



TAX LAW ADVISORY PRACTICE GROUP

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THE FIRM

At CM Advocates LLP, we pride ourselves on being able to provide our clients with consistently timely, high quality, innovative and commercially relevant legal advice. Since technical know-how is not adequate, we constantly seek to build excellent working relationships with our clients and clearly understand their businesses and the realities and imperatives they face. Our strategy is to build teams that are specific to our clients' needs and also combine specialist legal skills, industry experience and practical know-how.

Our focus is getting to the core of our clients' legal needs, creating and adding value to them; by delivering timely, innovative and commercially-sound advice and legal solutions. We have set up robust systems to ensure consistently high quality out-put in every assignment we undertake and we are uncompromising in our quality control. Moreover, we always seek to protect our clients' interests, mitigate their risks and create superior outcomes for them.

Our achievements for clients are made possible by our professional team of technically and commercially brilliant lawyers led by our Managing Partner at the fore front of every transaction, who are singularly focused on their clients' success. In other words, our pride is to make you succeed in your business or project.

We have a culture of professionalism, team work and respect, where talented professionals with different views, experiences and backgrounds can thrive. To remain on the cutting edge, we put extra emphasis on continuous learning, knowledge sharing and peer reviews. This has enabled the Firm to carve a niche for itself in the existing as well as new and emerging branches of law. The Firm's local and international clientele cuts across various sectors of our economy like financial services, real estate development, manufacturing, telecommunication, agribusiness, tourism and hospitality, energy and mining.

OUR PRACTICE AREAS

1. Anti-Bribery & Anti-Corruption
2. Asset Tracing & Recovery
3. Aviation Law
4. Capital Markets
5. Charities and Not-for-Profit Organizations (NPOs)
6. Commercial/Business Law
7. Construction & Infrastructure Law Unit
8. Corporate Law
9. Cyber Security, Privacy & Data Protection
10. Debt Recovery, Restructuring & Insolvency
11. Dispute Resolution
12. Employment, Labour Relations and Immigration Law Advisory
13. Energy, Mining & Extractive Industries
14. Entertainment & Sports Law
15. Family Law, Estate Planning & Probate Administration
16. Forensics & Investigations, Risk & Compliance
17. IP & TMT (Telecommunications, Media & Technology)
18. Lobbyist & Policy Practice
19. Multi-lateral Organizations. Foreign Embassies & Consultants
20. Non-Compete, Non-Solicit & Trade Secret Practices
21. Private Equity & Venture Capitalist
22. Real Estate, Banking & Finance
23. Shipping, Logistics & Admiralty Law
24. Start-ups & Small & Medium Sized Enterprises
- 25. Tax Law Advisory**

TAX LAW ADVISORY

At CM Advocates, we offer timely, independent, innovative and results-driven tax advisory services. We have expertise across diverse tax heads including income tax, withholding tax (“WHT”), custom duties, excise duty, stamp duty, capital gains tax (“CGT”), transfer pricing (“TP”), employment taxes and Value Added Tax (“VAT”). Our tax specialists combine industry experience with tax knowledge to help you maximize your profitability and reduce the tax risks associated with non-compliance.

Our services include:

(a) Tax Compliance Checks

The Kenya Revenue Authority (“KRA”) is increasingly becoming aggressive as it seeks to achieve and/or surpass ever increasing revenue targets. In pursuit of taxes, KRA audits are now commonplace often resulting in significant tax demands, as widely reported in the media. The risks lie in principal taxes, penalties, fines and interest. In some cases, the KRA or the Directorate of Criminal Investigations (“DCI”) may decide to pursue criminal prosecution for tax evasion, which is an economic crime.

Considering this background, it is critical that taxpayers become proactive and take all the necessary measures to minimize non-compliance risks and tax exposures.

KRA Tax Audits invariably fall under the

following categories:

Compliance audits

These are spot/ desk top high-level reviews which are conducted in a few days. The review team will focus mainly on compliance with regard to returns filing and payments without much attention on how the figures were generated.

Comprehensive in-depth audits

These will usually cover many tax heads and multiple issues recorded in the books of accounts and will involve a detailed scrutiny of all transactions to determine their accuracy and correctness. In this kind of audits, the taxpayer will be required to produce all the records and books of accounts required for examination by KRA officers. Such audits can take weeks or even several months.

