

**KAMPALA INTERNATIONAL UNIVERSITY
SCHOOL OF LAW**

**THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING TAX
MANAGEMENT AND ADMINISTRATION, CASE STUDY OF UGANDA REVENUE
AUTHORITY**

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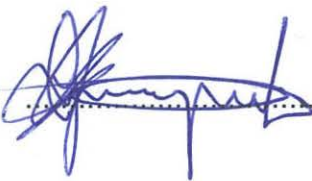
DEDICATION:

This work is dedicated to my late mother Jolly Bitoiywa Kanyamunyu without whom I would have never been able to reach where I have. She is a true inspiration that unfortunately passed on before seeing the fruits of her labour.

DECLARATION

I, MICHAEL KANYAMUNYU declare that this research on "THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING TAX MANAGEMENT AND ADMINISTRATION, CASE STUDY OF UGANDA REVENUE AUTHORITY" is original both in substance and style, unless otherwise acknowledged, and has never been presented to any other institution of learning for any form of academic award.

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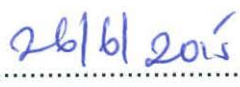
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APPROVAL

This dissertation is hereby submitted with my approval as a University Supervisor.

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However, the views expressed in this work bear my own ideas I take full responsibility for the errors and omissions therein.

LIST OF ACRONYMS

COMESA	Common Market for Eastern and Southern Africa
DSA	Debt Sustainability and Risk Analysis
EAC	East African Community
EPRC	Economic Policy Research Centre
ESSAPR	Education and Sports Sector Annual Performance Report
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FY	Fiscal Year
HIPC	Heavily Indebted Poor Countries
ICT	Information and Communication Technology
GDP	Gross Domestic Product
MAAIF	Ministry of Agriculture, Animal Industries and Fisheries
MDG	Millennium Development Goal
MFPED	Ministry of Finance, Planning and Economic Development
MLHUD	Ministry of Lands, Housing and Urban Development
NDP	National Development Plan
NRM	National Resistance Movement
ODA	Overseas Development Assistance
OECD	Organisation for Economic Co-operation and Development
PEAP	Poverty Eradication Action Plan
PMA	Plan for Modernisation of Agriculture
PPA	Participatory Poverty Assessment
PPP	Public Private Partnership
PRSP	Poverty Reduction Strategy Paper
JBOS	Uganda Bureau of Statistics
JN	United Nations
JNDP	United Nations Development Programme
JNEP	United Nations Environment Programme

UNHS	Uganda National Household Survey
UNPS	Uganda National Panel Survey
UPE	Universal Primary Education
USD	United States Dollar
WHO	World Health Organisation

CHAPTER ONE:

GENERAL INTRODUCTION

1.0 Overview

Since the establishment of the Uganda Revenue Authority¹, there has been increased capital development, increased standards of living and increased ratio of revenue to GDP². This has been so due to URA's organizational structure³ which has developed systems and procedures for investor support, has increased tax compliance and levels of awareness⁴, has introduced a number of modern systems to curb tax evasion⁵, introduced the customer care and tax payers services function⁶, simplification of tax administration procedures and regional sharing of modern tax revenue management experiences⁷.

To note, corruption, political interference, patronage, and tax payers non-compliance have, however, limited the operations and objectives of the authority⁸. However introduction of rotation systems for the staff, placing expatriates in key management

¹ URA was established in 1991 by virtue of the URA statute No_6 of 1991 and commenced its activities on 5th September 1991, Bakibinga (2003) 14

² Uganda Revenue Authority, Revenue Performance Report 2008/2009

³ The current structure headed by the Commissioner-General has six departments that is, The Commissioner General's office headed by the Commissioner General, Customs and excise department headed by the Commissioner Customs and Excise, Internal Audit, Tax Investigation & Internal Affairs Department headed by the Commissioner Internal Audit, Board and Legal Affairs Department headed by the Commissioner Board and Legal Affairs, Corporate Services headed by the Commissioner Corporate Services and Domestic Tax Department headed by the Commissioner Domestic tax.

⁴ Zake, J (1998)21

⁵ These systems are evident in the form of the work of the internal audit department, the tax audit and investigation division of the department of management services, the mobile task force in the department of customs whose work is supplemented by the anti-smuggling unit (Bakibinga op cit 17)

⁶ Kiwanuka Christopher (2005) 17

⁷ As a result a number of revenue authorities have been established south of Sahara, Kenya, Tanzania, Rwanda, and Zambia, all basing on the success of URA (Bakibinga op cit 16)

⁸ Taliercio (2002) 223

positions and encouraging the development of a good organisational culture may help improve URA's operations.

Though with challenges, URA, through a number of laws it administers⁹, it has managed to collect a number of taxes like income tax, taxes on services, taxes on local production and taxes from foreign trade among other all which it manages on behalf of the central government as shall be seen in chapter three. However, not all taxes in Uganda are collected by URA, there as those that are collected by local councils on behalf of the local government¹⁰. Such taxes include graduated tax¹¹, scales tax, property tax, parking fees, fishing licenses, agency fees, and charcoal burning licenses¹² among others.

1.2 BACKGROUND OF THE STUDY

Preliminary work on reforming the Ugandan tax administration began soon after the downfall of the Idi Amin's regime in 1980¹³ Over the next ten years at least two government commissions and three consultancy studies dealt with the problem of tax administration in the face of increasing fiscal problems¹⁴. Together these reports

It administers the Income Tax Act, 1997,the Stamp Duty Act, (Cap172) as amended; the Finance Statute 1998 statute No. 4 of 1998)-section 12 and the seventh scheduled to the statute (which provide for the imposition and collection of road users tax) as amended; the Customs Tariff Act, 1970 (Act No. 17 of 1970) as amended; the East African Customs Management Act 2004 the Value Added Tax Statute, 1996 as amended, the Traffic and Road Safety Act, 1998 (Act No.15 of 1998) and Regulations. All provisions for the collection of license fees and other fees, fines (other than fines imposed by Courts) and other levies collectable under the Act, the Excise Tariff Act Cap. 174) as amended and the East African Excise Management Act (EAC cap. 26) as amended (URA official website, www.ugrevenue.com accessed 11.Jan.2015)

⁹ Local government Act, fifth schedule

¹ a crude form of income tax levied in Uganda upon the entire population of able bodied adult males and some women by the district administration and urban authorities where they reside, Davey (1974) 31

² Ibid fifth schedule part 3

³ Katusiime, F.M. (2003)32

⁴ Ibid

described 'the decline of a previously highly regarded Ugandan civil service into a sorry state of inefficiency, irresponsibility, indiscipline and corruption'¹⁵

The reports identified four main causes of poor tax administration that included lack of taxpaying culture among taxpayers which was partly caused by a tax system perceived as unfair, low wage levels, poor working conditions and little encouragement for staff to exercise initiative and low probability of detection and punishment for corruption.

The suggested remedies were first and foremost increased salaries and better management¹⁶.

However, a proposal for the establishment of a revenue authority did not appear until 1991 when consultants were asked to prepare for its establishment. According to Ole¹⁷, the idea was inspired by the IMF and by experiences from Ghana. The consultants' arguments for an autonomous revenue authority were¹⁸ moving away from civil service terms and conditions of service and management practices many problems can be overcome. It was expected that the revenue authority model would provide 'stronger and more effective management of staff and resources, supported by better facilities and information and with adequate checks and auditing of both staff and taxpayers'¹⁹

Therkildsen (2004) 68
Coopers and Lybrand, Deloitte [CLD] (1991)11
Ibid
Harvey and Robinson (1995) 48-49
Ibid

A key element of the administrative reform was to move the existing revenue departments out of the Ministry of Finance into a semi-autonomous revenue authority overseen by a fairly independent Board of Directors.²⁰ The philosophy behind this move was mainly to provide incentives for the staff to improve their performance and thereby increase revenues. A revenue authority, established outside the civil service system is not bound by wage rates and employment regulations that apply to other sectors of government.²¹ This meant that the URA, in principle, could pay rates which would enable it to attract and retain highly qualified staff. Hence, the consultants involved in setting up the URA recommended that management and professional staff remuneration should be competitive with the private sector.²² Although these recommendations were only partly implemented, the staff that moved to the URA received dramatic increases in pay rates – for some categories of staff 8-9 times higher salaries than corresponding positions in the civil service.

The reform also strengthened accounting and internal monitoring systems and curtailed the opportunity of tax officers to use their own discretion in dealing with cases. The general scarcity of qualified accountants, lawyers and IT-experts in Uganda meant, however, that the URA would also have only small numbers of these professionals. Finally, working conditions for employees were improved by upgrading offices,

²⁰ Initially the Board was composed of nine persons: the Chairperson appointed by the Minister of Finance; the Commissioner General of the URA; the Secretary to the Treasury; the Principal Secretary of the Ministry of Commerce; the Commissioner for Industry; the Governor of the Bank of Uganda; and three members appointed by the Minister of Finance (RU 1991, p. 5). The main functions of the URA, its organizational structure, composition of the board, etc. are detailed in Fjeldstad et al. (2003) pp. 21-25. See also www.ugrevenue.com/

²¹ Devas et al. (2001) 214

²² Therkildsen op cit .71

expanding computer services, purchasing service vehicles, and so on. Hence, the initial focus was mainly on internal matters; less attention was paid to the URA's external relations.

Drastic measures were put in place to break the 'culture of corruption' in the administration.

