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Protection of Taxpayers' Rights in Tanzania *Vis-À-Vis* Powers of the Commissioner General to Make Tax Assessment

Eva Komba*

<https://orcid.org/0009-0002-9749-7625>

Abstract

Noting the concern of taxpayers about the powers of conducting tax assessments, this article examines the Commissioner General's powers to assess tax in light of the protection of taxpayers' rights in Tanzania. The main data collection method deployed was doctrinal supplemented by empirical qualitative methods. The article's findings indicate that the exercise of the Commissioner General's power to assess tax can result in violation of taxpayers' rights including the right to privacy, the right to presumption of innocence, the right to property, the right to object tax assessments, and the right to appeal. This situation is mainly contributed by lack of safeguards against the exercise of the powers of the Commissioner General. The article, therefore, recommends for a transparent and collaborative tax assessment process.

Keywords

Taxpayer; Taxpayer's Rights; Tax Assessment; Commissioner General; Tax Laws

1. Introduction

Globally, states are vested with powers to collect taxes from citizens.¹ However, unequal powers between tax authorities and taxpayers make taxpayers vulnerable to violations of their rights. To safeguard taxpayers' rights against the misuse of powers by tax authorities, taxpayers' rights are

* Assistant Lecturer – Mzumbe University; PhD student at the University of Dodoma; elkomba@mzumbe.ac.tz

¹ Bazo AE, 'Taxpayers' Rights: Comparative Analysis of the United State of America and the Latin American Institute of Tax Law' *Florida Tax Review* (Vol.22, No.1, 2019) 1035.

incorporated in the constitutions and tax laws in most of the countries.² The incorporation of taxpayers' rights in the legal framework of the country helps to improve the relationship between taxpayers and tax authorities in the process of tax assessment by ensuring that the rights of taxpayers are observed.

In its general context, the word right is the product of social, economic and political differences that exist in a given society. In this study, the word right is defined to mean an authority that is given to the person by the legal system or a benefit that is protected by the legal system by giving the person the will of force.³ Thus, taxpayers' rights can be defined as a bundle of rights that one must obtain during tax administration process, as enshrined in the laws and administrative practices.⁴ Such rights include the right to property, the right to confidentiality and privacy, the right to appeal, and the right to a presumption of innocence. Taxpayers' rights provide a prescriptive aspect in which persons pursue their ends while treating each other as free but responsible individuals.⁵ Without these legal safeguards, tax authorities can occasionally compromise taxpayers' rights, especially during tax assessment.

On the other hand, the phrase "tax assessment" appears to be very simple, but may cause many problems. The phrase is usually defined to mean the determination of the amount of taxation to be paid either on the value of property, income, or profit.⁶ In Tanzania, the phrase tax assessment is defined in the Tax Administration Act⁷ to mean the determination of the tax liability made by the Commissioner General or self-assessment made by the taxpayer responsible for filing returns.⁸ Tax assessment covers the whole procedure of establishing taxpayers' liabilities which include the computation of assessable income based on the information given by taxpayers and the issuing of a notice of assessment indicating the assessed tax.⁹ In most cases, tax assessment involves the process of scrutinising tax returns submitted by taxpayers, examining the taxpayer's information and issuing notice of the tax assessed.¹⁰ Thus, tax assessment involves the process of making a decision as to the appropriate tax liability of the taxpayer.

This article examines the legal protection of taxpayers' rights in Tanzania in relation to the powers of the Commissioner General to make assessments. Data were collected using doctrinal and empirical methods. Various laws,

² Ibid.

³ Puri A, 'The Meaning of Rights' *John Marshall Law Review* (Vol.51, No.503, 2018) 521.

⁴ Tuncel F, 'Taxpayers' Rights during Tax Audit in Turkey' in Erdogdu MM, et al (eds.), *Public Sector Economics & Development* (IJOPEC Publication 2018)117.

⁵ Walen A, *The Mechanics of Claims and Permissible Killing in War* (Oxford University Press 2019) 2.

