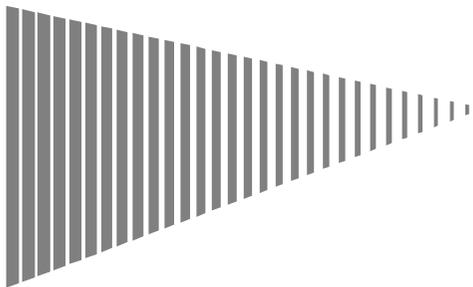


Tax in Tanzanian Recent developments

AmCham breakfast meeting

Dar es Salaam

29 September 2016



Building a better
working world

Agenda

- ▶ Introduction
- ▶ Amendments introduced by Finance Act, 2016
- ▶ Withholding tax

Finance Act 2016



Finance Act 2016

- ▶ On 8 June 2016, Tanzania's Minister of Finance presented the 2016/17 budget. The Finance Bill 2016 was made publically available on 13 June 2016.
- ▶ On 30 June 2016, the President assented the Finance Bill into law. The Finance Act, 2106 was made public on 14 July 2016.
- ▶ The Act provides for amendments of various laws with a view to impose and alter certain taxes, duties and fees. Further, it proposes to amend other written laws relating to collection and management of public revenue.

Finance Act 2016

▶ Amended laws

- ▶ Income Tax Act, 2004 (ITA, 2004)
- ▶ The Value Added Tax Act, 2014 (VAT, Act, 2014)
- ▶ The Tax Administration Act, 2015 (TAA, 2015)
- ▶ Other tax laws
 - ▶ The East African Community (EAC) Customs Management Act, 2004.
 - ▶ Excise Management and Tariffs Act, Cap 147
 - ▶ Motor Vehicles (Tax on Registration and Transfer) Act, Cap 124
 - ▶ The Local Government Finance Act, Cap 290
 - ▶ The Business Licensing Act, Cap 208
 - ▶ The Companies Act, Cap 212

Amendment of the ITA, 2004



Amendments of the ITA, 2004

- ▶ Amendments of definitions (**Section 3**) by deleting definition terms in the Act and introducing new definitions.
 - ▶ **“Farm-out arrangement”** with respect to a mineral right or petroleum right includes an arrangement for the transfer of part of the right in return for consideration that includes in whole or in part an obligation on the part of the transferee to meet a disproportionate amount of future expenditure w.r.t mineral operations or petroleum operations conducted w.r.t the right, as the case requires.
 - ▶ Introduction of the definition of the term **“rendering of services”** to mean transmitting or delivering of service in the United Republic of Tanzania irrespective of the place of performance of the service.
 - ▶ **“Rehabilitation fund”** w.r.t mineral operation or w.r.t processing, smelting or refining minerals means a fund
 - ▶ Required by law, a mineral right or under a development agreement and approved for the purpose by the Minister responsible for mining;
 - ▶ Which is established to meet expenses to be incurred in the course of rehabilitation of the operations including expenses under an approved mine closure plan; and
 - ▶ Where contributions to the are placed beyond the control of the person conducting the operation.

Amendments of the ITA, 2004

- ▶ Environmental expenditure (**Section 15**)
 - ▶ Costs relating to environmental expenditure are now restricted to expenditure incurred by the owner or occupier of farmland for prevention of soil erosion.
 - ▶ Previously such cost included costs incurred in connection with remedying any damage caused by natural resource extraction operations to the surface of or environment or land.
- ▶ Adjustments for not complying with arm's length principle between associates for Transfer Pricing purposes, the Commissioner will apportion and allocate expenditure based on comparability analysis. (**Section 33**)
- ▶ Elimination of deduction of withholding tax credit of tax withheld on dividend paid to non-resident shareholders. (**Section 54**)
- ▶ Change in **Section 56** (change of control) increasing the period from 2 years to 3 years.
- ▶ Elimination of income tax exemption in respect of an asset that is not a business asset, depreciable asset, investment asset or trading stock.
- ▶ Imposition of withholding tax on payments to approved retirement funds.
- ▶ Reduction of PAYE from 11% to 9% (**First Schedule**)
- ▶ Decrease of SDL levy from 5% to 4.5% (**VETA Act**)

Amendments of the VAT Act, 2014



Amendments of the VAT Act, 2014

- ▶ Financial services, other than health and life insurance as well aviation insurance, are no longer exempt unless supplied free of charge. **(VAT Schedule)**
 - ▶ There is uncertainty regarding **interest**; the minister in his speech mentioned fee based financial services and explicitly excluded interest on loans from VAT, the Finance Act, 2016 does not reflect this exclusion.
- ▶ Where the supply is both exempt and taxable at the standard rate, the supply shall be taxable at the standard rate. **(Section 5)**
- ▶ Introduce value of imported goods to include the sum of any tax, levy, fee or fiscal charge other than customs duty and VAT payable on import of goods. **(Section 9)**
- ▶ Removal of the requirement of security when applying for deferral of VAT on imported capital goods.