All former Ministry of Finance revenue staff, including the revenue commissioners, were transferred to the URA and employed on a probation basis.²³ During the probation period everybody was screened. Out of the around 1700 people who had worked in the former revenue departments of the Ministry of Finance, some 200 tax officers and 40 secretaries were dismissed during this exercise, a screening process in which the Board was heavily involved.

The hiring of expatriates was initially pushed by foreign donors who were heavily involved in financing the administrative reform through technical assistance. Hence, the first Commissioner General²⁴ was a Ghanaian, and later²⁵ the URA was led by a Swede. The philosophy behind the use of expatriates was to contribute to improved professionalism and integrity. When the Swedish born Commissioner General, Ms. Annebriitt Aslund was appointed in 2001, President Museveni is reported to have

²³ Therkildsen op cit. 70

²⁴ Held that position between 1991-97

²⁵ Was in office for only three years, that is from 2001-2004

remarked that she came from a 'very distant tribe'²⁶. Given tribal interests and the prevalence of patronage in the public sector, the President thus indicated that it was necessary to hire an outsider in order to undertake serious reform of the tax administration.

To provide for taxpayer representation, the Parliament also gave the Uganda Manufacturers Association (UMA) a seat on the board. As a consequence, the role of the Board changed from the being responsible for the formulation and implementation of the policy of the revenue authority, to being responsible for monitoring the revenue performance of the authority and for determining the policies related to staffing and procurement. Consequently, these legislative changes, which implied that the Minister of Finance appointed the majority of the members of the Board and also gave directives to the Board, laid the foundation for conflicts between the Board that is to say the Ministry of Finance and the Commissioner General. In practice, the new legislation that introduced URA gave day-to-day management authority, especially in staffing matters, to both the Board and the Commissioner General²⁷. This creates the need to analyse the role of URA in the administration of taxes in Uganda.

1.3 Statement of the Problem

Despite the tax reforms in Uganda that aimed at boosting the tax revenue, budget deficit has persistently increased. Almost every year the country experiences a budget

⁶ Taliencio ibid

⁷ Ibid

deficit. Both the pre- and post- reform periods are still characterised by budget deficits. Therefore there is a dire need to analyse the adequacy of tax revenue. The adequacy of tax revenue can be assessed by analysing the buoyancy, elasticity and tax effort indexes of the total tax revenue and of the individual tax revenues as ascertained by Yaqub M. (1994) that among the causes of inadequate tax revenue are; the inelasticity of the revenue structures and inadequate tax effort.

1.4 OBJECTIVES OF THE STUDY

The study is intended to

- (a) find out reasons for the establishment of the Uganda Revenue Authority
- (b) find out the role of the Uganda Revenue Authority
- (c) establish whether Uganda Revenue Authority has fulfilled its objectives
- (d) suggest any valuable reforms as far as the administration of taxes in Uganda is concerned.

1.5 RESEARCH QUESTIONS

- (a) What were the reasons for the establishment of the Uganda Revenue Authority?
- (b) What is the role of the Uganda Revenue Authority?
- (c) Has Uganda Revenue Authority fulfilled its objectives?
- (d) What reforms do you suggest as far as the administration of taxes in Uganda is concerned?

1.6 SCOPE OF THE STUDY

The study shall analyze the relevant law and this shall include the Constitution of the Republic of Uganda, 1995, the URA Act Cap 196 laws of Uganda, URA as a body and other laws administered by the U.R.A

1.7 RESEARCH METHODOLOGY

This research is basically doctrinal research in that it involves the analysis of the URA act cap 196 and related laws. The primary sources of this research are statute, case law, textbooks, and articles from various sources like internet and newspapers. Important to note is that this being doctrinal research, it will heavily depend on library sources.

The methods which are adopted are documentary research and observation. Documentary research is mainly relied on because it allows the analyzing of the theoretical arguments about URA. As for the observation, it allows analysis of situations, compare them and come up with possible solutions and answers to the research questions.

1.8 LITERATURE REVIEW

According to Osoro²⁸, when there is economic growth and tax revenue increases faster than GDP, then under such a scenario the tax is considered to be elastic. Sometimes there is growth in tax revenue which is due to growth in the tax base and increase in

²⁸ Osoro (2003), Dawn of a new era without import duty, Dairy Monitor February 3, P. 27

tax rate. The two factors must be considered separately so as to get a clear picture of the tax revenue generation.

Mirambo²⁹ says that elasticity of tax is the ratio of growth rate of tax revenue net of discretionary change in tax rates to the growth rate of tax base. An estimation of discretionary changes in tax policy is not easy so as to measure the increment in the tax revenue. The growth in the tax revenue in response to GDP growth has to be decomposed into two components: Automatic growth in response to GDP and the growth resulting from discretionary changes in tax rates and legislation when holding GDP constant. Elasticity measures the responsiveness of tax revenue to changes in national income if the tax structure would have remained unchanged. To estimate elasticity of any tax system, revenue series have to be corrected for the effects of discretionary changes in tax policy.

Mansfield³⁰ argues that automatic growth in tax revenue alone, abstracting from discretionary changes, is the elasticity of the tax. High tax elasticity, that is, a tax elasticity coefficient of one or more, is said to be particularly desirable since it allows growth in expenditure to be financed by raising tax revenue without recourse to the politically unpopular decision to raise tax rates.

Mirambo (2001) Revenue Authorities: Are They the Right Vehicle for Improved Tax Administration?
Mansfield (1972), Exploring Revenue Performance in the third world, P. 331

Tsegaye³¹ says that a high elasticity may simply reflect the progressiveness of the tax structure, showing positive ratios of tax revenues to increases in income. A high elasticity (that is greater than unity) implies that the tax revenue increases faster than the income. This means if the tax is meant to maximize revenue, the government could rely on more elastic taxes which do not require frequent discretionary changes. It is therefore essential that the tax elasticity be equal to or exceeds unity to maximize revenue.

Jayasundera³² explains that the buoyancy of a tax system reflects the total response of tax revenue to changes in national income as well as effects of discretionary changes in tax policies over time.

Matundu³³ adds to the view of Jayasundera that a buoyancy coefficient which is greater than one would imply that for every one percent increase in GDP, tax revenue increases by more than one percent.

According to Osoro³⁴ buoyancy of tax is defined as the ratio of growth in tax revenue to growth in tax base. The buoyancy of tax measures the responsiveness of tax revenue to changes in income without controlling for the discretionary changes in tax policy. The discretionary changes are the changes which result in more tax revenue from the same

Tsegaye (1993) Elasticity and the economy, P.81

Jayasundera (1991), Tax system and Buoyancy, P. 37

Matundu (1995) Exploring the Challenges of Realizing full tax sealing in Uganda, P. 101

Osoro (1993) Tax Regime and Prospects, P. 77

tax base. The sources of such changes are changes in tax legislation or changes in the tax rate.

According to Bollinger³⁵, tax effort refers to current level revenues collected by the Government. Tax effort index is defined as the difference between the buoyancy and elasticity of the total tax revenue expressed as a percentage of the latter. It is estimated to measure the administrative efforts undertaken to improve the tax system during the study period. When tax effort is less than unity it means a country exploits its estimated potential less than average. It also means that operation is on the normal range of the Laffer curve. In this case tax rate increase would be viable in order to increase revenue. Countries with tax effort above unity are said to operate on the prohibitive region of the Laffer curve.

Parthasarathi Shome³⁶ says that when a country is in a process of formulating its budget, it undertakes revenue projections. If the revenue turns out to be smaller than the budget expenditures, a country ends up with deficit financing. Budget deficit is precisely total revenue falling short of total public expenditure.

Soro³⁷ argues that if the government wants to reduce its deficits, it should not determine the level of spending on political grounds and then adjust the tax to suit it.

Bollinger (2005), Uganda Revenue Authority- a Vehicle for Transformation? Analyzing challenges and opportunities.

Parthasarathi Shome (1988), Development Processes in the Third World, P. 78

Supra, note 34

The level of spending should be determined by the funds available. This can be achieved by adopting a proper budgeting process. Measures to reduce deficits must begin with policies to curtail spending. As long as spending grows faster than revenue, any policies to contain deficits will be successful only in the short run.

The government thus needs to cut unproductive and unauthorized expenditure, which calls for budget restructuring and stern efforts to strictly enforce spending limits. Other measures that can be taken would increase revenue by enhancing tax collection, for example, through greater productivity of the tax system. Improved tax collections would, in turn, reduce government's need for borrowing, which is a low-cost mode of financing public spending relative to taxation, and ultimately help reduce the deficit.

According to Yaqub³⁸ inadequate revenue refers to the situation whereby the estimated tax revenue is greater than the realised tax revenue. Among the causes of inadequate tax revenue is the inelasticity of the revenue structures and inadequate tax effort. Inadequate revenue creates fiscal crisis.

Holcombe & Sobel³⁹ continue to argue that fiscal crises are an interaction of many complex causes including inadequate tax bases, increasing expenditure demand and commitments placed on state government by voters.

Yaqub (1994), Domestic Tax Portfolio in the Third World, P. 9
Holcombe & Sobel (1997), Fiscal interaction and crisis, P. 219

Adequacy of Total Tax revenue is estimated by computing its responsiveness to GDP. If it is inelastic to GDP then automatically TTR is inadequate. If it is elastic to GDP then the elasticity of its component Tax Revenues is estimated. If each individual tax revenue is elastic to its base and the base in turn is elastic to GDP, then TTR is adequate. Total Tax Revenue to be adequate its entire component Tax Revenues must be adequate.

