

# Finance Bill 2020 Update PwC Insights

This newsletter is an update on our bulletin of 12 June 2020 on the Budget Speech. It summarises additional points arising from our review of the Finance Bill 2020 (“the Bill”).



# Highlights

## Income Tax

- **Anti-avoidance:**
  - New taxing right on a “resident representative” applies to an agent of (i) a non-resident person or (ii) of a “beneficial owner”
  - Amended definition of “associate”, including reduction of the existing threshold (for control or right to income) to 25% (from 50%).
- **Calculation of taxable income:**
  - Relief for foreign exchange losses on an interest free loan capped at a maximum of 70%.
  - Potential restriction on timing of offset of brought forward tax losses after the fourth consecutive year recording tax loss
- **Special Economic Zones:** clarification of scope of limitation of exemption (category B investors).
- **Date of realisation on disposal:** New rules governing date of realisation of an interest in land, petroleum or mineral rights, buildings, shares or securities, licence or concessional right on reserved land.
- **Withholding tax**
  - Amendment to source rule for services.
  - Clarification on scope of withholding tax on commissions related to digital payments
- **Resident trusts:** A distribution by a resident trust is now taxable in the hands of the beneficiaries; and a beneficial interest in a resident trust now qualifies as an “investment asset”; despite these changes, the resident trust itself also remains separately taxable.

## Value Added Tax

- **Ancillary Transport Services:** Possibility of extension of normal 30 day time limit for transit goods to exit and related ancillary transport services to still qualify for zero-rating.

## Tax Administration

- **Timelines for responses / provision of information to TRA:** 14 days for notice to obtain information; 30 days for objections to tax decisions, and decisions on objections.
- **Determination of objection:** 6 months from date of admission of an objection for the Tanzania Revenue Authority (“TRA”) to determine an objection; otherwise it is treated as final/confirmed subject to the right to a tax appeal.

## Legal

- **Beneficial owners - reporting requirements:** Details of beneficial owners now need to be filed for companies (with the Registrar of Companies) and for trusts (with the Administrator General).
- **Share Warrants - prohibition:** various amendments to the Companies Act to effectively prohibit the use of share warrants.

## Income Tax\*



### Agent of a non-resident person or of a “beneficial owner” (“resident representative”)

A new taxing right on a “*representative assessee*” will apply in respect of income of a non-resident person or “*beneficial owner*” for whom the “*representative assessee*” acts as agent. Relevant legislative extracts are set out in the Appendix.

Activities that can create the categorisation of “*agent of a non-resident person or of a beneficial owner*” include: employment; any “*business connection*”; receipt of income for the other party; acting as trustee.

The definition of the term “*beneficial owner*” includes reference to aspects (whether direct or indirect) of “*substantial control*”, “*substantial economic interest in or...substantial economic benefit*”.

The term “*business connection*” includes reference to:

- Conclusion of or significant role leading to conclusion of contracts;
- Maintenance of stock of goods or merchandise;
- Habitually securing orders;
- Carrying on business or investment through an entity or an arrangement for the benefit of the other party (directly or indirectly).

A new source rule (s69A) is also introduced to bring the relevant income within scope. However as drafted it creates significant uncertainty as its scope is potentially wider than that contemplated by the “*business connection*” definition. In addition, even where there is no “*resident representative*”, it appears that a tax assessment can still be raised as sub-section (2) states “*nothing in this section shall preclude the Commissioner from assessing the tax to a non-resident person or beneficial owner under any provision of this Act*”.

### Associate - threshold change to 25% (from 50%)

The definition of “*associate*” is amended to:

- Reduce the existing threshold for control or right to benefit from income to 25% (from 50%).
- Qualify this by providing that “*the Commissioner may, upon consideration of the nature of business or investment of a person, determine the prescribed minimum percentage*”
- Qualify item (d) of the definition (which refers to reasonable expectation that one party may be expected to act (other than as an employee) in accordance with the intentions of the other) by adding the following: “*whether or not they are in a business relationship and whether such intentions are communicated or not*”.

This amendment will affect persons in scope in relation to the transfer pricing rules (set out in s33, s65B(5), s65K(5)).

Other situations where the term “*associate*” is used include:

- Definitions (s3, s12): “*business asset*”, “*domestic asset*”, “*investment asset*”; “*controlled foreign trust*” and “*controlled foreign corporation*”; “*life insurance*”; “*exempt-controlled resident entity*”
- Employment income (s7): scope of payments treated as made by an employer; medical services exemption
- Indirect payments (s29), compensation and recovery payments (s31, s41), income splitting (s34), transfer of assets (s44), income or dividend stripping (s57) controlled foreign trusts and corporations (s75)
- Strategic investor withholding tax relief (s82(2)(e)).



## Interest free loans - foreign exchange losses

The deduction of a foreign exchange loss realized on an interest free loan is restricted to not more than 70% of the amount of loss attributable to such loan obligation. This restriction mirrors the ratio applied in the existing thin-capitalisation restriction (3:7).

