



Finance Act 2018 update and The Tax Administration (Remission of Interest and Penalty) Order, 2018

TANZANIA FINANCE ACT 2018 UPDATE

Further to our newsletter circulated after the budget speech, we would like to take this opportunity to inform you of some significant changes in the Finance Act 2018 which were not included in the Budget Speech read by the Honorable Minister of Finance on 14 June 2018 and/or the Finance Bill passed by the Parliament on 28 June 2018

Income Tax

- Addition of S.129 which reads as follows: “The Minister may make regulations for the better carrying into effect of the principles, purposes and provisions of this Act”.

Implications – The Minister may publish regulations on any aspect of the Act with the object of ensuring better tax administration.

This change was not part of the budget speech.

- The Alternate Minimum Tax (AMT) has been increased from 0.3% to 0.5%.

Implications – The taxpayers making losses for 3 perpetual years will now be subject to tax at the rate of 0.5% in the third year of perpetual losses. However, it is not clear whether the rate applies retrospectively.

Value Added Tax

- VAT exemptions:
While the budget speech provided for exemption on imported animal and poultry feed additives, the Act provides exemptions for the following:

Oil-cake of soya beans

- Oil-cake and other solid residues of cotton seeds
- Oil-cake and other solid residues of sunflower seeds
- Maize bran
- Wheat bran
- Lysine
- Mycotoxin binders
- Pollard

- Rice bran
- Cotton cake

Addition of items 23 – Revenue Stamps of HS Code 4907.00.90 and 34 – Electronic cash register Code 8470.50.00

- S.85 of the Act has been amended by removing provision for refund of input tax to non-profit organisations.
- Implication – non-profit organisations will no longer be eligible for refund of input taxes on their purchases/imports.

Gaming Tax

The Act has made a number of changes to the tax rates that were proposed in the Budget speech and the Finance bill.

Other information

We also draw your attention to the newly passed Tax Revenue Appeals Board Rules 2018 and Tax Revenue Appeals Tribunal Rules 2018.

These rules replace the previous rules of 2009.



THE TAX ADMINISTRATION (REMISSION OF INTEREST AND PENALTY) ORDER, 2018 UNDER S 70 (2) OF THE TAX ADMINISTRATION ACT

The order is effective from 1 July 2018 and shall expire on 31 December 2018. The Order states the Commissioner General (CG), may remit the whole of interest or penalty in respect of eligible tax payable by an eligible person where the eligible person or his duly authorized representative has in his application voluntarily disclosed or affirmed the tax liability; agreed in writing within the validity period of this Order to pay the principal tax within the financial year 2018/19 and agreed to finally conclude the tax liability without any further grievance or dispute.

Eligible tax as defined in the Order, relate to any taxes, levies or duties emanating from tax laws administered by TRA but exclude tax payable under the East African Community Customs Management Act, 2004 and taxes, levies, duties or fees collected on behalf of local government authorities, institutions or agencies arising out of non-tax laws administered by TRA.

Eligible person has also been defined in the Order as follows:

- a) filed a tax return in respect of an eligible tax but has not paid the whole or part of the tax due;
- b) not filed a return in respect of an eligible tax and has not paid the whole or part of the eligible tax;
- c) not applied for taxpayer identification number or any required registration;
- d) filed an objection to the Commissioner General; or
- e) a pending case in the Tax Revenue Appeals Board, Tax Revenue Appeals Tribunal or Court of Appeal of Tanzania.

The Order also requires a person who has voluntarily disclosed unpaid eligible tax to file a return or returns in respect of disclosed taxes and the CG thereafter shall assess the tax liability of the person in a manner the CG deems fit. The application for remission has to be made in a prescribed form to the CG stating the amount of the principal tax payable and the amount of interest or penalty to be remitted. This application has to be made to the CG on or before the 30th November 2018. Under the Order the CG may determine an application received within 30 days from the date of receipt.

However, section 8 includes the following that are not eligible for the Amnesty:

- a. who may otherwise be an eligible person but who has already paid the eligible tax;
- b. whose tax affairs are being audited or investigated by the Commissioner General in respect of an eligible tax

- for the period under audit or investigation;
- c. who has been convicted of fraud by a court in respect of an eligible tax;
- d. who has been convicted of a transnational organized crime, including money laundering, human trafficking, poaching, economic sabotage, corruption, drug trafficking or involvement in terrorism;
- e. whose assessment is a result of an EFD or other offence which has been compounded; or
- f. whose assessment emanates from an offence involving willful or fraudulent omission or commission under a tax law.

Should the Commissioner General agree with the application, a Settlement Agreement shall be signed by both parties and the requirements to comply with the payment arrangement and due dates shall need to be adhered to, failure to which the Agreement shall rescind and the Commissioner General shall proceed to demand the eligible tax as if no remission was granted.

Unfortunately, the current tax liabilities are emanating from delay or lack of filing of various tax returns. Such penalties do not seem to have been waived under this Order even if the tax liability has already been settled. In addition, where tax audits are ongoing, the Amnesty shall not apply. It appears the intention of the Order is only to collect the taxes that have been objected to by taxpayers and are awaiting a ruling at Tax Revenue Appeals Board, Tax Revenue Tribunal and Court of Appeal, or those taxpayers who have been able to assess any potential understatement of payments but have yet to be audited by TRA. However, a number of cases are being objected to on the grounds of the principal tax being assessed by TRA without consideration of the facts or laws.

For taxpayers who have not received notification from TRA to commence the audits / are yet to be audited by TRA, it is advisable to get a tax health check carried out in order to establish any potential exposures and take advantage of the amnesty.

It remains to be seen how effective the TRA shall be in achieving its objective of collecting TZS 0.5 trillion from this measure.

Caveat

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