Different authors have carried out practical estimation of buoyancy and elasticity of the tax system of different countries. They have made an analysis of the tax system and the implications of the indexes computed. Among those who carried out the empirical studies, some are presented in the following paragraphs.

Isoro's⁴⁰ study on the revenue productivity of the tax system in Tanzania for the period 1969-1990 showed a low elasticity for the total tax system, as well as for individual taxes. Elasticity for total tax revenue was 0.76 with buoyancy of 1.06 which means that the Tanzanian tax system was unproductive over the study period. Elasticities of individual taxes were as follows: income tax, 0.76; company tax, 1.13; sales tax, 0.79; PAYE, 0.66; import duty, 0.55. Only company tax had elasticity above unity, which means that 1 percent increase in GDP was on average accompanied by 1.13 percent increase in revenue from company tax. The other four taxes had elasticities below unity, meaning that these taxes lagged behind GDP. The study concluded that the tax

Supra

reforms in Tanzania had failed to raise tax revenues. These results were attributed to the government granting numerous tax exemptions and poor tax administration.

Mtatifikolo⁴¹ did a study on the performance of the Tanzania tax system for the period since the major tax reforms of 1973- 1984. This study gives an estimate of the buoyancy and elasticities of the major taxes. Mtatifikolo uses the same method as one adopted by Thac and Lim⁴² (1984), as an indicator of the tax effort of the government of Tanzania. The results showed buoyancy of 0.998 for the total tax system. Buoyancies of individual taxes were as follows; PAYE, 0.97; Business income tax, 1.27; income tax, 1.17; tax on import, 1.16; sales and excise tax, 1.16. The study revealed that, having observed a low buoyancy of the business income tax relative to the elasticity, this suggests substantial tax evasion and avoidance.

Chipeta⁴³ evaluated effects of tax reforms on tax yields in Malawi for the period 1970 - 1994. The results indicated a buoyancy of 0.95 and an elasticity of 0.6. His study concluded that despite the tax reforms tax revenue was not buoyant and elastic with respect to GDP.

Milambo⁴⁴ used the Divisia Index method to study the revenue productivity of the Tanzanian tax structure for the period 1981 - 1999. The results showed elasticity of 1.15

Supra
Thac & Lim (1984), Indicators of Tax Governance Regimes in Tanzania, P. 61
Chipeta (1998), Tax Evasion and the Law, P. 33
Milambo (1999), Tax Difficulties in Tanzania, P. 49

and buoyancy of 2.0, which confirmed that tax reforms, had improved the revenue productivity of the overall system. However, these results were not reliable because time trends were used as proxies for discretionary changes and this was the study's major weakness.

Dele⁴⁵ estimated income elasticity of tax structure of Kenya for the period 1962-1972. Tax revenue was regressed on income without adjusting for the unusual observations. The results showed that the tax structure was income inelastic with an index of 0.81 for the period studied. After the study it was recommended that the tax system required urgent reforms to improve its productivity. The results also implied that Kenya's tax structure was not buoyant and therefore the country would require foreign assistance to close the budget deficit.

Mwajuma⁴⁶ studied the revenue productivity of tax reforms in Kenya for the period 1972/73 to 1990/91. Tax revenue was regressed on income after adjusting tax revenues for discretionary changes. The period of study was divided into two to make it easier to analyse the effects of tax reforms on revenues from various taxes. Income elasticity of total tax structure was found to be 0.67 for the period 1972 to 1981. This meant that the government received a decreasing share of rising GDP as tax revenues. The elasticity estimates for individual taxes were as follows: sales tax 0.6, import duties 0.45 and income tax 0.93. The buoyancy for the overall tax system for the same period

⁴⁵Supra
⁴⁶Mwajuma (1993), Taxation in Kenya, P. 66

was 1.19, implying that the tax system was quite buoyant. For the period 1982 to 1991, Vjoroge (1993) found that the overall elasticity was 0.86 while buoyancy was 1.00. The study concluded that from a revenue point of view, the system did not meet its target; hence it required constant review as the structure of the economy changes. However, the results could not be relied upon because the study never took into account time series properties of the data.

Usi⁴⁷ studied tax reform and revenue productivity of Ghana for the period 1970 - 1993. The results showed a pre-reform buoyancy of 0.72 and elasticity of 0.71 for the period 1970-1982. The period after reform 1983-1993, showed increased buoyancy of 1.29 and elasticity of 1.22. The study concluded that the reforms had contributed significantly to tax revenue productivity for the period 1983-1993. In this study, Usi(1998) evaluates the revenue productivity of Ghana's overall tax system and of individual taxes on the basis of estimates of tax buoyancies and elasticity.

This study also looked at the links between the tax reform of 1983-1993 and revenue performance. The analysis shows that the tax reform had a tremendous positive effect on the productivity of both the individual taxes and the overall tax system. In the 1970-1982 periods, all the individual taxes, except excise duty, had estimated buoyancies of less than unity, thereby causing the total tax system to have a buoyancy coefficient of 0.72. During the tax reform period of 1983-1993, however, all the individual taxes,

⁴⁷Usi (1998) Tax Reform and Revenue Productivity of Ghana for the period 1970 – 1993, P 14-22

except excise duty and cocoa export duty, showed buoyancies of more than unity, causing the buoyancy of the overall tax system to increase to 1.29. Compared with the 1970-1982 period, the tax buoyancy increased by 79.9 percent in the 1983-1993 period. The estimated income elasticity of the overall tax system for 1970-1982 was very low, 0.71; this was because all the individual taxes, except excise duty, had estimated elasticities of less than unity.

Thac and Lim,⁴⁸ in their study on the tax effort of Papua New Guinea government, used the size difference between buoyancy and elasticity, expressed as a percentage of the latter as an indicator of tax effort of the government. They reported the following tax efforts results; customs duties, 159 percent; excise duties, 31percent; personal income tax, 15 percent; company income tax, 32 percent and the total tax system was 40 percent. They concluded that apart from customs duties that have low tax potential other taxes have a high tax potentiality.

Ayoki, Obwona and Ogwapu⁴⁹s (2008) considered the tax reforms implemented by the government and how revenue yields of individual taxes and overall tax system have responded to changes in GDP(or Proxy bases). They computed elasticity and buoyancy indices for the pre- and post- reform periods as well as the combined period. According to them, the Pre-reform period refers to the period between 1988-1995 and the post reform period refers to the period between 1996-2003. The results of their

^{supra}
Ayoki, Obwona and Ogwapu (2008) Implementation of Tax Reforms in Nigeria

computations showed a tax-to-income elasticity coefficient of 0.645 for the pre-reform period and 0.545 for post-reform period. There was inelastic response of overall tax revenue to changes in income, prior to, and after the major reforms.

1.9 OVERVIEW OF CHAPTERS

This research is divided into five chapters. Chapter 1 discusses background to the study, statement of the problem, objectives of the study, scope of the study, research methodology and literature review. The second chapter explores the objectives of taxation, general theories and criteria of taxation as well as terminology of taxation. Chapter three is an enquiry into the structure of taxes. It considers income tax, taxes on services and transactions, taxes from local production, taxes from foreign trade and local government taxes. Chapter four discusses the role of Uganda revenue authority and challenges facing it while chapter five contains conclusion and recommendations.

CHAPTER TWO:

HISTORY AND DEVELOPMENT OF TAXATION IN UGANDA

2.1 Introduction

Taxation which has long history involves two phases. First the levying or imposition of taxes on persons and property and secondly the collection of the taxes levied⁵⁰. The first phase consists of provisions of the law which determines the persons or property to be taxed, the sums to be raised, the rate thereof the time and manner of levying and the mode of receipt and collection of taxes. The second phase comprises legal provisions indicating the manners of enforcing the obligation to pay taxes on the part of the tax payer.⁵¹

Two attributes of taxation are therefore evident. First there must be a requirement of public purpose to justify the exercise of the taxing powers since tax is an imposition for the supply of the public treasury and not for the supply of a private individual or enterprise. Second tax operates as a forced charge and does not in any way depend on the will or contractual assent expressed or implied on the tax payer. In other word it is statutory liability.

⁵⁰akibinga op cit I
⁵¹bid

2.2 Definition

Taxation is defined as⁵² "...the imposition of duties for the raising of revenue". It is advice used by Government to extract money or valuables from people and organizations by the use of law.

In the words of Pinson⁵³, all forms of taxation are imposed by parliament. Taxation is a creature of the statute. Taxation therefore encompasses every charge or burden imposed by a sovereign upon persons and property rights for the use and support of Government, thereby enabling it to support its functions and activities.

2.3 History of taxation

The history of modern taxation in Uganda dates back to the onset of the colonial era in 1894. However some form of taxation in Uganda existed even before the coming of the British.⁵⁴

Amkrishe Mukherjee⁵⁵ points out that the people of Buganda (central Uganda) had to pay taxes to their monarchs and chiefs in the form of tribute. Tribute was paid in various forms: it might consist of cattle, trade products such as ivory, or even forced labour.

Leslie Rutherford & Sheila Bone(eds) Osborn's Concise Law Dictionary 320
Pinson (1982) 677
Iga Bukenya (1996) 150
Iga Bukenya op cit.156

Mamdani⁵⁶ found that Buganda collected four different kinds of taxes: (a) an obligatory tax on each married man, who was required to pay twenty-one pieces of bark cloth and 100 cowry shells; (b) excise taxes on all food products from cattle, goats, and manufactured goods like pottery and handcrafts; (c) customs duties on salt and iron tools; and (d) compulsory military service.

