

## **TAX ALERT**

**22 October 2019**

### **A Snapshot of Tax Dispute Settlement Processes in Tanzania**

#### **1. Introduction**

Benjamin Franklin once asserted that “nothing can be said to be certain, except death and taxes”. This statement is relevant to date. Meaning, as a person will undoubtedly die so she/he will certainly have to pay taxes. In the course of taxing and tax administration, tax disputes between taxpayers and the tax authorities are inevitable. This is so because of the competing interests between the tax authorities, who aim at ensuring taxpayers, duly comply with the laws (in letter and in spirit) and taxpayers, who look for opportunities to minimize the tax liability. This tax alert provides a synopsis of how to manage tax disputes in Tanzania.

#### **2. How Tax Disputes Arise**

One of the primary functions of the Tanzania Revenue Authority (TRA) or any tax authority is to ensure compliance of tax laws by taxpayers by paying the correct amount of tax. In a system of self assessment TRA is also vested with powers to examine or audit tax returns to ascertain accuracy of the tax paid and the returns filed. In discharging this obligation, disagreement on the tax payable are bound to happen. Most of times, TRA will vouch for underpayment and issues an assessment or reassessment demanding additional payment of tax. Other tax disputes may arise from enforcement action(s) (such as tax recovery measures), imposition of late payment of taxes, interests and/or penalties.

Another facet of disputed tax amount (assessment) may be a result of disagreements as to the facts or interpretation of the respective tax legislation. Some of the disputes could be a result of tax authority’s arithmetic mistake or interpretation of tax statutes.

TRA’s silence or inaction in making certain decision such as registration of taxpayers, tax refunds and registration of customs agents may sometimes bring about tax disputes.

For taxpayers, it is important/economical that the disputes are resolved in an efficient and timely manner.

#### **3. Tax Dispute Processes**

Tanzania operates a self-assessment system, where taxpayers are obliged to file a tax return indicating the tax liability and pay taxes within the prescribed time.

A self-assessed tax liability may either be accepted or rejected by the Commissioner General of TRA. Where the TRA rejects the taxpayer’s assessment, the Commissioner General will issue an adjusted assessment. The taxpayer will be notified on the reason(s) of the adjustments, date of

payment of additional tax payable; time of payment, place and manner of objecting the assessment.

The powers to adjust an assessment is limited to 5 years from the date of filing the tax return, for self-assessment and in the case of any other assessment, the date of service of notice of assessment on the taxpayer. There is no time limit to the adjusted assessment where fraud, willful neglect or serious omission was made by or on behalf of the taxpayer.

If the taxpayer is aggrieved by the adjusted assessment, he/she can file an objection to the Commissioner General within 30 days from the date of service of the assessment, stating grounds in respect of which the objection to an assessment is made.

Where the taxpayer fails to file an objection within the prescribed time, he/she may apply to the Commissioner General for extension of time, showing reasonable grounds to warrant the extension. For objection to be admitted, the taxpayer is obliged to make a deposit of the tax assessed, which is not in dispute or one third of the assessed tax decision; whichever is greater. If the taxpayer has good reasons not to make a deposit, he/she can apply for waiver to the Commissioner General. The Commissioner Generals' decision on waiver is appealable to the TRAB.

Upon admission of an objection, the Commissioner General may determine the objection as filed, or call for any evidence as may appear to be necessary for the determination of the objection. In his determination, the Commissioner General may either amend the assessment or refuse to amend the assessment. Commissioner General shall then serve the objector with a notice setting out the reasons for the proposal of his decision. Where the taxpayer disputes the proposal, the Commissioner General will proceed to make the final assessment of tax and accordingly serve the objector with a notice thereof.

The taxpayer if aggrieved by that decision, may appeal to TRAB, notice of appeal should be served upon the Commissioner General within 30 days from final determination of tax assessment. Also, the appeal must be lodged before TRAB within 45 days following the date on which the notice of final determination of tax assessment was served upon the taxpayer.

TRAB is vested with the sole jurisdiction to deal with all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the TRA. This implies that disputes of criminal nature such as disputes over compounding of offences cannot be entertained by TRAB.

Before the Board, the taxpayers may appear either in person or by their duly authorized agent such as advocates or accountants. It is also notable that the onus of proving that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous shall be on the taxpayer. TRAB after hearing the parties may confirm, reduce, increase or annul the assessment concerned or make such other order as it may think fit or just.

A party who is aggrieved by the decision of TRAB may appeal to the Tax Revenue Appeals Tribunal (TRAT). Appeals against the decision of the TRAT lie to the Court of Appeal of Tanzania, on points of law only.

#### **4. Tax Disputes can be Reduced/ Avoided**

As discussed above, most of tax disputes arise from tax assessments. There are several ways through which taxpayers can reduce potential tax dispute with the tax administration. With proper tax understanding from a tax practitioner, taxpayers may reduce potential tax disputes by pre-arranging their tax affairs or tax liability before engaging into any arrangement that may expose them to tax liabilities. This will ensure certainty in their dealings and taxation at large.

In the event there are uncertainties on the interpretation of tax laws, taxpayers may obtain a binding private ruling from the Commissioner General as provided for under the law. This will do away with all uncertainties regarding tax liabilities. A similar approach may be taken to avoid transfer pricing disputes by entering into Advance Pricing Agreements (APA) with TRA to agree in advance on specific method which the taxpayer is to use to determine acceptable transfer prices.

#### **5. Conclusion**

Tax laws shapes the nature of almost every important business transaction and its compliance or non compliance has significant impact on the business or transaction. Therefore, taxpayers should avoid environment where litigation is a solution. Tax planning and early involvement of tax experts would enable them (taxpayers) to avoid or reduce potential tax disputes in the first place as well as properly manage them in the event they ensue.

***Disclaimer:** This tax alert has been posted for information purposes only. The information and/or observations contained in this alert do not constitute legal advice and should not be acted upon in any specific situation without appropriate legal advice. Should you need further details please contact:*

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