

**AN ANALYSIS OF THE EFFICACY OF THE LEGAL FRAMEWORK ON THE
COLLECTION OF TAXES AND RECOVERY SYSTEMS IN UGANDA.**

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**SUPERVISED BY
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DEDICATION

This research is dedicated to my Parents, Mr. & Mrs. Jubleth and Dolly Silaa for their love, extreme tolerance and understanding that has been invaluable for me being at Kampala International University.

Also dedicate it to my sisters and brothers Rahma, Ailensia, Amen-Ruth, Anania , Faith-Nector, Gobless and most important my Twin Jessicaline Silaa for their undying love and support. May our almighty God reward you all.

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June 2013.

DECLARATION

I SILAA JACKLINE JUBLETH: LLB/41107/91/DF, do hereby declare that the work presented here in this dissertation is my own, except where acknowledged, and it has never been submitted or examined in any University as an academic requirement for any award.

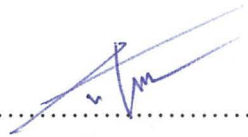
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APPROVAL

Certify that I have supervised and read this study and that in my opinion, It confirms to acceptable standards of scholarly presentation and is fully adequate in scope and quality as dissertation in partial fulfillment for the award of Degree of Bachelor of Laws of Kampala International University.


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Astor-vs- Perry (1935) AC 398;
Ayrshire Pullman Motor Services-vs- IRC (1989) 14 TC 754;
Cape Brady Syndicate -vs- IRC (1921) 1 KB 64 at 71;
Commissioner of income Tax -vs- Holdings Ltd (1972) EA 128;
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Russel -vs- Scott (1948) A.C. 422;
United Manufacturers Ltd -vs- WAFCO Ltd (1974) EA 233;
W. Tramsy Ltd-vs- I.R.C(1982)AC 300.

LIST OF ACRONYMS

NGO Non-Governmental Organization

P. A.Y.E Pay As You Earn

T.LN Tax Identification Number

U.R.A Uganda Revenue Authority

ABSTRACT

A “tax” has been defined as a charge by the Government on the income of an individual, corporation or trust, as well as the value of an estate gift²⁴. A “tax” has also been defined as any contribution imposed by Government upon individuals for the use and services of the state whether under the name toll, custom, excise, tribute, tallage, gable, impost, duty, subsidy but which essential characteristics is not a debt

The Uganda Revenue Authority is the central body mandated to assess , collect specified tax revenue, administer and enforce laws relating to such revenue. This statutory body conducts regular audits and investigations of taxpayers.

The research is to analyze the current legal regime in relation tax collection and offences under Uganda tax law ,to identify the existing legal and administrative weakness in addressing tax offences and recommend the necessary changes and to recommend and draw conclusion on legal regime in relation to violation of tax law.

CHAPTER ONE

1.1 INTRODUCTION

Taxes have existed virtually as long as there have been organized governments. The Bible does record instances when people were expected to pay taxes. Jesus was often asked whether people should pay taxes but he did answer that,

*“Give to Caesar what is Caesar”.*¹

Saint Paul said;²

“... This is also why you pay taxes, for the authorities are God's servants, who give their full time to governing... If you owe taxes, pay taxes...”

Laws are fundamental and unique resource of government. Without laws, citizens would have no protection against arbitrary authority and no obligation to pay taxes. One of the characteristics of tax legislation is that it empowers the Government to carry out tasks in relation to taxation matters. Tax legislations impose obligations on citizens to pay taxes and failure to do so is counteracted by sanctions. It is therefore important for the tax payers be able to ascertain the law and be well aware of the implications.

In a democratic society one of the most important aspects of a tax system is that the taxing authorities should be accountable to the electorate at large³. This can be so only if the tax system is such that a man and woman in the Street can comprehend clearly what the nature of the tax payers' liability is. This therefore calls for constant reforms of the Uganda Revenue Authority (U.R.A).

