

Amcham Presentation

**The New Tax Regulation in Tanzania
Breakfast Meeting**

29th September 2016

Agenda

- ❑ 2016 Budget Objectives
- ❑ Changes brought by FA, 2016
 - WHT Changes in wake of CoAT Decision in PanAfrican Energy
 - Extractive Industry Tax Regime
 - Tax Dispute Settlement – deposit requirement
 - VAT on tourism
- ❑ Exemptions of donor funded projects – strategic investments
- ❑ About Ako Law
- ❑ About Clyde& Co

2016 Budget Objective

- ❑ Increase revenue collection and control government expenditure
- ❑ Combat tax evasion and schemes to avoid tax
- ❑ Expand tax base through creating new tax revenue sources
- ❑ Control tax revenue leakage by enforcing use of EFDs

Strategies to realise the objectives

- ❑ Eliminate collusion between taxpayers and unethical tax officers
- ❑ Promote awareness of the new VAT Act and other tax compliance requirements
- ❑ Simplify tax payment and tax collection

Changes brought by the FA, 2016

FA passed in July 2016 amended 16 fiscal and non-fiscal statutes! The non-fiscal laws are those which complement the implementation of fiscal laws

WHT on services performed offshore – the un-ending saga of the PanAfrican case

- ❑ Pan Africa Energy operates the Songo Songo gas processing plant but also does some exploration drilling within the licence area. The drill samples are sent to UK for analysis and report writing. TRA imposed withholding tax on the payments to the offshore companies which do the analysis and prepare the reports
- ❑ The ITA says only payments with a source in Tz are subject to WHT. It also says a service fee has a source in TZ only if the service is performed in Tz. TRA interprets this to mean service is performed in Tz if what is done is relates to activities or a project in Tanzania
- ❑ This has been a point of intense dispute because it affects all major companies which rely on offshore service providers who provide various technical services without having to come to TZ. Pan Africa contested the WHT and the appeal went all the way to the CoA. In May 2016 CoA ruled in favour Pan Africa

Changes brought by the FA, 2016 cont...

WHT Changes in wake of CoAT decision PanAfrican case

- ❑ CoA advised TRA and government to change the law if they felt that the current wording creates a loophole for tax evasion
- ❑ In June a draft was prepared to change the law. The Indian govt did the same in 2010 after a WHT dispute with Vodacom. This move was aborted and instead there is now an amendment in the definition section clarifying the meaning of “*service rendered*” but largely the law remains unchanged
- ❑ Instead TRA has filed an application to have CoA decision reviewed alleging that the decision contains an apparent error of law. TRA is caught in two minds, if it changes the law, the previous claims will be lost because the change cannot be retrospective. There is more than 100 billion shillings in current tax claims This explains the persistence in fighting the courts

Changes brought by the FA, 2016 cont...

Tax changes for the Extractive Industry

- Division IV has been added to ITA, 2004 the new Division has 19 sections (Section 65A – Section 65S) introducing new principles for taxing mining and petroleum companies
 - Section 145 of ITA, 2004 which allowed 100% additional capital allowances has been repealed
 - Development capital expenditure must now be depreciated over 5 years on a straight line basis at 20% per annum. This will accelerate mining the time mining and petroleum companies begin to pay corporate tax

This suggests that within GoT there is now confidence the extractive sectors are sufficiently strong and the investment environment is sufficiently attractive so that the generous tax incentives given in 1998 are no longer justified. It may also mean that the dire need for tax revenue to fund government expenditure no longer receiving generous budget support from donors has become critical. It may also mean the public sentiment has changed and the politicians are reacting to a strong anti mining company lobby. This includes a perception of massive tax evasion in mining

Changes brought by the FA, 2016 cont... Extractive Industry

- The ring fencing provisions first introduced in 2010 have been enhanced (each licence area constitutes a separately taxable entity and the transfer pricing provisions will apply to operations of an entity like Barrick in respect of different mining projects or Shell in respect of different deep water exploration Blocks)
- With this the burden and cost of compliance is increased
- Losses utilization restriction – maximum 70% of previous years losses can be utilized against taxable profits

