



Tax Administration and Due Process Concerns in Tax Enforcement in Tanzania

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Abstract

This article examines due process concerns in the collection of taxes in Tanzania. It focuses on the use of administrative powers in enforcing tax collections by addressing public outcry on the excessive use of discretionary extra-judicial powers. Norms of justice demand that a person is entitled to due process wherever powers are exercised and are likely to lead to deprivation. Tax collection powers stand in that category. Applying both doctrinal and empirical methods, this paper examines the operation of due process in tax enforcement in Tanzania. The results show that due process is not observed in collecting taxes. There is a perception that due process delays the collection of taxes. This has led to the institutionalization of wide and unchecked extra-judicial discretionary powers by the tax authorities. It concludes that due process in the collection of tax is important in improving tax administration in Tanzania.

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1. INTRODUCTION

Public trust in tax administration is currently at its lowest ebb.¹ Most tax complaints emanate from allegations of arbitrariness in tax assessment and collection.² Tax authorities exercise tax administration powers without observance of due process safeguards.³ Consequently, taxpayers suffer a variety of deprivation. These include the deprivation of liberty, the right to property⁴ and even the right to privacy.⁵ Where there are no due process safeguards tax collection may lead to abuse of discretionary powers.

Discretionary powers refer to the authority of the tax authority to make decisions based on their judgment and interpretation of circumstances rather than being strictly bound by clear rules.⁶ Often in the tax laws powers are conferred upon the tax authority to decide as may be deemed fit. In tax jurisprudence discretionary powers which are extra-judicial may lead to abuses and occasion injustice. Hence due process rules are invoked to impose restraint on tax administration in dealing with taxpayers.⁷

In this article, an examination is made of the public outcry over the use of discretionary powers exercised extra-judicially in administering tax collection. The objective is to establish the extent to which such powers conform with natural justice norms and do not infringe the rights of taxpayers. It is often said that the enforcement of taxes is a necessary evil. However, as Richard K. Gordon cautions, the exercise of this necessary evil should be such that "the ruler should act like a bee that collects honey without causing pain to the plant."⁸ It means that, the powers vested

unto the tax authority should not cause harm to the subjects of taxation.

This article employs both doctrinal and empirical research. It is doctrinal due to its critical textual analysis, which was done by examining the specific provisions in the Constitution of the United Republic of Tanzania, various tax legislation such as the Tax Administration Act, judicial decisions, and various literature on the subject. The justification for the doctrinal research was to understand the problems associated with the current tax laws and to propose changes to the law (law reforms). The doctrinal research entailed conducting a documentary search to obtain policy documents and other documentary materials required for textual analysis.

Further, interviews were conducted with a limited number of respondents who are frequently involved in tax administration, especially those intervening for the taxpayers. These include tax practitioners in law firms which practice tax law, tax accounting firms, and the tax appeals organs, namely the Tax Revenue Appeals Board (TRAB) and the Tax Revenue Appeals Tribunal (TRAT). In addition, a number of officers of the Tanzania Revenue Authority (TRA), particularly those handling tax objections, were also interviewed.

The aim of conducting interviews was to elicit information that attests to the existence or non-existence of due process abuses, frequency thereof (if any) and an indicative number of affected taxpayers. Although the results may not disclose fully the extent of the

¹ Cords D, (2008) 'Administrative Law and Judicial Review of Tax Collection Decisions' 52(2) *St Louis University Law Journal* 429-478 at 433.

² *Ibid.*

³ *Ibid.*

⁴ Olson NE, (2010) 'Griswold Lecture before the American College of Tax Council-Taking the Bull by Its Horns: Some Thought on Constitutional Due Process in Tax Collection', 63(3) *Tax Law* 227-238 at 228.

⁵ *Ibid.*

⁶ Brennan G and Buchanan JM (2000) *The Power to Tax: Analytical Foundations of a Fiscal Constitution*, Liberty Fund Inc, 3.

