Tax Alert

Tribunal Clarifies Deductibility of CSR Expenses and Cost Attribution to Exempt Income

Summary

This alert brings to your attention the recent decision, by the Tax Appeals Tribunal in the case of **African Banking Corporation Limited -versus- Commissioner of Domestic Taxes (Tribunal Appeal E1324 of 2025) [2026] KETAT 162 (KLR) (13 July 2026) (Judgment).**

In summary, the Tribunal held that:

- Although corporate sponsorships may, in principle, qualify as deductible marketing and advertising expenditure, the Tribunal found that the taxpayer had not provided sufficient evidence linking the disputed CSR expenditure to a commercial purpose and identifiable marketing deliverables.
- KRA's apportionment of interest and operating expenses to exempt infrastructure bond income is speculative and without factual foundation.

Background

The Appellant, African Banking Corporation Limited, herein referred to as ABC or the Bank, is a licensed commercial bank operating in Kenya.

Following a compliance review of the Bank's tax affairs for the year of income 2019, KRA issued an additional assessment arising from two principal adjustments:

- the disallowance of **KES 1,339,841** in CSR expenses claimed within advertising and marketing expenses, and
- the disallowance of **KES 37,703,741** in expenses attributed to exempt infrastructure bond income.

The Appellant objected to the assessment in full.

KRA rejected the objection and issued an objection decision confirming the assessment. ABC then appealed to the Tax Appeals Tribunal.

The Appellant's Arguments

In its appeal, ABC contended that it operates a relationship-driven banking model that relies significantly on engagement with organised groups and institutions, including youth and women investment groups (commonly known as chamas), church dioceses, SACCOs, schools, and community-based organisations.

The Bank argued that, within the context of its business model, expenditure incurred on sponsorships, event participation, and brand visibility initiatives was not charitable in nature.

Rather, the expenditure formed an integral part of its marketing and business development strategy, enabling it to promote its products and services, attract and retain customers, and create opportunities for lending, savings mobilisation, trade finance, and other transactional banking activities.

On the issue of expenses attributed to exempt income, ABC argued that the income in question was derived from Infrastructure Bonds (IFBs), which generate passive income that accrues automatically by virtue of holding the bonds and does not require the incurrence of additional staff costs, advertising expenses, or financing costs.

The Bank therefore contended that KRA's assumption that a portion of its general operating expenses was attributable to the exempt income lacked both a factual and legal basis.

According to ABC, no specific expenses had been incurred in generating the exempt income, rendering KRA's attribution and consequent disallowance of expenses arbitrary and unjustified.

On these grounds, ABC urged the Tribunal to allow the appeal, set aside KRA's objection decision, restrain any enforcement of the disputed tax demand, and award costs and any other appropriate relief.

KRA's Arguments

Regarding the CSR expenses, KRA submitted that ABC had classified the expenditures as CSR costs in its own audited financial statements and accounting records.

KRA argued that the nature and character of the sponsorships fitted well within the definition of donations. KRA further argued that ordinary marketing and advertising expenses would be supported by an invoice issued to ABC for it to pay the said fees and claim them as an expense.

On the expenses attributed to IFBs, KRA contended that the bonds were acquired using customer deposits, which bear interest.

As such, a portion of the interest expenses incurred on customer deposits and other borrowed funds should be attributed to the earning of the exempt income.

KRA also relied on industry practice, arguing that financial institutions typically incur costs, including treasury staff salaries, in managing and investing in infrastructure bonds.

In its view, these costs are wholly and exclusively incurred in generating the exempt income and should therefore be apportioned accordingly.

On this basis, KRA urged the Tribunal to dismiss the appeal, uphold its objection decision, and award it costs.

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The Tribunal's Findings

The Tribunal identified three issues for determination. It found that the assessment was not time-barred under the limitation period applicable to the assessment. The remaining dispute centred on two substantive issues:

i. Whether corporate social responsibility (CSR) expenses claimed as advertising and marketing expenses were deductible; and

ii. Whether KRA was justified in attributing a portion of operating expenses to exempt infrastructure bond income.

On the first issue, the Tribunal acknowledged that sponsorship arrangements can constitute deductible marketing and advertising expenditure provided its commercial object is established, and that the substance of a transaction prevails over its label.

However, the Tribunal found that ABC did not provide sufficient evidence to demonstrate that the expenditures, which had been recorded in its books as CSR expenses, were in fact marketing and advertising costs.

ABC failed to produce sponsorship agreements, invoices for advertising services, branding arrangements or other documentation evidencing marketing deliverables. Accordingly, the Tribunal upheld KRA's disallowance of the CSR expenses.

On the second issue, the Tribunal noted that ABC had furnished documentary evidence, including purchase notes relating to the acquisition of the infrastructure bonds and the sources of funds used to finance those investments.

The Tribunal found that KRA had not undertaken or presented any detailed analysis demonstrating that the bonds were funded using interest-bearing customer deposits or borrowed funds.

Further, the Tribunal observed that KRA had failed to identify any specific expense incurred in generating the exempt infrastructure bond income or establish a clear nexus between the apportioned expenses and the passive income earned from the bonds.

Based on this, the Tribunal held that the apportionment of expenses was speculative and lacked a sufficient factual basis.

Our Comments and Key take ways

This decision provides important guidance on two recurring tax issues: the deductibility of CSR and sponsorship expenditure, and the attribution of expenses to exempt income.

The Tribunal reaffirmed that while sponsorships and community engagement initiatives may qualify as deductible marketing and advertising expenses, taxpayers must maintain sufficient evidence to demonstrate the underlying commercial purpose and business benefit. The substance of an expense will prevail over its label, but only where supported by adequate documentation.

The decision indicates that an expense properly established as attributable to exempt income may be disallowed under the applicable tax provisions. In this case, however, the Tribunal found that KRA had not established a sufficient factual nexus between the expenses apportioned and the exempt infrastructure bond income.

The judgment therefore underscores the importance of maintaining robust documentation to substantiate both the commercial basis of deductible expenditure and the funding and cost structure of exempt investments.

For taxpayers, the decision has two immediate implications. First, sponsorship and community-engagement expenditure should be supported by agreements, invoices and evidence of specific marketing deliverables. Second, where exempt investment income is earned, taxpayers should maintain records showing the source of the invested funds and the expenses, if any, directly connected with generating that income.

KPMG is happy to assist on any issues arising from this decision. If you have any questions, do not hesitate to reach out to us on **taxandregulatory@kpmg.co.ke** or contact **swaweru@kpmg.co.ke**

home.kpmg/ke/en/home

Contacts

Clive Akora
Partner/Director
Tax & Regulatory Services
KPMG Advisory Services Limited
E: cakora@kpmg.co.ke

Stephen Waweru
Technical Lead
Tax & Regulatory Services
KPMG Advisory Services Limited
E: swaweru@kpmg.co.ke

Miriam Mutune
Associate
Tax & Regulatory Services
KPMG Advisory Services Limited
E: smmutune@kpmg.co.ke