⁶ Mcgregor G, 'What Is an Assessment?' *Canadian Tax Journal* (vol.40, No.1, 1955) 40. see also Tegegne ZA, 'Assessment of Tax Administration Focusing on Tax Assessment and Collection Procedure in Case of Nifas Silk Lafto Sub City Small Taxpayers Branch Office' (A Research Project, Kidist Mariam University College 3013) 43.

⁷ Tax Administration Act, Cap. 438 [R.E 2019], s 3.

⁸ Ibid.

⁹ Mponguliana R, *The Theory and Practice of Taxation in Tanzania* (National Board of Accountants and Auditors 2000) 291.

¹⁰ Ibid.

rules, regulations and reports relating to taxation were examined to obtain relevant data. This article also collected data through interviewing the selected tax practitioners, taxpayers, and officers from the Tanzania Revenue Authority (TRA). The article is divided into six parts. The first part gives an introduction of the article while the second part presents a legal analysis of taxpayers' rights in Tanzania. The third part discusses the powers of the Commissioner General to make tax assessments. The fourth part focuses on available redress against tax assessment; the fifth part provides the general observations and the last part, gives conclusion and recommendations.

2. Legal Framework for Taxpayers' Rights in Tanzania

Taxpayers' rights are a universal phenomenon that began with the development of human rights. The Magna Carta, which prohibited taxes without representation in the thirteenth century, is where the principles of justice and legality that led to the protection of taxpayers originate.¹¹ These principles spread over in many countries around the 20th Century after the Second World War (WWII).¹² International instruments such as the Universal Declaration of Human Rights,¹³ the International Covenant on Economic, Social and Cultural Rights,¹⁴ and the International Covenant on Civil and Political Rights¹⁵ were among the first international instruments to recognise taxpayers' rights.

Different approaches are used to protect taxpayers' rights at the national level. These approaches include enacting the right in the constitutional freedoms and rights, incorporating the right in the tax charters or in the general principle of tax law, and ratifying international human rights instruments.¹⁶ In Tanzania, the rights of taxpayers are described in the Constitution,¹⁷ the Client Service Charter,¹⁸ tax laws including the Tax Administration Act,¹⁹ the Tax Revenue Appeal Act,²⁰ the Income Tax Act,²¹ the Value Added Tax Act²² and case laws.²³

¹¹ Olokooba SM, *Nigerian Taxation: Law, Practice and Procedures Simplified* (Springer Nature Singapore Pte Ltd 2019) 193.

¹² *Ibid*, 194.

¹³ Universal Declaration of Human Rights (adopted on 10th of December, 1948 UNGA Res 217A (III)) Art 29, 7, 3, 17(1) and 12.

¹⁴ International Covenant on Economic, Social and Cultural Rights (adopted on 16th of December, 1966, entered into force 23 March 1976) UNTS art 2.

¹⁵ International Covenant on Civil and Political Rights (adopted on 16th of December 1966, entered into force on 23rd of March, 1976) 999 UNTS 171 art 26.

¹⁶ Tychmanska A, 'Taxpayer Rights and Protection in the Era of Tax law Internationalization' (2021) 40 (https://www.americanbar.org/group/taxation/publication/abataximes_home/21spr/21spr-pop-tychmanska-intl-taxpayer-right/#_ftnref8) accessed on 12th of June, 2022.

¹⁷ Constitution of the United Republic of Tanzania, Cap. 2 [R.E 2002].

¹⁸ Client Service Charter, 9th Edition, 2020.

¹⁹ Cap. 438 [R.E 2019].

²⁰ Cap. 408 [R.E 2019].

²¹ Cap. 332 [R.E 2019].

²² Cap. 148 [R.E 2019].

²³ Miscellaneous Commercial Case No. 43 of 2005 (CAT).

