

14 June 2020



## Finance Bill 2020 seeks to amend Tax Administration Act

- All documents to be filed at objection stage
- 'Flight risk' taxpayer to pay 100% of tax prior to filing objection
- If objection not determined within 6 months, assessment deemed final, taxpayer can appeal to Board

The Finance Bill intends to amend the Tax Administration Act (Act) amongst other laws. FB Attorneys provides this update on the proposed key changes.

### Taxpayer representation

It is proposed that section 27 of the Act, which addresses right of taxpayer to representation, be amended clarifying who can be the taxpayer's representative. The proposed change states that such a representative can be a practicing advocate, tax consultant or any other person who is authorised by the taxpayer by way of power of attorney. This amendment removes ambiguities and will ensure that the TRA are dealing with a duly appointed representative, and will ensure a constructive and streamlined relationship between the TRA and taxpayer. Taxpayers are reminded to formally notify the TRA about appointment of such a representative.

### Notice to obtain information

Under section 44 of the Act, the TRA have the right to obtain information from a person who is not liable for tax, for example third parties doing business with the taxpayer.

The Finance Bill proposes to amend this section by adding that any information that is requested by the Commissioner General from such a person not liable to tax, must be submitted within 14 days. However, if such a person is unable to do so, and requires additional time, the TRA may extend time after an application is filed and sufficient cause established.

The amendment further states that a person who fails to submit information or documents within the time prescribed under the law shall be precluded from using such document or information as evidence at the stage of objection or appeal. The observation here is that the party who will need to use such document or information is likely to be the taxpayer and not the third party and it is to be seen how this will be applied in practice. The drafting may have to be relooked as the Finance Bill gets debated.

### Tax decision

The Finance Bill adds to the list of decisions that are not tax decisions for purposes of objection proceedings "any matter decided under any tax law on account of agreement, consent or admission." As per the Tax Administration Act, such a decision is not objectionable to the Commissioner General which means that the proposed amendment will make any agreement or consent between TRA and the taxpayer not objectionable (on account of the consensuality) in addition to making any confessions not objectionable.

### Objection to tax decision

The Finance Bill proposes to amend section 51 that addresses objections by making it mandatory for taxpayers now to ensure that their objections are accompanied by

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### About FB Attorneys

FB Attorneys is an all service law firm based out of Dar es Salaam, Tanzania.

We cover all aspects of the law and specialise in all corporate and commercial matters including Mining, Oil & Gas, Tax, Litigation, Competition, Banking & Intellectual Property law.

FB Attorneys has been ranked as a tier 1 law firm by the IFLR 1000 in the Energy & Infrastructure and Financial & Corporate sectors, tier 1 by Legal 500 and band 1 by Chambers and Partners General Business Law.

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# LEGAL UPDATE

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relevant documents or information which the taxpayer intends to rely upon. This is to ensure that the TRA has all information from the taxpayer before it makes an objection decision. Taxpayers will now be limited on what 'new evidence' they can bring at the stage of appealing.

## Flight risk

The amendment to section 51 also proposes to give powers to the Commissioner General where he has a reasonable cause to believe that the objector intends to permanently leave the United Republic, that the tax payable as a deposit be 100% of the tax, and not a 1/3 amount.

## Decisions on objections

The Finance Bill proposes to amend section 52 whereby taxpayers can be required by the Commissioner General to produce any evidence or information within a maximum of 30 days from the date of service of such notice. The amendment further states that where the objector fails to submit such documents within the time prescribed, such objector shall not be permitted to rely on such document or information at the time of hearing of an appeal.

## Time frame to determine objection

The Finance Bill proposes that the Commissioner General shall determine an objection to a tax decision within 6 months from the date of admission of the notice of objection. Whilst this comes as a welcome decision for genuine taxpayers, the amendment proposes that where the Commissioner General fails to determine the objection within 6 months, the tax assessment or tax decision shall be treated as confirmed (despite not having been responded to) and the objector shall have the right to appeal to the Tax Revenue Appeals Board (Board) in accordance with the Tax Revenue Appeals Act. This is unlike the East African Community Customs Management Act where a review decision must be made within 30 days and if no decision is made then the application is deemed to have been granted.

However, recent controversial decisions of the Court of Appeal and the Tax Revenue Appeals Tribunal have ruled that appeals to the Board can only be made after an 'objection decision', these decisions having caused huge turmoil on 1/3 waiver appeals, and this proposed 'no response to objection appealability' will likely create further confusion and could be held by the Courts as not an objection decision hence not appealable. This needs to be relooked at.

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