Finance Bill 2018 Update

PwC insight and analysis

Summary of points additional to those highlighted in our Budget Newsletter

We hope that you will find this update helpful and look forward to your comments

Finance Bill 2018 Update

Highlights

This newsletter summarises details of changes proposed in the Finance Bill 2018, which were not referred to in the Budget speech and therefore not included in our Budget speech newsletter. Changes proposed include the following:

Income Tax

- Alternative Minimum Tax rate – increase to 1% (from 0.3%).
- Non-resident individual tax rate on "total income" – increase to 30% (from 20%).
- Pharmaceutical and leather industries – reduced income tax rate of 20% to apply for the first five years from the first year of commencement of production.
- Regulations – wide powers granted to Minister for Finance

Value Added Tax

- Air charter services - now subject to VAT
- Motor vehicles – no longer eligible for VAT deferment
- Non-Government Organisations – removal of VAT refunds

Local Government

- Introduction of new sources of revenue for urban and district councils.
- TRA is now the rating authority with mandate to set and levy rates in rateable areas.

Tax Administration

- No provision yet for Tax Amnesty
- Waiver of interest / penalties - 50% cap no longer applicable to interest

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Income Tax

Alternative Minimum Tax ("AMT") rate – increase to 1%

- AMT is payable by corporations who make tax losses for a consecutive period of three years, and is calculated as percentage of turnover. The Bill proposes an increase of the rate to 1% (from 0.3%). Comment: The Income Tax Act provides for apportionment between the period before and after the change of rate. However, this would need confirmation with the Tanzania Revenue Authority ("TRA"). Taxpayers subject to AMT will need to consider amending their statements of estimated tax to take account of the rate change.

Non-resident individual tax rate on "total income" – increase to 30%

- The Bill proposes to increase the tax rate on the "total income" of a non-resident individual to 30% (from 20%). "Total income" covers employment, business or investment income other than final withholding payments. Comment: An immediate impact of this change will be on the taxation on disposal of investments. The 30% rate applicable to non-resident individuals will now be three times the 10% rate applicable to resident individuals on such transactions, but will align with the rate applicable to corporate entities (whether resident or non-resident).

New investors in pharmaceutical and leather industries

- The reduced corporate income tax (CIT) rate (20%) for pharmaceutical and leather industries will start to apply from the year of commencement of production for a period of five consecutive years.
- To be eligible an entity must be newly established and must have a performance agreement with the Government of Tanzania.
- Comment: The benefits of this relief are unclear given that: (i) the first years of operation frequently see operating losses as a new business seeks to gain market share; and (ii) even where there are operating profits, the tax depreciation on initial capital expenditure may well result in tax losses in the first few years. It would have been useful if the 20% tax rate started from the first year of taxable profits. Additionally, bearing in mind the likelihood of tax losses in initial years, it would be helpful if there was an exemption from AMT.

- *Increase in tax rates:*
  - *Alternative Minimum Tax: 1%.*
  - *Non-resident individual tax rate on "total income": 30%.*
- *As drafted, proposed 20% corporate tax rate for pharmaceutical and leather industries unlikely to be of significant benefit*

Income Tax

Ministerial power to make Regulations

- The Income Tax Act ("ITA") 2004 originally included a Section 129 titled "Regulations" which gave the Minister the power to issue Regulations for certain purposes - a provision repealed on the introduction of the Tax Administration Act ("TAA") 2015. The Bill proposes to reinstate a new Section 129, with wording as set out in the adjacent column.
- By contrast, the wording of the original version of Section 129 (prior to the 2015 repeal) limited the power to make regulations to the following purposes*: "(a) for matters authorised to be made or prescribed under this Act by regulation; (b) for the better carrying into effect of the principles, purposes and provisions of this Act; (c) for the establishment, membership, powers and duties of District Tax Advisory Committees; and (d) requiring persons or a class of persons to provide such information as may be prescribed, whether on an isolated or periodic basis".*

- The proposed new section reads as follows

  "(1) The Minister may make regulations for the better carrying into effect of the principles, purposes and provisions of this Act.
  (2) Without prejudice to the generality of subsection (1), regulations made may provide for-
  - *(a) <u>control and manner of calculating and charging income tax</u>;*
  - *(b) <u>regulation of income tax deductions</u> including losses, bad debts and depreciations;*
  - *(c) manner of processing and granting income tax exemption; and*
  - *(d) any other matter which needs to be prescribed under this Act."*

- <u>Comment</u>: The object of regulations is in essence to enable the better carrying out of the objects of the principal legislation – something captured in subsection (1) of the new section. However, subsection (2), and in particular the reference to *"manner of calculating and charging income tax"* is very widely drafted, and arguably purports to give the Minister powers broader than normally contemplated in regulations.