According to Francis Kamulegeya⁴, the tax laws and tax policy of any country are only as good as the tax administration and that there is a correlation between successful tax policy and efficient tax administration. Regular changes at UR.A are necessary in-order to enable it transform into a modern tax administration. The changes at UR.A have led to increased tax collection

A good tax system needs to be robust and efficient in terms of revenue collection, compliance improvement and control of tax offences.

¹ Luke 20:20-26

² Romans 13:1-6

³ The Structure and Reform of Direct Taxation. Report of a Committee chaired by professor J. E Meade (1978), pp 7-21, 30-41

⁴ Tuesday, July 22, 2008. Daily Monitor.

With the growth and increasing globalization of businesses (including the increased mobility of capital and rise of e-commerce), the opportunities for taxpayers to violate tax laws are expanding, prompting the need for the tax administration to continually update and broaden the strategies it uses to deal with this problem.

1.2 STATEMENT OF THE PROBLEM

The main aim of any revenue collection body is to ensure compliance of the various tax laws. Hence the need to have proper enforcement mechanism.

The most controversial aspect in tax compliance is whether penalties and sanctions have a role to play in ensuring compliance with tax laws.

1.3 OBJECTIVES OF THE STUDY

- i. To analyze the current legal regime in relation tax collection and offences under Uganda tax law;
- ii. To identify the existing legal and administrative weakness in addressing tax offences and recommend the necessary changes;
- iii. The research will recommend and draw conclusion on legal regime in relation to violation of tax law.

1.4 SCOPE OF THE STUDY

The context of this research paper is to critically analysis of both legal and administrative mechanisms currently existing in relation to various tax offences and penalties prescribed. The paper will also seek to examine the effectiveness legal and administrative mechanism in curbing violation of the various laws dealing with taxation in Uganda. The study shall also seek to recommend the best practices to be employed while dealing with suspected offenders of the legislation dealing with taxation matters in Uganda.

1.5 HYPOTHESIS

Whether the current legal provisions, enforcement mechanism and administrative mechanisms under Uganda tax laws are effective in promoting compliance.

1.6 SIGNIFICANCE OF THE STUDY

The study is intended to build upon prior research and public dialogues that may have done by scholars, Government, Education and research institutions, and international institution on offences provided for under the law and the sanction prescribed.

The study is also aimed at proving that in-order to ensure an upward trend in revenue collection, the enforcement mechanism including offences and penalties prescribed must be adequate to act as a deterrent.

1.7 METHODOLOGY

The research will be qualitatively and heavily dependent on prior published documents, secondary data, Government documents and legislations, archives, newspapers, NGO publications, textbooks and the internet.

1.8 LITERATURE REVIEW

Literature review is important t in a sense that it gives a background of what other authors have written about the problem and therefore a subsequent researcher is in position to identify the various gaps that were left out by such authors .The research is therefore to identify the same.

Definition of tax

The Concise Oxford Dictionary defines a ‘tax’ as a “contribution levied on persons, property or business for support of government”, while OECD defines a tax as “a compulsory, unrequited, transfer by the general government sector⁵.” It is in effect a contribution designed to reduce private expenditure in favor of public expenditure to enable the government to obtain funds in order to provide social and merit goods and services, redistribute income, clear market imperfections and stabilize the economy⁶.

Allan prefers a wider view of tax as “any leakage from the circular flow of income into the public sector, excepting loan transactions and direct payments for publicly produced goods and services up to the cost of producing these goods and services.⁷ While this definition distinguishes

⁵ Waburton R. Hendy P, International Comparison of Australia’s Taxes, 2006), pp.17-22.

⁶ Nicholas, T, Taxation in Kenya (Principles and Practices), 5th Revised Edition, 2003, p.71.

⁷ Allan C, The Theory of Taxation, Penguin, (1971) p.24.

taxes from other government action with an equivalent economic effect, it is at the same time both over- and under-exclusion. Some legally required payments may be made not to the government itself, but to a government controlled entity. Such payments differ only in form from earmarked taxes that are paid to the government and then passed to the spending agency in question.