The Constitution, being the supreme law of the land, any law that contradicts with it is declared null and void.²⁴ It was adopted in 1977 and in 1984, the Bill of Rights was incorporated in the Constitution.²⁵ This was followed by the enactment of the Basic Rights and Duties Enforcement Act²⁶ to provide procedures for enforcing the rights protected in the Constitution. The Constitution does not have specific provisions for taxpayers' rights. However, it prohibits imposition of taxes without a law enacted by parliament.²⁷ The Constitution also protects many other rights and freedoms that may, by implication, cover taxpayers' rights. These rights and freedoms include the right to own property,²⁸ the right to personal freedom,²⁹ the right to privacy,³⁰ right to fair treatment,³¹ presumption of innocence³² and the right to information.³³

Taxpayers' rights are also protected in a number of tax laws. The Tax Administration Act³⁴ for instance, recognises a number of taxpayer's rights, including the right to confidentiality and privacy,³⁵ right to appeal,³⁶ right to information,³⁷ right to representation³⁸ and the right to object tax assessment.³⁹ Moreover, the Value Added Tax Act recognises taxpayers' right to refund of excess taxes paid.⁴⁰ With regard to the right to information, the Tax Administration Act requires tax authorities to provide taxpayers with information regarding their tax status.⁴¹ Furthermore, the enactment of the Tax Revenue Appeals Act⁴² makes the right to appeal meaningful as the Act lays down the procedures to be followed to challenge decisions of the Commissioner General including tax assessments decisions. The Tax Revenue Appeals Act also establishes the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal.⁴³ The Tax Revenue Appeals Board is vested with the jurisdiction to hear appeals from the decision of the Commissioner General, while the Tax Revenue Appeals Tribunal has jurisdiction in all appeals arising from the decisions of the Board.⁴⁴

The rights of taxpayers are also emphasised in non-binding instruments made by the TRA, including the Client Service Charter. The Charter is significant in

²⁴ Constitution of The United Republic of Tanzania, Cap. 2 [R.E 2002] art.64(5).

²⁵ *ibid* art 11-29.

²⁶ Basic Rights and Duties Enforcement Act, Cap. 3 [R.E 2019].

²⁷ Constitution of the United Republic of Tanzania, Cap .2 [R.E 2002] art.138.

²⁸ *Ibid*, art. 24.

²⁹ *Ibid*, art. 17.

³⁰ *Ibid*, art 16.

³¹ *Ibid*, art 13 (6) (a).

³² *Ibid*, art 13 (6) (b).

³³ *Ibid*, art 18 (d).

³⁴ Cap. 438 [R.E 2019].

³⁵ Tax Administration Act, Cap.438 [R.E 2019] s 21.

³⁶ *Ibid*, s 53.

³⁷ *Ibid*, s 26.

³⁸ *Ibid*, s 27.

³⁹ *Ibid*, s 51.

⁴⁰ Value Added Tax Act, Cap.148 [R.E 2019] s 81-84.

⁴¹ Tax Administration Act, Cap.438 [R.E 2019] s 26.

⁴² Tax Revenue Appeals Act, Cap. 408 [R.E 2019].

⁴³ *Ibid*, s 4.

⁴⁴ *Ibid*, s16.

the protection of the taxpayer's rights for two reasons: first, it provides for the commitments of tax authority to its clients, and second, it reiterates the rights of the taxpayers. Under the Charter, the taxpayer has several rights, which include the right to fair treatment and the right to privacy and confidentiality.⁴⁵

