

28 July 2018



## Tribunal rules in favour of Taxpayer in latest Withholding Tax case

- Issue of withholding tax on services rendered outside Tanzania still perplexing
- Tribunal rules in favour of Taxpayer based on PanAfrican's decision
- Welcome decision for Taxpayers

Further developments have taken place in the controversial interpretation and application of the Income Tax Act 2004 on whether or not withholding tax applies on services rendered to a Tanzanian entity by a non-resident service provider from outside Tanzania. In what is a welcome decision for Taxpayers especially in the mining and oil and gas sectors, the issue has taken a new standing after the Tribunal delivered its judgment on a similar matter this week. In *Tax Appeal No. 27 of 2016 between Aggreko International Projects Limited and the Commissioner General, Tanzania Revenue Authority (TRA)*, the Tribunal ruled in favour of the Taxpayer (Aggreko).

Despite the recent surprising judgment of the Court of Appeal (Dodoma) in Tullow's case being in favour of TRA (see [link](#) to legal update 6 July 2018), the Tribunal's judgment delivered on 25 July 2018 is to the effect that no withholding tax is payable on services rendered out of Tanzania by non-resident suppliers. The Tribunal decided to stick to the findings of the Court of Appeal's May 2016 decision in the PanAfrican Energy case (see [link](#) to legal update May 2016), which effectively cements the fact that this decision is still valid and binding.

By way of background, the Appellant had filed Tax Appeal No. 27 of 2016 at the Tribunal challenging the decision of the Tax Revenue Appeals Board, which was delivered in favour of TRA to the extent that withholding tax was payable on services rendered outside Tanzania by non-resident suppliers. Aggreko referred her appeal to the Tribunal based on two grounds, namely: (i) the Board erred in law by holding that payments made by the Appellant to non-residents for services performed outside Tanzania have a source in Tanzania hence subject to withholding tax; and (ii) the Board erred in law by holding that TRA was right in law to impose interest on the Appellant.

Further updates and analysis will be provided once a copy of the Tribunal's judgment is made available.

For further information on legal updates please contact:

E: [info@fbattorneys.co.tz](mailto:info@fbattorneys.co.tz)

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### FB Attorneys

8th Floor, Amani Place, Ohio Street  
P. O. Box 19813  
Dar es Salaam, Tanzania  
T: +255 22 2135994/5  
F: +255 22 2135996  
E: [info@fbattorneys.co.tz](mailto:info@fbattorneys.co.tz)  
W: [www.fbattorneys.co.tz](http://www.fbattorneys.co.tz)

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