

Legal Brief

Lawhill & Co. Advocates – Premier Tax & Corporate Attorneys

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From our Tax Desk*

The Tax Revenue Appeals Board Settles the Legal Position on Time Limitation for Issuance of Adjusted Assessment in the Pre-Tax Administration Act, 2015 Era

The Tax Revenue Appeals Board (the Board) has ruled that:

- *The question of the time limitation within which the Commissioner General is allowed to issue adjusted assessments under section 96 (1) & (2) of the Income Tax Act, 2004, is a pure question of law and does not require a witness;*
- *Section 48 (4) of the Tax Administration Act, 2015 (the TAA 2015) which provides for five (5) years within which an adjustment assessment can be issued, cannot operate retrospectively and therefore does not apply to the years of income before the coming into force of the TAA 2015; and*
- *That section 100 (1) of the TAA 2015 specifically provides that respective tax laws shall apply for periods and events occurring before the date the TAA 2015 came into effect.*

Brief facts of the Dispute

The Appellant (Vodacom Tanzania Public Limited Company “VTPLC”) appealed against Adjusted Corporate Income Tax Assessments for the years 2012 and 2013. These were Consolidated Appeals No. 183 and 184 of 2016 between Vodacom Tanzania Public Limited Company “VTPLC” and Commissioner General, TRA. One of the grounds of appeal with respect to the year of income 2012 was that, the adjusted assessment was time-barred for not being issued within three (3) years as required under section 96 (2) of the ITA, 2004. Having conducted a full hearing and after the parties had filed their respective final submissions, the Board, on 4th October, 2019 gave its judgment allowing the entire appeal with respect to the year of income 2012 on the ground that the assessment was time barred. With regards to the year of income 2013, the Board held on three items on TRA’s favour and one item in VTPLC’s favour. This legal brief addresses the time limitation aspect and once full copy of the judgment is issued, we will provide our analysis of all the issues under dispute, which are of great interest to the telecommunications sector.

The Appellant’s Case

The Appellant with regards to time limitation argued that;

- Whether the assessment for the year of income 2012 is time barred is a pure question of law that does not necessarily require evidence;
- In the year 2012, the TAA 2015 had neither been enacted nor was it in operation. In the year 2012, the provision that allowed the Respondent to adjust an assessment was section 96 (2) (a) of the ITA, 2004 that required the Respondent to issue adjusted assessment within three years from the due date for filing return of income to which the assessment relates;
- That the Appellant’s year of income 2012 ended on 31st March 2012 and that the due date for filing the Appellant’s returns for the year of income 2012 was 30th September 2012; and the Respondent’s adjusted assessment was served upon the Appellant on 21st December 2015. The Respondent was late by over two months to issue the adjusted assessments; and

- The section 100 (1) of the TAA 2015 specifically provides for the applicability of respective tax laws on periods and events occurring before the TAA 2015 came into force, and hence section 48 (4) of the TAA 2015 did not apply for the year of income 2012.

The Respondent's Case

The Respondent, TRA, on its part, in its attempt to persuade the Board that the TAA 2015 applied to the year of income 2012 argued that;

- The events that section 100 (1) of the TAA 2015 speaks about is the act of issuance of the adjusted assessment;
- As long as the adjusted assessment was served upon the Appellant on 21st March 2015, then the time of limitation should be five (5) years as provided for under section 48 (4) of the TAA 2015; and
- Section 96 (2) of the ITA 2004 is not the applicable provisions with regard to time limitation and therefore the three years limitation does not apply to the year of income 2012.

Decision of the Board on Time Limitation and its Reasoning

The Board was satisfied that the TAA 2015 came into force on 1st August 2015 and therefore its provisions apply for the years of income subsequent to its coming into force. The TAA 2015 was not meant to operate retrospectively and therefore section 48 (4) of the TAA 2015 is inapplicable for the year of income 2012. The Board reasoned that, the question of time limitation within which an adjusted assessment can be issued is a question of law and therefore does not require evidence. In this regard, the Board was satisfied that the assessment for year of income 2012 was time-barred for being issued outside the time limit provided for under section 96 (2) of the ITA 2004.

Our Assessment of the Judgement

Lawhill & Co. Advocates welcomes the Board's decision as it has come at the right time. Indeed, the question of time limitation is purely a question of law. The decision captures well a cardinal principle that statutes are not meant to operate retrospectively, unless it is so specifically stated. The TAA 2015 does not contain a single provisions that suggests that it was meant to apply retrospectively, hence, events and periods occurring before 1st August 2015, are governed by the respective tax laws that were in force.

What Impact does the decision has to Taxpayers?

Lawhill & Co. Advocates notes that the decision is extremely significant as it puts to rest the long held belief within TRA on the time limitation for issuance of adjusted assessment in the periods occurring before the coming into force of the TAA 2015. Lawhill & Co. Advocates handles other numerous tax appeals pending before the Board and objections pending before the Commissioner General, TRA where the applicability of section 96 (2) of the TAA 2015 for the years before coming into force of the TAA 2015 is in question. The Board's confirmation means that, the balance in a horde of objections and pending appeals is by large tilted in favour of taxpayers. As a matter of fact, this position is well understood within TRA and it was therefore quite unnecessary for disputes on such issue to find their way to the adjudicating bodies. As a matter of strategic tax disputes management, taxpayers' room to close all matters which are time-barred within the ambits of section 96 of the ITA 2004, is more open now than before.

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