

The Microfinance Identity Crisis: When Tax Laws Can't Agree on What a Financial Institution Is

Microfinance companies and the Tanzania Revenue Authority (TRA) have previously disagreed on whether such entities qualify as financial institutions for purposes of both income tax and excise duty.

The argument by the microfinance companies is that they do not qualify as financial institution as defined by the Banking and Financial Institutions Act (BAFIA). The BAFIA defines a financial institution as an entity engaged in the business of accepting deposits or other repayable funds from the public and using those funds for lending or investment at the institution's own risk.

TRA's argument has been that the BAFIA recognizes microfinance companies as financial institutions. Further, they offer similar services to banks, i.e., offer loans and charge fees on the loans and therefore are financial institutions.

In resolving the dispute, the Court of Appeal in the case of Commissioner General Tanzania Revenue Authority vs Brac Tanzania Finance Limited (Civil Appeal No. 203 of 2025) made two important findings;

- i. Interpretation of the status of microfinance company must be drawn from the tax imposing statute. In that context the Excise (Management and Tariff) Act or Income Tax Act.
- ii. It is improper to position the taxability of the microfinance company based on its license, the business activities, regulatory mechanism and categorization of tiers.

The Court then decided that the microfinance company in question was a financial institution and therefore subject to excise duty.

While the Court ultimately held that the taxpayer was liable to excise duty as a financial institution, it did not formulate a general definition of "financial institution" for purposes of the tax statutes. Instead, the Court rejected the reasoning adopted by the lower tribunals. Consequently, questions concerning the precise statutory meaning of the expression may still arise where the legislation expressly incorporates a different definition.

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And before that decision Excise (Management and Tariff) Act was already amended to add a definition of a financial institution. Financial institution was now defined to include microfinance service providers falling under Tier 1 recognized under the Microfinance Act.

One would suggest that the court's decision might have been influenced by these changes because one cannot say that the interpretation by the Court was drawn from the Excise Act which, at the time, did not define a financial institution. Whether such influence, if all existed, was correct is a subject for another debate. A point to note is that the Court's decision makes more sense if you read the law as amended after the decision.

There is another twist which started in July 2025, when the Finance Act, 2025, introduced a new withholding Tax Regime on deemed distribution of dividends. The law empowered TRA to treat 30% of undistributed profit for a period of 12 months after the year end as distributed. Consequently, this allows TRA to demand withholding tax on deemed distribution of profit (dividends).

This amendment did not apply to resident entities qualified as controlled foreign corporations.

July this year, further amendment was introduced to the Income Tax Act. The amendment reduced the amount of profit the Commissioner can treat as having distributed from thirty percent to fifteen percent.

Critically, the amendment expanded the list of entities against which this provision would not apply. The list now includes Financial Institutions among others.

The amendment, however, raises an important interpretive question. It does not expressly mention microfinance companies. One would imagine that they may be covered as financial institutions given the position already taken by TRA and the Court of Appeal.

However, a different view may be formed as well. The deemed dividend provisions under the Income Tax Act seem to take a different path. This is because they do not have a similar definition of a financial institution to that of the Excise Act. The provisions simply say that the term "financial institution" bears the meaning assigned to it under the BAFIA.

The key criterion in the definition of a financial institution under BAFIA is that this is an entity which accepts deposits from public or other repayable funds from the public for lending or investment. Microfinance companies do not accept deposits from the public and therefore they are arguably not falling within the ambit of the definition of financial institutions under the BAFIA.

Whether this outcome was intended by Parliament is open to questions. If the policy objective is to exclude microfinance companies from the deemed dividend regime, legislative clarification would be desirable. An amendment expressly extending the exemption to qualifying microfinance service providers would remove uncertainty for both taxpayers and the TRA.