⁷ Baker, WB (2020) 'Tax Law Imperium: Income Tax Law's Role in Society' 51(1) *University of Memphis Law Review* 19-70 at 36.

⁸ Richard K (1996) 'Gordon Law of Tax Administration and Procedure' in Thuronyi V, *Tax Law Design and Drafting* (ed) International Monetary Fund at 106.

violations (quantitatively), they nevertheless be indicative of what happens when there are no safeguards to use of discretionary powers extra-judicially.

The article comprises six parts. Part one introduces the subject. Part two focuses on a brief review of the procedure prior to the tax collection process. Part three analyses the due process rule in tax collection and enforcement. Part four discusses the due process of tax collection in Tanzania in relation to taxpayers' rights. Part five gives general observations of the study; part six proffers the conclusions and way forward.

2. AN OVERVIEW OF TAX COLLECTION PROCEDURES IN TANZANIA

2.1. Tax Collection Powers

The government has the power to levy and collect taxes.⁹ It is a power originating from the social contracts whereby the citizens collectively empower the Government to mobilise resources for the well-being of all.¹⁰ It is a delegation of mandate rather than surrender of liberty. This mandate must be exercised within prescriptive limits so that the exercise of the power does not lead to harm and destruction of the citizenry as was the case in ancient times.¹¹ Tanzania has delegated the authority to collect and enforce taxes through tax laws to the Tanzania Revenue Authority (TRA).¹²

2.2. Procedure Prior to Collection of Taxes

Tax collection powers are only exercisable after the tax liabilities are conclusively determined with finality. It means

enforcement through collection measures can only be exercised when the taxes assessed are no longer subject to contentions between the tax authority and the taxpayer. It assumes that the tax assessments have been notified to the taxpayer and no objection has been raised, or where an objection has been raised, it has been determined, and no further contention exists. Where a taxpayer still contests the objection, an appeal should have been lodged and determined, and no further appeal has been preferred. In other words, there can be no enforcement of tax liabilities where the same are not conclusively and finally determined, save where exceptions are spelt out by law,¹³ but without permitting abuses by tax administration.¹⁴ Tax enforcement measures are predicated on tax compliance defaults by the taxpayer.¹⁵

Generally, after the determination of tax liabilities is done by TRA as the mandatory due process, the notice should be served to the taxpayer.¹⁶ The notice contains a simple and brief statement explaining the proposed assessed taxes and the attendant tax payment obligations. The notice served to the taxpayers normally demands immediate payment of taxes owed to the government.¹⁷ Nevertheless, if the taxpayer does not pay after TRA has issued demand notice, then TRA is free to invoke tax enforcement measures such as filing civil suit,¹⁸ creating charges over the assets of the defaulter taxpayer,¹⁹ access to taxpayer's bank account,²⁰ restraining a person²¹ and selling the property of the taxpayer.²² Most of these tax enforcement powers are discretionary and extra-judicial powers which do not entail the oversight of judicial organs.

⁹ The Constitution of the United Republic of Tanzania, cap. 2 [R.E 2002] art.138.see also the case of *Kotra Company Ltd commissioner General*, In the Tax Revenue Appeal Board at Dar es Salaam, case No. T3.06 of 2010.

¹⁰ Fatale MT, 'The Evolution of Due Process and State Tax Jurisdiction' 55(3) *Santa Clara Law Review* 563-642 at 569.

¹¹ *Ibid.*

¹² The Tanzania Revenue Authority Act, Cap 399 [R.E 2019] s. 4 and 5.

¹³ *Ibid* s.47.

¹⁴ The Tax Administration Act, Cap 438 [R.E 2019] s.46.

¹⁵ *Ibid* s.48.

¹⁶ *Ibid* s.49.

¹⁷ *ibid* s.57.

¹⁸ *Ibid* s.59.

¹⁹ *Ibid* s.61.

²⁰ *Ibid* s.58

²¹ *Ibid* s.63.

