
Tax Administration Act 2015

An overview

12 August 2015

In brief

The Tax Administration Act (“TAA”) 2015 passed by Parliament on 27 March 2015 and assented to on 11 May 2015 came into force on 1 July 2015. The new Act modernizes the tax administration provisions and consolidates these within one piece of legislation. Accordingly, the relevant tax administration provisions previously included in existing tax legislation have been repealed. Matters covered include: tax laws and their interpretation; the relationship between the Tanzania Revenue Authority (“TRA”), taxpayers and tax consultants; communication and documentation; tax returns; access to information and assets; assessments and objections; payment, recovery, remission and refund of tax; interest, penalties and offences; tax proceedings; transition and saving provisions; consequential amendments to other legislation.

Preliminary Provisions

- Application (s 2) – The TAA 2015 applies to Mainland Tanzania and in respect of union taxes to Zanzibar.
- Currency point system (s 4) – A currency point system is introduced as a mechanism to protect values provided for in legislation from erosion by inflation.

Tax laws and their interpretation

Customs law (s 6)

- In the case of Customs, the powers granted by the TAA 2015 are to be exercised in a manner consistent with the customs legislation.

International agreements (s 7)

- Provision is made for recognition of any *“treaty or other agreement signed with a foreign government for the purpose of providing reciprocal assistance for the administration or*

enforcement of tax laws”.

Any such treaty will override domestic tax legislation.

Schemes for obtaining undue tax benefits (s 8)

- Wide powers are granted to the Commissioner General (“CG”) where the CG is satisfied that a scheme conferring tax benefit on any person was entered into or carried out – (a) solely or mainly for the purpose of obtaining that benefit; and (b) by means or in a manner (i) that would not normally be employed for bona fide business purposes, or (ii) of the creation of rights or obligations that would not normally be created between persons dealing at arm’s length.

Practice Notes (s 9 & 10)

- Power is granted to the CG to *“issue practice notes with a view to ensuring consistency in the administration of tax laws and to provide guidance to persons affected by such laws”*.
- Unlike S 130 of ITA 2004, there is no explicit reference to a practice note being binding on the CG.

Private and Class Rulings (s11 to 14)

- The ability to request rulings now covers not just private rulings but also class rulings. This is therefore wider than the now repealed S 131 ITA 2004 which did not cover class rulings.
- Such a ruling is binding on the CG.
- Power is granted to (i) refuse an application for a ruling in certain cases; and (ii) revoke a ruling.

TRA, Taxpayers and Tax Consultants

The Authority

- Power is granted to the CG / TRA to:
 - Delegate powers to tax officers (s 16).
 - Engage external experts (s 18).
 - Seek assistance from officers in public institutions (s 19).
- A person employed or engaged by the TRA is subject to certain confidentiality provisions (s 21).

Taxpayer Identification Number – s 22 to 25

Application:

- Application for a Taxpayer Identification Number (“TIN”) must be made by a person *“who becomes potentially liable to tax by reason of carrying [on] a business or investment ...within fifteen days of commencing the business”*.
- *“A person shall own one Taxpayer Identification Number and use such Taxpayer Identification Number for the purposes of all tax laws”*.

Use of TIN:

- A person issued with a TIN must use the number on all documents submitted to TRA / used for purposes of tax law.
- Certain institutions (specified in the Third Schedule to the Act) must obtain a TIN from the person with whom they are transacting, and the CG can request information from such institutions.
- The transactions and institutions referred to include:
 - TRA (VAT registration; importation of goods, customs clearing and forwarding; vehicle registration / transfer /

- licensing)
 - Commissioner for Lands (registration of title)
 - Central and local Government (trade licence)
 - Business Registration and Licensing Authority, Registrar of Patents and Trade Service Marks (new registrations)
 - Ministry of Industry and Trade, Ministry of Natural Resources and Tourism (licensing)
- There is a thirty day time limit for a TIN holder to inform the TRA of any change of details referred to in the TIN certificate
- Non-compliance with obligations in relation to TIN is an offence.

Taxpayer right to information (s 26):

- A taxpayer has a right to information: *“regarding the taxpayer’s position in accordance with the provisions of the respective tax law”*.

