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RECONCILING TAX ENFORCEMENT AND FINANCIAL CONFIDENTIALITY: A CRITICAL ANALYSIS OF SECTION 59 OF KENYA'S TAX PROCEDURES ACT, 2015

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Abstract

The right to swing your fist ends where the other person's nose begins. The relationship between a government and its taxpayers with regard to financial confidentiality and data protection is of a similar nature. This article critically examines the implications of Section 59 of the Tax Procedures Act (TPA) on the principle of financial confidentiality in Kenya. This provision allows the disclosure of taxpayers' sensitive information to third parties for purposes of tax compliance. This raises significant concerns regarding the delicate balance between promoting tax compliance and safeguarding the right to financial privacy. The article highlights the potential constitutional conflicts arising from such disclosures, particularly concerning data held by financial institutions, and discusses how this could undermine established legal protections and individual rights enshrined under Article 31 of the Constitution of Kenya, 2010, as well as in the Data Protection Act 2019. Through a detailed analysis, and comparative evaluation of the Europeans Union's Approach to financial confidentiality, United Kingdom's approach and South Africa Approach, the article argues that the current legislative framework, which allows blanket third-party disclosures, may violate constitutional safeguards against unwarranted invasions of privacy. It advocates for a comprehensive reassessment of the relevant provisions within the TPA, emphasising the need for enhanced judicial oversight and robust data protection measures. By proposing amendments to the legislation, the article seeks to ensure that individual rights are adequately protected while maintaining effective tax administration.

Keywords – Financial Confidentiality; Kenya Revenue Authority, Right to Privacy; Data Protection; Legal Privilege; Judicial Oversight; Constitutional Rights; Third-party Disclosures; Duty of Confidentiality.

I. Introduction

Financial confidentiality is a cornerstone of individual rights and is essential for fostering a trusting relationship between taxpayers and the government (Sabry, 2024). Imagine a Catholic priest being compelled by the authority to reveal what a believer confessed to them. Well, this is not different from the authority compelling an advocate, or a bank to reveal client/customer deposited with them in confidentiality.

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In Kenya, Section 59 of the Tax Procedures Act, 2015, introduces significant changes to how taxpayers' information can be disclosed, potentially undermining this confidentiality. The imposition of tax obligations and the mechanisms for their enforcement represent a significant intersection between state power and individual rights, demanding careful consideration of constitutional safeguards to prevent overreach and ensure fairness (Mueni et al., 2021, p.49)
Within this framework, the confidentiality of financial information emerges as a critical aspect of taxpayers' rights, particularly in light of the expansive powers granted to revenue authorities to demand information from third parties (Korir et al., 2015, p. 12). The delicate balance between the state's legitimate interest in collecting revenue and the individual's right to privacy, and financial confidentiality is a recurring theme in constitutional law, requiring a nuanced analysis of the legal provisions that govern third-party disclosures under the Tax Procedures Act in Kenya.
This is because the framework promises people and businesses that their transactions and information are somewhat secure, and away from the prying eye of the government in a certain manner. Nevertheless, governments, including the Kenyan government, require access to individuals' and companies' financial and legal records for efficiency in the assessment of taxes, prevention of evasion, and improvement of the achievement of high revenues (Ivanova, 2021). This has created a legal and constitutional concern on how the state can enforce taxes and yet respect the rights to privacy of individuals and their financial and legal affairs.

In Kenya, the Tax Procedures Act (TPA), 2015, empowers (Kenya Revenue Authority) KRA to collect information about the taxpayers from any third party including but not limited to banks, employers, and lawyers. For instance, sections 59 and 99 of the Act provides KRA with the legal right to request financial records without seeking the permission of the court. These measures also touch sensitive issues of financial privacy, professional legal privilege and criminalisation of noncompliance thus prompting constitutional questions.
Some of the issues likely to arise from Section 59 and section 99 of the Tax Procedures Act include;

Violation of Financial Privacy

This is because Sections 59 and 99 of the TPA allow KRA unrestricted access to confidential financial information without a court order. This is in direct conflict with the provisions of Article 31 of the Constitution of Kenya 2010, which upholds the right to privacy. The problem with giving state agencies unfettered access to confidential financial information is that it is vulnerable to abuse. This undermines confidence in financial organizations.

