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TANZANIA FINANCE ACT 2020

Further to our newsletter circulated on 11 June 2020 after the budget speech, we would like to take this opportunity to inform you of some significant changes in the Finance Act 2020 passed by the Parliament on 18 June 2020.

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

Income Tax Act

The Act has amended the definition of the term “associate” by reducing the percentage of control or right to benefit from the income of an entity from 50% to 25% for the purpose of determining an associate of an entity.

Further, the Commissioner has been granted discretionary power to determine prescribed percentage upon consideration of the nature of business or investment of a person.

The amendment above will affect, among others, the application of S.33 (transaction between related parties and associates); S.44 (transfer of assets between associates); and S.12 (restriction on the deductibility of interest expense by the exempt-controlled entity). As a result, adherence to the Transfer Pricing for associates will be vital.

In terms of S.44 of the ITA on transfer between associates, the amendment should be a relief, that is where an asset is transferred to an associate, the amendment facilitates transfers between entities with 25% cross holding.

The word “associate” appears in several other sections of the Act including S.7 on employment, S.29 on indirect payment, S.31 & S.34 compensation and recovery payment, S.57 on income or dividend stripping, S.75 on taxation of controlled foreign trusts, corporations and S.82 on strategic investor withholding tax and in a few subsections of S.65 mining.

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Taxation of distribution of a resident trust

The definition of investment assets is amended by deleting the word “non-resident”. This amendment implies that an interest of the beneficiary from a resident trust will now be treated as an “investment asset” which gives rise to chargeable investment income under S.9. Prior to the amendment, only income derived from the distribution of a non-resident trust was subject to income tax.

In line with the amendment of the definition of the term investment asset, Section 52 (2) has also been amended to include the distribution of the resident trust other than an individual's testamentary trust incorporated for purposes of social protection of settlor's surviving minor dependants, in the computation of investment income of a beneficiary of a resident trust. This implies while the trust will be taxed on its income, the beneficiaries will be taxed as well upon distribution, resulting in double taxation and no relief seems to have been provided for tax already paid by the trust.



Taxation of an agent of a non-resident person or a beneficial owner

The Finance Act has amended Sections 4 and 6 of ITA to introduce taxation of “representative assessee” who acts as an agent of a non-resident person or a beneficial owner.

A person shall be treated as an agent of non-resident or a beneficial owner where such person:

- is employed by a non-resident person or a beneficial owner;
- has a business connection with a non-resident person or a beneficial owner;
- from or through whom a non-resident person or a beneficial owner is in receipt of any income, whether directly or indirectly acting as a trustee; or
- who is a trustee of a non-resident person, and includes any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset situated in the United Republic

According to S.2 of the ITA, a person has a business connection with a non-resident person or a beneficial owner where such person:

- has the authority or significant role to conclude contracts on behalf of a non-resident person or beneficial owner;
- maintains and regularly delivers stock of goods or merchandise on behalf of non-resident or beneficial owner;
- secures orders whether directly or indirectly for a non-resident person or beneficial owner; or
- carries out business or investment through an entity or an arrangement for the benefit of the other party (directly or indirectly)

The amendment intends to ensure that all income which has a source in the United Republic, earned by a person with no TIN, fixed place of business in the United Republic and operate through a representative is subject to tax.

The Act introduces S.69A whereby income of a non-resident is deemed to be directly or indirectly accruing or arising in the United Republic. The amendment intends to tax profits of non-resident entities which have “associated” entities in Tanzania or entities with “business connections” whereby profits of the non-resident will be brought to tax through representative assessee.

Extension of the power of the Minister to grant exemptions

Section 10 of the Act is amended to give powers to the Minister of Finance, without seeking cabinet approval, to exempt income tax on strategic projects where the total tax payable is not more than one billion shillings for the entire project period. This amendment is to enable fast-tracking of the implementation of strategic projects.

Restriction on the deductibility of foreign exchange losses

The Act also imposes an additional restriction on foreign interest-free loans in terms of the realised exchange losses i.e. the borrower will not be able to claim a deduction of more than 70 per cent of the realised exchange losses in relation to such loans. This is in addition to restrictions existing under “thin capitalisation rules”.

It is our understanding that the introduction of the restriction is to discourage interest free loans since there is a loss of revenue to the Government in form of withholding taxes. However, we continue to observe that the Revenue Authority deems interest expense on interest free loans and charges withholding tax without allowing any corporate tax deduction for the same. Hence, we foresee a contradiction between the amendment and the practice. If the practice of deemed interest continues and the exchange losses are disallowed too, there would be double tax implications to the taxpayer.

Extension of deduction of gifts and charitable donations

Contributions made to AIDS Trust Fund and the Government for fighting against COVID-19 shall qualify for 100 per cent deduction for the purpose of income tax. However, the contributions for COVID-19 shall remain allowable deduction until the Government announces the end by notice in the Gazette.