The major reasons advanced for imposing these taxes were governmental administration costs and defense from hostile neighbours.

Taxation ultimately benefited the king, and ordinary people bore the full burden of paying those taxes.

Uganda was declared a British protectorate in 1894. In order to raise money to meet their expenses, the British introduced cash-based taxes in Uganda.⁵⁷ According to Makenya⁵⁸, the British included stipulations concerning for tax payments in the very first agreement they signed with the African rulers. The 1900 Buganda Agreement imposed hut tax of 3 rupees per annum and a gun tax of 3 rupees. Later poll taxes, land taxes, and native administrative taxes were also instituted.

Makenya argues that taxes were used to impose a cash-based economy in Uganda. Though taxes prior to colonialism could be paid in kind, for example, by labour

Mamdani Mahmood (1976) 31
Vali Jamal (1978) 420
ibid

contribution, with the advent of colonialism, the payment of taxes had to be in cash. According to Bukenya, colonial taxation was detested by the Africans due to its oppressive nature.

The colonial taxes were discriminatory and inequitable. For example, the poll tax was regressive in that the black Ugandans, who had a much lower income, paid a higher rate than the non-natives, who had higher incomes.⁵⁹ Even amongst natives, the system was discriminatory as some favored tribes paid less than unfavored ones.

In 1965, withholding taxes on wages and East African income tax rules were issued⁶⁰.

The East African Income Tax Management Act, which from its passage in 1970 governed all tax systems in East Africa, collapsed in the 1970s, at which time each country had to take care of its own tax system. It was not until after President Museveni came to power in 1986 that Uganda started reforming its tax policy⁶¹.

Because these efforts were backed by Western guidance, Uganda, like many other African countries, undertook economic structuring agreements with international financial institutions. These agreements all emphasized the need for tax reform. Both the administration and the nature of Uganda tax law underwent significant changes.

⁵⁹ Ibid
⁶⁰ Katusime op cit 5
⁶¹ Bukenya op cit 34

In 1991, a semi-autonomous revenue authority responsible for collecting central government taxes was established⁶². Revenue collection was removed from the Ministry of Finance, a move which limited political interference in tax matters. Its major role was to optimize tax collection by administering and enforcing the law relating to revenue assessment and collection.

This Authority is charged with the responsibility of providing the foundation for development through revenue mobilization to: ⁶³finance current and capital development activities, increase the standard of living of all Ugandans and reduction of poverty and increase the ratio of revenue to GDP, to a level at which Government can fund its own essential expenditure. It administers a number of laws⁶⁴ through Board of Directors, which is the policy making body and has general oversight power. The management of Uganda Revenue Authority headed by the Commissioner General has six departments.⁶⁵

Ibid

URA official website<www.ugrevenue.com/profile (accessed on 15-Nov.2009)>

It administers the Income Tax Act, 1997, the Stamp Duty Act, (Cap172) as amended; the Finance Statute 1998 (Statute No. 4 of 1998)-section 12 and the seventh scheduled to the statute (which provide for the imposition and collection of road users tax) as amended; the Customs Tariff Act, 1970 (Act No. 17 of 1970) as amended; the East African Customs Management Act 2004 the Value Added Tax Statute, 1996 as amended, the Traffic and Road Safety Act, 1998 (Act No.15 of 1998) and Regulations. All provisions for the collection of license fees and other fees, fines (other than fines imposed by Courts) and other levies collectable under the Act, the Excise Tariff Act (Cap. 174) as amended and the East African Excise Management Act (EAC cap. 26) as amended (URA official website, www.ugrevenue.com accessed 11.Jan.2010)

(a)The Commissioner General's office headed by the Commissioner General (b) Customs and excise department headed by the Commissioner Customs and Excise (c) Internal Audit, Tax Investigation & Internal Affairs department headed by the Commissioner Internal Audit (d) Board and Legal Affairs Department headed by the Commissioner Board and Legal affairs (e) Corporate Services headed by the Commissioner Corporate Services (f) Domestic Tax Department headed by the Commissioner Domestic tax.

In 1996, the value added tax (VAT) was introduced to replace the commercial transaction levy (CTL)⁶⁶ and the sales tax. A flat VAT rate of 17% was applied on both imports and local products. In addition, the 1997 Income Tax Act was introduced to replace the inadequate, vague, and difficult to understand 1974 Income Tax Decree. The purpose of the new law was to simplify tax administration and boost taxpayer compliance.

Although these measures went some ways towards improving Uganda's basis for taxation, problems remained, so in 2001/2002⁶⁷, further amendments were made to the Income Tax Act, including the introduction of a 4% withholding tax on revenue received by professional certification bodies, abolition of the tax exempt status for Treasury Bills and Bank of Uganda bills, and elimination of double taxation on housing allowances made to employees. The government realized that export taxes were a major disincentive to the agricultural sector, and abolished them.

The corporate income tax rate was lowered from 60% in 1987 to 30% in 1997 and the maximum individual income tax rate was reduced from 60% in 1987/1988 to 30% in 1993/1994⁶⁸.

Finally to further rationalize the tax structure, the Tax Appeals Tribunal was established in 1998⁶⁹ to handle complaints and appeals from taxpayers. This tribunal is mandated

Musgrave op cit 34
JRA official website<www.ugrevenue.com accessed on 12.Jan. 2010>
bid

to review any URA taxation decision arising out of any taxing law. The establishment of the tribunal is part of the process of building a tax culture that ensures that the taxpayer pays fair and correct taxes, while at the same time the government receives the revenue due to it in a timely and orderly fashion.

2.4 Objectives of taxation

Viewed in this light, the imposition and collection of taxes is simply one of the fundamental policy instruments used to achieve governmental social and economic goals⁷⁰.

The objectives of tax policy are similar to those of public policy in developing countries, and overlap with the purposes of the tax system or the purpose of most governments.

There are five purposes for collecting revenue through taxes: to give government power to allocate resources; to enable government to provide/support social development; to stabilize the economy; to constitute and define the market place; and to encourage optimal economic growth.⁷¹

In his book *Tax Policy and Economic Development*, Richard Bird has concluded that three of these are of greatest urgency in developing countries: economic growth; internal and external stability; and ensuring that incomes are distributed appropriately.

Tax Appeals Tribunal Act, Cap 345
Bakibinga (2003) 1
Edgar and Sandler (2005) 64

(a) Economic Growth

Most developing countries are extremely focused on economic growth in both the private and public sectors. Even in primarily market-based economies, governments need to acquire assets for public sector capital formation and development-related expenditures.⁷²

There appears to be no limit to the tax gadgetry used in different countries to stimulate economic growth. Most developing countries encourage foreign direct investment to stimulate economic growth through the use of tax incentives, and many developing countries impose higher taxes on retained profits than on distributed profits in order to encourage distribution.⁷³

However, the effectiveness of some policies -- especially of incentives -- remains uncertain because there is still insufficient data to link such policies with growth performance.

(b) Stabilization

The use of tax instruments to enhance economic stability is important in developing countries because this enables them to ensure elasticity with respect to changes in the value of money and income levels⁷⁴. If tax yields rise when national income rises,

⁷² Bird (1992) 8
⁷³ Ibid
⁷⁴ Jakibingira op cit 2

governments have less need to rely on deficit financing to maintain and expand the level of public-sector activity in a growing economy.

c) Distribution of Income

The distributional role of taxes in developing countries is another important purpose of the tax system. Disparities in income can block development and increase demands for government social spending. The main explicitly redistributive tax in most tax systems is the personal income tax (PIT).⁷⁵

In practice, the personal income tax in developing countries is far from being progressive due to large disparities in incomes. These disparities are compounded by the influence of the rich, who may end up paying fewer taxes due to numerous exemptions or favors from the government.

It may be concluded that Government through taxation is able to uplift every class of people and provide them with the basic requirements of life at the expense of lavish consumption⁷⁶. A part from this, taxes also play a role in the management of demand in the economy. It should be noted, though that while these are the aims and objectives of every Government not all Governments have succeeded in attaining them for one reason or another such as failure to control inflation within the economy or to prioritize expenditure on public services.

Howell H. Zee (2005) 5
bid

2.5 General theories and criteria of taxation.

With the inevitable change in social structures of a particular economy, Government policies and revenue requirements are bound to change thereby necessitating changes in the tax regime either through the imposition of new taxes or abolition of old taxes.⁷⁷

This is normally effected through annual finance legislation. For economies that have a narrow tax base, the changes encourage widening of the tax base by the imposition of new types of taxes. This happened in Uganda in the 1996/97 financial year when the VAT was introduced. It is in this respect that changes must be critically examined not only in relation to the canons of taxation propounded by Adam Smith⁷⁸ but also the working and effect of the tax system as a whole and its interaction with the social security system.

The tax criteria of equity, neutrality, and simplicity are used to evaluate the extent to which substantive governmental goals are being pursued in a fair and just manner.⁷⁹

1) Equity

There are three main types of tax equity: horizontal, vertical, and, in the international context, inter-nation. Horizontal equity expresses the principal that similarly situated taxpayers should pay the same amounts of taxes because they have the same ability to pay while Vertical equity expresses the principal that those who are "better off" should bear a larger proportion of the tax burden while those who are "worse off" should bear

⁷⁷ Bakibinga op cit.5

⁷⁸ Smith, A (1910) 22

⁷⁹ This discussion of these criteria is based on Edgar and Sandler op cit.65.

less as Inter-nation equity centers on whether a tax system promotes a fair sharing of the international tax base, particularly among developing countries.

