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TANZANIA FINANCE ACT, 2023

Further to our newsletter on the budget speech issued on 15 June 2023, the following changes have been assented by the Parliament vide Finance Act 2023 issued on 30 June 2023. The Act shall be effective 1st July 2023.

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

Income Tax Act

Proposals from Speech and Bill passed in the Finance Act:

- Limitation of the scope of Section 56 to exclude allotment of new shares and transfer of membership interest of a resident entity to a resident person.

Whilst this change reduces the tax burden created by the change in underlying ownership of local companies, where such change is as a result of allotment of new shares or transfer of shares of a resident entity to another resident person, a transfer of shares to a non-resident person, even where such transfer is made at a local level, shall trigger the implication of the tax on the change of underlying ownership. Hence, the previous challenge of double taxation is not fully eradicated taking into consideration the fact that the country is still in need of foreign direct investment (FDI) in Tanzania.

Further, the Act states that

“The preceding provisions of this section shall not apply where change of underlying ownership referred to in subsection (1)–

(a) is a result of allotment of new membership interest of the entity; or

(b) is a sole result of transfer of membership interest of a resident entity to another resident person.”

By reading the plain meaning of the words used in subparagraph (b) above, particularly the word “of” between the words “interest” and “a resident”, it means that the exemption is granted only to the transfer of shares held by a resident entity to a resident person. Hence, a transfer of shares held by a resident individual shall not enjoy the same privilege.

It is our opinion that since the transfer of shares in a local company is subject to capital gain tax in Tanzania, the exemption granted above, should also include the transfer of shares held by any person in a resident entity irrespective of their legal/natural or residential status.

Our proposed changes above, align with the Minister's speech where he stated that the amendment intended to promote investment in the country and eliminate the ambiguities engulfing Section 56 of the ITA.

- Abolition of advance tax on transporters, which was introduced by the Finance Act, 2022. The Finance Act, 2023 introduces new rates applicable to individual transporters whose annual turnover does not exceed TZS 100 million. This is a commendable change considering the fact that many entities who own a large number of commercial buses and trucks ended up paying a significant tax in the financial year 2022 despite the fact that they did not make taxable profits to offset the advance tax paid.
- Introduction of income tax at the rate of 2% of the payments made to Artisanal and Small Miners (ASM).
- Introduction of income tax of 10% on the income accrued due to Verified Emission Reduction (VER).
- The Act further, clarifies that Income tax introduced on the payments made to Artisanal and Small Miners (ASM) and with respect of Verified Emission Reduction (VER) shall be imposed by way of withholding tax, and the same shall be final in the hands of the recipient.
- Introduction of Capital Gain Tax (CGT) of 3% on the sale of investment properties where there are no sufficient records the costs and expenses of the property.

This amendment would reduce the tax burden in terms of CGT on the sale of properties. However, the effective burden will be reduced only if the assessed CGT is a final tax (for individuals). In the case CGT is not a final tax (for entities) the company would still pay the tax at the rate of 30% when filing annual tax return.

Further, the rate of 3% shall not apply to the transfer of assets by non-resident persons.

- Exemption of income tax on income derived by the National Health Insurance Fund from investment returns on fixed deposit, treasury bonds, treasury bills or dividends.

- Exemption of Capital Gains Tax on internal restructuring of the mining companies pursuant to the requirement of a Framework Agreement entered between the Government and the investor to form a partnership entity.

Additional changes and clarifications in the Finance Act

Change in the due date for filing returns

The Finance Act, 2022 introduced income tax of 2% on the payment made to a non-resident person for the supply of electronic services. Among other requirements, a non-resident electronic service provider was required to file a return of income on or before the 7th day of the month following the month of payment.

The Finance Act, 2023 amends the due date for filing return from the 7th day to the 20th day of the month following the month of payment.



Value Added Tax

Proposals from Speech and Bill passed in the Finance Act:

- Exemption of VAT on:
 - Sale and lease of aircraft, aircraft engines, or parts by a local operator of air transportation;
 - Supply of precious metals, gemstones, and other precious stones at centres designated by the Mining Commission;
 - Moulds used solely by pharmaceutical manufacturers
 - Gaming odds and gaming software as part of gaming supplies;

- importation of pre-fabricated structures or supply of locally manufactured pre-fabricated structures of H.S Code 9406.20.90 to be used solely in poultry farming;
- Introduction of Zero-rate VAT on:
 - Textiles products manufactured using domestically produced cotton for a period of one year; and
 - Locally manufactured fertilizer for a period of one year
- Introduction of VAT Deferment on locally manufactured capital goods and abolishment of the VAT deferment on importation from 1 July 2026. Whilst this amendment intends to promote and protect local industries by granting the VAT deferment on local manufactured capital goods and abolish the VAT deferment on imports, it remains to be seen whether the 3-year timeline shall be sufficient to set up plants locally for production of capital goods.

Further, it is not clear whether the abolition of the deferment on imports will also include the goods in transit as of 1 July 2016.

