

# Tax Payers Rights in Tanzania: Revisiting the Rights of Taxpayers in Tanzania

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## Abstract

Over the last few years Tanzania has witnessed a controversy between Taxpayers and the tax authority i.e., The Tanzania Revenue Authority (TRA). These clashes have resulted into several boycotts, strikes, and demonstration by the tax payers, particularly the business owners (traders) in commercial areas. In all these altercations the message from the traders has always been that their rights are being infringed and they believe that the tax authority is not treating them fairly. With these unfolding, it is necessary to revisit the tax payers' rights as provided in the laws of Tanzania and study them in detail. This article delves into the tax payers' rights in Tanzania.

**Keywords:** Taxation, Tax payers, Rights, Tanzania.

## 1. Introduction

In June 2024, the country of Tanzania witnessed a nationwide strike when traders refused to open their businesses demanding for the government to adhere to their demands. The strike began at Kariakoo market (Kariakoo) in Dar es Salaam before it spread to other regions, including Mbeya, Morogoro, Mwanza, and Ruvuma. Their major complaint was the unbearable taxes and unfair treatment they encountered from officers of the TRA.

But this is not an unfamiliar sight, In May 2023, local businessmen in Tanzania went on a boycott opposing the introduction of new regulations by the TRA. The new regulations<sup>1</sup> required each trader at Kariakoo to register their store and the amount of inventory available<sup>2</sup>. The traders were not please with this regulation and it was seen as the last straw to a multitude of grievances that had been accumulating between TRA and the business community at Kariakoo over the last 10 years. The boycott lasted for four business days and resulted in a loss of more than 10 billion Tanzanian Shillings<sup>3</sup>.

If one zooms out of the timeline even further, 10 years ago in 2013, the traders at Kariakoo market also went on a strike to resist the introduction of Electronic Fiscal Devices (EFD) machines and unfair treatment by the tax administration<sup>4</sup>.

Looking at all these strikes and boycotts in unison, a common theme emerges. It appears that unfair treatment of taxpayers by tax officers is a common cry in all strikes. It is therefore crucial to understand taxpayers' rights and what a taxpayer is entitled to when dealing with the tax authority. The following part discusses the legal framework that provides for taxpayers' rights in Tanzania

<sup>1</sup> The Tax Administration (General) (Amendment) Regulations, 2022

<sup>2</sup> <https://www.bbc.com/swahili/articles/cx8prvx3l99o> accessed on 19/9/2023 1:07 pm

<sup>3</sup> *ibid*

<sup>4</sup> <https://www.voaswahili.com/a/1793516.html> accessed on 19/9/2023 1:07 pm

## 2. Legal framework.

The tax payers' rights in Tanzania are provided for in a number of authorities, this includes principal legislations, subsidiary legislations, cases and charters which are discussed in detail below.

### 2.1 The Constitution of United Republic of Tanzania of 1977

The Constitution<sup>5</sup> provides the overarching principles that guide taxation, including the protection of property rights<sup>6</sup>, access to justice<sup>7</sup>, right to privacy,<sup>8</sup> and equality before the law<sup>9</sup>. Article 13(6) of the same constitution also guarantees individuals the right to challenge by way of appeal or other remedies the decisions (including tax decisions) if aggrieved by such decisions.

### 2.2 The Tax Administration Act, 2015

This Act<sup>10</sup> is the primary legislation governing tax administration in Tanzania. It outlines taxpayers' rights and obligations, emphasizing fairness and efficiency. Key rights provided for include: Right to Information, Right to Appeal and Confidentiality and others. It also provides for mechanisms for resolving tax disputes, including administrative reviews and appeals to the Tax Revenue Appeals Board and Tribunal.

### 2.3 The Value Added Tax Act, 2014 and Income Tax Act, 2004 and other Tax statutes:

These Acts<sup>11</sup> provide sector-specific protections for taxpayers, such as exemptions, refunds, and rights to claim deductions. The tax payers are entitled to the incentives provided in these tax laws provided that they qualify for such benefits. The rights in these statutes are usually coupled with certain conditions or qualifications for a taxpayer to qualify for them.

### 2.4 Tanzania Revenue Authority's Clients/Taxpayer's Service Charter

TRA being a public institution established a Taxpayer's Service Charter<sup>12</sup> which stipulates taxpayer's rights, obligations and service standards expected from TRA. The Charter sets out the respective rights and obligations of both clients and TRA by spelling out the service standards that TRA will observe when dealing with clients and other stakeholders. Some rights provided include; Fair Treatment, Timely Service and Right to be heard.

