Issue No. 2, June 21, 2020.
From our Tax Desk

Critical Assessment of the Court of Appeal Decisions on the Financial Institutions' Deductibility of Bad Debts and Impairments on Loans

1. Introduction

Over the past half a decade, Banking and Financial Institutions have been confronted with hard to swallow realities on the deductibility of bad debts and impairments on loans. Taxpayers' appeals that found their way before the Court of Appeal, were welcomed with a dismissing handshake on the basis that they had not complied with the provisions of the Income Tax Act, 2004 (the ITA 2004). Given that reality, it looks like taxpayers' have no other option except lobbying for taxation reforms on those areas of concern. This feature article argues that, a review of decisions rendered by the Court of Appeal, had displayed inconsistencies and in some occasions, did not appreciate what the Court had decided in one case when deciding a subsequent case. Further, the Court has, on some aspects read into the law, what is not provided for in the applicable provisions. In this later regard, the Court seems to have ignored the very cardinal principal of income taxation, requiring that nothing should be read in, and nothing should be implied in a taxing statute. The paper briefly undertakes fact-checking of the decisions to substantiate the inconsistencies.

2. Context of the Feature Article

The release of this feature article is prompted by the recent decision of the Court of Appeal rendered on 16th June, 2020 at Dodoma, in **Civil Appeal No. 251 of 2018 between National Bank of Commerce and Commissioner General, Tanzania Revenue Authority**. In this decision, the Court sealed the question of deductibility of bad debts and impairments on loans by affirming all prior decisions on these issues. The Court ruled that, the cases of **National Bank of Commerce vs Commissioner General, TRA, Civil Appeal No. 52 of 2018**; and **Access Bank Tanzania Limited vs Commissioner General, TRA, Civil Appeal No. 314 of 2017**, as good law with regards to interpretation of the ITA 2004 on conditions warranting allowable deductions on loan impairment losses or what constitutes bad debt claims. The Court further approved its decision on similar issue as decided in **Civil Appeal No. 19 of 2018 between KCB Bank Tanzania Limited and Commissioner General, TRA**.

3. Review of the Key Issues and Applicable Provisions of the ITA 2004

For purposes of this article, the review is limited to two key burning issues of relevancy to the decisions under discussion. These issues are:

(a) Provisions of the ITA 2004 governing deductibility of a financial institution's bad debts; and
(b) Provisions of the ITA 2004 governing deductibility of a financial institution's impairments on loans.

Guided by the above two key issues, the article addresses an ancillary issue relating to the obligations imposed upon a financial institution as introduced by the Finance Act, 2014 before a claim for a bad debt is allowed.

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3.1. Provisions on Deductibility of Bad Debts

To start with, section 25 of the ITA 2004, is very crucial when it comes to deductibility of disclaimed amounts and bad debts. For purpose of putting the context of section 25 of the ITA 2004 in its correct perspective, we are obliged to reproduce its wording prior to amendment introduced in 2014. It provided as follows:

Reverse of amounts including bad debts (marginal notes)

25.- (1) where a person has deducted expenditure in calculating the person's income and the person later recovers the expenditure, the person shall, at the time of recovery, include the amount recovered in calculating the person's income.

(2) Where a person has included an amount in calculating the person's income and, because of a legal obligation to do so, the person later refunds the amount, the person may, at the time of refund, deduct the amount refunded in calculating the person's income.

(3) Where in calculating income on an accrual basis a person deducts expenditure that the person shall be obliged to make and the person later disclaims an obligation to incur the expenditure, the person shall, at the time of disclaimer, include the amount disclaimed in calculating the person's income.

