



Tax Alert

Value Added Tax (VAT) Exemption for Insurance Intermediaries Does Not Extend to Asset Management Services.



This alert highlights our analysis of the Tax Appeals Tribunal decision in Tax Appeal No. E473 of 2025 Waweru versus Commissioner of Domestic Taxes [2026] KETAT 12 (KLR).

The judgment draws a clear and critical distinction between insurance brokerage services, which enjoy VAT exempt status, and asset management services, which the Tribunal confirmed are subject to VAT at the standard rate of 16%.

This decision is particularly instructive for insurance intermediaries who also engage in ancillary financial services such as asset management, investment advisory, or pension product sales, and who may have assumed that the VAT exemption applicable to their core insurance activities extends broadly to all commission income earned.



A. Background

The Appellant, a Kenyan citizen, engaged in insurance agency and brokerage services as well as earned commissions from the sale of asset management financial products.

Kenya Revenue Authority (KRA) applied VAT at 16% on the assessed amounts relating to asset management commissions on the basis that the Appellant, being registered for VAT, had failed to account for VAT. The Appellant filed a notice of objection dated 29 January 2025 disputing the assessments. KRA issued its objection decision on 27 March 2025 upholding the assessments, prompting the Appellant to appeal to the Tribunal.

Key to note is that Appellant's VAT registration arose in the context of the Tax Laws (Amendment) Act 2020, which had removed insurance agency and brokerage services from the VAT exemption list under Paragraph 10, Part II of the First Schedule to the VAT Act 2013.

This change was, however, declared unconstitutional and unlawful by the High Court on 16 December 2021 courtesy of the Association of Kenya Insurers (AKI) v Kenya Revenue Authority & 2 others [2021] KEHC 402 (KLR) decision, which restored the VAT exempt status of insurance agency, insurance brokerage, and securities exchange brokerage services.

The Appellant averred that he applied to KRA for VAT deregistration on 27 May 2022, however his application was not considered which meant that the Appellant's VAT obligation was never cancelled.

Below is a brief summary of the key arguments advanced by the parties and the Court's determination.

B. Appellant's arguments

The Appellant challenged the VAT assessments on the basis that they were erroneous, excessive, and contrary to principles of administrative justice. He argued that his VAT registration had been compelled by the since-nullified Tax Laws (Amendment) Act 2020, and a deregistration request submitted on 27 May 2022 remained unprocessed by KRA.

Furthermore, the Appellant's annual commission income from asset management product sales fell below the statutory VAT registration threshold of KES 5,000,000 under the VAT Act.

The Appellant further contended that its asset management commission income constitutes exempt financial services under Part 2 of the First Schedule to the VAT Act 2013, and that no valid legal basis existed for imposing VAT on such commissions given the unconstitutionality of the legislation that had introduced that liability. He also alleged that KRA's assessments were issued in bad faith, in contravention of Section 31(8) of the Tax Procedures Act, and without genuine consideration of the evidence submitted during the objection process.

Finally, the Appellant invoked the doctrine of legitimate expectation, asserting that KRA's failure to process the deregistration request, together with the unlawful issuance of the assessments and wrongful dismissal of the objection, rendered KRA's conduct unreasonable and procedurally unfair.

C. KRA arguments

KRA opposed the appeal on the basis that its tax audit for the period 2023 to 2024 established that the Appellant provided both insurance brokerage and asset management services, with the VAT assessments relating specifically to the asset management component. The Appellant had failed to charge or remit VAT on its asset management commissions, thereby warranting the additional assessments issued on 23 January 2025.

KRA further contended that asset management services are not exempt supplies under the First Schedule to the VAT Act, which limits exemption to insurance and reinsurance services while expressly excluding management, consultancy, actuarial, and loss adjusting services. KRA also relied on the High Court's decision in *AKI v KRA* [2021] KEHC 402 (KLR), arguing that the ruling restored VAT exempt status only for insurance agency, insurance brokerage, and securities exchange brokerage services, and did not extend to asset management services.

Finally, KRA maintained that the Appellant's VAT obligations remained valid at the time of assessment, as it was still engaged in taxable activities, rendering deregistration contrary to Section 36(3)(a) of the VAT Act. By virtue of Section 36(8), the Appellant remained liable for all taxes due from the date of its registration, and the assessments were lawfully issued under Section 29 of the Tax Procedures Act and Section 5 of the VAT Act. KRA additionally asserted that the Appellant had failed to discharge its burden of proof under Section 56(1) of the Tax Procedures Act to demonstrate that the assessments were incorrect.

