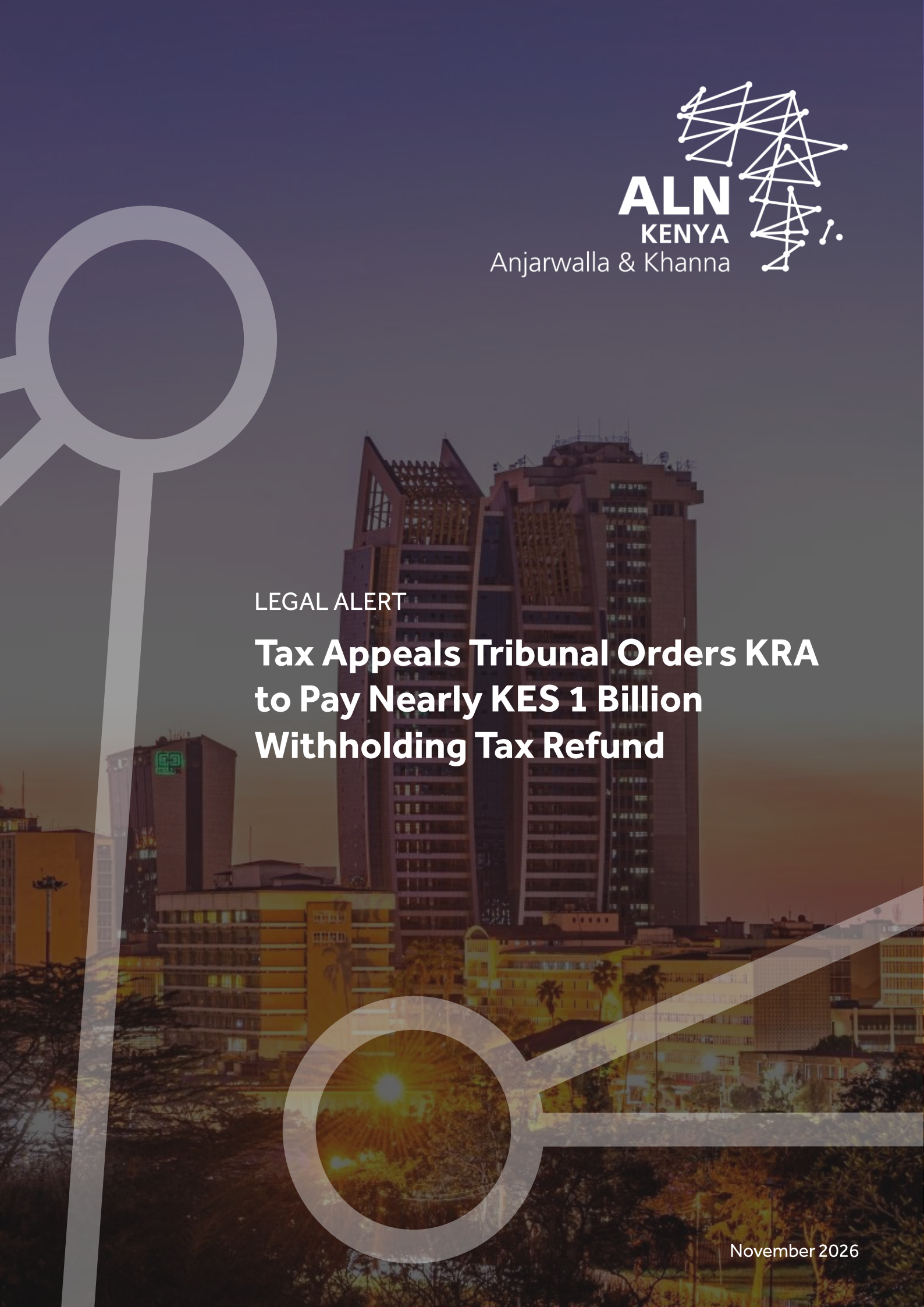
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LEGAL ALERT

Tax Appeals Tribunal Orders KRA to Pay Nearly KES 1 Billion Withholding Tax Refund

November 2026

The Tax Appeals Tribunal has ordered the Kenya Revenue Authority (KRA) to refund KES 933,240,690 (approx. USD 7.16 million) to Standard Chartered Bank Kenya Limited (the Bank) following the Supreme Court's decision in *Barclays Bank of Kenya Limited (now Absa Bank Kenya PLC) v Commissioner for Domestic Taxes (Large Taxpayers Office) [2025] KESC 70 (KLR)* (the Barclays Case) that card payment fees do not attract withholding tax (WHT).