3. Powers of the Commissioner General to Assess Tax

The Commissioner General of TRA is appointed in accordance with the Tax Administration Act to administer all tax laws in Tanzania.⁴⁶ In the administration of tax laws, the Commissioner General is vested with powers to conduct tax assessments. Part six of the Act provides for three types of tax assessments: self-assessment,⁴⁷ jeopardy assessment,⁴⁸ and adjusted or additional assessment.⁴⁹ Self-assessment is the kind of assessment in which the taxpayer files a return based on his or her tax records, and it happens at the time of filing tax return by tax payer.⁵⁰ Nevertheless, if the Commissioner General has reasons to believe that the taxpayer did not make a correct assessment, for instance, where the tax payable is understated, the Commissioner may interfere and adjust the tax to be paid.⁵¹ Other factors that may be considered in deciding whether to interfere with the self-assessment are improper submission of tax records, errors in the return submitted and general suppositions.⁵² Therefore, self-assessment does not mean that taxpayers finally determine their tax liabilities. The Commissioner General has the power to review what taxpayers file in their tax returns.⁵³ Moreover, good self- assessment requires tax auditing so as to examine the accuracy of the tax return submitted by the taxpayer.⁵⁴

Unlike self-assessment which is made by the taxpayer, jeopardy assessment is made by the Commissioner General using the best judgement rule and available information.⁵⁵ It is usually done after the expiration of the taxpayer's period of filing return. There are also exceptional circumstances where the Commissioner may conduct jeopardy assessment before the date on which the taxpayer is obliged to file a tax return.⁵⁶ These circumstances include where the taxpayer is declared insolvent, if the taxpayer is about to depart the country, if the taxpayer plans to stop conducting business within the country,

⁴⁵ TRA, Client Service Charter, (10th Edition) 2020, 9.

⁴⁶ Tax Administration Act, Cap. 438 [R.E 2019] s 15 provide the authority shall be responsible for administering and giving effect to the tax laws in accordance with the provisions of the Tanzania Revenue Authority Act.

⁴⁷ Ibid, S 46.

⁴⁸ Ibid, s 47.

⁴⁹ Ibid, s 48.

⁵⁰ Ibid, s 46.

⁵¹ For example, see the case of *Commissioner General of TRA v Insignia Ltd*, [2006] 1 TTLR 117.

⁵² Ibid.

⁵³ Mzee H and Chalu H, 'Determinants of Tax Audit Effectiveness in Tanzania' [2017] *Managerial Auditing Journal* (Vol.2 No.2,2017) 3. (<https://doi.org/1008/MAJ-06-2016-1390>) accessed on 17th of July, 2022.

⁵⁴ Oyedokun GE, 'Relevance of Tax Audit and Tax Investigation in Nigeria' *SSRN Electronic Journal* (2016) 6 (<https://www.researchgate.net/publication/317994395>) accessed on 30th of January, 2024.

⁵⁵ Tax Administration Act, Cap. 438 [R.E 2019] s 47.

⁵⁶ Ibid, s 37.

and if the taxpayer violates tax laws.⁵⁷ On the part of adjusted or additional tax assessment, the Commissioner General is allowed to adjust the tax payable for various reasons. These include taxpayers defaulting in paying taxes, filing improper tax assessments or furnishing incorrect information due to failure to keep proper records.⁵⁸ The Commissioner may also adjust the tax payable where there is fraud, deliberate neglect, or substantial omission on behalf of the taxpayer.⁵⁹ Where the Commissioner adjusts the tax payable, he is required to serve notice to the taxpayer with reasons for the adjustments.⁶⁰

4. Remedies against Tax Assessment Made by the Commissioner General

A taxpayer who is aggrieved by the decision of the Commissioner General on tax assessment is allowed to object. The powers to determine the objection is vested to the Commissioner General.⁶¹ The objection has to be lodged within thirty days from the date of service of the tax decision.⁶² The taxpayer who is prevented by reasonable grounds from lodging his objection within time, may make an application to the Commissioner General to lodge the objection outside the prescribed period.⁶³ The objection is required to be in writing, stating the grounds for which it is raised.⁶⁴

