Tax Alert

Highlights of the Finance Bill, 2021

This newsletter is an update on our Budget Speech bulletin of 11 June 2021. It summarises additional points arising from from our review of the Finance Bill 2021.

Income Tax
- "Permanent establishment" - expanded definition
- Withholding tax return - monthly filing (previously six-monthly)
- Government bonds - exemption for interest on bonds issued post 1 July 2021

Valued Added Tax
- New exemptions - (i) strategic projects, (ii) imports for mosquito net manufacture

Excise Duty
- Extension of 10% excise duty on money transfer and payment services to also cover charges or fees for such services where payable to other payment system providers licensed under the National Payment Systems Act.

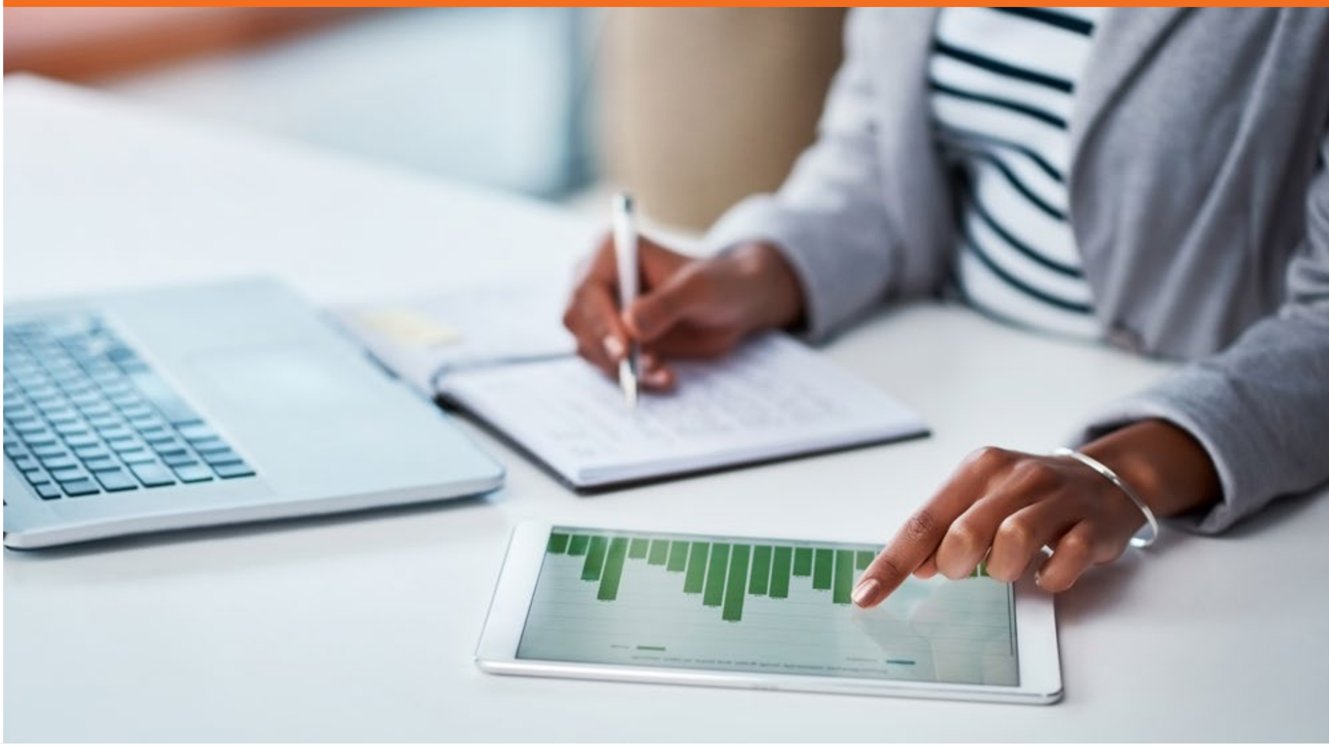
Stamp Duty
- Conveyance rate shown as 4% (instead of 1%); understood to be typographical error, but wait to see if amended in the Finance Act.

