

# CHALLENGES FACED BY FOREIGN INVESTORS WITH TANZANIA REVENUE AUTHORITY

## ***“AN ADVOCATE'S PERSPECTIVE”***

Recently, a letter from various embassies highlighted numerous challenges faced by foreign investors with the Tanzania Revenue Authority (TRA). Initially, I suspected the letter might be fictitious due to the nature of the complaints. However, my doubts were dispelled when the Ministry of Foreign Affairs responded with a letter dated 27<sup>th</sup> June 2024, acknowledging these complaints.

As an advocate and practitioner in taxation, I feel obliged to offer my observations on this matter. Legally, we are strictly forbidden from making extensive comments before hearing from all parties involved, in adherence to the principle of the right to be heard. Nevertheless, the embassies' letter presents a prima facie case regarding issues such as audits, the duration for service of assessments, tax demands, the gazettment of tax reliefs or exemptions, and agency notices to taxpayers' bankers. On the part of the TRA, I am not well aware of their responses to these complaints. Therefore, this article is based on the prima facie case, existing law, and current practice in our tax administration.

Globally, taxation is a creation of statute. Taxes are imposed or created by substantive law, such as the Income Tax Act or VAT Act, while their collection is governed by tax regulations, rules, Commissioner General's rulings, and the like. For effective and efficient tax administration, both taxpayers and tax administrators need to foster a sense of partnership. Without such a culture, government revenue through taxation remains at risk.

Paying taxes is not an easy task for taxpayers. They always strive to minimize their tax burden as much as possible, while the taxing authority is continually striving to increase tax collection to meet targets. Without coordinated efforts and a partnership between the government, the taxing authority, and taxpayers, government revenue through taxes can be severely compromised. Therefore, the government needs to address this matter with an anthropological approach.

By examining the complaint letter on a prima facie basis, it is important to elaborate on why we are in this situation.

### ***Root Causes of the Turmoil***

First and foremost, this turmoil between taxpayers and the TRA stems from tax administrators not appreciating that they are partners with taxpayers in collecting government revenue through taxation.

Secondly, professionalism and ethics appear to be at stake on the part of the TRA. The issue of agency notices in tax administration is very critical because it is a method of last resort, used only after all other means of collecting the tax due have been exhausted without success. When an agency notice is served to a taxpayer's bank, it means all available funds will be collected, and any further deposits will be taken until the notice is fully paid. This severely impacts the taxpayer's operations and damages their credibility with the bank.

Thirdly, the issue of gazetting reliefs or exemptions granted by the government should be the responsibility of the government, not the taxpayers. As a government department, it is improper for the TRA to shift this burden to taxpayers. There are decisions from the Tax Revenue Appeals Board making it clear that it is not the duty of the taxpayers. The TRA is obliged to comply with the Board's decisions.

## **Specific Issues Highlighted**

### *Tax Audits*

Tax audits are clearly provided for under the Tax Administration Act, CAP 438. If the law is properly followed, there is no reason for taxpayers to complain, as indicated in the letter. If there is indeed an issue, much is desired on the part of the TRA.

### *Short Payment Duration*

Another unfortunate scenario is giving a taxpayer only three days to pay taxes. This is quite unfair, as taxpayers have the right to lodge complaints and tax objections to the taxing authority itself or the Tax Ombudsman. Such a short duration makes it impossible for them to exercise their rights under the law.

### *Retroactive Tax Demands*

The issue of issuing notices demanding taxes dating back fifteen (15) years is also a matter of law. Legally, unless there is a well-established fraud, no tax assessment can be legally issued by TRA outside the duration of five (5) years from the date when it was due for being issued. This is in accordance with the provisions of the Tax Administration Act.

### *Need for Reforms*

Our tax administration process is currently beset by unjustified procedures, from filing notices of objection to appealing to the Board. Since 2022, these procedures have been seriously disrupted by decisions from the Court of Appeal regarding the jurisdiction of the Board, as well as amendments to the Tax Administration Act, CAP 438, and the Tax Revenue Appeals Act, CAP 408.

These changes essentially diminish the right of taxpayers to access the Tax Revenue Appeals Board through appeals, as correctly enshrined under Section 7 of the Tax Revenue Appeals Act, CAP 408.

For good governance, the government and the TRA need to revisit these procedures, listen to stakeholders, and comply with international standards in tax administration. Failure to do so will discourage investors and taxpayers, leading to increased tax avoidance, tax evasion, and corruption.

In conclusion, while the embassies' letter has brought critical issues to light, it is imperative that all stakeholders, including the TRA, taxpayers, and the government, work together to address these concerns. Only through collaboration and adherence to the principles of fairness and professionalism can we ensure a robust and efficient tax system that supports both economic growth and government revenue generation.

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