Amendments of the VAT Act, 2014

- ▶ Introduce zero rate for a supply of locally manufactured goods by a local manufacturer if the goods are supplied to a taxable person registered for VAT law administered in Zanzibar and such goods are removed from Mainland Tanzania without being effectively used or enjoyed in Mainland Tanzania. **(Section 55A)**

- ▶ Introduce requirement of lodging VAT return within **20 days** after the end of the tax period. Previously 30 days. **(Section 66)**

- ▶ Introduce in the exemption regime the following: **(VAT Schedule)**
 - ▶ Medicine and pharmaceuticals products, including food supplements of vitamins supplied to government entities.
 - ▶ Liquefied petroleum and natural gases
 - ▶ Compressed petroleum and natural gases
 - ▶ Compressed or liquefied gas cylinders for petroleum and natural gases for cooking

Amendments of the VAT Act, 2014

- ▶ Imposition of VAT on supply of tourist guiding, game driving, water safaris, animal or bird watching, park fees, and ground transport services. **(Removed from VAT schedule)**

Amendments of the TAA, 2015



Amendments of the TAA, 2015

- ▶ Introduction of a requirement for entities engaged in construction or the extractive industry to disclose to the Commissioner of TRA the names of all persons, nature of works and the duration of sub-contracted works in the course of their performance of their duties or business or carrying out of any project. **(Section 44A)**
 - ▶ An entity that fails to comply with the disclosure requirement shall be liable to a fine of not exceeding 25% of the quantum of the project or a fine of not exceeding 4000 currency points whichever is greater. (One currency point = Tshs. 15000/-).
- ▶ To validate an objection to tax decisions, a payment of the tax not in dispute or one third of the assessed tax whichever is greater remains unchanged. **(Section 51)**
 - ▶ Failure to pay the amount within 30 days from the date of service will lead to the decision becoming final.

Amendments of the TAA, 2015

- ▶ Introduce power to the Minister to remit interest imposed under any tax law where there exist good cause to remit up to an amount not exceeding 50% of interest payable by the person. **(Section 70)**
 - ▶ The Minister's power to remit interest will only be exercised after consultation with the Commissioner General.
- ▶ Introduce power to the Commissioner General to remit whole or part of the penalty payable by the person where the Commissioner is satisfied that there is good cause to remit such penalty. **(Section 70)**

Amendments of the TAA, 2015

- ▶ Introduce a fine of twice the amount of tax evaded for persons who are convicted with offences relating to making or using false or misleading statements or documents. **(Section 84)**
 - ▶ Previously, fines would not exceed 100 currency point.
- ▶ Extend the fine for failure to acquire or use electronic fiscal device or issue electronic fiscal receipt upon conviction to payment of a fine not less than 200 currency points and not more that 300 currency points. **(Section 86)**
 - ▶ Previously the fine was 100 currency points and not more that 150 currency points.
- ▶ Introduce a fine not less than 2 currency points and not more than 100 currency points or imprisonment for a term not exceeding six months upon conviction for a person who fails to demand or report a denial of issuance of a fiscal receipt or fiscal invoice upon payment of goods or services.

Amendments of the TAA, 2015

- ▶ Introduce requirement to payment of tax upon conviction by the court or compoundment of the offence under the TAA not to affect an obligation of a person to pay such tax. **(Section 88A)**
- ▶ Introduce a general penalty for any person who commits an offence under the Tax Administration Act, for which no specific penalty is provided to payment of a fine not less than 200 currency points and not more than 300 currency points or to imprisonment for a term not exceeding three years or to both. **(Section 88B)**
 - ▶ In addition, the person shall be required to pay a fine twice the amount of the evaded tax to imprisonment for a term not exceeding three years.

Amendments of other tax laws



Amendments in other tax laws

The East African Community (EAC) Customs Management Act, 2004

- ▶ The Ministers for Finance from EAC Partner States agreed to effect changes in the Common External Tariff (CET) and amend the EAC Customs Management Act, 2004 for the financial year 2016/17. The changes in the CET which were recommended and agreed are as follows:
 - ▶ Increase import duty on cement from 25% to 35%.
 - ▶ Increase the CET rate on flat rolled products of iron or non-alloy steel from 0% to 10%.
 - ▶ Increase import duty rate on bars and rods of iron steel from 10% to 25%.
 - ▶ Impose import duty rate of 0% one year and thereafter 25% used in construction of bridges and bridges sections.
 - ▶ Increase the import duty rate on fishing nets from 10% to 25%
 - ▶ Increase import duty on oil and petrol filters from 10% to 25%.
 - ▶ Grant duty remission of 0% to air filters and splints which are raw material used to manufacture matches, bolts and nuts and aluminum cans.

