



**Workshop on Tax Incentives and Base Protection  
New York, 23-24 April 2015**

**SAMPLE LEGISLATIVE PROVISIONS (TANZANIA)**

**Tanzania Investment Act, 1997**

**Benefits**

19 (1) A business enterprise in respect of which a certificate is granted under this Act shall be entitled to the benefits which are applicable to that enterprise under the provisions of the Income Tax Act, 1973, the Customs Tariff Act 1976, the Sales Tax Act, 1976, or of any other written law for the time being in force.

(2) For the purposes of creating a predictable investment climate, the benefits referred to under sub-section (1) shall not be amended or modified to the detriment of the investors enjoying those benefits.

**Benefits for strategic and major investments**

20. (1) For the purposes of promoting identified strategic or major investments, the Minister, may, by order published in the Gazette, and after consultation with appropriate government authorities and after consultation with the Minister of Finance, specify in addition to the benefits provided under section 19 of this Act for any period which the Board may specify.

(2) Where the Ministers do not agree on any issue or matter in accordance with the provisions subsection(1); the Minister shall within one month from the date of the consultations referred to in subsection(1), submit the matter to the President for consideration.

**Export Processing Zones Act, 2002**

**Incentives granted**

15. (1) An investor in the Export Processing Zones shall be entitled to the following incentives-

- (a) exemption from foreign exchange control or restrictions on operations carried on in an Export Processing Zone;

- (b) exemption from payment of corporate tax for an initial period of ten years and thereafter a corporate tax shall be charged at the rate of not more than twenty five percentum;
- (c) exemption from payment of withholding tax on dividends and interest for the first ten years;
- (d) remission of customs duty, value added tax and any other tax payable in respect of goods Purchased for use as raw materials, equipment, machinery including all good and services directly related to the manufacturing in the Export Processing Zones but shall not include motor vehicles, spare parts and consumables...

(3) The Agent may, subject to such conditions relating to the grant of investment incentives, recommend to the Minister [responsible for industries], variation, addition, alteration or general amendments to the types of investment incentives to be granted to the persons who are doing business in the Export Processing.

(4) Where the Minister is satisfied that variation, addition, alteration or general amendments to the types of investment incentives be made, he shall submit proposals for endorsement by the Council before forwarding such proposals to the Minister responsible for finance who shall proceed to make variation, addition, alteration or general amendments as may be necessary.

#### **Agent may enter into contractual agreement**

18 (1) The Agent may enter into a contractual agreement not inconsistent with this Act, with an investor on the grant of such investment incentives and the conduct of business within the Export Processing Zones.

(2) The contractual agreement entered into pursuant to subsection (1) may contain provisions binding on the United Republic in relation to a special licence or business transactions that may be conducted under a special licence—

- (a) which guarantee special provisions for the payment of taxes, fees and other fiscal imports;
- (b) relating to the circumstances or the manner in which the Agent may exercise any discretion conferred on it by this Act or regulations made under this Act;
- (c) relating to environmental matters, including matters which are project specific and not covered by any regulations of general application, provisions intended to define the scope and, as may be appropriate in any particular case, limit the extent of the obligations or liabilities of the holder of a special licence.

(3) Where this Act or regulations confer on the Minister or the Agent a discretion to do anything, the Minister or, as the case may be, the Agent, shall exercise such discretion subject to and in accordance with relevant stipulations contained in the contractual agreement entered into pursuant to the provisions of this section.

(4) The Agent shall refer the proposed contractual agreement to the Minister for purposes of obtaining approval in relation to the business transactions or project which the investor proposes to enter into.

### **Income Tax Act, 2004**

#### **Minister may exempt income from tax**

- 10 (1) The Minister may, by order in the Gazette, provide:
- (a) that any income or class of incomes accrued in or derived from the United Republic shall be exempt from tax to the extent specified in such order; or
  - (b) that any exemption under the Second Schedule shall cease to have effect either generally or to such extent as may be specified in such order.
- (2) The Minister may, by order in the Gazette, amend, vary or replace the Second Schedule.
- (3) Notwithstanding any law to the contrary, no exemption shall be provided from tax imposed by this Act and no agreement shall be concluded that affects or purports to affect the application of this Act, except as provided for by this Act or by way of amendment to this Act.

