



What are the Finance Act 2019 updates?

TANZANIA FINANCE ACT 2019 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 2019 which were not included in the Budget Speech read by the Honorable Minister of Finance on 13 June 2019 and/or the Finance Bill.

Income Tax

- Changing the tax rates by changing paragraph 3(2)(d) of the first schedule as follows "(d) an entity dealing in manufacture of sanitary pads and having a performance agreement with the Government of the United Republic shall be taxed at a reduced corporate rate of 25% for two consecutive years from 1st July 2019 to 30th June 2021." While the budget speech and the proposal in the Finance Bill indicated that the reduced rate would be applicable for newly established entities dealing in manufacturing of sanitary pads, the Finance Act does not limit the rate reduction to new entities only. Thus, this gives also an opportunity to existing manufacturers of sanitary pads to enjoy the tax relief.
- Clarification has been provided with regards to the exemption of interest, fees and other financing charges paid by the Government to a non-resident financial institution, other government or representative of other government arising from a loan agreement that entitles such an entity to tax exemption for the purposes of financing Government projects. The provisions of subparagraph (1) in the Act shall be deemed to have come into operation on the 1st June 2017. It is not clear if the intention is to apply the change retrospectively or is indeed a typo error.

Value Added Tax

- Clarification has been provided regarding exemption in the supply of aircraft lubricants to a local operator of air transportation by insertion of HS codes numbers 2710.19.51, 2710.19.52, 3403.19.00 and 3403.99.00.

The Excise (Management and Tariff) Act

- Under Heading 24.03, excise rate in respect of tobacco products falling under HS code 2403.19.00 has been reduced from the previous rate of TZS 28,232.40 per kilogram to a new rate of TZS 8,000.00 per kilogram. This was neither mentioned in the Speech nor proposed in the Bill.

- The Budget speech proposed the introduction of excise duty of 10% on imported pipes of HS code 39.17 with the aim of protecting local industries.. However, the Finance Bill did not include a split between locally manufactured and imported pipes, implying that the rate would also apply to locally manufactured pipes. The Finance Act clarifies that the excise duty would only apply to imported pipes in line with the proposal in the Budget Speech.

Tax Administration Act

- *Filing of provisional tax returns and payment of instalment tax*
The Finance Act clarifies that instalment tax payable during the relieved period should be deemed as deferred which shall be paid in three equal instalments in the remaining period. Further, the Act also states that where the deferment granted has the effect of deferring the tax payable beyond the year of income to which the tax relates, the whole of the tax payable shall be paid in the last instalment period of the year of income.
- Section 22A has been amended to give powers to the Minister to make regulations prescribing the fees, manner of recognising, registration and any other matter relating to small vendors or service providers.

Establishment of Tax Ombudsman Office

While there was no reference to the Office of Tax Ombudsman in the Finance Bill, The Finance Act 2019 introduces the same by adding Part IIIA in the Tax Administration Act. It was also unclear on who would appoint the Ombudsman and the roles and responsibilities of the Ombudsman. This has now been clarified in the Finance Act.

The Tax Ombudsman Service shall be responsible for reviewing and addressing any complaint by a taxpayer regarding service, procedural or administrative matter arising in the course of administering tax laws by TRA, the Commissioner General (CG) or staff of the Authority.

The Tax Ombudsman shall be appointed by the Minister of Finance and Planning to hold the office for a renewable period of three years and should have competent knowledge in the matters of tax administration.

The Ombudsman shall be in charge of and carry out the functions of the Tax Ombudsman Service independently and impartially without interference from any institution, agency or department of the Government or any other person.

Tax Ombudsman's findings shall directly be submitted to the Minister as recommendations; however his decision or recommendations shall not bind a taxpayer whose complaint or matter formed the subject matter of such decision or recommendations.

In addition, the Minister shall make regulations governing the conduct of Tax Ombudsman and modalities of recruiting staff and employees to perform Tax Ombudsman Service.

The duties of Tax Ombudsman include the following:

- Review complaints and resolve where necessary;
- Act independently and impartially in resolving complaints;
- Follow informal, fair and cost-effective procedures in resolving complaints;
- Provide information, training and awareness to taxpayers on tax ombudsman service, functions and procedures of making complaints;
- Facilitate access by taxpayers to dispute resolution processes within the Authority; and
- Identify and review tax administrative issues related to customer service or procedures and behaviour which impact negatively on taxpayers.

The Tax Ombudsman office has following limitation of powers:

- The Tax Ombudsman shall not review the legislation or tax policy;
- Inability to review TRA's policy or practice save that which relates to service, administrative or procedural matter concerning administration of tax laws;
- Inability to deal with a matter subject to a tax objection or appeal, save for an administrative matter relating to such tax objection or appeal.

Positives

Establishment of the Tax Ombudsman offers an extra opportunity for taxpayers to address their grievances with respect to the procedures followed by the TRA during tax audits.

Opportunities for taxpayers and TRA to resolve administrative issues without resorting to the appeals procedure, thereby reducing cost as well as time spent on disputes.

The taxpayer is not bound by the decisions of the Tax Ombudsman, which allows flexibility to the taxpayer. We did not note similar flexibility stated for the TRA.

Negatives

The duties of Tax Ombudsman are limited to administrative matters pertaining to service and procedures. Therefore, the Ombudsman will not have any powers to mediate on the issues of interpretation of tax laws or practice of TRA, which may not be in conformity with the tax laws. However, we believe the matters of facts giving rise to disputes would fall under his jurisdiction, provided the Ombudsman is approached before the objection is lodged. Having said the above, it is not clear how effective the

office of the Ombudsman shall be with limited powers that have been bestowed on it.

Examples of matters of facts include

- (a) not considering the tax credits of prior years in assessment;
- (b) not offsetting credits or deposits, made earlier in respect of the same taxes, on the assessments;
- (c) not recognising withholding taxes suffered;
- (d) not giving adequate time to respond to tax findings or tax proposals;
- (e) not incorporating responses of the taxpayers in the notes of discussion and so on.

Where the Ombudsman is approached after an assessment is issued, in the absence of any provision stating that the time limit for filing objections is waived until such time the Ombudsman issues a decision and where such decision may not be made within 30 days, the taxpayer will have no option but to lodge the objection without waiting for the decision of the Ombudsman.

Definition of fiscal receipt

The Finance Act includes a new definition of "fiscal device" and "fiscal receipt". A fiscal receipt is defined as "a receipt or invoice issued by using a fiscal device, Government electronic payment gateway system or any other electronic system approved by the Commissioner General". The purpose of the amendment is to include receipts issued by the Government Electronic Payment Gateway as a fiscal receipt so that the same can be used to claim input tax credit. However, the key challenge with respect to the receipts issued from the GEPG is that in most cases, the receipts issued do not meet the criteria of S.86 of the VAT Act, i.e. the receipts issued by various regulators do not include the TIN and the VRN number of the buyer. Hence, it is unclear as to whether the buyer would still be eligible to claim the input VAT where the conditions under S.86 of the VAT Act are not met.

Road Traffic Act

The Budget speech proposed to increase the validity and fees of the driving license and the registration fees for motor vehicles.

While the Bill and the Act proposed an increase in the validity period of the driver license to five years from three years, the increase in fees is not included in the Act.

With respect to the motor vehicles registration fees, we understand from the recent NBAA TRA joint seminar, the proposed increase in registration fees does not apply for registration of new vehicles. The increase shall apply in the case where a request is made for a new registration card.

Proposal on tax amnesty deadline

There has been no reference to the extension of payment with respect to the existing tax amnesty application. It remains to be seen whether there would be further regulations stipulating the same.

Caveat

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