²² *ibid* s.62.

The use of discretionary and extra-judicial powers is resorted to for several reasons.²³ The first is that it permits flexibility in the sense that, such powers allow tax authorities to exercise discretion in specific cases where strict adherence to the law may not be appropriate or practical.²⁴ For example, where a defaulting taxpayer seeks to flee the tax jurisdiction in order to evade tax obligations. This is a unique circumstance or situation, which may not neatly fit within the existing legal framework.

The second is to achieve efficiency.²⁵ By granting tax authorities discretionary powers, they can expedite the resolution of tax disputes or issues without having to go through lengthy and costly legal proceedings.

The third is compliance.²⁶ The use of discretionary powers can encourage voluntary compliance with tax laws. This objective is predicated on the professionalism of tax administration. Where there is lack of professionalism issues emerge and which create public complaints.

The fourth reason is also contestable where there is lack of professionalism.²⁷ That is, the use of discretionary powers is intended to ensure that tax enforcement actions are fair and proportionate to the circumstances of each case. For example, such discretionary powers can help to prevent undue hardship on taxpayers who may have legitimate reasons for non-compliance. That is, the use of discretionary powers in tax enforcement can help to strike a balance between enforcing tax laws effectively and addressing the specific needs and circumstances of taxpayers.²⁸

3. DUE PROCESS RULES IN TAX ENFORCEMENT

Taxpayers in Tanzania are largely unaware of due process rules in tax enforcement procedures.²⁹ This is in spite of the proclamation by TRA of the Taxpayer Service Charter (hereinafter called “the Charter”). The Charter is not a statute with binding force. Rather, it is an administrative guidance that provides for the assurance of taxpayers’ awareness of their’ rights during the enforcement of taxes.³⁰

In 2015, Tanzania passed comprehensive legislation on tax administration called the Tax Administration Act, Cap.438. This Act provides some of the due process rules in tax collection and enforcement measures. These include the right to be informed,³¹ the right to challenge the assessed tax³² and right to fair and just treatment.³³ The due process rules aim at restraining tax enforcement officers from treating taxpayers badly such as abusive action against tax debtors. TRA officials are always exhorted against resort to violence or demeaning the reputation of the taxpayer during the collection of taxes or during validation of the taxpayer’s debt. The taxpayer should not be intimidated by TRA officials in relation to his or her tax liability. This is because sometimes, the taxpayers are unaware of their tax liabilities following various factors such as; non-receipt of tax notice, not being aware of statutory entitlements, for example in respect of deductibility or non-deductibility of expenditure, items of inclusion in ascertaining chargeable income and other technical matters. Although there are no statistics, a few cases have been reported in Tanzania and they

²³ Book L, (2019) Collection Due Process at Twenty-five: Still Important and needed Check on IRS Collection Power’ 20 (1) Pittsburgh Tax Review 145-196 at 153.

²⁴ *Ibid.*

²⁵ Wolowicz T, (2022) ‘Discretionary Nature of the Tax Authority’s Decision in the Matter of Tax Write-Off’s, 19 (1) *Biuletyn Stowarzyszenia Absolwentów I przyjaciół Wydziału Prawa Katolickiego Uniwersytetu Lubelskiego* 349-367 at 352.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ McIlvaine GJ (1906) ‘Limitations of the Taxing Power; Including Limitations upon Public Indebtedness’ 23(1) *San Francisco: Bancroft-Whitney Co.* 1906.581-583 at 582.

²⁹ Interview with TRA Officer, Department of Taxpayers’ Service and Education, Tanzania Revenue Authority (TRA) Dar es Salaam, July 16, 2022).

³⁰ The Client Service Charter, 9th Edition, August 2020.

³¹ The Tax Administration Act, cap 438 [R.E 2019] s.26.

³² *ibid* s.51.