(b) Neutrality

The neutrality criterion requires that tax rules are drafted to minimize the excess burden of taxation whenever feasible⁸⁰. Tax neutrality looks to whether tax laws cause taxpayers to engage in fundamentally different activities just to avoid paying taxes.

A tax measure is considered to be neutral when it does not distort individual choices. If taxes are not neutral, they encourage tax avoidance. In an international context, it is important to consider whether tax systems promote capital export neutrality or capital import neutrality. Capital export neutrality is realized if a taxpayer's choice between investing at home or in a foreign country is not influenced by taxes, while capital import neutrality is realized if a company operating abroad is in the same tax position as a local competitor.

(c) Simplicity and accessibility

The simplicity criterion means that tax rules should be understandable, accessible, and uncomplicated.⁸¹ Simplicity is a general term that encompasses the following:

⁸⁰ Ibid
⁸¹ Edgar and Sandler op cit 70-72

Comprehensibility: The tax system should be understandable to the people to whom it applies.

Certainty: The application of the tax system to particular transactions should be determinable, predictable, and reasonably certain.

Administrative convenience: Taxpayers should not have to devote undue time or incur undue costs in complying with the tax system.

Difficult to avoid: The tax system should offer minimal opportunity for noncompliance.

Notable is that most of Smith's theories of taxation are valid and relevant to the debates over tax reform today. Limited taxes that are equitable, transparent, convenient, and efficient, combined with an "unfettered market," are still essential to maximizing the wealth of a nation.

6 Terminology of taxation

1) Direct taxes

These are levied or imposed upon individual according to his ability to pay or upon companies.⁸² The impact of such taxes falls on the individual or the company concerned and cannot easily be transferred or passed to another person. Examples of such taxes are income tax, corporate tax, estates duty among others.

Lay, J and Keng (1986) 18

(b) Indirect taxes

These are levied on certain articles for popular consumption⁸³. The tax payer's liability varies in proportion to the volume of these particular goods sold or purchased. This type of tax is levied on expenditure or consumption of commodities. Examples of indirect tax include customs duty, excise duty and VAT.

2.7 Conclusion

Uganda's tax system has undergone dynamic reforms over the past thirteen years both in terms of policy and administration

The current tax system is divided into Central Government and the principal taxes levied there are income tax both on individuals and companies; Value Added Tax; Import Duty and Excise Duty while the Local Government levies Ground Rates, Trading and Operational Licenses among others.

⁸³ Ibid, op cit 9

CHAPTER THREE:

LAW AND STRUCTURE OF TAXES IN UGANDA

3.0 Introduction

Each country has its own unique tax structure which responds to whether tax capacity can be tapped without disrupting the economy, government policy or motivation.

It is intended to examine the structure of the main taxes relative to the laws governing them. This entails discussion of the mode of collection and administration of the affected taxes.

In Uganda,⁸⁴ the modern taxes are broadly grouped into those administered by the local government and those administered by the central government. Those administered by the central government through Uganda Revenue Authority include, income tax, taxes on services and transactions, taxes on local production, taxes on foreign trade among others.

3.1 Income Tax

Income tax is defined,⁸⁵ as a tax payable on the income of a person or profits of a corporation over a period of time. Income was also defined in the case of **Eisner v Macomber**⁸⁶ where Pitney J stated;

⁸⁴ Bakibinga op cit.9
⁸⁵ Musgrave(1989).165
⁸⁶ 52 U.C 189 (Supreme Court U.S.A)(1919)

"Income may be defined as the gain derived from capital, labour or from both combined provided it is understood to include profit gained through a sale or conversion of capital assets..."

The structure, collection and administration of income tax is governed by the Income Tax Act, 1997.

The Income Tax Act is administered by the Commissioner General of URA appointed under the URA Act.⁸⁷ In practice the Commissioner General delegates his powers to the Commissioner for internal revenue who administers the Act. The Commissioner is in turn assisted by two deputies respectively for assessment and collection and assistant commissioner in charge of regional and technical matters who are in turn assisted by various revenue officers, some of whom manage regional and district revenue stations all over the country.

Income tax is charged for each year of income in respect of any person, resident or nonresident upon all the chargeable income of such person.⁸⁸ It is also charged upon the income of any business for whatever period of time covered and what is taxed here are the profits thus in **Commissioner of Income Tax V The L . Association**⁸⁹, it

JRA Act sec 9
Income Tax Act sec 5(1)
E.A.T.C.107

was held that all profits resulting to the unincorporated association from its agencies services were taxable.

Similarly in **R V Commissioner of Income Tax**⁹⁰, the appellant was a hotelier who was involved in various transactions involving purchase and sale of a restaurant, photography, transport safari tours, detergents and oil business whereby he realized a profit in some and loss in a few. He was assessed to income tax in respect of the profits of the transaction as a whole after taking into account any loss incurred on an individual transaction. He appealed on the ground that the profits were not made in the course of trade or business but were capital gains resulting from an appreciation of investments. It was held that while each transaction considered separately did not constitute a trade or business, the transaction considered as a whole formed part of a general scheme of profit making and constituted a trade or business therefore were revenue and not capital gains.

Also taxed is income from employment or and from any right granted to any other person for use or occupation of any property.⁹¹ The tax is also chargeable upon income in respect of dividends or interest.⁹² It is also charged on the total amount of any contributions made to a retirement fund during the year of income by a tax exempt employer.⁹³

S.A.T.C.172
bid sections 18(1),19, 20,21
bid sec 21(1)(a)
bid sec 21(1)(c)

Income tax is also chargeable on the value of any gifts derived by a person in connection with the provision use or exploitation of property,⁹⁴ thus in **Durga Dass Bawa V Commissioner of Tax Income**⁹⁵, a company offered to the appellant ex gratia monetary gift payable in four quarterly installments in appreciation of his long and royal service personally rendered to the company by him. He was assessed for tax and appealed. It was held that in considering whether a payment is truly voluntary and not in the nature of extra remuneration arising out of employment, the fact that it was made after the completion of the service and without legal obligation is of high importance. That the payment was a personal gift made after the termination of employment and was not taxable as gains or profits from employment or services rendered. The tax is also chargeable on income in respect of any amount deemed to be income of any person under the Act.⁹⁶

.3 Taxes on services and transactions

These are also administered by the central government through URA and are of two types that is,

bid sec 21(1)(b)
1963] E.A 659
bid sec 21(1)(d)

(a) Value Added Tax (VAT)

Until 1st July 1996, there existed Sales tax⁹⁷ and Commercial transactions levy⁹⁸. These have since been replaced by VAT⁹⁹. VAT is a consumption tax which is imposed at each stage of distribution on the value added at each of those stages. The recognized stages are; importation, manufacture, wholesale, retail and consumption.

Saleem, N.A.¹⁰⁰ defines VAT as a generalized tax on the gross income of a business less purchase from other firms. It is measured by the value added by a particular firm and this is distributed roughly in accordance with each firm's contribution to the net national income.

VAT is governed by VAT Act which is administered by the Commissioner General of URA who in practice has delegated her powers to the Commissioner for VAT who works closely with the Commissioner for Customs and exercise in monitoring the collection of VAT at importation and manufacturing points and also verifying claims for refunds of VAT. A major feature of VAT is the need for taxable persons to keep records of their transactions¹⁰¹ and to register with the Commissioner General for purposes of claiming funds.¹⁰²

Sales Act 1970
Finance Decree 1972
VAT Act cap 349
Saleem N.A(1996) 240
Ibid sections 30-31
Ibid sections 8-9,48

In Uganda all goods imported are liable to VAT except; exempt supplies¹⁰³ and Zero-rated supplies¹⁰⁴ indeed this was discussed in the case of **URA V Fresh Handling Ltd.**¹⁰⁵ where the High Court affirmed the decision of the Tax Appeals Tribunal that the services rendered by the appellant to exporters from Uganda have always enjoyed zero-rate of Value Added Tax. Also exempted are Private imports within the Customs Personal Relief provisions.

The importer regardless of whether the goods are private or for business purposes and whether or not the importer is registered for Value Added Tax has to pay for VAT on the imported goods.

VAT is paid at the point of clearing the goods through the Customs department where the importer has to pay the VAT that is due. However, he must provide his TIN and VAT registration numbers on the Customs Bill of Entry and declare if the goods imported are for his business. If they are imported for taxable business purposes, he is able to claim credit for the tax he has paid on his VAT Tax Return. The Value on which the importer has to pay VAT is defined in the VAT law as the CIF (cost, insurance and freight) value plus customs duty plus the customs duty plus any excise duty.¹⁰⁶

Ibid Schedule II
Ibid Schedule III
Civil Appeal No.13 of 2008
URA Regulations

Notable is that where goods are in transit in Uganda to another country they are not liable to VAT but the owner has to provide security to the Customs department for the VAT due on the goods together with other duty or taxes..

An importer can claim VAT credited for VAT paid at import if;¹⁰⁷

- (a) He is a registered VAT taxpayer.
- (b) The imports are for his business and NOT for private use.
- (c) Has Customs receipt for taxes paid (original copies.)
- (d) Has Customs amendment form if the figure on the receipt differs from the figure on the customs bill of entry.

