

LEGAL UPDATE

Court of Appeal Clarifies Withholding Tax Scope on Security Services Provided Before 1 July 2016

Case: Commissioner General (TRA) v. Coca-Cola Kwanza Ltd, Civil Appeal No. 201 of 2023 – Decision delivered on 27 June 2025

1. Overview and Significance of the Decision

The Court of Appeal of Tanzania has delivered a landmark ruling clarifying that payments for private security services rendered prior to 1 July 2016 were not subject to withholding tax (WHT) under the Income Tax Act (ITA). The Court emphasized that, under the law applicable at the time, security services did not fall within the scope of taxable services subject to WHT.

This decision offers crucial guidance for taxpayers facing similar assessments and sets a binding precedent on the pre-2016 interpretation of the withholding tax regime.

2. Background of the Case

TRA conducted a tax audit and raised WHT assessments totaling TZS.158.8 million on security service and consultancy fees. TRA rejected the taxpayer's objection, maintaining that security services constituted "independent business character" services subject to WHT. TRAT and TRAB ruled in favour of the taxpayer and set aside the assessment. TRA appealed before the Court of Appeal.

3. Key Legal Issues

- Whether payments for private security services qualified as "other such services of an independent business character" under the pre-2016 § 83(1)(c) of the ITA.
- Whether the taxpayer sufficiently proved that consultancy-service payments for January to June 2013 were not subject to WHT.
- Whether interest imposed on the assessed WHT remained valid after the principal tax liability was set aside.

4. Court Findings

The Court applied the *ejusdem generis principle*, ruling that the phrase “other services” must be restricted to services of the same nature as professional or consultancy services. security services do not fall within this class. TRA’s Withholding Tax Practice Note. 1 of 2013 was found to be binding on TRA officers and persuasive to the court, though not statutory law. The Court held that while tax laws generally require strict interpretation. Literal meaning must give way where it would render statutory provisions redundant or lead to unreasonable results. The Court dismissed the entire appeal.

5. Practical Implications for Taxpayers

- **Audit Defense:** TRA auditors must now adhere strictly to the narrow pre-2016 interpretation, limiting WHT application to professional or consultancy services as outlined in Practice Note No. 1/2013.
- **Post-2016 Law Still Applies:** Security services remain subject to WHT after 1 July 2016, following explicit legislative amendments.
- **Importance of Accurate Records:** The Court emphasized that tax assessments should follow the dates on invoices, underscoring the importance of accurate documentation.

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