On the other hand, not all required payments to the government are taxes. Tax should not include civil or criminal fines. The distinction between a fine and a tax can be a matter of form. For example, is consumption tax provided in law n° 26/2006 of 27/05/2006⁸ determining and establishing consumption tax on some imported and locally manufactured products really taxes or are they fines? The answer may differ depending on the context in which the question arises. Fines should not be considered as taxes. A fine may be distinguished from a tax on the basis that the former is designed to punish the illegal conduct, while the latter is designed to contribute to public revenues on the basis of the taxpayer's economic capacity.

Several continental European countries and Latin American countries have fairly well elaborated statutory definitions of taxes and other compulsory contributions⁹. Under such schemes, taxes are viewed as a subset of a more general category- compulsory contribution¹⁰ which has been defined as 'a monetary contribution unilaterally imposed under the public law which serves (at least in part) to raise revenues and is payable to a public authority'. The following definition in Spain is about the same: 'a public receipt under public law, obtained by a public entity, on the basis of a relationship as a creditor in respect of the person obligated to contribute, as a result of the application of the law to a fact which is indicative of economic capacity, and which does not constitute a penalty for an illegal activity'¹¹.

In France, obligatory contributions are divided into fees (*taxes fiscales et redevances*), parafiscal fees (*taxes parafiscales*), social contributions (*Cotisations sociales*), and taxes (*imports*). The difference between a 'taxe' and a 'redevance' is that the latter should be equivalent in value to

⁸ For example, article 4 of the cited law levies Consumption tax of 120 percent on cigarettes. One wonders whether it is tax or fine on cigarette smokers.

⁹ The definition is typically contained in the tax code or in a general law on tax procedure. For example, AC ss 3(Germany), LTG art. 26(Spain), Tax Code, art 8 (Russia)

¹⁰ In German: Abgabe. German law contains a definition of tax (Steuer) in ss 3 AC. Abgabe is a compulsory contribution.

¹¹ Taxes are subsets of abgaben. The corresponding to Abgabe in Spanish and Portuguese is tributo, the term for tax being impuesto (in Portuguese imposto)

the service rendered while the former needs not be. 'Taxe' has fiscal nature while 'redevance' is a non-fiscal fee for services¹² Parafiscal fees are same as 'taxes' except that they are extra-budgetary and not paid to the state itself. A fundamental criterion is that the contribution is *compelled* by the law. In turn, compulsory contributions are subdivided into fees, special contributions, and taxes paid by the beneficiary. Professor Seligman suggests that a tax is a compulsory contribution from a person to the government to defray the expense incurred in the common interest of all, without reference to special benefits conferred. It is a compulsory levy imposed on the nationals and residents to meet expenses which are incurred by a government for the common cause.

According to Warburton and Hendy: "*In liberal democratic societies, the community makes choices how they want their society and economy to operate. One of the most fundamental choices is the balance between private and public provision of services*"- including the extent and structure of the taxation system. It is not therefore surprising that attitudes to tax vary. At one extreme, Justice Oliver Wendell Holmes(ir.) observed in *Companiade Tabacosvs Collector* that;

"taxes are what we pay for civilized society,"

and that;

*"the power to tax is one great power upon which the whole national fabric is based... It is not only the power to destroy, but the power to keep alive"*¹³.

At the other extreme, more cynically, it has been said that;

*"the art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least amount of hissing"*¹⁴

and that;

*"there is only one difference between a tax collector and a taxidermist- the taxidermist leaves the hide"*¹⁵.

A common feature of taxation compliance policies is the existence of a formal penalty regime for taxation offences.¹⁶ Arguably one of the most controversial issues in global tax administration

¹² TROTAB5 L. & COTTERET J., *Droit Budgétaire et Comptabilité Publique*, Edition Dalloz, Sirey 1997, p.319-320,

¹³ Attributed to USA Supreme Court Judge by JP Smith, *Taxing Popularity: The story of Taxation in Australia* (Canberra: Federalism Research Centre (ANU),1990)

¹⁴ Jean Baptist Colbert in JP Smith above p.7.

