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## Finance Bill 2016 to change withholding tax law

- Withholding tax will apply irrespective of place of performance of service
- Court of Appeal recommendation that law be changed taken up
- Section 69(i)(i) to be changed
- Rendering of service further defined
- To come into force 1 July 2016
- Recent judgment in favour of taxpayer shortlived
- Section 83(1) of the Income Tax Act also amended

Investors who were thrilled with the recent decision of the Court of Appeal in the TRA v PanAfrican Energy Tanzania case on applicability of withholding taxes on services rendered by non resident companies to resident companies from outside Tanzania have only 17 days more to smile.

The Finance Bill 2016 has proposed to change the relevant withholding tax section in the Income Tax Act 2004. Section 69(i)(i), which was ruled in favour of the taxpayer by the Court of Appeal in the PanAfrican Energy case in that services performed by non resident companies to resident companies from outside Tanzania should not be imposed with withholding tax, is proposed to be changed on 1 July 2016.

If the Bill goes through, which is likely, all services rendered by non resident companies, irrespective of place of performance will be liable to 15% withholding tax from 1 July 2016. This solidifies the Court's judgment in the PanAfrican case but is bad news for companies that have not been deducting withholding tax on services rendered from outside the country on the basis of the yet to be changed section 69(i)(i). The 15% on such services will now unambiguously apply.

The Finance Bill 2016 which was released today, proposes to change section 69(i)(i) which will now read as follows:

*69(1) The following payments have a source in the United Republic:*

*(a)...(h)*

*(i) payments, including service fees, of a type not mentioned in paragraphs (g) or (h) or attributable to employment exercised, service rendered or a forbearance from exercising employment or rendering service -*

*(i) in the United Republic, regardless of the place of payment; or*

*(ii) where the payer is the Government of the United Republic, irrespective of the place of exercise, rendering or forbearance;*

*With the proposed amendment, a new subsection is proposed to be added, subsection (2) which states:*

*“(2) For the purposes of subsection (1)(i) “rendering of service” means transmitting or delivering of service in the United Republic of Tanzania irrespective of the place of performance of the service”.*

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