

JURISDICTION OF THE TAX BOARD QUESTIONED

The Court of Appeal: *No appeal should be tabled before the Tax Revenue Appeals Board (TRAB) in the absence of an objection to the Commissioner General or forward the matter to the Board by way of reference.*

Background of the Dispute

The tax dispute was between ABG and the Tanzania Revenue Authority (TRA). ABG is a mining company with subsidiaries in Tanzania, one of them being Nyanzaga Gold Exploration Limited (Nyanzaga). Prior to the dispute, 49% of Nyanzaga shares were indirectly owned by Tusker Gold Limited (Tusker), an ASX listed company through its Tanzania subsidiary, Sub Sahara Resources Limited. The remaining 51% of Nyanzaga was indirectly owned by ABG through its Tanzania subsidiary, Barrick Exploration African Limited. Sometime in 2010, ABG through its subsidiary company, **BUK Holdco Limited**, a UK registered company, acquired 49% interest owned by Tusker. After the acquisition, ABG was in full control of the Nyanzaga project. The TRA argued that, whilst the acquisition of shares was done at the international level i.e. at the ASX, the main intension of such acquisition was to allow ABG to have full control of the Nyanzaga project. Hence, there is tax liability under Tanzania laws, which led the TRA to issue a tax liability notice to ABG. On receiving the tax liability notice from the TRA, ABG resolved to file an appeal at the TRAB. As soon as ABG filed an appeal, the TRA raised a preliminary objection (PO) that ABG's appeal was premature because the TRA had yet to issue a final assessment. The PO was dismissed, the case was heard on merit at TRAB and Tax Revenue Appeals Tribunal (TRAT) and ABG won in both tribunals. The TRA further appealed to the Court of Appeal of Tanzania (CAT).

Whilst there were several grounds of appeal argued by the TRA, CAT focused on one ground;

That the Tax Revenue Tribunal erred in law and fact in holding that the notice issued by the appellant under section 35 of ITA constituted an appealable decision or act under section 14(2) of the Tax Revenue Appeal Act, Cap 408 R.E 2006 and section 6 of the Tanzania Revenue Authority Act, Cap 399 R.E 2006.

CAT framed the following issue for its determination: whether TRAB had jurisdiction to entertain the appeal against the Commissioner General's letter?

CAT's findings were; The Commissioner General of the TRA is by law empowered to receive and determine objections filed by tax payers disputing tax liability, this can be evidenced by the nature of the supporting documents which must accompany the appeal being ***a copy of the final objection decision of assessment of tax or any other decision by the Commissioner General being appealed against.***

The Court came to a conclusion that, the notice issued by the Commissioner General to the Respondent on 20th June, 2011 on the existence of tax liability of **USD 21,336,931** is certainly not among the decision envisaged to be appealable to TRAB. ABG had not exhausted the available remedy of lodging an objection to the Commissioner General or forward the matter to the Board by way of reference only before invoking the remedy of an appeal. Accordingly, both TRAB and TRAT lacked jurisdiction to hear the appeal. CAT quashed the decisions of TRAB and TRAT for lack of jurisdiction.

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