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TANZANIA FINANCE ACT, 2021

Further to our budget newsletter circulated on 11 June 2021, we would like to take this opportunity to inform you of other significant changes in the Finance Act 2021, enacted with effect from 1st July 2021.

Our newsletter serves as highlights of such amendments in various tax laws.

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INCOME TAX ACT, CAP 332

TECHNICAL INTERPRETATION OF PERMANENT ESTABLISHMENT (P.E)

The meaning of the term "agent other than independent agent" has been expanded to include an agent;

- (i) who habitually exercises authority to conclude contracts or issues invoices on behalf of the other person unless his activities are limited to purchase of goods or merchandise for that other person;
- (ii) who habitually maintains stock of goods or merchandise from which he makes deliveries on behalf of the other person; and
- (iii) who habitually secures orders wholly or almost wholly for that other person or for the enterprise(s) controlling, controlled by or subject to the same common control as that of that other person.

The rationale behind the said amendment is to provide clarity on technical interpretation of the term "*Permanent Establishment*" and averting contention between the taxman and taxpayers.

The technical interpretation of the term "*Permanent Establishment*" has been a contentious issue between the taxman and taxpayers for a long period of time. The issue has featured during numerous tax litigations in the Appellate Bodies i.e. Tax Revenue Appeals Board (TRAB) or Tax Revenue Appeals Tribunal (TRAT).

Hence, the move to provide more clarity on such technical term is indeed a commendable one as the same will mitigate unnecessary tax litigations in the Appellate bodies and enhance voluntary compliance.

DEPRECIATION ALLOWANCE ON THE INTERNATIONAL PIPELINE

The Act has widened the depreciation allowance, proposed in the financial budget reading, at the rate of 5 per cent to be provided not only to the East Africa Crude Oil Pipeline (EACOP) project, but to all assets owned and employed by a person on international pipeline.

Such assets shall be treated as depreciable assets of class 6 pool of depreciable assets and be accorded depreciation allowance of five percent (5%).

International pipeline is defined by the Act to mean cross border pipeline for transportation of crude oil from a foreign country to a port facility in the United Republic in which such crude oil is exported.

MONTHLY WITHHOLDING TAX RETURNS

While the e-filing system was introduced in August 2020 which required the taxpayers to file monthly "PAYE statements", there was no such requirement in the Income Tax Act. Further, the e-filing system did not accommodate the submission of semi-annual returns as well.

Therefore, in order to align with the e-filing system, the Act has now imposed a requirement for withholding tax agents to file monthly withholding taxes returns seven days after the end of each month.

At the same time the Act has repealed the requirement to file bi-annual returns.

INCOME TAX EXEMPTIONS ON GOVERNMENT BONDS

By virtue of Income Tax Act, 1973, interest earned from investment in long term bonds of not less than three years maturity period issued and listed on the Dar es Salaam Stock Exchange (DSE) was exempted from income tax.

However, Income Tax Act, 2004, repealed the said legislation by subjecting the interest derived from such Government bonds to income tax except for Government bonds issued and listed on the DSE in the fiscal year 2002/2003.

This has been a grey area since the BOT guidelines states such income to be exempt from withholding tax, however, no such provision existed in the Income Tax Act. The Act now clarifies this and exempts interest emanating from Government bonds of not less than three (3) years issued and listed on the DSE effective 01st July 2021 from income tax.

The exemption will motivate investors to subscribe to Government bonds which will promote investment prospects but one would need to consider the liquidity impact of investing long term.

THE TAX ADMINISTRATION ACT, (CAP. 438)

TIN REQUIREMENT ON EMPLOYEES

For the purposes of being aligned with the electronic tax returns i.e. monthly payroll returns and promoting voluntary compliance, the Act has now imposed Tax Identification Number (TIN) requirement on employees.

The employees have been accorded fifteen days (15) from the date of commencing employment to lodge their TIN application to the Commissioner General. Requirement to register for TIN is imposed on all persons who become liable to pay tax by virtue of business, investment or employment.

TAX OMBUDSMAN OFFICE

The Act has amended scope of tax ombudsman office to handle and review complaints from any person regarding services from the revenue authority. It remains to be seen whether this amendment will lead to the revival of the Tax Ombudsman office which has been a point of discussion since 2015.

The Act has also extended qualifications of the tax ombudsman to cater for "experience" in tax administration matters.

Further, the Act has revised provisions which rendered tax ombudsman's decision non-binding as well as tax ombudsman's findings serving as recommendations to the Minister for directives. Conclusively, the Act has redefined the roles of tax ombudsman from resolving to handling complaints only.