Whilst the deduction applies only to the donations made to the Government to fight AIDS and COVID-19, no relief has been provided to private sector and other NGOs who are also playing a major role in the fight against COVID - 19.



Restriction on the offset of tax losses

The Finance Act has also introduced a major change which limits the deduction of tax losses brought forward to 70% of the current year's taxable profit. The restriction shall apply to those entities which have accumulated tax losses for four consecutive years. The excess unutilised losses will be carried forward to the later years.

It should be noted that where an entity has taxable losses for three consecutive years, the entity is required to pay alternative minimum tax (AMT) equal to 0.5 per cent of the gross revenue for the year of income. Considering this amendment, it is unclear as to whether the AMT shall be applied to perpetual loss-making companies in addition to corporate tax at 30%.

However, based on the provision of Section 4(1) of ITA, Income tax is charged and payable for each year of income by every person who has total income for the year of income or is a corporation which has a perpetual unrelieved loss for the year of income and the previous two consecutive years of income. Hence, it is our interpretation that the two scenarios cannot be applied simultaneously. Where an entity has taxable income as a result of this amendment, the same should have been exonerated from the requirement to pay AMT.

Withholding tax on imported services

The Act amends the source rule in S.69 (i) to provide that as far as the beneficiary of the service is in the United Republic, the same shall be construed to have a source in the United Republic irrespective of the place of exercise, rendering, forbearance or place of payment.

The amendment complements the definition of "service rendered" under Section 2 of ITA as amended by the Finance Act, 2016 which provided that the service shall be treated as rendered in the United Republic where the service is transmitted or delivered in the United Republic of Tanzania irrespective of the place of performance of service.

Withholding tax on digital services

The Act also provides for 10% withholding tax (WHT) on commissions, charges or fees paid to a money transfer agent, commercial bank agents or digital payment agents. The amendment intends to widen the base for collection of withholding tax and bring about equal treatment among money transfer agents, commercial bank agents, digital payment agents and mobile money agents.

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The due date for payment of single instalment tax

Introduction of Capital Gains Tax (CGT) on net gains from the realisation of license or concessional right on reserved land. This measure is aimed at widening the tax base.

In addition, the Act also amends S.90(2) on the requirement to pay the single instalment tax. The single instalment tax now becomes payable within 30 days from the date of one of the following events:

- execution of the sale contract;
- parting with possession, use or control of the asset; or
- payment of part or whole of the consideration for the asset, whichever comes earlier

The requirement to pay the single instalment tax does not take into account the fact that execution of contract of sale and payment of part of the consideration does not guarantee the realisation of an asset since the same is subject to approval of other regulatory authorities including but not limited to Tanzania Investment Centre, Fair Competition Commission, completion of due diligence process, etc. The Act does not provide further guidance in the event where the transfer is not approved by the regulatory bodies and the single instalment has already been paid by the intended seller.

Amendment of the minimum amount for income tax of a resident individual in mainland Tanzania

Increase in the minimum threshold of employment income (PAYE) from monthly income of TZS 170,000 to TZS 270,000 per month. The revised PAYE bands have been summarised below:

Individual Income Tax Rates – New bands				
Taxable Income Year 2020 – 2021 TZS. p.m.			Rate %	Cumulative Tax TZS p.m.
0	–	270,000	Nil	0
270,001	–	520,000	9	22,500
520,001	–	760,000	20	70,500
760,001	–	1,000,000	25	130,500
Over 1,000,001			30	

This is a welcome relief for low-income earners. In essence, workers earning taxable pay of less than TZS 270,000 per month (TZS 3,420,000 annually) shall be exempt from PAYE.

Under the previous rates, the taxable income of TZS 720,000 was taxed at the rate of 13.625% and taxable income of TZS 1,000,000 was taxed at the rate of 18.21%. Under the new rates, the taxable income of 720,000 will be taxed at 8.68% and the taxable income of TZS 1,000,00 will be taxed at 13.05%. That means all taxable incomes below TZS. 1,000,000 will enjoy a tax reduction of about 5% overall.

Amendment of the Second Schedule

- Considering the small capital held by the Primary Cooperative Societies (PCS), the qualifying turnover for the purpose of income tax has been increased from fifty million shillings to over a hundred million shillings per annum.
- Special Economic Zone operators (who produce 100% for local supply) will no longer be able to enjoy the 10-year corporate income tax holiday. This is to create a fair playing ground for operators both within and outside the Special Economic Zones who produce only for local supply.
- The Second schedule is also amended to exempt the amounts paid to persons entitled to benefits granted pursuant to the provisions of Part V of the Political Service Retirement Benefits Act.

