

AT DAR ES SALAAM

**(CORAM: MKUYE, J.A., MAIGE J.A. And KHAMIS J.A.)**

**CIVIL APPEAL NO. 167 OF 2025**

**TANGA CEMENT PUBLIC LIMITED COMPANY .....APPELLANT**

**VERSUS**

**THE COMMISSIONER GENERAL  
(TANZANIA REVENUE AUTHORITY) .....RESPONDENT**

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

**(Hon. Herbert – Vice Chairperson)**

**dated the 29<sup>th</sup> day of February, 2024**

**in**

**Appeal No. 61 of 2022**

.....

**JUDGMENT OF THE COURT**

6<sup>th</sup> November & 25<sup>th</sup> 2025

**MKUYE, J.A.:**

In this appeal, the appellant, Tanga Cement Public Limited Company, is appealing against the decision of the Tax Revenue Appeal Tribunal (TRAT) for the alleged failure to interpret the provisions of section 10 (1) and (3) of the Income Tax Act, Cap RE 2019 by holding that, the appellant's tax exemption is invalid.

The crux of the matter between the parties arises from the withholding tax assessments made by the respondent on the appellant in relation to payment of interest due on a loan which were made to the

South African Government Employees Pension Fund (SAGEPF) and on service fee paid to Tianjin China for the foreign engineering consultancy and construction services rendered to the appellant for the establishment and construction of a new Clinker Plant in its cement factory at Pongwe Factory Area, Tanga.

On 29<sup>th</sup> June, 2020, the respondent issued a Withholding Tax Certificate on local services and interest for the year 2016 to 2018 demanding a total sum of TZS. 917,081,851,47. Yet, on 31<sup>st</sup> August, 2020 the respondent issued another Withholding Tax Certificate on local services with Tax Debit Number 445599549 for the same period of 2016 - 2018 in which a total sum of TZS. 1,354,812,976.00 was assessed.

The appellant objected against the said assessments contending that the payment for interest and services is exempted from withholding tax based on the tax incentive benefits which were granted to the appellant in 2013 by the Government of United Republic of Tanzania as represented by the Tanzania Investment Center.

The appellant further asserted that, she was granted "Strategic Investment" status by the Tanzania Investment Centre (TIC) as set out in the Performance Contract in which one of the incentives provided is exemption from deducting withholding tax on interest on loan payable to the SAGPF. It further claimed that it was exempted from deducting

withholding tax on services rendered for the establishment of its clinker plant. The exemption was premised on Strategic Investor Status granted by the Tanzania Investment Centre as set out in the Performance Contract. The appellant also intimated to the respondent of the steps she was taking to engage the Minister for Finance regarding the issuance of the Government Notice.

On the other hand, the respondent contended that there cannot be such exemption on the said payments as there is no Government Notice issued by the Government to that effect. The respondent further imposed interest for late payment of tax imposed on both payments which is also disputed.

Following sequence of correspondences, the respondent maintained its decision made earlier on. The appellant, dissatisfied with that decision, appealed to the Tanzania Revenue Appeals Board (TRAB) in Tax Appeals Nos. 2012 and 231 of 2021 which were determined in favour of the appellant. The TRAB found that the appellant was exempted from paying taxes as per the Agreement entered between the appellant and the Government on 25<sup>th</sup> June, 2013 (See page 213 of the record of appeal).

Aggrieved by the decision of the TRAB, the respondent appealed to the TRAT which overturned the decision of TRAB and held that the

appellant was not exempted from paying tax due to the absence of Government Notice issued by the Minister as per section 10 (1) and (3) of the Income Tax Act.

Discontented with the decision of the TRAT, the appellant has appealed to this Court on two grounds of appeal as follows:

- 1. That the Tax Revenue Appeals Tribunal erred in law in failing to interpret the provisions of section 10 (1) and (3) of the Income Tax properly holding that the appellant was not exempted from paying tax due to absence of Government Gazette.*
- 2. That the Tax Revenue Appeals Tribunal erred in law in failing to interpret the provisions of section 76 of the Tax Administration Act and the evidence on record concluding that the respondent was correct to impose payment of tax.*

When the appeal was called on for hearing, Mr. Norbert Mwaifwani, learned advocate, appeared representing the appellant while the respondent was represented by Messrs. Amon Meja, Akwila Mroso and Erasto Ntondokoso, all learned State Attorneys and both side sought to adopt their written submissions they had filed earlier on under rule 106 (1) and (7) of the Tanzania Court of Appeal Rules, 2009, respectively.

