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Tax & Legal Alert
June 2021

Keeping you in the loop

Finance Bill Alert 2021

The budget speech read by the minister of finance and planning on 10 June 2021 set out the proposed tax changes. Following the release of the Finance Bill 2021 ("the Bill"), this update sets out a high level summary of the changes and clarifications contained in the Bill, which when ratified will become law effectively from 1 July 2021. The focus is on particular changes which may have not been included or clarified in the Budget Speech read by the Minister for Finance and Planning ('the Minister").

The Electronic and Postal Communications Act, CAP 306

The Minister's speech indicated that the government sought to impose a levy between TZS 10 to TZS 10,000 for each mobile transaction and a levy of between TZS 10 to TZS 200 per day per SIM card.

The Bill further clarifies that this levy will be called a 'development levy on airtime'. No further detail is provided with respect to the amounts and methods of collecting the levy. However, the proposed change gives power to the **Minister responsible to make regulations prescribing the manner and modality under which the levy may be collected and accounted for**. Pending such Regulations, there remains little clarity on the amounts and modality of collecting this levy.

The Tax Administration Act, Cap 438

- **Employees are now required to register for Taxpayers Identification Number ("TIN") within 15 days after being employed:** The Bill proposes to amend the Tax Administration Act, Cap 438 ("TAA") by extending the reasons for which a person may be potentially liable to pay tax and thus be required to register for TIN within 15 days after a person becomes potentially liable to tax, as a result of business, investment or employment. As such, any person who becomes potentially liable to pay tax by a reason of being employed (i.e. PAYE) will be required to register for TIN within 15 days.
- **Any person can lodge a complaint to the office of the Tax Ombudsman Services:** The Bill proposes to amend section 28A which will now allow any person to lodge a complaint to the office of the Tax Ombudsman Services instead of only a taxpayer. The proposed amendment deletes the word "taxpayer" as it appears under section 28A of the Act and replace with the word "person".
- **The Tax Ombudsman is required to be a person with competent knowledge and experience in tax administration**. The Bill proposes to amend the TAA by adding another qualification for a person to be appointed as a Tax Ombudsman by the Minister. The proposal requires a person to also have an experience in tax administration in addition to competent knowledge as it is currently provided.
- **Official translation on communication or information not in official language to be submitted within 14 days upon requested by the Commissioner General.** The Bill proposes to amend section 29 by adding a new subsection 3 which subject section 29 to provisions of section 44. As such, request of official translation will be regulated by provisions of section 44 which deals with notice of obtaining information by the Commissioner General. The provision requires a person to submit information requested under the notice within 14 days. The Bill further proposes to amend section 85 of the Act by designating the failure to produce the official translation on communication or information as an act amounting to impeding the administration of a tax law and thus constitute an offence.

- **Documents maintained in electronic form should be kept in primary data server situated in United Republic and accessible to Commissioner General.** The Bill proposes to amend section 35 of the TAA by requiring all taxpayers to maintain documents in electronic form, to maintain a server of such documents in the United Republic and the server should be accessible by the Commissioner General. Further, the Bill defines the primary data server to mean a server which stores data that is created or collected by a taxable person. However, the proposed amendment if passed, will start to effectively apply after 12 months from 1 July 2021.

- The Bill further proposes to amend section 85 of the Act by designating the failure to maintain a primary server in the United Republic as an act amounting to impeding the administration of a tax law and thus constitute an offence.

- **The time within which an application for extension of time to file return has now been clarified.** The Bill proposes to amend section 39 of the Act by providing that the application for extension of time to file return should be made "not less than" 15 days before due date of filing of return. The provision of section 39(2) on application for extension of time for filing return was not clear as whether the application should be made 15 days before due date or within 15 days to the due date of filing a tax return.

- **Clarification on who the notice to obtain information may be served to by the Commissioner General.** The Bill proposes to amend section 44 of the TAA by clarifying to whom the Commissioner General may serve notice to obtain information or to attend in the any place for examination by Commissioner General as provided under section 44. The proposed amendment provides that the notice may be served by the Commissioner General to any person whether or not the person is liable to tax . Currently, section 44 provides that the notice may only be served to a person "who is" not liable to tax.

- **No requirement to notify the Commissioner General when property tax is paid.** The Bill proposes to amend the TAA by allocating collection of property taxes through the same modality of collecting electricity payments. Electricity payment will have a portion of property taxes apportioned in the payment. The Bill further waives the requirement to notify the Commissioner General when the property tax is paid.

