Law's complexity, severity concern

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ON JULY 1 2004 a new Income Tax Act came into force in Tanzania. Its main objective was to achieve high levels of internal revenue by modifying the tax structure and reorganizing the tax administration and management procedures.

The act was drafted to close loopholes allowing a taxpayer to pay the least taxes, and limited claims for deductions and other forms of relief. The result is complex legislation, which is perplexing not only to the taxpayer but to tax consultants and the accounting profession. Some of the general changes that were made in the act are: significant anti-avoidance measures; the introduction of self-assessment; and significant interest and penalties for any failure or offence. The act is seen by the accounting profession as being a move to greater consistency between accounting profit and tax profit because the loopholes that were present in the old legislation are being tightened so that taxpayers cannot hide profits that are subject to taxation. The anti-avoidance measures are scattered throughout the act. The provisions introduce new rules on transfer pricing and arrangements between associates and income splitting for dealing with anti-avoidance. New procedures have been introduced for dealing with tax avoidance transactions. These include adjustments regarding a person's liability for tax as the commissioner thinks appropriate to counteract any avoidance or reduction of liability. Other anti-avoidance measures regulate asset dealings between entities and their members, change in control or ownership of an entity and income or dividend stripping.
The introduction of self-assessment
provides that w h e re a return of income has been submitted, the amounts shown in the return shall be treated as self-assessment and the tax disclosed shall be the tax payable on the assessment. The introduction of self-assessment is a
positive step forward in reducing the administrative and time burdens on tax returns. However, final approval for all returns is still required from the commissioner. The act also sets out significant interest and penalties for
non-compliance. Interest and penalties are set for failure to maintain documents or file statements or returns of income, understating estimated tax payable by instalment, failure to pay tax, making false or misleading statements, and aiding and abetting another person to commit an offence. Fines are also levied for offences such as failure to comply with
the provisions of the act. Provisions in the act that relate to income from business have also been amended to include the following new changes: deferral of relief for interest costs in certain circumstances; new rules in relation to valuation of trading stock, long-term contracts, finance leases and instalment sales; capital deductions changes; special new rules for non-resident transport operators and charitable organisations; and, removal of absolute bar on accounting
periods longer than 12 months. The new changes concerning deferral of relief for interest costs in certain circumstances can apply to certain instances such as where interest is not paid to the lender for the year in which interest has accrued.
It is a policy of the Tanzania Revenue Authority to recognise interest only when it is paid, therefore the new change in the act provides that tax on interest may be deferred until interest is actually paid. The act stipulates new rules on how the valuation of trading stock can be made. This can be done either by referring to the lower of the cost of the trading stock of the business at the end of the year of income, or the market value of the trading cost. In relation to the new rules on long-term contracts, the act has adopted the percentage of completion method, in recognising income where a person is engaged in a long-term contract. Payments made by a person under a finance lease or in acquiring an asset under an instalment sale are now treated as interest and a repayment of capital under a loan made by the lessor or seller to the lessee or buyer. Where a person transfers an asset under an instalment sale or a finance lease, the person effecting the transfer shall be treated as de - riving an amount in respect of the transfer and the person acquiring the asset shall be treated as incurring expenditure and as such both transactions are subject to taxation. In relation to capital deduction changes have been made to include the removal of investment deduction in calculating the income tax
base. There is also a 50% initial deduction on plant and machinery used for manufacturing and tourism and 100% deduction on agriculture. Capital deductions have also been extended to cover deductions made to all buildings and intangible assets. Taxation on disposal of investment assets is no longer limited to Tanzanian assets, for the act now

provides for the taxation of the disposal of investment assets held worldwide. There are also increases in tax rate on disposal of investments such as real property or shares in Tanzania held by non-resident individuals (20%), any disposals by companies (30%) and any disposals of assets held overseas by resident individuals.

One rather peculiar new change in the act is that a person will be deemed to have realised an asset where such person ceases to exist, even though there is no disposal of the asset on death. This new provision has been inserted to provide that the value on inheritance of an asset is market value at that date, and thus ensures that legatees would have a base cost in inherited assets. The area of employment income has not been spared from tax implications,
for the new act provides that certain benefits in kind that result from employment will be taxed. The relief from housing allowance and gratuity which existed in the repealed act has been removed. Benefits from the use of cars provided by
the employer, loans given and premises under service tenancies have to be quantified for tax purposes. Unlike in the past, retirement contributions and retirement payments as well as payments for redundancy or loss or termination of employment must be included in calculating an individual's income from employment. New provisions have been drafted to impose withholding obligations on a resident person to withhold tax on insurance premiums payable to a non-resident. The act has not received support from the public due to its complex nature and its plain objective to increase tax revenue at any cost. Business organisations are concerned that provisions such as the determination of gains from realisation of assets are too complex. It is believed that the introduction of stringent
rules on deductibility of expenditures is also unfair in that it modifies established principles of taxation law. Employers are also anxious that the act is making employment costly and hinders their ability to provide attractive compensation packages, as these will no doubt be taxed . Another concern of the tax payer is that the act confers absolute powers
on tax authorities, which means that returns can be rejected leading to presumptive assessments, collection enforcement can be ordered without interference and taxpayer complaints can be ignored.

There is a total absence of safeguards against abuse of tax administration powers conferred on tax officers and the commissioner. Possible solutions for dealing with abuses that arise from the seemingly undemocratic tax legislation were provided by Florens Luoga in a seminar on the exposition of the Income Tax Act 2004. Luoga believes that the main reason why there is undemocratic governance and taxation in Tanzania is that taxation is left to the powers of the legislature. He argues that permitting the legislature to have a free hand in taxation is unadvisable because of its potential to be used coercively and for illegitimate political ends. He claims that if the legislature is involved in enacting tax laws, it should do so according to the agreed principles of legal security, uniformi - ty and equality, which will prevent uncertainty, erratic tax measures and stealth taxes. The tax administration system, according to Luoga, would also need to be regulated by imposing obligations on tax administrators, including the obligation to ensure publication of tax laws, regulations and administrative interpretations, the duty to conform with due process in dealing with taxpayers, the duty to act impartially, the duty to submit to judicial clarification and the duty not to compromise the law. The public has voiced countless complaints concerning the complexity and ambiguity of the act, which can only lead to an abuse of the powers of the tax administration. One can only hope that these complaints and potential abuses will influence the government to consider making possible amendments to the act so as to ensure that the tax legislation is more democratic.