Infringement of Legal Professional Privilege

Section 59(4) of the TPA erodes the well established and protected principle of advocate-client confidentiality. It provides that any person, including advocates is obliged to provide information belonging to their clients when demanded by the KRA. This is not only in sharp violation of the principle of privilege of advocates under section 134 of the Evidence Act, Cap. 80, but also a violation of the rule of law.

In addition, the section is in violation of the Code of Standards of Professional Practice and Ethical Conduct for lawyers (Kenya Gazette No. 5212, p. 2611), which provides that advocate-client privilege is an indispensable feature of the rule of law, essential to public trust, and administration of justice. These laws protect the advocate-client privilege and prevent disclosure of privileged information by anyone except the client and their attorney. Legal professional privilege is one of the fundamental principles of the legal process allowing clients to discuss matters with lawyers without the risk of a state inference.

Criminalization of Non-Compliance

Section 99 of the TPA states that any person or company that fails to disclose records as requested faces drastic consequences in terms of penalties. This puts banks, employers, and legal practitioners in a quandary because they have to observe statutory legal privilege rules and at the same time they must give compliance to the demands of KRA under the TPA. This erodes legal and constitutional standards and coerces people into submission by using penalties instead of the rule of law.

The judiciary has responded to these matters, especially through Petition *No. 412 of 2016 (Dr. Robert K. Ayisi v Kenya Revenue Authority 2018 eKLR)*. In this case at paragraph 89, the High Court found that Sections 44(1), 44(2), 60(1), and 60(3) of the TPA violates the right to privacy under Article 31 of the Constitution. Likewise, Section 59(4) of TPA was criticised for infringement of legal and banking privilege, thus buttressing the case that measures for enforcing tax need to respect constitutional protections.

Though there is a need for tax enforcement for the collection of national revenues, it must not compromise the general principles of financial privacy and legal professional privilege (Prejs, 2023). Thus, in Petition *No. 412 of 2016 (Dr. Robert K. Ayisi v Kenya Revenue Authority 2018 eKLR),* at paragraph 104, the court quoted with approval, the decision in *Kennedy vs. Ireland [1987] IR 587 as cited in Coalition for Reform and Democracy (CORD) & 2 Others vs. Republic & 10 Others [205] KLR,* where the court stated as follows:

> *"The dignity and freedom of an individual in a democratic society cannot be ensured if his communication of a private nature, be they written or telephonic, are deliberately, consciously and unjustifiably intruded upon and interfered with."*

There are constitutional and legal concerns that need to be addressed by legal reforms with regard to the broad powers granted to KRA under the Tax Procedures Act 2015, to ensure that the enforcement mechanisms are consistent with the constitution. To maintain checks and balances and ensure compliance with the law, to protect individual rights. It is important that the Kenyan financial and legal sectors strike a balance between compliance with confidentiality.

In light of these issues, this paper will analyze the constitutional and legal issues in KRA's third-party disclosure powers, the tension between tax collection and financial privacy, and measures adopted in other countries.

II. Research Questions

a) In what way could Sections 59 and 99 of the Tax Procedures Act infringe on constitutional rights of financial secrecy and legal privilege in Kenya?
b) In what ways does the sharing of financial and legal documents by the Kenya Revenue Authority infringe on the right to privacy as provided in Article 31 of the Constitution?
c) What measures have other countries put in place to ensure that there is a balance between tax collection and protection of financial privacy?
d) What changes do we need to make in order to improve the enforcement of taxes in Kenya in line with the best practices across the globe while protecting the rights to a person's financial secrecy?

III. Research Objectives

To examine the constitutional and legal issues that emanate from the general powers of enforcement given to KRA by sections 59 and 99 of the Tax Procedures Act, it is crucial to consider the aspects of financial and legal confidentiality. With this background, the purpose of this paper is;

a) To analyze the effects of KRA's third-party disclosure powers on privacy and the duty of confidentiality on financial institutions and legal professionals.
b) To assess the level of financial confidentiality protection in Kenya, it is necessary to compare the mechanisms for tax enforcement in Kenya to global standards, specifically the UK, South Africa, and the EU.
c) To advise on policy and legal changes that could be made in order to harmonize the tax administration and the rights of individuals regarding the constitution and other applicable international laws.

