Change: Joining the dots

National Budget 2013/2014

Finance Bill 2013 Update

Introduction

Our Budget newsletter of 14 June was based on the speech of the Minister for Finance. We now summarise some additional points arising out of our review of the Finance Bill 2013. Please note that the Bill may be subject to further change before it is enacted as the Finance Act 2013.

Skills and Development Levy (SDL)

The Finance bill clarifies that the SDL exemption is limited to *"any Government department or public institution which is wholly financed by the Government"*.

Income Tax

Transfer pricing adjustments – extended limitation period

The three year limitation period set out in section 96 ITA 2004 is extended to six years for any adjustment relating to transfer pricing.

Alternative minimum tax ("AMT")

Previously AMT was triggered in the 3rd year of continuous tax losses. The Finance Bill proposes to extend the required period so that AMT would only be triggered in the 5th year of continuous tax losses.

Ring-fencing – oil and gas, mining

The taxable income of upstream petroleum operations is to be ring-fenced by reference to the relevant petroleum contract area. This mirrors the ring fencing in place for mining operations which is by reference to the relevant mining licence area. Such ring fencing will however only apply where the mining or petroleum operations on different mining licence areas or petroleum contract areas can be considered to be "separate and distinct".

Depreciation allowances – oil and gas, mining

The Finance Bill now includes under the Class 8 category (100% deduction) *"equipment used for prospecting and exploration of minerals or petroleum"*. This inclusion does not substantively change the position for mining companies who are already entitled to a 100% deduction by reference to another provision. However, it does result in a real difference for upstream oil and gas entities who hitherto could only depreciate such expenditure at a rate of 20% straight line (i.e. over 5 years).

Failure to issue receipt

New tax geared penalties are introduced for any failure to comply with the receipt issuing requirement set out in Section 80A ITA 2004.

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Withholding tax – resident

(i) General – Services

As drafted the new 5% resident withholding tax on services (which is to be deducted by businesses when making payments to suppliers of services) will apply to:

- All types of services without restriction,
- All types of payee without restriction (for example, it is irrelevant whether the payee is VAT or TIN registered),
- All payments no matter how small.

As drafted this withholding tax will have significant adverse implications including:

- Administrative inconvenience and cost (both to the taxpayer and the tax collector);
- Cash flow cost to many taxpayers where not sufficiently profitable to absorb the withholding tax credits;
- Absolute costs (and therefore double tax) where administrative difficulties (for example, in obtaining withholding tax certificates from payers) result in withholding tax credits not being claimed.

If such a withholding tax is to be enforced then it should perhaps be limited to certain defined types of services (where there is a genuine concern as regards loss of revenue). In addition, there should be an automatic exclusion from this withholding requirement if the relevant payment is made in respect of a fiscal receipt generated by an electronic fiscal device – as the Tanzania Revenue Authority will already have a record of the transaction.

(ii) Telecommunications - Commission on mobile money transfer

The new 10% withholding tax is stated to be applied to a payment of *"money transfer commission"* to a *"money transfer agent"* and is to be a final tax. Definitions are provided for both these terms – copies of the definitions are set out in the attached Appendix.

(iii) Mining – Management services

Currently, payments by mining companies to a resident provider of "technical services" (as defined) are subject to a 5% withholding tax, which is a final tax for the recipient. The Finance Bill proposes to extend this 5% withholding tax to payments made by mining companies to resident providers of management services, again with this tax being a final tax. However, the term *"management services"* is not defined.

(iv) Government entities – payments for goods

The 2% withholding tax on goods will apply to payments made by *"a resident corporation whose budget is wholly or substantially financed by the Government budget subvention"*. No clarification is given as to what is to be considered as substantial in this context.

Withholding tax – rent paid to non-residents

The withholding tax on rent paid to non-residents is reduced to 10% (from 15%) in line with the prevailing rate of withholding tax on rent paid to residents.