The Tribunal followed its recent decision in *ABSA Bank Kenya PLC v Commissioner of Large & Medium Taxpayers [2026] KETAT 570 (KLR)* (the ABSA Decision) on the core refund principle, but this was a more complex dispute. The Bank was not a party to the Barclays Case, paid WHT on its own account rather than under a demand, and combined ordinary, tax amnesty and Voluntary Tax Disclosure Programme (VTDP) payments in one claim. The Tribunal therefore also had to resolve challenges to its jurisdiction, the Bank's standing, the character of the payments and the validity of an application lodged outside iTax.

ALN Kenya's tax team represented the Bank in the appeal, successfully securing the Tribunal's order for the refund.

In this legal alert, we examine the Tax Appeals Tribunal's decision.

Background to the Dispute

Following the Court of Appeal's decision of 6 November 2020 in *Commissioner of Domestic Taxes (Large Tax Payers Office) v Barclays Bank of Kenya Ltd [2020] KECA 214 (KLR)*, the Bank remitted WHT at 20% on fees paid to Visa, Mastercard and China UnionPay. The Supreme Court set aside that decision on 5 December 2025.

On 31 December 2025, the Bank applied for a refund or offset of KES 992,110,903 (approx. USD 7.61 million) of WHT paid in error. This comprised monthly remittances of KES 614,598,016 (approx. USD 5.1 million), tax amnesty payments of KES 318,642,674 (approx. USD 2.44 million) and VTDP payments of KES 58,870,213 (approx. USD 452,325). KRA referred the application to its Policy Unit and, on 22 May 2026, rejected it on the grounds that the Barclays Case could only be applied prospectively and that no refundable credit appeared in the Bank's ledger.

Key Findings

a) The Tribunal could apply, rather than reinterpret, the Supreme Court's decision

Distinguishing *Commissioner of Domestic Taxes v Kenya Breweries Limited [2025] KEHC 13979 (KLR)*, the Tribunal held that applying a binding Supreme Court decision under Article 163(7) of the Constitution is an ordinary exercise of stare decisis. Having rejected the claim on its own reading of the Barclays Case, KRA could not deny the Tribunal jurisdiction to test that reading.

b) The Supreme Court's interpretation was not confined to future transactions

Following ABSA, the Tribunal held that the Supreme Court had declared what the law had always meant and had not invoked prospective overruling. It went further than the ABSA Decision in holding that the Bank's position as a non-party that paid without a demand was immaterial, since Article 163(7) makes the Supreme Court's construction binding in every case. The sums became overpaid on 5 December 2025, so the five-year refund period ran from that date, and the absence of an iTax ledger credit was no bar.

c) A withholding agent that bore the tax could claim the refund

The Tribunal rejected KRA's argument that only the non-resident card companies could claim. A withholder is a "taxpayer" under the TPA, the WHT certificates named the Bank, and KRA had treated the tax as the Bank's own liability. Gross-up clauses and Visa's confirmation letter showed that the Bank bore the tax. They were evidence of who paid it, not an attempt to alter the statutory charge.

d) VTDP finality did not extend to tax amnesty payments

Following *Minet Kenya Insurance Brokers Limited v Commissioner of Domestic Taxes [2024] KETAT 763 (KLR)*, the Tribunal held that sections 37D(6) and (9) of the TPA barred any refund of the VTDP payment, and struck that claim out for want of jurisdiction. Section 37E (which introduced the tax amnesty) contains no equivalent bar, so the amnesty payments remained recoverable.

e) Administrative review did not suspend the statutory clock

The Tribunal rejected KRA's contentions that the refund application letter was a mere technical enquiry and that the Bank had lodged on iTax on 6 May 2026, which KRA could not prove. Referral to the Policy Unit was not an audit, so the 120-day period was not extended to 180 days. KRA's rejection was late on either receipt date, and the deemed approval was therefore self-executing. The Tribunal accepted the manual application on its facts, distinguishing *Commissioner of Investigation & Enforcement v Hanqing Zhao [2025] KEHC 16297 (KLR)* on the basis that the iTax module had failed, and KRA had never raised a prescribed-form defect under section 71(2) of the TPA.

Outcome and Concluding Perspective

The Tribunal set aside KRA's decision and ordered repayment of KES 933,240,690 within 90 days. The decision confirms that WHT remitted on card network fees after 6 November 2020 is recoverable as overpaid tax, even where the taxpayer was not a party to the Barclays Case, paid without a demand from KRA and bore the tax under a gross-up as withholding agent. Amnesty payments are also recoverable, but VTDP payments remain final.

The decision also underscores the importance of lodging refund applications in the prescribed form on iTax and keeping evidence of any system failures encountered when doing so.

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