

Licensing of Tax Consultants - A clog/fetter to taxpayer's right to representation?

The Finance Act, 2022 (the FA, 2022) has introduced a requirement that tax consultants should be licensed in addition to being registered by the Commissioner General of Tanzania Revenue Authority (TRA).

These changes came with the Tax Administration (General) (Amendment) Regulations, 2022 (the Regulations, 2022) which amend the Tax Administration (General) Regulations, 2016.

The amendment provides for the licensing requirements which are not substantially different from the then registration requirements. However, there are some disconcerting provisions contained in the Regulations worth pondering. That is the subject of this updater.

1. Agency contractual relationship

The Regulations, 2022 creates an agency contractual relationship between a tax consultant and a taxpayer. A tax Consultant who undertakes to assist/act for a taxpayer will now be in a binding contractual agency relationship with the taxpayer regardless of whether there is no formal or written contract.

The implication of the agency contractual relationship created by the law is that the taxpayer will be liable to the Commissioner General as a principal to all the deeds done by the tax Consultant relating to his affairs regardless of the taxpayer's knowledge of the tax Consultant's deeds. The tax Consultant will also be liable to the Commissioner General as legal agent to the taxpayer he purports to assist.

The extent of a tax Consultant's liability to the Commissioner General is not clear. The law on agency relationship is that an act of an agent binds the principal. However, there are circumstances where an agent may be held personally liable. As such there is a scope for the TRA to demand tax or impose penalties or to sanction tax Consultants as a legal agent for the taxpayers.

Authors



ALAN NLAWI KILEO

Managing Partner

QUALIFICATIONS

LLB | LLM in Revenue Law & Administration | Tax Consultant | Advocate

EXPERTISE

Tax | Dispute Resolution | Corporate |

CONTACT

alan.kileo@beakolaw.co.tz
+255 713 694 254 | 767 694 254



NORBERT MWAIFWANI

Senior Associate

QUALIFICATIONS

LLB | Advocate | Tax Consultant

EXPERTISE

Dispute Resolution | Tax | Research & Development | Conveyancing

CONTACT

norbert.mwaifwani@beakolaw.co.tz
+255 719 148 387 | +255 624 033 422

The Tax Administration Act, 2015 (TAA) allows TRA to recover tax from a non-resident through an agent who is in possession of any asset of the non-resident. This may seem impossible to enforce against tax Consultant because of the nature of the taxpayer-tax consultant relationship. In most cases a tax consultant will not possess taxpayer's assets in providing his services.

Now, it seems to us that there is nothing that would prevent TRA from stretching this rule to tax Consultants who do not possess any of the taxpayer's assets, but they are legal agents for the taxpayers they represent. TRA may also wish to invoke the general rule on principle - agency relationship.

2. Representation by persons other than tax Consultants

The Regulations, 2022 categorically forbid persons other than tax Consultants to represent or act on taxpayer's behalf while dealing with the Commissioner General. To that extent, an act done by a person other than a tax Consultant shall not have a binding legal effect and shall be void. Ostensibly, it means if a person other than a licensed tax Consultant files an objection to a tax decision/assessment on taxpayer's behalf, the objection will not have a legal effect. As such the taxpayer's objection will not be considered and that presents a real risk of enforcement of the assessment/tax decision.

Further, any act by Commissioner General on any act or document filed by a person who is not a licensed tax consultant shall be void. This means if the Commissioner General responds to an objection filed by a person who is not a licensed tax consultant on taxpayer's behalf, the Commissioner's response is of no legal effect.

Between 1st July 2022 and now, we suspect there may have been various correspondences from

taxpayers' representatives who are not licensed as tax consultants to the Commissioner and vice versa.

In terms of the Regulations, 2022, all such correspondences exchange is of no legal effect. It means the taxpayers and the TRA have done nothing during all that period. Some decisions may have been passed and taxes been paid illegally.

3. Foreign tax Consultant

The number one criterion for tax Consultant licensing is that the Applicant must be a citizen of Tanzania. We understand that there are tax Consultants who are not Tanzanian citizens. The question is what is the legal status for a non-citizen tax consultant? The law says, they must practice under a local tax Consultant. This is rather unclear. Perhaps, what it means is that all the correspondences to TRA by tax consulting firms which have foreigners must be signed by local (Tanzanian) tax Consultants. This is different from other professions like law where non-citizens are allowed to practice as advocates on their own right upon fulfilling conditions imposed by law.

Our view

In our view, the Regulations, 2022 are inconsistent with the TAA to the extent that they limit taxpayer's right to representation guaranteed in the TAA.

The TAA (as amended by the FA, 2022) says an individual other than an employee or manager of a person who is not licensed as a tax Consultant shall not act on taxpayer's behalf except as otherwise provided for under the TAA. The phrase "*except as otherwise provided for under the TAA*" means that a person who is not a licensed tax Consultant or an employee or manager of a person may act for a taxpayer if it is provided as such under the TAA.

Section 27 (3) of TAA provides to the effect that an advocate, a tax consultant or a person authorized through a power of attorney may represent a taxpayer. Therefore, an advocate or person acting through a power of attorney though not licensed as tax Consultants can represent a taxpayer. The Regulations, 2022 contradicts this provision of TAA.

In our view, imposing agency relationship between tax Consultants and taxpayers amidst presence of

professional bodies which handles professional misconducts of these professionals, indemnity covers and legal remedy for professional negligence is just another hurdle to taxpayers right of representation.

It seems advisors/consultants are put in a tight leash at the expense of taxpayers.