

URGENT REFORMS NEEDED IN TANZANIA'S TAX DISPUTE RESOLUTION MECHANISMS

In a previous article, I highlighted several critical areas within Tanzania's tax statutes that require immediate attention and amendment, especially as the national budget is currently under discussion in Parliament and the Finance Act, 2024 is on the verge of enactment. One crucial area that stands out is the duration allowed for determining notices of objections filed with the Commissioner General of the Tanzania Revenue Authority (TRA) when taxpayers dispute tax assessments.

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Historical Context and Legislative Changes

Under the original Tax Revenue Appeals Act, Cap 408 (TRAA) enacted in 2000, the duration for determining a notice of objection was six months. If the Commissioner General did not resolve the notice within this period, it was deemed that they had agreed with the taxpayer's objection. Specifically, Section 13 (3) stated:

"Where a notice of objection has been given and the Commissioner General has not communicated with the person objecting to the assessment within a period of six months, he shall be deemed to have agreed to amend the assessment in accordance with the objection."

This provision was straightforward and provided a clear timeframe, ensuring that disputes were handled expeditiously.

However, this provision was repealed by Section 58 of the Finance Act No. 15 of 2004, which removed the specific time limit for determining objections by repealing section 13(3) mentioned above. This change left the matter at the discretion of the Commissioner General, creating an open-ended timeline for resolving tax disputes.

Recent Legislative Changes and Their Implications

The Finance Act, 2022, introduced a new provision that further complicates the tax dispute resolution process. Under this new law, if the Commissioner General fails to determine a notice of objection within six months, the objection is automatically deemed confirmed, effectively endorsing the original assessment or action.

The relevant sections of the Tax Administration Act, Cap 438 (TAA) now state:

“51-(1) A person who is aggrieved by a tax decision made by the Commissioner General may object the decision by filing an objection to the Commissioner General within thirty days from the date of service of the tax decision.

52-(10) The Commissioner General shall determine an objection to a tax decision within six months from the date of admission of the notice of objection.

(11) Where the Commissioner General fails to determine the objection within the time prescribed under subsection (10), the tax assessment or tax decision shall be treated as confirmed and the objector shall have the right to appeal to the Board in accordance with the Tax Revenue Appeals Act.”

This change has significantly hindered the tax dispute resolution mechanism. Essentially, it implies that if the Commissioner General does not act within six months, there will be no decision to appeal to the Tax Revenue Appeals Board (TRAB). This undermines the purpose of the TRAB, as there is no clear decision to challenge, contrary to the detailed processes outlined in the Tax Administration Act, specifically sections 50, 51, 52, and 53.

Recommendations for Reform

Given the evident regression in our tax dispute resolution mechanisms, reverting to the original procedure established by Section 13 (3) of the Tax Revenue Appeals Act of 2000 is advisable. This provision ensured timely resolutions by deeming objections agreed upon if not resolved within six months.

Moreover, adopting the procedural approach of the East African Community Customs Management Act, 2004 (EACCMA) could provide a more efficient framework. Section 229 of EACCMA outlines a clear, 30-day period for reviewing a complaint, failing which it is deemed that the Commissioner has agreed with the complaint. Specifically:

“229. (1) A person directly affected by the decision or omission of the Commissioner or any other officer on matters relating to Customs shall within thirty days of the date of the decision or omission lodge an application for review of that decision or omission.

(4) The Commissioner shall, within a period not exceeding thirty days of the receipt of the application under subsection (2) and any further information the Commissioner may require from the person lodging the application, communicate his or her decision in writing to the person lodging the application stating reasons for the decision.

(5) Where the commissioner has not communicated his or her decision to the person lodging the application for review within the time specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application."

Borrowing the gist of the EACCMA in the above-cited provisions, the Tax Administration Act can incorporate Section 229, stipulating that objections be determined within six months instead of 30 days. Should the Commissioner General fail to resolve the objection within this timeframe, it should be deemed that the Commissioner has agreed with the objection, necessitating an amendment to the assessment in favor of the objection.

Adopting this system would constitute good practice in our tax dispute resolution process and comply with international standards in tax dispute resolution mechanisms. For instance, sister countries in the East African Community have set reasonable timeframes for determining tax objections. In Rwanda, the period is 60 working days; in Kenya and Uganda, it is 6 months. If the taxing authorities in these countries do not determine objections within these periods, they are deemed to have agreed with the notice of objection.

Imperative Reforms for Good Governance

To improve our tax management system, particularly in tax dispute resolution, it is imperative for our government to amend the current provision. This amendment would promote good governance in tax dispute resolution. Otherwise, the Tax Revenue Appeals Board (TRAB) will be preoccupied with dealing with tax objections rather than appeals, which contradicts the board's intended purpose and logic.

Consequences of Not Amending the Provisions

Failure to make these crucial amendments may result in several negative consequences:

1) *Lack of Seriousness in Determining Tax Objections by TRA*

Without a clear timeframe, there is less urgency and accountability for the TRA in resolving tax objections.

2) *Diminishing the Jurisdiction of TRAB*

The TRAB would be overwhelmed with determining objections rather than focusing on appeals, thus diluting its primary function.

3) *Diluting the Purpose and Intent of the Tax Administration Act, CAP 438*

The Act's intent to provide a structured process for resolving tax disputes would be undermined, leading to inefficiencies and a lack of clarity.

4) *Promoting Compromises between Tax Administrators and Taxpayers*

The absence of a strict deadline for tax administrators could lead to undue compromises, undermining the fair determination of tax objections.

5) *Severely Diminishing our Tax Appeals Mechanisms*

The tax appeals mechanisms, which have been in place for over 20 years, would be severely impacted, reducing their effectiveness and reliability.

6) *Contravening Good Governance in Tax Dispute Resolution*

Taxpayers face strict deadlines for filing objections and appeals (ranging from 14 to 45 days), while the taxing authority is not held to similar standards, creating an imbalance and lack of fairness in the process.

Conclusion

In conclusion, I urge our esteemed government to enact reforms that will make our economy more robust and promote foreign investment by ensuring a clear and definite tax management system where the resolution of tax disputes is integral. Establishing a system where tax objections are resolved within a specified period, and failure to do so results in the acceptance of the objection, will enhance transparency, fairness, and efficiency in our tax dispute resolution process. This approach not only aligns with good governance principles but also ensures a balanced and just framework for both taxpayers and the tax authority.

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