The Tax Revenue Appeals Act, Cap 408

- **Introduction of mediation when tax cases are at the Tax Revenue Appeals Board and Tax Revenue Appeals Tribunal as a method to settle appeals.** The Bill proposes to amend the Tax Revenue Appeals Act by allowing parties engaged in an ongoing appeal (i.e. at the Board and the Tribunal) to apply for the appeal to be settled outside the court through mediation.

- However, parties will be required to report the outcome of the mediation to the Board and or the Tribunal, which will issue the final order based on the duly signed settlement agreement by the parties and the matter will be finally settled.

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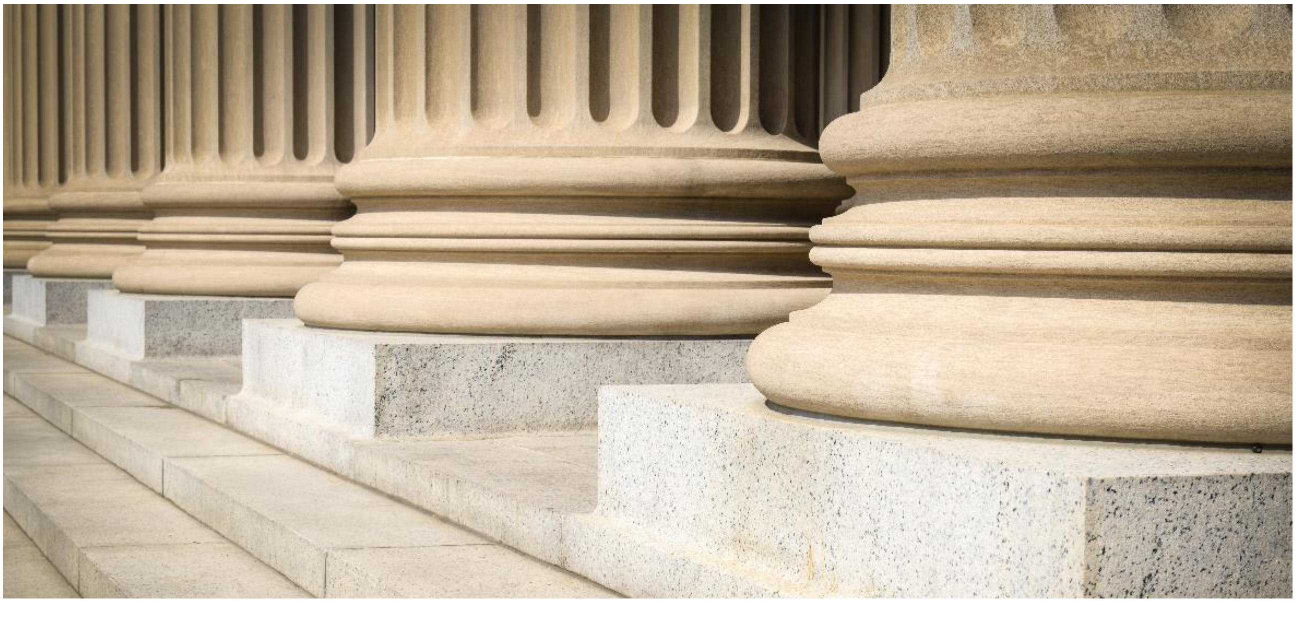

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The Income Tax Act, Cap. 332

- **Further clarification of the definition of Permanent Establishment (Agency PE):** The Bill proposes to amend the definition of Permanent Establishment (PE) in the Income Tax Act, Cap. 332 by mentioning specific situations through which a PE may be created through a dependent agent.

  The newly proposed definition bears similarity with Article 5 of the OECD Model Tax Convention that includes among other things, carrying on business through a dependent agent who concludes contracts, issues invoices, habitually maintains stock, secures orders or regularly delivers merchandise on behalf of the principal or another entity. This amendment provides much needed clarity for PE establishments, particularly for non-resident entities with agents in Tanzania.

- **Presumptive tax for small scale mining operators:** The Bill further clarifies that individuals involved in small scale mining operations without regular income will be taxed under presumptive income tax regime at the rate of 3% of the sale value of minerals.

