**Tanzania Finance Act of 2022: It Could Have Been So Much More…**

The Tanzania Finance Act 2022 was assented on June 30, 2022 and has been effective since July 1, 2022. The Finance Act 2022 has been received with the sentiment that more could have been done to improve the business and investment environment namely undoing the many damaging laws that exist which make doing business in Tanzania perceived as highly risky by investors.

I will focus on the six areas of the law and attempt to analyse what the law means and its impact.

1. **Entrepreneurship, Start-ups and SMEs**

Firstly, I am a strong believer that poverty alleviation will be accomplished not by large foreign investors and multinational companies coming to invest in Africa, but by empowering the smaller companies and entrepreneurs who exist in millions and make up the largest proportion of the private sector in Tanzania. According to the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA), 95% of the businesses in Tanzania are Small and Medium Enterprises (SMEs), and they represent about 35% of the country’s GDP. Therefore, SMEs need to be given the attention and opportunity to nurture and allow them to scale.

The Finance Act amends the Income Tax Act which introduces a presumptive tax rate of 3.5% with turnover above Tshs 11 million (USD 4,716.98) but not exceeding Tshs 100,000,000 (USD 42881.65) individual traders / sole proprietors. This is proposal is a regression since previously the 3.5% was paid on a gross turnover of Tshs 14,000,000 (USD 5,970.80). Where gross turnover that is above Tshs 100,000,000, 30% tax is paid on income which is still very high for SMEs that are starting business and with ambitions of scaling up.

Interestingly, individuals conducting professional, technical, management, construction and training services do not qualify for this presumptive tax system. It is unclear why this group of entrepreneurs are excluded from the presumptive tax system, which reduces the burden of filing annual returns under self-assessment and preparation of audited financial statements. The measure is discriminatory and in violation of the right to equality in the law as provided at article 13 of the Constitution.

These changes are relevant for entrepreneurs that are trading as sole proprietors, however entrepreneurs that are organised as companies benefit from no tax reliefs hence it continues to be quite difficult for them to scale and grow given that the tax system remains to be at 30% for the year of income. Given the rhetoric of government that they would support small businesses and the trending topic of entrepreneurship in Tanzania, I think most were expecting to see more significant reforms that these.

It is unfortunate that the Finance Act of 2022 decided to remove the proposal under the Finance Bill of 2022, which introduced the distribution of revenue collected by the local government in the following portions:

* 10% to improvement of local entrepreneur’s infrastructure;
* 2% to youth loans,
* 2% to women (which has gone down from 4%): and
* 1% to people with disabilities.

Prior to 2022, there was a contribution of 4% of revenue collected by government going to women, now there is nothing and there is no money allocated to entrepreneurship either.

1. **Corporate Governance and Company matters under the Companies Act**

The Companies Act has not been amended in any significant manner other than to close any loop holes that may have existed regarding the “beneficial ownership” provisions and to re-enforce compliance with regarding to officers of the Company filing annual returns.

The Finance Act of 2022 has amended the definition of “equity” to mean “paid up share capital” at the end of a financial year. The previous definition of equity under section 12 (5) of the Income Tax included share premium and retained earnings for purposes of determining the debt-to-equity ratio which is legislated to be 7:3 in accordance with section 12 (2) of the income Tax Act. The narrowing of the definition to only include paid up share capital may pose problems to companies who are leveraged as the removal of retained earnings from the calculation of equity can distort the debt-to-equity ratio. Entities that are exempt controlled residents may not be able to claim interest deduction in excess of the debt-to-equity ratio.

With regards to residents persons who carry out business and investment in both in both Zanzibar and Mainland Tanzania, the income tax has introduced section 77A which allows them to claim a tax credit on income tax paid in either Mainland Tanzania or Zanzibar.

It was my expectation that the government would deal with some of the low hanging fruits that stop the government from fully singing the choir song of “We have a friendly investment climate”. For example, the restoration of the strong principle of the corporate veil, whose intention is to protect authorised company members / shareholders from being held personally liable for the actions of the company. As it stands now, this principle has been totally eroded, trampled on and buried the last few years due to the various amendments in the Companies Act, including the introduction of the arbitrary provisions under section 400A of the Companies Act.

1. **Good Governance of Public Sector regarding investments**

Although the Finance Bill 2022 proposed the reinstatement of powers to the Minister of Finance to remit interest and penalties subject to consultation with the Commissioner General. The Finance Act of 2022 does not contain this amendment therefore the current system whereby the Commissioner General has the power to remit interest and penalties shall stay the same which has proven to work better than the previous pre 2016 system where the Minister of Finance had this mandate.

