

Electronic Money Transactions Levy: Banks, Financial Institutions and Electronic Money Issuer Guide.

The Finance Act, 2022 amended the National Payment Systems Act, 2015 (NPSA) and introduced a levy on electronic money transaction (the Levy). The amendment came along with the National Payment Systems (Electronic Money Transaction Levy) Regulations, 2022 (EMTL Regulations). The EMTL Regulations prescribe the manner and modality for collection and accounting for the Levy. There have been questions on the source of the Levy and on how the Levy applies. As such, the Government is due to give clarifications today about the Levy. This updaters tries to answer these queries.

Source of the Levy

Understanding the source of the Levy is most important to the banks, financial institutions, and electronic money issuer. This is because the obligation to collect the Levy is imposed on the banks, financial institutions, and electronic money issuer (collectors).

The pertinent question for the collectors is where do they collect the Levy from? The answer is found on the NPSA as amended by the Finance Act, 2022. The NPSA says there is established a levy to be charged on electronic money transaction. As such the Levy is sourced from an electronic money transaction. This is clarified further by regulation 4 of the EMTL Regulations which says the source of the Levy shall be electronic money transaction by a user.

The EMTL Regulations state further that the Levy shall not be part of the consideration of the electronic money transaction covered by the Regulations. This means that the Levy should not be taken from the amount transferred or withdrawn electronically. If a user wants to transfer or withdraw TZS 1 million for example, the Levy should not be part of that 1 million. The user should be allowed to transfer or withdraw TZS 1 million.

Therefore, the collectors shall collect from a user and not from the electronic money transaction. To comply with requirement, collectors may need to adjust the lowest balance in the user's account to factor in the required Levy for the last transaction.

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Does Levy apply to over-the-counter transactions?

A definition of the word user in the EMTL Regulations seems to suggest that the Levy applies on over-the-counter transactions. This is because the Levy applies to an electronic money transaction by a user. A user is defined to also mean a person who transfers or withdraw money *over the counter*.

However, a strict reading of the definition of the words electronic money transaction suggests otherwise. Electronic money transaction is defined to mean a transaction which enables a user to transfer or withdraw money *electronically*. Does over-the-counter transaction enable a person to transfer or withdraw electronically? Maybe not all of them – especially those which involves a person filling in a withdraw/deposit form at the bank. It doesn't seem like these types of transaction allows a person to make direct transfer or withdrawal electronically. As such, an over-the-counter transfer (say by a cheque, deposit slips or TT) or withdraw of money should not attract the Levy. This is because the fundamental is that under the NPSA the levy is charged on electronic money transaction.

The broad definition of the word user that should not in itself justify collection of Levy on over-the-counter transfer or withdraw of money. Regard to the context leading to the introduction of the Levy is also necessary. Further, the NPSA being the principal legislation imposes the Levy on electronic transfer or withdraw of money whereas over-the-counter transfer or withdraw of money may not necessarily be an electronic transaction.

Perhaps clarity is required from the drafters of the EMTL Regulations.

Are there any exemptions?

The NPSA exempts payment of salaries by the employer from the Levy. The collectors should not collect the levy when an employer pays salaries to its employees.

According to the EMTL Regulations, a transfer or withdraw by a merchant, business or Government is outside the scope of the Levy. This is because the Government, merchant or business is not considered as a user by the law therefore their withdraws and transfers are not subject to the Levy.

The question worth considering is what about a transfer by a person to the Government, merchant, or business. A scenario here is that a person transfer money from his mobile/bank account to the Government, merchant, or business. Does that attract the Levy?

Arguably, the Levy should not apply. This is because the word transfer covers (according to EMTL Regulations) a transfer of electronic money from a user's account to another user's account. This is because a transfer of electronic money to the government, merchant, and business is not a transfer from a user's account to another user's account because the government, merchant and business are not users under the EMTL Regulations.

Collectors (banks, financial institutions, and electronic money issuer obligations

The banks and financial institutions are obligated to:

- Collect the Levy from a user at a prescribed rate. This would entail putting a system (unless the current system suffices) that would track the transfers or withdraws or doing reconciliation at the end of the month to ascertain all transfers and withdrawals and appropriate levy to collect and remit to TRA.

- Remit the Levy to TRA within 7 days of the month following the month to which the Levy relates.
- File a return to TRA within 7 days of the month following the month to which the Levy relates. The return shall be in a manner and form approved by TRA.
- Submit all data requested by TRA within 14 days.

Sanctions

- Liable to interest for each month or part thereof compounded at the rate issued by Bank of Tanzania for failure to remit the Levy to TRA.
- Liable to penalty of 1 million for each month or part thereof for failure to file return within the prescribed time.
- Liable to penalty of five hundred thousand for failure to submit data requested by TRA. The penalty amount is for each day during which the failure continues.
- Fine not less than 5 million or imprisonment of not less than 12 months upon conviction of an offence for contravening the EMTL Regulations.

Dispute Resolution

The EMTL Regulations allows any person aggrieved by the decision of the TRA under the Regulations to appeal to the Minister within 30 days.

The EMTL Regulations are silent on the format of the appeal document and the way the appeal process is handled.

The law is also silent on the remedy against the Minister's decision. And it does not say if the Minister's decision is final and conclusive. Perhaps, the banks and financial institutions or electronic money issuer may resort to the remedies against an administrative decision – challenging the decisions before the High Court of Tanzania.

Conclusion

The EMTL Regulations impose compliance obligations to the banks, electronic money issuer, and the financial institutions. It is important for the collectors to ensure that they comply with the law. The penalty and interest associated with non-compliance may be a huge burden to the banks, electronic money issuer and the financial institutions.