- **Introduction of monthly withholding tax returns instead of bi-annual statement:** The Bill proposes to amend the Income Tax Act, Cap. 332 by introducing monthly withholding tax returns in order to align with the newly introduced e-filing system. The return should specify the type of payment made, Taxpayers Identification Number "TIN", name, and address of the withholdee and the amount of income tax withheld from each payment. Therefore, from the proposed change, taxpayers will not be required to file bi-annual statements of withholding tax.

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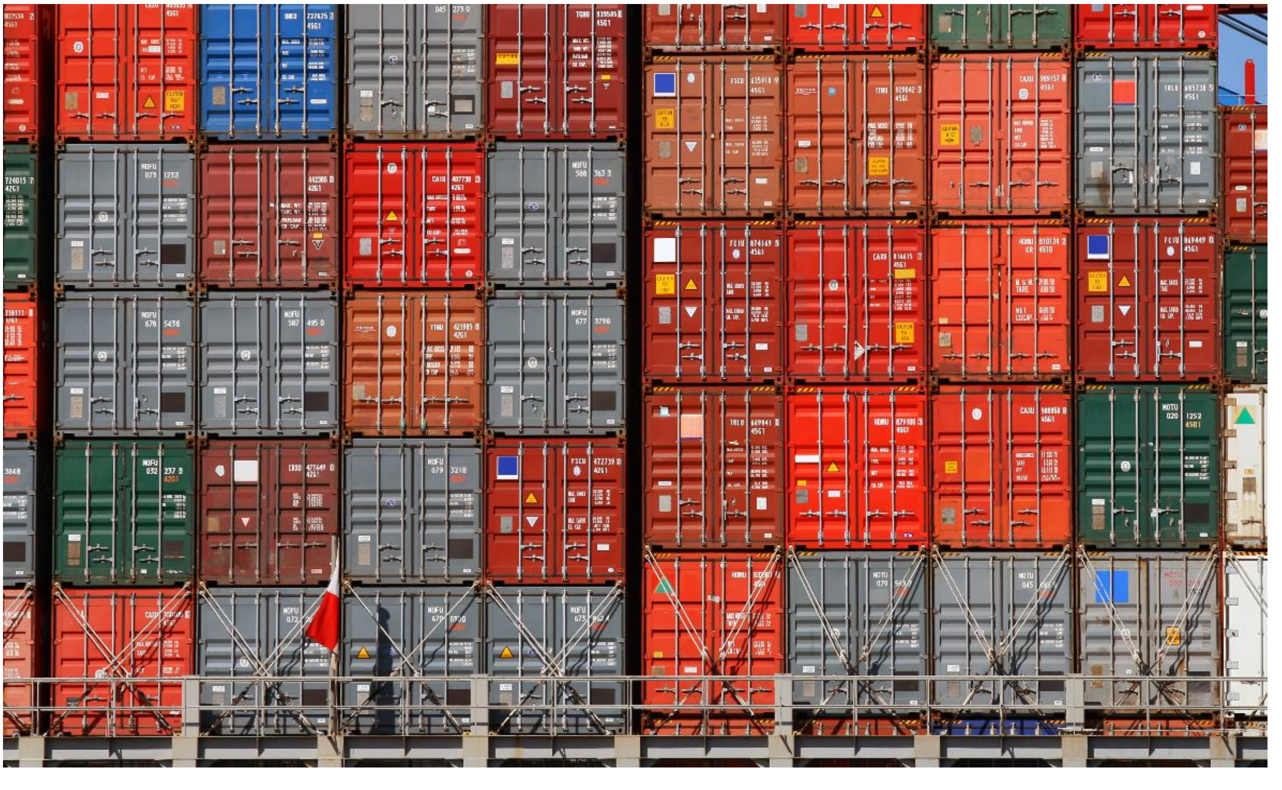
- **Introduction of withholding tax on supply of agricultural, livestock and fishery products between residents except for the case of agricultural marketing cooperative societies and cooperative unions.** However, the Bill has not provided for the explicit definition of agricultural, livestock and fishery products. One may infer from the definition of 'agricultural business' according to section 19(4) of the Income Tax Act, 332 which uses the "practice of rearing of crops or animals including forestry, beekeeping, aqua-culture and farming with a view to deriving a profit, but excludes processing of agricultural produce other than preparing such produce for the purpose of sale in its original form". However, further specific guidance may be required.