IV. Literature Review

It is pertinent to acknowledge that conflicts between tax enforcement and human rights are not unique to developing countries. TPA has been praised as having increased tax compliance in Kenya, but has been criticized for compromising financial privacy. Critics have described third-party disclosures as adventitious and incongruent with the constitution since there is no judicial review (Mwenda, 2020). From the European Union, the United Kingdom, and South Africa, comparative studies suggest that the involvement of the judiciary is crucial in maintaining the equilibrium between tax collection and the protection of the right to privacy (Smith, 2018; Van der Berg, 2019). Besides, the duty of confidentiality under section 41 of the Advocates Act has been regarded as sacrosanct in the legal profession as it helps to foster trust between the lawyer and their client (Ojienda, 2017).

Recently, the European Court of Human Rights (ECHR) in *Ferrieri and Bonassisa v. Italy of 08.01.2026 (Application nos. 40607/19 and 34583/20),* acknowledged that access to banking data of a taxpayer constitutes interference with the right to respect private life. The tax authority in the case was relying on the Italian National law, where Article 51 (2) of the Presidential Decree no. 633/1972 and Article 32 (1) of Presidential Decree no. 600/1973, authorised the Tax authority to obtain such data from financial institutions. However, the court held that, conditions indicated in the legislative provisions, taken alone are insufficient to authorise domestic authorities to obtain such data from a third party.

Earlier on, the ECHR in *GBS v Swizerland, Application No. 28601/11* and in *M.N and Others v San Marino, Application No. 28005/12*, the court held that information obtained by a tax agency from financial documents of a taxpayer constitute personal data. Consequently, it is a breach to obtain such information without the taxpayers' consent.

In simple terms, the court was saying that the mere demonstration o f the need to assess taxpayers' tax compliance is not tantamount to an authorisation to obtain their data from third parties. The ECHR called upon Italy to put in place measures to ensure its legislation and practice are in tandem with the court's finding.

In Kenya, just like the court noted in the above case, the problem is that of a "systemic character". That is, where that is domestic law permitting the tax authority to obtain personal financial data from third parties.

V. The Principle of Financial Confidentiality in Kenya

Banking Confidentiality

Managing customer information is part of the legal duty of a bank with its customer under the law of contract, and based on the implied duty of confidentiality. This is an international legal principle and has been affirmed in many legal cases. In the leading case of, *Tournier v. National Provincial and Union Bank of England (1924),* the Court held that information of customers must not be disclosed to a third party unless when it is required by law, when there is a duty to disclose or where the customer has agreed to be disclosed.

The Kenyan courts have also supported these principles. In *Standard Chartered Bank Kenya Ltd v. In Intercom Services Ltd & 4 Others [2004] eKLR*, the Court of Appeal observed that the duty of confidentiality of financial information is agreed upon by the parties and may only be waived where there are legal requirements or public interest to do so.

Similarly, in *Irene Donna Shamala v. In NIC Bank Limited (NAI HC CHR DIVISION PETITION NO. 583 OF 2017)*, the High Court held that when a bank divulged a customer's financial details without the customer's consent, privacy rights as enshrined in Article 31 of the Constitution of Kenya 2010, were infringed. The court reconfirmed the principle that customers' data are protected, including by financial institutions, and cannot be disclosed if there is no legal justification for disclosure. However, Section 59 of the TPA permits KRA to obtain financial documents without judicial clearance hence negating legal protections of case laws.

Legal Professional Privilege and Confidentiality

Legal professional privilege is one of the most basic principles within the legal profession and allows clients to seek legal advice without the risk of disclosure. In Kenya, this privilege is protected under: Section 134 of the Evidence Act, and the Advocates Act (Cap. 16), whereby lawyers are under oath to maintain confidential clients information. However, Section 59(4) of the TPA seeks to circumvent these protections with a provision that allows disclosure of client's information for tax purposes.

One of the cases which has dealt with this concern is *Petition No. 412 of 2016 – Dr. Robert K. Ayisi v. Kenya Revenue Authority & Another*. In this case, KRA required financial records that concerned the Nairobi County Government's payment to an advocate. The following provisions of the TPA were declared unconstitutional; Section 44(1), Section 44(2), Section 60(1), Section 60(3) and Section 59(4) as they were in contravention of Article 31 of the Constitution. The court stated that the proper collection of taxes is necessary, but at the same time, it cannot encroach on some rights.

