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Tax Alert

Foreign Exchange Regulations, 2022

On 13th May 2022 the Bank of Tanzania ("BoT") published the Foreign Exchange Regulations, 2022 ("the Regulations") in accordance to section 6(1) of the Foreign Exchange Act, 1992 ('' the Act'') which empowers the BoT to exercise or discharge all functions, powers and duties relating to the administration, control and management of all dealings and transactions in relation to gold and foreign exchange matters. Furthermore, Section 7 of the Act vests the BOT with powers to make regulations, rules, orders, or directions in relation to foreign exchange in Tanzania.

This alert provides a detailed summary of the key provisions and our comments in respect to the published Regulations.

Introduction

Prior to the issuance of the Foreign Exchange Regulations, 2022, matters relating to foreign exchange were regulated by the Foreign Exchange Act, 1992, the Foreign Exchange Regulations, 1998 and the Foreign Exchange (Listed Securities) Regulations, 2003. The newly introduced Foreign Exchange Regulations, 2022 generally reiterate the provisions of the Foreign Exchange Regulations, 1998 and the Foreign Exchange (Listed Securities) Regulations, 2003 with some much-needed changes.

The table below summarizes the key provisions and our comments in respect to the newly published Regulations.

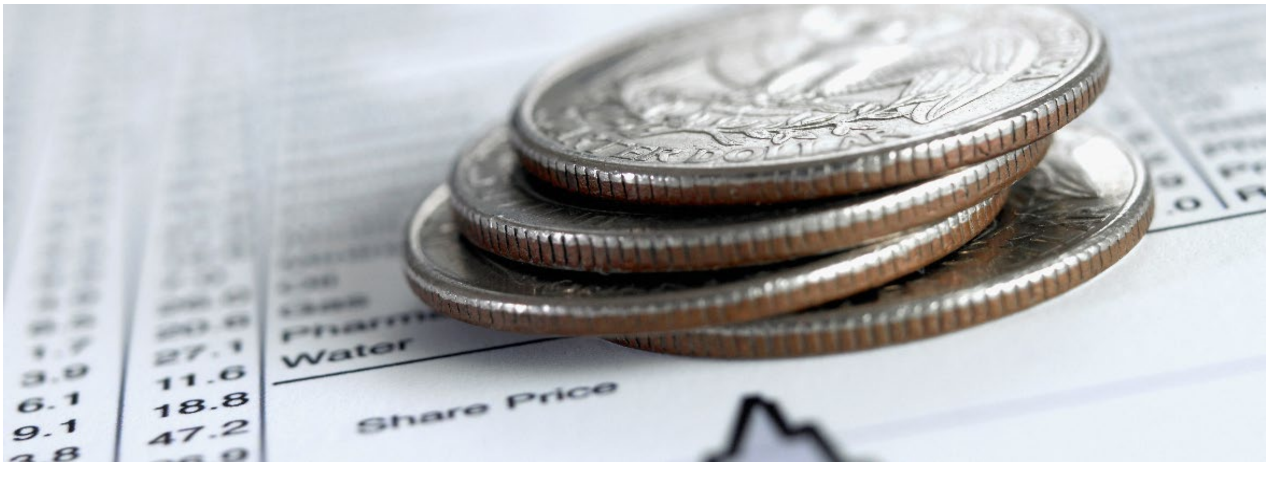
Part	Key Amendments	Comments
1. Notable Definitions (Regulation 2)	"resident" means a person who resides consecutively or whose center of predominant economic interest is in Tanzania for twelve months or more.	The new Regulations do not provide for meaning of 'predominant economic interest' and there may be challenges with this interpretation upon the implementation of the Regulations. Unlike the Income Tax Act's definition, there is no clarity provided on the period test i.e. whether twelve months implies calendar year end or any other year end The definition also does not align with the Income Tax Act, 2004 (RE 2019) definition of a resident i.e. the threshold period of six-months versus twelve months under this Regulation.
	"prescribed territory" means a member country of the East Africa Community or Southern Africa Development Community.	This definition is to allow investment flow within the EAC and SADC in order to improve trade across the region. It may be the case that this Regulation may need to be amended to expand the scope in the future, given that Tanzania has ratified the African Continental Free Trade Area (AfCTA).

Key Amendments

Part	Key Amendments	Comments
1. Notable Definitions (Regulation 2) continued	"capital account transaction" means capital or financial flow which alters the assets or liabilities, including contingent liabilities, outside the United Republic of a person resident in the United Republic or assets or liabilities in the United Republic of a person resident outside the United Republic;	The words assets or liabilities have not been defined and it will be important that such definition is provided in order to align with the International financial reporting standards and Income Tax Act, 2004 (RE 2019) to avoid ambiguity when determining capital account transactions.
	"current account transaction" includes- (a) payment for goods and services imported or exported and short-term credit facilities in the ordinary course of business; (b) payments for or receipts of coupon, dividends, interest on loans and net income from investments; or (c) remittances to or from abroad for living expenses, travel, education, medical care, insurance, retirement benefits, consultancy fees and other expenses of similar nature	The term short term credit facilities should be defined and align with the international financial reporting standards in order to clearly differentiate with long term credit facilities.
	"exporter" means a person who sells goods or services supplied in the United Republic to customers residing outside the United Republic	The definition does not provide for export of services. There should be an alignment on how to determine export of services to avoid ambiguity and this should align with the VAT Act, 2014 (RE 2019) criteria for export of service.
2. Dealing in Foreign Currency and Gold (Regulation 3)	**Restriction for resident individuals to open and maintain an account outside Tanzania**. *A resident shall not open or maintain an account outside Tanzania except:* - For the settlement of securities in the EAC or SADC; or - Expressly permitted by the Governor	There may be adverse implications for resident expatriates based in Tanzania in terms of compliance. This is because the majority of expatriates maintain their bank accounts from their home countries. Accordingly, there may be a need for BoT to provide clarity and additional exceptions in order to minimize the administrative burden of approving all request for approval that would be made by these expatriates to the Governor.