#### **Agreements and Certificates for fiscal stability**

143 (1) Subject to the provisions of subsection (2), where the Government of the United Republic has concluded a binding agreement with a person (whether before or after the commencement of this Act) such that certain provisions of the repealed legislation or provisions of this Act that are later repealed will continue to apply or not be altered to the detriment of the person:

- (a) the provisions of the repealed legislation shall continue to apply:
  - (i) to the extent provided for in the agreement, for the duration of the agreement; or
  - (ii) until such time as the person relinquishes the right to apply those provisions, whichever is earlier; and
- (b) in calculating the tax liability of the person during the application period referred to in paragraph (a), the Commissioner may, in the Commissioner's discretion:
  - (i) continue to apply other provisions of the repealed legislation that the Commissioner considers are associated with or that have an application that is consequential upon the provisions mentioned in paragraph (a)

instead of applying the corresponding provisions under this Act; and

- (ii) disapply any provisions in this Act that have no corresponding provision in the repealed legislation.

(2) An agreement referred to in subsection (1) have no effect on the application of this Act until registered by the Minister in the Register of Tax Agreements.

(3) A person seeking the benefit of an agreement referred to in subsection (1) shall apply to the Minister for inclusion of the agreement in the Register of Tax Agreements.

(4) For the purposes of this section, an agreement concluded by the Government of the United Republic includes a certificate of incentive issued by the Tanzanian Investment Centre under the Tanzania Investment Act, 1997.

[Possible rewrite of s. 143 for insertion into the proposed Tax Administration Act]

### **Government Agreements**

7A. (1) This section applies where-

- (a) the Government of the United Republic has concluded a binding agreement with a person (whether before or after the commencement of this Act);
- (b) the agreement purports to alter the manner in which a tax law applies, including by reason of a fiscal stability clause; and
- (c) the agreement has been registered by the Minister in the Register of Tax Agreements

(2) Where this section applies, the provisions of the old tax law that are altered or protected by the agreement continue to apply until the earlier of-

- (a) the end of the agreement or relevant clauses in the agreement;
- (b) the first alteration of the agreement after the commencement of this Act; and
- (c) the relinquishment by the person of the person's right to altered tax treatment.

(3) Where this subsection applies, in calculating the tax liability of the person during the application period referred to in subsection (2) the Commissioner General may, in the Commissioner General's discretion-

- (a) continue to apply other provisions of the old tax law (whether or not the provisions or the law have been repealed) that the Commissioner General considers are associated with or that have an application that is consequential upon the provisions mentioned in subsection (2); and

- (b) disapply any provisions of tax laws, as amended from time to time, that the Commissioner General considers-
  - (i) correspond to provisions referred to in paragraph (a); or
  - (ii) have no corresponding provision in the old tax law.
  
- (4) The Minister may only register an agreement under subsection (1)(c) if the Minister is satisfied that-
  - (a) making the agreement was authorised by law; and
  - (b) the fiscal terms of the agreement do not purport to alter the application of a tax law in an unauthorised fashion.
  
- (5) The Minister must make the Register of Tax Agreements publicly available, including by way of publication on the Ministry's website.
  
- (6) In applying and administering tax laws, the Authority must ignore an agreement to the extent the agreement purports to alter the manner in which a tax law applies-
  - (a) unless it is including the Register of Tax Agreements as required by subsection (1) and has been including on the Ministry's website as required by subsection (5); and
  - (b) irrespective of inclusion in the Register, to the extent the agreement purports to affect the application of a tax law with respect to a person that is not a party to the agreement.
  
- (7) In this section-

"fiscal stability clause" means a clause in an agreement with the Government of the United Republic that warrants that the fiscal regime applying to a contracting party will continue to apply or not be altered to the detriment of the party; and

"old tax law" means a tax law as applicable at the time the effect of the tax law is altered or protected by an agreement referred to in subsection (1) and includes a tax law that has been repealed."