The Value Added Tax Act, Cap. 148

The Bill proposes the following amendments in relation to harmonization of VAT regime between Mainland Tanzania and Tanzania Zanzibar:

- **VAT equalization:** The Bill proposes to amend section 3 of the Value Added Tax Act,Cap.148 ("VAT Act") to allow for transfer of goods to Mainland Tanzania without payment of additional VAT in case VAT on those goods has been paid in Zanzibar at the same rate as the rate applicable in Mainland Tanzania.
    - Further to the proposed amendment above, the Bill proposes that in case the VAT rate in Tanzania Zanzibar is lower than the rate in Mainland Tanzania, the difference in VAT shall be deemed to be unpaid and hence will be collected by the Tanzania Revenue Authority upon transfer of goods to Mainland Tanzania.
- **VAT collection by the TRA on behalf of ZRB:** The Bill further proposes to amend the VAT Act, by requiring the Tanzania Revenue Authority (TRA) to collect VAT on behalf of Zanzibar revenue Board and remit it to the Tanzania Zanzibar Treasury in case of taxable supply made directly in Mainland Tanzania to a taxable person in Tanzania Zanzibar.
- **Empowering the Commissioner General to Grant VAT exemptions:** The Bill proposes an amendment of section 6 of the VAT Act, by transferring powers to grant exemption from the Minister and empowers the Commissioner General to grant VAT exemption upon application by taxpayer. The Bill further proposes to amend this section by including raw materials for manufacture of long-lasting mosquito nets among the items that qualify for VAT exemption.
- **Definition of Capital Goods that qualify for VAT deferment:** The Bill proposes to amend section 11 of the VAT Act, by replacing the current definition of "Capital goods" with goods classifiable under Chapters 84, 85, and 90 of Annex 1 to the Protocol on the Establishment of the East African Community Customs Union provided that the goods are not imported for resale in the ordinary course of business.
    - Chapter 84: Nuclear reactors, boilers, machinery and mechanical appliances (parts thereof);
    - Chapter 85: Electrical machinery and equipment and parts thereof; sound recorders and reproducers, television image and sound recorders and reproducers, and parts and accessories of such articles, and
    - Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof.
- The Bill proposes to amend section 59 of the VAT Act, by including a supply of transportation and incidental services to an international pipeline as zero rated supplies under international transport services.



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The Tanzania Investment Act, Cap 38

The bill proposes to amend the act by introducing an advisory committee of the National Investment Steering Committee with the object of enhancing effective implementation of the responsibilities of the committee. The advisory committee will be comprised of different members including the Deputy Commissioner General of the TRA.

The Excise (Management and Tariff) Act, Cap 147

Imposition of 10% excise duty on fees or charges payable by a person to a payment system provider: The Bill proposes to impose excise duty at a rate of 10% of fees or charges paid to a payment system provider licensed under the National Payment System Act for money transfer and payment service.

Local Government Authorities (Rating) Act, Cap 289

The Bill proposes to amend the act by requiring all monies collected as property rate to deposited to the Government Consolidated Fund. The Bill proposes further that, the Minister responsible for finance will be required to allocate 15% of the money collected as property rate to the Minister responsible for local government authorities.

The Gaming Act, Cap 41

The Bill proposes to increase gaming tax rate on sports betting from 25% of the gross gaming revenue to 30%. However, the Bill proposes that the 5% increment of the rate shall be directed and allocated to the Sports Development Fund.

The Stamp Duty Act, Cap 189

The Bill proposes to delete and replace the schedule to the stamp duty act which provides applicable stamp duty rates for different instruments. During the budget speech, the Minister proposed to amend the rates of few instruments. However, the Bill proposes to amend the rates of most instruments. However, stamp duty rates for leases and transfer of shares remained the same.

The National Payment Systems Act, Cap 437

The Bill proposes to amend the National Payment Systems Act by adding new subsection 46A which introduces a new levy on money transfer (i.e. money transfer levy). The manner for collection and accounting of the levy has been left to the minister of the finance who will be required to make regulations after consultation with the Minister responsible for communication.

The Higher Education Student's Loans Board Act, Cap 178

During the budget speech the Minister proposed to amend the act by abolishing the 6 percent value retention fee on higher education loans. There is an amendment that seeks to add, after subsection (1) of the missed provision. Such amendment seem to limit the powers of the Higher Education Student's Loan Board by requiring the Minister to approve such powers and a Government Gazette is published.

In the absence of such clarity, the Bill seems to not contain the 6% retention fee removal in explicit form. However, it may be the case that this change will be brought about by an amendment to the regulations.