## Tax losses - potential timing restriction on offset

The offset of losses brought forward is limited to 70% of current year taxable profit before brought forward losses if an entity:

- Has tax losses in the preceding four years, and
- Does not operate in one of the sectors excluded from this limitation (namely, agriculture, education, health)

The excess losses not utilized are carried forward to later years. A similar restriction was introduced in 2016 for entities in the extractive sector (but in that case without the precondition of tax losses in the preceding four years).

Given this change, there would appear to be little reason to maintain alternative minimum tax (applied to perpetual loss making entities).

## Special Economic Zones (“SEZ”) - Category B Investors

The SEZ income tax exemption removal relates to Category B investors (Investors producing for sale into the customs territory), previously entitled to a withholding tax on interest exemption.

## New rules for realisation date of certain asset disposals

New rules are introduced governing the date of realisation of an interest in land, petroleum or mineral rights, buildings, shares or securities, licence or concessional right on reserved land. In particular, these rules define the “*date of realisation of an interest*” as the earlier of the date of:

- Execution of contract for sale;
- Parting with possession, use or control of the asset;
- Payment of part or whole of the consideration for the asset

Amendments to compliance requirements include:

- Instalment tax payment on such disposals within 30 days (“*or such other period determined by the Commissioner*”) from the date of realisation of the interest.
- Notification to the Commissioner within 14 days from the date of realisation.

One concern with this amendment - and in particular the reference to execution of a contract for sale as a trigger - is the ostensible deeming of realisation before a transaction is legally complete (for example, where subject to certain conditions), In particular:

- How can a tax liability be assessed and payment demanded for a transaction that may not ultimately happen?
- How does a seller fund payment of a tax liability if no consideration has yet been received?

The new provision is also inconsistent with the income recognition rules in s23(2) (“*an amount is receivable when the person becomes entitled to receive it, even if the time for discharge of the entitlement is postponed or the entitlement is payable in instalments*”).



## Income Tax\*

### Source rules - services provided by non residents

A payment for services will now have a source in Tanzania: “(i) *irrespective of the place of exercise, rendering or forbearance; and (ii) regardless of the place of payment: Provided that, the services are consumed in the United Republic*”.

In 2016 a Court of Appeal ruling had confirmed that the Income Tax Act (“ITA”) 2004 provided for the source of services to be determined by reference to the place of performance. Following this ruling a legislative amendment (under the Finance Act 2016) was passed to the provision on the source of services (s69(i)). The Finance Bill 2020 amendment appears to effectively acknowledge that whilst the objective of the 2016 amendment was to make withholding tax apply to all payments to non-residents for services (i.e. irrespective of place of performance), as drafted it perhaps did not achieve this objective. Withholding tax is a tax on income, however the new definition makes clear that under Tanzanian legislation its scope is to be determined by reference to consumption tax principles (namely the place of consumption).

### Withholding Tax - Digital Payments

The scope of extension of the withholding tax on commissions for digital payments covers payments to a “*commercial bank agent*” or “*digital payment agent*” of a “*fee, commission or any other charge*”. “*Digital payment agent*” means “*a person who renders digital payment services at a fee, commission or any other charges*”.

## Taxation on the distribution of a resident trust

Previously the tax treatment of trusts had been as follows:

- Resident trusts - trust and beneficiaries treated as separate, and income of the trust taxed on the trust and no further tax on distribution to the beneficiaries, and beneficial interest in the trust not an “investment asset”
- Non-resident trusts - no tax on the trust but tax on the distribution to the beneficiaries. In addition a beneficial interest in the trust treated as an “investment asset”.

In future, a distribution by a resident trust will be included as taxable income of the recipient (the trust beneficiary), and an interest in such a trust will now be an “investment asset”. There is however no compensating exclusion from taxation of the resident trust on its income or any gain on disposal. As drafted it appears that the amendment will result in taxation of the same income twice - namely, firstly in the hands of the trust, and then again when distributed to / realised by a beneficiary.

## Value Added Tax (“VAT”)

### Zero rating of ancillary transport services - extension of time for transit goods to exit

The law provides that ancillary transport services only qualify for VAT zero rating if the related goods are in the country for not more than 30 days. However, the Commissioner for Customs will now have the mandate to grant an extension of time for goods in transit to exit the country and for the related ancillary transport services to still qualify for zero rating.



## Tax Administration

### Tax deposit on objection to tax decisions (s51) - 100% if flight risk

The Commissioner can now demand a deposit of 100% of assessed tax where he has reasonable cause to believe that the objector intends to permanently leave the country. The words “permanently leave” might be construed to limit the scope of this to individuals.

### Timeline for determination of objection (s52) - 6 months

If no determination is issued within six months of an objection, the underlying tax assessment or decision will be treated as final/confirmed and the taxpayer can appeal to the Board. Such an approach is a matter for concern on a number of levels including: (i) it appears to assume that it is more likely than not that proposed adjustments are justified (i.e. benefit of doubt to the TRA not the taxpayer), (ii) it might create a disincentive for TRA to determine objections, and de facto pass on more work to the appellate bodies (iii) it may create difficulties for taxpayers to monitor the deadline for filing an appeal unless some formal notification mechanism from TRA is instituted. (A better approach would have been to adopt the old Tax Revenue Appeals Act approach (which up to 2004) deemed a notice of objection as agreed to if no response was sent within a period of six months from the date of the objection.)

