Growing tomorrow's economy

National Budget 2012/2013

Finance Act 2012 Update

Change in Control amendment remains as proposed in Finance Bill

Mining - removal of VAT special relief for MDA holders

Reinstatement of 100% special relief for religious and charitable organisations

Introduction

This newsletter is an update on our June Budget newsletter and the subsequent Finance Bill newsletter. It summarises some additional points arising out of our review of the recently assented Finance Act 2012. 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

Change in Control

It had been hoped that the provisions proposed in the Finance Bill would be amended so as to introduce more certainty as to the circumstances in which the amended "change in control" provision would apply so as to produce an outcome that is workable and practical from both an administrative and economic perspective. However, the amendment to the "change in control" provision as set out in the Finance Bill in essence remains unchanged.

For more detail on the nature of this very significant change, do refer to the "International Tax Update" section of our Finance Bill newsletter.

Strategic Investors

The Finance Bill 2012 introduced an exemption from withholding tax of interest payable to a non resident bank by a "strategic investor". The definition of the term "strategic investor" was not provided in the Bill. The Finance Act now defines this term as *"an investor who has been determined as such under the Tanzania Investment Act"*. The Tanzania Investment Act does not set out who qualifies as a "strategic investor" but does provides that for the purpose of promoting identified strategic or major investments, certain additional benefits may be granted to an investor registered with the Tanzania Investment Centre.

The Act also qualifies the exemption from withholding tax on interest proposed in the Finance Bill so as to exclude *"interest payable on any loan taken by a strategic investor from an associated or related company"*.

Presumptive income tax

The tax free threshold for presumptive income has been increased from a turnover of TZS 3 million to TZS 4 million.

Electronic Fiscal Device ("EFD")

The Finance Act amends the Income Tax Act 2004 changes proposed in the Finance Bill in relation to EFDs as follows:

- A TZS 5,000 threshold for the requirement to issue a fiscal receipt or fiscal invoice using an EFD.
- Amendment of the financial component of the penalty for failure to *"acquire or use electronic devices or issue fiscal receipt or fiscal invoices"* from a sum of a penalty TZS 3 million to a range of TZS 1 million to TZS 3 million.

Excise Duty

Basis for adjustment of specific excise duty rates

The Finance Bill had proposed that in future the annual adjustment of fixed excise duty rates should be *"as may be required depending on prevailing circumstances"* instead of an automatic link to inflation. The Finance Act now amends this wording to provide that rates *"may be annually adjusted in accordance with the project inflation rate and other key macroeconomic indicators*".

Juice and mineral water

Excise duty rates on juice and bottled and mineral water have been revised as follows:

	Original	Revised
	TZS / litre	TZS / litre
Juice - local	7	8
Juice - imported	77	100
Water – mineral, aerated, boiled & packed but not containing sugar or sweetening matter	83	69

Value Added Tax

Zero rating of locally produced textile, milk and milk products

The following supplies are now taxable at zero rate:

- Locally produced textile by local manufacturer using locally produced cotton;
- Locally produced milk and milk related products produced by local manufacturers using locally produced milk.

Exemption of certain supplies

The exemption of the provision or conducting of games of chance is now amended so as to also cover the following: National lottery, Internet casinos, and SMS lottery.

The exemption proposed for natural gas and related equipment has been extended so as to include the following:

- Air and nitrogen systems;
- Condensate stabilizers;
- System piping on pipe rack;
- Instrumentation; and
- Gas cookers designed for natural gas.

Removal of Special Relief for Mining

The Finance Act 2012 unexpectedly removes the special relief entitlement of mining companies holding Mining Development Agreements (MDAs) executed before 1 July 2009.

By way of background the Finance Act 2009 removed VAT special relief for mining, but this relief was reinstated in the Finance Act 2010 but restricted to mining companies holding MDAs executed before 1 July 2009. The experience during the one year period from 1 July 2009 was that VAT refunds owed to mining companies escalated to very significant levels. The reinstatement of the relief in 2010 helped deal with this burden, as well as ensure compliance with contractual commitments given by the Government in a number of MDAs.

The removal of this relief is therefore a surprise for the following reasons:

- It conflicts with legal entitlements of a number of mining companies under their MDAs
- It will result in a very significant increase in VAT refund claims.

For mining companies this is an unwelcome change as it will have significant adverse consequences in terms of cash flow costs as well as foreign currency risk arising from the significantly increased amount of cash tied up as outstanding TZS denominated VAT refunds.

Whilst the impact of this change is on existing mining projects with MDAs pre-dating 1 July 2009, it will quickly highlight once again the importance of special relief for the mining sector. This point is pertinent for a number of new large scale mining projects in the pipeline – in particular, it remains open to question whether investors will commit to these projects in the absence of VAT special relief.

Other changes to special relief

For certain supplies, the Finance Bill restricted special relief to a partial relief of 45% rather than 100%. The Act now reinstates this relief for certain supplies including in relation to the following: religious and charitable organisations; water and sewerage infrastructure development; export processing zones; special economic zones; capital goods; railway plant and equipment; certain fire fighting vehicles; certain supplies to the agricultural sector.

New special relief categories (eligible for 100% relief) are also added in relation to tractor trailers and related spare parts as well as tractor tyres.

Tanzania Investment Act

The Budget speech included reference to a reduction of the tax exemption on "deemed capital goods" for investors registered with the Tanzania Investment Centre - from 100% to 90%, so that an investor would be obliged to pay 10% of the due tax. This proposal is now reflected by a Finance Act amendment to the Tanzania Investment Act 1997.

The Budget speech also included reference to the abolition of import duty exemptions on all non-utility motor vehicles of 3000cc and above (other than for certain donor funded projects). An amendment to the Tanzania Investment Act makes clear that such vehicles will not qualify as deemed capital goods.

Gaming Tax

Gaming tax is now extended to SMS lotteries and National lotteries at rates of 30% and 10% of gross sales respectively. The term "SMS lottery" is defined as "*a lottery whose participation is by sending an SMS from a player's mobile phone for a purchase of lottery virtual ticket*"

The licensing requirement under the Gaming Act is now also extended to the following:

- Internet casino licence for conducting casino games through remote devices with internet connection; and
- SMS lottery licence for conducting SMS lotteries for commercial purposes.