³³ *Ibid* s.27, 21, 38 and 39.

are discussed below, where TRA officials have been reported to abuse taxpayers during the income tax collection process. Complaints of abuse were aired during the meeting of the Prime Minister and businessmen in Dar es Salaam where most of the taxpayers alleged to have been treated badly during tax collection process.³⁴ However, this part of the article explains in detail the taxpayers' rights such as right to information, right to challenge the assessed taxes by the TRA and right to fair treatment and just tax system in Tanzania.

3.1. The Right to Information

The tax collection system of the Tanzania should be tested against the taxpayers' protection on the right to information.³⁵ The right demands that the taxpayer be fully informed of the tax liability, the basis of tax assessment, time and mode of payment, right to object the assessment and other pertinent information that will assist the taxpayer to exercise due process rights. Apparently, Tanzania has improved significantly on compliance with the right to information. This was revealed by the majority of taxpayer respondents where 55 out of 75 equivalents to 73% of the respondents who attested that taxpayers were well informed about the facts and assumptions upon which an assessment or decision of the Commissioner General is based.³⁶ These findings are supported by literature which reveals that, the right to information is very crucial during the collection of income taxes so as to enhance voluntary compliance.³⁷

3.2. The right to Contest an Assessment

In collection of taxes, the taxpayer has several opportunities of challenging the proposed tax assessments by TRA. In Tanzania, taxpayers have the right to contest impugned tax assessment through statutory procedures

prescribed under the Tax Administration Act.³⁸ However, this right may be illusory if the contesting taxpayer is unable to meet the conditions precedent before a tax objection can be admitted. For example, where a taxpayer contests that the tax assessment is astronomical and arbitrarily raised and is required to pay either the whole of the tax assessed or half the tax assessed, whichever is the highest as a condition for the admissibility of the objection notice, the right is rendered nugatory.

3.3. The Right to Just and Fair Treatment

In the collection of income taxes perspective, the right of the taxpayer to just and fair tax treatment has numerous components such as the right to privacy and confidentiality during the tax collection,³⁹ the right to be represented,⁴⁰ the right to precise tax assessment that enables the taxpayer to pay the correct amount of taxes.⁴¹ These due process rights can easily be trampled where TRA officials divert from strict professional conduct and ethics. The consequences become deleterious to the affected taxpayers because it leads to impasse and individualized contest between the taxpayer and the tax official. In the absence of a neutral procedure to mediate and restrain the conduct of the tax officials, taxpayers become helpless victims. In other jurisdictions where there are strong and effective tax ombudsman, taxpayers can take resort to invoke the ombudsman intervention. In Tanzania, although the Minister of Finance is the designated tax ombudsman, he or she remains ineffective because that role requires a person from outside the tax authorities with clear impartiality.

³⁴ TBC1, Kikao cha Waziri Mkuu na Wafanyabiashara wa Soko la Kimataifa Kariakoo, 17, May 2023.

³⁵ The Tax Administration Act, Cap 438 [R.E 2019], s.26.

³⁶ Data obtained from interview made with taxpayers during the field study conducted on different dates in study areas from February to July 2022.

³⁷ Kiunsi H (2021) 'Watching the Watcher: Evaluating the Tanzania Revenue Authority in its Administration of Tax' 28 (1) *Huria Journal* at 68.

³⁸ The Tax Administration Act, Cap 438 [R.E 2019], S. 51.

³⁹ Ibid. s.21.

⁴⁰ Ibid. s.27.

⁴¹ Ibid.,54.

Generally, the article proffers that the due process rules in tax enforcement as discussed above are of utmost importance in ensuring compliance with taxpayers' rights. The taxpayer's knowledge and presentation of these rights will deter the unlawful conduct of tax authorities during tax administration especially on collection of taxes. The examination of due process in the collection and enforcement is discussed hereunder.

