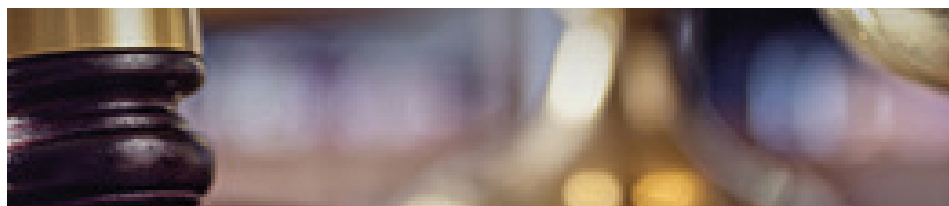


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Tribunal rules Board has no jurisdiction over tax waiver appeals

- Tribunal overrules Board's latest decisions
- Board now has no jurisdiction on waiver appeals
- Final decision will have to await Court of Appeal

Waiver rejection decisions have continued to cause great uncertainty as to what an aggrieved taxpayer should do when an application for a one-third waiver is rejected by the Tanzania Revenue Authority (TRA). Under our law, it is a mandatory requirement for a taxpayer intending to file an objection against an assessment issued by the Commissioner General (CG) to deposit one-third of the amount assessed or tax not in dispute (whichever is greater), or obtain a waiver to make such a deposit. The uncertainty is caused by an inconsistent position by tax Courts on whether an aggrieved taxpayer can directly appeal a waiver decision to the Tax Revenue Appeals Board (Board) or is required to file a second objection before appealing to the Board.

The Tax Revenue Appeal Tribunal's (Tribunal) latest decision this week in Commissioner General (TRA) vs. Mek One, Tax Appeal Nos. 69 & 70 of 2019, confirmed its earlier position that the Board has no jurisdiction to hear and determine waiver rejection appeals on account that such appeals are not emanating from objection decisions as required by section 16(1) of the Tax Revenue Appeals Act (the TRAA). The Tribunal relied on the principle of stare decisis (precedent) to confirm its earlier position on waiver appeals. The Tribunal further distinguished the recent decision of the Court of Appeal in Commissioner General, Tanzania Revenue Authority vs. New Musoma Textiles Limited, Civil Appeal No. 119 of 2019 for not being relevant in waiver appeals.

The Tribunal stated that the New Musoma Case was not specifically on a waiver appeal nor did it interpret provisions of sections 7 and 16(1) of the TRAA and section 53(1) of the Tax Administration Act, 2015 (the TAA) which are relevant in waiver appeals. This decision of the Tribunal will come as a disappointment to taxpayers who had already gained clarity from recent decisions of the Board which confirmed that it has jurisdiction on waiver appeals directly after waiver rejections by the TRA.

It should be remembered that in TPC vs. Commissioner General, Tanzania Revenue Authority, Tax Appeal No. 8 of 2019, the Tribunal held that the jurisdiction of the Board to hear and determine tax disputes is limited to objection decisions only. The Tribunal ruled that any other decision is not directly appealable to the Board without passing through objection proceedings at the TRA.

The controversy in waiver appeals started with the Court of Appeal in the case of PanAfrican Energy Tanzania Limited vs. Commissioner General (TRA), Civil Appeal No. 121 of 2018. In this appeal, the Court of Appeal held that section 16(1) of the TRAA as amended by the TAA restricts the right to appeal available under section 53(1) of the TAA to objection decisions only. This position suggested that since waiver rejection decisions did not emanate from objection proceedings, hence were non-objection decisions, any appeals to the Board based on such decisions were incompetent. The Court of Appeal's decision has been widely interpreted as requiring another objection on the waiver decision to be filed with the TRA before an appeal can be lodged to the Board. This additional layer, now cemented by the Tribunal, will delay disposition of matters on merit to the detriment of the TRA and taxpayer.

This back and forth change of position on waiver appeals brings more uncertainty in tax administration in Tanzania, hence the need for both legal and administrative reforms.

It now remains for the Court of Appeal to give its final decision on the matter.

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About FB Attorneys

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