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OVERVIEW OF THE TANZANIA FINANCE ACT, 2024

Further to our newsletter dated Friday, 14th June 2024 after the budget speech, we provide below the additional changes and clarifications assented in the Finance Act on 30th June 2024.

While the Finance Act entails changes in various laws, we have only covered the changes in tax laws in this newsletter.

Key changes and clarifications include:

- Mandatory retention of electronic fiscal / virtual fiscal receipts for expenses to claim tax deduction;
- 10% withholding tax on rent of construction equipment and machinery;
- 3% Capital Gains Tax rate restricted to individuals;
- Automatic deregistration from VAT upon failure to reach the registration threshold;
- Expansion of official communication with TRA to include emails and fax;
- Revised penalty for EFD offences;
- Deemed admission of objection upon fulfilment of deposit requirement; and
- 60 day time limit for amicable tax cases settlements

Income Tax Act

Mandatory retention of fiscal receipts for tax deduction purposes

In his Budget speech, the Minister proposed amendments aimed at enhancing compliance through the mandatory use of Electronic Fiscal Devices (EFDs) or Virtual Fiscal Devices (VFDs). The Finance Act includes an amendment to Section 11 of the Income Tax Act, governing tax deductions for business and investment expenses.

According to the amendment, individuals and businesses need to obtain EFD/VFD receipts to claim corporate tax deduction, except when the provider of goods or services is a non-resident with no permanent establishment in Tanzania or the seller or supplier is a resident with an annual turnover of TZS 11 million or less. The objective of this change is to increase the use of fiscal devices and safeguard government revenue by authenticating taxpayer purchases during the year of income.

It is important to note that companies account for income tax on an accruals basis, claiming deductions for expenses incurred even when invoices are not yet received. Section 21 of the Income Tax Act, which governs the basis of accounting for income tax, refers to accounting for income according to generally accepted accounting principles, such as IFRS. The amendment to Section 11 contradicts the provisions under Section 21 of the ITA and may lead to disputes between the tax authority and taxpayers, as the tax authority will base deductions on information available in the EFDMS system, which may differ from the financial statements.



Additionally, while promoting fiscal responsibility, this amendment may inadvertently place a greater burden on buyers. Many manufacturers source raw materials and supplies from small and informal sectors, which individually fall below the TZS 11 million threshold but collectively represent significant amounts. The onus will be on the buyers to determine which suppliers are exempt from issuing electronic receipts and to reconcile any discrepancies between their records and the EFDMS data. Consequently, buyers may face challenges in claiming deductions for such expenses, potentially leading to disallowances and increased costs.

Introduction of withholding tax on rent of construction equipment or machinery

The Finance Act expands the application of the 10% withholding tax on rent payments to residents, originally covering payments for the use of aircraft, land, and buildings, to now include equipment, machinery, structures, scaffolding, materials, tools, supplies, or systems rented or leased by contractors or subcontractors for use in construction projects. It is important to note that this provision excludes equipment or machinery that are integral to contractual obligations or deliveries.

Introduction of withholding tax on digital content

While the Minister proposed a 5% withholding tax on payments made by non-residents to resident digital content creators, the Finance Act expands this requirement to include resident persons as well.

It defines 'digital content' as *electronic content that can be downloaded, streamed, or accessed in any manner, excluding content simultaneously broadcasted over conventional radio or television networks in Tanzania*. 'Digital content creators' are defined as *individuals who produce such content in formats shareable via digital medium or platform over the internet*.

To comply with the withholding tax requirement, a withholding tax agent must register with the Commissioner General of the Tanzania Revenue Authority (TRA). While the Act imposes withholding tax obligation on non-resident acquirer of services, it does not currently specify the method for making such payments given that non-residents neither have a TIN nor access to the taxpayer portal. It remains to be seen how the Revenue Authority will be able to impose this requirement on non-residents.

Introduction of withholding tax on the exchange of digital platforms

The Budget speech initially proposed a 3% withholding tax obligation on income derived from the transfer of digital assets by both residents and non-residents. Subsequently, the Finance Bill limited this requirement to non-resident persons only. However, the Finance Act maintains the stance outlined in the Budget speech and clarifies that this obligation applies to both residents and non-residents.

The Act defines 'digital asset' as *(a) anything of value that is not tangible including crypto-currencies, token code, number held in digital form and generated through cryptographic means or any other means, by whatever name called, providing a digital representation of value exchanged with or without consideration that can be transferred, stored or exchanged electronically (b) a non-fungible token or any other token of similar nature*.

Additionally, the term payment is defined as *the gross fair market value considered received or receivable at the point of exchange or transfer of a digital asset*.

Removal of withholding tax on agricultural produce, fishing, animal and poultry keeping

In his budget speech, the Minister proposed a 2% withholding tax on agricultural produce, fishing, animal husbandry, and poultry farming, excluding forestry products. Subsequently, the Finance Bill clarified through the addition of Section 83D to the Income Tax Act that this 2% final withholding tax applies exclusively to payments made for the purchase of agricultural, livestock, forestry, or fishery products by resident intermediary persons, such as distributors or agents, rather than the actual producers.