Tax Administration
- Tax Ombudsman - indication of planned operationalisation
- Electronic record keeping - primary data server required to be in Tanzania from 1 July 2022

Tax Appeals
- Opportunity for mediation on undecided appeals at the Tax Revenue Appeals Board or Tribunal.

Companies Act
- Elimination of share warrants

Non-Citizen Returns
- Late filing penalty for non citizen employment return (filed with Labour Office)



Income Tax

"Permanent establishment" - expanded definition

The definition of "permanent establishment" ("PE") is amended to include the following activities which if performed by an agent will result in a deemed PE of the other person in Tanzania:

- Habitual exercise of the authority to conclude contracts or issuance of invoices on behalf of that other person;
- Maintenance of stock of goods or merchandise from which the agent delivers such goods or merchandise on behalf of the other person;
- Habitual securing of orders on behalf of the other person or an enterprise with whom the other person has a common control.

This expansion of the definition is broadly in line with the latest guidance from both the OECD and UN in relation to the PE definition[1]. A similar amendment is also included in Kenya's Finance Bill 2021[2].

The above activities mirror the amendments introduced last year[3] with respect to activities that can create the categorisation of *"agent of a non-resident person or of a beneficial owner"* and in particular the definition of the term "business connection".

Indeed, last year's changes had appeared to indirectly seek to extend the scope of PE, without expressly amending its definition. Given this change, the purpose or need for last year's amendments remains even more unclear.

Withholding tax return - monthly filing

The requirement to file a withholding tax return (previously six monthly i.e. semi-annual) changes to a monthly basis, with the return now due within seven days following the month to which the tax relates. The other change is the mandatory provision of the Taxpayer Identification Number ("TIN") of the withholdee.

This change appears to seek to align the law with the configuration of the e-filing system in relation to PAYE (which requires the filing of a PAYE return online, before tax payment can be made) and the withholding portal (where the withholder populates the relevant details before making the payment of withholding tax).

Payroll taxes - small-scale miners (deemed PAYE?; deemed SDL)

The Budget speech included a proposal for payment of "deemed PAYE" by employers engaged in small-scale mining at a rate of 0.6% of the sale value of minerals. However, this is not included in the Finance Bill.

On the other hand, the Finance Bill provides for such employers to account for skills and development levy ("SDL") at a rate of 0.4% of the sale value of minerals.

It appears that the intention is for an overall payment of 1% of the sale value of minerals to cover PAYE and SDL obligations, albeit the required PAYE amendment appears to have been overlooked. There are no amendments in relation to social security (National Social Security Fund) and Workers Compensation Fund, and so it is assumed that these payroll based levies apply to this sector on the same basis as for others.

Payroll taxes - religious institutions (SDL exemption)

The existing SDL exemption for religious institutions (which covers "religious institutions whose employees are solely employed to (i) administer places of worship, or (ii) give religious instructions or generally to administer religion") is extended to also cover religious institutions whose employees are solely engaged in providing public health.

Transfer pricing penalty adjustment

Unlike the Budget speech, the Finance Bill does not refer to the removal of the 100% penalty for transfer pricing adjustment. This may be because the Bill only covers principal legislation (i.e. Acts) whereas the penalty was introduced by subsidiary legislation (namely, a regulation). Therefore it is important to ensure that the relevant regulation is amended to reflect this change.

Interest on Government bonds - income tax exemption

Although the Budget Speech referred to an exemption for interest derived from all Government bonds, the Bill restricts this exemption to bonds issued and listed on the Dar es Salaam Stock Exchange from 1 July 2021.

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[1]The amendments align with certain aspects of the PE definition in the United Nations 2017 model double tax convention, and with the direction envisaged by the OECD in their additional guidance on the attribution of profits to a permanent establishment under BEPS Action 7.