### 2.5 Decided cases by Tax tribunals and Courts, by way of appeal, review or revision.

Decided cases resulting from different avenues available to challenge tax decisions of the TRA by way of appeal, review or revision have also provided authority on tax payers rights.

Tax Revenue Appeals Board (TRAB) is the first avenue of legal remedy available to taxpayers who are aggrieved with the decision of the Commissioner General of TRA. Tax Revenue Appeals Tribunal (TRAT) handles appeals against TRAB decisions. Finally, taxpayers can further escalate disputes to the Judiciary, particularly Court of Appeal of Tanzania if still aggrieved by the decision of the TRAT. The decisions from these avenues on tax payers rights form authority on the subject. For example, **Pan African Energy Tanzania Ltd v. Commissioner General**<sup>13</sup> where the court discussed taxpayer's rights.

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<sup>5</sup> The Constitution of the United Republic of Tanzania of 1977 [CAP 2]

<sup>6</sup> Ibid, Article 24

<sup>7</sup> Ibid, Article

<sup>8</sup> Ibid, Article 16

<sup>9</sup> Ibid, Article 13

<sup>10</sup> The Tax Administration Act, CAP 438, R.E 2019

<sup>11</sup> The Value Added Tax Act, 2014 CAP 148, R.E 2019 and The Income Tax Act, 2004

<sup>12</sup> Tanzania Revenue Authority Client Service Charter, 10<sup>th</sup> edition, published in January 2024

<sup>13</sup> Pan African Energy Tanzania Ltd v. Commissioner General TRA, Court of Appeal of Tanzania at Dar es Salaam, Civil Appeal No172 of 2020 (Unreported)

## 2.6 International Agreements and Standards

Tanzania is a signatory to various international agreements that influence its tax policies, including: The East African Community (EAC) Treaty<sup>14</sup> which harmonizes tax laws within the region to promote fairness and transparency. Other international instruments which are not binding have also greatly influenced the form of taxpayers' rights in Tanzania. For example, the Organization of economic cooperation and development (OECD) Guidelines on Taxpayer Rights although not legally binding because Tanzania is not a member to OECD<sup>15</sup>, these guidelines inspire reforms to align with global best practices.

## 3. The tax payers' rights.

### 3.1 Right to fair and equitable treatment

Taxpayers have the right to be treated fairly and equitably, meaning that the tax laws should be applied to all with impartiality. The law requires that the tax laws be applied uniformly without nepotism and discrimination based on status, size, influence, or anything. Fair treatment also extends to how taxes are assessed. Taxpayers should not face arbitrary or excessive assessments. This right is provided for in the TRA's client service charter.<sup>16</sup>

### 3.2 Right to information and transparency

Taxpayers' right to information is perhaps one of the basic rights enshrined in the Tax Administration Act<sup>17</sup>. Section 26 of the Act imposes obligations on the TRA to timely inform the taxpayer of his tax liabilities, the applicable laws, and his rights under the law. Taxpayers have the right to request and receive information about how their taxes are calculated. If a taxpayer is taken through an audit process, he or she has a right to be informed regarding the scope and outcome of such an audit. Furthermore, the information should be timely and accurate.

### 3.3 Right to objection, appeal and review

Taxpayers' right to appeal against tax decisions believed to be incorrect or unfair is a very important safeguard to enable them to seek redress where there is disagreement with the determinations of the TRA. This is a constitutional right<sup>18</sup> that is also underpinned in the Tax Revenue Appeals Act<sup>19</sup>. A grievance against an assessment or a tax decision made by the TRA can first be challenged by way of objection to the commissioner and then appealed to the Tax Revenue Appeals Board. If the taxpayer is still dissatisfied with the Board's decision, he may appeal to the Tax Revenue Appeals Tribunal and then to the Court of Appeal of Tanzania.

### 3.4 Right to privacy and confidentiality

Section 21 and Section 8 of the Tax Administration Act<sup>20</sup> and Tanzania Revenue Authority Act<sup>21</sup> respectively, guarantees taxpayers the right to confidentiality. The law requires the TRA to maintain confidentiality for all information on taxpayers except as permitted by law or by the taxpayer himself. This protects the personal and financial information of taxpayers against unauthorized access and

<sup>14</sup> The Treaty for the Establishment of the East African Community was signed in Arusha on 30 November 1999. The Treaty entered into force on 7 July 2000.

