

Tax Alert

Highlights of the Finance Bill, 2022





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Highlights



This newsletter is an update on our Budget Speech bulletin of 15 June 2022. It summarises additional points arising from our review of the Finance Bill 2022. The next step in the legislative process will be the passing of the Finance Act 2022, which will come into force on 1 July 2022.

01

Digital Services

- Income Tax / Digital Services Tax - scope alignment with VAT
- Ideally, DST would have a threshold aligned with VAT registration threshold
- Await further regulations

02

Income Tax

- Alternative Financing - "margin" to be treated as "interest"
- Corporate Tax Residence - electronic "management and control" of overseas company
- Withholding tax on supply of power by non-resident generated from local / contiguous resource
- Petroleum products - mode and timing of payment by wholesalers
- Simplified / presumptive income tax - annual income not exceeding TZS100m:
 - Exclusion - individuals providing specified services
 - Transport - TZS 3.5m per annum per individual (subject to conditions)
 - Small scale miners - 2% of revenue (subject to conditions)

03

Excise Duty

- Pay-to-view services providers - scope to include terrestrial and "other technology"
- Penalties in relation to denaturing spirits - moved to the Tax Administration Act

04

Other Taxes

- Gaming Act - various changes
- Hotel Levy - reduced to 5% (from 10%)
- SDL exemption - interns under TAESA program

05

Tax Administration

- Primary data server requirement - no amendment to 2021 change
- TIN registration / usage for transactions:
 - Registration for anyone with NIDA registration
 - To commence from 1 January 2023
- Tax returns - default requirement: electronic filing
- Goods storage facility - registration and reporting requirement
- Offences - various amendments

06

Company / Entity Administration

- Penalties - significant penalties for non-compliance with filing / reporting requirements for annual returns and beneficial owners



Digital Services

01



Digital Services

Income Tax on Digital Services (“Digital Services Tax”/ “DST”) – administration, scope

Administration

The obligation to account for the new tax is set out in a new section² which requires the non-resident to:

- Account for tax of 2% of the payment received (excluding VAT)
- File a return with the Tanzania Revenue Authority (“TRA”) by the 7th day of the following month

No return of income will be required to be filed by the non-resident service provider. The Minister is expected to issue Regulations to prescribe procedures for assessing and collecting the tax or giving effect to the section.



Scope

The source rules are amended to bring into scope “payments by individuals other than payments made in conducting a business for services rendered by a non-resident through a digital marketplace”. For greater clarity, ideally there would be commas before “other” and after “business” (as included in the amendment to the related administrative provision¹), but the intention is clear that the new digital services tax will apply to revenues derived by digital services companies from individual consumers. (This wording is important as business customers are already required to withhold tax on such payments to non-residents, and if they had been included within scope this would have caused confusion as to which tax is applicable.)

The amendments also include an expanded definition of the term “business” to cover electronic or digital transactions, and the introduction of new definitions for the terms “digital market place” and “electronic service” as follows:

- “digital market place” means a platform which enables direct interaction between buyers and sellers of goods and services through electronic means;
- “electronic service” has the meaning ascribed to it under section 51 of the Value Added Tax Act”

VAT representatives for non-residents

The budget speech stated that non-resident digital service providers will be enabled to register for VAT without imposing an obligation under the ITA 2004. The VAT Act is to be amended to enable a non-resident to apply for VAT registration if it is impractical to appoint a VAT representative and in accordance with procedures prescribed in regulations. Again, we await regulations which will provide further guidance.

General observation

The framing of the scope of the income tax on digital services has in effect been aligned with the scope of the VAT on such services. The overall effect is a 20% tax (2% plus 18%) on such services. One concern though is that as drafted there is no threshold for the obligation to account for the 2% DST, whereas the VAT accounting will only apply where the annual VAT threshold (TZS100m) is reached. Ideally, such a threshold would also apply with regard to DST.

1. Section 90A ITA 2004
2. Section 90A ITA 2004 “Tax payment on income realised through digital market place” (which follows Section 90 ITA 2004 dealing with “single instalment tax”)



Income Tax

02



Income Tax

Financial Services - Alternative Financing

The margin on an “alternative financing arrangement” will be treated as interest for an arrangement approved by the Bank of Tanzania, which is payable as “cost plus margin”. This is most likely to apply to Islamic banking products and assets sold by banks through alternative financing.



