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OPINIONS AND RECOMMENDATIONS REGARDING THE FINANCE BILL 2024

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In reviewing the Finance Bill 2024, published on June 18th, 2024, SARC Law Chambers would like to highlight our opinions and recommendations regarding certain proposed and non-proposed provisions within the Tax Revenue Appeals Act (CAP 408) and the Tax Administration Act (CAP 438).

1.0 Regarding the Amendment of the Tax Revenue Appeals Act, CAP 408

1.1 The existing provision subject to amendment reads as follows:

“4.-(1) There is established a Board to be known as the Tax Revenue Appeals Board.

(2) The Board shall consist of:

(a) a Chairman who shall be appointed by the Minister;

(b) two Vice-Chairmen who shall be appointed by the Minister, one of whom shall be from Tanzania Zanzibar;

(c) four other members who shall be appointed by the Minister from each region who shall sit on the Board for the purposes of hearing and determining any appeal originating in the region from which they are appointed.

(3) A person may be appointed to be:

(a) Chairman if he is a principal legal officer or a person having adequate knowledge of taxation;

(b) member of the Board if he has knowledge of, and experience in, taxation, commercial, or financial matters.

(4) Where any appointment relates to a person from Tanzania Zanzibar, the Minister shall consult the Minister responsible for finance in the Revolutionary Government of Zanzibar.”

1.2 Proposed amendment according to the Finance Bill, Section 90:

“90. The principal Act is amended in section 4: (a) in subsection (3) by deleting paragraph (a) and substituting it with the following:

‘(a) a Chairman if he is a principal legal officer or a practicing advocate with at least seven years of working experience and adequate knowledge in taxation;’

(b) by adding immediately after subsection (4) the following:

‘(5) The Minister may issue an extended jurisdiction certificate to a member appointed under subsection (2)(c) to sit on the Board for purposes of hearing and determining an appeal originating from a region in which he was not appointed.’”

1.2.1 First Opinion of Section 90 amending 4(3)(a):

The proposal to appoint a practicing advocate with at least seven (7) years of working experience and adequate knowledge in taxation is improper. The Chairman of the Board, who chairs the judicial proceedings and holds a casting vote in cases of dissent among members, should be impartial and free from personal interests. Practicing advocates, who often represent taxpayers with tax disputes, inherently have personal interests. Therefore, in the interest of maintaining impartiality, practicing advocates are not suitable for the position of Chairman. However, according to the Tax Revenue Appeals Act, practicing advocates with relevant expertise can be appointed as members of the Board, as is currently the case but not the Chairman.

1.2.1.1 Suggestion

We suggest that the existing provision remain unchanged, as it has proven effective. Moreover, it is crucial that Chairmen are judicial officers from the judiciary, who have taken a judicial oath, and possess extensive knowledge of judicial administration and procedures plus judicial ethics. Considering that the Board is a quasi-judicial body, whose decisions are subject to final appeal by the Court of Appeal, the Chairman should ideally be a judicial officer.

1.2.2 Second Opinion of Section 90 Amending 4(b)(5):

The proposal introduces a new subsection (5) after subsection (4), empowering the Minister to issue an "extended jurisdiction certificate." The new subsection reads as follows:

"(5) The Minister may issue an extended jurisdiction certificate to a member appointed under subsection (2)(c) to sit on the Board for the purposes of hearing and determining an appeal originating from a region in which the member was not appointed."

This proposal does not offer substantial benefits to the adjudication of tax disputes before the Board. In practice, it is likely to cause unnecessary delays and inconvenience in the administration of tax appeals and applications. There are instances where applications are made under a certificate of urgency, and financial constraints prevent the Board from traveling to the respective regions where urgent appeals or applications need to be heard. Obtaining a certificate from the Minister of Finance will be challenging and does not align with the spirit of efficiently determining tax appeals. The quorum of Board members for any appeal or application from any region should be managed administratively by the Secretary to the Board and the Chairman. Therefore, this provision should be revised, allowing the Chairman or Secretary of the Board to determine the quorum of Board members not the Minister responsible for Finance.