Additional changes and clarifications in the Finance Act

Exemption of VAT on immovable properties

The Finance Act, 2023 widened the scope of the exemption of VAT on immovable properties to include the sale of a house of a value not exceeding fifty million shillings by a real estate developer.

It should be noted that before this amendment, no exemption was available on the sale of a newly constructed residential property.

Exemption of VAT on minerals

The Finance Act, 2023 widened the scope of the exemption of VAT on minerals to include the supply of precious metals, gemstones and other precious stones at refineries, irrespective of the type of mining license.

Before this amendment, exemption was only applicable to the supply of precious metals, gemstones and other precious stones by a small-scale miner at buying stations or at Mineral and Gem Houses designated by the Mining Commission.

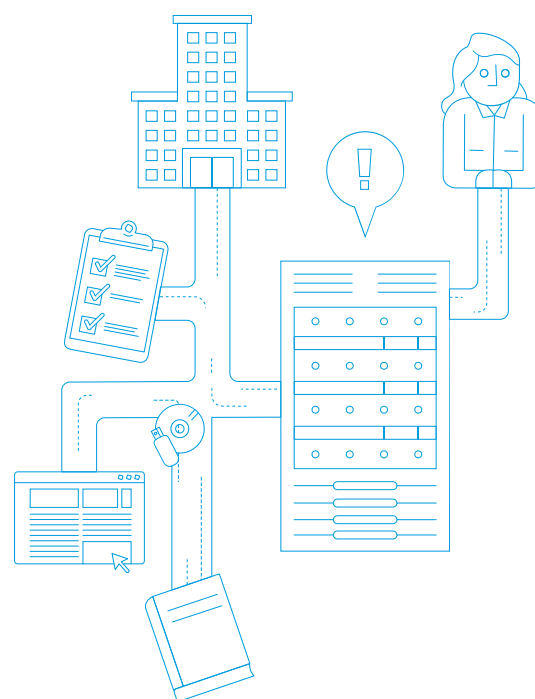
Extension of time on the exemption of VAT edible oil

The Finance Act extends the time for exemption of VAT on the supply of double refined edible oil from locally grown seeds by a local manufacturer for a period of one year from 1st July, 2023 to 30th June, 2024.

Exemption of VAT on automobile accessories

The Finance Act introduces exemption of VAT on the supply of automobile accessories used in the conversion of motor vehicle fuel system to natural gas or electricity system to persons engaged in the conversion of such motor vehicles.

This amendment align with the Minister's proposal to grant duty remission on electric vehicles for environmental protection purposes.



The Vocational Education and Training Act

- Exemption from the requirement to file SDL monthly returns by employers who are not required to pay SDL. This clarification brings an end to the controversy surrounding the filing requirement for employers who are not subject to SDL payment since the industry experienced punitive fines and penalties being imposed where the employer failed to file SDL returns on account that they were not liable to pay SDL in the first place.
- Grant of the power to the Minister to issue special exemption certificates where the exemption is for the public interest.
- Reduction of the SDL rate from 4% to 3.5%.

The Tax Administration Act

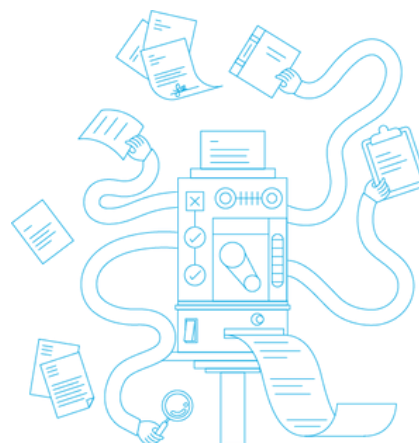
Proposals from Speech and Bill passed in the Finance Act:

- Expansion of the definition of primary data sever to include a virtual server. The Act also extends the requirement to have a primary server in Tanzania from the initial deadline of 1 July 2022 to 1 January 2024. Whilst the Finance Act amended the definition of primary data server, main provision, S. 35 (7), which requires a taxpayer to maintain a primary data server in the country is not amended. Therefore, the intended objective of the amendment to reduce the cost associated in establishing and maintaining servers may not be attained.
- Deadline introduced for the requirement to disclose contracts and parties involved on construction or extractive projects within 30-days from date of execution.

- Amendment of fine imposed for failure to demand or report the denial to issue EFD receipt to be compounded at the higher of 20% of tax evaded or TZS 30,000.

Further, the Finance bill proposed amendment of the fine imposed for failure to use EFD or issue EFD receipt at higher of 20% of tax evaded or TZS 3,000,000.

However, the Finance Act imposed the fine at the higher of 20% of the **value of the goods/services** or TZS 1,500,000. Given that the intention of this change which was aimed at reducing the burden on the fines and penalty imposed for failure to use EFD receipt, it is not clear whether the same shall be achieved since the 20% may be even significant where the value of the goods is material.



- Definition of the terms “storage facility” and “owner” introduced which clarifies the storage facilities required to be registered with TRA. This requirement shall not be applicable to warehouse, godown or other facility which are part of a shop, factory, industry or farm.

CAVEAT

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