¹⁵ Mortimer Maxwell Capwell, *Time magazines*, 1 Februarys 1963.

and tax compliance policy development has been the role of penalties and sanctions for taxation offences.¹⁷

The doctrines depict 'tax offence' "as an unlawful, culpable action or inaction, that results in non-fulfillment inappropriate fulfillment of tax obligations foreseen in the tax legislation and such action or inaction breaches the rights and legal interests of participants of tax relations and legislation foresees legal responsibility for that¹⁸ ." Professor Shaulov and professor Cann¹⁹ provide some examples of such offences, which include tax evasion, creation of illegal organizations and violation of cash payment disciplines.

In 1968, Nobel laureate economist Gary Becker first theorized *the economics of crime*²⁰ on the basis of which Allingham and Sandmo produced in 1972 an economic model of tax evasion. It deals with the evasion of income tax, the main source of tax revenue in the developed countries. According to them, the level of evasion of income tax depends on the Level of punishment provided by law.²¹ The literature's theoretical models are elegant in their effort to identify the variables likely to affect non-compliant behaviors, however, alternative specifications yield conflicting results concerning both the signs and magnitudes of variables believed to affect tax evasion. Income tax evasion appears to be positively influenced by the tax rate, the unemployment rate, the level of income and dissatisfaction with government.

1.9 Chapterization

This paper will be divided into five chapters.

Chapter one of the dissertation contains, general introduction, statement of the problem, objectives of the study, scope, hypothesis and significance of the study, methodology, literature review and chapterisation.

¹⁶ Devos, Ken (2004) "Penalties and Sanctions for Taxation Offences in Anglo Saxon Countries: Implications for Tax Payer Compliance and Tax Policy," Revenue Law Journal: Vol. 14: Iss. 1, Article 5. Available at: fipj/publications.bond.edu.au/rli/voll4/iss1/5

¹⁷ Ibid.

¹⁸ Shaulov D.I and Cann U., "Foundations of tax legislation", (2000) World of economics and law Publishing House, at page 71.

¹⁹ Ibid

²⁰ Gary Becker (1968). "Crime and Punishment: An Economic Approach". *The Journal of Political Economy* 76: at page 169— 217.

²¹ Allingham, M. G. and A. Sandmo [1972] 'Income Tax evasion: A Theoretical Analysis', *Journal of Public Economics*, Vol.1, 1972, at page 323-38.

Chapter two will look at the historical perspectives of taxation in Uganda, imposition of tax, classification of taxes, canons of a good tax system, and functions of a good tax system.

Chapter three will discuss interpretation of tax statutes.

Chapter four will cover the enforcement mechanism in ensuring compliance with tax laws. The chapter will also discuss the various tax offences including tax evasion and avoidance.

Chapter Five will give recommendations and concluding remarks to the entire research paper.

CHAPTER TWO

BASIC TAXATION PRINCIPLES IN UGANDA

2.0 INTRODUCTION

Uganda's tax law mainly stems from the colonial history. In pre-colonial Uganda, taxes were levied mainly centralized societies and existed in the form of tributes, where clan members gave part of their harvest to clan leaders, or engaged in forced labor on clan leaders' farm, and other times, took part in 'annual tax' which consisted of constructing and maintaining road network.

To finance its operations in the Uganda Protectorate, the British Government introduced hut and gun tax, which were later replaced by a poll tax in 1905. It was not until 1922, however, that taxes were introduced. After independence, and upon the collapse of the East African Community, Uganda introduced its own legislation, the first which was the 1974 Income Tax Decree.

In 1996, the Uganda Government commissioned a study into the existing law and how it could best be channeled. Underlying this study was a need to widen the tax base and improve on the overall tax structure so that taxes on income could contribute more substantially to the revenue performance. The result of the study and the deliberations thereafter, was the enactment of the 1997 Income tax Act, which has in recent years been amended and has current state in the laws of Uganda as Cap 340.

