

THE URGENT NEED FOR LEGISLATIVE ALIGNMENT IN TANZANIA'S TAX DISPUTE RESOLUTION FRAMEWORK



For more than two decades, Tanzania's tax disputes have been adjudicated by a structured system starting with the Tax Revenue Appeals Board (TRAB), followed by appeals to the Tax Revenue Appeals Tribunal (TRAT), and finally to the Court of Appeal of Tanzania (CAT). This process has been governed by the Tax Revenue Appeals Act Cap 408, [R.E 2019] (TRAA) and the Tax Administration Act, CAP 438, [R.E 2019] (TAA). However, a recent decision by the CAT in the case of *Pan African Energy vs. Commissioner General (TRA)*, Civil Appeal 121 of 2018 TZCA at Dar-es-Salaam [unreported], has thrown this system into confusion.

Disruption of Established Jurisprudence

The CAT's decision restricts the jurisdiction of TRAB to section 16(1) of the TRAA, excluding the broader jurisdiction outlined in section 7 of the same Act. According to the Court, taxpayers aggrieved by a TRA decision can only appeal to the Board following an objection decision, essentially limiting access to TRAB and undermining the broader intent of section 7 of the TRAA and section 53 of the TAA.

Relevant Legal Provisions

Jurisdiction under the TRAA

Section 7 of the TRAA stipulates:

“The Board shall have sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.”

Conversely, section 16(1) states:

“Any person who is aggrieved by an objection decision of the Commissioner General made under the Tax Administration Act may appeal to the Board.”

Appeal Rights under the TAA

Section 53 of the TAA outlines:

“(1) A person who is aggrieved by an objection decision or other decision or omission of the Commissioner General under this Part may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act.

(2) Subsection (1) shall also apply to a decision or omission made under the customs law.

(3) For purposes of this section, the Board shall be deemed to be the Tax Appeals Tribunal established under section 231 of the East African Community Customs Management Act.”

Implications of the CAT Decision

The CAT’s narrowing interpretation effectively diminishes the Board’s authority and disrupts the established jurisprudence in tax dispute resolution. This decision has several negative implications:

- **Undermining Legislative Intent:** It nullifies the comprehensive jurisdiction intended by section 7 of the TRAA and section 53 of the TAA.
- **Potential for Corruption:** Limiting access to TRAB could increase corruption as taxpayers and administrators may seek informal resolutions.
- **Increased Tax Evasion:** A less accessible and transparent appeals process could encourage tax evasion.
- **Decreased Investor Confidence:** Uncertainty in tax dispute resolution can deter investment, as investors seek stable and predictable legal environments.

Call for Legislative Amendment

To rectify this situation, it is imperative to amend section 16(1) of the TRAA to align it with section 53 of the TAA. This alignment is necessary to restore the tax dispute resolution process and preserve the integrity of the system developed over the past 20 years. This amendment should be incorporated into the upcoming **Finance Bill of 2024**.

Recommendations for Government Action

The government, particularly the Attorney General, the Minister responsible for Finance, the Commissioner General (TRA), and Members of Parliament, must take proactive measures to stabilize the tax dispute resolution mechanisms. Failure to address this could lead to:

Erosion of Established Jurisprudence

Erosion of established jurisprudence for the decades, in tax administration practices and decisions could be undermined.

Redundancy of Legislative Provisions

Immediate action is necessary to prevent redundancy of legislative provisions such as Sections 7 of the Tax Revenue Appeals Act (TRAA) and 53 of the Tax Administration Act (TAA), which would become ineffective without intervention.



Financial Losses

There is a significant risk of financial losses resulting from potential revenue loss due to increased tax evasion and corruption if these issues are not promptly addressed.

Investment Deterrence

The stability and predictability of the legal environment are crucial for economic growth. Therefore, failure to stabilize tax dispute resolution mechanisms could deter investment in the country, as investors may perceive the market as legally unstable.

Conclusion

To ensure the effective functioning of Tanzania's tax system, it is crucial to have clear, reasonable, and internationally aligned tax laws. Continuous training for adjudicators at all levels is also essential to maintain a high standard of tax administration. Moreover, integrating mediation processes into tax dispute resolution could be better than adversarial systems and more efficient means of resolving tax disputes. The government's decisive action in amending the TRAA is vital to safeguarding the proper administration of tax dispute mechanisms in our country.

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