

## Finance Act 2022: A move to widen tax base.

The Finance Act, 2022 (FA) became operation on 1<sup>st</sup> July 2022. In our view, the objective of the parliament has been to widen tax base. What has been left out are the challenges on the tax dispute resolution process.

For instance, an adverse decision on a waiver request for payment of one third of assessed tax cannot be challenged at the Tax Revenue Board or through the objection process. This is long and disadvantageous to both the taxpayer and the TRA. In addition, the deemed confirmation of assessment after expiry of six months of admission of objection is still a quagmire.

Nevertheless, there are many positives. Below are the key amendments introduced by the FA to various fiscal laws.

### THE INCOME TAX ACT, 2004 R.E 2019

#### Digital taxation

The FA amends the Income Tax Act, 2004 (ITA, 2004) to impose income tax on digital services provided by a non-resident at a rate of 2% of gross payment by way of single installment.

The basis of imposing income tax on digital services is that digital/electronic transactions are now recognized as businesses under the ITA, 2004. The definition of business under the ITA is amended to include digital/electronic transactions. The term business now also means a transaction or activity carried out through the internet or an electronic means including an electronic service or transaction conducted in the digital marketplace regardless the way such transaction is carried out.

The FA has also introduced definitions of a digital marketplace and electronic services. Digital marketplace means a platform which enables direct interaction between buyers and sellers of goods and services through electronic means. Electronic services mean services provided or delivered through a telecommunication network i.e., website, webhosting and remote maintenance, software (updating), access to database, images, text and information, self-education packages, music, film, and games, political, cultural, artistic, sporting, scientific and other broadcast events (TV broadcast)

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Digital tax is to be paid by a non-resident person who is required to file a return to the Commissioner by the 7<sup>th</sup> day of the month following the month to which payment relates.

The FA has thus amended section 69 to include a clause which provides that payment in respect of services rendered by a non-resident through a digital marketplace has a source in Tanzania.

The framework on how this will work is provided under the Income Tax (Registration of Non-Resident Electronic Service Providers) Regulations, 2022 which are now operational.

Further, payment for electronic services will be deemed to have a source in Tanzania where the recipient of the services is in Tanzania. The recipient of the services is deemed to be in Tanzania if the payment proxy including credit or debit card information and bank account details of the recipient is in Tanzania or the resident proxy including billing or home address or access proxy including internet address, mobile country code of the SIM card of the recipient is in Tanzania.

There is also a scope for TRA to demand withholding tax on payment for digital services which attracts higher rate. The higher rate in this case is 2%.

### **Alternative financing**

The FA has included an alternative financing in the scope of treatment of annuities, instalment sales and finance leases under the ITA. As such where an alternative financing approved by the Bank of Tanzania is payable as cost plus margin, the margin shall be treated in the same manner as interest. This means that withholding tax will apply on the margin.

### **Company's residence in Tanzania**

The FA amends the place of management and control of a company criteria for attributing residence status to company by including exercise

of management and control by electronic means. This means a company incorporated outside Tanzania will be considered as resident in Tanzania if management and control of the company is done in Tanzania through electronic means.

### **Controlled Foreign Companies Rules – Resident Financial Institution**

The FA has introduced the manner of determining unallocated income of a resident financial institution for purposes of controlled foreign companies rules. For a resident financial institution an amount of distributions which are treated as not-distributable as determined by the Bank of Tanzania is included in determining deemed distribution of its unallocated income to its members.

When this new provision is read with the definition a dividend under the ITA, it is very likely that the CG would seek to treat the distribution of unallocated income as dividend payment and consequently demand withholding tax.

### **Withholding Tax (WHT) on natural resources**

The FA has added into natural resources payment which has a source in Tanzania payment made to foreign investors who harness natural resources (land, air, water) for generation of power or anything of value located within the country or alongside the border.

This has widened the scope of withholding tax on natural resources payment. Now, payments made to non-resident for harnessing natural resources for generation of power or anything of value are also subject to withholding tax.

### **Income tax to small scale miners**

The Act imposes income tax to small scale miners. A small-scale miner who does not have a regular income shall be required to pay income tax at the

rate of 2% of the sale value of the minerals. The Mining Commission shall collect and remit income tax to the Commissioner General at the time of selling minerals at Minerals and Gem Houses or buying stations by individuals.

### **Income tax on transportation services**

The Act introduces income tax on long distance transportation of passengers with a bus of carrying capacity of 45 passengers and above or long-distance transportation of goods with lorry having axles above three at a rate of 3,500,00 per year.

### **WHT obligation on rent by individual**

Before the FA rent payment by individuals was out of the scope of the withholding tax unless the payment was made in conducting business. The FA has deleted that provision and now rent payments by individuals fall within the withholding tax scope. Individuals are now required to withhold income tax on rent payment in respect of residential and commercial buildings.

Further, the Act exclude/exempts payment of interest paid to a holder of corporate or municipal bonds listed at the DSE from withholding tax.

### **Tax credit on business operating in Tanzania Zanzibar and Mainland Tanzania**

The Act allows a resident person to claim tax credit for year of income for any income tax paid in relation to the person's taxable income from business/investment carried out in Tanzania Zanzibar or Mainland.

## **TAX ADMINISTRATION ACT, 2015 R.E 2019**

### **Remission of interest and penalty**

Contrary to the expectations by many, the FA has not amended the provision which gives powers given to CG to remit interest and penalty. This is huge relief to taxpayers who recently have been engaging in amicable settlement and have been

able to enjoy the remission of interest and penalty powers effectively.