Comparative Analysis

Achieving an equitable balance between tax enforcement authorities and the principles of financial and legal confidentiality is a subject that has stimulated the interest of various jurisdictions in the development of different legislative, judicial, and regulatory mechanisms. Unlike in the Kenyan context where the Tax Procedures Act (TPA), 2015, specifically sections 59 and 99, affords KRA the discretion to access the financial and legal information without the court's supervision, other jurisdictions such as the UK, EU, and South Africa have put robust measures to protect legal professional privilege and financial secrecy.
Cases like the European Court of Justice Case *C-432/23 "F SCS and Ordre des Avocats du Barreau de Luxembourg v Administration des Contributions Directes"* and the UK Supreme Court's decision in *R (Ingenious Media Holdings Plc) v Revenue and Customs Commissioners [2016] UKSC 54* have cemented the role of confidentiality in tax collection as this has put stringent restrictions on legal and financial documents by the taxation authorities. The study will compare and contrast the tax enforcement laws and financial secrecy regimes in the selected countries to draw contrast with the practice in Kenya.

The European Union's Approach to Financial Confidentiality and Legal Professional Privilege in Tax Matters.

The EU has one of the most stringent legal systems dealing with confidentiality and legal professional privilege in the context of tax enforcement (Tredoux, 2023). This protection has its roots in several legal documents such as the General Data Protection Regulation (GDPR), the Charter of Fundamental Rights of the European Union (CFREU), and judicial decisions from the European Court of Justice (ECJ). These mechanisms are rigid in limiting the extent to which tax authorities can obtain privileged legal and financial information yet respect the protection of confidentiality rights in as far as taxation is concerned.

A decision strengthening these protections was given in *C-432/23 F SCS and Ordre des Avocats du Barreau de Luxembourg v Administration des Contributions Directes* where the ECJ interpreted the extent of legal professional privilege in relation to taxation cases. The case emerged when a

Luxembourg law firm challenged the authority of the tax authority to request communication with clients in relation to tax issues. The ECJ stressed that legal professional privilege is one of the key rights that fall under the CFREU provisions, namely Article 7, Right to Privacy, and Article 8, Protection of Personal Data. The Court enumerated the following principles in the *C-432/23 F SCS and Ordre des Avocats du Barreau de Luxembourg* case:

a) *Limits on Tax Authorities' Powers:* Lawyers cannot be forced to produce privileged legal communications to the tax authorities unless there is a rational, reasonable, and lawful basis for their production. Tax authorities have to satisfy necessity and proportionality considerations to avoid violating the fundamental rights of individuals.
b) *Judicial Oversight Requirement:* The documents and records which are legal or financial in nature must not be shared with the tax authorities unless it goes through the scrutiny of the court. This helps to make sure that the request disclosure is assessed by an impartial body.
c) *Restrictions on Automatic Disclosure:* It is important to note that any blanket or automatic requirements given by the tax authorities infringes on fundamental rights where there is no strict necessity test. The principle of proportionality requires the disclosure of only necessary and relevant information.

These policies and principles are much stronger than Kenya's measures to protect individuals' rights regarding tax collection. Pursuant to Section 59(4) of the Tax Procedures Act (TPA), 2015, KRA does not require any judicial approval to request financial and legal documents, thus erasing the doctrine of legal professional privilege. Different from the EU where lawyers and taxpayers have the legal recourse to challenge disclosure requests in courts, Kenyan law does not afford an avenue through which one can challenge KRA demands before compliance when effected.

Financial confidentiality is further enhanced by GDPR given that before a financial institution can disclose any information belonging to a taxpayer, they must meet strict requirements and guidelines set by the regulation (Foulsham, 2019). This involves: Legal Justification and Proportionality whereby before revealing any financial information like account details, banks are obliged to ensure that the request is legally valid and does not breach the law on rights of privacy. Taxpayers' rights entitle the taxpayer to be notified prior to the disclosure of his/her financial information unless disclosure is required to be kept under wraps due to investigations. The regulation holds that any request for financial records must have a clear legal rationale for going around the data protection laws to prevent infringement on citizens' rights to privacy.

On the other hand, Kenyan banks have no choice but to accede to KRA's demands under the TPA section 59(1) without any obligation to notify taxpayers or to determine whether the request fulfills data protection and more importantly, proportionality. This lack of transparency and supervision makes it very easy for dishonest people and organizations to take advantage of the system and compromises the integrity of Kenya's financial and legal system.