(4) Subject to the provisions of subsection (5), where in calculating income on an accrual basis a person includes an amount to which the person is entitled and the person later –

(a) <u>disclaims an entitlement to receive the amount</u>; or

(b) ***in the case where the amount constitutes a debt claim of the person, the person writes off the debt as bad****,*

The person may, <u>at the time of disclaimer</u> OR <u>writing off</u>, <u>deduct the amount disclaimed</u> OR <u>written off</u> in calculating the person's income*.*

(5) ***A person <u>may disclaim the entitlement to receive an amount</u> OR <u>write off as bad a debt claim of the person</u>*** *–*

(a) ***in the case of a debt claim of a financial institution, <u>ONLY</u> after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania****; and*

(b) ***in any other case, only after the person has taken all reasonable steps in pursuing payment and the person reasonably believes that the entitlement or debt claim will not be satisfied****.*

A reading of section 25 of the ITA 2004, reveals that subsections (1), (2) and (3) are pretty straight forward as they merely deal with reversal of amounts which were either previously claimed as an expense or included as an income. In this regard, where an amount was claimed but later on recovered, a taxpayer reverses the entry at the time of recovery; equally, where an amount was recognized on accrual basis, but later the amount, because of a legal obligation is refunded, then, the taxpayer shall reverse such entry.

Subsections (4) and (5) of the ITA 2004, require a reading between the lines. These subsections provide for two distinct treatment when an entitlement to an amount is disclaimed, and where, the claim being a debt claim, is written off. This means that, in terms of section 25 (4) of the ITA 2004, whereas the deductibility of a disclaimed amount is deductible at the time of disclaimer; a bad debt is claimed at the time of writing it off as a bad debt. Section 25 (5) of the ITA 2004, is therefore clear as at what time a person is entitled to deduct a disclaimed amount and a bad debt that is written off.

Section 25 (5) of the ITA 2004, clarifies the circumstances envisaged under section 25 (4) of the ITA 2004. It provides further obligation before a person invokes section 25 (4). It also provides distinct qualifying conditions where; a deduction is in respect of a debt claim of a financial institution and where it is any other case besides a debt claim of financial institution. These distinct requirements are:

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(a) In the case of a debt claim of a financial institution, **only** after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania; and

(b) **In any other case, only** after the person has taken all reasonable steps in pursuing payment and the person reasonably believes that the entitlement or debt claim will not be satisfied.

The ITA, 2004, therefore makes it clear, and it actually speaks in no ambiguous terms, that, the then **only** condition for the deductibility of a debt claim of a financial institution, is after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania. The law did not make reference to standards established or that are at the pleasure of the Tanzania Revenue Authority. Nothing should be read in, in section 25 (4) (b) and (5) (a) of the ITA 2004, to provide for additional conditions not provided for under ITA, 2004. It is worthy to note that, prior to 1st July 2014, the only obligations to substantiate all reasonable steps have been taken in pursuing payment, and the person reasonably believes that the entitlement or debt claim will not be satisfied, was imposed on deductibility of bad debt claims or disclaimed amounts of other cases, and not a debt claim of a financial institution.

Having clarified on the applicability of section 25 of the ITA 2004, it is ideal that section 39 of the ITA 2004, is also closely looked at. Again prior to 1st July, 2014, section 39 (d) of the ITA 2004, which is relevant to the realization of debt claims owed by financial institution, provided as follows:

Realisation (marginal note)

39. A person who owns an asset shall be treated as realising the asset-
(a) – (c)- NA;
*(d)in the case of an asset that is a debt claim owned by a financial institution, **when the debt claim becomes a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania** and **the institution writes the debt off as bad**.*

It is interesting to note that, section 39 (d) of the ITA, 2004, echoes the same conditions imposed under section 25 (4) (b) and (5) (a) of the ITA, 2004; that is, a debt claim of a financial institution shall be treated to have been realized when, the debt claim becomes a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania; and the institution writes the debt off as bad. A collective reading of sections 25 and 39 of the ITA 2014 as they were, prior to 1st July, 2014, is clear that bad debts of a financial institution, were deductible **only** after the debt has become bad in accordance with the standards established by the Bank of Tanzania, and that the institution has written off the debt as bad.

