



Solutions for protracted tax disputes

Disputes are an inevitable feature of any tax system. They usually arise following a tax assessment issued by a tax authority after a tax audit or compliance check. Interpretation of facts involved in disputes, or the law applicable or both, can also lead to a tax dispute. Protracted tax disputes delay the collection taxes and can be costly for taxpayers, both by way of litigation costs and uncertainty created. Accordingly, revenue authorities need to manage disputes in a timely manner, both for the benefit of the taxpayer involved and in order to maintain public trust and confidence.

In Tanzania, the Tax Revenue Appeals Act (TRAA) gives taxpayers the right to contest assessments issued by the Tanzania Revenue Authority (TRA). Firstly, by way of a formal objection to Commissioner General (CG). If unsatisfied by the decision on the objection, taxpayers may appeal at the Tax Revenue Appeals Board (the Board). If dissatisfied by the decision of the Board, the taxpayer can further appeal to the Tax Revenue Appeals Tribunal (Tribunal) and the Court of Appeal subsequently. The decision of the Court of Appeal is final.

Tax dispute mechanisms ensure fair decision on tax matters. However, the more the layers of resolution mechanism, the longer it takes to resolve the dispute. It is not uncommon for a tax dispute in Tanzania to take more than five years. A good example is the withholding tax dispute between Tullow Tanzania BV and the CG, which was decided at the Court of Appeal in 2018 after almost seven years from 2011 when the assessment was issued.

No one benefits from protracted tax disputes. In addition, time erodes the purchasing power of the tax revenue in dispute. Inflation destroys the value of tax collected if the government wins. This applies also to taxpayers for refunds arising from overpaid tax or where advance tax payments were made when the dispute is resolved in their favour.

In 2017, Tax Administration Act (TAA) was amended in relation to the accrual of interest on unpaid taxes. The amendment provided that interest accruing on unpaid tax after the due date shall not be affected or waived for the reason of delay due to court proceedings or any other dispute resolution process. This move was to protect the government revenue from the impact of inflation. Should a similar provision be introduced to protect taxpayers as well. Legislators may want to consider doing reciprocating this move to the taxpayers.

Alternatively, instead of charging interest during the dispute resolution period, the authority may consider other ways of reducing time spent on resolving tax dispute, and recommend changes to the tax laws where appropriate. Below are some of the suggested solutions.

Payment of one third of tax assessed or tax not in dispute, whichever is higher is one of the condition for admission of the objection by the TRA. A waiver or payment of a lesser amount can be accepted on application, and subject to approval by the CG. Some disputes arise from the refusal by the CG to provide a waiver or accept payment of a lesser amount. Consequently, this has contributed to prolonged dispute resolution.

Some taxpayers express feelings that some arbitrary assessments are issued with a view of collecting the one third, and after the payment the objection is not attended promptly. Considering the removal of the requirement to pay one third may act as a catalyst for the tax assessors to conclude the matters as soon as possible in order to collect the rightful tax.



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The condition for objection/appeal should also be limited to payment of the balance of the additional tax assessed, which is not in dispute. To avoid some unscrupulous taxpayers abusing this arrangement, punitive fines should be imposed on fraudulent cases.

The tax authority may also consider timely finalisation of tax audit and quick resolution of objection as one of the performance evaluation criteria, and reward assessors meeting the criteria accordingly. This is already provided in the taxpayers charter, but it will have legal backing to have it introduced as a law.

Introduction of a time limit for settlement of tax objections will improve the turnaround time and reduce the dispute resolution time. No such time limit exists currently. This should go hand in hand with capacity building of the TRA officers.

Whilst complexity and regular changes to tax laws cannot be totally avoided, it should be minimized. Undue complexity of tax laws and numerous amendments may lead to disputes. It is important that tax laws are technically well drafted, with care for precise language to avoid different interpretations that lead to disputes. Clear regulations or practice notes should supplement contentious provisions of the law.

TRA may also consider introducing Alternative Dispute Resolution (ADR), which currently is in use by various countries, including our neighbour Kenya. My colleague Carlos comprehensively addressed this in his article published on 29 May this year in this paper.

It is my hope that the relevant authorities and legislators may consider some if not all of the above suggestions with a view of enhancing tax compliance, reduction of disputes, and avoiding prolonged dispute resolution.

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