Amendments in other tax laws

- ▶ Increase progressively the import duty remission of sugar confectionery to 15%, 20% 25% for 2016/17, 2017/18 and 2018/19 respectively.
- ▶ Increase the CET rate on aluminum milk cans from 10% to 25%.
- ▶ Increase duty on worn clothes and shoes from 0.2 USD/kg to 0.4 USD/kg or 35% whichever is higher.
- ▶ Continue to impose a duty rate of 25% of US\$200 per metric tons for one year on flat-rolled products of iron or non-alloy steel.
- ▶ Grant application EAC CET rate of 10% on wheat grain instead of 35% for one year and manufacture of crude oil and apply 10% instead of 0% for one year.
- ▶ Amend the 5th Schedule to include incinerator's equipment and materials used in hospitals to burn waste ,refrigeration equipment for human dead bodies for use in Hospitals, city councils or funerals and to remove import duty exemption on uniforms for hospital staff.
- ▶ Grant exemption on specialized equipment for development and generation of Solar and wind energy, including accessories and deep cycle batteries which use and/or store solar power.
- ▶ Amend the 5th Schedule to the EAC-CMA to include blood collection tubes.

Amendments in other tax laws

The Excise (Management and Tariff) Act, CAP 147

- ▶ Extend excise duty of 10% on charges/fees payable by a person to telecommunication service provider on money transfer and payment service.
- ▶ Increase duty on locally produced juice from TZS 9 per litre to TZS 9.50 per litre.
- ▶ Increase duty on imported produced juice from TZS 200 per litre to TZS 210 per litre.
- ▶ Increase duty from 15% to 20% on imported furniture.

Amendments in other tax laws

Motor Vehicle (Tax on Registration and Transfer) Act, CAP 124

- ▶ Increase in motor vehicle registration fee from TZS150,000 to TZS250,000 and motor cycle registration fee from TZS45,000 to TZS95,000.
- ▶ Increase in personalized registration number fee from TZS5,000,000 to TZS10,000,000.

Local Government Finance Act, Cap 290

- ▶ The Tanzania Revenue Authority (TRA) is empowered to evaluate, assess, collect and account for property rate.
- ▶ In the enforcement or recovery of property rate, TRA shall apply the powers of recovery conferred to them under the Tax Administration Act, 2015.

Amendments in other tax laws

The Business Licensing Act, Cap 208

- ▶ Introduce revocation of business license for a period of not less than two years where a person fails to acquire, use, issue fiscal receipts, or invoices generated by Electronic Fiscal Device (EFD) as required by a tax law. **(23A)**
- ▶ The revocation shall be upon failure to show good cause.
- ▶ Exceptions are only applicable to persons who are exempted under any tax law to acquire or use an EFD.

Companies Act, Cap 212

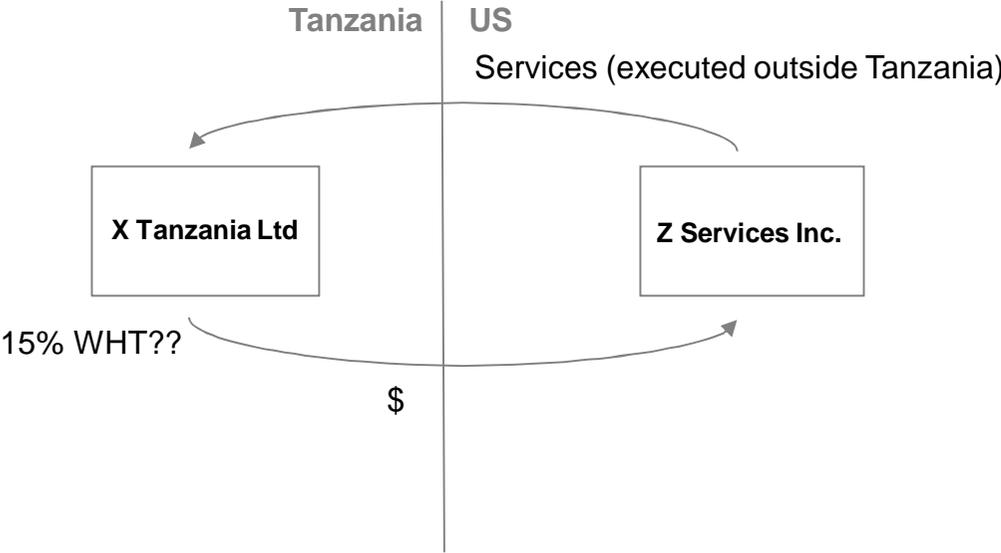
- ▶ Introduce the requirement of the Registrar of Companies to supply any information to the Commissioner General for purpose of carrying out the provision of any tax law. **(S. 458)**

