

# TANZANIA – FINANCE ACT, 2022 – NEW REGULATIONS ISSUED

Following the enactment of the Finance Act, 2022, on 30th June 2022, the Minister of Finance has published four Regulations:

- *(Tax Administration (General) (Amendment) Regulations, 2022,*
- *Value Added Tax (Registration of Non-Resident Electronic Service Suppliers) Regulations, 2022,*
- *Income Tax (Registration of Non-Resident Electronic Service Providers) Regulations, 2022 and*
- *National Payment Systems (Electronic Money Transaction Levy) Regulations, 2022)*

on 1<sup>st</sup> July 2022 to provide clarity and guidance on the implementation of the following amendments in the Finance Act, 2022:

- a) Registration of Non-resident electronic service providers from an Income Tax and VAT perspective;
- b) Registration of storage facilities;
- c) Licensing of tax consultants; and
- d) Amendment to levy on electronic money transfer.

## Registration of Non-resident electronic service providers

The Finance Act, 2022 introduced taxation of digital market services rendered by non-residents to resident individuals at the rate of 2% from 1<sup>st</sup> July 2022.

It also amended the Value Added Tax Act, in relation to the registration and taxation of digital market services rendered by non-residents to resident individuals in Tanzania Mainland.

The Regulations provide clarity on the following:

### Scope of electronic services

For the purpose of both the Income Tax Act and the VAT Act, the Regulations shall apply to electronic services provided or delivered through the internet or any other electronic means and shall include:

- websites, web-hosting or remote programs and equipment;
- software and updating thereof;
- images, texts or information (e.g., desktop theme, photographic image, pictorial image, screensaver, any right to view any item listed under this paragraph)
- access to the database including subscription-based media and electronic data management;
- self-education packages (e-learning);
- music, films and games including gaming activities; and
- political, cultural, artistic, sporting, scientific and other broadcasts and events including broadcast television.

The Regulations provide a further breakdown of each item above.

## Application for registration and filing of tax returns

A non-resident electronic service provider shall be required to apply online for registration to the Commissioner General using specific forms provided under the Regulations. Upon being satisfied, the Commissioner General shall register and issue the applicant with a Taxpayer Identification Number (TIN) and Value Added Tax Number (VRN) for filing returns and making tax payments.

Where a taxable person ceases to supply electronic services in Tanzania, the Commissioner General will have to be notified of the same in the prescribed form. A non-resident person who supplies electronic services in Mainland Tanzania prior to the coming into effect of these Regulations shall, within six months from the date of coming into effect of these Regulations, be required to register with TRA.

The tax returns shall be submitted online using a simplified form provided under the Regulations on or before the seventh day of the following month to which the return relates.

## Source of payment

For the purpose of taxation, the payment received by a non-resident electronic service provider shall have a source in Tanzania if:

- the payment proxy, including credit or debit card information and bank account details of the recipient of the electronic services, is in Tanzania; or
- the resident proxy including the billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient in Tanzania

## Exemption from using EFD

Unlike other business operations, a non-resident person who provides electronic services shall not be required to acquire and use electronic fiscal devices for the transactions carried out in Tanzania.

## Claim of input tax for VAT purpose

Input tax credit shall not be allowed to a supplier of electronic services registered under these Regulations.

## Penalty for making false or misleading statements

Any person who makes a false or misleading statement or omits to include material facts in a statement made to a tax officer (TRA) shall be liable to a penalty of up to 100% of the tax shortfall depending on the intention of the person as may be determined by TRA.

Further, a person who fails to comply with these Regulations commits an offence and shall be liable on conviction to a fine of up to TZS 4,500,000 or imprisonment for a term not exceeding three years or to both.

Further, a non-resident electronic service provider shall also be liable to pay interest at the statutory rate compounded monthly for the delay in payment of tax.

## Our observations

The Regulations provide clarity in terms of the scope of the services to be covered under the principal Act, procedures for registration, filing of returns and payment of the relevant taxes, which is a commendable move by the Government in ensuring effective and efficient collection of revenue.

However, the Regulations (VAT Regulations) state that no input tax credit shall be allowed to a supplier of electronic services registered under these Regulations. This is contrary to the principal Act, which allows a registered person to claim input tax credit for an input tax incurred for the supply of taxable supplies where a registered person possesses proper fiscal receipts or invoice.

Moreover, the Regulations do not clearly state how the Government will ensure non-resident electronic service providers are brought to the tax base provided that such providers operate outside Tanzania and the recipient of the service is not obliged to ensure the supplier is registered with TRA before procuring the services. Hence, it would be a daunting task to ensure all service providers are captured for tax purposes.

Further, while it is a commendable move to increase the tax base, it is not clear from the Regulations how the TRA would ensure and verify the completeness of the data provided by such service providers, if at all they do provide such data.

