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## Court Rules in Favour of Taxpayer in Withholding Tax Matter

- Taxpayer had lost at TRA, Board and Tribunal
- Key features of lease stipulated
- Payments declared not to be rent
- Court applies substance over form principle
- Decisions of the Board and the Tribunal quashed

Recently, the Court of Appeal of Tanzania (the Court) delivered its judgement in Civil Appeal No. 380 of 2021. This matter emanates from the decision of the Tanzania Revenue Authority (TRA) to impose withholding tax (WHT) against the taxpayer (the Appellant) on payments made to hunting companies. The said payments were made as a result of Strategic Alliance Agreements (SAAs) entered into between the Appellant and the hunting companies. According to the Appellant, the nature of the payments was compensation for loss of business by the hunting companies that co-existed with the Appellant in one area. On the other hand, the TRA treated the said payments as rent, hence liable to WHT.

As a result of the differences on how to treat the payments between the TRA and the Appellant, a tax dispute arose. The Appellant unsuccessfully filed a Notice of Objection to challenge the decision of the TRA. Later, the Appellant appealed at the Tax Revenue Appeals Board and subsequently at the Tax Revenue Appeals Tribunal fruitlessly. Aggrieved by the decision of the Tribunal, the Appellant preferred an appeal to the Court. The main issue of contention before the Court was whether there was a lease between the Appellant and the hunting companies to justify treating the payments as rent. The Appellant's position was that there was no such lease; the TRAs position was that there was a lease and hence WHT applied.

In arguing in favour of its position, the TRA pleaded to the Court to adopt a substance over form principle in examining the SAAs so that if the Court finds the same to be a lease, notwithstanding the fact that it is not so named, WHT would apply. However, having applied the said principle, the Court denied the proposition by the TRA that the arrangement satisfied the condition for creating a lease and agreed with the Appellant's position that there was no such lease, nor an intention to create one.

Further to the above, in determining whether the SAAs were a lease arrangement between the Appellant and the hunting companies, the Court outlined three essentials for existence of a lease. These essentials were that, the agreement must explicitly show that the land was granted for a specific duration (commencement date, continuation and end date); specific rent must be pronounced; and a tenant must have exclusive possession of the land during the tenancy period. The Court's examination of the SAAs found that the above essentials were missing, hence the arrangement could not qualify as a lease.

Having made the finding that the arrangement was not a lease, the Court allowed the Appellant's appeal; quashed the decisions by both the Board and the Tribunal, a first of its kind; and set aside the consequential orders made. Specifically, the Court held that the Appellant had no obligation, in terms of section 82 of the Income Tax Act, 2004, to withhold tax, for the payments to the hunting companies were not rent. This is a welcome decision for taxpayers in Tanzania that the appropriate checks and balances by the Court are falling in place notwithstanding that all prior decisions in the matter were against the taxpayer.

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