<sup>15</sup> The OECD Model Tax Convention on Income and on Capital

<sup>16</sup> Tanzania Revenue Authority Client Service Charter, 10th edition, published in January 2024

<sup>17</sup> The Tax Administration Act, CAP 438, R.E 2019

<sup>18</sup> Supra note 5, Article 13(6)(a)

<sup>19</sup> Tax Revenue Appeals Act of 2000. [CAP 408]

<sup>20</sup> Supra note 10

<sup>21</sup> Tax Revenue Appeals Act. CAP 399. R.E 2019

misuse. For instance, the tax authorities cannot disclose the financial information of a taxpayer to a third party without justifiable reasons. Breach of this right may trigger legal action against the TRA. There are multiple instances when TRA has refrained from giving a taxpayer's information despite pressure from the press and the public, particularly when a tax dispute becomes a national sensation.

### **3.5 The right to pay no more than the correct amount of tax**

A Taxpayer should pay only the amount of tax legally due. When there is an overpayment, the excess shall be refunded or adjusted. Section 71 of the Tax Administration Act<sup>22</sup>, enables a taxpayer to apply for refund when he has paid more than the prescribed tax. Where a taxpayer has paid excess taxes, they qualify for a refund, only that such application for refund must be made within 3 years from the day they made such a payment. The law indicates that any refund application should be determined within 90 days following the date on which the taxpayer submitted a valid claim.

### **3.6 Right to representation**

Section 27 of the Tax Administration Act<sup>23</sup>, provides that a taxpayer in dealing with the TRA may be represented by a tax consultant or an attorney. This right ensures that taxpayers are not disadvantaged by lack of expertise or knowledge in tax matters. In complicated tax disputes, it is always advised for taxpayers to seek the services of professional tax consultants or lawyers to represent their interests before the TRA, the board, the tribunal or in the courts of law. Professional representation usually makes a big difference in amicably solving tax issues at hand.

### **3.7 Right to timely service**

Taxpayers are entitled to timely and efficient services from the TRA; this encompasses timely processing of tax returns, timely issuance of tax clearance certificates, and speedy resolution of tax disputes. In practice, delays in the provision of these services can negatively affect businesses and individuals. For instance, a late tax clearance certificate would hinder businesses from engaging in government tenders or acquiring licenses. This right is enshrined in the TRA's client service charter<sup>24</sup>.

### **3.8 Right to finality in tax matters**

Taxpayers have a right to certainty or finality of their tax issues. This means that once a tax dispute has been resolved, the taxpayer should not be subject to further assessments or reviews for the same period unless, of course, new information comes to light. Section 48 of the Tax Administration Act<sup>25</sup>, limits the time within which the TRA can raise assessments, generally after five years, except in cases of fraud or misrepresentation. In tax litigations this right is protected through the legal doctrine of **res judicata**, which prohibits the institution of a new case on the same matter once it has been determined by the court or a competent authority.

### **3.9 Presumption of Honesty**

The taxpayer has a right to be presumed honest unless evidence to the contrary exists. When dealing with a tax payer the TRA shall at all time assume that the tax payer is telling the truth and treat all his documents as truthful until there is evidence that this is not the case. This right is very closely related to the canon principle of "presumption of innocence" in criminal law, which calls for the accused person to be presumed innocent until proven guilty. This right is provided in the TRA's Client Service Charter<sup>26</sup>

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<sup>22</sup> Supra note 10

<sup>23</sup> Supra note 10

<sup>24</sup> Supra note 12

<sup>25</sup> Supra note 10

<sup>26</sup> Supra note 12

### 3.10 Tax incentives and Exemption under the Tax Laws

Taxpayers have the right to plan their tax affairs so as to obtain incentives and exemption allowed under the tax laws. TRA shall apply the tax laws in a consistent manner to all taxpayers. The tax authority should observe and respect all tax incentives, reliefs, deductions, exemptions and tax holidays that a tax payer is entitled to according to the law. This right is also guaranteed in the TRA's Client Service Charter<sup>27</sup>.

### 4. Source of the controversy

After having discussed the taxpayers' rights as provided in different authorities in Tanzania, the question still remains, what is the cause for the recurrent clashes between tax payers and the tax authorities through out the years. The tax payers' rights seem to be duly provided in the law, but still controversies emerge on the claims that the rights of tax payers are not observed, especially the right to be treated fairly.