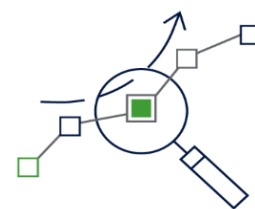
It is worth noting that this amendment has not been incorporated in the Finance Act. Although the Finance Act includes provisions for the addition of Sections 83B, 83C, and 83D, Section 83D itself is not part of the Act. It is not clear whether the said section has been overlooked in being included in the Act or was to be removed/amended.

Timeframe for payment of Capital Gains Tax (CGT)

The Finance Act made slight amendments to Section 90 of the Income Tax Act, specifying that Capital Gains Tax on property transfers must be paid at the earlier of:

- a) executing the contract for sale;
- b) the date of parting with possession, use or control of a realised asset; or
- c) the date of payment of part or whole of the consideration for the realised asset.

However, this provision does not account for procedural requirements in other laws that could delay or cancel property transfer transactions. For example, transactions are deemed incomplete and invalid until approval is granted by relevant authorities such as Land authorities or the Fair Competition Commission. Requiring CGT payment before transaction completion places a financial burden on parties and impedes investment in the country.



Withholding tax on verified carbon emission reduction payment

The Finance Act, 2023 introduced withholding tax of 10% on the payment to a resident person in respect of verified carbon emission reduction. The Finance Act 2024 stipulates such tax to be final tax where the payment is made to a local government authority, local community or any resident individual in respect of verified carbon emission reduction.

Withholding tax on tour guiding services

The Finance Bill included an amendment under S.86 of the Income Tax Act to cover tour-guiding services as part of items subject to final withholding tax, which would mean that the 5% withholding tax on professional services would be applicable to tour guiding services. However, the Finance Act has not included this amendment.

Limitation of CGT rate on the sale of properties with no proof of purchase cost

The Finance Act of 2023 introduced an alternative basis for income tax on property disposals for resident persons who lack records of the asset's cost. Under this revision, reduced CGT rate of 3% applies to the higher of either the sale value or the approved value of the asset.

The Finance Act now specifies "individual" instead of "person". For entities, the CGT rate uniformly stands at 10% of the supported or deemed gain.

Extension of time to file annual tax return for institutions audited by CAG

The Finance Act amended Section 91 of the Income Tax Act by extending the time for filing annual tax return from 6 to 9 months.

Reduction of withholding tax rate on Royalty

The Finance Act amended Section 82 of the Income Tax Act by reducing withholding tax, from 15% to 5%, on royalty payments to the resident sports entity or Tanzania Football Federation.

Removal of filing requirement for non-resident employees

The Finance Act introduced an exclusion from filing requirements for non-resident individuals whose income consists of employment income only.



Definition of the term "Gross payment" for non-resident charterer

Non-resident persons engaged in the business of operating land, sea, air transport or charter services are liable to pay a single installment income tax, as per Section 90 amounting to 5% of the gross payment received. The term "gross payment" lacked clarity, as it was undefined. The Finance Act addresses this by defining "gross payment" as *the total amount of payment received by a non-resident person, an instalment payer in conducting a business of land, sea or air transport operator or charterer excluding any fees, charge or tax paid by a passenger and received by that person on behalf of the Government.*

Other changes proposed in the Budget speech and passed in the Finance Act

- a) Restriction on utilization of tax losses (up to 60% of current year chargeable income)-. Previously, where an entity with four years of consecutive tax losses derived a chargeable income in the fifth year, the minimum taxable income was 30% of the chargeable income. The Finance Act includes an amendment to S.19 (2) of the Income Tax Act to increase the minimum taxable income to 40% of the chargeable income.
- b) Change in control tax – The Finance Act includes an amendment to S.56 to clarify the exclusion criteria on issuance of shares. S 56 shall not apply where shares are issued by a resident entity.
- c) Broaden the scope of charitable organizations – S.64 (8) of the Income Tax Act is amended to include institutions that advance health services and environmental conservation. It is important to note that such institution will still be required to obtain a ruling from the Commissioner stating that it is a charitable organization.
- d) Exemption of tea processors from payment of AMT for a period of three years from 1 July 2024 to 30 June 2027.
- e) Exemption on interest paid by resident financial institutions – when resident financial institutions secure loans from non-resident financial institutions or funds who have agreements with the Government of Tanzania offering lower interest rates, and subsequently charge reduced rates to resident beneficiaries from these concessional loans, the Finance Act exempts withholding tax on the interest payable by the resident financial institution. This measure aims to facilitate domestic banks in accessing concessional loans, thereby enabling them to offer affordable finance and stimulate economic growth.
- f) Industrial minerals – introduction of final withholding tax at 2% on purchase of industrial minerals except for salt or precious metals as defined in the Mining Act, supplied by a holder of a primary mining license or artisanal miner.
- g) Presumptive tax rates amended for individuals engaged in passenger transportation.

