



Keeping you in the loop

Tanzania Court of Appeal's decision on waiver of objection deposits

The Court of Appeal of Tanzania issued a ruling regarding an Appeal on the Commissioner General's decision on waiver of objection deposits on 31 May 2019.

We have prepared this alert to give you a summary of the ruling and its potential implications to your business.

Introduction

When objecting to a tax decision, there is a requirement to deposit the higher of one third of the assessed tax or an amount which is not in dispute prior to the submission of the objection as provided for under section 51(5) of the Tax Administration Act, 2015 (TAA). However, taxpayers often have difficulties in meeting this requirement due to cash flow challenges. Section 51(6) of the TAA empowers the Commissioner General to waive the deposit requirement where to his satisfaction, there exists "good reasons" to do so.

The law left it to the Commissioner General's discretion to determine what amounts to good reasons. As a result, a number of cases have found their way up the tax appeal system, including the *PanAfrican Energy Tanzania Limited v. Commissioner General*, Civil Appeal No. 121 of 2018 ("the PanAfrican case"), where the taxpayers appealed against the Commissioner General's decision to deny such waivers. The PanAfrican case may be the first case on objection deposit waiver decisions to reach the highest rank of our judicial hierarchy, the Court of Appeal of Tanzania.

Background of the case

PanAfrican Energy Tanzania Limited ("PanAfrican"), a company incorporated in Tanzania, is engaged in the supply of gas for power generation and compressed natural gas for use in motor vehicles. PanAfrican was issued with assessments by the Commissioner General, which it objected to and applied for a waiver of the one third deposit. The Commissioner General rejected PanAfrican's application of the waiver and subsequently refused to admit the objections. The Commissioner General asserted that, PanAfrican's reasons advanced in the application did not suffice the test of "good reasons" and related to issues that would have been reviewed during objection proceedings.

Aggrieved by the Commissioner General's decision, PanAfrican appealed to the Tax Revenue Appeal Board (TRAB). The TRAB upheld the Commissioner General's decision but required PanAfrican to pay a lesser amount to the tune of 5% of the assessed tax. PanAfrican appealed against this decision to the Tax Revenue Appeals Tribunal (TRAT). The TRAT upheld the TRAB's decision and dismissed the appeal. Still aggrieved, PanAfrican appealed to the Court of Appeal. The case was heard and a written ruling was issued on May 31, 2019.

The Court of Appeal on its own motion "suo moto" raised a point of law on the competence of appeal by PanAfrican at the TRAB. Citing section 16(1) of the Tax Revenue Appeals Act, 2001 (TRAA), the Court of Appeal doubted whether the appeal by PanAfrican at the TRAB was properly lodged.

PanAfrican contended that, although section 16(1) of the TRAA allows an appeal to the TRAB on objection decisions only, the appeal was still competent by virtue of section 53(1) of the TAA which allows appeals to the TRAB on objection or other decisions by the Commissioner General. Therefore, the Commissioner General's decision to refuse the waiver falls under the ambit of "other decisions" as it was anticipated by section 53(1) of the TAA.

The TRA argued that the appeal was incompetent by virtue of section 16(1) of the TRAA. The refusal of the Commissioner General with respect to the waiver of the tax deposit is not an objection decision and hence not appealable. According to the TRA, the only remedy for PanAfrican would have been a judicial review of administrative action of the Commissioner General and not an Appeal to TRAB.

The Decision

The three judges of the Court of Appeal weighed the arguments set forth by both parties and concluded as follows:

- The relevant provision for appeals to TRAB is section 53(1) of the TAA, however the reading of the section makes reference to the provisions of the TRAA;
- Since section 53(1) of the TAA requires appeals to the TRAB to be governed by relevant provisions of the TRAA, then section 16(1) of the TRAA will be the most appropriate provision for instituting appeals to the TRAB;
- Section 16(1) allows appeals to the TRAB on an objection decision by the Commissioner General only; and
- In light of the above, the Court of Appeal invoked its revisional jurisdiction and dismissed the case on the ground that the appeal at the TRAB was not competent since the Commissioner General's decision on denial of waiver was not an objection decision as envisaged under section 16(1) of the TRAA.

The decision's implications for taxpayers

The decision of the Court of Appeal comes at the time when there are a number of appeals with respect to objection deposit waiver decisions that are pending at both the TRAB and the TRAT for determination. Consequently, it is likely that these appeals will be dismissed on a competence basis as both the TRAB and the TRAT are bound to abide by the Court of Appeal's decision.

The Court of Appeal dismissed the case on technical/procedural grounds and did not provide on what could have been a proper channel for a taxpayer to challenge the Commissioner General's decision of the denial of waiver. A key area of contention with waiver objections is the discretionary powers vested on the Commissioner which hinges on whether or not good reasons exist to warrant a waiver.

Given the decision, taxpayers wishing to challenge the decision of the Commissioner General on the denial of waiver may have to object to that decision before subsequently appealing to the TRAB if aggrieved. Section 50 of the TAA defines tax objections to include "*decision on assessment or **other decision** or omission on a matter left to the discretion, judgement, direction, opinion, approval, consent, satisfaction or determination of the Commissioner General under a tax law that directly affects a person*" (*Emphasis added*).

In line with the above mentioned provision, the Commissioner General's decision on waiver applications fall under "*other decisions*". Since section 16(1) of the TRAA allows appeal to the TRAB on objection decision only, taxpayers who are aggrieved by the decision of the Commissioner General on a waiver request should object on the decision in accordance with section 51 of the TAA and appeal to the TRAB when aggrieved by the Commissioner General's objection decision on waiver.

The Court of Appeal provided no guidance on what constitutes "good reasons" for the purposes of granting the waiver. It is therefore likely that the Commissioner General will continue to exercise his discretionary powers.

Taxpayers are therefore advised to engage with the Commissioner General before any waiver application is made with a view of providing sufficient grounds for the Commissioner General to make a favourable decision.

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