4. DUE PROCESS IN THE COLLECTION OF INCOME TAXES

Due process in enforcement of taxes is very important since taxation touches on people's properties and means of livelihood. The process of taking a person's property demands the process be appropriate.⁴² The administration of taxes may entail commission of errors by both the tax officials and taxpayers. Thus, safeguards need to be in place to correct such errors. The complexities in the tax laws exacerbate the plight of taxpayers in tax administration, especially when the tax authorities wield discretionary powers.⁴³

The study found that, in Tanzania, the use of discretionary powers is strongly defended by the Government for the reason that collection of taxes is a necessary evil if revenue targets are to be met and empower the Government to implement its duties and obligations to the citizens.⁴⁴ The argument by the Government justifying the use of wide discretionary powers is, nonetheless, fraught with dangers. Where the tax authorities are perpetually under pressure to meet revenue collection targets, the tendency is to ignore strict observance with professional disctates and the due process rules. For example, in the case of the Commissioner General *TRA v Geita Gold Mining Limited*⁴⁵, the taxpayer challenged that the Commissioner General had enforced collection of Tanzanian Shillings (TAS) 1,470,620,536.00 through

agency notice served upon the company's banker, while no tax assessment notice had been issued. It transpired that an assessment notice by the Commissioner General was issued sometime in April, 2014 for an amount of TAS Tsh.1, 208,568,508.00, but the same was never served to the taxpayers until the year 2017. By the time the assessment notice was delivered, the taxpayer had already paid the said amount and had notified the Commissioner General. The taxpayers thus demanded refund of the wrongly collected money because it amounted to double payment of the tax liability. Regrettably, the Commissioner General refused to refund. On an appeal to the Tax Revenue Appeal Board (TRAB), the taxpayer was successful as TRAB decided in favour of the taxpayer and ordered the Commissioner General to refund the said money to the taxpayer. Being unsatisfied with Decision of the TRAB, the Commissioner General, TRA appealed to the Tax Revenue Appeal Tribunal (TRAT) which also upheld the decision of the TRAB. The Commissioner General further appealed to the Court of Appeal of Tanzania demanding that the taxpayer fill the refund claim provided under section 71(1) (2) and (3) of the Tax Administration Act. The Court of Appeal held that, the said provision was irrelevant to the matter, and held in favour of the taxpayer.

The above case demonstrates that without intervention of adjudicatory authorities' taxpayers may suffer under discretionary powers contrary to the principles of due process. In this case the taxpayer had been wrongly deprived of their money and put to extreme litigation expenses and costs of none use of the money for their business purposes. The Commissioner General had been availed evidence that the notice of assessment had not been served upon the taxpayer. Further that enforcement was levied three years after the claimed assessment had been issued and a time when the tax liability had been fully

⁴² Camp (note 5) at 198.

⁴³ Ibid., p.199.

⁴⁴ Li J (2014) 'Dare you Sure the Tax Collector? An Empirical Study of Administrative Lawsuits against

Tax Agencies in China' 23(1) *Pacific Rim Law &Policy Journal* 57-112 at 107.

⁴⁵ In the Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No.192 of 2021.

discharged by the taxpayer. What probably motivated the insolence by the Commissioner General to redress the taxpayer was the desire to retain the wrongfully collected money to satisfy revenue collection targets.

In another case of *Mbeya Inter trade Company Limited v Commissioner General*,⁴⁶ it was held that, the closure of the taxpayers' business due to tax debt should accompany with good justification. This is due to the fact that, restraining of asset improperly without due process, leads to infringement of the taxpayer's right to own property. It was cautioned that tax legislation should be construed and applied with the aim of avoiding unfair and oppressive treatment of taxpayers.

This study calls upon TRA to create a conducive environment for taxpayers to repose trust in tax administration and cultivate voluntary compliance with tax obligations. Further, tax authorities should always fairly balance taxpayers' interest and the public interest of funding the government.