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The Road and Fuel Tolls Act, Cap 220

The Bill proposes to amend the Act by increasing road and fuel tolls by TZS 100 per litre of petrol and diesel from the current TZS 263. The Bill further proposes measures on the how the road and fuel tolls will be distributed in which TZS 100 will allocated to Tanzania Rural Roads Agency and the remaining TZS 263 will be distributed amongst the Roads Fund and the Tanzania Rural Roads Agency in accordance with the regulations by the Minister responsible for local government.

The Bill further proposes an increase in road and fuel tolls, and how the road and fuel tolls will be distributed.

The Land Act, Cap 113

During the budget speech, the Minister proposed to amend the act by reducing the premium rate from 2.5 percent to 0.5 percent for new land occupancy and from 1 percent to 0.5 percent on regularizing land. However, the Bill does not contain the proposal by the Minister.

The Vocational Education and Training Act, Cap. 82

The Bill proposes to introduce a Skills and Development Levy ("SDL") at a rate of 0.4% to the individual employer engaged in small scale mining. The Levy will be imposed on the sale value of the minerals at the time of selling minerals and payment of royalty.

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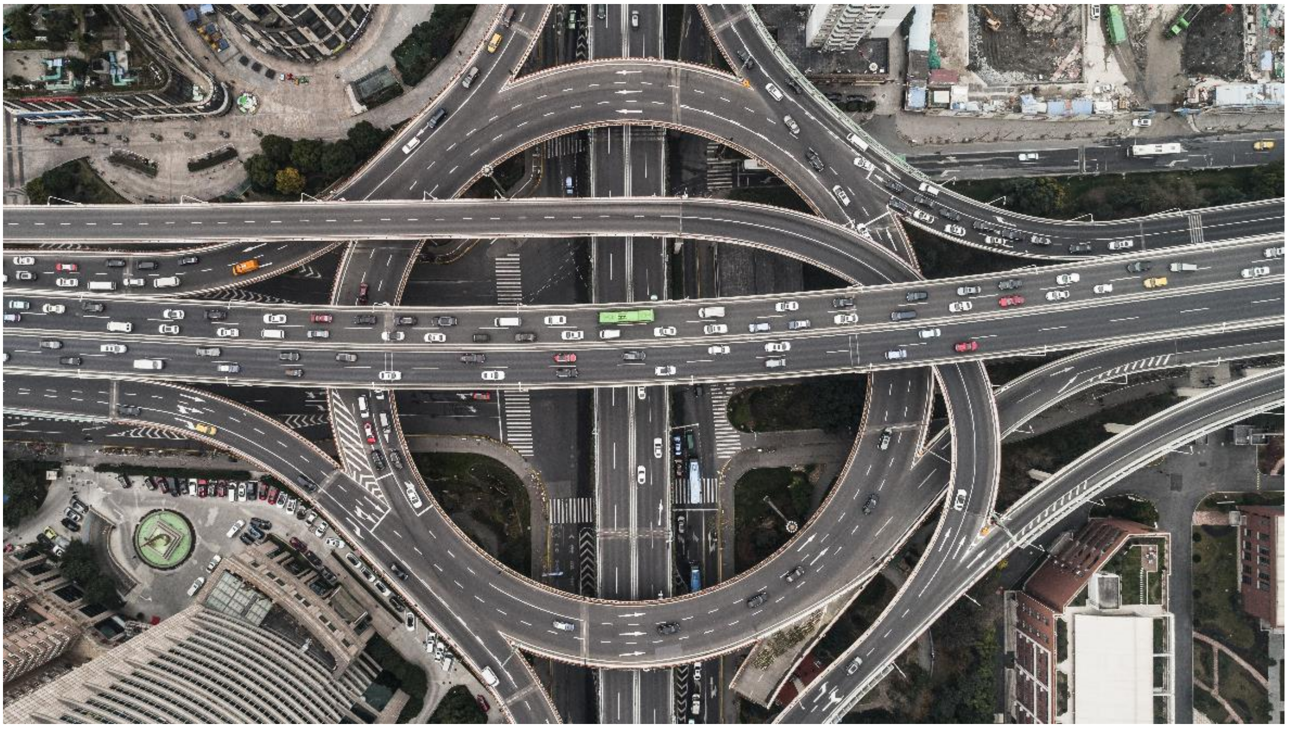

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