Decision on Kenya-South Africa Double Taxation Agreement

Kaplan & Stratton is delighted to report that the High Court has upheld a decision of the Tax Appeals Tribunal (Tribunal) in a dispute relating to the application of Kenya - South Africa Double Taxation Agreement (Kenya - South Africa DTA) on professional fees paid to a South African entity.

The Tribunal determined that pursuant to Article 7 of the Kenya - South Africa DTA, professional fees paid by a Kenyan branch of a South African entity to a related South African entity in South Africa were only taxable in South Africa. Kaplan & Stratton successfully represented the Kenyan Branch of the South African entity in opposing the appeal filed by the KRA against the Tribunal's decision. The High Court, in its decision, has confirmed that pursuant to the Kenya-South Africa DTA, the fees were only taxable in South Africa.

In 2024, the High Court in a dispute, in which Kaplan & Stratton also acted, relating to the Kenya - France DTA, held that management fees payable by Total Kenya to a French entity were only taxable in France, pursuant to the Kenya - France DTA.

These two decisions are vital as they emphasise the importance of ensuring that the objective and purpose of DTAs, which includes encouraging cross-border trade and ensuring that there is no double taxation, are upheld.

The team at **Kaplan & Stratton**, the LEX Africa member for Kenya, was led by **Nazima Malik SC**, alongside **Noreen W.** and **Lena Onyango**.

For further information and updates, please contact Nazima Malik on NMalik@kapstrat.com or visit: https://www.kaplanstratton.com/