

Court of Appeal rules in favour of taxpayer in withholding tax case

- Issue of withholding tax on services not rendered in Tanzania now settled
- Big relief to the private sector
- Court issues an unbiased opinion against TRA
- Recommends the law be changed

In what has been a controversial interpretation and application of the Income Tax Act 2004 (Income Tax Act) by the Tanzania Revenue Authority (TRA) on the issue of whether or not withholding tax applies to services rendered to a Tanzanian entity by a non-resident service provider from outside Tanzania, the Court of Appeal has today dismissed TRA's appeal and ruled in favour of the taxpayer.

The parties to Civil Appeal No 146 of 2015 were TRA as the Appellant and PanAfrican Energy Tanzania Limited (PanAfrican Energy or the Company) as the Respondent, where PanAfrican Energy was represented by FB Attorneys as one of the counsels.

Snapshot

Facts

The Company did not withhold tax on payments made to non-resident service providers as the services were not rendered in Tanzania.

Issue

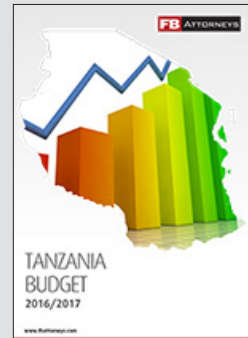
Whether or not such payments made to non-resident suppliers of services rendered outside Tanzania attracted withholding tax in Tanzania under the purview of section 69(i)(i) read together with section 83(1)(c) of the Income Tax Act.

Holding and ruling

The Court of Appeal held that:

1. Construction of the section is tied to the place where the services are rendered.
2. Section 69(i)(i) does not impose liability on an individual Company to withhold tax where service fee is paid in relation to services rendered out of Tanzania regardless of the fact that payment is made by a Company registered in Tanzania.
3. Since the services were not rendered in Tanzania, such payments had no source in Tanzania and hence withholding tax does not apply.
4. The Court is bound to interpret the law in its true perspective and cannot create a situation in the statute that was not intended by the legislature.
5. Best way for the Government to remedy the situation so as not to allow loss of income to the Government is to amend the law as was the case in India.

Judgment delivered by the Court of Appeal on Monday 16 May 2016.



Tanzania Budget 2016/2017

To read Tanzania Budget 2016/2017 newsletter please [click here](#).

Around the World

Switzerland voters reject universal basic income plan

Swiss voters rejected a plan that would provide all citizens with a guaranteed basic income. The proposal called for all adults to be paid an unconditional monthly income, regardless of need.

Many of those who supported the proposal suggested a monthly income of 2500 Swiss francs for every adult and 625 francs for every child. However, the results of the vote showed that almost 77 percent of the population opposed the plan.

EU court adviser: employers may ban headscarves in workplace

A legal adviser to the European Court of Justice issued an opinion finding that an employer may ban an employee from wearing a headscarf for religious purposes.

Written by Advocate General Juliane Kokott the opinion holds that "If the ban is based on a general company rule which prohibits political, philosophical and religious symbols from being worn visibly in the workplace, such a ban may be justified if it enables the employer to pursue the legitimate policy of ensuring religious and ideological neutrality."



Strengthening the arm of the law through judicial training - TRAFFI

Magistrates and prosecutors, including law enforcement officers and wildlife management officers adjudicating over wildlife crimes from across Tanzania met last month as part of a programme to strengthen the judicial, prosecutorial and investigative sectors in the fight against wildlife crime.

The meeting was held under the banner of Strengthening Legal Mechanisms to Combat Wildlife Crime - it marked the beginning of a comprehensive programme to strengthen Tanzania's judiciary.

Poaching and associated crime continue to take a major toll on the wildlife in many parts of Africa, affecting not only wildlife, but also damaging communities, local economies and the rule of law.

In several countries, weaknesses and loopholes in wildlife laws and law enforcement provide inadequate deterrents, while prosecuting wildlife crime is not a priority for many of the decision makers controlling implementation of environmental laws through the police, Customs and judicial authorities. The result is a low conviction rate and weak penalties for wildlife crime. These problems are compounded by cross-border challenges such as the lack of harmonization of wildlife laws.

Media Services Law in Pipeline

The government is finalising the process of enacting the Media Services Law that will provide a framework to govern media activities in the country.

The Minister for Information, Culture, Arts and Sports said in Parliament that enactment of the Media Services Law would contribute to the improvement of the management of media activities in Tanzania.

Review of foreign loans starts

It was announced last month that a team of experts has been formed to compile reports of transactions that companies make with non-residents in areas of equity and in all types of foreign loans including trade credits and advances.

The team comprises of senior officials from the Bank of Tanzania (BoT), the National Bureau of Statistics (NBS) and the Tanzania Investment Centre (TIC).

The statement further read that the institutions are mandated by law to collect the information.

Around the World

About a time when a boxer tested the rule of law

When Mohammed Ali died this month, the TV news rolled continuous tributes to this black man who grew up in a segregated South, elevated his voice through success in the brutal sport of boxing and with that voice took positions, both in the courts and through his First Amendment Rights, that challenged the government and even the boxing establishment which banned him during his prime. While Ali will be remembered for many things, many will never forget that he was an American who benefited from the rule of law and aggressively tested its fabric.

HP sells iManage to its founders

The software company provides document management services to many of the top players in the legal marketplace.

Hewlett-Packard has sold legal IT company iManage to its management. The enterprise content management software company, which helps professional services firms securely manage documents and email, was acquired by HP when it bought Autonomy.

Massachusetts House passes transgender rights bill

The Massachusetts House of Representatives passed a bill that provides protection to transgender persons in public places. House Bill 4253 "An Act relative to gender identity and nondiscrimination," provides that those who identify as transgender shall not be subject to discrimination in such public places as hospitals and restaurants, and will allow those who are transgender to use the rest- and locker-rooms of the gender with which they identify.



New Film Industry Law to be enacted

A new legislation for the film industry is in the offing, the Minister for Information, Culture, Arts and Sports, has announced.

The new law would be enacted after the formulation of a policy for the sector slated for the forthcoming 2016/2017 financial year.

The planned reforms aim to, among other things, protect copyrights of artistic works by local artistes, including film makers and musicians.

World Bank Approve USD 65M Credit To Improve Tanzania Justice Services And Boost Economic Development

The World Bank's International Development Association (IDA), approved in April 2016 a credit of USD 65M for the Tanzania Citizen-Centric Judicial Modernization and Justice Service Delivery Project which aims at improving the efficiency and transparency of, and access to, selected citizen-centric justice services.

The new project responds to Tanzania's Development Vision 2025 and the Judiciary Strategic Plan 2015–2020, part of the government's aim to improve peoples' lives by enhancing the business and investment environment, increasing transparency and reducing poverty.

The Judiciary Strategic Plan contributes to national priorities by supporting improvements in service delivery and increasing access to justice, the World Bank (WB) indicates. According to WB's Doing Business 2016, which provides objective measures of business regulations and their enforcement across 189 economies, in Tanzania it takes 515 days to resolve a commercial dispute, while in Singapore it takes only 150 days.

Around the World

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