3.2.Provisions on Deductibility of Impairment provisions on loans

In order to appreciate whether impairment provisions on loans are deductible or not, the starting point is to determine the nature of loans issued by a financial institution. The determination of the nature of the loans is crucial for purposes of understanding the specific provisions of the ITA 2004 that would govern the deductibility of impairments on loans. In terms of section 3 of the ITA 2004, loans made in the ordinary course of the banking business are the bank's trading stocks. Section 3 defines trading stock in as follows:

*""**trading stock**" means assets owned by a person that are sold or intended to be sold in the ordinary course of a business of the person, work in progress on such assets and inventories of materials to be incorporated into such assets **and includes, in the case of a person carrying on a banking business, loans made in the ordinary course of that business**;"*

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What one gets from the above definition is that, loans to a financial institution/bank made in the ordinary course of the banking business are the Bank's trading stock. The loans are therefore neither business assets nor are they investment assets. Further, the loans are not depreciable assets.

Being trading stocks, banks are permitted under section 13 of the ITA 2004, to claim a deduction in respect of the trading stock of the business, the allowance determined under section 13 (2) of the ITA 2004. On this basis, deductibility of impairments on loans is governed by section 13 of the ITA 2004, and not sections 18, 25 and 39 (d) of the ITA 2004. This understanding was explicitly underscored by the Court of Appeal in **Civil Appeal No. 314 of 2017 between Access Bank Tanzania Limited and Commissioner General, TRA (unreported)**; where at pages 20 through to 23 stated as follows (only excerpts of relevant parts are quoted):

> *"In ascertaining an applicable section under which the impairment provisions are to be subjected to for income tax purposes, we were made to go through the provision cited by the learned counsel for the parties. Reading sections 3, 13, 18 and 39 all of the ITA, it is clear that impairment provisions are allowable deductions for income tax purposes. Section 3 defines trading stock as…….Going by the definition above, it is obvious that impairment provisions are trading stocks and therefore deduction principle applicable is under s.13 of* ***Part III division 1 subdivision D*** *of the ITA………*
>
> *Impairment provisions are allowable deductions under s.13 of the Act and not s.18 and 39(d) as rightly submitted by Dr. Nyika. We say so because while s.18 of the ITA deals with the losses* ***on realization of business assets and liabilities****, the definition of the Business assets under s.3 explicitly excludes trading stocks. The section defines '****business assets****' to mean an asset to the extent to which it is employed in a business and includes a membership interest of a partner in a partnership but '****excludes (a) a trading stock or a depreciable asset****'. Going by the International Accounting Standards, impairment provisions/doubtful debts are accounting of the diminution in the value of the debt. It happens when there is a decrease in the fair value of an asset below its carrying amount. Thus, under the GAAP, the Financial Institution are required to set aside that amount upon evaluation of the risk and subsequently release the said amount upon diminishing of the risk.*
>
> *It is clear therefore, when a doubtful debt is under impairment, it is yet to become a bad debt for income tax purposes and therefore not ready for being written off.*
>
> *Being a trading stock, impairment provisions do not form part of the business assets deductible under the provisions of s.18 and 39(d) of the ITA. It was therefore wrong on this aspect, for the Board and Tribunal to uphold the respondent disallowance of impairment losses on loan relying on s.18 and 39 (d) of the ITA. The item under scrutiny should have been evaluated in line with s.13 of the ITA and not otherwise. This ground succeed to that extent."*

The above quotations from the decision of the Court of Appeal speaks volumes on the inapplicability of section 18 and 39 (d) of the ITA 2004, when determining the deductibility of impairments on loans. One need only evaluate the deductibility of impairments on loans in line with section 13 of the ITA 2004. In short, impairments on loans are deductible under section 13 of the ITA 2004 as trading stock allowances. The modalities of determining the qualifying allowable trading stock allowance, are specified in section 13 (2) of the ITA 2004. There is no single requirement of seeking prior approval to the BOT, neither a requirement of taking reasonable steps under section 13 of the ITA 2004. What is required of a taxpayer is just to demonstrate that, in provisioning for impairments on loans, the provisions of section 21 (1) of the ITA 2004, were complied, that is, the provisioning is determined in accordance with the generally accepted accounting principles (GAAP).

Just to emphasize on the question of impairments on loans; section 25 (4) & (5) of the ITA 2004, does not apply when the question relates to impairments on loans. Section 25 (4) & (5) of the ITA 2004, as explained above, apply to deductibility of bad debts. It is no wonder that, the Court of Appeal appreciated this legal position and faulted the Board and the Tribunal in relying on the provisions of sections 18 and 39 (d) of the ITA 2004 in upholding TRA's position on disallowance of impairment provisions on loans, though it did not explicitly state the inapplicability of section 25 (4) & (5) of the ITA 2004.

