



# Tax Alert

## Taxation of retained earnings of resident companies



### Introduction

The Tax Revenue Appeals Board (the Board), on 23 September 2022, ruled that the withholding tax and interest is payable on retained income of the resident company. The decision was pronounced by the Board in the appeal between Gateway Gaming Tanzania and Commissioner General (TRA) in the Consolidated Income Tax Appeals No.11, 12 & 13 of 2022 (Unreported).

### The decision

While arriving at its decision, the Board considered the fact that Gateway Gaming Limited is a resident company in Tanzania and that for the years of income under dispute, it did not distribute dividends to its shareholders who are residents and non-residents.

The Board also noted that if those retained earnings were distributed they would have been taxed under the provisions of section 54 (1) of the Income Tax Act, 2004, hereinafter to be referred to as the ITA.

In its deliberations culminating to its decision, the Board stated that it adopted a strict interpretation of section 75 (6) of the ITA and deemed Gateway as if it is a controlled foreign corporation for the purpose of taxation and further found that its retained income was properly subjected to income tax by the TRA.

### Our observation

According to the Board's interpretation of section 75 (6) of the ITA, retained earnings of all resident companies are to be subjected to withholding tax as if the resident companies are Controlled Foreign Corporations.

A CFC is a non-resident trust or corporation in which a resident person owns a membership interest, whether directly or indirectly through one or more interposed non-resident entities and it is treated as distributing its unallocated income to its members at the end of each year of income and such income is rightly taxed under the ITA.

### Our opinion on the decision

This decision of the Board is alarming on the basis that all resident companies with retained earnings, will be required to withhold income tax from their retained earnings as if the dividend is distributed.

However, it should be noted that the decision of the Board is in effect until overturned by the Tax Revenue Appeals Tribunal or the Court of Appeal. Therefore, going forward from the Board's decision, withholding tax on retained earnings of all resident companies may be subjected to tax by the TRA.

KPMG is happy to assist on any issues arising from this alert. You can contact our tax and regulatory team on [salomegondwe@kpmg.co.tz](mailto:salomegondwe@kpmg.co.tz)

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