heard by the Tax Appeals Tribunal which dismissed KRA's objection decision dated 27 November 2018. Unhappy with the Tribunal's decision, the KRA lodged an appeal at the High Court.

KRA's grounds of appeal at the High Court

KRA argued that:

- i. The Church needed a tax exemption certificate for its tithes and donations income to be exempted from tax;
- ii. Exemption is not automatic but is subject to the conditions set out in Paragraph 10 of the First Schedule of the Income Tax Act; and
- iii. The Church ought to have applied for the tax exemption.

The Church's response to KRA's Appeal

In rebutting KRA's appeal, the Church contended that tithes, offerings and freewill donations are not a specified source of income, subject to tax, under the Section 3(2) of the Income Tax Act. For this reason, the issue of applying for an exemption certificate did not arise.

Issues for determination

- i. Whether tithes and offerings are taxable income under the Income Tax Act; and
- ii. Whether the Church was required to apply for the tax exemption certificate.

High's Courts determination

The High Court decided the case in favour of the Church, giving the following reasons:

- Tithes, offerings, and freewill donations to religious organisations do not fall within the scope of taxable income under Section 3(2) of the Income Tax Act;
- KRA did not demonstrate that tithes, donations and offering are gains and profits from business, employment or rights granted for use of property or any other form of recognized income caught by the Income Tax Act; and
- Only income that is taxable under Section 3(2) of the Income Tax Act can be exempted under Section 13 of the Income Tax Act as read with the First Schedule of the Income Tax Act. The Church was therefore not required to apply for a tax exemption certificate.

Our opinion

The decision is a big relief to churches and charitable organisations as it affirms that tithes, offerings, and donations are not subject to tax.

The decision provides clarity on the tax treatment of income that is not specified as subject to tax under the Income Tax Act. The strict interpretation of what is subject to tax under Section 3(2) of the Income Tax Act is a welcome relief for taxpayers where income tax is demanded outside the scope of the Income Tax Act. Further, the decision clarifies that one is not supposed to apply for a tax exemption certificate when the income is not subject to tax in the first place.

It is important to note that churches are subject to tax on the income derived from activities that are covered under Section 3(2) of the Income Tax Act. In such instances, churches need to apply for tax exemption and obtain a tax exemption certificate from the KRA if they do not wish to pay the tax.

KPMG is happy to assist on any issues arising from this decision.

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