Withholding tax



Withholding tax

- ▶ Are – under the current Tanzanian rules – payments of service fees by a Tanzanian resident for services rendered by a non-resident service provider and executed outside Tanzania subject to Tanzanian WHT?



Withholding tax

- ▶ **Section 83 ITA, 2004**

“(1) Subject to subsection (2) a resident person who

(c) pays to

(i) a non-resident a service fee with a source in the United Republic; or

(ii) a resident person a service fee for provision of a professional service

shall withhold income tax from the payment at the rate provided for in paragraph 4 (c) of the First Schedule.”

- ▶ **Paragraph 4 (c) of the First Schedule** stipulates that the WHT rate in case of service fees referred to in Section 83 (1) (c) amounts to 15% if it is paid to a non-resident and 5% if paid to a resident.

Withholding tax

- ▶ What is a service fee with a source in the United Republic?
- ▶ **Section 3 ITA, 2004** refers for the definition of source to Section 67, 68 or 69 ITA, 2004 as the case requires.
- ▶ **Article 69 ITA, 2004**
“The following payments have a source in the United Republic: payments, including service fees, of a type not mentioned in (g) or (h) or attributable to employment exercised, (for a) service rendered or a forbearance from exercising employment or rendering service –
 - (i) in the United Republic, regardless of the place of payment; or*
 - (ii) where the payer is the Government of the United Republic, irrespective of the place of exercise, rendering or forbearance.”*

Withholding tax

- ▶ Court of Appeal - **Pan African case** d.d. 9 May 2016
 - ▶ Pan African Energy Tanzania Ltd vs Commissioner General TRA
 - ▶ Applicability of WHT for technical fees paid to non-resident consultants for services rendered outside Tanzania
 - ▶ Interpretation of Section 69 and Section 83 (1) (c) ITA, 2004

- ▶ Decision Court:
 - ▶ Section 83 (1) (c) ITA, 2004 in connection with Section 69 ITA does not impose liability on an individual company to withhold tax where the service fee paid in relation to services rendered outside the United Republic
 - ▶ Situation would have been different if the payer was the Government
 - ▶ Recommends to consider the possibility to amend the law to remove leeway for loss on income to the Government

Withholding tax

▶ Finance Bill 2016

- ▶ First version (3 June 2016): amendment to the source rule of Section 69 ITA, 2004

Proposed Article 69 ITA, 2004

“(1) The following payments have a source in the United Republic: payments, including service fees, of a type not mentioned in (g) or (h) or attributable to employment exercised, (for a) service rendered or a forbearance from exercising employment or rendering service –

(i) in the United Republic, regardless of the place of payment; or

(ii) where the payer is the Government of the United Republic, irrespective of the place of exercise, rendering or forbearance.

(2) For the purpose of subsection 1 (i) “rendering of service” means transmitting or delivering of service in the United Republic of Tanzania irrespective of the place of performance of the service.”

- ▶ Based on that wording, any service fee to a non-resident for the provision of services would be deemed to have source in Tanzania without necessarily being performed in Tanzania. As a consequence, 15% WHT would be due, irrespective of place of performance of services.

Withholding tax

- ▶ Finance Act, 2016
 - ▶ Originally proposed amendment of Section 69 ITA, 2004 was no longer included.
 - ▶ General definition of “services rendered” was included in Section 3 ITA, 2004
- ▶ But:
 - ▶ Strict interpretation of law
 - ▶ Lex specialis derogat legi generali
- ▶ What’s next?
 - ▶ New Court case?
 - ▶ Confirmation Pan African case and reclaim undue WHT

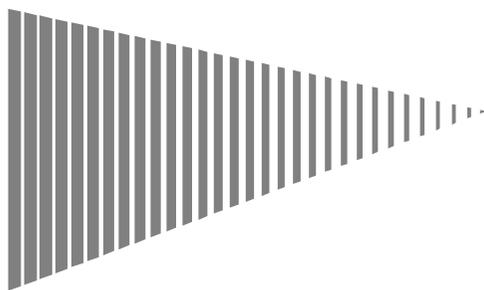
Thank you for your attention

For any questions, please feel free to contact:

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