

8 May 2020



Tax Waiver Rejection Appeals still a Quagmire

- Tribunal cements waiver appeal position
- Court of Appeal decision still haunting tax administration in Tanzania
- Board's position inconsistent with Tribunal
- TRA treatment of one-third waiver rejection decisions inconsistent

Recently, there has been a great amount of uncertainty on what an aggrieved taxpayer is entitled to do when an application for a one-third waiver prior to filing an objection is fully or partially rejected to by the Tanzania Revenue Authority (TRA). There has been inconsistent position by the TRA on whether an appeal against the rejection of waiver should be filed or the taxpayer should object to such a rejection decision.

The shaky waiver appeal position started with the Court of Appeal (the Court) in the case of **PanAfrican Energy Tanzania Limited vs Commissioner General, Tanzania Revenue Authority**, Civil Appeal No 121 of 2018. In this appeal, the Court held that section 16(1) of the Tax Revenue Appeals Act (the TRAA) as amended by the Tax Administration Act, 2015 (the TAA, 2015) restricts the right to appeal available under section 53(1) of the TAA, 2015 to objection decisions only. Since the decision on denial of waiver is not an objection decision, the Appellant's appeal to the Tax Revenue Appeals Board (the Board) was incompetent. The Court's decision has been widely interpreted that another objection on the one-third waiver decision would have to be filed to the TRA before an Appeal can be lodged to the Board. This unwelcome decision not only adds another layer in tax administration, but also increases TRA's workload and prolongs the settlement of the tax dispute on merit.

Subsequent to the Court's decision, in the case of **Sunshine Group Limited vs Commissioner General (TRA)**, Income Tax Appeal No. 327 of 2018, the Board was invited by the parties to determine whether the Board has jurisdiction to entertain appeals arising from non-objection decisions of TRA, denial of one-third waiver being one of them. The Board while distinguishing the PanAfrican's decision, jealously confirmed that, by virtue of section 7 of the TRAA, the Board has exclusive jurisdiction to entertain all appeals of civil nature emanating from the TRA's decisions in administering revenue laws. Furthermore, the Board distinguished PanAfrican's Court of Appeal decision by stating that the PanAfrican's case was based on the interpretation of section 16(1) of the TRAA and section 53(1) of the TAA, 2015, while in Sunshine's matter the Board was dealing with section 7 of the TRAA. This was a welcome decision for taxpayers and likely also for the TRA.

Amid the above developments, the Tax Revenue Appeals Tribunal (the Tribunal) has recently, in the case of **TPCC vs Commissioner General**, Tanzania Revenue Authority, Tax Appeal No. 8 of 2019, held that the jurisdiction of the Board to hear and determine tax disputes is limited to objection decisions only in line with the PanAfrican decision by the Court. The Tribunal ruled that any other decision is not appealable to the Board directly without passing through the objection proceedings with the Commissioner General (TRA).

In the Tax Appeal No. 8 of 2019, the Appellant had requested for one-third waiver so that the objection against the assessment could be admitted and determined without any deposit. TRA turned down the request for waiver and the Appellant appealed directly

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to the Board. The Board ruled in favour of TRA, hence the Appellant appealed to the Tribunal. When the said appeal was called for hearing at the Tribunal, the Respondent (TRA) raised two points of preliminary objection. The said points were that: (i) the appeal is bad in law for violating section 16(1) of the TRAA from its inception at the Board; and (ii) the appeal is bad in law for being against a non-appealable decision. So, the Tribunal was obliged to make a ruling on the preliminary objection first before entertaining the merits of the appeal lodged.

Guided by the Court's decision in PanAfrican Energy's case, the Tribunal held that, in order for a taxpayer to appeal to the Board s/he must first file an objection to the Commissioner General and after the objection decision of the Commissioner General, the aggrieved person has the right to file an appeal at the Board. Further, the Tribunal insisted that the Appellant was required to make sure that the decision appealed against is arising from an objection decision. If the Appellant wanted a one-third waiver decision to be an objection decision, the Appellant should have first objected to the Commissioner's decision to reject the application for waiver, and from there the decision becomes an objection decision that is appealable.

On the other hand, the TRA has surprisingly and inconsistently continued to treat one-third waiver rejection decisions as both non-objectionable and non-appealable. Whenever taxpayers appeal directly to the Board upon receiving one-third waiver rejection decisions, the TRA has been raising preliminary objections that the decision is not appealable as per section 16(1) of the TRAA and the Court's decision in PanAfrican, in that the taxpayer must object to the decision. Also, when taxpayers file objections against the one-third waiver rejection decision, the TRA has been alleging that the objections lack legal basis. Unless the PanAfrican decision is overturned, the TRA will now have no choice but to accept that a one-third waiver decision must be objected to. It will increase TRA's already huge workload and backlog, and delay resolution of tax disputes on their merit in Tanzania.

This situation presents a serious challenge in tax administration in Tanzania, hence the need for both legal and administrative reforms.

To read a copy of the PanAfrican judgment [click here](#).

To read a copy of the Sunshine ruling [click here](#).

To read a copy of the TPCC ruling [click here](#).

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