This provides a useful starting point for understanding how the EU seeks to protect financial confidentiality and legal professional privilege as fundamental rights while pursuing tax enforcement. In this regard, the EU has put in place measures like the judicial control, necessity standards, and the notification of taxpayers to curb abuses of power among the tax authorities. Kenyan tax laws especially section 59 and 99 of the TPA, do not have these important safeguards, which grants direct access to the financial and legal documents without going through any procedural formalities. It is argued that to enhance the taxation system, changes need to be made in the Kenya taxation laws and practices and that the tax compliance should not encroach the constitutional rights of the country.

The United Kingdom's Approach to Financial Confidentiality and Legal Professional Privilege in Tax Matters.

The United Kingdom has established extensive legal protection of confidentiality and legal professional privilege in the assessment and collection of taxes. These protections stem from the UK Finance Act, General Data Protection Regulation (UK GDPR), the Commissioners for Revenue and Customs Act 2005 (CRCA) and from the UK Supreme Court and Court of Appeal case laws. Collectively, these instruments guarantee that HMRC cannot unilaterally access privileged legal and financial documents but provides stringent guidelines for disclosure.

One of the most significant cases supporting these protections is *R (Ingenious Media Holdings Plc) v Revenue and Customs Commissioners [2016] UKSC 54* where HMRC was found to have violated the taxpayer confidentiality by releasing some tax details to reporters. The Court identified three crucial principles that needs to be observed: The Court stated that the principle of confidentiality of taxpayers applies and must be observed by the taxman, unless there are reasons that are based on legislation. This principle relates to section 18(1) of the CRCA which prohibits HMRC from releasing information gathered in the exercise of its functions unless the release is allowed under the statutory exemptions. The Court also stated that the disclosure of the taxpayer's information must meet the necessity test, which means that HMRC cannot seek extensive financial information without adequate legal justification. HMRC cannot interfere with legal professional privilege in any case unless the court decides that privilege does not exist. This is to ensure that all communications between the client and the lawyer do not come into the hands of the tax authorities.

The UK has clear legal protections for its citizens, unlike Kenya's tax enforcement laws under the Tax Procedures Act (TPA), 2015. While, in the UK, HMRC can override confidentiality provisions only with a court permission, in the case of Kenya, KRA can request and sequester financial and legal documents under Section 59 of the TPA without a judicial warrant. This general and unrestricted power encroaches on the privacy of taxpayers.

Further Section 99 of the TPA makes it illegal to decline to produce information to KRA, which places many financial institutions and lawyers in a cleft stick where they can either violate their legal professional responsibility of confidentiality or risk prosecution. However, the UK model is more balanced and does not deny legal professional privilege and contains measures against its misuse.

The UK has implemented higher levels of disclosure requirements in order to safeguard the identity and anonymity of a taxpayer. The UK GDPR places many restrictions on financial institutions when it comes to disclosing taxpayer records, including that the request is legitimate and reasonable, the taxpayer is informed of the disclosure (unless the investigation is on-going), and there is a valid reason for the data protection laws to be overridden. The problem is that Kenya does not have these safeguards in place, thus making it's tax enforcement not as transparent and more vulnerable to abuse.

The presented aspects of the UK's legal framework appear to strike a good balance between the protection of taxpayers' rights and obligations in accordance with the tax legislation. As such, the UK preserves taxpayers' rights through mandatory judicial supervision, necessity tests, as well as the legal professional privilege but does not leave loopholes in revenue collection. Consequently the TPA provide inadequate safeguard towards enhancing the protection of financial secrecy and enhancing taxpayer rights, Kenya needs to embrace legal changes that reflect the standard legal reforms in the conduct of tax law enforcement that is reasonable, non-discriminatory and does not conflict with other laws.

***South Africa's Approach to Financial Confidentiality and Legal Professional Privilege in Tax Matters*.**

South Africa has adopted a systematic and integrated policy regarding enforcement of taxes without compromising so much on the facets of finance and law. SARS is governed by the Tax Administration Act (TAA), 2011, which regulates the investigative powers of the organisation and affords strict protection to taxpayers' rights based on section 81 of the Constitution of the Republic of South Africa. In contrast to KRA that can directly request tax information from taxpayers in Kenya, SARS requires a court order to request third parties including a bank or a lawyer to release any information pertaining to a taxpayer. This requirement guards against the risk of abuse and misuse of power in tax enforcement by ensuring that it is legal and reasonable and respects citizens' privacy rights.

Legal professional privilege is one of the most firmly entrenched legal principles in South African law, which allows SARS only limited access to a party's confidential legal advice. Lawyer-client communications are privileged, and lawyers are not allowed to be compelled to reveal information that was communicated between them and their clients unless a court rules that privilege does not apply. This guarantees that clients are allowed to interact with their lawyers without coercion from the state.