1.2.2.1 Suggestion

We suggest revising subsection (5) as follows:

"(5) The Chairman or the Secretary may appoint any member to preside over the hearing of an appeal or an application arising from any region for the proper determination of the appeal or application."

This suggestion is more practical and will facilitate the efficient determination of appeals and applications within the Board.

2.0 Recommendations for provisions not covered in the Finance Bill 2024.

2.1 Time Limit for Determination of Notices of Objection by the Commissioner General

The tax dispute administration in our country is not unique compared to other jurisdictions. Therefore, we recommend amendments to the Tax Administration Act and Tax Revenue Appeals Act in the following areas:

Under the original Tax Revenue Appeals Act, Cap 408 (TRAA) enacted in 2000, the duration for determining a notice of objection was six months. If the Commissioner General did not resolve the notice within this period, it was deemed that they had agreed with the taxpayer's objection. Specifically, Section 13(3) stated:

"Where a notice of objection has been given and the Commissioner General has not communicated with the person objecting to the assessment within a period of six months, he shall be deemed to have agreed to amend the assessment in accordance with the objection."

This provision was straightforward and provided a clear timeframe, ensuring that disputes were handled expeditiously. However, this provision was repealed by Section 58 of the Finance Act No. 15 of 2004, which removed the specific time limit for determining objections by repealing section 13(3). This change left the matter at the discretion of the Commissioner General, creating an open-ended timeline for resolving tax disputes.

2.1.1 Recent Legislative Changes and Their Implications

The Finance Act, 2022, introduced a new provision that further complicates the tax dispute resolution process. Under this new law, if the Commissioner General fails to determine a notice of objection within six months, the objection is automatically deemed confirmed, effectively endorsing the original assessment or action.

The relevant sections of the Tax Administration Act, Cap 438 (TAA) now state:

"51-(1) A person who is aggrieved by a tax decision made by the Commissioner General may object to the decision by filing an objection to the Commissioner General within thirty days from the date of service of the tax decision.

52-(10) The Commissioner General shall determine an objection to a tax decision within six months from the date of admission of the notice of objection.

(11) Where the Commissioner General fails to determine the objection within the time prescribed under subsection (10), the tax assessment or tax decision shall be treated as confirmed, and the objector shall have the right to appeal to the Board in accordance with the Tax Revenue Appeals Act."

This change has significantly hindered the tax dispute resolution mechanism. Essentially, it implies that if the Commissioner General does not act within six months, there will be no decision to appeal to the Tax Revenue Appeals Board (TRAB).

This undermines the purpose of the TRAB, as there is no clear decision to challenge, contrary to the detailed processes outlined in the Tax Administration Act, specifically sections 50, 51, 52, and 53.

Given the evident regression in our tax dispute resolution mechanisms, it is advisable to revert to the original procedure established by Section 13(3) of the Tax Revenue Appeals Act of 2000. This provision ensured timely resolutions by deeming objections agreed upon if not resolved within six months.

Additionally, adopting the procedural approach of the East African Community Customs Management Act, 2004 (EACCMA), could provide a more efficient framework. Section 229 of EACCMA outlines a clear, 30-day period for reviewing a complaint, failing which it is deemed that the Commissioner has agreed with the complaint. Specifically:

Section 229:

“(1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

(2) The application referred to under subsection (1) shall be lodged with the Commissioner in writing stating the grounds upon which it is lodged.

(3) N/A

(4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

(5) Where the commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application.”

Borrowing from these provisions, the Tax Administration Act could incorporate Section 229, stipulating that objections be determined within six months instead of 30 days. If the Commissioner General fails to resolve the objection within this timeframe, it should be deemed that the Commissioner has agreed with the objection, necessitating an amendment to the assessment in favor of the objection.

Adopting this system would constitute good practice in our tax dispute resolution process and comply with international standards. For instance, sister countries in the East African Community have set reasonable timeframes for determining tax objections. In Rwanda, the period is 60 working days; in Kenya and Uganda, it is six months. If the taxing authorities in these countries do not determine objections within these periods, they are deemed to have agreed with the notice of objection.

