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TANZANIA FINANCE BILL, 2022

Further to our newsletter circulated on Tuesday, 14th June 2022 after the budget speech, we provide below the changes proposed in the Finance Bill on Wednesday, 15th June 2022.

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

Income Tax Act

Taxation of digital market services rendered by non-residents

To align with the proposal in the budget speech of introducing income tax on digital business, the Finance bill proposes amendment of Section 3 of the Income Tax Act and introduces S.90A and S.90B which offer clarity on taxation of digital market services.

The Finance Bill proposes to expand the definition of "Business" under Section 3 of the Income Tax Act to include transactions or activities carried out through the internet or an electronic means including an electronic service or transaction conducted in the digital market place regardless of the manner in which such transaction is carried out. The Bill also proposes addition of the term "digital market place" under Section 3 which is defined as "a platform which enables direct interaction between buyers and sellers of goods and services through electronic means."

While it has been clarified by the proposed addition of Section 90A and 90B that a non-resident person shall pay income tax by way of single instalment at the rate of 2% of the gross payment when rendering services to individuals, the modalities of paying the single instalment tax still remain unclear and the Bill states that the Minister shall issue Regulations to prescribe procedures for assessing and collecting Income Tax.

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The non-resident service provider shall be required to file a return and pay the single instalment tax within seven (7) days following the month in which the payment is received.

Recognition of alternative financing arrangements

The Finance bill has provided clarification on the recognition of alternative finance arrangements approved by the Bank of Tanzania by amending Section 32 of the Income Tax Act to treat the margin charged on the cost of the arrangement as interest. This implies that the borrower shall be obliged to withhold income tax at the rate of 10 percent based on the provision of Section 82 of the Income Tax Act. Further, the interest paid shall be subject to Thin Capitalization rule under Section 12 of the same Act from the borrower's perspective.

Expansion of residential status criteria for corporations

According to Section 66 (4)(b) of the Income Tax Act, a corporation shall be a resident in Tanzania for a year of income if the management and control is exercised in Tanzania during such year of income. The Finance bill proposes to expand the scope and include control exercised through any electronic means in Tanzania.

While the proposal is intended to address current technological changes in the conduct of business by including the control and management of a business through electronic means, it remains to be seen how TRA would determine if control is exercised in Tanzania through electronic means where the servers are located outside Tanzania.

Expansion of scope on payments with a source in Tanzania

The Finance bill proposes expansion of source of payments emanating from Tanzania to include payments made for harnessing, generating or utilizing land, air or water natural resources for generation of power or anything of value whether the respective natural resource is located alongside the border or within the country.

In order to tax digital services, the Bill also proposes to include such payments as having a source in Tanzania.

Abolishment of withholding tax payment exemption

In the budget speech, the Minister of Finance proposed to abolish withholding tax payment exemption to individuals for payments on rentals to allow tenants to withhold tax on rental income with respect to residential houses, apartments and commercial buildings.

However, the Finance bill proposes to repeal the entire exemption under Section 82 of the Income Tax Act, which implies that any payment made by an individual in relation to rent, interest, natural resource payments and royalty, shall be subject to withholding tax.



Clarification on the withholding tax on petroleum products

The Finance bill has clarified that the tax withheld by a wholesaler of bulk petroleum products of TZS 20 per litre shall be an advance tax by the retailer to be offset against quarterly tax payments.

The wholesaler shall charge and remit the tax within 7 days from the date of the transaction and submit a return or certificate of payment of tax collected to the Commissioner General within 7 days of the following month. The requirement to remit tax within 7 days may create a lot of administrative challenges if the same is assented by Parliament.

Limitation of scope of individuals under the presumptive tax system

Individuals conducting professional, technical, management, construction and training services would not qualify for the presumptive tax system. This implies that an individual engaged in any of such services shall be required to file annual return under self-assessment, which will necessitate preparation of audited financial statements and it is likely more tax shall be payable by such individuals.

Clarification on the introduction of tax on trucks and buses

With respect to tax proposed of TZS 3,500,000 on each truck and passenger vehicle, the Finance Bill clarifies that such tax shall be applicable to individuals qualifying under the presumptive tax scheme and engaged in long distance travel (from one region to another in Tanzania), buses with seating capacity of at least 40 passengers or load vehicles with lorry having axles above three. The proposed amendment aims to enhance predictability and certainty in taxation.

Reduction of withholding tax rate on film industry

The proposed amendment to reduce withholding tax rate on the royalties paid in the film industry from 15 percent to 10 percent shall only apply to the payment made to non-resident persons in order to promote employment and transfer of knowledge and skills in the film industry.

Withholding tax on royalty payments made to resident persons shall remain at 15 percent.

Value Added Tax

Clarification on the introduction of VAT on digital services by non-residents

In order to simplify the registration of non-resident service provider of digital services, who do not have places of business in the United Republic of Tanzania, the Finance bill clarifies that such provider shall submit an application to the Commissioner in accordance with the Regulations in the case it is not appropriate to register through a resident VAT representative as provided for under Section 64 of the VAT Act. It is expected that the Minister shall issue further Regulations on the registration process and modalities for payment by digital service providers.

Expansion of the scope of exemption on dairy products

Proposal to amend the Schedule to the VAT Act to include unpasteurised or pasteurised cow and goat milk with additives and long-life milk in the exemption list

Exemption of pasture seeds

The Finance bill has excluded the proposed exemption from the budget speech on Pasture Seeds (pasture grass seeds) under HS Code 1209.25.00; pasture legumes seeds under HS Code 1209.21.00; pasture multiple tree seeds and pasture cuttings, and rhizomes and stolons 1209.29.00.