- *Wide powers granted to Minister in relation to making of Regulations*

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Value Added Tax

Air charter services – now subject to VAT

- The Bill removes the VAT exemption on air charter services. As a result, such services will become more expensive. This move may negatively affect the tourism industry.

Motor vehicles – no VAT deferment

- The definition of capital good for the purpose of VAT deferment will now exclude motor vehicles.

NGOs - removal of VAT refunds

- Non-profit organisations will no longer be entitled to a refund of VAT incurred on acquisition or importation of items under international assistance agreement.

New exemption – soya cake

- In addition to the VAT exemptions mentioned on the budget speech, the bill proposes to exempt soya cake from VAT. This move intends to reduce production costs for livestock keepers.

Missing exemption – imported animal and poultry feed additives

- The budget speech included a proposal to exempt VAT on imported animal and poultry feed additives. However, the Bill does not reflect this exemption.

Excise Duty

Wine with insufficient domestic content (i.e less than 25%)

- Minor change to rate originally announced – TZS 2,466.45 per litre (instead of announced TZS 2,466 per litre).

Local Government

New sources of revenue

- The Bill includes fees for advertisement on billboards, posters or hoarding as sources of revenue for urban authorities and district councils. As regards district councils, it makes explicit reference to inclusion of fees for shops, butcheries, market stalls, user charges and service charges.

TRA as a rating authority

- The Bill provides for the TRA to be the rating authority effective from July 2018.
- The valuation rating tribunal shall not have mandate in rateable areas where the TRA is a rating authority. Our understanding is that disputes from such areas shall follow the normal procedures as for other taxes administered by TRA.

- *Removal of VAT exemption on air charter services.*
- *TRA is now the rating authority with mandate to set and levy rates in rateable areas.*
- *Introduction of new sources of revenue for urban and district councils.*

Tax Administration

Liability of Managers for unpaid tax liabilities of entities – further clarity

- Section 65 TAA 2015 imposes a potential liability on a manager of an entity for the non-payment of tax by the entity if the manager had not exercised an appropriate degree of care, diligence, and skill.
- The liability is joint and several with the entity, and so in practice one would only expect resort to this section in a situation where the entity was itself unable to settle the relevant liability.
- As originally drafted this liability applied to any manager who *"was the manager of the entity within a period of twelve months prior to the entity default"*. The Bill replaces the words *"within a period of twelve months prior to the entity"* with *"during the time of occurrence of the"*
  Comment: This amendment more explicitly links the liability of unpaid tax by an entity to the manager responsible at the time of the default.

Tax Amnesty

- The Budget speech included the welcome announcement of a tax amnesty. However, although this was stated as effective from 1 July, there is no reference to this in the Bill. Accordingly, we would expect that the Finance Act will include a provision to cover this. Alternatively, this may be covered in the Regulations issued by the Minister (as mentioned below).

Interest and penalties – Remission

- The TAA 2015 originally granted power to the Commissioner General to waive penalties or interest in whole or in part. The Finance Act 2016 transferred the power to remit interest to the Minister for Finance (upon consultation with the Commissioner General) subject to a limit of 50% of the interest assessed. The Finance Act 2017 then reinstated the power of the Commissioner General (and reversed the requirement for Ministerial involvement).
- The Bill proposes to:
  - Remove the waiver cap of 50% for interest
  - Empower the Minister to issue Regulations or publish a Gazette Notice to prescribe eligibility, duration and procedure for accessing the remission under this section.

Comment: Bearing in mind the proposed tax amnesty, it is logical to remove the waiver cap of 50% in respect of interest.

- *No provision for Tax Amnesty in the Finance Bill*
- *Removal of cap of 50% for waiver of interest*

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