### **Taxpayer's representation**

The Act has introduced a new requirement that only a tax consultant, employee or manager is allowed to represent a taxpayer before the Commissioner General on any matter under a tax law. This means lawyers who used their positions as representatives of the public before courts of law or law enforcing institutions must be licensed as tax consultants as well to be able to represent taxpayers in any matter with TRA.

### **Registration of storage facilities**

Storage facility owners are required to register their storage facilities with TRA. The storage facilities owners are also required to keep records of all goods stored and report to TRA on monthly basis. Failure to do this may lead to penalties and payment of any detected loss of revenue regardless of whether they own the goods or not.

Registration of these facilities is done under the Tax Administration (General) (Amendment) Regulations, 2022 which are now in place. The amendments also require the owner of storage facility to submit stock movement ledger disclosing the goods kept on the facility and the details of the owner of the goods, origin, and destination. This information must be submitted on monthly basis, not later than seventh day of the following month.

## **THE VALUED ADDED TAX ACT, 2014 R.E 2019**

The FA has introduced a requirement to a non-resident person who cannot appoint a tax representative to apply to the TRA to be registered for VAT. In that regard Value Added Tax (Registration of Non-Resident Electronic Service Suppliers) Regulations, 2022 have been introduced. The Regulations require a non-resident person who supplies electronic services to an unregistered person and who does not

appoint tax representative shall be required to apply for registration as a taxable person to the TRA. The application is made online in a prescribed form.

A non-resident who has been supplying electronic services before the coming into force of the FA is required to apply for registration within six months. Further, a non-resident upon registration is required to submit a return online in a prescribed form and pay tax before the seventh day of the following month.

For purposes of electronic services, a supply by a non-resident shall be treated as supply delivered in Mainland Tanzania when supplied to an unregistered person if the payment proxy including credit or debit card information and bank account details of the recipient of the electronic services is in Mainland 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 is in the mainland Tanzania.

Further, the FA has introduced new exemptions targeting local producers of edible oil.

#### **NATIONAL PAYMENT SYSTEM ACT, 2015**

The FA has widened tax base on electronic money by introducing electronic money transaction levy on what was referred to as mobile money levy. This levy is imposed on electronic money transaction (transfer or withdraw of money electronically). However, the FA exempts payment of salaries by employers from electronic money transaction levy.

The Regulations required a bank/financial institution/electronic money issuer to collect levy from a user at a prescribed rate and remit it to TRA within seven days of the following month. Failure to do that a bank/financial institution/electronic money issuer will be subjected to interest for each month.

A bank/financial institution/electronic money issuer is required to file a return within seven days of the following month in the manner and form approved by TRA.

#### **TAX REVENUE APPEALS ACT**

The Act has expressly recognized alternative dispute resolution through amicable settlement of appeals before the Tribunal and the Board.

#### **EXCISE (MANAGEMENT AND TARIFF) ACT**

The FA has introduced excise duty of 5% to operator of cable, terrestrial infrastructure, satellite, or other technology. Initially, this duty was imposed in respect of the services of pay-to-view television provided by a licensed cable television network or cable operator other than the Government or the local government authority.

For any pay-to-view television services provider using cable, terrestrial infrastructure, satellite, or other technology the duty imposed by the Act shall become due and payable when the service is supplied.

The FA has also introduced new excise duty rate for sugar confectionary (including white chocolate) not containing cocoa, chocolate and other food preparations containing cocoa, bread, pastry, cakes, biscuits and other bakers' wares, and electric accumulators.

#### **THE EXPORT TAX ACT**

The FA has introduced export tax in copper waste or scrap metals at a rate of 30% of the f.o.b value of the commodity or USD 150 per ton whichever is greater.

#### **THE GAMING ACT**

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The FA has shifted the administration of the gaming tax to the Tax Administration Act (TAA). Accordingly, the provisions of the TAA relating to maintenance of documents, tax collection and recovery of tax, imposition of interest, tax enforcement, objection and appeal apply to gaming tax.

Gaming tax on winning to sports betting has been introduced at a rate of 10% on the amount or the value of winning.

The FA has also introduced a withholding tax obligation to a licensee of a gaming activity in which the wining is made and paid for. The licensee is also required to remit gaming tax withheld electronically and submit return or certificate of payment. Failure to comply with these obligations makes the licensee responsible for payment of the gaming tax plus penalty and interest.

## **THE INSURANCE ACT**

The FA has introduced mandatory insurance to imported goods, public market, commercial buildings, marine vessel, ferry.

It is now mandatory for any person importing goods, operating a public market, commercial building, marine vessel, or ferry to obtain an insurance cover.

## **THE LOCAL GOVERNMENT FINANCE ACT**

The FA has reduced a rate of levy which a Local Government Authority may impose on forest produce cess from cap 5% to 3%. The FA has also exempted a cess from seeds from levy, rates, charges, or fee by a Local Government Authority.

## **THE MINING ACT**

The FA has introduced new royalty payment rate by every miner for gold sold at a refinery centers and coal used as industrial raw material to the Government. The royalty payment rate for gold sold at refinery centers is 4% of the gross value. The royalty payment rate for coal used as industrial raw material is 1% of the gross value.

## **CONCLUSION**

Clearly, the focus on the Finance Act, 2022 is widening tax base and to enforce compliance through sanctions. The dispute resolution part has been left out. However, the positive thing for the taxpayers is the express recognition of alternative dispute resolution through amicable settlement of tax dispute/appeals. This route helps taxpayers to reach a win-win situation and resolve tax disputes timely.