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4. Key Highlights of Civil Appeal No. 251 of 2018 between National Bank of Commerce and Commissioner General, Tanzania Revenue Authority

This part discusses the key issues, parties' submissions and the Court's findings on the issues. The discussion in this part provides the foundation for fact-checking that follows thereafter. In order to remain focused, the discussion in this part is subdivided into the three thematic areas; the key issues; the submissions of the parties; and the Court's analysis findings which are immediately fact-checked.

4.1.Key Issues in the Appeal

In the latest decision of the Court of Appeal, the Court summarized at page 2 of the judgement, the controlling issues that were in contention before the Board, and relevant to the appeal as follows:

(a) Whether the Respondent was correct in law to disallow impairment on loan losses for the years of income under dispute;

(b) Whether the Respondent was correct in law to disallow loan losses actually written off for the year of income 2010; and

(c) Whether the demanded interest on the tax liability was proper.

In deliberating the appeal, the Court remarked at page 6 through to 7 of the judgment, that, what it had gathered from the grounds of appeal and the written submissions, revolved on four major issues, namely:

(a) Whether the Tribunal's decision in holding that an approval of impaired loan losses by the Bank of Tanzania (the BOT) if the only evidence of bad debts claims qualifying for deduction in terms of section 39 (d) of the ITA, 2004;

(b) Whether the Tribunal's holding that a financial institution cannot deduct impaired loan losses prior to proving that it has in vain taken recovery measures is not in accordance with section 39 (d) of the ITA, 2004;

(c) Whether it is opportune for the Court to depart from its earlier decisions in the cases of National Bank of Commerce vs Commissioner General Tanzania Revenue Authority, (supra) and Access Bank Tanzania Limited vs Commissioner General Tanzania Revenue Authority (supra); and

(d) Whether interest is justified on the tax liability as against the appellant.

4.2.Arguments by the Parties in Brief

Appellant (NBC Bank Limited)	Respondent (TRA)
Impaired loan losses which have been calculated and approved according to the standards established by the BOT, qualify for deduction. The Board and the Tribunal failed to correctly interpret the provisions of section 39 (d) of the ITA, 2004, having held that the BOT's approval of impaired loans losses does not qualify for allowable deductions.	Provision of bad debt claims which the appellant had sought to be deducted, had not been realized in accordance with sections 39 (d) and 18 of the ITA and as such, did not qualify for deduction.

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The Tribunal wrongly imposed a requirement that, prior to the bad debt claim being written off, the taxpayer must embark on recovery measure and demonstrate that such measures have failed was introduced by the Finance Act 2014 which was not applicable at the time of filing returns in 2005 and 2006 as the law was not in existence.	A person can enjoy deduction on losses arising from bad debts claims only when the debt has been actualized and in respect of a financial institution, the debt must be realized in terms of section 30 (d) of ITA, 2004 and written off after all recovery measures have failed. **National Bank of Commerce vs Commissioner General Tanzania Revenue Authority**, was cited as authority.
A condition that impaired loan losses qualify for deduction after meeting the requirements under section 39 (d) of the ITA, 2004 is inapplicable and the Tribunal misconstrued the decision of the Court in **National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (supra) and ended up in making a wrong decision.	The Finance Act 2014 codified the principle enunciated in the **Barclays Bank vs Commissioner of Income Tax, Tax Appeal No. 3 of 2011**; and **Access Bank Tanzania Limited vs Commissioner General** (supra), where the Court said that the Tribunal did not rely on section 25 (5) of the Finance Act, 2014 which emphasized that, the applicable procedure on the deductibility or otherwise for any loss requires presenting to the Commissioner General evidentiary proof on existence of any loss for it to be deductible under the ITA, 2004.
	Since a bad debt claim is not allowable deduction under ITA, 2004 and considering that a financial institution cannot write off a debt from its books of account until when it has taken measures to recover the debt in vain, the interest imposed on tax uncollected is inevitable.