In addition, taxpayers have the right to sue for the non-disclosure of information in court before compliance occurs, which offer an important check on excessive or unnecessary requests for information. Further, SARS is obligated to obtain information from other sources before approaching third parties for financial records, which is in line with the principles of necessity and proportionality in tax audits.

The question of taxpayer confidentiality and access to financial records was recently brought to the forefront in the case of *Arena Holdings (Pty) Ltd t/a Financial Mail & Another v South African Revenue Service & Others*. In this case, a media organization wanted to obtain the tax records of a former president, claiming that the interest of the public in the disclosure of information prevailed over the privacy rights of the taxpayers (Tredoux, 2023). This case introduced a legal battle between the right to privacy in section 14 of the Constitution of the Republic of South Africa and the right to access information in section 32. The Constitutional Court had to decide whether the identity of taxpayers should not be kept secret in all circumstances or whether, in special circumstances, the common good can be a reason sufficient to disclose the identity of the taxpayer (Tredoux, 2023).

The Court noted that the concept of the taxpayer's privacy is sacrosanct, but it also recognized it was not inviolable. Nevertheless, there are few circumstances when confidentiality can be waived: where the accused is guilty of misconduct, the disclosure is a product of the accused's negligence, or where the disclosure is urgently required in the public interest. However, the minority judgement argued that an increase in tax openness can generate legal ambiguities in the country and reduce voluntary tax compliance. The ruling noted that it is impossible to maintain complete taxpayer anonymity at all times, especially when issues of accountability are involved (Tredoux, 2023). The *Arena Holdings* case affirmed how South African law balances between the need to enforce tax, privacy and public interest by striking a balance between the two rights (Tredoux, 2023).

Compared to Kenya, the legal protection for the enforcement of taxes is not as robust as it is in the South Africa. The Tax Procedures Act, 2015 entitles KRA to request financial and legal documents without having to seek a judicial warrant. Unlike in South Africa, the courts contribute significantly to deciding whether a taxpayer must disclose his or her financial records or not; Kenyan taxpayers lack legal redress against KRA before compliance. They also limit the independent scrutiny, which in turn raises the prospect of arbitrary administrative actions.

Furthermore, even as South African law offers extensive legal professional privilege, Kenyan tax laws permit KRA to breach confidentiality clauses, compelling lawyers to surrender their clients' records without a court order. Lack of procedural protection measures in the current Kenyan tax laws does imply the rights of privacy and professional secrecy may be violated in the process of tax enforcement.

The provision of Judicial sanction before SARS can access financial records acts as a check and balance on tax authorities. This avoids unnecessary invasion of a taxpayer's privacy while permitting proper investigation into tax evasion and other related offenses. In addition, the ability of taxpayers to contest disclosure demands helps to offer some protection against improper requests. Kenya could borrow similar judicial measures to guard financial records from being opened routinely and where it is not necessary for the intensified enforcement of taxes.

Another crucial issue discussed in the *Arena Holdings* case was the question of public interest regarding maintaining the confidentiality of taxpayer's information. Despite the fact that the principle of absolute tax secrecy can be questioned, any departure from this policy should be based on the legal rules providing clear standards for non-confidentiality, and the decisions made should be subject to judicial control. It is thus widely recognized that it is sometimes acceptable to be transparent concerning taxes, especially where violations of the law may have been committed by high-profile individuals. Though, it is done under certain conditions that ensure against reckless disclosures. Kenya's tax laws do not incorporate such provisions.

In an effort to enhance taxpayer rights in Kenya, it is recommended that the country adopt legal changes that provide judicial review of tax financial statements. The strict necessity test would also make sure that the requests for financial records are reasonable and appropriate. Enhancing the legal professional privilege provisions would ensure that KRA cannot demand lawyers reveal privileged client information without a court order. Moreover, it will give taxpayers the opportunity to challenge disclosure requests in court, which is currently lacking in Kenya and would bring the Kenyan law into compliance with international standards.

The *Arena Holdings* case contributes another piece of evidence to the notion that the policy of taxation anonymity should not be interpreted as absolute, but any violations of such policy should be justified and reviewed by a third party. Still, the Kenya Tax Procedures Act places KRA as the sole guardian of financial records without legal restrictions, subjecting the taxpayers to privacy invasion. Proposing changes to legal frameworks that would bring Kenyan tax enforcement into accordance with the South African model would thus help to make tax processes more transparent, properly respect the constitution, and create a more fair approach to tax collection.

