



## Keeping you informed

### Tax Alert

Following the amendments to section 238 of the Companies Act No. 15 of 2013 by the Finance (Public Revenue Management) Act No.3 of 2021, the Zanzibar Ministry of Industry and Trade (“ZMIT”) has released a public notice on 21<sup>st</sup> September 2021 to revoke certificates of compliance-for companies that were established in mainland Tanzania. This update provides a detailed summary of the amendment which came into effect on 1<sup>st</sup> July 2021 and the following public notice by the ZMIT that came into effect on 21st September 2021

## Finance (Public Revenue Management) Act No.3 of 2021

### Re-registration of companies incorporated in Tanzanian mainland with registered branches in Zanzibar

- Section 29 of the Finance Act No. 3 of 2021 amends section 238 of the Companies Act No.15 of 2013 ("Companies Act") requiring a company registered under applicable laws in Mainland Tanzania to incorporate a foreign subsidiary if it establishes a place of business in Zanzibar.
- Prior to this amendment, a company registered / incorporated in Mainland Tanzania and wish to establish a place of business in Zanzibar was treated as a foreign company just like other companies incorporated in other countries. As such, the company was required to register a branch and be issued a Certificate of Compliance in order to operate in Zanzibar.
- Therefore, the new amendment distinguishes companies registered in Mainland Tanzania from companies registered in other foreign companies. Companies registered in Mainland Tanzania will be required to incorporate a foreign subsidiary while companies registered in other foreign countries will continue to have an option to either incorporate a subsidiary or register a branch.
- The specific provision (newly added section 238, subsection 3 of the Companies Act) states that;

*'Notwithstanding the provisions of subsections (1) and (2) of this section, a company incorporated under the law applicable in Mainland Tanzania shall register a foreign subsidiary company under the law applicable in Zanzibar if it establishes a place of business in Zanzibar...'*

- In implementing amendments, the government of Zanzibar through ZMIT has now issued a notice to the public requiring all companies established in mainland Tanzania and which were previously registered a branch in Zanzibar to re-register themselves in accordance with the Companies Act and incorporate a foreign subsidiary and to be issued with a Certificate of Incorporation in Zanzibar.
- Furthermore, ZMIT has given a transition period of ninety (90) days from the 21st of September 2021 for Mainland Tanzania companies with registered branches in Zanzibar to comply with this new requirement. Failure to comply within the stipulated time will result into deregistration from the register of companies and the consequent disqualification from undertaking business operations in Zanzibar.



## Tax Implication brought by the amendments

This new development gives rise to various tax implications;

- Income tax is a union matter. However, the newly registered entity will now be considered a separate entity from its parent. As a result, the newly registered company will need to maintain a separate income tax file, and file for corporate income taxes separately, including filling for payroll taxes.
- In addition to this, local subsidiaries of companies incorporated in the Mainland are treated as subsidiaries of a foreign company. Any distribution to entities in Mainland Tanzania will be subjected to withholding taxes.
- Given the fact that subsidiaries and branches are treated as separate legal entities in Tanzania, transfer pricing provisions will apply for transactions between two entities on either sides of the union. This means that transfer pricing documentations must now be in place and related party transactions should disclosed.



*“ Any distribution to entities in Mainland Tanzania will be subjected to withholding taxes. ”*





## Contacts for this alert

**David C. Nchimbi**  
**Country Managing Partner**  
+255 222 169 002  
[dnchimbi@deloitte.co.tz](mailto:dnchimbi@deloitte.co.tz)

**Festo Barthalome**  
**Associate Director**  
+255 222 169 168  
[fbarthalome@deloitte.co.tz](mailto:fbarthalome@deloitte.co.tz)

**Yonazi Mngumi**  
**Associate Director**  
+255 222 169 162  
[ymngumi@deloitte.co.tz](mailto:ymngumi@deloitte.co.tz)

**Samwel Ndandala**  
**Senior Manager**  
+255 742 079 332  
[sndandala@deloitte.co.tz](mailto:sndandala@deloitte.co.tz)

**Charles Kitali**  
**Consultant**  
+255 743 062 854  
[sndandala@deloitte.co.tz](mailto:sndandala@deloitte.co.tz)

**Linda Lyimo**  
**Associate**  
+255 222 216 900  
[lilyimo@deloitte.co.tz](mailto:lilyimo@deloitte.co.tz)

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