

Tax & Legal Alert
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Tax Alert

Applicability of withholding tax on interest

On 8th April 2025, the Court of Appeal of Tanzania delivered its decision in the case of the *Commissioner General, TRA vs. Vodacom Tanzania PLC Civil Appeal No. 485 of 2023*. The decision that was issued in favour of the TRA highlighted that withholding tax (“WHT”) is due upon accrual and not on actual payment.

This alert summarizes the key details of the case, the judgement of the Court of Appeal and its implications to taxpayers.

Overview

On 8 April 2025, the Court of Appeal of Tanzania issued a decision in the case of Commissioner General, *TRA vs. Vodacom Tanzania PLC*, Civil Appeal No. 485 of 2023, resolving a long-standing dispute between the Tanzania Revenue Authority (TRA) and taxpayers regarding the triggering point for withholding tax deductions i.e., when the obligation to deduct and remit withholding tax (WHT) arises.

Background of the case

Between the years 2004 and 2009, Vodacom Tanzania PLC obtained loans from its affiliates, Vodacom Group and Mirambo. Although interest was contractually due annually, actual payments were deferred.

Vodacom PLC began paying interest to Vodacom Group in 2015, with WHT being remitted in the same year. For Mirambo, interest payments began in 2009, but WHT was remitted in 2017.

The appeal arose from a dispute regarding the timing of deducting withholding tax (WHT) on interest payments under section 82(1) of the Income Tax Act, 2004 (ITA).

The Tanzania Revenue Authority (TRA) took a position that WHT on interest is due at the time the interest accrues, irrespective of when the actual payment is done. Conversely, the taxpayer contended that the WHT obligation arises only upon actual disbursement of the interest.

The taxpayer challenged the TRA's assessment on this regard before the Tax Revenue Appeals Board and subsequently the Tax Revenue Appeals Tribunal, both of which confirmed the taxpayer's position. Dissatisfied with these outcomes, the TRA appealed to the Court of Appeal, arguing that the lower adjudicatory bodies had misapprehended the law by failing to recognize that the obligation to withhold tax on loan interest is triggered upon accrual.

Key Issues addressed

- Whether sections 3, 21, 23, and 82(1) of the ITA can be construed harmoniously or whether section 82 overrides the other provisions?
- Whether any ambiguity exists in the meaning of the term "payment" as defined under section 3 of the Income Tax Act, 2004?



Key Issues addressed

Whether sections 3, 21, 23, and 82(1) of the ITA can be construed harmoniously or whether section 82 overrides the other provisions?

- The taxpayer argued that section 82(1) should be read separately, and that tax on interest should be withheld only when actual payment is made.
- TRA argued that the provisions must be read together (harmoniously) because they work together to regulate how and when WHT applies.

The court's decision:

- The provisions do not conflict, but rather, complement each other.
- Section 82(1) doesn't stand alone; it relies on the definitions and timing rules in sections 3, 21, and 23.
- Because income for corporations is recognized on accrual basis (section 23), then WHT also becomes due when an accrual is made.

Whether any ambiguity exists in the meaning of the term "payment" as defined under section 3 of the Income Tax Act, 2004?

- The court emphasized that "payment" has a technical meaning in the income tax law, which is broader than the literal understanding.
- It includes situations where the obligation to pay arises, even if no cash has been exchanged yet.
- Thus, when interest accrues, even if unpaid, a "payment" has occurred under this technical meaning.

The court's decision:

- The court found no ambiguity and indicated that the definition provided in the law clearly includes accrued obligations. Thus, WHT becomes due when interest accrues, and not when actual payment is done.



Decision by the court

The court affirmed that “payment” includes not only the actual exchange of money but also the transfer or creation of assets, provision of services, the use or availability of assets, or the discharge of obligations. On this basis, the court concluded that interest on a loan is considered paid when it accrues, thereby triggering the obligation to withhold tax at that point, regardless of when the actual disbursement occurs.

Key highlights

WHT on interest is payable on accrual basis

The Court of Appeal held that WHT on loan interest must be accounted for when accrued, aligning it with the requirement to account for income on accrual basis for corporate income tax purposes. This ruling departs from the position previously held by both the board and the tribunal, which had favoured WHT deduction upon actual payment.

Broad interpretation of the term “payment”

The Court of Appeal adopted a technical interpretation of the term “payment” as defined under section 3 of the Income Tax Act, 2004 (ITA). The definition extends beyond the mere transfer of money and includes the creation of liabilities, provision of services, and availability of assets, among other things.

Strict interpretation of tax statutes

Confirming the principle of strict statutory interpretation, the Court of Appeal underscored that clear legislative language should not be expanded or narrowed by judicial construction. The decision emphasized that section 82 of the ITA does not override, but must be read harmoniously with other relevant provisions, including sections 3, 21, and 23.

Conclusion and recommendations

- WHT obligations are triggered once interest accrues, regardless of when payment is made.
- Taxpayers should therefore review loan agreements as well as other documentation whose payment attract withholding tax and update compliance processes to ensure timely WHT deductions and remissions.
- Going forward, taxpayers should align their tax practices with this precedent to avoid disputes and ensure compliance.



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