

## **TAX ALERT**

**31<sup>st</sup> March 2020**

### **The Tax Revenue Appeals Tribunal clarifies on what constitutes a final determination of an objection**

On the 29<sup>th</sup> January 2020, the Tax Revenue Appeals Tribunal (“TRAT”) made an important ruling in *Ultravetis (T) Limited v. Commissioner General (TRA)*, Appeal No. 20 of 2019, on what constitutes a final determination of an objection by the Commissioner General.

#### **Facts of the Case**

The Appellant, Ultravetis, is a limited liability company that deals with importation and distribution of animal health care products. The Appellant was served with a notice of assessment with a total tax liability of TShs 117,404,064.80, for the year of income 2014. Being aggrieved by this assessment, the Appellant filed an objection which was admitted by the Respondent. In response to the objection, the Respondent issued an amended assessment with an uplifted figure of TShs 472,765,000.52.

Aggrieved by this amended assessment, the Appellant filed an appeal before the Tax Revenue Appeals Board (“TRAB”), challenging the original assessment with a tax liability of TShs 117,404,064. At the TRAB, the Respondent raised an objection that the appeal was incompetent for failure to attach the final determination of the assessment by the Commissioner General as required under Regulation 7(2) (c) of the Tax Revenue Appeals Board Rules of 2001 (Currently found under Rule 6(2)(a)(iii) of the Tax Revenue Appeals Board Rules, 2018). The TRAB upheld the objection and went on to dismiss the appeal for being filed prematurely.

Dissatisfied with the decision of TRAB, the Appellant preferred an appeal to the Tax Revenue Appeals Tribunal (TRAT), on the following grounds:

1. The Board erred in law by holding that the appeal before it was filed prematurely.
2. That the Board erred in law and fact by holding that the Appellant did not adhere to the law requirement under section 52(4) of the Tax Administration Act, 2015.
3. That the Board erred in law by holding that, the law requires the Appellant on receiving the notice of amended assessment to make a submission to the Respondent.

#### **Arguments by Counsel for Appellant (Ultravetis)**

It was the Appellant’s submission that all steps for the determination of objections set out under section 52 of the Tax Administration Act, 2015 (“TAA”) were fully followed and fulfilled. The Appellant also argued that the law does not provide for an avenue to the Appellant, after receipt of an amended assessment arising from determination of the objection, other than appealing to the TRAB. Further to that, section 52(5) of the TAA, does not prescribe the format of the final

determination of the objection by the Respondent. In that regard, the notice of amended assessment, which was issued after receipt of a submission by the Appellant under section 52(4) of TAA, constitutes a final determination of the objection, thus the appeal was properly filed before the TRAB.

### **Arguments by Counsel for Respondent (TRA)**

The counsel for Respondent submitted that, the notice of amended assessment which the Appellant relied on in her appeal, is not the final determination of tax liability by the Commissioner General as envisaged under section 7(2) of the TRAB Rules of 2001. He further argued that, the Respondent neither confirmed the original assessment with a liability TShs 117, 404, 064.80 nor amended it in accordance with the objection. Instead, the Respondent uplifted the assessment to TShs 472,765,000.52 after noting that the previous assessment was erroneously made. The Appellant was therefore, required to object on the new findings i.e. the amended assessment.

### **Tribunal's decision**

The main issue for determination by TRAT was whether an amended assessment constitutes a final determination by the Commissioner General so as to trigger an appeal to the TRAB.

The Tribunal held that:

- In terms of section 52(3) of the TAA, where the Commissioner General intends to amend the assessment in accordance with the objection or refuse to amend the assessment, he must serve the objector with a notice setting out the reasons for the intended decision.
- The objector (taxpayer) who receives a proposal under section 52(3) of TAA is required to make a submission in writing to the Commissioner General on his agreement or disagreement with the amended assessment or refusal to amend the assessment as per section 52(4) of TAA.
- The Commissioner General upon receipt of the submission by the objector is enjoined under section 52(5) of TAA, to make a final determination on the objection.
- Since the amended assessment served to the Appellant was based on the objection and new facts were introduced, the Appellant was required to file written submission under section 52(4) of TAA before the Respondent could issue the final assessment under section 52(5) of TAA.
- Given that, the Appellant after receiving the amended assessment did not make a written submission to the Respondent, as required under section 52(4) of TAA, which would have enabled the Respondent to make a final decision, the TRAB was right in holding that the appeal was filed prematurely before the Board as there was no final decision of the Commissioner General.

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