

# Budget Update/ Finance Bill 2023

PwC Tanzania | June 2023



## Highlights

This newsletter is an update on our Budget Speech bulletin of 15 June 2023. It summarises additional points arising from our review of the Finance Bill 2023 (“the Bill”) dated 19 June 2023, and which became publicly available on 20 June 2023. The next step in the legislative process will be the passing of the Finance Act 2023, which will come into force on 1 July 2023.

## In Brief

### Income Tax

- Change in Control - amendments made in the Bill to address direct sales and share allotment (issue), but wording could be clearer

### Indirect Tax

- VAT - alignment of VAT documentary requirements with current systems
- Excise duty - express reference to three year timeline for adjustments
- SDL - removal of SDL filing requirement where a nil return

### Tax Administration

- Positive changes with regard to (i) admission of objection deadline, (ii) deadline for application for tax refund claim, (iii) clarity on scope of storage facility reporting requirement,
- Primary data server requirement remains a significant concern;
- New 30 day reporting deadline for construction and extractive sector contracts.

## Income Tax

### Change in control provisions - exclusions for (i) issuance of shares and (ii) direct transfer of shares

The wording in the Bill to put into effect the exclusions announced in the Budget speech refers to the non-application of section 56 (“change in control”)<sup>1</sup> where a change in underlying ownership is:

- “A result of allotment of new membership interest of an entity”;  
or

- “Solely a result of transfer of resident membership interest of the entity to another resident person”.

### Allotment of new membership interest of an entity<sup>2</sup>

The objective of the amendment is to enable capital to be raised by issuance of shares without triggering a change in control event and related income tax liability. The need for this amendment is particularly pressing with many mining sector projects looking to raise capital on international stock markets.

Whilst the intention of the amendment is clear, a concern arises as to the interpretation of the exclusion as drafted. In particular, in the context of Section 56 the term “an entity” refers back to the use of this term in sub-section (1) of Section 56, which is the provision that deems a realisation on change in control and which by its very nature can only refer to an entity over which Tanzania has a taxing right. However, the issue of shares on an international stock exchange will naturally be by a company listed overseas, and it is not completely

clear that an issue of shares by such a company will be excluded based on the wording as drafted.

Options to provide clarity on the matter could include a formal clarification on this point by the Tanzania Revenue Authority, or a change to the amendment as currently drafted to expressly capture the underlying owners of the entity (for example “allotment of new membership interest in an entity, or in a person with an underlying ownership interest in such an entity”).

### Solely a result of transfer of resident membership interest of the entity to another resident person

The purpose of this change is to remove any uncertainty as to potential double taxation of direct disposal of shares in a Tanzanian company. However, as drafted (in particular, the references to “resident membership interest” and “another resident person”) it appears to restrict the exclusion to a direct disposal from one resident shareholder to another resident shareholder, and so not cover a disposal where the buyer or



1. For more detailed commentary see our May 2021 pre-Budget Tax Briefing 5 on Section 56 ITA 2004 (<https://www.pwc.co.tz/assets/pdf/tax-alert-pre-budget-tax-briefing-5-change-in-control.pdf>) as well as our June 2023 pre-Budget Briefing 2 (Mining): (<https://www.pwc.co.tz/assets/pdf/pre-budget-briefing-mining-june-2023.pdf>)

2. The term “entity” refers to “a partnership, trust or corporation”

seller in non-resident, or both buyer and seller are non-resident.

Given that the intention was simply to ensure no double taxation, the reason for such differentiation is unclear. To more clearly achieve this objective, the provision would be worded as follows: *“is solely a result of transfer of a membership interest in a resident entity”*.

### **Income Tax on Digital Service provided by Non-Residents (“Digital Services Tax”/ “DST”)**

The following changes have been made with respect to DST:

- The monthly compliance deadline (for return filing and payment) is extended to twentieth of the following month (from the previous deadline of seventh), similar to the VAT deadline;
- Clarificatory amendment to confirm exclusion from the scope of DST of any payment made in the course of conducting business (as such payments would be covered by existing withholding tax provisions);
- Alignment of terminology with the Value Added Tax Act by replacing the reference to “service rendered through a digital market place” with “electronic service”.

### **Value Added Tax Act**

#### **Tax invoice requirements**

The term “fiscal receipt” is now defined to have the meaning ascribed to it in the Tax Administration Act. Consistent with this section 86 (“tax invoice”) is amended to refer

to “fiscal receipt” (replacing “tax invoice generated by electronic fiscal device”).

The Bill repeals a 2019 amendment, which had made input tax credit claims conditional on inclusion of prescribed customer details<sup>3</sup> where a supply exceeds a certain threshold (currently TZS 100,000). This repeal is a logical step following implementation of the new TRA receipt authentication system, a mechanism introduced to ensure the authentication of legitimate fiscal receipts.