VI. Research Methodology

The study adopted the doctrinal research method. The study focused on secondary data sources that comprised of statutes such as the Tax Procedures Act 2015, the Constitution of Kenya 2010, the Evidence Act, Advocates Act, Banking Act among others, textbooks, academic journals and articles, theses, newspaper articles, and several internet sources.
Data collected from different sources were screened and assessed based on the objectives of teh study.
In the course of comparing and contrasting the literature, statutes, international conventions and cases with data collected from several jurisdictions, the study has highlighted how south Africa, the united kingdom and the European union manage the tension between financial secrecy and disclosure of tax payers information.

VII. Results/Findings

The study demonstrates that the levels of tax payers anonymity, lawyer-client privilege, judicial review, and tax collection authority differ across the EU, UK, South Africa and Kenya. The findings are that both the EU and the UK have set legal barriers that prevent tax authorities from accessing the records of taxpayers without a court warrant and aligning with the principles of necessity and proportionality.
In the EU for instance, the GDPR and the CFREU prohibit arbitrary access to an individual's financial data by the taxing authorities. The ECJ in Case *C-432/23* on legal professional privilege thereby confirmed that it is a fundamental right of the CFREU under Articles 7 and 8 which means that the tax authorities cannot require privileged legal communications unless they have objective and reasonable reasons for doing so.
In the same way, the UK also has the Finance Act, the UK GDPR evolving from the GDPR and case law that prevents HMRC from circumventing legal professional privilege or gaining access to records belonging to a taxpayer without a court order. The recent judgement of the UK Supreme Court in *R (Ingenious Media Holdings Plc) v Revenue and Customs Commissioners [2016] UKSC 54* highlights that the tax authorities must satisfy certain legal requirements for the issuance of disclosure.

The Tax Administration framework of South Africa, as governed by the TAA, 2011, is hierarchal in nature with a strong judicial involvement and the protection of taxpayers' rights. Unlike in Kenya where KRA has unfettered discretion to request for financial records SARS can only request for information about a taxpayer from a third party such as a bank or lawyer by obtaining an order from a court of law.

The study has also found that legal professional privilege is statutorily set to mean that lawyers cannot be compelled to disclose their clients' communications with them unless a court rules that privilege was inapplicable. The case of the *Arena Holdings limited* was used to determine the extent to which the taxpayer confidentiality can be applied specifically when the public interest is involved, and the Constitutional Court noted that the notion of an absolute confidentiality cannot be deemed appropriate if important public interest is involved. But this is the only one, and judiciary oversees that disclosure powers are not misused by the tax authorities.

In contrast, the Tax Procedures Act 2015 laws of Kenya, offers significantly fewer safeguards for tax anonymity and the lawyer-client privilege. The KRA has extensive authorities under sections 59 and 99 that empower it to request for financial and legal documents without the necessity of obtaining a court order and also turn non-compliance into a criminal offence.

As illustrated in section 4 above, whereas the taxpayers and third parties in the EU, UK, and South Africa can approach the court to challenge the disclosure requests, the Kenyan taxpayers do not have a legal remedy to confront KRA's demands before compliance. Moreover, Section 59(4) of the TPA breaches legal privilege unlike in countries where the client records privilege is protected and a legal professional cannot divulge the records without the client's consent or an order from the court as is the case with KRA.

Another consideration of the findings is the compliance of Kenya's constitutional provisions with international tax enforcement norms. Article 31 of the Constitution of Kenya addresses the right to privacy which includes protection of privacy of individuals and their finances from unauthorized access. This constitutional right is enshrined in Article 50 in terms of a fair hearing and the right to be represented legally, thus underlining the relevance of legal professional privilege. Also, Article 47 of the Constitution provides for administrative justice to ensure that any public body such as the KRA complies with procedural fairness in decision making. However, even with these constitutional provisions, Kenya's tax laws lack protection of judicial oversight or legal redress in respect to financial disclosures which leaves a legal loophole that may be exploited by KRA to overstep their mandate.

