

## Tax Alert

### HK Motors Kenya Limited vs Commissioner of Customs & Border Control.

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The High Court of Kenya has delivered its judgment in ***Tax Appeal No. E084 of 2023: HK Motors Kenya Limited vs Commissioner of Customs & Border Control***. In its judgment, the High Court held that the fact that discounts are not expressly disclosed on invoices does not invalidate the applicability of the transaction value method for customs valuation purposes. Written confirmation of discounts allowed by a supplier to an importer on account of imported goods is sufficient evidence of the price actually paid on the imported goods.

Following a post clearance audit of the taxpayer's business, the Kenya Revenue Authority (KRA) alleged that the taxpayer had underdeclared the customs value of trucks imported into Kenya. The KRA sought to uplift the customs value of these trucks by relying on the Transaction Value of identical goods. Its rationale for this adjustment was that during the same period, the taxpayer had imported identical trucks but had declared higher customs on them.

The taxpayer opposed the proposed uplift on the basis that the trucks had been purchased at a lower price during a clearance sale held by its overseas supplier. Whilst the discounts had not been expressly stated on the invoices, the taxpayer produced email correspondence with its supplier confirming that the trucks had indeed been acquired for less than the price paid for other trucks imported during the same period. The taxpayer argued that the customs value declared was based on actual amounts paid for the trucks.

The matter culminated in an appeal before the Tax Appeals Tribunal (Tribunal), which upheld the customs duty uplift and the resultant tax assessment. In its decision, the Tribunal held that the burden was on the taxpayer to demonstrate that the declared customs value of the imported trucks was reflective of competitive pricing and that the taxpayer had failed to demonstrate this requirement. Dissatisfied with the Tribunal's decision, the taxpayer appealed to the High court.

The High Court allowed the appeal, finding that even though the invoices produced by the taxpayer did not show the discounts received from its supplier, written confirmation from the supplier was sufficient evidence to support price actually paid for the imported trucks. The High Court held that KRA had, therefore, erred in not adopting the transaction value method for valuation of the imported trucks.

### **What does this decision mean for you?**

This decision adds to the growing number of precedents that uphold the transaction value method as the primary method for purposes of valuation of imported goods. The transaction value method must first be attempted before any other hierarchical valuation method. More significantly, the decision establishes that application of the transaction value method cannot be defeated by lack of explicit disclosure of discounts on importation documents. The decision, however, does not in any way diminish the obligation of taxpayers to maintain proper import documentation in support of prices paid or payable on account of imported goods including trade discounts, where applicable.

It is also important for taxpayers to assess how this decision impacts their import value added tax declarations since the Value Added Tax Act, 2013 requires that discounts be declared or accounted for at the time of supply for purposes of ascertaining the taxable value of a supply.

For more information on this decision or any other tax matters, kindly get in touch with any of the persons listed under Key Contacts.

## **KEY CONTACTS**



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Please note that the information provided in this article does not constitute legal or professional advice or a legal opinion of any kind. If you require any assistance regarding specific issues, please contact Andrew Warambo, James Kimani, Najma Mahat and Thiongo Ndwiri.