The outcomes of the objection can be an amended tax assessment or a refusal to amend the tax assessment.⁶⁵ The Tax Administration Act does not oblige the Commissioner General to give reasons for his refusal to amend the assessment. However, in the case of *Nimrod E Mkono v Commissioner General*,⁶⁶ the court emphasised that, despite the silence of the laws, the duty to give reasons for the decision is an important aspect of the administration of justice. Therefore, the Commissioner General has the duty to give reasons for his refusal to amend the objected tax assessment. The taxpayer who is aggrieved by the Commissioner General's decision regarding objection raised, may appeal to the Tax Revenue Appeals Board.⁶⁷ Further appeal goes to the Tax Revenue Appeals Tribunal and finally the Court of Appeal of Tanzania. Nevertheless, the appeal to the court will be limited to legal issues or points of law.⁶⁸

5. General Observations

The powers of the Commissioner General to assess tax are enormous.⁶⁹ The wider discretionary powers of the Commissioner General are justified on the

⁵⁷ Ibid, s 37(3).

⁵⁸ Ibid.

⁵⁹ Ibid, s 48.

⁶⁰ Ibid, s 49.

⁶¹ Ibid, s 50

⁶² Tax Administration Act, Cap .438 [R.E 2019] s 51.

⁶³ Ibid, s 51(2).

⁶⁴ Ibid, s 51 (2).

⁶⁵ Tax Administration Act, Cap. 438 [R.E 2019] s 52.

⁶⁶ [2004] 2 TTLR 169.

⁶⁷ See section 53(1) of the Tax Administration Act Cap 438 [R.E 2019].

⁶⁸ Ibid, s 25(2).

⁶⁹ Interview by Author, Director of Taxpayer Education Department (6 July 2022, TRA, Dar es Salaam).

ground that they aim to combat tax avoidance and evasion. However, the Commissioner General may exercise the powers arbitrarily to the detriment of taxpayers. For instance, in the case of *African Barrick Gold PLC v Commissioner General, TRA*,⁷⁰ the grievance concerned the discretionary power of the Commissioner General to make tax assessments. In this case, African Barrick Gold PLC reported losses for four consecutive years with no tax return filed. The Commissioner General, being unsatisfied with their losses, conducted an investigation and auditing and demanded payment of taxes. The action of the Commissioner had justifications under tax laws, since there were indicators that the Company was evading tax. However, it is necessary that the exercise of these powers should be safeguarded. Otherwise, the Commissioner General may exercise the powers at the detriment of the taxpayers' rights. The safeguards would include complying with procedural legality.⁷¹

Moreover, the violation of taxpayers' rights is also contributed by high tension of government budget cuts and inadequate tax base. The need to collect enough tax to fund the government budget creates hardship to tax authorities to protect taxpayers' rights. According to the 2021 Organisation for Economic Co-operation and Development (OECD) report, the tax base in Tanzania Mainland is approximately 106,000 corporate taxpayers and 3.5 million individual taxpayers, which is about 6% of the population. This implies that the tax burden on the few taxpayers is enormous. This is a major cause for the tax authority to adopt the practice of policing the taxpayers directly and is an inducement to tax assessors to raise astronomical assessments in order to meet revenue collection targets. The fact that there are fewer taxpayers means that every time taxes are structured, the same taxpayers are targeted. Often, these are the individuals who do not have the means to shift the tax burden to others, hence unfair and discriminatory taxation.

Furthermore, the findings in this study demonstrates Campbell's argument that economic barriers to justice are many for taxpayers who seek to pursue their right to appeal in cases of improper tax assessments.⁷² Access to justice implies a basis for a fair and impartial legal system.⁷³ Access to justice within tax administration is elusive due to the economic barriers faced by taxpayers. These economic barriers include legal fees, court costs, and other expenses related to litigation.⁷⁴ The costs associated with hiring a legal expert and rotating the complex legal process may seem impossible. As once noted by late Benjamin William Mkapa, most Tanzanians are poor, they cannot afford professional costs, and are often the ones who experience administrative

⁷⁰ Income Tax Case, No. T3.20 of 2016 (TRAT).

⁷¹ Li J, 'Dare you sue the Tax Collector? An Empirical Study of Administrative Lawsuit against Tax Agencies in China' (Vol.23, No.1, 2014) 102.