Taxpayer right to representation (s 27):

- A taxpayer has the right to be represented in tax matters.
- A taxpayer must notify the CG in writing upon appointing a representative. However, the TRA is not obliged to communicate with a taxpayer through the taxpayer’s representative.

Tax consultants (s 28)

- Power is granted to the Minister for Finance to make regulations for the registration and de-registration of tax consultants.

Official Communications & Documentation

Official languages (s 29)

- The official languages for the purposes of tax administration are both Kiswahili and English.

Filing / service of documents (s32 & 33)

- Details are given as to when documents are to be treated as filed with / served by the CG / TRA – including reference to physical delivery, registered post, fax, electronic mail and post.
- In the case of post, a document posted within Tanzania (other than registered post) (s 32 & 33) is treated as served ten days after posting.

Electronic document system (s 34):

- The CG may establish and operate an electronic system for filing and furnishing of documents and servicing documents.
- An electronic document is considered to be served on a person by the CG under a tax law when a document registration number is created and the document can be accessed by using the person’s authentication code.

Maintenance of documents (s 35)

- Taxpayers must maintain relevant documents in paper or electronic form.
- Relevant documents are those which: (a) contain information to be provided or filed with the CG under any tax law; (b) enable an accurate determination of tax payable; (c) have been prescribed by the CG or by regulations.

- Records and accounts are to be kept in accordance with generally accepted accounting principles
- Relevant documents have a retention period of five years, subject to the following exceptions:
 - Documents relevant to tax disputes not yet determined.
 - Where the CG has served a notice requiring longer retention.

Use of electronic fiscal device (“EFD”) (s 36)

- Use of an EFD is mandatory for any person who is trading. No threshold is stated, but the CG has the power to publish a list / class of persons exempted.

Tax returns; access to information & assets

Certification of entity tax returns (s 37 & 38):

- A tax return filed by an entity must be signed with a “complete and accurate” declaration by a Manager of the entity, and additionally in the case of an income tax return by a certified public accountant in public practice.
- A person preparing a tax return, or attachment to a tax return, must certify that he has examined relevant documents and that to his knowledge the return or attachment presents a true and fair view of the circumstances to which it relates.

Extension of time to file a tax return (s 39):

- An application for extension of time must be made in writing and “within fifteen days before the due date for filing the return”.

- Any extension period granted cannot exceed thirty days from the due date.

Failure to file a tax return on time (s 40):

- Where a tax return has not been filed by the due date / extended date, the CG:
 - May appoint another person to prepare and file information;
 - Is required to make an assessment based on information that he has in his possession.
- No change has been to subsection (2) of Section 40 which reads “*Any purported filing of a tax return after the due date or in a manner other than that specified in the relevant tax law shall be ineffective*”. At the time of public consultation to review the draft legislation the Ministry of Finance technical team formally communicated that the legislation would be reworded to make it clear that tax returns can still be filed even if the due date has passed. We assume that the lack of amendment to this clause was an oversight and will be corrected in due course.

Correction of tax returns (s 41):

- “*A tax return which has been filed shall not be amended or corrected unless as specified under the relevant tax law*”.

Access to information and assets (s 42 to 45):

- Widespread powers are granted to the CG in relation to access to information and assets, as well as to audit and investigation.
- Rights and obligations are also stated in relation to the possessor of information and assets.

Primary Tax Liability

Assessments

- Self-assessment (s 46) – An assessment is made by way of self-assessment where there is an obligation on a taxpayer to file a tax return.
- Assessments can only be adjusted by the CG
- Assessments that can be raised by the CG are:
 - Jeopardy assessments (s 47)
 - Adjusted assessments (s 48) – A five year limitation period applies for raising an adjusted assessment, subject to override in case of fraud, willful neglect, or serious omission. (This five year period compares with the three year limitation period previously provided for under the Income Tax Act 2004; the increased time limit does raise a concern that it will work against the efficiency previously driven by the three year time limit.)
- A notice of assessment must be served in writing and state
 - The taxpayer’s name and TIN;
 - The tax payable and remaining tax to be paid, and date by which it is to be paid;
 - Reasons for the assessment;
 - The time, place and manner of objecting the assessment