The Vocational Education and Training Act

Proposal to amend the VETA Act by exempting Skills and Development Levy (SDL) on payments made to intern students from universities who are under the Tanzania Employment Service Agency program. This is indeed a commendable move and will encourage practical training for students without increasing the cost to the employers offering such opportunities.

The Tax Administration Act

Expansion of the scope of fiscal devices

Proposed amendment to the Tax Administration Act to recognise other electronic systems that are used to produce electronic receipts and invoices such as Virtual Fiscal Device (VFD).

Clarification on the issuance of TIN to all citizens

The Finance Bill provides clarifications in terms of the requirement to obtain TIN by all citizens aged 18 years or above. According to the Bill, the Taxpayer Identification Number issued to a person under shall be used in every transaction involving sales or purchases, whether made electronically or manually, and the same shall come into force with effect from 1 January 2023.

Representation of taxpayers

The Finance bill proposes to amend Section 28 of the Act which provides for Licensing of tax consultants. The proposal intends to forbid any individual who is not registered by the Commissioner as a tax consultant or an employee/manager of the taxpayer to act on behalf or communicate with the Commissioner General on pretext of representing a person on any matter under any tax law.

Filing of tax returns

During his budget speech, the Minister of Finance mentioned *“we urge all citizens with TIN to submit their annual returns to TRA. This process will provide incentive among Tanzanians to pay taxes as a result increase revenue particularly from livestock, agriculture, fishing and other sectors that do not contribute to Government revenue but have major contribution to the National Income.”* The Finance Bill proposes to amend Section 37 by adding Section 37A on compulsory filing of electronic tax returns which require every taxpayer to file a return electronically on or before the due date as prescribed in the specific tax law. This implies that the Commissioner General shall not accept any return filed manually. However, the Commissioner may allow, in writing, a person to file manual return under special circumstances.

The Bill further states that the Minister may prescribe the form and the manner in which the tax return shall be filed electronically. However, the proposed amendment in the Bill requiring **“Every taxpayer”** to file the return electronically contradicts with Section 92 of the Income Tax Act which provides for exemption of filing a tax return.

According to Section 92, a resident individual who has no income tax payable or whose income consists exclusively of employment income or gains subject to single instalment tax is not required to file a tax return. We hope the Finance Act or Regulations shall offer further clarity on the requirement and the contradiction.

Registration and monitoring of storage facilities

Any person who establishes a storage facility with the aim of keeping goods for business or investment purposes, and the facility is capable of storing goods of the value exceeding TZS 10,000,000 shall register the facility with the Commissioner General. The owner of the storage facility shall keep records of all stored goods and report to the Commissioner General on monthly basis in the manner prescribed by the Commissioner General

Failure to comply with this provision will trigger a penalty equal to TZS 4.5 million and be liable to pay any detected loss of Government revenue whether the goods are owned by the storage facility owner or not.

While the proposal includes storage facilities held for investment purposes, it does not consider the fact that storage facilities may be rented by the owner to 3rd parties and the main source of income for the owner would be rental income. Clearly, the owner of the facility would not have any control on the goods stored, hence, it is practically impossible for the owner to keep records of all stored goods and report to the Commissioner General. Therefore, further clarity would be required on the practical implementation of this proposal.

Clarification on the liability of managers

A manager shall be jointly liable to pay the tax shortfall where the default is on account of fraud as proved in a court of law. This implies that the Commissioner shall not institute any recovery measures until the person is proved guilty in the court of law.

Offense for failure to register

The Finance Bill proposes to amend the Act to impose a penalty of TZS 7.5 million or to imprisonment for a term not exceeding one year, or both to any person who fails to register under any tax laws where required to do so.

Excise duty offences

The Finance Bill proposes to amend the Act to impose a fine of TZS 4.95 Million shillings, or imprisonment for a term not exceeding three years, or both for failure to comply with the Excise (Management and Tariff) Act,

including but not limited to failure to acquire relevant license, failure to maintain records and failure to make entry or declaration.

The Finance bill further provides that if the person who commits an offence under subsection (1) is a subsequent offender, such person shall, on conviction, be liable to a fine of not less than 4,950,000 shillings but not exceeding 52,500,000 or to imprisonment for a term of not less than five years but not exceeding twenty years, or to both.

In addition to the penalty, the court may issue an order for forfeiture of any plant, excisable goods or materials connected to the commission of the offence.

The Workers Compensation Act

The Minister of Finance proposed a reduction of 0.1% on Workers Compensation contribution by the employers in the private sector in order to align with the public sector. However, this change has not been incorporated in the Finance Bill.

Other areas to note

VAT Tax invoice requirement

While the newly introduced e-VAT system, does not accept any tax invoice without the name, TIN and VRN of the buyer, the Finance Bill does not propose any amendment to Section 86 (1) (b) (v) of the VAT Act, which stipulates that the name, address, TIN and VRN of the customer shall be included in the tax invoice only if the supply exceeds the minimum amount prescribed in the Regulations of TZS 100,000.

Primary data server requirement

Section 35 of the Tax Administration Act was amended vide Finance Act 2021 to add Subsection 7 stipulating that every person maintaining documents in electronic form shall maintain a primary data server in Tanzania and the requirement would come into effect from 1 July 2022. Since the Finance Bill proposes no amendment to Section 35, it is important to note that effective 1 July 2022, all taxpayers are required to maintain primary data server in Tanzania.

Caveat

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