## Registration of Storage Facilities

The Regulations provide guidance in terms of the following provisions:

### Registration with TRA

Storage facilities used to store goods for business purposes must be registered with the Commissioner General.

The Commissioner General shall maintain a register which will contain the following particulars:

- storage facility number;
- name and address of the owner of the storage facility;
- TIN number of the owner;
- details of the nature of goods which are kept in the storage facility; and
- such other particulars as the Commissioner General may deem fit

### Other obligations of the storage facility owner

A registered storage facility owner shall have the following obligations in addition to the application for registration:

- Obligation to notify the Commissioner General, within 30 days, of any changes on the particulars of the facility;
- Obligation to keep a proper record with respect to the goods stored in the facility in the manner as shall be directed by the Commissioner;
- Obligation to submit to the Commissioner General a stock movement ledger which shall disclose goods kept in his storage facility during the month, including details of owners of the goods, origin and destination. The requisite return shall be submitted no later than the seventh day of the following month.

## Offence and penalty

It is imperative to note that where the Commissioner General is satisfied that a storage facility has not been registered as required or goods have been kept without being reported as required under subsection (2), the facility owner shall be liable to a penalty of TZS 4,500,000 and be responsible for paying any detected loss of revenue with respect to undisclosed goods.

## Our observations

Whilst the Regulations provide clarity in terms of obligations of storage facility owners, the term “storage facility” is not clearly defined, which may result in further ambiguities and inconsistencies in the implementation of the Regulations.

Further, the Finance Bill 2022 had indicated that the requirement would apply to the storage facilities where the value of the stored goods exceeds ten (10) million shillings. However, the threshold was not passed in the Finance Act 2022, indicating that the requirement would apply to all taxpayers with storage facilities irrespective of the value of goods stored in the facility.



We foresee a further challenge in terms of the requirement to register the facility and file returns with TRA, which is the onus of the storage facility owner (legal owner, presumably). The Regulations do not provide any specific form and manner in which the returns relating to stock movement ledgers shall be lodged with the TRA. Hence, inconsistencies are expected from one month to another or from one taxpayer to another which may result into administration burden for TRA in terms of coordinating and consolidating this information for record-keeping purposes.

While the Regulation intends to oversee and capture any loss of government revenue upfront, practical implementation of the same is surrounded by uncertainties and inconsistent application/implementation.

## Registration of Tax Consultants

### Qualifications of a registered and licensed

- An individual must be a citizen of Tanzania;
- He/she must have an experience of not less than three (3) years in the taxation, customs, finance accountancy, financial management, business management, commerce, economics, or law field;
- He/she must undertake an entrance certified tax consultancy examination and attain the required grades. Exemption to undertake an exam shall be applicable to a person who, for more than ten years, has held a senior position in the areas of tax administration, tax practice, tax management or tax resolution;

### Other obligations

A registered tax consultant must attend regular professional tax practice training each year organised and conducted by professional bodies, institutions or persons approved by the Commissioner General;

Any non-compliance with the Regulations may result to a fine of not less than five (5) million shillings or imprisonment for a term of not less than six months.

The Regulations further prohibit individuals not licensed to assist, represent or act on behalf of taxpayers in the course of dealing with the Commissioner or complying with tax law procedures.



### Our observation

The objective of the Regulations is to streamline and regularise the process of licensing tax consultants. The Commissioner shall grant tax consultant practising licenses to individuals qualifying for the same. However, we hope such Authority will be exercised fairly and not used to the disadvantage of the tax consultants.

## Amendment to levy on electronic money transaction

During his budget speech, the Minister of Finance proposed a reduction to the electronic transfer levy from a cap of TZS 7,000 to TZS 4,000. However, he also proposed to extend the scope to include all electronic transactions.

The National Payment Systems (Electronic Money Transaction Levy) Regulations, 2022 provide further clarification as follows:

The Regulations define the term “transfer” and “withdrawal” as follows:

“transfer” means the transfer of electronic money from–  
(a) a user’s mobile money account to a user’s mobile money account;

(b) a user’s mobile money account to a user’s bank account;

(c) a user’s bank account to a user’s bank account; or

(d) a user’s bank account to a user’s mobile money account;

“withdrawal” means withdrawal of cash from a user’s mobile money account or bank account at a collector, collector’s agent or automated teller machine.

Therefore, it is clear that the levy would now be applicable on all over-the-counter withdrawals and transfer of electronic money from (a) to (d) above.

For more information and clarification, please reach out to us via [iratansi@tz.rsm-ea.co.tz](mailto:iratansi@tz.rsm-ea.co.tz), [msinai@tz.rsm-ea.co.tz](mailto:msinai@tz.rsm-ea.co.tz) or [jboke@tz.rsm-ea.co.tz](mailto:jboke@tz.rsm-ea.co.tz) or our office premises at *1<sup>st</sup> Floor, Plot 1040, Haile Selassie Road, Masaki.*

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