However, failure to produce a customs certified bill of entry leads to VAT credit claim to be rejected.

The main advantage of VAT is that it has an extremely broad base. Therefore, it is capable of yielding substantial revenue at low rates. This is largely passed forward into the final product price.

i) Stamp duty

Stamp duties are charged by the government in respect of some documents which are specified in the schedule of the Stamp Act.¹⁰⁸ Certain instruments of transfer of title,

¹⁰⁷ Ibid

property or interest are charged with payment of stamp duty. Examples of stamp duties are,

(a) Stamp duty land tax¹⁰⁹. This is generally payable on the purchase or transfer of property or land where the amount paid is above a certain threshold. Various rules apply for working out how much if any stamp duty land tax is payable. The calculation which is based on a value called the chargeable consideration which varies depending on whether the land is residential or non-residential, freehold or leasehold or on other factors such as whether several transactions are linked.

There are also some types of transactions that are exempt from stamp duty land tax or where reliefs can reduce the amount payable.

b) Stamp duty reserve. This is paid on electronic paperless share transfer which is usually done when buying shares using electronic means. The tax is automatically deducted when the transaction is made.¹¹⁰ The rate of duty presently stands at 1%.¹¹¹ Stamp duty collection is presently administered by commissioner for internal revenue and in most cases through the agencies of the Registrar general, Registrar of titles and registrar of motor vehicles.

Cap 342
Stamp duty <www.hmrc.gov/sdlt (accessed on 23-01-2010)>
Ibid
Stamps Act sec 3 and schedule item 42 as amended

3.4 Taxes from local production

Taxes which are imposed on local production are called excise duty. Excise duty is defined as a duty charged on the production or use of any goods whether meant for local consumption or export or on license to deal in certain products.¹¹² Under the URA Regulations¹¹³, it is defined as any duty of excise imposed under the excise law. It is generally imposed on goods that are manufactured and some services offered in Uganda. A few imported goods attract excise duty.

The structure, collection and administration of excise duty in Uganda is governed by the East African Excise Management Act¹¹⁴ and the Excise Tariff Act¹¹⁵ as amended from time to time. The excise legislation is administered by the Commissioner General of URA through the Commissioner for customs and excise.

Under the Finance Act¹¹⁶, the following goods and services are liable to excise duty; beer, wines, spirits, soft drinks like soda and juice, cigarettes and fuel.

Excise duty is payable on Ex. Factory price of the manufactured goods. These are; raw materials, manufacturing costs, bank charges, profits, other cost, charges, expenses incidental to the factory including the distribution costs.

¹¹² Leslie Rutherford & Sheila Bone(eds) Osborn's concise law dictionary(1993)320
URA official website< www.ugrevenue.com/regulations (accessed on 03-02-2010)>
Cap 28 Laws of East African Community (1970)
Cap 174 Laws of Uganda
2001

Excise duty is an Ad valorem tax based on the Ex. Factory price of the manufactured goods or as a minimum specific tax per a given quantity on a few selected items like cigarette. The current rates are set out in the table below¹¹⁷,

Table 1 Excise duty rates

PRODUCT	DUTY RATE (%)
Beer	60
Spirits	45
Soft drinks	15
Cigarette	13
Airtime/Service fee	7

Source: URA, Department of customs and exercise

essentially every manufacturer of excisable goods must be licensed in the manner provided by the Excise Management Act.¹¹⁸ The licensee must pay excise duty at the rates and under circumstances provided for under the Excise Tariff Act.¹¹⁹ The manufacturer is also required to maintain Stock book form E6 containing details of daily receipts and Appendix B containing records of stock brought forward.

Excise duty is due when the goods are delivered from the stockroom or when an invoice is raised and is payable at the end of each month where the manufacturer has to

¹¹⁷ Ibid
¹¹⁸ Sections 8-15
¹¹⁹ Ibid sec 39

prepare an excise account on form E9B-2 for goods or form E9B-1 for services¹²⁰ which he then submits to the designated Revenue collecting commercial bank on or before the 21st day of the month for goods and by 15th day of the month for services following the month of sale.

3.5 Taxes from foreign trade

Taxes from foreign trade comprise duties on imports or exports principally excise and customs duties. Customs duty is defined¹²¹, as duties or tolls payable upon merchandise imported into the country.

Customs duty is also a kind of indirect tax which is realized on goods of international trade. In economic sense, it is also a kind of consumption tax.¹²² Duties levied by the government in relation to imported items are referred to as import duty. In the same vein, duties realized on export consignments are called export duty. Tariff which is actually a list of commodities along with the leviable rate (amount) of Customs duty is popularly understood as Customs duty¹²³.

Calculation of Customs duty depends on the determination of what is called assessable value in case of items for which the duty is levied ad valorem. This is often the transaction value unless the Customs officers determine assessable value in accordance

Ibid
Leslie Rutherford & Sheila Bone(eds) Osborn's concise law dictionary 105
Customs in Uganda<www.wikipedia.com/customs (accessed on 12.Jan.2010)>
Ibid

with Brussels definition. However, for certain items like petroleum and alcohol, Customs duty is realized at a specific rate applied to the volume of the import or export consignments.

Trade taxes are governed by the Customs and Excise Decree¹²⁴ which provides for the application of the East African Customs and Transfer Management Act¹²⁵ and the Excise Management Act¹²⁶. Both legislations regulate the collection of customs and excise duty while the Customs Tariff Act and the Excise Tariff Act provide for the imposition of fiscal entry, suspended fiscal entry and import duty on goods, the rates of customs duty and goods or imports liable to customs duty.

Customs duty legislation is administered by the Commissioner General of URA through the Commissioner for Customs and Excise.

One note is that customs duty on the goods within the East African Community has been abolished after the East African Community Customs Union's struggle towards the creation of a Common Market, which was ratified by the Five-heads of state in November and it's to be effected come July 1, 2010¹²⁷. This combined with the Common market requirement of; free movement of labour, capital, services, goods and people to and settle in any part of the bigger East Africa Community market economy leaves

No.13 of 1977

Cap 27 Laws of the East African Community

Supra

Dawn of a new era without Import Duty, daily monitor 3rd.Feb.2010

traders suspicious and on tension.¹²⁸ However, this arrangement does not cater for goods that are imported from outside the East African Community region and then mixed and re-packaged within a member state. A case in point is Nescafe powder milk, which is imported and re-packed in Kenya.

3.6 Local Government Taxes

In Uganda the local councils have been given mandate to levy certain taxes, these are:

(a) Scales tax

This is determined by the Local Governments in accordance with the advice of the Local Government Finance Committee as provided in article 194(4) (d).¹²⁹

b) Property tax

District and urban councils are mandated to impose under the provisions of the Local Governments (Rating) Act rates on property that is within its area jurisdiction. The council may enact laws imposing rates on persons owning, occupying or in possession of land, buildings in any area to which Local Governments (Rating) Act does not apply.¹³⁰

¹²⁸ Ibid
¹²⁹ Local Government Act, fifth schedule
¹³⁰ Ibid fifth schedule part 3

CHAPTER FOUR: ADMINISTRATION OF TAXES IN UGANDA

4.1 Introduction

In most developing countries national tax collection is carried out by line departments within the Ministry of Finance¹³². However, over the past two decades more than 20 developing countries, especially in Latin America and Africa, have established revenue authorities whereby the tax administration function is moved out of the Ministry of Finance and granted to a semi-autonomous entity¹³³

The revenue authority model is designed partly to limit direct political interference in day-to-day operations by the Ministry of Finance and partly to free the tax administration from the constraints of the civil service system¹³⁴. A revenue authority is not meant to be as autonomous as a central bank or as dependent as departments in line ministries. It is 'semi-autonomous'. But a revenue authority is meant to be quite independent of the financing and personnel rules that govern the public sector in general. A semi-autonomous revenue authority (SARA) can in principle recruit, retain and promote quality staff by paying salaries above civil service pay scales, and also more easily dismiss staff. Such steps are expected to provide incentives for greater job motivation and less corruption. Moreover, a single purpose agency is meant to integrate tax administrations and focus its efforts on collecting revenues more effectively than is usually possible under civil service rules.

ga Bukenya op cit 23
Devas, et al (2001)45
bid

The URA, established in 1991, is the oldest integrated revenue authority in sub-Saharan Africa.¹³⁵ Hence, it is possible to assess the reform initiative on the basis of developments over a relatively long period of time. The reform appeared to be a success in URA's first years of existence. Reported revenue increased sharply – from 7 per cent of GDP in 1991 to around 12 per cent in 1997¹³⁶. Corruption also seemed to decline. During this period many observers referred to the URA as a model for other sub-African countries. The success of URA has spearheaded the setting up of revenue authorities in Zambia, Kenya and Tanzania with others planned elsewhere in Africa.¹³⁷

1.2 The role of Uganda Revenue Authority

URA took over the revenue collection functions of the former tax departments under the Ministry of Finance. The vision was to collect revenue competitively, contractually and in a businesslike manner. Thus since its inception in 1991, URA has played a big role in the administration of taxes in Uganda as seen below:

1) Investor Support Systems/Procedures

Under the URA administration¹³⁸, Government has developed systems and procedures for investor support. This is through;

¹³⁵In 1985, Ghana established the first revenue authority in Africa, but each major tax (for instance, income tax and customs duties) was collected by its own agency (Terpker 1999).