Electronic “management and control” of foreign corporation

A corporation is a resident corporation (and hence tax resident) in Tanzania if:

- It is incorporated or formed under Tanzanian law, or
- At any time during the year, the “management and control” of its affairs is exercised in Tanzania.

Accordingly, a company incorporated or formed overseas can only be a resident corporation if “management and control” is exercised locally. The narrative dealing with the exercise of management and control is now expanded to state that this can be exercised “physically or through any electronic means”. This essentially seeks to bring within the tax net a company not incorporated in Tanzania but with effective management from Tanzania electronically.



Withholding Tax

Rent paid by individuals

Currently Section 82 (“withholding on investment returns”) requires a resident person to withhold tax from payment of dividend, interest, natural resource payment, rent or royalty, subject to certain exceptions. One of these exceptions, which excludes a payment made by an individual (unless made in conducting a business), is now deleted. The object of this deletion is to impose the withholding tax obligation on individual tenants as announced in the speech. This change is likely to face significant practical implementation challenges.

Royalty on use of a cinematography film, videotape, sound recording or any other like medium - withholding tax rate

“Royalty” (as defined) broadly refers to payments related to intangible rights (for example, linked to intellectual property). Currently a withholding tax of 15% applies on royalty payments, whether paid to residents or non-residents.

For a royalty relating to the use of a cinematography film, videotape, sound recording or any other like medium, the Finance Bill now provides for a differential rate between the resident and non-resident withholding tax rate; however, it appears that in error the resident rate remained unchanged (at 15%) and so is higher than the stated non-resident rate (10%). We assume that the intention is to have a lower resident rate either with (i) an unchanged non-resident rate of 15%, and lower resident rate of 10%, or (ii) a reduction in both rates with a new non-resident rate of 10% and a resident rate of 10% (or perhaps 5%). We await the Finance Act to see if a further amendment is made.

Supply of power by non-resident - new withholding tax

An amendment to the income tax source rules appears to extend the scope of withholding tax to a payment for the supply of power by a non-resident entity, where this power is generated from land, air or water natural resources where the respective natural resource is located alongside the border or within the country. An example, potentially could be a hydro-electric project on the border, where the final power supply is from the neighbouring country.

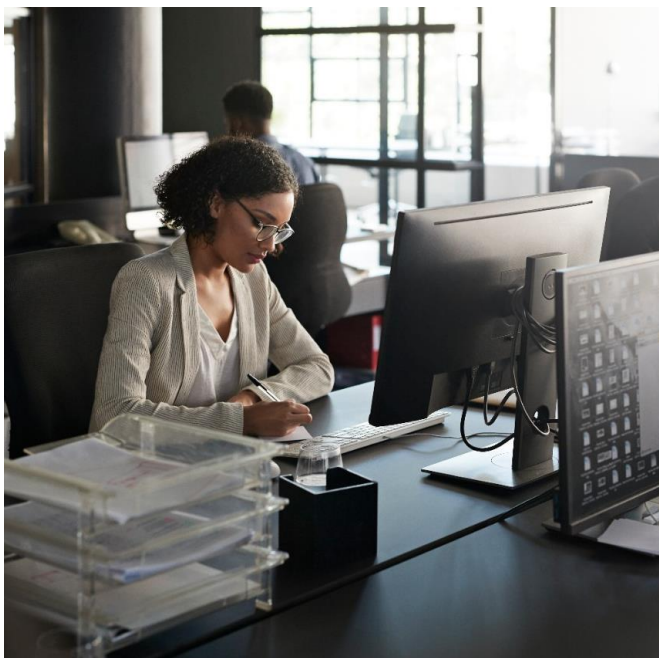
Income Tax

Tax on sale of petroleum products - mode and timing of payment

The tax administration burden for the proposed advanced income tax on petroleum retailers of TZS20 per litre is placed on the wholesaler of bulk petroleum products who is required to:

- Charge the tax to the retailer at the time of the sale of the products.
- Remit the tax to the TRA within 7 days of the transaction date (otherwise a late payment penalty will accrue).
- Submit to the TRA a monthly return or certificate of payment of tax collected, to be submitted within 7 days of the month end (otherwise a late filing penalty will accrue).

The proposed arrangement raises a number of practical administrative and cost concerns. In addition, the objective is unclear as retailers are in any case required to file income tax returns and account for income tax.