In her written submission, it is the appellant's argument that, despite the absence of approval from the Cabinet or Order published in

the Gazette, the services were exempted from withholding tax based on the tax incentives benefit granted to the appellant by the Government through Tanzania Investment Centre as clearly shown in Clause 1 (i) and (ii) of the agreement. She clarified that, Clause 3.3 of the contract provides for such incentives to be enjoyed until 2018 in respect of diesel and HFO; 2025 for withholding tax exemption on South African Government Employees Pension Fund (SAFPF) and in 2015 for other approved items on specific dates as per the notices to that effect to be made by the Minister responsible for Finance in the Government Gazette.

It is argued further that, since tax incentives were granted under the contract, it augurs well with section 10 (3) of the Income Tax Act which allows the exemptions provided by the agreement on strategic projects, in particular, Clause 1 (i) of the contract which in a way is an exception to section 10 (1) of the Income Tax Act. That, the requirement under section 10 (1) of ITA is inapplicable to the appellant since, she being a strategic investor, enjoys the exemption under section 10 (3) by virtue of an agreement for a strategic project which she has, and thus there was no need of securing a Government Notice. It is argued further that, even if it was required, its absence did not invalidate the incentives granted as per section 10 (1) due to the use of the word “may” in that

section, meaning that under the said provision, the Minister has discretion to issue it or not to issue it.

In this regard, it is the appellants' argument that the respondent's claim that the Government Notice and approval of the Cabinet are mandatory, is misleading as the performance contract suffices.

In relation to ground No. 2, the appellant argued that it is inconsequential to the submission made on the 1<sup>st</sup> ground of appeal.

In addition to the written submissions, Mr. Mwaifwani commented on the cases of **Mlimani Holdings Limited v. Commissioner General TRA**, Civil Appeal No. 505 of 2022 and **State Oil AS (currently known as Equinor Tanzania AS) v. Commissioner General TRA**, Civil Appeal No. 372 of 2020 (both unreported) arguing that they are distinguishable to the case at hand as they dealt with different facts from this case in that they did not discuss section 10 (1) and (3) of the Income Tax Act. Moreover, as to the later case of **State Oil Tanzania AS (currently known as Equinor Tanzania AS)** (supra), the Court dealt with production sharing agreement between it and the Government and the dispute was on stamp duty and not section 10 (1) and (3) of the Income Tax Act.

In response, the respondent prefaced by declaring her stance that she was supporting the TRAT's holding that the appellant's exemption under performance agreement with the Government of United Republic of Tanzania was invalid in the absence of the Government Notice issued under section 10 (1) and (3) of the Income Tax Act. In the respondent's view, the point of contention is section 10 (1) and (3) of the Income Tax Act, which in their argument, it gives discretion to the Minister to grant or not to grant exemption. But where he/she decides to grant it, it mandatorily requires him to do so by an order to be published in the Government Gazette. The respondent argued that the contention by the appellant that section 10 (1) is inapplicable in this matter; and that the absence of Government Notice does invalidate the incentives granted is misconceived. That, the requirement of Government Gazette is mandatory whenever the Minister exercises his discretion.

On the issue that section 10 (1) of the Income Tax Act is discretionary due to the use of the word "may", the respondent argued that such interpretation is misconceived as it confers the Minister discretion on whether to grant it or not but if he/she decides to do so, he is mandatorily required to publish an order in the Government Gazette. This is suggested from the use of "comma" "," after the word "may."

In relation to section 10 (3) of the Income Tax Act, it is the respondent's argument that, it restricts the grant of exemption unless it is under the Act or an agreement on strategic project and on public interest provided they are approved by Cabinet. However, it is argued that, there was no evidence showing that the performance agreement was approved by the Cabinet or that the Minister did issue an order to that effect.

The respondent further stressed that, for a person to have a right to enjoy tax exemption under section 10 (3) of the Income Tax Act, it is a mandatory requirement to comply with section (10) (1) of the same Act by having such exemption by order published in the Gazette. It is argued that, there is no question of automatic exemption as suggested by the appellant except for specific exemptions listed in the 2<sup>nd</sup> Schedule to the Act, and, as the tax under consideration is not listed under that Schedule, then the appellant was duty bound to comply with section 10 (1) of ITA.