¹³⁶Katusiime op cit 12

¹³⁷Bakibinga op cit.16

¹³⁸Uganda Revenue Authority, Revenue Performance Report op cit

(i) Investment Trader

Under the VAT law¹³⁹, an investment trader (in possession of an investment license) can register for VAT and claim refund of input tax paid on capital equipment at construction and installation stage of the investment. This enables the investor recover the funds spent in tax for reinvestment on a monthly basis. Refund is made within 30 days from the date of the claim.

(ii) Fast Track Clearance

The system was established and is administered by URA in order to facilitate the clearance of plant, machinery and equipment for industrial development in Uganda.¹⁴⁰

(iii) Duty drawback Desk

Specialized services are offered by URA to ensure fast refund of duty paid on industrial inputs on goods declared for export under the duty drawback system¹⁴¹.

(iv) Export Promotion Desk

A special unit is in place within URA, which provides services and procedural advice to exporters. A special arrangement is also available to facilitate exports under AGOA¹⁴²

VAT Act Sec 8(4)

On 1st march 2010, URA's customs department will tremendously transform the clearance of temporary importation and exportation of foreign registered motor vehicles. The service code named, temporary importation of motor vehicles and export system(Tevies), is the first in the East African region and will bring enormous benefits to Uganda. (Daily Monitor, 26th.Feb.2010)

Uganda Revenue Authority, Revenue Performance Report 2005/2006

Uganda Revenue Authority, Revenue investment Report 2007/2008

(v) VAT Deferment Desk

Where some capital inputs still attract VAT, there is a procedure for deferring the VAT, which is otherwise assessed, and payable, until production commences. Essentially VAT remains not paid, giving room for ease of cash flows.

(vi) Registration Process

The registration system was modernized by introducing a single taxpayer identifier for all tax purposes known as the **Tax Identification Number (TIN)**¹⁴³. While the allocation of TIN is centralized at Head Office, application for registration can be made from any revenue office countrywide. The processing would then be done internally and allocation communicated back through the same office where the application was made. Allocation of TIN together with any income tax and VAT reference numbers is done at no extra cost and may take between one and fourteen days depending on where the application was made¹⁴⁴. It requires only the ordinary documents like certificates of registration or incorporation, memorandum and articles of association, partnership deed, or any other form of official information. For approved investments it is necessary to attach a copy of the Investment License from Uganda Investment Authority.

JRA introduces new returns filing, assessment and payment processes (New Vision 27th.Nov.2009, p.11)
JRA report op cit 12

(b) Revenue Performance

By the time URA was established, the total tax revenue collection was barely UShs. 134 Billion per annum (11Billion per month) equivalent of 5.5 percent of GDP in 1990/91¹⁴⁵. By 2003¹⁴⁶, total revenue had risen to Ushs1, 410 Billion per annum (116.8 Billion per month) equivalent of 13 percent of GDP. The revenue has risen as per the table below;

Table 2 Revenue collected between 2008 and 2014

YEAR	REVENUE COLLECTED BY URA(BILLIONS)
008/09	639
009/10	742
010/11	822
011/12	970
012/13	1266
013/14	2311
014/15	4130

Source: URA, Statistics department

URA Statistics, Department of Finance and Administration.
Revenue collection shoots over 4000 billion(New vision 2nd November 2009)

(c) Taxpaying culture

URA has created an impact in increasing tax compliance and the level of awareness through intensive taxpayer education programs¹⁴⁷ such as proactive information dissemination¹⁴⁸. Various strategies have been adopted such as seminars, workshops, tax clinics, live radio talk shows, tax literature and URA website. More professional tax administration techniques have been imparted onto staff to ensure efficiency and effectiveness in revenue collection. The Authority has further adopted modern systems to ease tax compliance, reduce compliance costs and minimize the cost of tax administration. It is evident that the taxpayers' attitude is gradually changing¹⁴⁹.

d) Modernization of Administration systems

A number of modern systems have been developed to curb tax evasion, reduce revenue leakage and simplify compliance.¹⁵⁰ They are:

e) Liberalization of revenue collection (improved taxpayer services)

Previously tax payment was being made only through Uganda Commercial Bank. The monopoly position of UCB caused operational problems, which could only be overcome by liberalizing. Subsequently other Commercial banks were invited to participate in revenue collection together with UCB. Currently ten commercial banks collect revenue

Training of clients on new forms and forms (new vision ibid)

Muke, J. (1998)²¹

JRA back on track after shortfall (Daily monitor 15th.Jan.2010, 40)

Makibinga op cit.17

through their branches countrywide¹⁵¹. A taxpayer is at liberty to bank the revenue at the bank of his/her choice amongst the authorized.

(ii) Direct banking

The facility of Direct Banking was introduced and is operational for VAT, Income Tax and Customs Taxes¹⁵². A taxpayer completes a return, determines his/her own liability, proceeds to the bank, lodges the return at the bank and pays the relevant tax. The bank then submits the return and evidence of tax payment to URA on behalf of the taxpayer¹⁵³.

iii) IT Supported Revenue Management

This is mainly for monitoring and control. Systems introduced include, automatic Master register, Direct Trader Input, Cargo Scanning, Electronic Transit Cargo Tracking and Fast Track Clearance and Integrated Database Management. Automatic Motor Vehicle registration and Licensing is also being developed¹⁵⁴.

iv) Self Assessment

Under the Income Tax law¹⁵⁵, all corporate taxpayers can make a self assessment of their taxable income of a given year of income, determine own liability and file and pay

bid

JRA introduces new returns filling, assessment and payment processes (new vision 27th.Dec.2009 ,11)

Obwona,M. and Muwonge, A.(2002)7

This is to commence come 1st March.2010(Daily monitor 26th.Feb.2010, 32)

Income Act Sections 96-99

accordingly. In essence a taxpayer's declaration is regarded true unless proved otherwise.

(v) Withholding Tax Exemptions

Taxpayers who have regularly complied with the income tax requirements as well as importing for industrial production are specifically exempted from withholding tax¹⁵⁶. This has been widened to also cover Hotels. Thus in **URA V Speke Hotel 1996 Ltd.**¹⁵⁷ For practical purposes, all audit and accounting professionals and large corporations are automatically exempt from withholding tax¹⁵⁸.

vi) Double Taxation Relief Agreements

The Government has endeavored to enter Double Taxation Relief Agreements with a number of countries. These so far include UK, South Africa, Denmark, Norway, Kenya and India. These are major partners in commerce, trade and investment¹⁵⁹.

vii) Customer Care and Public Relations

To work towards creating a sustainable positive corporate image, URA has employed a multistrategic approach to improve URA taxpayer relationships¹⁶⁰. The Authority has introduced the customer care and taxpayer services functions in which taxpayers' needs, queries or concerns are promptly addressed. In particular, Customer Care and

Uganda Revenue Authority V Toro & Mityana Tea Co. Ltd- HCT-00-CC-CA-0004-2006
Civil Appeal No.12 of 2008
Kangave(2005)152
ibid
Mwambi Christopher op cit17

Complaints desks administered through the Tax Education Division have been established initially at the Kampala long room in Customs and at the Tax Education Offices. Many complaints are now being handled expeditiously using this strategy.

The strategy has also enabled government establish and strengthen partnerships with various stakeholders such as Government institutions, Parliament, business community, the professionals (Taxpayer Agents), the Media, etc¹⁶¹. Permanent forums have been established for dialogue with trading communities through their associations such as KACITA, UNCCI, UFFA, UCIFA, UCTOA and UMA. URA has further embarked on establishing permanent call centers in the proximity of the stakeholders, beginning with Parliament, Kampala and Entebbe to ease and quicken the flow and exchange of tax information.

The overall effect is that the measure has helped to foster the development of confidence and business ethics especially amongst the ordinary business community and increase the level of ethics and integrity in tax administration.

) Human Resource capacity building

Particular emphasis has been laid on staff development and training. Also staff is encouraged to undertake private courses to enhance their professional skills to become more competent and competitive in the job market.

(g) Simplification of tax administration procedures

The authority has overhauled most of the tax administration procedures relating to the various laws to make them simple to administer, easy for taxpayers to comply and cope with the development trends¹⁶².

(h) Regional impact

URA was the first Authority to be established in the East African region.¹⁶³ To date, similar Authorities have been established south of Sahara, in Kenya, Tanzania, Rwanda, Zambia, etc basing on URA's success story. Thus URA has become a hub of sharing experiences in modern tax revenue management in the region and is conceptually in the leads.¹⁶⁴

3.3 Challenges facing Uganda Revenue Authority

The first 15 years of URA's operation shows that many of the advantages envisaged prior to its creation have been realized. However, this does not mean that it is moving on 'a silver plate'. It has faced a number of challenges which include;

i) Corruption

Though the level of corruption was perceived to drop during the initial phase, corruption has been considered a problem in the URA since its outset. For instance, a survey conducted in Kampala in 1993, two years after the authority was established,

URA official website *ibid*.

ibid

Wakibing op cit 16

revealed that there was 'a general impression that URA is a corrupt institution, high-handed and inconsiderate'¹⁶⁵..¹⁶⁶ Moreover, in a business survey conducted in 1998, which covered 243 firms, as many as 43 per cent said they were paying bribes to tax officers occasionally or always.¹⁶⁷

Senior managers seem to be heavily involved in corruption in the URA. This is, for instance, reflected in the court case in 2003 against five senior officers attached to the Large Taxpayers Department (LTPD) who were accused of defrauding the URA of US\$ 338 million. The accused included the commissioner of the LTPD, three assistant commissioners for audits and business analysis, and the public relations officer.¹⁶⁸

b) Political interference

Few public agencies are as powerful and as interwoven with society as the tax administration, which monitors and appraises the economic activities of many of the citizens and businesses in the country¹⁶⁹. For instance, the tax administration often has important financial information about the economic operations of these actors. Hence, giving political control over the tax administration can pay high political dividends¹⁷⁰. Politicians can, for example, intervene in the tax administration to grant favors such as tax exemptions to supporters or to harass political opponents through audits. Political

Zake op cit 77

Dockcroft and Legoretta (1998) 23

Gauthier and Reinikka (2001) 22

The New Vision (11 March 2003) 4

Walemwa (2009) 15

Galiercio (2002) p. 223

interference in the recruitment process has been a source of dissatisfaction and unease among staff, who see this as causing job insecurity.

