

**TAX LAW**



**THE FINANCE ACT, 2020: THE NEW ERA OF BUSINESS TRANSPARENCY**

**I. INTRODUCTION**

The Finance Act, 2020 (Act No. 8 of 2020) has amended 18 laws in Tanzania with a view to imposing and altering certain taxes, duties, levies and fees in order to safeguard the collection and management of public revenues. Among others, the amendments focused on the imposing and enhancing business transparency and compliance. Specifically, the Anti-Money Laundering Act, Cap. 423, the Companies Act, Cap 212, the Income Tax Act, Cap. 332, the Trustees Incorporation Act, Cap. 318 have been amended to impose and deal with the new concept of beneficial ownership. This update reviews the changes brought about these amendments to highlight the important regulatory and compliance features as well as provide necessary general legal information to our clients.

**2. AMENDMENT OF THE ANTI-MONEY LAUNDERING ACT, CAP. 423**

**Identification of entity owners for Anti-Money Laundering Compliance**

The Anti-Money Laundering Act, Cap. 423 has been amended to incorporate and introduce the new concept of beneficial owner of an entity in order to establish parameters for identifying owners and beneficiaries in various entities for tax purposes in Tanzania. According to the amendment, the term beneficial owner has been defined to encompass a natural person:

- a) Who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement;
- b) who has a substantial economic interest in or receives substantial economic benefit from an entity or an arrangement directly or indirectly whether acting alone or together with other persons;
- c) on whose behalf an arrangement is conducted; or
- d) who exercises significant control or influence over a person or arrangement through a formal or informal agreement.



**KEY ISSUES:**

- The imposition of mandatory requirement for disclosure of beneficial owners of an entity in order to identify owners and beneficiaries for tax purposes
- The introduction of mandatory requirement for Corporate tax Residence for entities registered in Tanzania the purpose of Taxation.
- The Amendment of the Fair Competition Act that changed the mode of calculating the the penalties and fines imposed to be based on the annual turnover of an Entity which has a source in mainland Tanzania.

It is important to note that the word “arrangement” is a legal term that has been defined under the Income Tax Act, Cap. 332. Arrangement includes, an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person. Therefore, for the purpose of anti-money laundering, beneficial owner encompasses not only a person on whose behalf an arrangement is conducted but also a person who exercises significant control over an arrangement whether formal or informal.



For the purpose of enforcing the law and compliance, section 15 (2) of the Anti-Money Laundering Act has also been amended to require beneficial owners of entities or arrangements to produce their detailed personal information such as full names, date and place of birth, telephone number, nationality, national identity, passport number or other appropriate identification and proof of identity to a reporting person (such as bank, real estate agents, accountants, attorneys, regulator, customs officer, regulator).

### 3. AMENDMENT OF THE COMPANIES ACT, CAP. 212

#### Disclosure of Beneficial Owners of the Company

The concept of Beneficial ownership has also been embodied in the amendment of the Companies Act, Cap. 212. Like the amendments made under the Anti-Money Laundering Act, Cap. 423, the Companies Act also requires the Company to deliver to the Registrar of Companies accurate and up to date records/information of beneficial owners of such company. The information entails, full names, date and place of birth, telephone number, nationality, national identity, passport number or other appropriate identification and proof of identity.



Further, any changes to the beneficial ownership must be reported to the Registrar within 30 days of such changes. The new Section 451A and Section 451B have also been added into Companies Act requiring the Registrar of Companies to maintain a register of Beneficial Owners. According to Section 451B, the Beneficial Owners’ information kept by the Registrar of Companies will only be accessible to the Government entities and authorities dealing with Anti-Money Laundering and terrorist financing, Tanzania Revenue Authority, Financial Intelligence Unit and other relevant Government Institutions responsible for overseeing or implementing economic empowerment of Tanzanian nationals.

#### About FIN & LAW

FIN & LAW is a full service highly accredited law firm in Tanzania with top notch legal practice on corporate and commercial matters including Banking Law and Capital Markets, Wealth Management, Trustee Services, Insolvency, Intellectual Property law, Mining, Oil & Gas, Tax, Investment, Gaming, Telecommunication, Land and Real Estate, Merges and Acquisitions, Competition, Anti-Trust Law, Dispute Resolution (Commercial Litigation, Arbitration and Mediation) and White Collar Crime.

