

**IN THE COURT OF APPEAL OF TANZANIA
AT ARUSHA**

(CORAM: NDIKA, J.A., FIKIRINI, J.A. And MGEYEKWA, J.A.)

CIVIL APPEAL NO. 147 OF 2025

SEACOM TANZANIA LIMITED APPELLANT

VERSUS

COMMISSIONER GENERAL,

TANZANIA REVENUE AUTHORITY RESPONDENT

**(Appeal from the Judgment and Decree of the Tax Revenue Appeals Tribunal
at Dar es Salaam)**

(Ngimilanga, - Vice Chairperson)

dated the 16th day of August, 2024

in

Tax Appeal No. 22 of 2023

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JUDGMENT OF THE COURT

15th & 28th November, 2025

MGEYEKWA, J.A.:

The appellant, SEACOM Tanzania Limited, has lodged this appeal challenging the decision of the Tax Revenue Appeals Tribunal (the Tribunal) dated 16th August 2024, which dismissed its appeal against the decision of the Tax Revenue Appeals Board (the Board) in favour of the respondent, the Commissioner General Tanzania Revenue Authority.

Briefly, the background to the appeal is as follows: the appellant is a Tanzanian company engaged in the provision of network facilities. It owns a portion of the SEACOM fibre optic cable located in the territorial waters of Tanzania up to and including a landing point in Tanzania, and holds a certificate issued by the Tanzania Communications Regulatory Authority authorizing it to provide services on the network. In 2021, the respondent conducted an audit of the tax returns and accounts of the appellant for the year of income 2018. The respondent reviewed balances relating to intercompany transactions. Arising from that exercise, the respondent observed that the appellant received funds from the related party amounting to TZS 5,442,324,239/=, which the respondent viewed as intra-group financing in the nature of a loan.

Following those findings, the respondent re-characterized the transaction in line with section 33 (2) (a) of the Income Tax Act. Cap. 332 (the ITA). Consequently, on 28th May 2021, the respondent demanded withholding tax assessment on deemed interest at the rate of 10% pursuant to Regulation 10 (3) of the Tax Administration (Transfer Pricing) Regulations, 2018 (GN No. 166 of 2018) read together with section 33 of the ITA.

Aggrieved, the appellant unsuccessfully lodged an objection challenging that the funds were not a loan but operational support from SEACOM LTD, a related party. Following further correspondence between the parties, the respondent issued a final determination reaffirming its earlier position. Dissatisfied, the appellant preferred an appeal to the Board. In its determination, the Board upheld the respondent's assessment and dismissed the appeal.

Still dissatisfied, the appellant unsuccessfully pursued a second appeal to the Tribunal. Undeterred, the appellant has appealed to the Court, raising three grounds of complaint as follows:

- 1. That, the Tribunal erred in law by holding that the respondent was justified in treating the intercompany payable as a loan in terms of Regulation 10 (3) of the Tax Administration (Transfer Pricing) Regulations, 2018, and Transfer Pricing Guidelines, 2020.*
- 2. That, the Tribunal erred in law by holding that the respondent's imposition of withholding tax on deemed interest is correct in terms of Regulation 10 (3) of the Tax Administration (Transfer Pricing) Regulations, 2018.*
- 3. That, the Tribunal erred in law by holding that the imposition of interest for late payment was justified.*

The learned advocates for the parties lodged their respective written submissions for and against the grounds of appeal, supported by a list of authorities in support of their respective standpoints. The appellant was represented by Messrs. Alan Nlawi Kileo and Mahmoud Mwangia, both learned counsel. The respondent was represented by Ms. Consolatha Andrew, learned Principal State Attorney, Ms. Salome Chambai, learned Senior State Attorney and Ms. Jacqueline Chacha, learned State Attorney.

Mr. Kileo took the floor and submitted that the Tribunal faulted itself for failure to provide reason of its findings on why Regulation 10 (3) of the Tax Administration (Transfer Pricing) Regulations, 2018 (the TP Regulations) and Transfer Pricing Guidelines, 2020 (the TP Guidelines) empower the respondent to characterize the said funds as loan. He continued to argue that the Tribunal failed to state any reason as to why the respondent is empowered to use best judgment in its decision to deem interest on the loan, and failed to refer to any provision of a statute.

It was Mr. Kileo's further submission that the Tribunal did not explain why or what law makes the respondent's deemed interest correct due to the failure of the appellant to provide an alternative of what is the correct arm's length interest and no reference to the law why the respondent is not obliged to make comparability. Exemplifying, he started by admitting that Regulation

10 (3) of the TP Regulations read together with the TP Guidelines empowers the respondent to characterize the said fund as the loan. However, he added that the respondent's observation is flawed because Regulation 10 (3) of the TP Regulations does not empower the respondent to recharacterize an intercompany payable or any amount for that matter as a loan or anything else. He argued that the cited provision of the law requires a person in a controlled transaction who provides or receives intra-group financing directly or indirectly with or without consideration, to determine an arm's length interest rate for such assistance.