In this regard, it is argued that as the alleged exemption under the performance contract neither had any approval by the Cabinet nor blessed with an Order published in the Government Gazette, such exemption is invalid. To fortify her argument, she referred us to the case of **State oil Tanzania as (currently known as Equinor Tanzania**

**AS**) (supra) and **Mlimani Holding Limited** (supra). In the latter case, it was held that exemption of tax on foreign loan interest is through the Government Notice issued by the Minister for Finance.

The respondent argued further that, the appellant's claim that under Clause 3.3 of the Performance Contract issuance of Government Notice is related to the dates of the exemption, was a misconception as the same are issued to validate and give effect the exemptions listed under the said Performance Contract. They insisted that, the TRAT was correct to hold that the appellant was not exempted from paying tax for lack of the Government Notice.

As regard the second issue which is whether the TRAT correctly held that the respondent rightly imposed interest for the late payments of tax under section 76 of the Tax Administration Act, it is the respondent's argument that, that is in accordance with the law or rather a statutory requirement to charge it due to the appellant's default in payment of the required tax as per section 76 of the Tax Administration Act. Therefore, the TRAT decision in that aspect was correct.

Besides the written submissions filed earlier on, Mr. Meja reiterated what was submitted in the written submission that, the so-called exemption was invalid for lack of Government Notice by the Minister for Finance as per section 10 (1) and (3) of the Income Tax Act or approval

of the Cabinet granting such exemption. He, also, argued that the interpretation of the word "may" used in section 10 (1) of the Income Tax Act was wrong as the imperativeness is on publication of exemption in the Government Gazette and not on the decision of the Minister to grant it or not as that is discretionary by the word "may".

He added that, the relevance of the case of **Mlimani Holding Limited** (supra) is that it provided a legal principle regarding the requirement of exemption to be by an order published in the Gazette.

In relation to the issue of having a Strategic Project Agreement, Mr. Meja argued that, it lacked a Cabinet approval. He insisted that section 10 of the Income Tax Act must be read wholistically based on our decision in **Commissioner General TRA v. Vodacom Company Tanzania Public Limited**, Civil Appeal No. 485 of 2023.

He added that according to the case of **State Oil Tanzania AS (currently known as Equinor Tanzania AS)** (supra), the exemption being part of tax regime, has to be governed by the law. Also, tax law should be properly interpreted without inviting a room for intendment in the provision. (See: **Commissioner General TRA v. ECORAM East Africa (TZ) LTD**, Civil Appeal No. 35 of 2020.

On charging interest on late payment of tax, he referred us to the case of **Vodacom Company Tanzania Public Ltd** (supra) where it was emphasized that late payment of tax attracts interest.

In the end, the respondent implored the Court to find that the appeal has no merit and dismiss it with costs.

In rejoinder, Mr. Mwaifwani insisted that at TRAB the issue of Cabinet approval did not arises but it merely surfaced in respondent's submissions as shown at pages 241 to 248 of the record of appeal. He also argued that, it is not always that the Government Notice is required in exemptions. He maintained that exemption under Strategic Project Agreement did not require Cabinet approval.

Otherwise, Mr. Mwaifwani insisted that, the case of **Mlimani Holding** (supra) is irrelevant and distinguishable and **Vodacom Company Tanzania Public Ltd's** case (supra) is inapplicable. He reiterated his prayer to the Court to allow the appeal with costs.

After having considered the grounds of appeal and the rival written and oral submissions, based on the interpretation of section 10 (1) and (3) of the Income Tax Act, the issue is whether the TRAT was correct to hold that the appellant was not exempted from paying tax due to lack of an order published in the Gazette. While the appellant is of the view that as long as the appellant had entered into a Strategic Project Agreement

with the Government, it did not require an order of the Minister for Finance published in the Government Gazette, the respondent firmly maintains that, that was a mandatory requirement for the exemption to be valid.

In the first place, we wish to acknowledge that it is common ground that the appellant was granted a Strategic Investment Status by the Tanzania Investment Center as set out in the Performance Contract in which one of the incentives provided was exemption from withholding tax on interest on a loan payable to SAGPF and services rendered for establishment its Clinker Plant. In particular, this was stipulated under Clause 1 (i) and (ii) of the Performance Contract between the appellant and the Government as follows:

*"(ii) In consideration of the Investor performing all that is described under Article 2 herein below, and subject to the approved list of project requirements, the Government grants to the Investor the following special investment incentives:*

*Exemption of the whole withholding tax on interest for the loan advanced to the investor by South African Government Employees Pension Fund (SA GEPF) for the implementation of the project: Provided that the interest charged on*

*the loan shall not be less favorable than the market rates.*

*(ii) Exemption of withholding tax on foreign engineering consultancy and construction services fees in respect of services rendered to the investor for the establishment of the Plant for two years counting from the date of execution of the respective consultancy agreements between the investor and the consultants. It shall be the duty of the investor to notify the Government the date of signing of such consultancy agreements”.*

The issue which follows is whether such stipulation in the performance sufficed for the grant of exemption or not.

