Tax Alert

August 2026

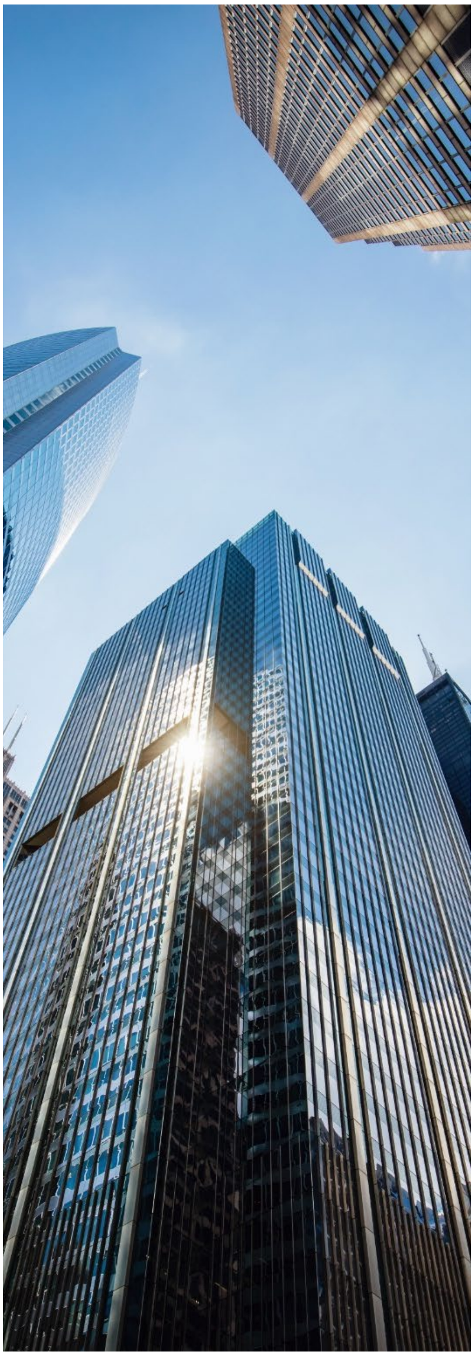
Tax Appeals Tribunal rejects Treasury's restriction orders and affirms taxpayers' right to offset overpaid taxes across all tax heads.

Summary

In a decision delivered on 10 July 2026, the Tax Appeals Tribunal, in **Howard Humphreys (East Africa) Limited v Kenya Revenue Authority, TATC/E980/2025** held that a taxpayer with ascertained and approved overpaid taxes may utilise Overpayment Adjustment Vouchers ("OAVs") to offset any outstanding tax debts and future tax liabilities, including Pay-As-You-Earn ("PAYE"), without restriction to specific tax heads. The Tribunal found that Section 47 of the Tax Procedures Act, 2015 ("TPA") does not restrict offsets to specific tax heads, and that an administrative circular issued by the National Treasury could not override taxpayers' rights under the law. Consequently, the Kenya Revenue Authority's ("KRA") decision to disable the iTax functionality that enabled offset of PAYE liabilities was found to be without legal basis.

KES 42.2M

in WHT credits were held by Howard Humphreys (East Africa) Limited, an engineering consultancy firm.



Background

Howard Humphreys (East Africa) Limited ("the Appellant"), an engineering consultancy and management services company, had accumulated withholding tax ("WHT") credits amounting to KES 42.2 million. Owing to substantial accumulated tax losses, it was unable to utilise WHT credits against its corporation income tax liability, and the credits accumulated as overpaid tax. Following a refund audit and a consent settlement in an earlier dispute, KRA confirmed the amount as refundable.

Although the Appellant applied for a cash refund, KRA rejected the application and directed it to utilise the overpaid tax through offsets. Consequently, KRA issued Overpayment Adjustment Vouchers ("OAVs") equivalent to the approved tax credits. Between July 2024 and June 2025, the Appellant successfully utilised the OAVs to settle PAYE and VAT liabilities through the iTax platform.

On 19 June 2025, the Cabinet Secretary for the National Treasury and Economic Planning issued a circular (Ref. TNT/ZZ/129/010(7)) addressed to the Commissioner General of KRA. The circular directed that approved refunds should not be offset against PAYE, withholding taxes, or taxes, fees and levies on imported goods, which were considered to be "agency taxes". Instead, refunds were to be strictly offset against the taxpayer's "own" outstanding tax debts and future tax liabilities, which the circular described as only the company's corporation tax dues, VAT payable on its supplies, and excise duty payable on its supplies.