4.3. Fact-Checking of the Court's Analysis and Finding vis-à-vis Provisions of the ITA, 2004 and the Court's earlier Decisions on Similar Issues

This section endeavors to fact-check the Court's analysis in its judgement as confirmed against the applicable provisions of the ITA, 2004, and other earlier decision(s) of the Court. The section basically fact-checks all the key highlights summarized below. The Court in dismissing the appeal, was guided by the following propositions:

(a) The Court began with the position of the law regulating deduction of loss of the person's calculated income whereby section 18 (b) of the ITA, 2004, which provides as follows:

> *For the purposes of calculating a person's income for a year of income from any business, there shall be deducted any loss of the person, as calculated under Division III of this Part, from the realisation during the year of income of*
>
> *(b) **a debt obligation incurred in borrowing money**, where the money is or was employed or an asset purchased with the money is or was employed wholly and exclusively in the production of income from the business;*

FACT! Section 18 (b) of the ITA 2004 is not relevant when it comes to deductibility of impairment loan losses or bad debts written off. For impairments on loans, the applicable provision is section 13 read together with section 3 of the ITA 2004, which provides for deductibility of trading stock allowances. See pages 20 to 23 the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). For bad debts, the applicable provisions are section 25 (4), (5) and 39 (d) of the ITA 2004. The only condition for the deductibility of a debt claim of a financial

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institution prior to 1st July 2014, <u>is after the debt claim has become bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania</u>. The law did not make reference to standards established or that are at the pleasure of the Tanzania Revenue Authority. Once BOT is satisfied that its set standards have been satisfied, and approval thereof is granted, it is not upon TRA to question the standards for which, firstly, it has not set; and secondly, it does not administer.

(b) Division III which covers sections 36 to 41 provide guidance to the respondent in the calculation of gains and losses, costs of assets, incomings for an asset and realization. A financial institution seeking deduction on impaired loan losses must comply with the requirements prescribed under section 25 (5) of the ITA which stipulates:

(5) A person may disclaim the entitlement to receive an amount or write off as bad a debt claim of the person –

(a) in the case of a debt claim of a financial institution, only after the debt claim has become a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania;

Section 39 (d) which stipulate as follows:

A person who owns an asset shall be treated as realising the asset-

in the case of an asset that is a debt claim owned by a financial institution, when the debt claim becomes a bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania and the institution writes the debt off as bad.

<u>FACT!</u> A financial institution seeking deduction on impaired loan losses is governed by section 13 of the ITA, 2004, and not section 25 (5) of the ITA 2004. Section 25 (5) of the ITA 2004, is not the applicable provision of the ITA 2004, on deductibility of impairments on loans. See pages 20 to 23 of the Court's decision on this point in <u>Access Bank Tanzania Limited vs Commissioner General</u> (supra).

(c) Apart from the similarities in the prescribed conditions in the determination of a bad debt claim, after such determination, in addition, under section 39 (d) of ITA, the financial institution must write off the bad debt claim. Prior to writing off a bad debt claim, a financial institution must prove that it has in vain embarked on recovery measures. See: **The National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (supra) and **KCB Bank Tanzania Limited vs Commissioner General Tanzania Revenue Authority** (supra).

<u>FACT!</u> The ITA, 2004, makes it clear, and it actually speaks in no ambiguous terms, that the then <u>only</u> condition for the deductibility of a debt claim of a financial institution, <u>is after the debt claim has become bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania</u>. The law did not make reference to standards established or that are at the pleasure of the Tanzania Revenue Authority. It is a cardinal principle of interpretation of taxing statute that "nothing should be read in and nothing should be implied in a taxing statute. One has to merely look at the clear words of a statute". This means that nothing is to be read in section 25 (4) (b) and (5) (a) of the ITA 2004, to provide for additional conditions not provided for under ITA, 2004. Section 39 (d) of the ITA, 2004, echoes the same conditions imposed under section 25 (4) (b) and (5) (a) of the ITA, 2004; that is, a debt claim of a financial claim shall be treated to have been realized when, the debt claim becomes bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania; and the institution writes the debt off as bad.