Section 10 (1) and (3) of the Income Tax Act which is the basis of the controversy provides that:

***"(1) The Minister may, by order published in the Gazette, provide:***

***(a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or***

***(b) that any exemption under the second schedule shall cease to have effect either***

*generally or to such extend as may be specified in such order.*

*(2) The Minister may, by order published in the Gazette, amend, vary or replace the Second Schedule.*

*(3) Notwithstanding any law to the contrary, no exemption shall be provided from tax imposed by this Act and no agreement shall be concluded that affects or purports to affect the application of this Act, except as provided for-*

*(a) by the provisions of this Act;*

***(b) by an agreement;***

***(i) on a strategic project, and***

***(ii) on public interest, as may be approved by the Cabinet.*** "[Emphasis added]

That was the position before the proclamation of the Revised Edition of 2023 as it seems that the requirement of the approval by the Cabinet was replaced by the approval of the National Investment Steering Committee under the Tanzania Investment Act.

Our understanding of the provision of the law quoted above is that it empowers the Minister by order to be published in the Gazettes to **one**, exempt any income or class of incomes accrued in or derived from the United Republic, from tax to the extent specified. This was the

position taken in the cases of **State Oil Tanzania AS (currently known as Equinor Tanzania AS)** (supra) and **Mlimani Holding Company Limited** (supra). **Two**, it provides that an exemption under the Second Schedule ceases to have effect be it in general or to the specified extent. **Three**, in terms of subsection (2) of the same section, the Minister is empowered by order to amend, vary or replace the Second Schedule.

**Four**, section 10 (3) of the Act, provides for the manner and the parameters under which such exemption can be validly granted. Essentially, it prohibits exemption from tax under the Act and as by agreement which affects or purports to affect the application of the Act to be made, except under the Act itself or by an agreement for a strategic project and on public interest which must be approved by the Cabinet.

This means that, apart from exemptions granted by the Minister by order published in the Gazette, there are exemptions which could be made under the Act or agreements for strategic project and public interest which must be approved by the Cabinet or rather which require approval of the Cabinet. In other words, the incentives granted by the Government under the Performance Contract are not automatic as the

counsel for the appellant would wish to convince us but they require a Cabinet approval as per section 10(3) of the Income Tax Act.

It is also important to note at this juncture that the manner subsection (3) of section 10 of the Income Tax Act is couched, by the use of the phrase "Notwithstanding any law to the contrary..." entails that even if there is another law or contract which provide for tax exemption, such stipulation would not override the Income Tax Act save those which are permitted as stated above.

In our view, this is crucial in order to preserve the supremacy of the Income Tax Act as to what income can be exempted from tax and to provide for a control mechanism to ensure that tax exemption is not simply granted by side agreements or other statutes unless the Act itself permits it.

In this regard, our view is that; **one**, a person alleging exemption under section 10 (1) (a) has to ensure that he secures an order to that effect published in the Gazette. That exemption will show the type of income and the extent of exemption. **Two**, a person claiming exemption by virtual of a contract or agreement with the Government, as in the case at hand, must show if it falls under the strategic investment and public interest and has obtained an approval of the Cabinet. This, therefore, makes it clear that the exemption under the Income Tax Act

has to be by order published in the Government Notice issued by the Minister or by the agreement issued by the Government on strategic investment and on public interest approved by Cabinet (by then) but now such approval is by the National Investment Steering Committee under the Tanzania Investment Act [R.E. 2023].

What is the situation in the matter at hand?

While the appellant maintains that the exemption provided under clause 1 of the Strategic Performance Agreement did not require issuance of Government Notice by the Minister, the respondent is of the view that the order issued by the Minister was a mandatory requirement. However, with respect to the counsel for the respondent, we think, that is not correct. We do not have qualms with the respondent's stance that, under the law there are exemptions which are granted by Government Notice issued by the Minister – See Section 10 (1) of the Income Tax Act. However, as was rightly submitted by the appellant and partially reiterated by the learned counsel for the respondent, not all exemptions must be issued by the Minister by an order to be published in the Gazette. As we have extensively discussed above, there are those which are given by virtue of Strategic Projects Agreements as provided for under section 10 (3) (a) (i) and (ii) of the Income Tax Act provided that, they are approved by the Cabinet.