PENALTY IMPOSITION – FALSE / MISLEADING STATEMENTS

The Act has introduced 100% penalty on the tax shortfall in controlled transactions if the transactions are not in line with the arms' length principle.

TRANSLATED DOCUMENT / INFORMATION SUBMISSION

By virtue of Tax Administration Act (TAA) provisions, document or information necessary for tax administration should be in official language being English or Swahili. However, in case such document or information is not in official language, the taxpayer is obligated to furnish a translated copy upon request by the Commissioner General.

No time limit was prescribed previously for the taxpayer to submit the translated document or information. However, the Act has now accorded taxpayers with only fourteen (14) days to avail such translated document or information to the Commissioner.

It should be noted that where such information is not provided to the Commissioner General within the prescribed period, such information cannot be relied on as evidence at the time of objection or appeal irrespective of the fact that the requisite information, in a language other than English or Swahili, had been provided to the Commissioner General before.

In line with the above requirement, Section 85 of the Act has been amended in such a way that any person who fails to avail the requisite document, commits an offense and shall, upon conviction, be liable to a penalty of not more than three million shillings.

LOCAL STORAGE REQUIREMENT

Persons maintaining documents in electronic form were not obligated to maintain a primary data server in the Country for storage of documents in electronic form.

However, the Act has now obligated taxpayers maintaining documents in electronic form to maintain a primary data server in the Country for storage of documents in electronic form.

Key notable requirements on such obligation includes;

- The requisite server shall be accessible to the Commissioner General for purposes of tax administration in the manner and time prescribed in accordance with relevant provisions of tax law.
- Primary data server is interpreted to mean a server which stores data that is created or collected by the person in the ordinary course of business.
- A period of twelve months (12) from 1st July 2021 has been accorded as implementation period for such requirement with failure to comply with same qualifying as offence. This serves as an advance notice and allows the taxpayers sufficient time to set up the infrastructure.

With the amendment requiring all taxpayers to host data locally, challenges may be faced in terms of data centre solutions and infrastructure availability to accommodate requirements of various systems.

TIME EXTENSION – FINAL RETURN SUBMISSION

Interpretation of Section 39 of the Tax Administration Act in terms of deadline to lodge any extension requests has been a contentious issue between taxman and taxpayers since the enactment of the Act in 2015. There has also been different interpretations from different tax offices as well.

The gist of the contention being on whether the said extension application should be lodged before the fifteenth day or during the last fifteen days of the filing deadline.

The Act has provided clarity on such contention vide amending relevant provisions to state that the extension application should be lodged not less than fifteen (15) days before the due date for submission of requisite final tax return.

RELEVANCY OF REQUISITE TAX DEPOSIT

By virtue of Tax Administration Act (TAA), 2015 provisions, an objection to any tax decision has to be validated through requisite tax deposit, the deposit being one third of total tax assessed or tax not in dispute, whichever is greater.

However, a grey area emanated from such legislation on the basis that not all tax decisions are associated with imposition of additional tax liabilities, hence, the requirement of the tax deposit was irrelevant.

The Act has provided some clarity on the relevancy of requisite tax deposit in relation to institution of tax objection. The requisite deposit will now be applicable on objection against tax decision on assessment or notice of liability to pay tax.

PAYMENT MODALITY – PROPERTY RATES

The Act has construed payment modality in relation to property rates with the same being settled at the time of paying electricity.

SCOPE REVISION – ERRONEOUS REFUND

The Commissioner General (CG) is empowered to demand from a requisite person, repayment of erroneous duty refund or payment of duty short levied. The Act has now extended the scope of CG's aforesighted powers to cater for erroneous tax refunds or tax short levied. The rationale behind the said amendment is to enable the CG to recover erroneous tax refunds and incorrect tax assessments.

THE VALUE ADDED TAX ACT, (CAP. 148)

INTRA UNION – VAT CHALLENGES

The following changes have been made in terms of VAT relating to Intra Union transactions:

- Where taxable goods are purchased from Tanzania Zanzibar on which value added tax (VAT) is paid in Tanzania Zanzibar at a rate which is the same as the VAT rate applicable in Mainland Tanzania, the VAT paid shall be deemed to have been paid in Mainland Tanzania and no additional VAT shall be payable in Mainland Tanzania at the time of importation.
- Where taxable goods are purchased from Tanzania Zanzibar on which VAT is paid in Tanzania Zanzibar at a rate which is lower than the VAT rate applicable in Mainland Tanzania, the difference in the VAT shall be deemed to be unpaid and shall be payable in Mainland Tanzania at the time of importation.
- Where taxable goods are supplied directly by a taxable person in Mainland Tanzania to a taxable person in Tanzania Zanzibar, VAT shall be collected in Mainland Tanzania by the Tanzania Revenue Authority (TRA) on behalf of the Zanzibar Revenue Board and TRA shall remit the VAT to the Tanzania Zanzibar Treasury.