Objections to tax decisions (s 50 to 53)

Tax decision

- A tax decision includes any “*assessment or other decision, or omission on a matter left to the discretion, judgement, direction, opinion, approval, consent,*

satisfaction or determination of the [CG] under a tax law that directly affects a person". A tax decision is considered to be made in the case of assessments on the filing due date if a self-assessment, and when notice of assessment is served in the case of other assessments. Any other tax decision is considered to be made (i) where the legal deadline for the CG's decision has passed, or (ii) where the CG serves the affected person with a written notice of assessment.

Right to object

- A person who is aggrieved by a "tax decision" made by the CG has the right to object the decision by filing a notice of objection.

Form of objection

- An objection must be in writing and state the grounds of objection.

Time limit

- A person aggrieved by a tax decision and who wishes to make an objection has a time limit of thirty days from the date of service of the tax decision. Where there are reasonable grounds, a taxpayer can apply for an extension of time to file an objection.

Minimum tax payment

- An objection to a tax decision shall not be admitted unless the taxpayer has paid the greater of (i) the tax not in dispute and (ii) one third of the tax assessed, subject to reduction or waiver "*where the Commissioner General is satisfied that there exist good reasons*".
- "Tax not in dispute" means "*(a) the amount that ought to be charged where the assessment or a tax decision is amended in*

accordance with the objection; and (b) the whole of duty or any tax assessed on imports".

Further tax payment

- Where an objection has been filed, and the required minimum tax payment made, the liability to pay the remaining assessed tax is suspended until the objection is finally determined.

Decisions on objections

- Where the CG intends to amend the assessment in accordance with the objection, he will serve a notice of final assessment on the taxpayer. In any other case, the CG is required to serve the taxpayer a notice setting out the reasons for his intended decision, and the taxpayer has thirty days to respond to the proposal. After receipt of such further submissions the CG will then determine the objection.

Appeal against objection decisions

- A person aggrieved by an objection decision or other decision or omission of the CG may appeal to the Tax Revenue Appeals Board in accordance with Tax Revenue Appeals Act (or in the case of customs matters, the Tax Appeals Tribunal established under the East African Community Customs Management Act).

Payment and Recovery of Tax, Remission and Refund of Tax

Payment of Tax (s 54 to 58)

- Clauses in relation to payment of tax include sections dealing with the following:
 - Time for paying tax;
 - Extension of time for paying tax;
 - Manner and place of paying tax (including tax office, approved banks, mobile phone payment, any other manner prescribed by the CG);
 - Order of paying tax;
 - Taxpayer tax accounts (including an electronic system of such accounts).

Recovery of Tax from Taxpayer (s 59 to 64)

- Provisions in relation to recovery of tax from a taxpayer include sections covering the following:
 - Suit for unpaid tax;
 - Security for tax;
 - Charge over assets;
 - Sale of charged assets;
 - Restraint of person;
 - Restraint of assets.

Recovery of Tax from Third Parties (s 65 to 69)

- Provisions in relation to recovery of tax from third parties include sections covering the following:
 - Liability of managers of entities;
 - Receivers;
 - Third party debtors and guarantors;
 - Compliance with notice or security;
 - Agents of non-residents.

Remission of Tax (s 70)

- The CG can remit penalties or interest imposed under any tax law where satisfied that there is "good cause".

Refund of Tax (s71 to 74)

- An application for a tax refund must be made in writing, indicating the correct tax calculation and supported by documentary evidence to support the claim.
- The CG is required to consider and make a refund decision (or make a request for further information) within ninety days from the date of receipt of the application.
- Such decision is to be served in writing on the applicant.
- Where further information is requested, the CG must serve the notice within thirty days of receipt of the additional information requested.
- A tax refund must be paid within 14 days of the refund decision, subject to the right of the CG to offset the refund against any tax due from the taxpayer under any tax law.
- Interest on refunds is calculated at the statutory rate and runs from the date of issue of the refund decision to the date of payment of the refund.
- The CG is required to maintain a separate bank account for refunds and ensure that the account is adequately funded.