We are still mindful of the argument by the appellant that the Minister's power is discretionary on the issue of issuance of the Government Notice. However, we think that is mis-interpretation of the law. As was rightly submitted by Mr. Meja, the word "may" in that section relates to the discretion of the Minister on whether to grant exemption or not. If he/she decides to grant it, then he/she is mandatorily required to do so by an order to be published in the *Gazette*. Even the complaint by the appellant that the issue of Cabinet approval was not an issue at the TRAB level is not tenable considering that it is on point of law which can be raised at any stage even at appeal stage – See: the case of **CRDB Bank Limited v. George M. Kilindu**, Civil Reference, [2010] TZCA 387.

In this case, much as the learned counsel for the appellant stressed that the appellant had entered into such Strategic Project Performance Agreement which gave her an automatic exemption of tax incentive, we could not see and the counsel did not show us whether the same had obtained the Cabinet's approval. In other words, there was no such Cabinet approval and this is confirmed by the fact that even in her statement of appeal at page 47 of the record of appeal, she stated that she took initiatives to engage the Minister responsible in having the Government Notice issued.

It is true that in terms of Clause 1 (i) and (ii) of the Strategic Project Agreement the Government granted the appellant (Investor) special investment incentives including exemption of the whole of withholdings tax on interest for the loan advanced to the investor by the South African Government Employees Pension Fund (SAGEPF) for the implementation of the project. The Government also gave an exemption of the whole withholdings tax on foreign engineering consultancy and construction services fees in respect of services rendered to the investor for the establishment of Clinker Plant.

As the appellant has failed to prove the Cabinet's approval of the said Strategic Project Agreement, we agree with the learned counsel for the respondent that, there was no valid exemption issued to the appellant as she tries to convince us. We, therefore, though on a different reason, agree with the TRAT's finding that the appellant was not exempted from withholding tax. However, we do not agree with TRAT that such exemption was required to be issued by the Minister by Government Notice. Instead, we affirm that the appellant was not exempted from withholding tax but for the reason that the Strategic Project Performance Agreement to which the appellant placed reliance was not approved by the Cabinet as required by section 10 (3) (b) (i) and (ii) of the Income Tax Act.

We therefore find ground 1 to be devoid of merit and dismiss it.

As regards the 2<sup>nd</sup> ground of appeal which raises an issue whether the Tribunal failed to interpret the provisions of section 76 of the Tax Administration Act (the TAA) and the evidence on record in concluding that the respondent was correct to impose interest for the late payment of tax, we find it to be inconsequential to the outcome of the first ground of appeal.

Be it as it may, section 76 of the TAA Cap 438 R.E. 2019 now section 87 of the TAA, Cap 438 R.E. 2023, provides that:

*"Where any amount of tax imposed under a tax law remains unpaid after the due date prescribed in tax law, the interest at the statutory rate compounded monthly shall be payable to the Commissioner General".*

To our understanding, under the above cited provision, the Commissioner is empowered to impose statutory penalty to any unpaid tax after the expiry of the due date prescribed by the law. Therefore, the TRAT cannot be faulted in its finding that the respondent was correct to impose such tax on the appellant.

As any rate, as the first ground is answered in the affirmative to the extent alluded to above, we are settled in our mind that the TRAT

properly interpreted section 76 of the TAA since the amount of tax claimed by the respondent remained unpaid after the due date

This ground, therefore, lacks merit and we dismiss it.

In the final analysis, we are satisfied that the appeal is devoid of merit and we, accordingly, dismiss it with cost.

**DATED at DODOMA this 21<sup>st</sup> day of November, 2025.**

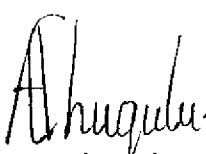
R. K. MKUYE  
**JUSTICE OF APPEAL**

I. J. MAIGE  
**JUSTICE OF APPEAL**

A. S. KHAMIS  
**JUSTICE OF APPEAL**

Judgment delivered this 25<sup>th</sup> day of November, 2025 in the presence of Ms. Suleina Salum, learned counsel for the Appellant, Mr. Baraka Mwakiyaragwe, learned counsel for the Respondent through Video link at Dar es Salaam and Mr. Ladislaus Msuba, Court Clerk; is hereby certified as a true copy of the original.



  
A. S. CHUGULU  
**DEPUTY REGISTRAR**  
**COURT OF APPEAL**