The Finance Act of 2015 introduced the possibility of the Government of Tanzania to grant certain projects whose investment capital was of USD 300,000,000 and fulfilled a number of other conditions namely that the investment capital is registered at Tanzania financial service institution and Tanzania insurance and that the project generated at least 1,500 local employment, the “special strategic investment” status. The Finance Act 2015 provided for the Minister of Trade and Industries as the one to define the fiscal incentives for a given strategic investor which were submitted to the National Investment Steering Committee for approval and the Minister of Finance had the power of just transforming such into an order and gazetting the same so they become law and binding.

The Finance Act of 2022 enacts special strategic investments that have been approved by the National Investment Steering Committee is exempt from income tax and also the same type of investor is exempt on value added tax on goods and services.

The Finance Act enacts a more transparent mechanism for exempting strategic investors and this is demonstrating good governance and democracy since the previous framework provided for an extraordinary mechanism of granting exemptions that was overriding existing laws.

1. **Digital Service Tax**

The Digital Service Tax (DST) of 2% on turnover generated by non-resident service providers is proposed in the Finance Act 2022. While the intention of this new provision is for the government to benefit from the growing trend of business that is taking place on social media platforms like Instagram, WhatsApp, Meta, etc.

However, ride sharing companies may also benefit from the Digital Service Tax since the foreign ride sharing companies are not registered in Tanzania and merely benefit from a service provider agreement with local registered company. The new tax may benefit them as non-resident suppliers of electronic services, even though their business model is very different from the likes of Meta, WhatsApp, Instagram, etc.

1. **Investment Climate and Business environment reform**

The Tanzania Finance Act reduces some tax burdens on investors in certain areas:

* The National Payment System Act has been amended so that where traders are using mobile money, the mobile money transaction levy has been reduced from a maximum of Tshs 10, 000 to Tshs 4,000. The Budget speech of the Minister of Finance included that measures to ensure that all mobile wallets are integrated to the TRA means that special efforts will be made to focus on enlarging the tax base with the help of licensed telecommunication companies.
* Reduction on the contributions to Workers Compensation Fund (WCF) from 0.6% to 0.5% which brings equality in treatment of the law between public and private sector employers.
* The forestry industry has been growing the past few years in Tanzania and there is a proposal of the reduction of produce cess on forestry products from 5% to 3%. This will encourage the growth of the forestry sector
* The amendment of the Mining Act which reduces the rate of royalties on coal used as industrial raw material to 1% and for gold sold to local refineries to 4%.
* Each district authority and urban authority shall establish a one-stop centre for cocoordinating, encouraging, promoting and facilitating business within its area of jurisdiction. This is a positive measure that may facilitate investment at the local government level and discharge some of the duties of the central governments when it comes to some levels of implementation for example.

1. **Copyright and Neighbouring Rights**

Good news for the artists in Tanzania as the law provides for “Collective Management Organisation” that can be licensed to collect copyright royalties. Prior to this legislative amendment, COSOTA was tasked to collect copyright royalties which was very ineffective. Many artists in Tanzania complained that they simply were not being paid their royalties and that there was little to no enforcement mechanisms in place to ensure this.

The introduction of a collective management organisations which are private companies that may be licensed by COSOTA is a good signal for the market and for artists since private companies may have more resources to effectively track artists’ work that is being used and may have better enforcement mechanisms to collect the dues on behalf of the copyright holders.

**Conclusion**

The Finance Act of 2022 has proved to be less ambitious than expected when it comes to private sector development reforms and improvement of investment climate in Tanzania. It would have been an opportunity for the Government of Tanznaia to really cement their position as being open for business and being a friendly business destination had they dealt with some of the detrimental provisions that damage the investment climate in Tanzania.

Furthermore, tax reliefs in the form of reductions were expected for the hospitality industry. The Finance Bill of 2022 had proposed a reduction of the hotel levy from 10% to 5%, which is great relief for the hotel and tourism industry in Tanzania that is only recovering now from COVID19. However, this was removed in the Finance Act of 2022.

Tax reliefs or a better legal framework for SMEs and starts ups would have been a major milestone for Tanzania’s private sector development agenda, however the Finance Act does not address the heavy burden that start-ups and SMEs face when doing business in Tanzania and furthermore the proposed allocation of local government to the improvement of local entrepreneurship infrastructure was proposed, it was subsequently removed along with the contribution of local government finances to women entrepreneurs as well.

It would have been an opportunity for the Finance Act to enact amendments of certain Anti-Money Laundering Act and Economic Crimes Act provisions that treat tax offenses as economic crimes or money laundering offences that are unbailable offences when they should be treated as tax offences that attract hefty fines and/or penalties. Other areas that could have been amended is the problematic provisions of the Tax Administration Act including section 52(10) which provides that an objected assessment/decision is confirmed and subject to appeal if the Commissioner fails to determine it within 6 months of admission to name just a few.

I remain optimistic that the next Parliament seating will address some of the core issues that are hindering the investment climate in Tanzania and that the words and extensive PR efforts of the Government will eventually match the policies and laws on the ground.