The amendment of the Companies Act has set the time frame of 6 months from 01st July, 2020 to comply with the requirement of the law i.e. provide accurate and up to date information of beneficial owners of the company. However, the Minister responsible for trade may extend such time.

#### 4. AMENDMENT OF THE INCOME TAX ACT, CAP. 332

##### Disclosure of Beneficial owners and Tax Representatives

Like the Anti-Money Laundering Act, Cap. 423 and Companies Act, Cap. 212, the Income Tax Act, Cap. 332 has also incorporated the concept of Beneficial Ownership. Besides introducing the Beneficial Ownership Concept, the Income Tax Act has in addition, introduced other concepts relating to tax residence and fiscal domicile in Tanzania including:-

- a) Representative Assessee which has been defined as an agent of a non-resident person or of a beneficial owner for the purpose of tax Assessment in Tanzania
- b) Agent of a non-resident person or of a beneficial owner has been defined to include and encompass any person:-
  - i). who is employed by or on behalf of a non-resident person or a beneficial owner;
  - ii). who has any business connection with a non-resident person or a beneficial owner;
  - iii). from or through whom a non-resident person or a beneficial owner is in receipt of any income, whether directly or indirectly; or
  - iv). who is a trustee of a non-resident person, and includes any other person who, whether a resident or non-resident, has acquired by means of a transfer, a capital asset situated in the United Republic
- c) more notably is the introduction of the concept “Business connection”. According to the amendment, the term Business Connection has been broadly defined to include any business activity carried out through a person who, acting on behalf of the non-resident person or a beneficial owner. Therefore, in order to determine whether a person is acting under business connection the law stipulates that, a person:-
  - i). has and habitually exercises in the United Republic, an authority to conclude contracts on behalf of the non-resident person or a beneficial owner;
  - ii). habitually concludes contracts or plays the principal role leading to conclusion of contracts by that non-resident person or a beneficial owner, and the contracts are-
    - whether or not in the name of the non-resident person or the beneficial owner;

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- for the transfer of the ownership of, or for the granting of the right to use property owned by that non-resident person, or that non-resident person has the right to use; or
  - for the provision of services by the non-resident person or the beneficial owner;
- iii). has no such authority but habitually maintains in the United Republic a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident person or the beneficial owner;
- iv). habitually secures orders in the United Republic, mainly or wholly for the non-resident person or for that non-resident person and other non-resident persons controlling, controlled by, or subject to the same common control as that non-resident person, or for the beneficial owner; or
- v). carries out any business or investment in the United Republic through an entity or an arrangement for economic benefit of a non-resident person or beneficial owner, whether directly or indirectly;

It is important to note that, the introduction of all these terms such as Beneficial Ownership Concept, Representative Assessee, Agent of a non-resident person or of a beneficial owner and Business connection to the Income Tax Act are meant to cover the possible loop holes in tax avoidance and tax evasion of multinational companies/entities doing business or domiciled in Tanzania. More importantly is to ensure entities registered or doing business in Tanzania have their tax residence and fiscal domicile in Tanzania.

- d) Further, the amendment of the Income Tax included the amendment of Section 16 to include voluntary contribution to the AIDS Trust Fund and contributions to the Government in the fight against Coronavirus disease (COVID-19) in the list of allowable deductions in order to motivate voluntary contributions by entities.
- e) Moreover and equally important to note, is the applauded amendment of the First Schedule to the Income Tax that increased the minimum income threshold for individual income that will not be subject to tax from TZS 170,000 to TZS 270,000 per month.;
- f) Furthermore, the Second schedule to the Income Tax Act has been amended to Increase minimum threshold of Primary Cooperative societies liable to Income tax from TZS 50 Million to TZS 100 Million so as to provide tax relief to primary Cooperative Societies and Saving and Credit Societies.

## 5. AMENDMENT OF THE TRUSTEES INCORPORATION ACT, CAP. 318

Just like the amendments made to the Anti-Money Laundering Act Cap. 423, the Companies Act, Cap. 212, the Income Tax Act, Cap. 332, the Trustees Incorporation Act, Cap. 318 has also been amended to incorporate the requirements for the Disclosure of Beneficial Owners of the Trusts.

