

## LEGAL UPDATE

### Court of Appeal Overturns TRAT Decision on Withholding Tax (WHT) on Loan Interest

#### Commissioner General (TRA) v. Vodacom Tanzania PLC | Civil Appeal No. 485 of 2023

**Judgment Delivered: 8th April 2025**

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#### Introduction

The Court of Appeal of Tanzania (CAT), on 8th April 2025, delivered a landmark decision in the case of *Commissioner General (TRA) v. Vodacom Tanzania Public Limited Company*, Civil Appeal No. 485 of 2023. The CAT overturned earlier decisions by the Tax Revenue Appeals Board (TRAB) and the Tax Revenue Appeals Tribunal (TRAT) regarding the timing of withholding tax (WHT) obligations on interest payments for intercompany loans.

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#### Background

Vodacom Tanzania PLC secured loans from its sister companies, Vodacom Group and Mirambo, in 2004, 2007, and 2009. Under the loan agreements, interest was to be paid annually. However, Vodacom did not make interest payments until 2015 (Vodacom Group) and 2017 (Mirambo), at which point it also remitted WHT to the Tanzania Revenue Authority (TRA).

During audits for the income years 2011 and 2012, TRA assessed Vodacom for WHT liabilities totaling **TZS 7,779,581,441.00**, covering both principal and interest for those years. TRA's position was that WHT was due when the interest accrued — not when the payment was actually made.

Vodacom challenged the assessment before TRAB and subsequently TRAT, both of which held in Vodacom's favor — ruling that WHT is only payable when the interest is actually paid to the lender.

## Key Legal Issue

The dispute revolved around the interpretation of **Section 82(1)** of the Income Tax Act, Cap 332 (ITA), and whether WHT is payable on an **accrual basis** or **cash basis**.

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## TRA's Grounds of Appeal

The TRA raised three issues before the Court of Appeal:

1. Whether sections 3, 21, 23, and 82 of the ITA can be harmonized or whether section 82 overrides the other provisions.
  2. Whether the term "**payment**" under section 3 of the ITA is ambiguous.
  3. Whether the WHT liability arises when interest is due or when it is actually paid.
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## Judgment and Reasoning

The CAT emphasized that the ITA provides a **technical definition** of the word "payment" under **Section 3**, which **does not require actual cash transfer**. The Court held:

- The term "pays" under Section 82 should be interpreted in its **technical sense** as provided in Section 3 of the ITA.
  - A payment obligation can arise through means other than actual cash transfer — such as the **accrual or creation of a liability**.
  - The previous rulings by TRAB and TRAT gave the term "pays" an unduly narrow interpretation by linking it strictly to **actual discharge of a liability**.
  - Sections 3, 21, 23, and 82 can be **applied harmoniously**, and there was **no ambiguity** in the relevant provisions.
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## Conclusion

The Court of Appeal conclusively held that **Withholding Tax on interest is payable on an accrual basis — when the amount becomes due**, not when the actual payment is made.

This judgment now sets binding precedent and **overrules the prior positions of both TRAB and TRAT**.

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## Key Takeaway for Taxpayers

When dealing with interest or any other payments subject to WHT:

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- **Withholding Tax must be remitted when the obligation to pay arises**, not when the payment is actually effected.
- Non-compliance with this principle may lead to **substantial assessments and penalties** during tax audits.

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