VALUE ADDED TAX

Extension of time for transit goods

The Act has now granted the applicability of VAT at zero rate on ancillary transport services on transit goods which remain in the customs area beyond 30 days. Such application shall only apply for goods which are granted with an extension by Commissioner for Customs to remain in the customs area beyond thirty days in line with EACCMA.

This is a welcome relief considering the fact that the period of thirty days was not sufficient where there are delays in clearance of goods beyond the owner's control.

Exemption of VAT on agricultural crops

Grant of exemption of VAT on premium charged and insurance proceeds with respect to insurance on agricultural crops. The measure will now reduce the insurance costs and encourage farmers to insure their crops from unforeseen tragedies like drought and floods.

Input VAT credit to exporters of raw products

Exporters of raw products are now entitled to recover input tax. This measure will enhance the competitiveness

of the products in international markets and abide by the VAT destination principle (exports categorised at zero-rate while making it a taxable supply)

Excise duty

The Act introduces a specific excise duty rate of TZS 844 per Kg on imported powdered beer and TZS 232 per Kg on imported powdered juice.

Unlike every year, there has been no increase in the excise rate on alcoholic products.

The Tax Administration Act

Taxpayer representative

The law has now made clear the conditions for qualification of taxpayer representative. A representative of a taxpayer shall be any person being:

- a practising advocate;
- tax consultant; or
- other person authorised by Power of Attorney (POA) granted by the taxpayer

The clarification above gives the right to the taxpayer to be represented in all tax matters by the persons stipulated in the Act.

Tax deposit requirement for objection purpose

The Commissioner is granted the discretionary power to demand full payment of the assessed tax to validate the objection if he has reasonable ground to believe that the objector might permanently leave the country.

Whilst Section 7 (former Section 5) of TAA, 2015, allows a taxpayer to pay either one-third of the assessed tax or the tax not in dispute, whichever is higher, the person referred in the paragraph above will be required to deposit the whole amount of the tax assessed before lodging the objection.

Submission of information

Taxpayers are required to submit documents to the Commissioner within 14 days subject to extension granted by the Commissioner upon request.

Further, where the taxpayer fails to submit the information required within the time provided he will be prohibited to use such information as evidence at any other stage in the dispute resolution.

This provision is likely to cause a lot of inconvenience to taxpayers where information relating to several years is sought.

Tax decision

Any matter decided as a result of the agreement, consent or admission shall now not form part of tax decision or assessment, hence cannot be objected against. This provision is broadening the scope of decisions which cannot be objected to, similar to compounded offences currently in force. Taxpayer should ensure they do not sign documents implying agreement to tax liabilities where taxes are disputed e.g. notes of discussion.

Objection to tax decision

In case of objections, taxpayers are now required to submit all information and documents necessary to support the objection at the time of lodging the Notice of objection. The Commissioner General may request additional information during the process of determining the objection.

The time limit for determination of the objection by the Commissioner shall be six months. Where the Commissioner fails to determine the objection within the stipulated period, the objection will be deemed to have been determined as per assessment served, and the taxpayer shall have the right to appeal to the Board.

The limitation of the time required by the Commissioner to review and determine the taxpayers' objection will enable early conclusion of the objection process, provide a room for a taxpayer to access the appellate machineries, and reduce the accumulated interest and penalties which accrue during the objection and appeals processes.

The downside is where, even after paying one-third tax to validate the objection, the CG fails to decide on valid grounds submitted by the taxpayer, the entire tax assessed will need to be determined by the judicial bodies. Earlier, where the CG conceded on specific grounds of the objection, the taxpayer had the

opportunity not to proceed to appellate bodies thereby reducing the litigation costs. The other downside is that the onus is on taxpayers to be on top of all the objections lodged and to be mindful of the respective due dates in case the objection is admitted but not attended to within 6 months.

Local Government Finance Act

The Minister for Local Government shall be responsible to collect City Service Levy from telecommunication companies and distribute the same to Local Government Authorities (LGA) within fourteen days from the date of collection. The distribution will be done based on a formula derived from the amounts collected from telecommunication companies in respective areas.

Business Registration and Licensing Agent (BRELA)

The requirement of the seal by the Commissioner of Oaths to show that one has fulfilled the requirements of the Act when incorporating a company or renewing a registration is being abolished by repealing of section 16 (2) of the Companies Act.

The Vocational, Educational and Training Act, CAP 82

Skills Development Levy has been reduced from 4.5 percent to 4 percent to relieve employers' overheads.

The Mining Act, CAP 123

Introduction of a new provision which requires the applicant for new or renewal of mining license to have Taxpayer Identification Number (TIN) and Tax Clearance from Tanzania Revenue Authority.

The Motor Vehicle (Tax Registration and Transfer) Act, CAP 124

A Special Registration Number for Motor Vehicle has been introduced at a one-time fee of TZS 500,000 in order to enable customers to be allocated with their preferred registration number, subject to availability.

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