Pursuant to this circular, KRA disabled the iTax functionality that previously allowed taxpayers to apply OAVs against PAYE liabilities. As a result, when the Appellant attempted to utilise its OAVs to settle PAYE liabilities for July and August 2025, it was unable to do so and interest accrued on the unpaid amounts. It therefore wrote to KRA requesting reactivation of the functionality. KRA did not respond. The Appellant therefore lodged an appeal at the Tribunal.

The Appellant contended that Section 47(1)(a) of the TPA expressly permits taxpayers to offset overpaid taxes against existing and future tax liabilities without restricting the offset to specific tax heads. It contended that an administrative circular could not override an express statutory provision.

KRA argued that that the deduction of PAYE attaches to an individual employee's tax obligation, with the liability for the tax resting on the employee and not the employer, the employer being merely an agent of KRA for the purposes of collection and accounting. It concluded that only the employee ought to be the only beneficiary of such a credit.

The Appellant maintained that contrary to KRA's and National Treasury's assertion, it is the employers who bear the statutory obligation to deduct, account for and remit PAYE and are statutorily exposed to penalties and interest for non-compliance and they should therefore be allowed to utilise their tax overpayments to cover their PAYE payment obligations.

The Tribunal's determination

Adopting a plain reading of Section 47(1)(a) of the TPA, the Tribunal noted that the provision reads as follows;
"(1) Where a taxpayer has overpaid a tax under any tax law, the taxpayer may apply to the Commissioner in the prescribed form— (a) to offset the overpaid tax against the taxpayer's outstanding tax debts and future tax liabilities including instalment taxes and value added tax payable on imports."

The words "the taxpayer's outstanding tax debts and future tax liabilities" is without qualification or restriction as to tax head. It therefore found that the provision permits taxpayers to offset overpaid tax against outstanding tax debts and future tax liabilities without restricting the offset to particular tax heads. Further, the Tribunal emphasised that the use of the word "including" in the provision indicated that the listed tax liabilities were not exhaustive.

The Tribunal drew a critical distinction between the charge to tax on the employee's income and the employer's statutory obligation to deduct, account for and remit PAYE to KRA. It held that although PAYE is imposed on employees' income, employers bear the statutory obligation to deduct, account for and remit the tax. Consequently, PAYE obligations form part of an employer's outstanding tax debts and future tax liabilities for purposes of Section 47 of the TPA.

The Tribunal rejected KRA's reliance on the National Treasury circular, holding that a circular cannot amend, restrict or vary the operation of a statutory provision. Any limitation on the utilisation of approved tax credits would require legislative amendment rather than administrative action.

The Tribunal also rejected KRA's unjust enrichment argument, noting that the Appellant was not seeking a refund of PAYE deducted from employees. Rather, it was settling its own remittance obligation using its own ascertained income tax credit arising from WHT on its consultancy fees. The employees' position remained unaffected.

Having found that KRA unlawfully disabled the offset functionality, the Tribunal further held that the interest imposed on the Appellant's PAYE liabilities arose solely from KRA's actions and therefore had to be vacated. The appeal was accordingly allowed with the Tribunal declaring that the Appellant was entitled to utilise its OAVs to offset PAYE liabilities and any other outstanding tax debts and future tax liabilities under Section 47(1)(a) of the TPA

Implications of the judgment

This decision is significant for taxpayers holding approved tax credits, particularly those arising from excess withholding tax credits. The decision affirms that taxpayers with ascertained and approved overpaid taxes may utilise their OAVs to offset any and all kinds of existing and future tax liabilities. Taxpayers holding approved OAVs are therefore entitled to apply them against their outstanding tax debts and future tax liabilities broadly, including PAYE, VAT, corporation tax, and other obligations.

The decision also raises questions regarding the legality of administrative restrictions introduced through the National Treasury circulars or potentially KRA administrative guidelines that are deemed subversive to the strict provisions of the law. The Tribunal reaffirmed the principle that administrative guidance cannot override express statutory provisions and that any limitation of taxpayer rights must be grounded in legislation.

For taxpayers with substantial accumulated tax credits and limited prospects of utilising those credits against corporation tax liabilities, the decision provides support for the application of approved credits against PAYE and potentially other tax liabilities. Taxpayers seeking to offset overpaid taxes against PAYE and other liabilities may apply for OAVs and utilise them against such tax obligations. However, the practical ability to do so remains dependent on KRA enabling the requisite iTax functionality. We recommend that affected taxpayers engage with KRA to request reactivation of the offset functionality, citing this Tribunal decision.

Given the broader revenue implications of the decision and the policy concerns underpinning the National Treasury circular, it remains to be seen whether KRA will appeal the decision to the High Court or pursue legislative amendments to Section 47 of the TPA. Until such an amendment is enacted, the law as interpreted by the Tribunal remains that offset is available across all tax heads.

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