

Kenya High Court rules club entrance and subscription fees are exempt from VAT

- *The Kenya Revenue Authority sought to impose value added tax (VAT) on entrance fees and subscription fees charged by golf clubs.*
- *The High Court concluded that the Value Added Tax Act, 2013 did not expressly revoke Public Notice No. 20 of 2001 that exempted these fees from VAT.*
- *This decision affirmed that entrance fees and subscription fees charged by golf clubs are exempt from VAT.*

Executive summary

The High Court in Kenya issued a decision (*Commissioner of Domestic Taxes v Sigona Golf Club, et al.*) in favor of several golf clubs and the Kenya Golf Federation (Respondents), affirming that entrance fees and subscription fees charged by golf clubs are exempt from VAT.

Detailed discussion

The appeal forming the subject of the decision arose when the Kenya Revenue Authority (KRA) conducted a tax compliance check on the Respondents and issued a tax demand for VAT on entrance fees and subscription fees. The KRA rejected the objections, which prompted the Respondents to file their appeals at the Tax Appeals Tribunal (TAT). The appeals succeeded and the TAT set aside the impugned tax demands.

Dissatisfied with the decisions, the KRA (Appellant) filed an appeal in the High Court seeking to have the TAT's decisions set aside.

Appellant's arguments

The Appellant asserted that the Respondents were trading and doing business with their members. Entrance fees and subscription fees thus should be considered as taxable supplies, the Appellant asserted.

The Appellant further argued that Public Notice No. 20 of 2001 (the public notice), which exempted entrance fees and subscription fees from VAT, was issued under the repealed VAT Act Cap 476 (the repealed Act) and thus was revoked automatically by the Statutory Instruments Act, 2013 once the VAT Act 2013 came into force. Consequently, the Appellant contended, the TAT erred in relying on the public notice to find that the services were exempt from VAT.

Respondents' arguments

The Respondents argued that the TAT correctly concluded that the fees at issue were exempt from VAT. They contended that even if the public notice was allegedly repealed by the Statutory Instruments Act, 2013 the Appellant failed to inform the Respondents of its intention to impose VAT on the subject fees.

High Court determination

The High Court, having considered the Appeal, determined that the public notice created a legitimate expectation that the clubs would continue to enjoy the exemption. The Court pointed out that the VAT Act 2013 neither withdrew the exemption nor imposed VAT on the fees.

The Court noted that there should be public participation before repealing a tax exemption.

Finding

The High Court concluded that the Appellant had failed to discharge its burden because it did not provide proof that the public notice that exempted entrance fees and subscription fees charged by golf and sports clubs was revoked by the entry into force of the VAT Act, 2013.

The High Court therefore dismissed the appeal due to lack of merit and upheld the decision of the TAT.
