Case Brief: **Non-Deposit-Taking Microfinance Service Providers as Financial Institutions for Excise Duty Purposes**

Commissioner General (TRA) v. Brac Tanzania Finance Limited, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No. 203 of 2025 dated 5 February 2026

Introduction

The Court of Appeal overturned decisions by the Tax Revenue Appeals Board (TRAB) and Tribunal (TRAT), ruling that a non-deposit-taking microfinance service provider (Tier 2) qualifies as a "financial institution" for the purposes of excise duty. The judgment clarifies that tax liability is determined by tax statutes and the nature of the business, rather than strictly following the regulatory categorizations found in the Microfinance Act, 2018.

Background and Facts

The dispute began when the Tanzania Revenue Authority (TRA) assessed Brac Tanzania Finance Limited for excise duty and interest totalling TZS 1,259,705,687.00 for the year of income 2021.

Brac argued it was a Tier 2 microfinance service provider licensed by the Bank of Tanzania that does not take deposits from the public and that it is not regulated under the Banking and Financial Institutions Act (BAFIA). It argued that it should not be classified as a "financial institution" subject to the 10% excise duty under Section 124(6A)(a) of the Excise (Management and Tariff) Act.

Both the TRAB and TRAT agreed with the Respondent's argument, finding that the TRA erred in classifying a non-deposit-taking entity as a financial institution. Dissatisfied, TRA appealed to the Court of Appeal of Tanzania.

Key Legal Issues

The central question before the CAT was whether a non-deposit-taking microfinance service provider falls within the definition of a "financial institution" liable for excise duty under Section 124(6A) (a) of the Excise (Management and Tariff) Act.

The Court's Decision

The Court of Appeal allowed the appeal by the TRA, based on several key principles:

First, the Court held that when determining tax liability, the imposing tax statute must take precedence over general regulatory laws. Relying solely on the Microfinance Act to determine tax status was deemed an error. It held that interpretation of the status of Brac in respect of taxability must be drawn from the tax imposing statute.

Second, Since the Excise Act did not define the term "financial instution", the Court looked at the Income Tax Act (ITA) and the Bank of Tanzania Act. It concluded that a financial institution includes any entity approved by the BoT to provide financial services to the public, regardless of whether it takes deposits or not.

Third, while acknowledging that tax laws must be interpreted strictly, the Court found that the legislative intent was to cover financial institutions broadly. The distinction between "deposit-taking" and "non-deposit-taking" is for regulatory purposes and does not exempt an entity from being a "financial institution" in a tax context. It held that the legislature's intention to distinguish between deposit taking and non-deposit taking did not render the Respondent ineligible to be classified as a financial institution.

Our take on the decision

We understand that the decision subject of the present appeal relates to the years of income 2021 whereas among the relevant provisions in establishing excise duty liability to the Respondent as argued by the Appellant was the Income Tax Act, Bank of Tanzania Act as well as the Microfinance Act read together with the Excise (Management and Tariff) Act. However, the Finance Act in 2025 amended Section 2 of the Excise (Management and Tariff) Act by expanding the definition of Financial Institutions to include microfinance service providers under Tier 1 as recognized by the Microfinance Act.

This can simply be interpreted to mean that as per the Finance Act 2025, Microfinance Service Providers that can be charged with excise duty are only those falling under Tier 1 (deposit taking institutions) and expressly excluding those falling under Tier 2. However, with this decision we find that the Court has failed to clearly consider the definition of the "Financial Institutions" as expanded by the Finance Act 2025. Hence, the effect is that the interpretation by the Court waters down the amendment done by the Finance Act 2025 and rendering it obsolete. The Court has now generalized all microfinance service providers under Tier 1 and 2 to be financial institutions which defeats the intention of the legislature.

We find that the Court ought to have gone beyond the definitions of "Financial Institutions" as provided in the Income Tax Act and Bank of Tanzania Act but focus on the Excise (Management and Tariff) Act as amended from time to time. Doing so we believe that the Court could have borrowed wisdom behind the intent of the legislature when formulating the duty as well as the intended personnel to be subjected to that duty through the amendment of the Finance Act 2025.

Implications of the Judgment

This judgment has the following implications:

First, Despite the Finance Act 2025 excluding Microfinance service providers falling under Tier 2 from excise duty, they must now prepare for excise duty liabilities (10%) on fees and charges for services provided, even if they do not take deposits.

Second, all microfinance service providers falling under Tier 2 must start filing excise duty returns to avoid the hands of the taxing authority in future.

Third, the judgment provides a clear precedent that tax statutes are the primary authority for tax classifications, overriding regulatory categorizations in other Acts.

Fourth, the judgment reinforces the BoT's role as the licensing authority that effectively designates an entity's status for tax purposes through the issuance of financial service licenses.