[2]See PwC Kenya newsletter on Kenya's Finance Bill 2021: *https://www.pwc.com/ke/en/assets/pdf/tax-alert-highlights-of-the-finance-bill-2021.pdf*

[3]See PwC Tanzania newsletter on Finance Bill 2020: *https://www.pwc.co.tz/assets/pdf/finance-bill-2020-newsletter.pdf*

Indirect Taxes

New Value Added Tax (VAT) exemptions: (i) strategic projects, (ii) imports for mosquito net manufacture

In addition to the VAT exemptions announced in the Budget speech, the Finance Bill includes exemptions for:

- The import by, or supply of goods or services to, an entity having an agreement with the Government for the purpose of operating or executing a "strategic project" (defined as "a project that has been so determined by the Cabinet").
- The import of raw materials to be used solely in the manufacture of long-lasting mosquito nets.

VAT exemption - power to make regulations

Previously the section dealing with VAT exemption made reference to a technical committee appointed by the Minister for Finance who would advise on the grant and monitoring of exemptions, and who would prescribe procedures for monitoring utilisation of such exemptions.

This requirement is now removed and instead power is granted to the Minister to make regulations that prescribe the manner of application, granting of exemptions as well as monitoring their utilisation.

Excise Duty - providers licensed under the National Payment Systems Act

In order to create a level playing field, the existing provision which imposes a 10% excise duty charge on charges or fees payable to financial institutions (general) and telecommunication services providers (money transfer and payment services) is extended to cover charges or fees payable to payment system providers licensed under the National Payment Systems Act for money transfer and payment service.

Stamp Duty - applicable rate on "conveyance" - 4% or 1%?

The Budget speech included reference to an upward adjustment of fixed tariff stamp duty amounts (from a range of TZS500 to TZS5,000 to a range of TZS2,000 to TZS10,000).

Consistent with this the Finance Bill includes a new Schedule to the Stamp Duty Act which reflects these changes to fixed tariffs, and which does not change ad valorem tariffs with the exception of the rate for conveyance, which the new Schedule shows as 4%.

However, no such change was announced in the Budget speech, and indeed the conveyance rate has been 1% since 1 July 2004 (albeit prior to this it was at 4%).

We are aware that, despite the Finance Act 2004 change, subsequent Government consolidations of the Stamp Duty Act had overlooked the 2004 amendment and still made reference to the 4% rate.

Nevertheless, in practice the correct rate (1%) has been applied by the TRA. Accordingly, the reference to a 4% rate in the Bill appears to be an oversight and so we await to see if the 1% rate is reinstated in the Finance Act.

Tax Administration

Tax Ombudsman

Provisions dealing with the Tax Ombudsman were first introduced by Finance Act 2019 amendments to the Tax Administration Act ("TAA") 2015. However, to date no appointment has been made. Amendments in the Finance Bill (as well as the recent issue of draft regulations) appear to indicate that operationalisation of this office is imminent.

The Finance Bill removes the provision that would make the decisions or recommendations of the Tax Ombudsman non-binding to the taxpayer, and replaces the words "resolving" with "handling" - effectively limiting the Ombudsman role to one of handling complaints. It remains to be seen how this reduced mandate will influence the willingness of the taxpayer to engage the Ombudsman.

Requirement to maintain primary data server in Tanzania - 1 July 2022

The Bill introduces the requirement for a taxpayer who maintains documents in electronic form to maintain the primary data server for storage of documents in Tanzania. The term "primary data server" has been defined as *"a server which stores data that is created or collected by a taxable or liable person in the ordinary course of business".*

Access to this server is to be granted to the Commissioner General in line with the current provisions on access to information.

Taxpayers will have a period of 12 months (from 1 July 2021 to 30 June 2022) to implement the above directive. Non-adherence to this requirement constitutes an offence.

Tax deposit requirement - technical change, or wider scope?

The Finance Bill amends the tax deposit requirement for admission of an objection so that it applies to (i) a tax decision on assessment or (ii) a notice of liability to pay tax. Previously, the legislation just referred to "tax decision".

The objective of the change is to enable an objection to a non-assessment tax decision to be made without payment of a tax deposit; however, it is not clear that the amendment achieves this. Firstly, a non-assessment tax decision is unlikely to involve any tax liability and therefore the question of tax deposit does not arise. Secondly, there is no definition of the term "notice of liability to pay tax"and so its scope is not completely clear.