One may note that while the amendment caters for VAT on goods, there is no mention of "services". It remains to be seen whether the same treatment would apply for services rendered between Tanzania Mainland and Tanzania Zanzibar.

ZERO RATING OF TRANSPORT & INCIDENTAL SERVICES – INTERNATIONAL PIPELINE

The Act has widened the scope on supply of transportation and incidental services to the EACOP project to include all the supply of transportation and incidental services to an international pipeline. Such supplies shall be zero rated.

International pipeline is interpreted to mean a cross border pipeline for transportation of crude oil from a foreign country to a port facility in the Tanzania from which such crude oil is exported to another foreign country.

POWER TO MAKE REGULATIONS – VAT REMISSION

The Act has empowered the Minister for Finance and Planning to make regulations prescribing the manner of remission of VAT collected on taxable goods supplied to a registered taxable person in Tanzania Zanzibar.

ELECTRONIC AND POSTAL COMMUNICATIONS ACT, CAP 306

IMPOSITION OF AIRTIME LEVY

The Act imposes Airtime Levy ranging from TZS 5 to TZS 222.70 on the basis of consumer's ability to top up. The manner and modality of collecting and accounting for such levy shall be preceded by ensuing regulations by respective Minister upon consultation with Minister of Finance.

The rationale behind the said amendment is to procure funds to be utilized in the implementation of development and strategic projects.

On the basis of recent GMSA report titled "*Driving Social and Economic Value Through Mobile – Sector Tax Reforms*" indicated that about fifty nine percent (59%) of Tanzania's population remains unconnected on mobile coverage. While the amount may not be significant, this amendment may have a detrimental impact on the connectivity penetration sought in the Country.

EXCISE (MANAGEMENT AND TARIFF) ACT, CAP 147

IMPOSITION OF EXCISE DUTY ON SYNTHETIC FIBRE

The Act has imposed excise duty at the rate of ten percent (10%) on both imported and locally produced synthetic fibres other than synthetic used for fishing activities.

The rationale behind the said amendment is environment conservation and promoting the use of locally produced sisal fibres.

This is indeed a commendable move by the Government as the same is poised to promote local industry thereon widening the informal sector employment opportunities.

UPWARD REVISION OF EXCISE DUTY ON SPIRITS

The Act has revised excise duty rates on both locally produced and imported spirits upwards by thirty percent (30%). The rationale behind the said amendment is to boost the Government revenue.

IMPOSITION OF EXCISE DUTY ON MOTORCYCLES

The Act has imposed excise duty at the rate of ten percent (10%) on imported used motorcycles aged more than three (3) years. The rationale behind the said amendment is to reduce importation of used motorcycles and promote environment conservation.

GOVERNMENT LOANS, GRANTS AND GUARANTEES ACT, CAP 134

GOVERNMENT AS A GUARANTOR

The Act has empowered the Minister responsible for finance to issue a guarantee (for loan purposes) for and on behalf of the Government to an institution or company in which the Government holds shares, subject to approval of the Cabinet.

The Limitation criteria for such guarantee is the sought amount of loan not exceeding the value of shares held by the Government in such institution or company.

The rationale behind the said amendment is to boost credit worthiness of such institutions or companies and expediting the finalisation of development and strategic projects.

GAMING ACT, CAP 41

REDUCTION OF GAMING TAX ON WinnINGS

The Act has reduced gaming tax on winnings from twenty percent (20%) to fifteen percent (15%). The rationale behind the said amendment is to motivate players in opting for local gaming activities rather than offshore gaming activities.

INCREASE IN GAMING TAX ON SPORTS BETTING

The Act has increased gaming tax on sports betting from prior twenty five percent (25%) to thirty percent (30%). The rationale behind the said amendment is to procure funds for Sports Development Fund.

IMPOSITION OF GAMING TAX ON VIRTUAL GAMES AND OTHER GAMING PRODUCTS

The Act has imposed gaming tax in at ten percent (10%) of gross gaming revenue on virtual games and other gaming products licensed under the relevant provisions of the Gaming Act. The rationale behind the said amendment is to protect tax base and widen Government revenue.

