Understanding Tanzania's 2014/2015 National Budget

PwC insight and analysis

Finance Act 2014 Update

Financial institutions – amendment of provisions in relation to bad debts

Change in control – notification requirement

5% withholding tax on technical and management fees extended to oil and gas sector

Aircraft lease rentals - no reinstatement of non-resident withholding tax exemption

Excise duty – 20% increase on alcohol and 40% decrease on soft drinks

Introduction

This newsletter is an update on our newsletter issued in June this year based on the Budget speech, and summarises additional points arising from our review of the subsequently assented Finance Act 2014.

Action should not be taken on the strength of this newsletter, which has been prepared to give a quick reference and is not a substitute for professional advice.

Income Tax

Financial institutions – Bad Debts

An amendment has been made to the provisions governing relief for bad debts for financial institutions. The amendment in question is to introduce an additional condition for such relief, namely that the relevant institution *"has taken all reasonable steps in pursuing payment and the institution reasonably believes that [the] debt claim will not be satisfied"*. Further comments on this amendment are set out in a separate "Financial Sector Commentary" that we attach.

Change in Control – notification requirement

A new notification requirement is introduced in relation to the change of control provisions, which reads as follows: *"(5) The entity shall have the duty to report to the commissioner immediately before and after the changes referred to under subsection (1) had occurred".*

By way of background, the effect of changes made in the Finance Act 2012 were to deem an automatic local realisation of assets and liabilities at market value where the "underlying ownership" of an entity changes by more than 50% as compared with that ownership at any time during the previous three years.

The purpose of the amendment was to crystallise a tax liability in Tanzania where shares are sold in overseas companies with a significant component of the underlying economic value of the transaction relating to underlying assets in Tanzania. However, uncertainty remains as to what is a reportable event as the change of control provision is now so widely worded that it potentially covers transactions that were not intended, and thereby might deter investment.

Withholding Tax

Technical services and management fees (oil and gas) – 5%

The withholding tax regime that applies to the mining sector in relation to resident providers of technical services and management fees has been extended to the oil and gas sector. Under this regime a 5% withholding tax is to be deducted from payments to resident providers of "technical services" (as defined) and management fees, and this withholding tax is a final tax. In other words the basis for taxation of such entities is 5% of turnover instead of 30% of taxable profit. Further details were set out in an "Oil and Gas – Tax Alert" that we circulated in July based on provisions in the Finance Bill. For completeness we attach an updated "Oil and Gas Commentary", which is substantially the same as the document circulated in July.

Aircraft leasing – exemption not reinstated

The Budget speech and Finance Bill had proposed the removal of the withholding tax exemption on payments made by air transporters in respect of aircraft lease rental. It had been expected that the Finance Act would reinstate this exemption (mirroring the position last year where a similar proposal had been made in the Budget speech but was then rejected). However, the Finance Act maintains the clause providing for the removal of the exemption and so withholding tax does now apply to such rentals.

Aircraft leasing contracts with non-resident lessors will definitely provide for a consideration stated as net of local taxes so any such cost will simply be an additional burden for the lessee not the lessor. The result of the change will be additional costs for an airline industry in no state to absorb such increased costs.

Directors' fees – 15%

In our Budget newsletter, we highlighted the new 15% withholding tax on fees paid to directors other than full time service directors. The Finance Act introduces the following definition: *"'full time service director' means a person at a managerial position and is in full time service in a corporation"*. However, confusion remains as to how this withholding tax interacts with the existing 30% withholding tax on secondary employment, which had been understood to already cover such payments.

Dividends – withholding tax credit

The Finance Act 2014 adds a new subsection (3) to section 54, which reads as follows: *"Where dividends referred to in subsection (1) is paid to a non-resident shareholder, the corporation paying the dividends is entitled to a proportionate amount of withholding tax credit deducted"*.

The wording of this amendment is unclear but appears to seek to give an imputed tax credit to offset a dividend withholding tax liability if the effective source of funds for the dividend payment is dividend income that has already suffered withholding tax. If so the motivation for this amendment would be a desire to remove some of the adverse consequences of the Finance Act 2012 amendment which removed the withholding tax exemption on local intra-group dividends. However, it is unclear why the amendment limits relief to dividends paid to non-residents.

Customs Duty

Telecommunications

The Tanzania Investment Act is amended so as to limit any deemed capital goods relief in respect of telecommunication operators to relief for capital goods for the installation of telecommunication towers.

Excise Duty

Alcohol, Carbonated Soft Drinks

The written copy of the Budget Speech as well as the original Finance Bill referred to an excise duty increase of 10% for alcohol products. The Finance Act 2014 has amended the proposed specific excise rates to amounts that represent a 20% increase on the rates for the preceding year. However, excise duty rates for carbonated drinks – originally also proposed to have a 10% increase - have been reduced by 40%.

In 2013/14 the VAT and excise collections for beer were only marginally up on the previous year (7%) and significantly down on budget (-15%) – indicating little capacity in the market to absorb price increases. Assuming that the purpose of the significant increase was not to encourage temperance but rather to increase revenue collection, then the concern is whether it actually will achieve the reverse thereby creating a "lose lose" situation for the Government and brewing industry with less revenues for Government than would otherwise have been the case and less profits for the industry.

Financial services, Telecommunications

The new 10% excise duty for the financial sector is stated to apply to charges or fees payable to:

- *"a financial institution for service provided by such institution"* and
- *"a telecommunication service provider for money transfer service"*

In a seminar held in August 2014 TRA confirmed their view that in relation to financial institutions this excise duty is applicable to all charges and fees except interest income.

Looking forward a concern for the financial sector will be that the new VAT Bill proposes to also subject such charges to VAT. If this VAT change is implemented, then it would be important to remove the excise duty on such charges so as to avoid an excessive tax burden.

Old vehicles and spare parts

The additional excise duty rates applicable to the import of old vehicles will now be as follows:

- 10%: passenger motor vehicles more than 5 years old
- 15%: any vehicles between eight and ten years old
- 30%: any vehicles more than 10 years old

In addition a 25% excise duty will apply to imported used parts (for vehicles, motorcycles, domestic appliances and electrical appliances).

Excise duty return

A new requirement is introduced for the manufacturer of excisable goods or providers of excisable services to submit to the Commissioner within 21 days a return giving details of excisable goods manufactured or service provided. As there is already an existing requirement to file a monthly sales return, it would appear that this new requirement will only be relevant at the commencement of a business.

Taxes on fuel

Power to grant exemptions

The original proposal in relation to the limitation of the Minister of Finance's power to grant exemptions from taxes on fuel (excise duty and fuel levy) had been to limit this power to cases of exemption commitments in agreements signed by the Government in relation to projects funded by Development Partners. The restriction is now amended to remove the restriction to agreements with Development Partners and simply refer to *"projects exempted by an agreement to which the Government is a party"*.

Business Licences

Business Licence fee structure

A revised Schedule is introduced setting out business licence fees for various categories of business split between fees for a "principal licence" and fees for a "subsidiary licence".

Option to pay for 3 years

The requirement for an annual renewal of business licences was reinstated last year (with effect from 1st July 2013). This year an amendment is made to enable taxpayers to pay a licence fee in advance for a period of up to three consecutive years.

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