⁷² Campbell C, 'Access to Justice in Income Tax Appeals' *University of New Brunswick law* (Vol. 63, No.2012, 2019) 447.

⁷³ Bhattacharya A, *Decoding Justice: Socio-Economic Dimensions* (Advocacy Unified Network 2024) 91.

⁷⁴ *Ibid.*

abuse.⁷⁵ Thus, that being the case, most of the small taxpayers find themselves unable to pursue the legal remedies.

In spite of the various remedies against the Commissioner's powers to make assessment, these remedies are largely ineffective. For instance, a taxpayer who wants to object to the Commissioner's assessment is required to deposit one-third or the tax not in dispute, whichever amount is greater.⁷⁶ The payment of one third of the disputed taxes acts as a stumbling block for most of the taxpayers who wish to challenge the Commissioner's decision at the objection stage.⁷⁷ In the case of *Shana General Store Limited v. Commissioner General (TRA)*,⁷⁸ the appellant, Shana Store Limited, was the company incorporated in Tanzania. The company was carrying on business in wholesale and retail. The Commissioner General of TRA conducted auditing and made tax assessments against the appellant for several years from 2011 to 2015. The assessments demanded the appellant to pay taxes amounting to TZS 2,757,169,591.00. Being aggrieved by the Commissioner's assessment, the appellant lodged a notice of objection before the Tax Revenue Appeal Board. To comply with section 51(5) of the Tax Administration Act, which demands payment of one-third of taxes before objection, the appellant was required to pay TZS 797,621,329.10 which she was unable to pay.

It is unfair for the government to demand payment of disputed taxes pending an appeal, in which the appeal may result in a decision that is contrary to the tax authorities' determination.⁷⁹ The payment of disputed tax pending the appeal, especially if the amount of tax assessed is large, leads to severe economic hardship to the taxpayers including closing down the business.⁸⁰ To overcome the problem associated with the deposit of undisputed tax, some states allow the tax authorities to accept guarantees such as sureties, mortgages, pledges, and financial assets like bonds from the taxpayer who wishes to access judicial justice, unlike paying disputed taxes pending litigation.⁸¹

6.0 Conclusion and Recommendations

Tax systems in any country, including Tanzania should safeguard the rights of taxpayers. The determination of tax liability by taxing authorities should aim to balance the need to collect tax for the government budget and the need to protect the taxpayers' rights. This will increase voluntary compliance. Among the measures that need to be employed to ensure the balance between the need to collect tax and protection of tax payers' rights is to put in place

⁷⁵ Mkapa BW, 'The Legal System Should be more Accessible and Affordable to More Tanzanian' in Peter CM and Kijo-Bisimba H (eds) *Law and Justice in Tanzania: Quarter of Century of the Court of Appeal* (Mkuki na Nyota Publishers, 2007) 39.

⁷⁶ Tax Administration Act, Cap .438 [R.E 2019] s 51(5).

⁷⁷ Interview by Author (Legal and Tax Consultant Assisting Businesses with Tax Advisory and compliance, Law firm, Mikocheni, Dar es Salaam 9th of March, 2022).

⁷⁸ In the Court of Appeal of Tanzania at Dodoma, Civil Appeal No, 369 of 2020.

⁷⁹ Liker AD, 'The Legal and Institutional Framework of Tax Administration in Developing Countries' *UCLA Law Review* (Vol. 14, No. 1, 1966) 319.

⁸⁰ *Ibid.*

⁸¹ Byness AA, 'Tax Appeal Proceedings before Federal Tax Appeal Commission in Ethiopia: Critical Reflections' *Mizan Law Review* (Vol.14, No.2, 2020) 2018.

safeguards against the exercise of the powers of the Commissioner General. It is risky to accumulate discretionary powers to the Commissioner General without their control. Therefore, there is a need to amend the tax laws to safeguard the rights of the tax payers against the abuse of the powers of the Commissioner General with respect to tax assessment.

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