LOCAL GOVERNMENT AUTHORITIES (RATING) ACT, (CAP. 289)

PROPERTY RATES REVISION

The Act has introduced property rate charges for District, City, Municipal and Town council in the following manner:

- i. Twelve thousand shillings (TZS 12,000) for ordinary buildings; and
- ii. Sixty thousand shillings (TZS 60,000) for storey buildings.

CONSOLIDATED FUND ADOPTION

The Act has introduced new requirement in terms of depositing all cash collected as property rates into the Consolidated Fund with fifteen percent (15%) of garnered cash to be remitted to Ministry responsible for Local Government and remaining amount to be transferred to Treasury.

THE LOCAL GOVERNMENT FINANCE ACT, (CAP. 290)

CLARITY ON PRODUCE CESS AND SERVICE LEVY PAYMENT

The imposition, chargeability and payment of produce cess and service levy by entities engaging on agricultural produce has been a bitter issue for a long period of time.

The Act has expounded some clarity on how produce cess and service levy shall be payable by requisite entities as deduced below:

- I. Entities required to pay service levy shall not be liable to pay produce cess on agricultural produce or other produce unless the produce is produced by another person other than the entity.
- II. Entities required to pay service levy in one council shall pay service levy in a council in which the entity produces agricultural produce or other produce in accordance with the guidelines issued by the Minister.
- III. Entities required to pay service levy in one council shall pay produce cess in a council in which it purchases agricultural produce or other produce.

The rationale behind the said amendment is to provide clarity to those charged with produce cess and service levy on applicability and modality of such payments to avoid inherent dispute and create a conducive business environment.



THE NATIONAL PAYMENT SYSTEMS ACT, (CAP. 437)

MONEY TRANSFER LEVY

A person executing mobile money transactions is anticipated to suffer charges in form of cash withdrawal charges or cash remittance charges and taxes in form of value added tax (VAT), to name a few.

The Act has now imposed money transfer levy ranging from TZS 10 to TZS 10,000 to be charged on mobile money transfer transactions.

The manner and modality of collecting and accounting for such levy will be preceded by ensuing regulations by respective Minister upon consultation with Minister responsible for finance.

THE STAMP DUTY ACT, (CAP. 189)

STAMP DUTY RATES REVISION

For the purposes of reflecting the current value of Tanzania shilling, the Act has amended the current schedule by revising the prescribed rates on dutiable instruments. For instance, fixed stamp duty rate for several dutiable instruments previously ranging from TZS 500 to TZS 5,000 have been revised to range from TZS 2,000 to TZS 10,000.

THE TAX REVENUE APPEALS ACT, (CAP. 408)

Several tax stakeholders have been rooting for Alternative Dispute Resolution (ADR) as viable way to reduce tax cases backlog constraining Appellate Bodies in Tanzania.

In addition to establishment of tax ombudsman office, the Act has now introduced an avenue where taxpayers can settle the presiding appeal whether at the Tax Board or Tax Tribunal through mediation thus a great step towards realisation of Alternative Dispute Resolution (ADR).



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DAR ES SALAAM

1st Floor, Plot 1040, Haile Selassie Road,
Masaki
P.O. Box 79586
Dar es Salaam, Tanzania

Tel: +255 22 2137314/15
Email: info@tz.rsm-ea.com
Website: www.rsm.global/tanzania
Contact: Lina Ratansi (Group Chief Executive)

NAIROBI

1st Floor, Pacis Centre,
Slip Road, off Waiyaki Way, Westlands
P.O. Box 349, 00606
Nairobi, Kenya

Tel: +254 20 3614000/4451747/8/9
Mobile: +254 706 347950/772 786111
Email: info@ke.rsm-ea.com
Website: www.rsm.global/kenya
Contact: Ashif Kassam (Executive Chairman)

MOMBASA

3rd Floor, Bayview Place,
Moi Avenue
P.O. Box 87227, 80100
Mombasa, Kenya

Tel: +254 41 2311778/2312640/2224116
Mobile: +254 707 613329
Email: infomsa@ke.rsm-ea.com
Website: www.rsm.global/kenya
Contact: Nihla Mazrui (Partner)

KAMPALA

6th Floor, DTB Centre,
Plot 17/19, Kampala Road
P.O. Box 31704,
Kampala, Uganda

Tel: +256 414 342780
Email: info@ug.rsm-ea.com
Website: www.rsm.global/uganda
Contact: John Walabyeki (Managing Partner)

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