D. Tax Appeals Tribunal's findings

The Tribunal affirmed that the burden of proof rested with the Appellant under Section 30 of the Tax Appeals Tribunal Act and Section 56(1) of the Tax Procedures Act to demonstrate that the assessments were excessive or incorrect. It then examined the definition of insurance business under Section 2 of the Insurance Act, finding that asset management product sales fell outside that definition, and consequently outside the scope of any VAT exemption applicable to insurance activities.

The Tribunal further considered the effect of the High Court's decision in *AKI v KRA* [2021] KEHC 402 (KLR), clarifying that its sole effect was to reinstate the VAT exempt status of insurance agency, insurance brokerage, and securities exchange brokerage services. It held that the ruling neither extended nor could have extended VAT exempt status to asset management services, and that the Appellant had misinterpreted the decision in asserting that the retention of insurance-related exemptions impliedly exempted asset management commissions from VAT.

The Tribunal restated the foundational principle that tax exemptions must be expressly provided for in legislation. Having reviewed the First Schedule to the VAT Act and finding no provision exempting asset management services, and noting the Appellant's own acknowledgment in its correspondence and Statement of Facts that it had received commission income from asset management activities in 2023 and 2024, the Tribunal held that such commissions were subject to VAT at the standard rate of 16%.





However, the Tribunal’s interpretation of “insurance business” under Section 2 of the Insurance Act warrants further scrutiny. The Tribunal appears to have confined the definition to the narrow limb of undertaking liability for losses upon the occurrence of a specified event. This is without adequately engaging with the extended limb of the same definition, which expressly brings within the scope of insurance business “any business incidental to insurance business.”

This broader statutory language is significant. Where an insurance intermediary earns commissions specifically for directing policyholder funds into investment products that are integral to an insurance contract, such as unit-linked or investment-linked life insurance policies, a compelling argument exists that such activity constitutes business incidental to insurance business within the meaning of Section 2 of the Insurance Act.

On that basis, it can be argued that the commissions arising therefrom may properly be characterised as income from insurance agency and consequently exempt from VAT under the reinstated provisions affirmed in AKI v KRA.

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E. Our Comments

The Tribunal decision affirmed two principal facts. First, the effect of the decision in AKI v KRA [2021] KEHC was narrow and specific: it reinstated the VAT exempt status of insurance agency, insurance brokerage, and securities exchange brokerage services, following the court’s finding that the amendments introduced by the Tax Laws (Amendment) Act 2020 were unconstitutional.

The decision did not create a broader exemption for all financial services offered by insurance intermediaries.

This is consistent with the principle affirmed by the Tribunal in the present case and entrenched in VAT jurisprudence generally, that exemptions are strictly construed and must be expressly enumerated in the First Schedule to the VAT Act.

Insurance intermediaries should not assume that an exemption applicable to core insurance activities extends by implication to ancillary or collateral financial services they may offer.

Second, the Tribunal correctly held that a pending deregistration request does not operate to suspend a taxpayer’s VAT obligations. By virtue of Section 36 of the VAT Act, a registered person remains legally bound to comply with all VAT obligations until deregistration is formally confirmed in writing by KRA.

The strength of this argument, however, is contingent on the nature and structure of the underlying arrangement. Where the investment management activity is inextricably linked to the performance of an insurance contract, the nexus to insurance business is sufficiently proximate to sustain the exemption claim.

Conversely, where asset management services are rendered independently of any insurance contract, such as the management of a standalone investment fund on behalf of an insurer or third-party investors, the connection to insurance business is too remote to bring such services within the statutory definition, and VAT liability would attach in the ordinary course.

The critical distinction therefore lies in whether the asset management activity is an integral component of an insurance product or a wholly independent commercial service.

This remains an area requiring definitive judicial pronouncement or legislative clarification and presents a strong ground of appeal warranting further interrogation before the High Court which we await to see whether the Appellant will explore.

F. The next steps

Based on the TAT's reasoning, we would propose the following:

- i. Insurance intermediaries who earn commissions from asset management, investment advisory, pension product sales, or similar financial services should urgently review their VAT compliance positions to determine whether such income has been correctly subjected to VAT.
- ii. Businesses with mixed income streams that is combining VAT exempt insurance activities with non-exempt financial services should maintain clear segregation in their accounting records to enable accurate VAT apportionment and compliance.
- iii. Taxpayers who had registered for VAT under the now-nullified provisions of the Tax Laws (Amendment) Act 2020 and sought deregistration should be aware that a pending deregistration request does not suspend VAT obligations. They remain legally required to comply with the VAT Act until deregistration is formally confirmed in writing by KRA pursuant to Section 36 of the VAT Act.

KPMG is happy to assist on any issues arising from this alert. Contact our tax and regulatory team on taxandregulatory@kpmg.co.ke or cakora@kpmg.co.ke.

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