Presumptive / simplified income tax - annual income not exceeding TZS100m

Individuals - exclusions

The presumptive income tax regime will not apply to individuals who are engaged in professional, technical, management, construction and training services.

Individuals - long distance transport

The Budget speech had mentioned a new tax of TZS3.5m per annum for each bus or truck. However the Finance Bill provides for a total tax of TZS3.5m per annum per individual to be applied where the following conditions are satisfied:

- The individual is engaged in long distance transportation (being from one region to another region, or outside Tanzania) of either:
 - Passengers (using buses of a carrying capacity of 40 passengers and above) and / or
 - Goods (using lorries with more than 3 axles); and
- The individual's turnover does not exceed TZS100m (and does not have other regular income) and the individual does not elect to disapply the presumptive income tax provision.

Small scale miners - mode and timing of payment

The 2% income tax on sale value of minerals will apply to small scale miners whose turnover does not exceed TZS100m (provided they do not have other regular income and the individual does not elect to disapply the presumptive income tax provision). The tax is payable at the time of sale at the mineral and gem houses or buying stations designated by the Mining Commission, who will then remit it to the TRA.

Excise Duty

03



Excise Duty

Excise Duty: Pay-to-view services

The scope of the 5% excise duty on pay-to-view services (previously applied to services supplied by cable and satellite³) is expanded to include those provided using terrestrial, or other technology services.



Excise Duty: Offence

Penalty provisions with regards to a licence required to denature spirits and licence for entry of premises and plants are now included in the Tax Administration Act.

Where an excise duty offence is committed, and upon conviction, the penalty will be a fine and / or imprisonment as follows:

	Fine	Imprisonment
First offence	Up to 330 currency points (currently TZS4.95m)	Up to 3 years
Subsequent offence	Between 330 and 3500 currency points (currently TZS4.95m and TZS52.5m respectively)	Between 5 years and 20 years

Activities that can give rise to an excise duty offence are listed in the Appendix. The list of offences is now more extensive including matters relating to "licence required to manufacture excisable goods", "application for and grant of

licence", "effects of revocation of licence" and "keeping records" (as respectively dealt with in Sections 8, 10(5), 13 and 15 of the Excise Duty Act).



3. The amendment also rectifies an anomaly in the existing legislation which previously included reference to services supplied by satellite in the payment obligation section, but not the charging section.



Other Taxes

04



Other Taxes

Communication Equipment and Television Decoder Subscriptions

A 1.5% levy on equipment used to produce, distribute, duplicate and preserve artistic work⁴. In addition, a fee ranging between TZS1,000 and TZS3,000 is to be charged on television decoder subscriptions.

Gaming Act

Various amendments are proposed which are summarised in Appendix 2.

Hotel Levy - rate reduction

The hotel levy (charged under the Local Government Finance Act, and applicable to guest houses that are not registered for VAT) is reduced from ten percent to five percent⁵.

SDL exemption - interns under TAESA program

Skills and Development Levy (“SDL”) exemption introduced⁶ for remuneration paid to intern students from universities who are under the Tanzania Employment Service Agency program.

Fiscal Incentives

Tanzania Investment Act (“TIA”) - harmonisation with tax laws

Fiscal incentives issued to strategic investors to be issued under relevant tax laws



4. Including radios, TVs, analogue audio and video recorders, CD/DVD copiers, digital jukebox, and MP3 player. This item was referred to in the printed copy of the Budget speech but not included in our Budget speech newsletter
5. This item was referred to in the printed copy of the Budget speech but not included in our Budget speech newsletter
6. Amendment to the Vocational Education and Training Act



Tax Administration

05



Tax Administration

Primary data server - no amendment to 2021 change

The Finance Act 2021 introduced a requirement to take effect from 1 July 2022 for taxpayers to maintain a primary data server for storage of documents in Tanzania and granting access to this server to the Commissioner General. In pre-Budget submissions several organisations had raised concerns as to the practicality / cost implications for businesses especially when running regional business operating systems. Despite this there is no change in this requirement.

“Fiscal device” - definition expanded

The definition of “fiscal device” is expanded to include “any other electronic system” used for business transactions.