The study also reveals that Kenya's tax enforcement laws for data are not as effective in addressing the principles of data protection as those of the EU or the UK. The GDPR established stringent requirements on cross-border data transfers by financial institutions, which means that taxpayers' data shared with those authorities is accessed in a legal and reasonable way. On the other hand, the Kenyan financial institutions are bound to adhere to the demands of KRA as spelled out in section 59(1) of the TPA without evaluating the legal ground for disclosure or even informing the taxpayer. This lack of data protection measures makes Kenyan taxpayers vulnerable to unnecessary financial invasions, thus eroding the confidence in the Kenyan financial and legal systems.

These findings support the argument that an efficient tax enforcement regime must incorporate sufficient legal protection to protect taxpayers' information leakage. The examples of the EU, UK, and South Africa all reveal that the ability to enforce taxes and protect the privacy of taxpayers are not in conflict with each other, as long as these rights are embedded within the legal system that observe constitutional and procedural fairness and propriety, and respects the law. However, the existing laws on tax enforcement do not have adequate safeguards against abuse by the tax authorities, which makes it crucial to enact legislation to reform the judiciary, enhance the rights of taxpayers, and ensure that the procedural justice is met when it comes to financial declaration.

VIII. Policy Recommendations

In light of these findings, it can be concluded that the current tax enforcement structure in Kenya needs overhauling in terms of legal and policy frameworks. This is to ensure that it adheres to international standards but continues to sustain mechanisms of tax compliance. The following policy recommendations will have a positive impact on the legal treatment of taxpayer confidentiality, legal professional privilege, judicial supervision, and procedural rationality in Kenya's tax legislation.

First, KRA should be subjected to judicial supervision before getting access to the financial and legal information. As the UK, EU, and South Africa practices have shown, only when tax authorities are compelled to seek court clearance before demanding disclosure does this process become proportionate, necessary, and legal. This would eliminate unnecessary violations of people's financial privacy and decrease the potential for misuse of power by tax collectors.

Second, legal professional privilege protections should be strengthened. The current law being bypassed by KRA through section 59(4) of the Tax Procedures Act (TPA) 2015, gives KRA immunity to disregard certain legal confidentiality provisions. This section (section 59(4)) of the TPA should be amended in order to recognize advocate-client privilege.

Third, a taxpayer recourse mechanism should be put in place through which individuals and businesses that are subject to KRA requirements, can seek redress before KRA may make the disclosures. Citizens in the EU, the UK, and South Africa, for example, are allowed to fight disclosure requests through a judicial review to make sure only legal demands are made.

IX. Conclusion

This research has shown that Kenya's tax enforcement regime is not adequately protected by law in terms of the rights to protection of confidentiality of the taxpayer, legal professional privilege and financial privacy. In contrast to the EU, UK, and South Africa, where judicial review and necessity tests as well as legal redress mechanisms are firmly entrenched, the Tax Procedures Act provides KRA with unfettered powers to seize a taxpayer's records. It leads to risk of abuse, invasion of financial privacy and decrease in public confidence in tax administration due to this legal loophole.

Kenyan constitution contains provisions on right to privacy, right to fair administrative action, and right to access to justice enshrined in Articles 31, 47 and 50 respectively. Nevertheless, these provisions are not accorded due recognition in the current tax enforcement laws of Kenya. This situation deprives taxpayers of judicial protection, proportionality, and legal remedies to challenge disclosure requests, resulting in unjustified state invasions. The findings also reveal that the Kenyan legal regime does not embrace modern data protection principles as seen in GDPR in the EU and POPIA in South Africa; the financial institutions are not required to scrutinize the legitimacy of any request by tax authorities regarding the customer's information.

To support Kenya's tax enforcement efforts while respecting rights enshrined in the Constitution, the study thus proposes the following reforms: Introducing judicial supervision of requests for financial disclosure, enhancing legal professional privilege laws, developing a remedy procedure for taxpayers, strengthening the data protection laws, applying the necessity and proportionality test, and reconsidering the criminalization of non-compliance. These reforms would bring the Kenyan tax laws to par with international standards, in realizing that tax compliance can only be implemented in a manner that respects the principles of the constitution, and most importantly uphold the rule of law.

An effective tax collection mechanism, thus, requires that there is a balance of protection for taxpayer information while pumping up the spirit of paying the taxes. The UK, EU, and South Africa examples show that tax authorities can enforce compliance without infringing on people's rights. They are a good reference for Kenya to reform its tax laws. These changes would make Kenya's tax system more equitable, less opaque, and more constitutional, thus enabling the government to collect taxes more effectively while at the same time protecting the rights of citizens as stipulated by the constitution.