It is important to observe that although the tax legislation provide for some rights to taxpayers, these may remain illusory where discretion can override or curtail the exercise of those rights. For example, the right to object an assessment to tax is subject to restrictions such as a demand of the taxpayer to deposit the amount of tax which is not in dispute.⁴⁷ The relief available to taxpayers to request for waiver of the requirement to pay tax before an objection can be entertained is also circumscribed by the exercise of discretion.⁴⁸

It is unfortunate that tax decisions in Tanzania are not admissible for judicial review procedures. This would have been a very helpful and effective oversight over the temptation by the tax authorities to cocoon themselves where they intentionally infringe due process on account of overzealousness to meet revenue collection targets.

5. GENERAL OBSERVATION

Due process in the collection and enforcement of taxes is an important aspect of protecting the rights of the taxpayers against intrusive TRA's tax collection actions.⁴⁹ The problem gets compounded by the existence of tax official who do not observe professional integrity.⁵⁰ The tax authorities should be educated and trained to execute their customer duties properly, specifically during tax collection and enforcement processes.⁵¹ This statement was also emphasised by one tax officer that, the absence of competent TRA officers with integrity in Tanzania has been contributing to the violation of taxpayers' rights during collection of income taxes.⁵²

For example, in one instance a taxpayer who had goods from South Africa via the Tunduma border had cleared all duties and thereafter transported them to Dar-es-Salaam. At Dar-es-Salaam, the taxpayer was arrested by police at the instance of TRA officers. It is alleged that when he refused to pay TAS 2 million as bribe the goods were held in TRA custody for three years from 2016 to 2019.⁵³ It was also reported that in 2020 about 600 businesses were closed in Geita because of unethical behaviours of TRA officers during tax collection and enforcement processes.⁵⁴

⁴⁶ Civil Appeal No.108 of 2005 (CAT).

⁴⁷ The Tax Administration Act, Cap 438 [R.E 2019] s.51 (5).

⁴⁸ *Ibid*, s.51 (6).

⁴⁹ Interview by Author (13th of July, 2022, Posta Law Firm, Dar es Salaam).

⁵⁰ Interview by the Author (9th of March, 2022, Law Firm-Legal and Tax consultant Assisting Businesses with Tax Advisory and Compliance –Mikocheni, Dar-es-Salaam).

⁵¹ *Ibid*.

⁵² Interview by Author (17th of February, 2022, TRA, Mbeya).

⁵³ Kiunsi H (2021) 'Watching the Watcher: Evaluating the Tanzania Revenue Authority in its Administration of Tax' 28(1) *Huria Journal* 53-74 at 68.

⁵⁴ *Ibid*, 67.

This study also found the existence of inordinate interference of politicians during collection of taxes. A clear example is the resort to using Task Force to collect income taxes as attested by the case of *Lengai Ole Sabaya and Others v. The Director of Public Prosecutions*,⁵⁵ Sabaya and other were charged with armed robbery contrary to section 287A of the penal code. In defence, Ole Sabaya argued that, the use of arms was based on the instructions given by his appointing authority which directed him to collect taxes by using such means.

The article argues that if the TRA plans to use other persons like Task force in the collection of income taxes, it should take measures to protect taxpayers from abusive actions. The TRA should make sure that, taxpayers are well informed of their rights and other options available when it happens, they are subjected to abusive actions of the aforementioned persons. Alternatively, the TRA should issue notice to the taxpayer explaining and informing the tax collectors that it may

approach them for the purpose of collecting taxes they owe the government for the purpose of observing the due process.

6. CONCLUSION

According to the analysis done, it is evident that tax Administration and due process in tax collection and enforcement in Tanzania are being compromised. Good tax administration, specifically due process in tax enforcement, is the base of stable business activities that enhance the taxpayer's trust to a state. The presence of many practical problems associated with tax authorities in tax collection process erodes public trust in tax administration and fosters tax resistance by taxpayers. Therefore, this study recommends that the tax adjudicatory bodies should employ a versatile approach when addressing tax collection issues. It is additionally advised that the principle of integrity and professionalism should be reinforced among TRA officials.

⁵⁵ Criminal Appeal No.129 of 2021 (HCT) p. 6.