2.1.2 Imperative Recommendation

To improve our tax management system, particularly in tax dispute resolution, it is imperative for our government to amend the current provision in the Finance Bill 2024. This amendment would promote good governance in tax dispute resolution. Otherwise, the Tax Revenue Appeals Board (TRAB) will be preoccupied with dealing with tax objections rather than appeals, which contradicts the Board's intended purpose and logic.

We recommend amending Section 52(11) of the Tax Administration Act as follows:

"(11) Where the Commissioner General fails to determine the objection within the time prescribed under subsection (10), the tax assessment shall be deemed to have been determined in favor of the objection."

2.2 Jurisdiction of the Board

For more than two decades, Tanzania's tax disputes have been adjudicated by a structured system starting with the Tax Revenue Appeals Board (TRAB), followed by appeals to the Tax Revenue Appeals Tribunal (TRAT), and finally to the Court of Appeal of Tanzania (CAT). This process has been governed by the **Tax Revenue Appeals Act, CAP 408, (TRAA) and the Tax Administration Act, CAP 438, (TAA)**. However, a recent decision by the CAT in the case of *Pan African Energy vs. Commissioner General (TRA), Civil Appeal 121 of 2018 TZCA at Dar-es-Salaam* [unreported], has thrown this system into confusion.

2.2.1 Disruption of Established Jurisprudence

The CAT's decision restricts the jurisdiction of TRAB to Section 16(1) of the TRAA, excluding the broader jurisdiction outlined in Section 7 of the same Act. According to the Court, taxpayers aggrieved by a TRA decision can only appeal to the Board following an objection decision, essentially limiting access to TRAB and undermining the broader intent of Section 7 of the TRAA and Section 53 of the TAA.

2.2.2 Relevant Legal Provisions

Jurisdiction under the TRAA

Section 7 of the TRAA stipulates:

"The Board shall have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority."

Conversely, Section 16(1) states:

"Any person who is aggrieved by an objection decision of the Commissioner General made under the Tax Administration Act may appeal to the Board."

In light of this, it is essential to amend the relevant sections to restore the broader jurisdiction intended by the original legislation, ensuring efficient and fair tax dispute resolution.

Section 53 of the TAA outlines:

A person who is aggrieved by an objection decision or other decision or omission of the Commissioner General under this Part may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act.

Subsection (1) shall also apply to a decision or omission made under the customs law.

For the purposes of this section, the Board shall be deemed to be the Tax Appeals Tribunal established under section 231 of the East African Community Customs Management Act.

2.2.3 Imperative Recommendation

To rectify this situation, it is imperative to amend section 16(1) of the TRAA to align it with section 53 of the TAA. This alignment is necessary to restore the tax dispute resolution process and preserve the integrity of the system developed over the past 20 years.

We recommend that section 16(1) of the Tax Revenue Appeals Act be amended to read as follows:

"16.-(1) Any person who is aggrieved by the final determination of the assessment of tax by the Commissioner General or other decision or omission of the Commissioner General under Part VII of the Tax Administration Act, may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act."

Consequences if Recommendations are Not Considered in the Finance Bill 2024

(a) Erosion of Established Jurisprudence

The established jurisprudence in tax administration practices and decisions could be undermined.

(b) Redundancy of Legislative Provisions

Immediate action is necessary to prevent the redundancy of legislative provisions such as Sections 7 of the Tax Revenue Appeals Act (TRAA) and 53 of the Tax Administration Act (TAA), which would become ineffective without intervention.

(c) Financial Losses

There is a significant risk of financial losses due to potential revenue loss from increased tax evasion and corruption if these issues are not promptly addressed.

(d) Investment Deterrence

The stability and predictability of the legal environment are crucial for economic growth. Failure to stabilize tax dispute resolution mechanisms could deter investment in the country, as investors may perceive the market as legally unstable.