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(d) Apart from sections 25 (5) and 39 (d) of ITA, 2004 improvising as to when the debt claim becomes a bad debt, it as well embraces the standards established BOT in making the requisite determination and besides, it imposes a condition on the ultimate writing off of the debt in question whereas section 18 (b) of the ITA, 2004 directs on measures to be pursued by both the taxpayer and the tax authority who is given leverage to receive returns and accounts from taxpayers and enjoy finality in the assessment, allowing and disallowing deductions. See: **The National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (supra).

FACT! Section 18 (b) of the ITA 2004 is not relevant when it comes to deductibility of impairment loan losses or bad debts written off. For impairments on loans, the applicable provision is section 13 read together with section 3 of the ITA 2004, which provides for deductibility of trading stock allowances. See pages 20 to 23 of the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). For bad debts, the applicable provisions are section 25 (4), (5) and 39 (d) of the ITA 2004. The only condition for the deductibility of a debt claim of a financial institution prior to 1st July 2014, is after the debt claim has become bad debt as determined in accordance with the relevant standards established by the Bank of Tanzania.

(e) Parties locked horns on the propriety or otherwise of subjecting a financial institution which has obtained approval of the BOT on the impairment of loans losses to be subjected to the provisions of the ITA on what is allowable deduction. The Court was confronted with a similar scenario in the case of **Access Bank Tanzania Limited vs Commissioner General, TRA** (supra) and it observed as follows:

> *"..If it is taken that the issues of approval on what is allowable/deductible amount under ITA are left with BOT after the tax payer has complied with the GAAP, this is, in our view, would be preventing the respondent (TRA) who is responsible for Tax administration from making considerations of justification behind declared losses and the actual chargeable income tax of the payer."*

FACT! Deductibility of impairment loan losses under section 13 of the ITA 2004 does not require BOT's approval. It is enough that the computation of the trading stock allowance is done in compliance with section 13 (2) of the ITA 2004 and the GAAP. BOT's approval in this regard, would only collaborate a demonstration of taxpayers' compliance with the set standards, hence a genuine trading stock allowance being claimed. See pages 20 to 23 of the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). In essence even imposing a requirement of BOT's approval for purposes of section 13 of the ITA 2004, would be reading in a statute what is not provided for.

(f) The objectives and mandates of BOT and TRA are quite distinct. It is TRA which is mandated to impose, assess and collect tax. This is not the business of BOT. In this regard, the appellant's argument that once BOT's approval is obtained on impairment of loan losses, the ITA 2004 is not applicable is with respect, misconceived. This is regardless of the ITA having embraced the application of the BOT standards when it comes to determining and approving impairment of loan losses or bad debts claims by BOT. Such claims must as well qualify for deduction in terms of section 39 (d) of the ITA, 2004.

FACT! Section 39 (d) of the ITA 2004 is not applicable to impairment on loan losses. Deductibility of impairment loan losses under section 13 of the ITA 2004 does not require BOT's approval. It is enough that the computation of the trading stock allowance is done in compliance with section 13 (2) of the ITA 2004 and the GAAP. BOT's approval in this regard, would only collaborate a demonstration of taxpayers' compliance with the set standards, hence a genuine trading stock allowance being claimed. See pages 20 to 23 of the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). In essence even imposing

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a requirement of BOT's approval for purposes of section 13 of the ITA 2004, would be reading in a statute what is not provided for.

(g) The BOT standards are not a stand-alone requirement as viewed by the appellant. As such, the evidence presented to the Bank in seeking approval of impaired loan losses and bad debts claims constitutes the evidence to be presented to the respondent for it to determine as to whether to allow or disallow the deduction.

FACT! Deductibility of impairment loan losses under section 13 of the ITA 2004 does not require BOT's approval. It is enough that the computation of the trading stock allowance is done in compliance with section 13 (2) of the ITA 2004 and the GAAP. BOT's approval in this regard, would only collaborate a demonstration of taxpayers' compliance with the set standards, hence a genuine trading stock allowance being claimed. See pages 20 to 23 of the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). In essence even imposing a requirement of BOT's approval for purposes of section 13 of the ITA 2004, would be reading in a statute what is not provided for.