#### **“Electronic services” definition**

The definition of the term “electronic services”<sup>4</sup> is expanded to cover “online intermediation services” and “online advertisement services”.

#### **VAT deferment**

As drafted, the implication of the deferment cessation on imported capital goods is not completely clear - in particular, whether it simply means that future imports (i.e. from 1 July 2026) will not be covered within the deferment scheme scope or whether it also implies that the VAT deferment enjoyed by importers prior to this date will cease to have effect and the resultant VAT becomes payable on that date. Given the intention expressed in the Budget Speech, we assume the former to be the correct interpretation but this may require further clarification.

#### **Zero rated supplies**

The bill reflects the commitment in the Budget speech for a one-

year period of zero-rated VAT on textile products manufactured using domestically cultivated cotton. However, the term “locally grown cotton” remains undefined, which might create some uncertainty.

#### **Input tax credit - supporting documentation**

A clarificatory amendment is made to correct referencing to link the input tax supporting documentation requirements (set out in Section 69(3)) with the provision dealing with input tax credit (section 68).

#### **Exemptions**

The sale by a real estate developer of a house with a value not exceeding TZS 50 million, is now exempt. The stated objective is to exempt low cost houses in order to enable citizens to have access to affordable houses. Points to note with regard to this exemption:

- While there will not be VAT on the sale, there will also not be VAT input recovery on the related costs - so the VAT saving will be on the value add element rather than on total consideration.
- Where a real estate developer also has taxable supplies (for example, the sale of new residential property with a value exceeding TZS 50 million) then the implication of the partial exemption rules will need to be considered.

The Bill removes the exemption for soaps imported by a manufacturer of gas cylinders (and contingent upon the signing of a performance agreement).



**“...one-year period of zero-rated VAT on textile products manufactured using domestically cultivated cotton.”**

3. Name, address, Tax Identification Number (TIN), and Value-Added Tax Registration Number (VRN)  
4. Non-residents supplying “electronic services” are required to account for VAT (as well as DST)

## Excise Duty

The excise duty legislation anticipates but does not commit to regular indexation of specific tariffs by way of Section 124(2) which reads “*The specific excise duty rates imposed under subsection (1) may be annually adjusted in accordance with the projected inflation rate and other key macroeconomic indicators*”. From 1 July 2005 to 30 June 2012 this provision had used the word “shall” instead of “may” in line with a commitment made for annual indexation. However, in practice this commitment was not consistently implemented hence the change to the use of the word “may”. Aligned with the Budget speech reference to a three-year freeze on these rates, the Finance Bill replaces the words “annually adjusted” with the words “adjusted after every three years”.

## Vocational Education and Training Act

### SDL return - exemption from filing for employers who are not required to pay

Employers who are not required to pay SDL levy are now expressly exempted from filing SDL returns.

This is a welcome change as there was little purpose and significant administrative inconvenience to requiring the filing of nil returns by employers with no SDL obligation (for example, employers with employee numbers below the threshold required to account for SDL). Implementation of this change will require the facility to disable the current automatic assumption on the “taxpayer portal”

of the need to file the SDL return.

(Ideally, a similar change would be made to cover PAYE returns (to clarify that there is no filing requirement if there are no employees).)

## Gaming Tax

### New definitions - “commercial gaming undertaking” and “gross gaming revenue”

New definitions are introduced as follows:

- “*commercial gaming undertaking*” means “*any gaming activity which is subject to gaming tax*”.
- “*gross gaming revenue*” means “*collective amount of wagering or staking placed by players minus the collective amount of winnings paid out to players*”

### Gaming business licence - 25% local ownership requirement

To obtain a commercial gaming licence at least 25% of the applicant’s undivided participating shares should be owned by Tanzanian citizens.

### Changes not reflected

Certain changes proposed in the Budget Speech are not reflected in the Bill including the following:

- Limitation of a maximum of 2 table games for every forty machines site.
- Proposed increase of gaming levy on slot machines in bar sites (clubs/places selling liquor).
- Introduction of certain application fees and principal licence fees (for slot machines in shops and bar

sites, and for forty machine sites).

## The Local Government Finance Act

20% of property tax collections<sup>5</sup> will be set aside for urban authorities and district councils.

Changes proposed in the budget speech with regard to billboard fees are not reflected in the Finance Bill.

