



# Tax Alert

December 2025

## High Court rules on who is the principal supplier for VAT purposes for services offered through digital platforms



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In the case of the Commissioner of Domestic Taxes v Sindy Limited (Income Tax Appeal No. E137 of 2024) the High Court has delivered a significant judgement with far-reaching implications on the application of VAT to platform-facilitated services in Kenya. At the heart of the case is a crucial question: when a digital platform orchestrates pricing, allocation of service providers, and payment flows, is it the principal supplier or merely a commission-earning intermediary? The decision also considers the treatment of Requests for Payment (“RFPs”) under the Value Added Tax Act, Cap 476 (“VAT Act”) and the weight of private rulings issued by the Commissioner.

### Background

Sindy Limited (“Sindy”, “the Respondent”) operated a digital marketplace platform that matched customers requiring delivery/transportation services with independent third-party transporters. Following an audit initiated on 1 November 2021, the Kenya Revenue Authority (“KRA”) issued additional VAT and Corporation Tax assessments, citing discrepancies between Sindy’s declared turnover and bankings. Sindy objected, and while the Corporation Tax assessment was vacated, the VAT liability was confirmed. The Appellant (“the KRA”, “the Commissioner”) was of the view that Sindy was liable for VAT on the full delivery charges, not merely on its commissions. Sindy appealed to the Tax Appeals Tribunal (“TAT”), which ruled in its favour, finding that Sindy was not a transport service provider but a platform operator.

The KRA appealed to the High Court on grounds that the Tribunal failed to consider the economic reality of the transactions.

### Kenya Revenue Authority’s position

The KRA argued that Sindy controls the essential elements of the transport service and is, therefore, the principal supplier for VAT purposes. Specifically, it asserted that Sindy controls the customer relationship through its application and brand, dispatches the nearest driver through its algorithm, determines the price and issues RFPs demanding payment, and collects the full consideration directly into its bank accounts while remitting payouts to drivers as cost of sale. On this basis, the KRA contended that VAT is chargeable on the full consideration under Section 5(1) of the VAT Act and that RFPs are functionally tax invoices under Section 42.

## Sendy Limited position

Sendy maintained that it is a technology platform charging commission to transporters and that VAT is due only on that commission. Sendy relied on a private ruling issued by the KRA on 30 June 2020, binding under section 65(4) of the Tax Procedures Act, Cap 469A (“TPA”), confirming that transporters should account for VAT on transport services while Sendy should account for VAT on commissions earned. Sendy also raised a preliminary objection that the High Court’s jurisdiction is limited to questions of law under section 56(2) of the TPA, and that the Tribunal’s findings were factual.

## The High Court’s determination

The Court held that the appeal raised questions of law, including the legal characterization of the supply and the status of RFPs under the VAT Act. Applying a substance-over-form analysis, the Court found that Sendy exercises decisive control over the supply and, therefore, acts as the principal supplier for VAT purposes. The Court was persuaded by the transactional realities, noting that Sendy authorizes the charge and demands payment in its own name through RFPs. It further observed that Sendy allocates the driver via its algorithm, effectively authorizing delivery, and that customers pay Sendy directly and interact exclusively with Sendy’s platform and brand.

The Court drew on comparative VAT jurisprudence, including the EU’s “deemed supplier” approach and decisions such as put forward in the *Asociación Profesional Elite Taxi v Uber Systems Spain SL* (Case C434/15) case emphasizing that platforms controlling the essential aspects of a transaction are deemed suppliers liable on the full consideration.

Regarding the 30 June 2020 private ruling, the High Court stressed that while such rulings are binding on the Commissioner administratively, they cannot override the correct statutory interpretation by a court. The duty of the Court is to apply the law as

enacted, and legitimate expectations arising from administrative rulings do not estop judicial determination.

The Court allowed the appeal, set aside the Tribunal’s decision, and upheld the Objection Decision confirming VAT of KES 82,248,150.74.

## Key takeaways and implications

This judgement provides critical guidance for digital platforms operating in Kenya. Where a platform controls pricing, allocation of service providers, terms and conditions, and payment collection, it may be treated as the principal supplier for VAT purposes and, therefore, liable on the full consideration paid by customers. Functional documents such as RFPs may be treated as demands for payment consistent with tax invoice requirements, depending on their role in the billing process and the characterization of the supplier.

Administrative private rulings, even if binding on the Commissioner, cannot displace statutory interpretation by the courts, and platforms relying on prior rulings should reassess their VAT position in light of this judgement.

The decision may align Kenya’s VAT treatment of digital platforms with persuasive international jurisprudence that emphasizes economic reality over contractual form.

Given the sector-wide impact, platforms facilitating multi-party transactions, particularly in mobility, logistics, delivery, marketplace services, and on-demand content, should review their contractual frameworks, customer billing flows, and VAT compliance models to assess potential exposures.

In the absence of a stay or a successful appeal, this judgement potentially sets a precedence on the VAT characterization of digital platform-facilitated services in Kenya.

We will continue to monitor any developments in regard to this topic. Please feel free to contact your usual PwC contact or any of our tax experts listed herein should you wish to discuss this further.

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