If we look at all the clashes between the tax payers and the tax authorities over years as describe in the introduction part, there seems to be a pattern. There is a common pattern where a law is introduced and faces resistance from the business community before eventually being accepted. The root of this conflict emanates from the breach of a key right in taxation, the "**principle of the right to representation**". Inadequate representation in the regulation-making process has resulted in the business community being taken by surprise by the tax regulations. Consequently, this leads to distrust and confusion among taxpayers causing them to resist each new regulation even if it is for their own benefit.

The principle of the right to representation is enshrined in the Constitution of the United Republic of Tanzania under Article 138<sup>28</sup>, as it states "No tax of any kind shall be imposed save in accordance with a law enacted by Parliament or pursuant to a procedure lawfully prescribed and having the force of law by virtue of a law enacted by Parliament". This article establishes representation in the making of tax legislations by parliament, where the people are represented through their elected members of parliament. However, it also provides room for imposition of tax in any other way that that a law enacted by parliament prescribes.

The article, read together with provisions of the Income Tax Act<sup>29</sup> and the Tax Administration Act<sup>30</sup>, gives the TRA through the commissioner general who leads the TRA and the minister of finance, delegated authority to make regulations (subsidiary legislation) and to provide for smooth tax administration. During the making of these regulations, the local business community is in no way represented, consulted nor involved. When making tax regulations, the laws do not compel the authorities to engage in any consultations with the people who are going to be affected by that regulation thus preventing them from expressing their concerns and recommendations.

The law has to be amended to make it mandatory for the tax authority to consult with all relevant stakeholders subject to the particular regulation before imposing it. This will help avoid future conflict between the taxpayers and the tax authorities because laws alone are not enough to bring compliance if the people who are going to be subject to those laws do not feel represented and are excluded from the rulemaking process.

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<sup>27</sup> Supra note 12

<sup>28</sup> The Constitution of the United Republic of Tanzania of 1977

<sup>29</sup> Section 129 of the Income Tax Act [CAP. 332 R.E 2019]

<sup>30</sup> Supra note 10, Section 98 & 99.

## 5. Conclusion

Kiunsi<sup>31</sup> argued that the TRA should strive to adhere to its core values in administering taxes and solving problems within its reach. Kiunsi further argued that it is important for TRA to enhance taxpayers' education expand and simplify taxpayer services using technology in addition to respecting taxpayers' rights.<sup>32</sup> An argument which is very relevant in today's contemporary Tanzania and this article seeks to cement. Moreover, there is a call to make the TRA more independent and freer from influence, particularly influence from the executive arm. This is the case because as of now the chief executive officer of the TRA i.e., The Commissioner General of TRA is a presidential appointee. This is argued to affect the impartiality of the Commissioner General and at large the revenue authority when dealing with tax disputes that involve the state or government. This is because the Commissioner General's tenure is out of an appointment by president (the senior most office of the government of Tanzania), and this making him indifferent when dealing with the government. Therefore, it is recommended to make amendments to the law and make the Commissioner General not a presidential appointee but a meritorious and qualified public servant. This will provide for more autonomy to TRA and free it from direct political interference in its daily operations.

Finally, it is recommended that the TRA should seek to build positive relations with taxpayers and become a friend rather than enemy. The TRA should actively seek to create a positive image in the tax payers. However, It is hard to build a positive image when there are factors that actively tarnish the image. For example, in her research Kiunsi<sup>33</sup> found that tax payers were willing to pay taxes only that they were not knowledgeable on how the tax code works and many times felt to be mistreated by the authority. On the other hand, there are tax payers who are discouraged to pay taxes because of the corruption and embezzlement of public funds<sup>34</sup>. To curb this the TRA should be responsible to educate taxpayers on the tax code and actively improve their customer service to treat their clients better. Parallel to that also the government at large should increase its control for public expenditure in order to ensure value for money and consequently encourage taxpayers to pay taxes without compulsion.

With more fairness, accountability, improved taxpayers' education and an independent tax authority, the clashes between taxpayers and the tax authority as witnessed at Karikaoo can become something of the past.

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<sup>31</sup> Kiunsi Helen (2021) Watching the Watcher: Evaluation of The Tanzania Revenue Authority in Administration of Tax. Vol 28(1), 53-74

<sup>32</sup> Ibid

<sup>33</sup> Ibid

<sup>34</sup> Annual General Report of The Controller and Auditor General on The Audit of Central Government for The Financial Year 2022/23, National Audit Office (NAOT)