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The effects of the Finance Act, 2020 on Tax Adjudication

The Finance Act of 2020, has made the following amendments in tax adjudication;

- Taxpayer representative recognised as either a practicing advocate, tax consultant or a holder of a power of attorney;
- Procedure to object tax assessment or decision by an aggrieved taxpayer further regulated;
- Commissioner General may require deposit of full tax assessed if he considers taxpayer a "flight risk";
- The term tax "decision" further restricted;
- New requirements when filing objection to a tax decision (additional information and attachment of documents);
- Requirement to produce evidence or information to the Commissioner General;
- Time limitation for filing notice of appeal and appeal.

Introduction:

The Finance Act, No. 8 of 2020 came into force on 15th June, 2020. The Act amends a number of provisions of different laws, which include the Tanzania Revenue Authority Act (Cap. 399), the Tax Administration Act (Cap. 438), the Value Added Tax Act (Cap. 148), and other laws.

In this article, we shall point out the changes that the Finance Act has made to the Tax Administration Act, which has been amended in the following ways.

Taxpayer Representative:

The Finance Act amends the Tax Administration Act (Cap. 438 R.E. 2019) and adds subsection (3) to section 27 of that Act. The added provision defines who can be the taxpayer's representative as practicing advocates, tax consultants or holders of powers of attorney as recognized representatives.

Objections to Tax Assessment or Decision:

Any person who is aggrieved by a tax decision made by the Commissioner General of the TRA may challenge the decision by filing an objection in writing to the Commissioner General within thirty days from the date of service of the tax decision.

Where the taxpayer cannot meet the deadline, the taxpayer will have to apply to the Commissioner General for extension of time to file objection (section 51(2) and regulations 92(3) and 94 and the 12th Schedule). Before the 2020 amendments, there was no time limit within which the Commissioner General was to determine an objection. The new position under section 51 of the Tax Administration Act gives the Commissioner General 6 months to do so.

If you require specific advice on this matter, please email our **Hon. Dr. Fauz Twaib**, f.twaib@rexattorneys.co.tz

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If he fails to do so, the assessment “shall be treated as confirmed”. The admission of an objection for determination is subject to a deposit of either the undisputed amount or one third of the assessed amount (whichever is higher). A new provision has been introduced by the Finance Act amending section 51 of the Tax Administration Act by adding subsection (12) thereto. Under the new provision, where the Commissioner General has reasonable cause to believe that the objector intends to permanently leave the United Republic, there would be no partial tax deposit under subsection (7), and instead, the objector shall deposit the whole of the assessed tax.

Tax Decision:

The amendment adds one more instance to the list of decisions that are not tax decisions for purposes of objection proceedings under section 50(2) of the Tax Administration Act. It states that such a tax decision or assessment shall not include “any matter decided under any tax law on account of an agreement, consent or admission.”

The new provision appears to recognise that a party may not be afforded a right of appeal from a decision that was given based on the party’s own agreement, consent or admission.

Objection to Tax Decisions (Attachment of Documents or Information):

The amendments also add subsections (5) and (6) to section 51 of the Tax Administration Act which make it mandatory for taxpayers, when making an objection, to attach all relevant documents or information which the taxpayer intends to rely upon when making the objection. With this amendment, the law limits taxpayers’ right to introduce “new evidence” at the appeal stage which was not submitted with the objection.

Decisions on Objections (Production of Evidence or Information):

The Act introduces new subsections under section 52 of the Tax Administration Act, under which the Commissioner General can require a taxpayer to produce any evidence or information within 30 days from the date of service of notice of objection. Where the party objecting fails to comply with the request to provide information, then the taxpayer shall not be permitted to rely on such document or information at the time of hearing of an appeal.

Upon obtaining such evidence or information, the Commissioner General may determine the objection by either amending the assessment or may refuse to amend. If the Commissioner General agrees to amend, he serves notice of final assessment to the objector. If the Commissioner General does not fully agree or refuses to amend, the objector has 30 days within which to submit his agreement or disagreement.

Any person who is aggrieved with a decision or omission of the Commissioner General upon an objection may, under section 53(1) of TAA, appeal to the Tax Revenue Appeals Board. Section 53(2) provides for appeals from customs law under the East African Community Customs Management Act.



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Notice to Obtain Information:

The Finance Act amends section 44 of the Tax Administration Act by adding section 44(4), (5) and (6). With these amendments, TRA can now require information from any person, not liable for tax but with information on taxpayer (e.g. doing business with him). The information must be submitted within 14 days. If not supplied, the taxpayer will be precluded from using such information as evidence at the stage of objection or appeal.

The Commissioner General may extend time for submission of the information required upon receipt of an application showing good cause for the delay, and such extension shall not be unreasonably withheld.

Time Frame for Determining Objection:

The law now sets 6 months within which the Commissioner General must determine an objection to tax assessment or tax decision, which is a welcome move as it has done away with the previous position under which the Commissioner General could take as long as he wished, and the taxpayer would not know when the objection would be determined.

However, failure by the Commissioner General to determine the objection within that period would mean that the tax assessment or tax decision "shall be treated as confirmed". The amendment further stipulates that the taxpayer would then have a right to appeal to the Tax Revenue Appeals Board, "in accordance with the Tax Revenue Appeals Act". It is to be noted, however, that when this phrase is used, the Board can only have jurisdiction if the appeal passed the test set by the Court of Appeal decision in *Pan African Energy v. Commissioner General* [Civil Appeal No. 121 of 2018]. It was held in that case that section 16(1) of the Tax Revenue Appeals Act meant that one can only appeal to the Board from an objection decision made by the Commissioner General and not otherwise. Since an appeal in this situation would be from the Commissioner General's failure to decide an objection, it is still a moot question as to whether this would meet the criterion set by the *Pan African Energy Case*.

Time Limitation for Appeals:

Section 16 of TRA Act states that a Notice of Appeal shall be filed within 30 days of service of notice, and filing of appeal within 45 days after notice of final assessment or other appealable decision.



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