Mr. Kileo went further, contending that the appellant, during the objection proceedings before the Board and the Tribunal, had asserted that the respondent's decision to treat the intercompany balances as intra-group loan financing was incorrect. He added that it is the appellant's position that determination of arm's length interest is uncalled for because the intercompany balances was not an intragroup financing nor constitute a loan or interest-bearing trade credit, or advances or debt or provision of any security or guarantee since it is undisputed that the intercompany balances were not interest-bearing trade credit and were not a provision of any security or guarantee.

He contended that the re-characterisation of transactions is governed by section 33 (2) (b) of the ITA, which obliges the respondent to conduct a comparability analysis using the most appropriate transfer-pricing method preferably the Comparable Uncontrolled Price method as envisaged under paragraphs 5 and 6 of the Transfer Pricing Guidelines before deeming any interest. He further argued that, since the respondent had rejected the taxpayer's own characterisation of the funds received, the matter necessarily fell within the scope of paragraph (b).

The learned counsel for the appellant went on to submit that the respondent undertook no such analysis, thereby rendering the assessment fatally flawed. Expounding on this, Mr. Kileo argued that section 33 (2) (b) of the ITA imposes a duty on the respondent to re-characterise funds only after conducting a proper comparability analysis of the businesses in question. He referred us to page 379 of the record of appeal, faulting the Tribunal for holding that the respondent had no duty to perform such analysis. According to him, once the question of arm's length interest arose, the Tribunal was statutorily required to invoke the comparability procedures prescribed under paragraph 13.8 of the TP Guidelines. He insisted that the respondent's position lacked any analytical foundation and that the deemed

interest had no demonstrable arm's-length basis, as reflected at page 221 of the record of appeal.

The learned counsel for the appellant further asserted that if the respondent disagreed with the appellant's position, it was incumbent upon the respondent to propose an alternative arm's length rate. To that end, he contended that the respondent could not simply make an adjustment and attribute the omission of comparability analysis to the appellant. In conclusion, he implored the Court to find that the appeal has merit and allow it.

In reply to the appellant's assertions, Ms. Andrew vigorously maintained that Regulation 10 (3) of the TP Regulations is applicable in the present case. She submitted that, having examined the nature of the funds received by the appellant, the respondent issued its final determination and correctly held that the arrangement constituted intra-group financing within the meaning of paragraph 13 of the Transfer Pricing Guidelines. Once that classification was established, Regulation 10 (3) of the TP Regulations obligated the Commissioner to determine the appropriate arm's length interest and to compute withholding tax accordingly.

The learned Principal State Attorney further pointed out that the Tribunal, at page 378 of the record of appeal, properly interpreted Regulation 10 (3) of the TP Regulation together with the TP Guidelines and rightly concluded that the respondent was empowered to characterize the impugned funding as a loan, and, where necessary, to rely on best-judgment assessment pursuant to section 48 (3) of the TAA. According to her, the appellant's failure to furnish contemporaneous documentation left the respondent with no option but to estimate the arm's-length return consistent with paragraph 15.5 of the *TP Guidelines*. She added that the burden of proving that the funds were not a loan, or that the interest imputed was not at arm's-length, rested squarely upon the appellant under section 18 (2) of the TAA. She cited the authority of **Insignia Limited v. Commissioner General Tanzania Revenue Authority**, Civil Appeal No. 14 of 2007 [2011] TZCA 246, and argued that the taxpayer bears the burden of disproving the Commissioner's assessment.

With respect to section 33 of the ITA, Ms. Andrew submitted emphatically that the present matter falls squarely within section 33 (2) (a) and not paragraph (b), contrary to the argument advanced by Mr. Kileo.

Having considered the rival contentions, we are satisfied that the controversy hinges on the applicability of Regulation 10 (3) of the TP

Regulations and the proper interpretation of section 33 (2) (a) and (b) of the ITA. Before addressing the interplay of these provisions, it is apposite to reproduce Regulation 10 (3), which provides:

"10 (3) A person in a controlled transaction who provides or receives intra-group financing directly, or indirectly, with or without consideration shall determine the arm's length interest rate for such assistance."

From the plain language of the above provision, it is evident that the obligation to determine the arm's length interest is mandatory and directly binding on a person engaging in intra-group financing. The regulation leaves no ambiguity; where intra-group financing occurs, the arm's length interest must be ascertained, and the Commissioner is empowered to ensure compliance. In the present case, having failed to furnish contemporaneous documentation, the appellant cannot escape the statutory and regulatory framework which, as submitted by Ms. Andrew, authorizes the respondent to compute the appropriate arm's length interest and the resulting tax liabilities.

