



TAX ALERT

WHEN CAN THE KENYA REVENUE AUTHORITY (KRA) VALIDLY TREAT BANK DEPOSITS AS TAXABLE INCOME?

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- ❑ **The taxpayer fails the burden of proof** – Under Section 56 of the Tax Procedures Act, once KRA has issued an assessment, it is up to the taxpayer to prove otherwise. If the taxpayer cannot produce verifiable records showing that deposits are from non-taxable sources (such as loans, shareholder capital, intercompany transfers, or refunds), KRA is entitled to treat them as income.
- ❑ **Books of account are unreliable or absent** – If financial statements, ledgers, and supporting vouchers are missing, inconsistent, or not properly kept in accordance with the Income Tax Act and Companies Act, KRA can disregard them and rely on bank deposits analysis.
- ❑ **No corroborative evidence is available** – Claims that deposits represent non-income items must be supported with independent and credible evidence: e.g **Loan** agreements and repayment schedules for borrowings, **Board/shareholder resolutions and updated CR12** for capital injections, **Contracts, invoices**, or documentation on correspondence to support intercompany transfers or refunds.
- ❑ **Judicial precedent supports KRA's approach** – Kenyan tax tribunals and courts have upheld KRA's "banking method" in multiple cases where taxpayers could not adequately substantiate their explanations. The logic is that bank deposits are prima facie evidence of cash received, and unless proven otherwise, they are presumed to be taxable receipts.

Case Overview: Kirin Pipes Limited vs Commissioner—E1116 of 2024 (Tax Appeals Tribunal, 22 August 2025)

The KRA audited Kirin Pipes Limited's bank account activity for the FY 2019 – 2022 and issued additional assessments amounting to KES 34,300,288 (income tax) and KES 22,687,105 (VAT)

Kirin Pipes' Main Argument

The KRA wrongly treated all bank deposits as income.

Several categories of deposits were not income:

- ❑ Capital injections from shareholders totaling KES 29,425,495.45 (in addition to the initial KES 10 million capital declared).
- ❑ A loan of KES 31,697,392 from Nanchang Municipal Engineering Development.
- ❑ Funds from shareholders totaling KES 24,619,662.

The company claimed these were non-taxable as they represent capital and loans, not income



Tribunal's Analysis and Decision

- The company failed to provide adequate documentation such as certified bank statements, resolutions, or minute references linking deposits to shareholders listed in the CR-12 (company search) or to explain how the capital flow occurred.
- The loan terms were open-ended, interest-free, and lacked a repayment schedule. No repayments were evidenced over the FY 2019 - 2022. These factors rendered the loan claim unverifiable

Burden of Proof

Under Section 56 of the Tax Procedures Act and Section 30 of the Tax Appeals Tribunal Act, the taxpayer carries the burden of proof. Kirin Pipes failed to meet that threshold, making their assertions mere allegations rather than substantiated facts.

Final Outcome

The Tribunal dismissed the appeal, upheld the KRA's objection decision, and confirmed that the assessments were valid. Each party was to bear its own costs

Decisions Illustrating the Principle

1. Gemini Properties Limited v Commissioner of Investigation and Enforcement (Income Tax Appeal E056 of 2022) [2024] KEHC 908 (KLR) (Commercial and Tax) (19 January 2024)

Gemini Properties claimed that many deposits were non-revenue items such as loans, tenant deposits, intercompany transfers, and disbursements. The High Court, however, found that the taxpayer failed to produce tenancy agreements, stamped receipts, or credible proof of these claims. As a result, the KRA was entitled to treat unexplained deposits as taxable income, since the burden of proof rests with the taxpayer.

2. Roniam Construction Limited v Commissioner of Legal Services and Board Coordination (Tax Appeal E019 of 2024) [2024] KETAT 1669 (21 November 2024)

Roniam challenged **Kshs. 15.67 million** in additional taxes, arguing that deposits wrongly included loans and capital injections. The Tribunal held that Roniam had not provided sufficient proof and therefore upheld the KRA's decision, dismissing the appeal.

3. Hamron Logistics Limited v Commissioner of Domestic Taxes (Tax Appeal E972 of 2023) [2024] KETAT 1612 (22 November 2024)

Hamron Logistics disputed **Kshs. 13.2 million**, claiming that deposits included loans, capital injections, bounced cheques, and contra entries. The Tribunal found that the taxpayer failed to submit adequate supporting documentation despite being given time and reminders. The appeal was dismissed, with the Tribunal affirming that the burden of proof under **Section 56(1) TPA** had not been met.



Conclusion

The KRA is justified in treating all bank deposits as taxable income when the taxpayer fails to provide credible documentation or evidence that the deposits are not taxable income. This approach, known as the "bank deposit (banking) analysis," is repeatedly upheld by Kenyan tribunals as a lawful method of assessment, especially under Section 56 of the Tax Procedures Act and Section 30 of the Tax Appeals Tribunal Act, which place the burden of proof on the taxpayer.

To avoid the KRA treating all your bank deposits as taxable income, take proactive steps:

- Gather and submit documentation such as certified bank statements, shareholder resolutions, loan agreements and repayment records and ensure that they are well maintained.
- Ensure timely submission of these documents during the objection phase. The High Court has held that failure to present evidence within prescribed timelines can render it inadmissible.
- Engage a tax professional to assist in assembling verifiable supporting records and crafting a compelling objection. Expert guidance increases your chances of satisfying the evidentiary threshold and shifting the burden of proof.

Should you have any questions on this legal alert, please do not hesitate to contact us,



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