



Production sharing agreement (PSA) review

We are a large company that has entered into a PSA with Tanzania Petroleum Development Corporation (TPDC) for the prospecting of oil in Tanzania. We have recently come across reports that the Government is intending to review all PSAs. What are the chances that this can happen and what is our remedy under the PSA? How likely is this to happen? Our other question is that the Tanzania Revenue Authority (TRA) is causing our subcontractors havoc in taxation although we are exempt. Can we sue the TRA to stop harassing us?

GP, Dar

There were reports in the press that the Ministry for Energy and Minerals had ordered the new TPDC board of directors to review all PSA that were not beneficial to Tanzania to be reviewed. However this was not the case and the Ministry clarified the matter.

PSA is like any other agreement that once you have entered into cannot be changed unless there is a breach and hence a termination, or there is a mutual agreement to amend. The Ministry committed that it was fully respecting the rule of law. Hence, atleast for now, the Ministry has assured investors that these PSAs will not be reviewed.

You ask us how likely is this to

unless we see your PSA. However generally speaking the exemption applies to you and not your subcontractors and unless they have been specifically mentioned in the PSA, they will be liable to pay taxes.

Suing the TRA for harassment will not help either you or TRA. It is for that very purpose that TRA has sent up a department that deals with taxpayers' education and which clarifies tax matters even prior to importation. Our observation is that many investors merely import goods without consulting TRA on their eligibility for exemption. It is critical that your tax consultants fully engage with TRA in areas that are ambiguous prior to you making any moves. The law allows for advance private rulings which can be utilized.

Fired and acquitted

In 2007, my boss suspected me of having stolen some office property. The matter was reported to the police and I was charged of stealing from employer. The case went on for 3 years when I got acquitted. I contacted my former boss to be paid compensation for the allegations leveled against me but he has flatly refused. What can I do to recover my income for the last 3 years?

YU, Dar

First and foremost stealing from employer is a bailable offence and

resolved in your favour without there being any appeals. It is necessary to prove that damage was suffered as a result of the prosecution.

From what you have stated it is hard to tell if there was malice in your employer reporting you and if it was without just cause or whether it was reasonable. Whilst filing your case you must be reminded that should your malicious prosecution suit fail, you will be hit with costs. Hence it is paramount that you seek expert opinion of a lawyer before embarking on this.

Taxation of non-Tanzanian income

I am a Tanzanian living in Dar es Salaam. I recently acquired shares in a company in South Africa from where I received dividends for the first time a few months ago. TRA somehow found this out and to my surprise I have been hit with an assessment. How and why should I be taxed for my investment in South Africa. It seems like TRA can tax the whole world and this is their scheme to make some quick money. Please guide me- I am a very poor person and cannot afford this.

UK, Dar

Just so that you know, the TRA will come after you whether you are rich or poor, and your argument that you are poor holds

happen? Our response is that it is very unlikely that the PSAs that you have entered into will be reopened. Investments in Tanzania are guaranteed against nationalisation and expropriation. Tanzania is also a signatory of several multilateral and bilateral agreements on protection and promotion of foreign investment. Among other international agreements and membership, Tanzania is a member of Multilateral Investment Guarantee Agency (MIGA) and International Centre for Settlement of Investment Disputes (ICSID). By opening the PSAs, Tanzania will receive very bad publicity internationally, which is something Tanzania cannot afford at this stage of its development. It would send the wrong signals to the investor community.

As for your tax issue, we cannot answer whether you are correct or not in your interpretation of the exemption

hence for you to claim that you were just waiting for the acquittal to claim lost income for the past three years might be a long shot. You have the option of filing a civil case against your boss and/or his company and demand damages for malicious prosecution. Malicious prosecution is the malicious institution of unsuccessful criminal proceedings against another without reasonable or probable cause. This tort balances competing principles, namely freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons.

The tort provides redress for those who are prosecuted without cause and with malice. In order to succeed you must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was

no water.

The Income Tax Act of Tanzania provides that if a person is a resident in Tanzania he is liable to pay income tax for all his income whether he obtains it in Tanzania or elsewhere. Since you are a resident and you have both a local income and a foreign income, both these incomes are liable to be taxed in Tanzania. This provision means that all Tanzanians residents here are liable to pay taxes for their income not only in Tanzania but from all over the world.

However one avenue that you may want to explore based on what kind of income you have received in South Africa, is the Double Tax Agreement that exists between South Africa and Tanzania. This may come to your rescue and exempt your South African earnings from being taxed again in Tanzania as long as they have been taxed in South Africa. Your tax consultant can guide you further.

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