In addressing the interplay between section 33 (2) (a) and (b) of the ITA, we find it necessary, for purposes of clarity and proper context, to reproduce the subsection in extenso. Section 33 (2) provides:

"33 (2) Where, in the opinion of the Commissioner, a person has failed to comply with the provisions of subsection (1), the Commissioner may make adjustments consistent with subsection (1) and in doing so the Commissioner may—

(a) re-characterise the source and type of any income, loss, amount or payment; or

(b) apportion and allocate expenditure, including that referred to in section 71 (2) incurred by one person in conducting a business that benefits an associate in conducting a business to the person and the associate based on the comparability analysis of the businesses."

From the above provisions of law, the distinction is both clear and decisive. Paragraph (a) applies in circumstances where the Commissioner General must intervene because the taxpayer has failed to comply with section 33 (1) of the ITA. In such cases, the Commissioner is empowered to re-characterize the source or nature of any amount, including treating funds received as a loan. This accurately reflects the factual posture of the present

matter. By contrast, paragraph (b) is engaged only where the taxpayer has already undertaken a comparability analysis, and the Commissioner's role is limited to apportioning expenditure or challenging the method employed. The preconditions of paragraph (b) are plainly inapplicable here as the appellant neither quantified the intra-group transaction on an arm's length basis nor provided any analysis upon which the Commissioner could take issue.

We therefore agree with the Tribunal's conclusion that the Commissioner acted within the scope of section 33 (2) (a) of ITA read together with Regulation 10 (3) of TP Regulations. As alluded to above, having found that the appellant provided no contemporaneous transfer-pricing evidence, the respondent was entitled to classify the funds as an intra-group loan, determine an arm's-length interest rate and apply best judgment as stipulated under section 48 (3) of the TAA. In the circumstances, we see no misdirection on the part of the Tribunal in accepting the respondent's approach. Consequently, the complaint on the alleged non-compliance with Regulation 10 (3) of the TP Regulation and section 33 (2) (b) of ITA is devoid of merit. Accordingly, this ground of appeal fails.

On the second ground, learned counsel for the appellant argued that under section 82 (1) of ITA, a withholding tax obligation arises only where interest is actually paid. He faulted the Tribunal for elevating a regulatory deeming provision in a manner that distorted the legislative scheme. Counsel maintained that Regulation 10 (3) of the TP Regulations does not itself impose a withholding obligation; rather, it merely requires that intra-group financial assistance be priced at arm's length. According to him, that provision was inapplicable in the present circumstances and, even if it were, the respondent failed to establish an arm's length interest rate as required by law.

Mr. Kileo further submitted that Regulation 10 (3) of TP Regulation does not deem a payment to have occurred for purposes of tax collection, nor does it override the express wording of section 82 (1) of the TAA. The counsel for the appellant insisted that section 82 (1) of the TAA imposes a withholding obligation only where a resident person pays interest, and that such payment must have a source in Tanzania. Relying on **Commissioner General, Tanzania Revenue Authority v. Vodacom Tanzania PLC**, Civil Appeal No. 485 of 2023 [2025] TZCA 343, he argued that the obligation to withhold arises only on accrual of interest, not on a hypothetical or

imputed payment. He further averred that the deemed interest relied on by the respondent never accrued in the appellant's accounts and therefore created no obligation to withhold. He also emphasized that no loan existed between the appellant and its related party, and hence no legal obligation to pay interest ever arose. In his view, the Tribunal erred in law by invoking Regulation 10 (3) of TP Regulation to justify imposing withholding tax on interest that was neither paid nor accrued. He thus prayed that the Court revise the Tribunal's findings and allow the appeal.

In reply, the learned Principal State Attorney submitted that Regulation 10 (3) of TP Regulation validly deems the imputed interest as accrued and payable, thereby triggering section 82 (1) of the ITA. She stated that the interest rate applied was the Bank of Tanzania base rate plus margin, consistent with established practice, and that this rate had been communicated to the taxpayer. She stressed, however, that the issue of interest rate never arose during the objection proceedings nor before the Board; the dispute then concerned only the re-characterization of the intra-group funding as a loan. It was her submission that the interest rate argument emerged for the first time at the Tribunal during submissions and is therefore a new matter which the Court should not entertain. She cited

Singita Trading Store (EA) Limited v. Commissioner General Tanzania Revenue Authority, Civil Appeal 57 of 2020 [2021] TZCA 179 in support of her argument. In a brief rejoinder, Mr. Kileo disputed the respondent's position that the rate had not been communicated during objection proceedings.