Value Added Tax

Automatic deregistration from VAT

The Finance Act has amended Section 29 of the VAT Act, which relates to VAT registration for 'intending traders'. Under the amended provisions, if a person registered under this category fails to meet specified conditions, they must notify the Commissioner within 90 days, stating reasons for non-compliance. Failure to notify will result in automatic deregistration from VAT. Consequently, any input VAT previously claimed by the taxpayer will be disallowed, and the taxpayer will be liable to settle any VAT liabilities from the deregistration date.

Definition of online data services and expansion of electronic services definition

Online data services are defined as *“any form of monetization of user data including the sale or licensing of, or access to user data or information collected through user engagement with an online platform, whether sold or licensed directly or indirectly, aggregated or disaggregated, anonymised or used in any other form.”* Further, electronic services definition under S.51(2) of the VAT Act is amended to include online data services. This means the non-resident data service providers will be required to register for VAT and charge VAT through the simplified registration process and pay VAT if they provide services to unregistered persons in Tanzania.

Other changes proposed in the Budget speech and passed in the Finance Act

- a) Exempt VAT on:
- Importation or supply of water sanitation and treatment chemicals
 - Importation or supply of equipment and machinery for processing and storing bee products
 - Single axle tractors (Power Tiller) of HS Code 8701.10.00
 - Video Assistant Referee (VAR) equipment and accessories
 - Supply of sewerage services by a water supply and sanitation authority
 - All goods, including materials, supplies, equipment, machinery and motor vehicle for official use of armed forces
 - Blended tea or fermented tea from locally grown tea leaves - This is a positive move towards promoting the local consumption following the fall in price. However, this change comes at a cost, that inability to claim input VAT on expenses related to exempt supply of tea
 - Aircraft, aircraft engine, aircraft parts and aircraft maintenance to a local air manufacturer, assembling or production
 - Double refined edible oil from locally grown seeds by a local manufacturer - extended for one year

- b) Zero-rating on:
- Gold supplied to the Bank of Tanzania
 - Gold supplied to licensed refinery
 - Locally manufactured fertilizer – for one year
 - Textile products (fabric and garments) made using locally grown cotton – for one year

The Tax Administration Act

Official communication to TRA now extended to include email, fax, and other electronic means

The Finance Act of 2024 has introduced amendments to Section 34 of the Tax Administration Act, which relates to the electronic system for the filing, furnishing, and servicing of documents. This amendment broadens the scope of official communication between taxpayers and the Commissioner General to include documents transmitted via email, fax, or other electronic means, as prescribed by the laws governing electronic transactions.

This amendment formally acknowledges the practice of taxpayers filing documents with the TRA through email, fax, or other electronic methods as permitted under existing electronic transaction laws. Importantly, the legislation also extends the provision for electronic service of documents beyond the TRA. It indicates that electronic communication may also be utilized by the TRA to serve documents on taxpayers, enhancing the efficiency and convenience of tax administration.

Definition of “tax audit”

The Tax Administration Act has been amended to define the term “tax audit” comprehensively. A tax audit is defined as *“examination of a taxpayer’s tax affairs to check compliance with tax laws, including desk audits, issue-oriented audits or comprehensive audits.”* This clarifies that both examination audits and desk reviews shall be considered as tax audits.



Consolidators of imported cargo to comply with custom laws

A new provision has been introduced which requires a cargo consolidator to comply with customs and other laws and procedures governing deconsolidation of cargo to its owners at the time of importation of goods in the country.

The Act also imposes a penalty equal to thirty percent of the customs value of imported cargo in the event of non-compliance.

Deemed admission of objection

Section 52 stipulates that if a tax objection decision is not finally determined by TRA within six months from the date of admission, it is deemed confirmed. However, the term "date of admission" was not defined in the Act. This resulted in lack of clarity regarding when the six-month period began especially where no formal letter of admission was issued even after fulfilling the objection requirements.

The process for objecting to a tax decision includes:

- Filing an objection within 30 days of receipt of assessments
- Payment of tax not in dispute or one-third deposit (whichever is higher) within 30 days (unless a waiver is granted)

The Act has now been amended to specify that an objection is deemed admitted on the date the conditions are fulfilled. This means the six-month period starts once the one-third/tax not in dispute is paid or a waiver is granted, and the objection is lodged. Taxpayers must be aware of this timeline, as an objection not determined within six months will be considered confirmed in favour of the Revenue Authority, necessitating an appeal to the Tax Revenue Appeals Board.

This results in additional bureaucracy in the tax dispute resolution process, placing the burden on the taxpayer even if the Revenue Authority fails to respond in a timely manner.

EFD Offence penalty

In the budget speech, the Minister proposed a maximum penalty of 1000 currency points (TZS 20,000,000) for failure to acquire and use EFD. However, as per the Finance Act, the maximum penalty shall be TZS 4,000,000.

Other change proposed in the Budget speech and passed in the Finance Act

1 currency point amended from TZS 15,000 to TZS 20,000.

The Tax Appeals Act

Time limit for Out of Court settlements

A 60-day time limit has been introduced by the Finance Act for out-of-court settlements, with the possibility of a 10-day extension upon application by the parties involved.

This change is a positive step toward the timely resolution of tax disputes.



CAVEAT

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