Taxpayer Identification Number (TIN) - 1 January 2023 deadline

The obligations placed on the TRA and taxpayers are as follows:

- **TRA obligations:**
 - Registration and issuance of TIN to every Tanzanian citizen aged 18 years or above, who has been issued with a national identification by the National Identification Authority (NIDA)⁷, and
 - Ensuring connection of each TIN issued with a NIDA number.
- **Taxpayers obligations:**
 - To use the TIN for “every transaction involving sales or purchases, whether made electronically or manually”.

The commencement date is set as 1 January 2023.

A concern is as to the practicality of the requirement to use a TIN for every transaction. A more optimal initial approach would be to limit this requirement to specified transactions - perhaps a more expanded version of the list previously provided for under the Income Tax Act 2004⁸ (which included reference to: imports; registration of purchase of / title to vehicles and land; registration / licencing by various Government bodies⁹; certain contracts¹⁰).

Tax returns - default requirement: electronic filing

The default requirement now is for every taxpayer to file tax returns electronically unless the Commissioner General permits otherwise by way of a notice in writing. Again, there is a question as to the all embracing practicality of this requirement.

Goods storage facility - registration and reporting requirement

Any owner of a storage facility (whether for business or investment purposes) capable of storing goods exceeding TZS10m in value must:

- Register the facility
- Keep records and file a monthly report to the TRA

Failure to comply will result in a penalty of (i) 300 currency points (currently TZS4.5m) and (ii) any lost revenue in respect of the undisclosed goods.

Recovery from third parties - Manager liability in case of fraud

Following an amendment made in 2018, if an entity defaults on payment of tax, a Manager at the time of default is jointly and severally liable for the payment unless the Manager exercised a reasonable degree of care, diligence and skill¹¹. This is now amended to restrict the liability of the Manager to cases where the default was a result of fraud proven in a court of law.

7. National identification numbers issued under the Registration and Identification of Persons Act.

8. Fourth Schedule to ITA 2004 (Schedule was repealed wef 1 August 2015, following the coming into effect of the TAA 2015.)

9. Trade licence (central and local Government), new registrations (Business Registration and Licensing Authority; Registrar of Patents and Trade Service Marks); licensing (Ministry of Industry and Commerce; Ministry of Natural Resources and Tourism; Ministry of Energy and Minerals (then a combined ministry)).

10. Contracts specified were those with: Government Ministries, Government Agencies, Local Government Authorities, Financial Institutions, Cooperative Societies and public bodies

11. Section 65 TAA 2015

Tax Administration

Tax consultants - licensing

The provision dealing with licensing of tax consultants currently simply provides for the Minister power to make regulations for the registration and deregistration of tax consultants and the conduct of their activities; and regulations to this effect are included in the Tax Administration (General Regulations) 2016. However, the principal legislation is now amended to expressly state (i) the licensing power of the Commissioner General, (ii) the conditions for granting such a licence, (iii) the requirement for a tax consultant to act in accordance with conditions prescribed in the licence or in the regulations, and (iv) the bar on an unlicensed tax consultant acting for a taxpayer.

Offences

Offences by entities - Manager liability

Although the provision dealing with recovery from third parties now restricts recovery from a Manager to cases of fraud (see above), a Manager still remains liable to an offence if he has not exercised reasonable degree of care, diligence and skill¹² (as the equivalent offence provision has not been amended).

Issuance of fiscal receipt - applicable at the time of supply of goods or service

The offence for non-issuance of a fiscal receipt or fiscal invoice¹³ previously referred to the time of receipt of payment for the goods or service. This has now been amended to also include reference to the time of supply of goods and services. In other words, even if payment has not yet been made, if the goods or services have been supplied then the obligation has crystallised.

Late registration of an authorised person

A person required to be registered or be licensed under a tax law for performing authorised functions who fails to do so in time, commits an offence. The penalty on conviction is a fine of not more than 500 currency points (currently TZS7.5m) or imprisonment for a term not exceeding a year or both.