(h) It is settled that a financial institution seeking deduction on impaired loans must comply with the requirements prescribed under sections 18 (b), 25 (5) and 39 (d) of the ITA, 2004. See: **The National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (supra) and **KCB Bank Tanzania Limited vs Commissioner General Tanzania Revenue Authority** (supra). In view of the settled position of the law, the Court was satisfied that, it was incumbent for the appellant to establish that it did comply with the requirements of the law governing the impairment of loan losses.

FACT! Sections 18 (b); 25 (5) and 39 (d) of the ITA 2004 are not relevant when it comes to deductibility of impairment loan losses. For impairments on loans, the applicable provision is section 13 read together with section 3 of the ITA 2004, which provides for deductibility of trading stock allowances. See pages 20 to 23 of the Court's decision on this point in Access Bank Tanzania Limited vs Commissioner General (supra). Contrary to what the Court states to be a settled position of the law, the Access Bank Tanzania Limited vs Commissioner General (supra), had held that, the issue of deductibility of impairments on loans must evaluated in line with section 13 of the ITA 2004 and not otherwise (see page 23 of that judgement). Deductibility of impairment loan losses under section 13 of the ITA 2004 does not require BOT's approval. It is enough that the computation of the trading stock allowance is done in compliance with section 13 (2) of the ITA 2004 and the GAAP. BOT's approval in this regard, would only collaborate a demonstration of taxpayers' compliance with the set standards, hence a genuine trading stock allowance being claimed

(i) In view of what the Court had endeavored to discuss, the cases of **The National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (supra) and **Access Bank Tanzania Limited vs Commissioner General Tanzania Revenue Authority** (supra), are still good law having interpreted the ITA, 2004 on conditions warranting allowable deductions on loan impairment losses or what constitutes bad debt claims.

FACT! The National Bank of Commerce vs Commissioner General Tanzania Revenue Authority (supra) premised its decisions on sections 18; 25 and 39 of the ITA 2004; and Access Bank Tanzania Limited vs Commissioner General Tanzania Revenue Authority (supra) emphasized the applicability of section 13 of the ITA 2004 on impairments on loans. There is a need to be explicit which of the two cases good law is, when it comes to deductibility of impairments on loans.

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5. Entangling the Wrangle

Given the observations with regards to the applicable provisions in respect of both impairments on loans and bad debts, and the latest decision of the Court of Appeal, the question is who to entangle the wrangle? We see two possible options: first, through the Court reviewing its latest decision whether *suo moto* (in its own motion) or upon application, to clarify the inconsistencies noted between the latest decision and the Court's findings in **Access Bank Tanzania Limited vs Commissioner General** (supra). This will ensure consistencies specifically on the provisions governing the deductibility of impairments on loans are concerned; second, is through amending the provisions of the ITA 2004 to align them with the interpretation accorded by the Court. While it is appreciated that the first option may not be preferred in the short run, it would then probably be advisable to exclude loans made by a bank in the ordinary course of its business from the definition of trading stock and accommodate it in the definition of a business asset. By so doing, the applicability of section 18; 25 and 39 of the ITA 2004, on impairment provisions on loans, would be justified. Until the wrangle is entangled, the noted inconsistencies would not develop our tax jurisprudence on the impacted aspects.

6. Conclusion

This feature article has endeavoured to demonstrate what the provisions of the ITA 2004 provide with regards to deductibility of bad debts and impairment provisions of loans. It went further to review the decision of the Court of Appeal in **Civil Appeal No. 251 of 2018 between National Bank of Commerce vs Commissioner General Tanzania Revenue Authority** (unreported). In reviewing the decision, the article embarks in fact-checking exercise to see how the decision contradicts the Court's decision in **Access Bank Tanzania Limited vs Commissioner General, TRA** (supra), and to what extent some of the Court's findings are not in line with the applicable provisions of the ITA 2004. The position discussed in this article with regard to deductibility of bad debts is limited to pre 1st July, 2014 position of the law, whereas the provision of the ITA 2004 governing deductibility of impairments on loans remains the same. The article concludes by recommending either review of the decision to align it with the provisions of the ITA 2004 and decision of the Court, or amend the provisions of the ITA 2004 to align with the Court's interpretation.

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