Recovery of tax short levied or erroneously refunded

The TAA 2015 already includes a power for the Commissioner General to recover the amount of duty that is short levied or erroneously refunded, subject to a time limit of a period of five years from the date of such short levy or erroneous refund.

The Finance Bill amends this power to extend it to "duty or tax" - in other words, this power is extended to also cover "tax" in addition to "duty". The object of this change appears to be to provide a mechanism for the Tanzania Revenue Authority ("TRA") to recover refunds of tax if subsequently found to be incorrect (subject to the five year time limit).

Official translation of a communication - 14 day deadline

If requested by the Commissioner, a taxpayer is required to submit an official translation of a document or communication (that is not in the official language) within 14 days subject to extension upon application. If this is not done, the document cannot be used at the objection or appeal stages. In addition, non-adherence to this requirement constitutes an offence.

TIN requirement - extension to employment

The TAA 2015 has a requirement for a person who becomes potentially liable to tax by reason of carrying on a business or investment to apply for a TIN within 15 days from the date of commencement of the business or investment. This provision is now amended to also include employment.

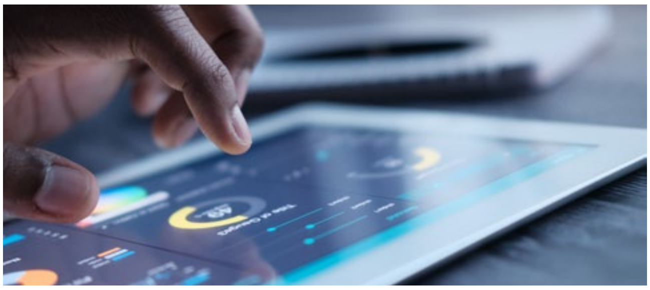
The rationale for this is that the monthly statement of tax withheld for employees (PAYE return) (filed under the e-filing system) now requires the inclusion of a TIN number for each employee.

Tax Revenue Appeals Act, 2000

Avenue for mediation between parties to an appeal

The Finance Bill introduces an opportunity for the parties to an appeal to settle a dispute through mediation – in other words an out of court settlement. This only applies to appeals with the Tax Revenue Appeals Board or Tribunal.

This is a positive move to potentially reduce the time and resources of the appellate bodies and ensure that cases are resolved on a more timely basis.



Companies Act, 2002

Elimination of share warrants

Share warrants will no longer be recognised in mainland Tanzania as a result of amendments to:

- Remove the ability to issue new share warrants
- Require bearers of existing share warrants to surrender such warrants within twelve months (namely, by 30 June 2022). Any share warrant not surrendered within this period shall be deemed to be cancelled.

Upon surrender, in addition to cancellation of the share warrant, the Company is required to:

- Enter in its register of members and beneficial owners the names of share warrant holders whose share warrants have been cancelled, and
- Notify the Registrar of any changes in the register of members and beneficial owners.

This amendment comes after the introduction of the new reporting requirements in relation to beneficial owners as introduced in the Finance Act, 2020, and with a commencement compliance deadline of 31 December 2021[4]. A share warrant holder can fall under the definition of a "beneficial owner" and a share warrant is a negotiable instrument, and so it could be a challenge to maintain an up to date record of share warrant holders and by extension beneficial owners. Therefore, the object of the amendments appears to be to remove this uncertainty and so enhance transparency.

Non-Citizens (Employment Regulation) Act, 2015

Non-citizen employment return - late filing penalty

The Non-Citizens (Employment Regulation) Act, 2015 Act requires an employer to submit a non citizen employment return to the Labour Commissioner twice a year, on 30 June and 31 December.

The Finance Bill introduces a penalty for late submission or failure to submit a return at a rate of TZS 500,000 for each month (or part of a month) during which the delay continues.

[4]For further detail, see our May 2021 newsletter: *https://www.pwc.co.tz/assets/pdf/companies-act-alert-beneficial-ownership-notification.pdf*

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