All these changes point to a determination to collect more revenue. While these measures will accelerate corporate tax payments, there is a risk that marginally profitable projects could be taxed on unearned profits. The challenge for stakeholders is not to make their opposition heard, but to approach the GoT with alternatives that enable GoT to develop policy and legislation which is mutually beneficial both in the short and long term. The message you should be delivering to GoT is that it is wrong to focus only on income tax when assessing the contribution of the extractive industry, a holistic view of the entire value chain is required – VAT, payroll taxes, import duties, job creation, contracts for local industries, community development, etc

Changes brought by the FA, 2016 cont...

The right to contest a tax claim – prepayment requirement

- ❑ The initial version of the Finance Bill required taxpayers wanting to contest a tax assessment to make a deposit for the full amount demanded. This was vigorously opposed. A reduction to 50% prepayment also did not get support. So the one third deposit which has been the law since 2004 has been retained
- ❑ The rules regarding the prepayment have been tightened. – Payment must be made within 30 of lodging the objection or else the objection becomes invalid and the taxes assessed is confirmed as final
- ❑ The requirement to prepay a portion of the tax disputed is common to most tax jurisdictions. It helps to minimize abuse of the tax objection process to delay tax payment. But this assumes that tax assessments are objection and tax computations largely accurate. This is not always the case with TRA
- ❑ There is certainly a genuine need to improve tax collection and may be now is the time to be constructive when criticizing government and TRA by putting forward viable options

Changes brought by the FA, 2016 cont...

The VAT on tourism now pushed through! The battle against VAT on tourism lasted over two years!

- ❑ Tourism the biggest earner of foreign exchange and has been for a few years now
- ❑ Worryingly, it is also the most heavily taxed industry (more than 50 types of taxes, levies and fees). The introduction of VAT on tourism adds to this mountain of cost to the tourist. We are already in court against 3 districts (Babati, Ngorongoro and Serengeti) regarding local government tourism levy
- ❑ Government says we should see this in the context of targeting high-end tourism instead of the low end back-packer tourism which characterized the industry for a long time
- ❑ But shouldn't government policy focus on the whole value chain instead of targeting tax collection only

Tax exemptions for donor funded projects and strategic investments

- ❑ The funding for projects financed by donor is usually given with undertaking by GoT not to tax the payments. The scope of exemption is a matter of controversy. Should the contractors who execute the project enjoy the tax exemption??
- ❑ There is the same problem in the extractive industry – TRA refuses to honor tax exemptions in MDAs and PSAs
- ❑ TRA says it will only honour the exemption if gazetted. But even when gazetted TRA tends to read down the exemption. This affects international goodwill towards Tanzania. The suspicion has extended to mistrust for the courts preferring international arbitration for such disputes
- ❑ This is undermining GoT's credibility and deepening the reluctance to commit to long-term investments

About Ako Law and Clyde & Co

- ❑ Most probably the best tax law team in the country specialising in tax dispute resolution, general tax advice and tax structuring. Led by **Dr Kibuta** acknowledged as leading tax lawyer in Tanzania; **Alan Kileo** a sound tax attorney who worked with PWC before joining Ako Law; **Wilson Mukebezi** a tax litigator of five year standing and **Salome Gondwe** who worked with TRA and brings a different dimension to the Ako Law tax team
- ❑ Ako Law affiliation with **Clyde & Co** (UK law firm) which runs a full fledged commercial law practice enables the two firms to deliver a legal offering superior to others. **Clyde & Co** is an international law firm with 40 offices across 23 countries. As an international law firm we have the largest presence in East Africa and have opened offices in Johannesburg and Cape Town
- ❑ Clyde & Co Tanzania is rated by Chambers Global as a top tier law firm in Tanzania and is recognized as global leader in the tourism and leisure industry with the ability to draw upon specialist expertise across the Clyde & Co global network of offices

Thank You!