12. Section 88 TAA 2015

13. Offence for failing to use electronic fiscal device: Section 86(1)(b)

Company / Entity Administration; Beneficial Owner ("BO") reporting

06



Company / Entity Administration; Beneficial Owner (“BO”) reporting

Beneficial Owner - definition; partnerships

- Definition of “beneficial owner” aligned in various legislation¹⁴ with the definition in the Anti-Money Laundering Act.
- Requirement for beneficial owners’ particulars during registration of partnership¹⁵



Penalties - Annual Return, Beneficial Owner Reporting

Omission / failure	Penalty		Legislation
Failure to comply with beneficial owners reporting requirements	Not less than TZS1m but not exceeding TZS5m		Business Names (Registration) Act
Failure to comply with beneficial owners and trustees’ reporting requirements	Not less than TZS200,000 but not exceeding TZS1m		Trustees Incorporation Act
Failure to maintain a register of members and beneficial owners or notify the Registrar of any changes thereof	Immediate TZS100,000	Daily TZS10,000 / day	Companies Act
Penalty of failure to file annual return within 28 days of the return date	Immediate TZS100,000	Daily TZS10,000 / day	Companies Act

The daily penalty of TZS10,000 provided for under the Companies Act, and applicable to “the company and every officer of the company who is in default”, could quickly escalate to a large sum. For example, for a year this would represent TZS3.65m (or TZS3.75m including the immediate penalty)!

Liquidators’ Obligations - Maintenance of Records¹⁶

Liquidators are now required to maintain accounting records and documents in relation to dissolution of companies for at least 5 years.



14. Business Names (Registration) Act, Companies Act, Trustees Incorporation Act
 15. Business Names (Registration) Act
 16. Companies Act



Appendix 1

Excise duty offences

A person commits an offence if they:

- Manufacture any excisable goods without being licenced by the licensing authority;
- Do not abide with any condition in a licence imposed on them or breaches any of the licence conditions given to them;
- Do not obey a suspension or revocation of his licence by the Commissioner together with any condition thereof;
- Fail to keep records with respect to manufacture, storage and delivery of excisable goods at their factory or place of work in the prescribed manner;
- Denature spirits for sale without being licenced by the licensing authority and adopting the prescribed formula;
- Fail to make entry or declaration, before commencing manufacture of excisable goods, of each building, room, place, machinery or equipment, item of plant for the manufacture, preparation for sale or storage of excisable goods;
- Make use of any building, room, place, machinery or equipment or item of plant for manufacture, preparation for sale or storage of excisable goods without a valid entry;
- Make use of a building, room, place, machinery or equipment or item of manufacture, preparation for sale or storage of excisable goods for purpose other than that declared in the approved entry; or
- Effect alteration in shape, position, or capacity of a building, room, place of manufacture or preparation for sale or storage of excisable goods without prior permission of the Commissioner



Appendix 2

Gaming Act - amendments

Definition of terms

Scope of gaming - internet and virtual games

Internet and virtual games are now included in the definition of gaming activities. Although these were previously not explicitly mentioned, it had been understood that these were covered by the broad definition which encompassed most gaming activities.

New definitions - "winning", "withholding agent"

"Winning" means the receipt of an amount of payment or other consideration including a prize, award or reward given by way of money, assets, goods or property in kind to a person after having participated directly or indirectly in a gaming activity recognised under this Act and includes a prize award or reward of money given prior to finalisation of the gaming activity.

"Withholding agent" means a person required to withhold gaming tax on winning from a payment under this Act and remit the amount withheld to the Commissioner.

Application of gaming tax to virtual and internet gaming activities

An amendment is made that seeks to bring clarity on the taxation of virtual and internet games under internet casinos.

Gaming tax (10%) on other gaming activities

Gaming tax is introduced at the rate of 10% on the monthly gaming revenue on gaming activities not specifically mentioned under the Gaming Act.

The amendment refers to a tax remittance due date of the 7th day following the month of payment of the winning prize. However, similar to remittance of gaming tax for other gaming activities, we believe reference should be made to calendar month instead of month of payment of the winning prize (as the tax does not relate to winnings).

Tax Administration Act - application to gaming taxes

TAA 2015 provisions will apply to gaming taxes (including relating to maintenance of documents, tax liability, collection and recovery of tax, imposition of interest, tax enforcement, objection and appeal). (An oversight appears to be that no amendment is made to delete the provision that still refers to application of the repealed ITA 2004 provisions relating to collection and recovery of tax and imposition of interest.)

Amended collection procedures

The obligation to account for the tax is imposed on the licensee of a gaming activity, who in a case where a winning is made and paid for is required to:

- Be the withholding agent for the tax
- Remit the tax within 7 days following the month of payment of the winning prize
- File the relevant return within 15 days following the end of each calendar month

A licensee or withholding tax agent who fails to withholding the tax will be liable for the tax not withheld together with applicable interest and penalties.



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