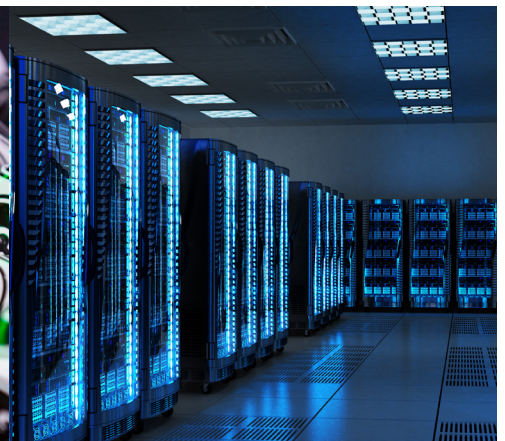
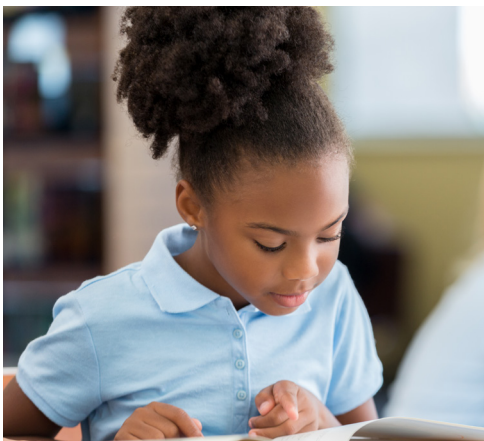
## Tax Administration Act

### Primary data server - no amendment to the provision requiring a server to be maintained in the United Republic

In our Budget speech newsletter we had noted a concern as to the maintenance of the “primary data server” requirement (notwithstanding the amendment to the definition of the term to include “physical, virtual or any other server”). The concern arises as sub-section (7) of Section 35 of the TAA 2015 (which refers to the requirement of “maintaining a server in the United Republic”) is not amended by the Finance Bill. In summary, despite multiple concerns raised by the business community on this issue the requirement remains and it appears will give Tanzania the dubious privilege of being a unique tax jurisdiction in this regard.

### Recognition of other devices used to issue fiscal receipt or fiscal invoice

The wording “by using an electronic fiscal device” is removed for the purpose of issuance of fiscal receipt or fiscal invoice (section 36(1) of the TAA 2015), recognising fiscal receipts





or invoices issued by other devices that are capable of doing so.

### **Extractive and Construction sectors - 30 day contract disclosure deadline**

A 30 day deadline is introduced for any entity engaged in the construction and extractive industry to disclose to the Commissioner General the names of all persons contracted and sub-contracted in the course of performance of their duties or business or carrying out of any project. The 30 day deadline runs from the date of execution of a contract.

### **Storage facility - new definitions of “storage facility” and “owner”**

The Finance Act 2022 introduced a monthly reporting requirement for any owner of a storage facility. Definitions are now provided for the terms “storage facility” and “owner” as follows:

- **“storage facility”** means *warehouse, godown or any other storage facility, which is used to keep own or other persons’ goods for business purposes, provided that such warehouse, godown or other facility is not part of a shop, factory, industry or farm.*
- **“owner”** means *a person who establishes or operates and is in control of the facility and possession of the storage facility or a person to whom the storage facility has been leased or sub-let to.*

These definitions are helpful in clarifying the type of facilities that are supposed to be registered and who is responsible for the compliance, in particular making it clear that it

excludes facilities in the place of production and retail locations so the target is intermediate locations.

### **Admission of objections - clarity on procedure**

A deadline is introduced for the TRA to provide a decision on admission or refusal of a notice of objection within 14 days from the date of receipt of the objection. Where there is failure to communicate the decision to the taxpayer within this timeline, the notice of objection is deemed to have been admitted.

### **Application for a tax refund - timeline of 3 years extended to overpayments resulting from a decision made**

Currently, the law requires an application for a tax refund to be made within three years from the date of payment of tax in excess. This would generally apply to tax overpayments resulting from self assessments. This time limit is now amended so that in the case of a tax decision or any other decision made which gives rise to the tax overpayment, the refund application can be made within three years from the date of the particular decision.

Some examples of where this would apply include disputes at the objection stage where TRA issues a final determination with the final position showing a tax recoverable amount. In this case, the due date for filing a refund application will be three years from the date of the final determination.

### **Tax Administration Act 2015 - applicable to bed night levy**

The provisions of the TAA 2015 will apply to a return filed under

Tourism (Tourism Development Levy) Regulations in relation to bed night levy.

## **Other Regulatory Matters**

### **The Immigration Act, Cap 54**

As yet there is no amendment reflected with regard to the Budget speech proposal to issue Residence Permit Class B to any investor who is not a resident in Tanzania but will invest to buy a house with a capital of not less than USD 150k. We assume that the precise legal requirements in this regard are still the subject of review.

### **The Land Act, Cap 113**

The Bill does not reflect the proposed amendments to several fees including premium charges, certificate of occupancy fees, registration fees, deed plans etc. For most fees the proposals had been reduced by 50%.

The Bill reflects the proposal to introduce the consolidated fund (where all land rent collected will be deposited) and grant powers to the Commissioner to enter into an arrangement with a local government authority for collection and recovery of land rent, with 20% of the rent collected to go to the respective local government authority in return for facilitating rent collection and recovery.

### **Banking and Financial Institutions Act, Cap 342**

The Bill does not reflect the proposed widened scope of duties of the Deposit Insurance Board (DIB).



## Get in touch with us

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