Key Amendments

Part	Key Amendments	Comments
2. Dealing in Foreign Currency and Gold (Regulation 3) continued	**Facilitation of border trade** Subject to directives that may be issued by the Bank of Tanzania (BoT) for purposes other than for travel; • An individual may be allowed to remit currencies of neighboring countries through a bank or financial institution for specified purpose; and • Import into or export from Tanzania any amount of currencies from countries sharing boarder with Tanzania provided that the person is a national from neighboring countries.	This will allow stimulate cross-border trade with neighboring countries.
	Account relationship An exporter shall make sale of foreign currency through a bank or financial institution where he maintains an account relationship.	This will create hurdles for traders involved in importation especially when there is a shortage of foreign currencies in the local market.
	Payment by non-resident to residents A non-resident individual shall not do or refrain from doing any act with intent to delay receipt, or extinguish the right of such resident person in Tanzania to receive payment in full or partly	It is not clear how this measure can be enforced given that the non-residents are based outside Tanzania. More information is needed on the measures that will be taken against the non-residents. Otherwise, it will be difficult to enforce.



Key Amendments

Part	Key Amendments	Comments
3. Current Account Transactions (Part III of the regulations)	I. Export Transactions	
	Export proceeds and other receipts Exporters are to provide reasons in writing as prescribed in Form B for shortfall or excess compared to the value stated in the relevant documents and a bank or financial institution shall within seven days upon receipt of reasons, submit such information to the BoT.	There may be reconciliation issues for exporters with huge volume of transactions. Record-keeping will be important by the exporter on the sale agreement, invoices, credit notes and debit notes. It is not clear whether the same will be applicable for export of services more clarification is required.
	Prohibition of under pricing An exporter is prohibited from underpricing of export of goods or services.	It is not clear how the issue of underpricing will be determined as no reference is made to Income Tax Act, 2004 (RE 2019) from Transfer Pricing perspective. Disputes may arise incase there is differences in determining the underpricing of export between BoT and the TRA.
	Time of exportation of goods Goods are considered to have been exported based on customs rules.	The Regulations does not provide for time of export of service. This should be aligned with the VAT Act, 2014 (RE 2019) which will lead to difference in interpretation.
	Restriction on offsetting of financial claims Offsetting of financial claims on export transaction between two related affiliate companies is not permissible.	It is normal for multinationals to have intercompany/related party transactions which are offset in order to minimize the obligation to transfer payments. The Regulations have not provided for whether the same restriction will apply for export of services.

Key Amendments

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3. Current Account Transactions (Part III of the regulations) continued	**II. Outward remittances** Prior to making remittances outside Tanzania the following are the compliance requirements that should be fulfilled:		
	Insurance and reinsurance policy	Non-objection letter from the Commissioner of Insurance	A compliance requirement for the insurance sector. More clarification should by provided by the Commissioner of Insurance on the documentation, process and timeline so that it does not affect the insurance industry value chain.
	Consultancy, management or royalty agreement	Contractual agreement or invoices and tax clearance certificate from the Tanzania Revenue Authority (TRA).	This may create disputes between overseas service providers and residents in Tanzania due to delay in payment and services may end being withheld. BoT should consider the consequences of such measures for smooth operation of the business. To create efficiency for the TRA to expeditiously process TCC application, the e-filing should be upgraded to accommodate TCC applications. It should be also clarified in terms of remedy in situation where invoices are cancelled.
	Technology transfer agreement	Evidence that the agreement is registered with the Tanzania Investment Centre (TIC).	This will create an additional compliance burden to taxpayers with technology transfer agreements especially for the financial services industry. The TIC should provide details of the documentation required, the process and timeline for registration.

Key Amendments

Part	Key Amendments		Comments
3. Current Account Transactions (Part III of the regulations) continued	II. Outward remittances		
	Mobile money operator or authorized financial service provider	Mobile money operators may make outward remittances within prescribed territories without supporting documents provided the remittance is within the threshold amount per transaction per day as provided by relevant authorities.	It facilitates mobile money transfer within EAC and SADC regions which will improve financial inclusion but increase the volume of transaction. More compliance requirement for mobile money operator in terms of supporting documents.
	Dividends	Audited financial statements, or dividend payment notice indicating declared dividends or board of directors/ shareholders approval and tax clearance certificate from the Tanzania Revenue Authority (TRA).	This Regulation has provided alternative dividend declaration documents in place of audited financial statements. The aim is to simplify the process of remitting dividends to shareholders incase the signed audited financial statements have been delayed to be issued.

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