



TANZANIA REVENUE AUTHORITY

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THE TAX ADMINISTRATION ACT, CAP. 438

**PRACTICE NOTE
(Made under Section 9)**

TAXATION OF A REPRESENTATIVE ASSESSEE

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1.0 TAX LAW.

This Practice Note is made with respect to Section 4 of the Act concerning the taxation of a representative assessee.

2.0 INTERPRETATION.

2.1 In this Practice Note, unless the context requires otherwise –

“**the Act**” means the Income Tax Act, Cap 332.

2.2 Definitions or expressions used in this Practice Note which are used in the Act shall have the same meaning in this Note as they have in the Act.

3.0 THE PURPOSE OF THIS PRACTICE NOTE

The purpose of this Practice Note is to give clarity to the general public on the taxation of a person for the year of income who is a representative assessee

4.0 HOW THE LAW APPLIES

4.1 Taxation of Representative Assessee

4.1.1 The Act under Section 4(1)(d) requires the charging and payment of income tax by a person who is a representative assessee from or through whom a non-resident person or beneficial owner is in receipt of any income, whether directly or indirectly.

4.1.2 Further, section 6(1)(d) of the Act provides the scope of chargeable income to include income of a nonresident or beneficial owner earned through an agent in the course of business or investment carried out in the United Republic of Tanzania (URT)

4.1.3 The activity of a non-resident person or beneficial owner carried out in URT which does not create a Permanent Establishment (PE) in the URT but has led whether directly or indirectly to the accruing of income in URT within the meaning of representative assessee, such income is chargeable to tax in the URT through a representative Assessee.

4.2 Scope of Income Chargeable under Representative Assessee

- 4.2.1 Tax is chargeable on all income of a nonresident or beneficial owner received from or through its agent in the URT.
- 4.2.2 In terms of section 3 of the Act, a nonresident or beneficial owner is considered to have conducted business or investment in URT through its agent, when a resident person has acted on behalf of nonresident or beneficial owner on various circumstances as listed under the definition of 'agent of nonresident or beneficial owner
- 4.2.3 The definition of 'agent of nonresident or beneficial owner', essentially brings into taxation in the URT, any income of nonresident or beneficial owner received from or through that agent, however, for such income to be chargeable, the activity giving rise to the income should meet conditions necessary for it to be properly characterized as business or investment carried out in the URT.
- 4.2.4 The Act provides indicative activities which if carried out in the URT by a nonresident or beneficial owner through its agent would be considered as conducting business or investment in the URT.
- 4.2.5 Generally, income received by a nonresident person as result of the following undertakings would be taxed under representative assessee regime.
- (a) employment on resident person by or on behalf of a nonresident person
 - (b) Business connection between a resident person and a nonresident person
 - (c) any income received by nonresident person from or through a resident person in any arrangement of a business or investment character
 - (d) activity of a trustee of a nonresident person,
 - (e) Acquisition of any capital asset by a person on behalf of a nonresident person

- 4.2.6 The Act therefore, requires existence of representation of a nonresident person or beneficial owner within the URT through which the business or investment is conducted, before income from such business or investment is taxed in the URT.
- 4.2.6 Nevertheless, the key consideration is the accrual of income of a nonresident or beneficial owner from business or investment carried out in the URT, therefore conditions pertinent to business or investment being carried in the URT, would be assessed separately based on facts and circumstances of each case or arrangements.
- 4.2.7 Section 69A of the Act, in addition to other source rules, provides that when a nonresident or beneficial owner derives income from activities carried out in the URT through an 'agent of a nonresident or beneficial owner', such income is deemed to have a source in the URT and hence chargeable to income tax under to section 4(1)(d) of the Act.
- 3.2.9 The income chargeable under representative assessee relates only to income accrued from activities of nonresident or beneficial owner not carried out through an agent. If the activities of the nonresident or beneficial owner are found not to fits the provisions of representative assessee, the Commissioner is empowered to elect the relevant provisions of bringing the accrued income into Taxation in the URT

4.3 The manner of taxing representative assessee

- 4.3.1 The chargeable income of a representative assessee for a year of income from any business or investment would be the income of a nonresident or beneficial owner from business or investment for the year of income deemed to accrue or arise in the URT.
- 4.3.2 Tax assessment on income of a nonresident person would be made by or upon a representative assessee in his representative capacity only, and the assessed tax, subject to other provisions of the Act, be levied upon and recovered from him in the manner and to the same extent as it would be levied upon and recovered from the person represented by him.

4.3.2 A representative assessee is liable to all tax compliance requirements in respect of income of a nonresident person as though the income upon which tax is chargeable were income received by or accruing to or in favor of him

Illustration 1:

Mr. Swalehe has been residing abroad for the past 8 years. However, he receives rent from three properties in Dar es salaam. Mr. Hassan a relative of Mr. Swalehe, has been acting in the capacity of Mr. Swalehe in Tanzania and concludes contract with tenants in the name of Swalehe.

In this case, Mr. Hassan is regarded as a representative assessee. He shall be liable to tax assessment in the name of Hassan in respect of the income of Mr. Swalehe, but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall, subject to the other provisions contained in the Act, be served and collected upon him.

Illustration 2:

Conte Co Ltd is an IT Company based in North Korea. It sales its products including Smartphones, TV, Projectors, Cameras and its accessories in Tanzania through an agent (Nestory Co Ltd) based in Kariakoo Dar es salaam.

During the year of income 2020, through her agent, the company sold goods amounting Tshs 500 mil as per customs statistics. Conte Co Ltd pays Nestory Co Ltd a commission of 10% based on sales.

In the examination of tax returns for the year of income 2021 it was observed that, Nestory Co Ltd didn't account for the income earned by Conte Co Ltd but only his commission obtained on the sale of such goods.

In this case, it is not appropriate for Nestory Co Ltd to exclude the income of Conte Co. Ltd on account of the income generated through the Company in the United Republic of Tanzania. The company was supposed to account

for the income related to the stocks of Conte Co. Limited it maintained based on the following;

- i. Through Nestory Co Ltd a non - resident person (Conte Co. Ltd) is directly in receipt of an income.
- ii. Nestory Co. Ltd is an agent of a non -resident person, with Business connections in the sense that the company habitually maintains in the United Republic a stock of goods or merchandise from which it regularly delivers goods or merchandise on behalf of the non-resident person.

Hence Nestory Co Ltd as the agent will be assessed separately on the following;

- i. The commission income received and
- ii. Profit margin earned by Conte Co Ltd from the URT.

The obligation is vested on the agent to file returns and pay tax on such amount earned by the non-resident person having source in the URT.

4.4 Tax Compliance Obligations of a nonresident or beneficial owner

4.4.1 Any person through whom a non-resident or beneficial owner is in receipt of any income should visit the nearby TRA office and register to be a representative assessee. However, the Commissioner may appoint any person as he thinks fit to be a representative assessee

4.4.2 A representative assessee is liable to all tax compliance requirements as contained in relevant tax laws including maintenance of relevant documents relating to his arrangement with a nonresident.

4.4.3 Tax chargeable under representative assessee regime should be paid according to the provisions of section 78 of the Act

4.4.4 Since the Act requires, an income of a nonresident person or beneficial owner be chargeable to income tax through the representative assessee,

any tax return filed by the resident person who is a representative assessee should separate between income of the representative assessee's own business and that attributable to a nonresident person or beneficial owner.

Signed.....*[Signature]*.....

Commissioner General

November, 2022.