Interest, Penalties & Offences; and Tax Proceedings

There are detailed provisions governing interest, penalties and tax proceedings including the following:

Interest and Penalties (s 75 to 81)

- Interest for underestimation of tax (s 75) – 80% threshold maintained.

- Interest for failure to pay tax (s 76).
- Interest under sections 75 and 76 - calculated at the statutory rate; extension of time not considered for purposes of calculation of interest liability.
- Penalty for failure to maintain documents (s 77) – one and ten currency points per month for individual and entity respectively.
- Penalty for failure to file tax return (s 78) – monthly penalty calculated as higher of (i) 2.5% of unpaid tax at start of the month and (ii) five and fifteen currency points per month for individual and entity respectively.
- Penalty for making false or misleading statements (s 79) – 50% (without reasonable excuse); 75% (knowing or reckless statement or omission); 10% increase of the penalty where already previously penalised under this section; 10% reduction if voluntary disclosure prior to discovery / tax audit.
- Penalty for aiding and abetting (s 80) – 100%.
- Assessment of interest and penalties (s 81) – requires a written notice of assessment stating:
 - The taxpayer's name and TIN;
 - The amount of interest or penalty assessed;
 - The manner in which the assessment is calculated;
 - The reasons for making the assessment;
 - The date on which the interest or penalties shall be paid;
 - The time, place and manner of objecting to the assessment.

Offences (s 82 to 92)

- A person convicted of the offences listed below is subject to penalties (as set out in each individual section) of absolute amounts (defined by reference to currency points) and / or imprisonment:
 - Failure to comply with the tax law (s 82).
 - Failure to pay tax (s 83).
 - Making or using false or misleading statements or documents (s 84).
 - Impeding tax administration (s 85).
 - Failure to use electronic fiscal device (s 86).
 - Offences by authorised and unauthorised persons (s 87).
 - Offences by entities (s 88) – provides that where an entity has committed an offence under a tax law, “*every person who is a manager of the entity at the time of commission of that offence shall be treated as having committed that offence*”; however, this shall not apply “*where the manager has exercised the degree of care, diligence and skill that would have been exercised by a reasonable person in preventing the commission of that offence*”.
 - Aiding or abetting (s 89).
 - VAT offences (s 90) – including failure to apply for VAT registration, or to notify the CG of various matters (including cessation of liability to VAT, change in circumstances where notification required, relevant legal processes, transfer of a going concern).
 - Stamp duty offences (s 91).

- Compounding offences (s 92) – provides for power to compound offence in which case there is no liability for prosecution.

Tax Proceedings

- There are sections dealing with the following:
 - Multiple proceedings (s 93).
 - Power of search, seizure and arrest (s 94).
 - Search without warrant (s 95).
 - Provision of security (s 96).
 - Publication of offenders (s 97) – Power given to the CG to publish in the media a list of persons who (i) in spite of notification by CG, have repeatedly failed to pay tax on time, or (ii) have been convicted of an offence for which the time limit for appeal has expired, or (iii) repeatedly had an offence compounded under s 92.

recognition of existing regulations, rules, practice notes, rulings, orders and notices in force at commencement until such time that amended or revoked; continued use of blank forms / documents in use at commencement.

Consequential amendments (s 101 to 170)

- Repeal of various legislative provisions including:
 - Various tax administrative provisions in existing tax law
 - Penalty and interest changing provisions in existing tax law
 - Tax objection provisions in the Tax Revenue Appeals Act.
 - A new requirement has been introduced for employers to file a monthly tax return in respect of Skills and Development Levy. We have sent a separate Tax Alert with regard to this new requirement.

Ministerial Powers (s 98, 99)

Regulations:

- *“The Minister [for Finance] may make regulations under any tax law for the better carrying into effect of the principles, purposes and provisions of that law”*

Schedules to the Act:

- *“The Minister [for Finance] may in consultation with the Commissioner General, by order published in the Gazette, amend, vary, add or replace any Schedule to this Act”.*

Transitional and Savings Provisions (s 100)

- Provision is made for various transitional and savings matters including recognition of international agreements recognized at commencement under existing tax laws; continued

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