The URA has been riddled with political interventions, especially in managerial appointments and dismissals. In 1997, for instance, the President personally intervened in the appointment of the new Commissioner General, although the person appointed by the president was not among the candidates listed for interview by the Board, and not the preferred candidate of the minister of finance¹⁷¹. He also had close family ties to the president. Thus, President Museveni did what other members of the elite continuously try to: influence staffing in the URA. Moreover, as noted above, the president on several occasions publicly criticized the URA staff for being corrupt. This certainly had a major negative impact on taxpayers' perceptions of the revenue agency. The URA lost its legitimacy in the eyes of taxpayers. It also lost its formal and informal authority vis-à-vis the Ministry of Finance and the state elites.

;) Patronage

Certain tribal networks are strong in the URA and influence promotions and transfers within the organization. Many tax officers and managers remain under the strong influence of traditional patterns of social relations and recognize the benefits of large extended families and strong kinship ties. This implies that such social relations operate across purposes to formal bureaucratic structures and positions. For instance,

¹⁷¹herkildsen op cit pp. 80-81

according to some informants, one of the Commissioners of the URA is fully controlled by a lower ranking official in the department, because this person ranks above the Commissioner in the kinship system.¹⁷²

(d) Taxpayers' compliance

In Uganda, as in many other African countries, the frequent use of the tax administration for political purposes has helped erode taxpayers' confidence in the fairness and impartiality of the tax administration, which has itself contributed to undermine tax compliance¹⁷³. The formal autonomy awarded the URA upon its inception and the degree to which this autonomy was exerted in the initial phases of its existence, could very well have had a favorable impact on taxpayers' perceptions of the tax administration's operations, and hence possibly on compliance rates. As a result of this URA has lost billions of money.

e) Human resource management and job security

The URA is perceived by staff members to be a top-down organization characterized by obmissiveness. Promotion is in general based on seniority. Younger staff members are given few opportunities to develop their skills. Incentives are in general weak in the sense that good performance is not rewarded and bad performance is not punished. According to interviews conducted during the period 2000-2003¹⁷⁴, the core of committed staff who would be willing to participate in change either are induced by

¹⁷²mi working paper(2005)12

¹⁷³aliercio op cit32

¹⁷⁴mi working paper op cit 10

peer pressure to conform to corrupt practices, or they are turned off by an apparent lack of interest by a management – and a board - that seems mainly concerned about maintaining the status quo.

Although the turnover of ordinary staff members has been reduced after the initial shake outs, job insecurity seems to have increased for top managers¹⁷⁵.

4.4 Conclusion

Though with some weaknesses and challenges, the tax policy reforms enacted by the government and implemented by the URA have led to the rise of revenue from 7% of GDP in 1991, when the URA was first established, to more than 11% by the late 1990s¹⁷⁶ and 17% by 2009. This indeed leaves no question unanswered on the role of URA in the administration of taxes whose most notable achievement has been setting up of controls to curb malpractices in the tax administration.

bid
Torgny Holmgren et al(1999) 12

CHAPTER FIVE:

CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

In Uganda, like in most developing countries national tax collection was carried out by line departments within the Ministry of Finance. However, in 1991 the tax administration function was moved out of the Ministry of Finance and granted to a semi-autonomous entity that is the URA. Although this semi-autonomous URA has been established it was done so under differing political and economic circumstances. First, the government was greatly dissatisfied with the performance of revenue collection, especially in the face of fiscal deficits and expanding public expenditure needs, and the chronic inefficiencies of the existing tax administration arrangements placed in the Ministry of Finance. Second, perceptions of widespread corruption and tax evasion, combined with high taxpayer compliance costs, led to calls for wholesale reform of the tax administration. Third, the shift to a semi-autonomous revenue authority model has been also attractive to foreign donors because it created opportunities for more widespread reforms of the tax administration.

The Uganda revenue authority model is designed partly to limit direct political interference in day-to-day operations by the Ministry of Finance and partly to free the tax administration from the constraints of the civil service system. The Uganda revenue authority is not meant to be as autonomous as a central bank or as dependent as departments in line ministries. It is 'semi-autonomous'. But it is meant to be quite

independent of the financing and personnel rules that govern the public sector in general. The Uganda revenue authority can in principle recruit, retain and promote quality staff by paying salaries above civil service pay scales, and also more easily dismiss staff. Such steps are expected to provide incentives for greater job motivation and less corruption. Moreover, a single purpose agency is meant to integrate tax operations and focus its efforts on collecting revenues more effectively than is usually possible under civil service rules. Indeed though with challenges, this has enabled URA achieve the objectives for which it was set up.

4.2 Recommendations

Since its inception in 1991, URA has introduced a number of reforms in tax administration that has enabled it achieve its objectives. However, more is still needed in order for it to effectively administer taxes. Thus the following recommendations:

As seen from the research, sharing norms reflected in patronage and social obligations within the URA are liable to discourage the development of a professional tax administration. At the same time, the experiences of the URA emphasize the particular importance of breaking the influence of kin-based networks on the operations of the revenue administration. One suggestion is to introduce rotation systems for the staff, where revenue collectors remain only for short periods in the same post. Indeed President Museveni has already started this in the civil service where senior accountants and procurement officers who had worked long in one ministry have been transferred and this is going to be a routine where no one will be allowed to work for a long period

in one department. If this is taken in the URA, it will see URA become a better institution to administer taxes.

Furthermore, placing expatriates in key management positions might also help in avoiding the unfolding logic of patronage and predatory authority. Strong expatriate leadership may more easily confront political and bureaucratic pressures, and thus provide a 'buffer zone' within which systemic changes and new forms of staff behavior are implanted.

In order to overcome the political and bureaucratic obstacles that confront the URA, a strong leadership of the revenue authority is essential. This also requires a better demarcation of management authority between the Board and the Commissioner General. A board acting as the chief executive is certainly not a recipe for the strong and effective daily leadership which the revenue authority needs. The present problems of micro-management by the Ministry of Finance and the Board's involvement in day-to-day operations must therefore be addressed. This may imply a re-composition of the Board that better matches the expectations of the Government about the status and performance of the tax administration. Such measures, however, do not imply the end of mutual cooperation between the URA and the Ministry of Finance. The revenue authority possesses unique datasets on taxpayers and revenue bases, and this information is essential for improving tax policy and legislation.

From the research, it is established that lack of a taxpaying 'culture' is the largest obstacle to building a firm long-term revenue base in Uganda. The opposite may, however, also be the case: as long as the tax administration culture is perceived to be influenced by sectarianism, nepotism and corruption, it is unlikely to contribute to the fostering of a more conducive taxpaying culture.

Despite quite comprehensive changes in the tax structure (rates and bases) in recent years, the tax system in Uganda is still complicated and non-transparent. Tax legislation is unclear and causes random and partly ad hoc collection procedures.

Assessors have wide discretionary powers to interpret tax laws, for instance, to allow or disallow expenses or charges, or to exempt items from import duties. These factors, combined with a perception of limited tangible benefits in return for taxes paid legitimize tax evasion. In such circumstances it is not surprising that taxation takes place in an atmosphere of distrust and fear between taxpayers and revenue officers. Extensive use of force is often required to collect revenues, as reflected in the use of special military units to enforce taxes and fight smuggling. Thus, the government's credible commitment about the use of tax revenues and its procedures to design and implement tax policy non-arbitrarily are crucial to regain legitimacy. The credibility or trustworthiness of the revenue administration's sanctions against tax defaulters is also important in this context.

Last but not least, encouraging the development of a positive organizational culture should be taken as an important way of improving of URA's performance in a situation where the broader environment, including the public sector in general, discourages good performance. If the enabling environment is weak, managers tend to drive performance. Hence, internal leadership and culture are likely to be keys to establishing meritocratic and performance-oriented organizational behavior in situations where the formal political and administrative institutions are weak.

Accordingly, a reasonable hypothesis is that URA should be given more real autonomy in personnel matters as this would contribute to greater capacity to set performance standards for its employees and hold them accountable to the organization for meeting those standards. Autonomy in personnel matters can here be understood as a facilitating condition that provides the URA and its managers with the ability to build cultures that allow the organization to rise above the norm for the public sector in Uganda. Required measures should include a rigorously planned and executed re-staffing process, also at the senior management levels, and introduction of human resources policies relating to transparent recruitment, adequate remuneration, pension/retirement schemes, etc. Such measures ought to be taken before proceeding with traditional forms of technical assistance such as the design and implementation of integrated computer systems, organization of formal training courses and on-the-job training, and process re-engineering in a wide range of areas, including better forms

and filing, auditing and management of revenues, taxpayer education programs, and so on.

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