Forensic audits

These are investigative audits conducted because of a report of unusual, suspicious or fraudulent activities.

At CM Advocates, we provide the following tax compliance support services:

Pre-KRA audit/compliance review

We conduct tax compliance reviews as a prudent check for tax compliance or upon indication that the KRA intends to conduct a tax audit. This helps in identifying areas of tax exposure and

mitigation measures.

The KRA usually encourages voluntary/self-disclosure of back taxes and regularly offer remission on penalties and interest, such as the current Voluntary Tax Disclosure Programme (“VTDP”) currently in place from 2021 – 2023. Effective 1 January 2021, the VTDP provides taxpayers the opportunity to regularize their tax compliance affairs. The VTDP is applicable to unpaid tax liabilities that have accrued within any of the five-year period prior to 1 July 2020 with the exception of any years under audit by the KRA or where there is an existing notice of intention to audit.

A voluntary disclosure application is made to the KRA, the principal taxes paid in full under an agreed payment plan, and the penalties and interest waived.

KRA Audit support

In the event of an ongoing KRA audit exercise, we support clients by analysing information requested by the KRA prior to submission to ascertain inherent tax exposures, advise on potential mitigation of the identified risks and respond to KRA’s queries and findings.

(b) Ongoing Tax Compliance

Tax compliance is a continuous process whereby taxpayers have to meet their tax reporting deadlines in an accurate and timely manner. At CM Advocates we ensure that the information contained in tax reports is accurate, while ensuring there is no undue tax exposure or overpayment, and that the same is filed in a manner and as per the timelines set out in our tax laws.

We routinely assist our clients to comply by

preparing and/or reviewing tax computations and filing of returns such as:

- annual corporate and personal taxes,
- instalment taxes,
- monthly VAT and withholding VAT filing,
- monthly withholding tax filing,
- monthly excise duty filing,
- monthly PAYE filing,
- monthly rental income tax filing, and
- review of tariff classification while Importing goods

We also conduct training for our clients’ various teams to ensure that their in-house finance, operation and logistics teams are updated on and understand the most recent tax requirements so as to ensure proper tax treatment in transactions on a day-to-day basis.

(c) Tax Advisory Services

At CM Advocates, our tax advisory services are designed to minimize your tax liabilities, maximize tax saving opportunities, advise on tax implications of transactions and reduce the time spent on managing tax compliance. Therefore, besides rendering tax advice and opinions to our clients on their day-to-day transactions, we routinely advise clients on the most tax efficient models to achieve their commercial objectives.

Moreover, we regularly help clients to analyse the potential tax liability of commercial transactions, especially dealing in property, to ensure transaction prices realistically incorporate future operating costs related to tax.

This includes:

- advising on tax implications of

commercial agreements or transactions such as VAT and Capital Gains Tax when selling property;

- advising on tax implications in mergers and acquisitions, spins off, business/as set transfers transactions, demerger, finance structures and transactions, corporate restructuring, estate planning and family settlement;
- advising on opportunities for tax rebates or deductions available based on our Kenyan tax laws and
- advising on and setting the most tax efficient structures for owning or holding assets or property portfolios.

(d) Tax Disputes Resolution Services

In association with our Dispute Resolution Department, we routinely represent clients in tax disputes with the KRA by filing a tax objection following a tax assessment after a KRA audit, dealing with agency notices, lodging tax appeals and conducting hearings before the Tax Appeals Tribunal, participating in Alternative Dispute Resolution (ADR) mechanism as well as in tax appeals and judicial reviews cases before the High Court of Kenya in relation to unfair or unconstitutional assessments made by KRA.

We also provide legal counsel in cases involving criminal tax investigations as well as in depth tax audits by KRA or other investigative bodies.

(e) Estate Planning and Tax Exemptions

At CM Advocates, we normally help individuals and corporates in their estate planning matters, and where applicable we can process tax exemptions on their behalf.

Moreover, we also advise clients on the most tax advantageous way to hold their assets portfolio and how to minimize any tax exposures. Some of the tax exemptions we usually process for clients include:

- Transfer of property from an individual to a family company;
- Transfer of property between spouses;
- Transfer in consideration of gift inter vivos in favour of NGOs/charitable organizations;
- Transfer of property between associated companies-usually during restructuring;
- Income tax and Land Rates exemptions for NGOs and charitable trusts; where applicable.