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## **OTHER NOTABLE AMENDMENTS**

### **6. TAX ADMINISTRATION ACT, CAP. 438**

Tax Administration Act Cap. 438 has also been amended by the Finance Act, 2020 to provide among others a clarification on several Tax Administrative matters.

A new Section 27(3) has been added to provide for recognized Tax representatives to include practising advocate, a tax consultant or such other person authorised by power of attorney by the taxpayer. Initially the law did not specifically provide as to who has mandate or authorized to represent a tax payer in any matter.

Furthermore, the amendments also have focused on the production of documents during and when the tax objector files its objection with the Commissioner General. According to the Amendments, failure to submit documents during the filing of objection, such objector shall not be permitted to rely on such document or information at the time of hearing of an appeal.

More importantly the amendment to the Tax Administration Act has imposed the time limit for the Commissioner General to determine Tax objections. The amendments requires the Commissioner General to determine an objection to a tax decision within 6 months from the date of admission of the notice of objection failure of which the tax assessment or tax decision shall be treated as confirmed and the objector shall have the right to appeal to the Tax Revenue Board. The amendments will thus bind Commissioner General to have time frame upon which to give decision of the tax objections. Earlier, the law was silent hence led to backlogs of tax objections at Commissioner General level.

### **7. AMENDMENT OF THE FAIR COMPETITION ACT, CAP. 285**

Section 60(1) of the Fair Competition Act, Cap. 285 has been amended to clarify and specifically provide on the fines imposed by the Act. Previously, the law was not clear and explicit to the basis upon which the calculation of the penalty would base upon that is annual turnover of the Company. The main challenge was turn over would be calculated from which source of income? Income generate in Tanzania or even income generated elsewhere (particularly to foreign based entities)

Following the amendment, the penalties and fines imposed would be calculated based on the annual turnover which has a source in mainland Tanzania. Consequently, the section provides thus, "where a person commits an offence against this Act (other than under Part VI, Part VII or sections 58, 59 or 88) or is involved in such an offence, the Fair Competition Commission may impose on that person a fine of not less than 5% but not exceeding 10% of his annual turnover which has a source in mainland Tanzania. Consequently, effective upon the amendment, failure to notify the Fair Competition Commission on a notifiable merger in Tanzania may result to a fine of between 5% and 10% of the annual turnover which has a source in mainland Tanzania to any of the parties to the merger. It is also important to note that, according to Section 60(3) of the Fair Competition Act, any director, manager or officer may also be charged jointly with the Company and liable to pay the fine.

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It relevant to note that, according to the Fair Competition (Threshold for notification of Merger) (Amendment) Order 2017 the threshold for reporting a merger transaction (change of control of a business, part of a business or an asset of a business in Tanzania) is TZS 3.5 billion which is calculated on the total value of assets or turnover of the merging firms.

#### **8. AMENDMENT OF THE VALUE ADDED TAX CAP 148**

Value Added Tax Cap. 148 has been amended to provide VAT Exemption on Agricultural Crop Insurance in order to reduce costs for Agricultural insurance in the event of tragedies. In Tanzania, insurance Services are subject to 18% VAT

#### **9. AMENDMENT OF THE VOCATIONAL EDUCATION AND TRAINING ACT, CAP. 82**

The Skills Development Levy (SDL) which is part of the mandatory employment taxes (payroll tax), has been reduced from 4.5% to 4% as a measure to relieve employers from cost of employment

#### **10. AMENDMENT OF THE ELECTRONIC AND POSTAL COMMUNICATIONS ACT, CAP. 306**

The amendment is meant to Exclude Government owned entities and telecommunication tower listing companies from the mandatory requirements of stock exchange listing. According to Section 26(3) and 26(4) of the Electronic and Postal Communications Act, it is the requirement of the law for the Network Facilities, Network Services, Application Services or Content Services Companies to offer shares to the public and subsequently list with the Stock Exchange in accordance with the requirement of the Capital Markets and Securities Act Cap. 79 within three years from the date of grant of the license. Thus, following the amendment, the Government owned entities/companies are thus excepted form this requirement. This is meant at protecting shares owned by Government from dilution.

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