

Supporting and empowering  
you every step of the way

## TANZANIA – TRANSFER OF ASSETS BETWEEN ASSOCIATES COMPLIANCE REQUIREMENTS

In this newsletter, we shall cover the compliance requirements on the preferential treatment accorded when transferring assets to associates as per S.44 (2) of the Income Tax Act (ITA).

In accordance to the provisions of Income Tax Act (ITA), a person's gain at the time of disposal/realisation of an asset is the amount by which the sum of the incomings for the asset exceeds the cost of the asset.

Further, if the gain is in relation to realisation of an interest in land, petroleum or mineral rights, buildings situated in the United Republic, license or concessional right on reserved land and shares or securities held in resident entity, a person deriving such gain will be obliged to pay single instalment tax at the time of realisation i.e. capital gain tax (CGT).

However, there is a preferential treatment accorded on transfer of assets to **associates** as stipulated in section 44(2) of Income Tax Act (ITA), 2004 read together with section 44(4) ITA, 2004.

The term "associate" is technically interpreted to mean **a person whose relationship with another person is in form of individual and relative of the individual, partners in a partnership and that of entity and a person who controls or may benefit from 25% or more of the rights to income / capital / voting power of the entity either alone or together with an associate, directly or through one / more interposed entities.**

Therefore, a person realising an asset by way of transfer of such asset to an associate, will be treated as deriving an amount in respect of the realisation equal to the net cost of the asset immediately before the realisation.

[www.rsm.global/tanzania](http://www.rsm.global/tanzania)  
[info@tz.rsm-ea.com](mailto:info@tz.rsm-ea.com)

In other words, the realisation shall have a neutral tax effect as the net cost of asset before the transfer is deemed as the realisation value, which will be reflected as an acquisition cost for the associate.

In order to qualify for the preferential treatment on transfer of asset to an associate, S.44 (4) of the ITA stipulates the following requirements;

- Either the person or associate should be an entity;
- The assets should be business assets, depreciable assets or trading stock of the associate immediately after transfer by that person;
- The person and associate are residents at the time of realisation;
- The associate or in case of associate partnership none of its partners is exempt from Income Tax;
- There must be continuity of underlying ownership of the asset at least fifty percent (50%); and
- The person and associate must elect in writing for the aforesaid preferential treatment to apply on the envisaged asset transfer.

In the **Income Tax appeal No. 388 of 2020 between John Epimaki Kessy and Commissioner General (CG) for Tanzania Revenue Authority (TRA)**, the Court of Appeal of Tanzania (CAT) emphasised on the applicability and compliance requirements in relation to preferential treatment to be afforded on a person realising an asset by way of transfer of such asset to an associate in accordance to the dictates of provisions of section 44(2) ITA, 2004 read together with provisions of section 44(4) ITA, 2004.

The CAT cemented the precedence on:

- **Timing – Election to be made on applicability of prevailing provisions**

The CAT was of the view that in the context of logic, common sense and law both the person and associate involved in the said transfer should elect in writing for application of the relevant provisions prior to CG's issuance of capital gain tax assessment on that transfer.

On that basis, both the person and associate engaged in such transfer of asset should notify the Commissioner General of their election for applicability of tax neutral impact on such transfer.

- **Applicability of relevant provisions is contingent on prescribed compliance**

The CAT was of the view that applicability and compliance with relevant provisions affording preferential treatment on a person realising an asset by way of transfer of such asset to an associate are inseparable.

On that basis, for tax neutral impact to be applicable on transfer of assets between a person and associate, provisions of S. 44(2) together with provisions of S.44(4), both ITA 2004 needs to be complied with.

- **Burden of proof**

The CAT was of the reiteration that the onus is on the person transferring an asset to the associate to evidently convince the CG regarding applicability of S. 44 (2) read together with S.44 (4), both ITA 2004 giving rise to a tax neutral impact on such transfer.

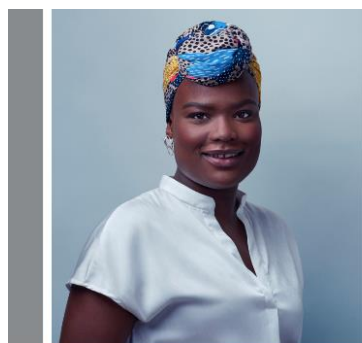
In order to comply with the notification requirement, both the person and associate should be mindful that election notification in relation to such asset transfer should be in writing vide letters by both.

It is imperative to note that the preferential treatment accorded on a person transferring an asset to an associate is not an automatic one rather such person needs to comply with prescribed eligibility criteria as well as adducing documentary evidence (i.e. notification letter by both the person and associate to the CG on applicability of provisions providing for tax neutral impact) to the CG on such compliance as applicability and compliance with the provisions of section 44(2) read together with section 44(4) ITA, 2004 are inseparable.

Do you have any questions or require tax advice on restructuring your business? Reach out to us on [iratansi@tz.rsm-ea.co.tz](mailto:iratansi@tz.rsm-ea.co.tz) or our office premises at **1<sup>st</sup> Floor, Plot 1040, Haile Selassie Road, Masaki.**

#### Caveat

This newsletter has been prepared for general guidance, and does not constitute professional advice. Accordingly, RSM Eastern Africa, its associates and its employees and agents accept no liability for the consequences of anyone acting, or refraining from acting, in reliance on the information contained herein or for any decision based on it. No part of the newsletter may be reproduced or published without prior written consent. RSM Eastern Africa is a member firm of RSM, a worldwide network of accounting and consulting firms. RSM does not offer professional services in its own name and each member firm of RSM is a legally separate and independent national firm.



### Tax information at your fingertips!

Download the RSM Tax App on Android or IOS to get the latest tax and accounting updates and timely reminders for your tax obligations, customized to your requirements

Scan here:



GET IT ON  
Google Play

Download on the  
App Store



THE POWER OF BEING UNDERSTOOD  
AUDIT | TAX | CONSULTING

RSM