Withholding tax – aircraft lease rentals

Our earlier newsletter stated that the abolition of the withholding tax exemption on aircraft lease rentals would result in a 15% withholding tax on payments to non-residents. However, assuming the Finance Bill remains unchanged, the rate will instead be 10% (applicable to rent).

The Finance Bill also extends the withholding tax on aircraft lease rentals to payments to residents. Again, the withholding rate applicable will be 10%.

Excise Duty

Telecommunication services

Excise will now be applied to "telecommunication service" rather than "airtime". The bill includes a definition of "telecommunication service" – see the definition included in the Appendix to this newsletter.

Excise duty - 10% increase in specific rates (other items)

Not mentioned in the budget speech, but now included in the Finance Bill is a 10% increase in the specific excise tariffs listed below.

Goods	Old Rate TZS	New Rate TZS
Natural gas for industrial use	0.35	0.39
Recorded video and audio tapes	40	44
Recorded DVD,VCD,CD	40	44

Excise duty – ad valorem on various products

The budget speech referred to the extension of excise duty to various products at rates ranging from 10% to 25%. The Finance Bill has listed the relevant excise duty rates by products, which in broad terms are as follows:

- 25%: firearms;
- 20%: aircraft (including helicopters, aeroplanes); yachts and other vessels for pleasure or sport;
- 15%: imported furniture; and
- 10%: other products including: perfumes, toiletries; cases and bags; certain types of clothing; certain household furnishings.

Customs Duty / Tanzania Investment Act

Deemed capital goods - exclusions

The budget speech introduced a list of goods which cannot be deemed as capital goods. This list has been amended by:

- The addition of crockeries, cutleries and beddings, and
- The inclusion of non-utility motor vehicles (instead of saloon cars) and petroleum products (instead of fuel).

The new list includes:

- Non-utility motor vehicles;
- Petroleum products;
- Sugar;
- Beverages, spirits;
- Office equipment, stationery;
- Furniture, tiles, beddings;
- Air conditioners, fridges, electronic equipment; and
- Crockery, cutlery.

Gaming tax

Gaming tax is to be charged on a weekly rather than monthly basis.

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Appendix - Telecommunications

Income Tax Act 2004 – amendment – Section 3

"'money transfer commission' means a payment in respect of money transfer service paid or payable to a money transfer agent"

"'money transfer agent' means any person rendering money transfer service on behalf of the money transfer service provider"

Excise (Management and Tariff) Act – amendment – Section 2

Section 8 of the Finance Bill proposes the inclusion of the following definition of *"telecommunication service":*

"'telecommunication service' means a service of any description provided by a telecommunication company by means of any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence or information of any nature, by wire, optical, visual or other electromagnetic means or systems, including-

(a) voice mail, data services, audio text services, video text services, radio paging;

(b) fixed telephone services including provision of access to and use of the public switched telephone network for the transmission and switching of voice, data and video, inbound and outbound telephone service to and from national and international destinations;

(c) cellular mobile telephone services including provision of access to and use of switched or non-switched networks for the transmission of voice, data and video, inbound and outbound roaming service to and from national and international destinations;

(d) carrier services including provision of wired or wireless facilities to originate, terminate or transit calls, charging for interconnection, settlement or termination of domestic or international calls, charging for jointly used facilities including pole attachments, charging for the exclusive use of circuits, a leased circuit or a dedicated link including a speech circuit, data circuit or a telegraph circuit;

(e) provision of call management services for a fee including call waiting, call forwarding, caller identification, three-way calling, call display, call return, call screen, call blocking, automatic call-back, call answer, voice mail, voice menus and video conferencing;

(f) private network services including provision of wired or wireless telecommunication link between specified points for the exclusive use of the client;

(g) data transmission services including provision of access to wired or wireless facilities and services specifically designed for efficient transmission of data; and

(h) communication through facsimile, pager, telegraph and telex."