Having considered the parties' positions, the issue for determination in this ground is whether the respondent properly imposed withholding tax on deemed interest following the re-characterization of the appellant's related-party balance. The appellant's complaint is essentially that the respondent misconstrued the increase in related-party balances as a loan, thereby wrongly charging withholding tax on imputed interest. We agree with Ms. Andrew that Regulation 10 (3) of the TP Regulations empowers the respondent to re-characterize intra-group funding as a loan for purposes of ensuring compliance with the arm's length principle. Consequently, the imposition of withholding tax on the deemed interest was not misplaced. We also agree with Mr. Kileo that the Tribunal did not sufficiently explain the basis of its findings. However, the nature of a loan, unlike a gift, necessarily involves an expectation of return. Moreover, the law imposes on taxpayers a duty to conduct self-assessment on an accrual basis. In **TRA v. Vodacom**

Tanzania PLC (supra), while interpreting section 82 of the ITA in the context of intra-group financing, this Court reiterated that corporations must account for income tax on an accrual basis, it held that:

*“...This provision lays down the basis for accounting for income tax purposes. It prescribes cash basis for individuals and the accrual basis for corporations. Therefore, the corporation such as the respondent in the instant appeal is required **to deal with its tax issues on the accrual basis.** Section 21(3) has been couched in a mandatory term that **a corporation shall account its income tax on accrual basis. Withholding tax as one of the taxes the corporation is obliged to pay, follows the same principle that it should be paid on an accrual basis.**”* [Emphasis added]

The import of the foregoing decision is plain and leaves no room for doubt; a taxpayer is required to account for interest on an accrual basis, not upon actual payment. The above cited case, relied upon by both sides, in fact strengthens the respondent’s position. On the question whether the issue of the interest rate was ventilated during the objection and Board proceedings, our review of the appellant’s objection letter dated 25th June 2021 reveals that no alternative interest rate was proposed. We therefore

agree with Ms. Andrew that the issue of the applicable interest rate was not placed before the Commissioner, nor was it raised before the Board. It is, in the circumstances, a new matter that this Court cannot entertain. As this Court held in **Singita Trading Store (EA) Ltd** (supra), a party cannot challenge an interest rate without having proposed one during the administrative process.

In the result, we are satisfied that the appellant did not adhere to the arm's length principle. It bears emphasis that transactions between related entities are required to mirror those undertaken by independent parties, and it was incumbent upon the appellant to self-assess and apply that principle to its intra-group financing arrangements. In the circumstances, we find no merit in the second ground.

On the third ground, Mr. Kileo's was brief; he submitted that the interest imposed under section 76 of the TAA is purely consequential and therefore collapses once the principal assessment is set aside. In reply, Ms. Andrew maintained that once tax remains unpaid after its due date, the imposition of interest is mandatory and follows as a matter of course.

We have carefully examined the record of appeal. The appellant, in its objection, challenged the late payment interest of TZS 219,168,634.35.00

on the basis that it emanated from an incorrect principal tax. The respondent's counsel, however, upheld the assessment and maintained the imposition of late payment interest. The Board, at page 231 of the record of appeal, held that interest and penalties were consequential, and since the first two grounds had been determined against the appellant, Ms. Andrew was correct to levy interest. The Tribunal affirmed that position, observing that sections 76 (1) and 81 (1) of the TAA mandated the imposition of interest where principal tax remains unpaid after the due date. It accordingly ordered the appellant to pay the accrued interest. Thus, we concur with the Tribunal's approach.

Having found that the appellant's challenge to the principal withholding-tax assessment lacks merit, it follows that the chargeable interest, being consequential under section 76 of the TAA, was properly imposed. The appellant did not contend that the principal tax had been paid on time; its complaint was limited to disputing the principal amount. In the circumstances, we are satisfied that interest, being compensatory in nature and statutorily mandated, was properly chargeable. Accordingly, the third ground fails.

In the upshot, the entire appeal is devoid of merit and is dismissed with costs.

It is so ordered.

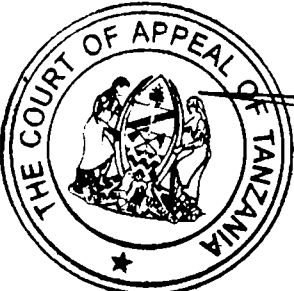
DATED at DAR ES SALAAM this 27th day of November, 2025.

G. A. M. NDIKA
JUSTICE OF APPEAL

P. S. FIKIRINI
JUSTICE OF APPEAL

A. Z. MGEYEKWA
JUSTICE OF APPEAL

Judgment delivered this 28th day of November, 2025 in the presence of Mr. Mahmoud Mwangia, learned counsel for the Appellant, Mr. Andrew Kevela, Mr. Emmanuel Ally, both learned State Attorney for the Respondent and Janekisa Bukuku, Court Clerk is hereby certified as a true copy of the original.



J. E. FOVO
DEPUTY REGISTRAR
COURT OF APPEAL