### Information submission - deadlines now applicable to taxpayers

Trigger	Deadline	Consequence	Comment
Notice to obtain information - s44	14 days (subject to extension of time)	Prohibition on use of information as evidence in the dispute resolution process (objection or appeal) where the taxpayer fails to submit the information within the prescribed time	The time limit is subject to extension, which “shall not be unreasonably withheld” if “sufficient cause” shown. The length of potential extension period is not stated.
Objection to tax decisions - s51	30 days	At the time of lodging the notice of objection all relevant information and documents to support the objection should be submitted	It will not be possible to state grounds of objection and send pending supporting documentation at a later date.
Decision on objection - s52	Not exceeding 30 days	The taxpayer will be prohibited to use information as evidence on the dispute resolution process if they fail to submit the information within the prescribed time.	Although provision is made for extension of time, it is stated that such extension shall be “for a period not exceeding seven days from the date of service of the notice of extension”.



## Anti-Money Laundering Act, Companies Act, Trustees Incorporation Act

### Beneficial Owners - new reporting requirements

The Anti-Money Laundering Act, Companies Act and Trustees Incorporation Act are amended to introduce the same definitions of “arrangement” and “beneficial owner” as under ITA 2004.

Details of beneficial owners now need to be filed as follows:

- Companies: with the Registrar of Companies initially with the memorandum and then with the annual return.
- Trusts: with the Administrator General

The stated purpose is to ensure access to accurate and up to date records of beneficial owners of legal entities for information required, among other things, for tax purposes, control of anti-money laundering and terrorism financing.

### Share Warrants - prohibition

Amendments to the Companies Act to:

- Remove procedures relating to share warrants,
- Prohibit the issue of share warrants, and
- Require bearers of share warrant to surrender the warrants issued to them within twelve months of 1st July, 2020.



# Appendices





# Income Tax - Section 3



## Who is a Resident Representative?

**Representative assessee** is defined as “*an agent of a non-resident person or of a beneficial owner*”

**Beneficial owner** means a natural person

- (a) who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement;
- (b) who has a substantial economic interest in or receives substantial economic benefit from an entity or an arrangement directly or indirectly whether acting alone or together with other persons;
- (c) on whose behalf a transaction or arrangement is conducted; or
- (d) who exercises significant control or influence over a person or arrangement through a formal or informal agreement;

**Agent of non resident person or of a beneficial owner** includes any person in the United Republic -

- (a) who is employed by or on behalf of a non-resident person or a beneficial owner;
- (b) who has any business connection with a non-resident person or a beneficial owner;
- (c) From or through whom a non-resident person or a beneficial owner is in receipt of any income, whether directly or indirectly; or
- (d) who is a trustee of a non-resident person, and includes any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset situated in the United Republic;“



# Income Tax - Section 3

## What is a Business Connection?

“**Business connection**” includes any business activity carried out through a person who, acting on behalf of the non-resident person or a beneficial owner-

- (a) has and habitually exercises in the United Republic, an authority to conclude contracts on behalf of the non-resident person or a beneficial owner;
- (b) habitually concludes contracts or plays the principal role leading to conclusion of contracts by that non-resident person or a beneficial owner, and the contracts are-
  - (i) whether or not in the name of the non-resident person or the beneficial owner;
  - (ii) for the transfer of the ownership of, or for the granting of the right to use property owned by that non-resident person, or that non-resident person has the right to use; or
  - (iii) for the provision of services by the non-resident person or the beneficial owner;
- (c) has no such authority but habitually maintains in the United Republic a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident person or the beneficial owner;
- (d) habitually secures orders in the United Republic, mainly or wholly for the non-resident person or for that non-resident person and other non-resident persons controlling, controlled by, or subject to the same common control as that non-resident person, or for the beneficial owner; or
- (e) carries out any business or investment in the United Republic through an entity or an arrangement for economic benefit of a non-resident person or beneficial owner, whether directly or indirectly;”

# Income Tax - Sections 4(d), 6(d), 69A



## Charge of Tax

### Section 4(d)

“who is a representative assessee from or through whom a non-resident person is in receipt of any income, whether directly or indirectly.”

## Chargeable Income

### Section 6(d)

“in the case of a representative assessee, the income of a non-resident or beneficial owner from business or investment for the year of income deemed to accrue or arise in the United Republic.”

## Income accruing or arising in the United Republic

### Section 69A

(1) Income accruing or arising in the United Republic, whether directly or indirectly through or from-

(a) any business connection;

(b) any property;

(c) any asset or any source of income including the sources of payment referred to in section 69; or

(d) transfer of an asset situated in the United Republic, shall be deemed to accrue or arise in the United Republic and shall be taxed through a representative assessee of a non-resident person or a beneficial owner

(2) Nothing in this section shall preclude the Commissioner from assessing the tax to a non-resident person or beneficial owner under any provision of this Act.”

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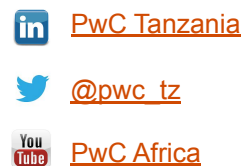
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