



Keeping you in the loop

Six months tax objection determination deadline

The Finance Act, 2020 that became effective on 1 July 2020 made some crucial amendments to the Tax Administration Act, Cap 438 [RE 2019] ("TAA"). The amendments dealt with the tax dispute resolution mechanism in Tanzania, specifically the resolution of objections filed with the TRA.

This communication highlights the key issues resulting from these amendments and related potential implications to taxpayers.

Introduction

In our budget highlights and the tax alert after the release of the Finance Act, 2020, we shared some crucial amendments that were made to the Tax Administration Act, Cap 438 [RE 2019] ("TAA"). The amendments dealt with the tax dispute resolution mechanism in Tanzania, specifically the resolution of objections filed with the TRA.

The Finance Act, 2020 amended section 52 of TAA by incorporating several consequential subsections. The relevant subsections in this case are 10 and 11. The amended section 52 of the TAA states that;

"52 (10) The Commissioner General shall determine an objection to a tax decision within six months from the date of admission of the notice of objection.

*(11) Where the Commissioner General fails to determine the objection within the time prescribed under subsection (10), **the tax assessment or tax decision shall be treated as confirmed and the objector shall have the right to appeal to the Board in accordance with the Tax Revenue Appeals Act.**"*

These provisions are of crucial importance and have far reaching implications in the tax dispute resolution. We summarize the key issues below:

1. Commissioner General is required to determine the objection within six months

The added new subsection 10 under section 52 of TAA requires the Commissioner General to determine the objection within six months from the date of admission of objection. Prior to the amendment, the Commissioner General was not constrained by a time limit with respect to determining an objection.

2. When the Commissioner does not determine the objection within the prescribed time, the onus of appealing the decision falls on the taxpayer.

The amendment went further by shifting the burden to the taxpayer when the Commissioner General fails to determine the objection within the six months period.

The new subsection 11 provides that if the objection is not determined within the six-month period after the objection is admitted by the Commissioner, the tax decision or assessment shall be treated as confirmed.

Accordingly, the taxpayer / objector shall have the right to appeal to the Tax Revenue Appeals Board ("TRAB") in accordance with the provisions of the Tax Revenue Appeals Act, Cap 408 [RE 2019] ("TRAA").



3. The implication of the amendments to taxpayers

When the objection is admitted by the Commissioner General, a taxpayer would be prudent to monitor and track the expiration of the six months period. In case the objection is not determined by the Commissioner General within six months, then appeal procedures as laid down in the TRAA should be followed.

This is important because the TRAA sets out the time limit within which a taxpayer should file the intention to appeal an objection decision with the TRAB. Section 16 of the TRAA requires a taxpayer aggrieved by the final determination of the Commissioner General, and intending to appeal to such decision to the TRAB, to file a notice of intention to appeal within 30 days and lodge an appeal within 45 days from the date of the final determination of the objection. Simply put, the provisions of the TRAA relating the appealing an objection decision kicks in six months after the objection has been admitted or when the TRA issues a determination of the objections, whichever comes earlier.

Failing to file the notice of intention to appeal and the statement of appeal within the prescribed due dates may invalidate the appeal with the effect of the right of the taxpayer to appeal the objection decision being lost.

4. Practical considerations relating to the changes to the Tax Administration Act.

Dealing with the time between the filing of objections and formal communication of admission of such objections from the TRA. The counting of the six months' time limit should begin from the date when the objection is admitted. However, experience indicates that there are cases where a taxpayer files an objection and takes all necessary steps to validate the objection (including the payment of the 1/3rd deposit or requesting for a waiver of the deposit) but the TRA may take a while to communicate its admission of objections. It is prudent in this case to follow up with TRA to confirm admission of such objection.

- In the absence of such confirmation, a taxpayer may consider a conservative risk mitigating approach and start to count the six months from the time when all necessary steps to validate the objection were completed, which is typically the due date of the objections.

Simply put, the provisions of the TRAA relating appealing an objection decision kicks in six months after the objection has been admitted, or when the TRA issues the final determination, whichever comes earlier.

The six months time limit ceases only when the objection is finally determined by the CG. The provisions of the TAA are silent with respect to objections where the TRA has initiated a determination process but has not completed the determination within the six months period.

There may be situations in which the six months time limit may expire when the Commissioner has initiated the processes of determining the objection (such as the issuance of a proposal to settle the objection). In this situation, a taxpayer would still be prudent to initiate appeal procedures since the objection will be deemed determined when the time limit elapses.



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