The Uganda Tax system is divided into Central Government and Local Government²². The principal taxes levied by the Central Government are income tax both on individuals and companies; Value Added Tax, Import Duty and Excise Duty²³. In September 1991, the 'Uganda Revenue Agency (URA) was formed as a semi-autonomous authority responsible for collecting tax revenue to take over from the Ministry of Finance. It was hoped that an independent revenue authority would limit political interference in the tax assessment and collection process.

A "tax" has been defined as a charge by the Government on the income of an individual, corporation or trust, as well as the value of an estate gift²⁴. A "tax" has also been defined as any contribution imposed by Government upon individuals for the use and services of the state

²² See: Article 191, and 192 of the Republic of Uganda constitution, 1995, in relation to levying of taxes by Local Government.

²³ Richard M. Bird, Tax Policy and Economic Development", Baltimore: John Hopkins Press, 1992, at page 3-4.

²⁴ Black's Law Dictionary, page 1457.

whether under the name toll, custom, excise, tribute, tallage, gabel, impost, duty, subsidy but which essential characteristics is not a debt²⁵.

However, the Value Added Tax Act, cap 349 introduces the aspect of tax as a debt due to the Government. Section 35(1) of the Act provides that tax due and payable under the Act is a debt due to the Government and is payable to the Commissioner General by the person specified in Section 5. The persons liable to pay tax under Section 5 are suppliers of taxable supply, importers of goods and recipients of imported services.

Taxes are levied in almost every country of the world. It has been suggested that the tax system has become the 'maid' of all work²⁶. "...it is necessary to the existence and prosperity of a nation as the air he breathes to a natural man²⁷.

2.1 Imposition of Tax

In the case of *Nyali Ltd —vs- Attorney General*²⁸ where issue to be determined was who can impose tax. Nyali ltd built a pontoon bridge linking the mainland at Nyali with the island of Mombasa, bottle in Kenya. The bridge was built under an agreement of October 9, 1929 with the Government of Kenya, which entitled the company to charge tolls for,

“(a) all passenger vehicles (persons limited to six)

(b) foot passengers or persons in excess of six in number “travelling in any vehicle” but provided for exemptions in respect of “military on duty or their equipment luggage or transport”

At page 13, Lord Denning said,

“In former times there were many cases where a man set up a ferry or made a bridge to cross a river or an arm of the sea. It was usually done to connect two highways so as to save a long journey round. In such a case, it is well settled that the owner of the ferry or bridge cannot of his own head impose a toll upon the people who use it. The reason because it is a thing of public benefit and use; and it ought, therefore, to be under public regulation. He must get lawful authority to levy a toll; and the only authority recognized for this purpose is a Crown grant of

²⁵ Ibid.

²⁶ Kirkbride J. and Olowokkufu, A., “The Law And Theory Of Income Tax”, (2001) Liverpool Academic Press. At page 28, 2001

²⁷ Mills S., “Taxation in Australia’ (1925) Macmillan, London, at page 1.

²⁸ (1956) 1 QB 1.

franchise of tolls, or an Act of Parliament. The toll charged must not exceed the amount specified in the Crown grant or in the Statute”.

It is thus clear from the foregoing quotation that authority to levy tax should be derived from an Act of Parliament. The all important matter of imposing tax should be contained in primary legislation and not left to subsidiary, delegated legislation or secondary regulations. If the latter is done, it may lead to abuse, excessive taxation or imposing taxes which are *ultra vires* to the parent Act.

The Constitution of the Republic of Uganda has enshrined this principle. Article 152(1) provides, “*No tax shall be levied except under the authority of an Act of Parliament*”.

2.2 Classification of Taxes

Taxes are classified according to administrative collection arrangements, bases, and their rates and effects. Tax collection arrangements may involve either direct payment by tax payers to revenue authorities or indirect payments where the tax payer cannot be identified in advance. This arrangement leads to the categorization of a tax as either a direct tax or an indirect tax.

Direct tax is levied or imposed upon a person basing on his or her ability to pay. Section 2(y) of the Income Tax Act defines a person to include an individual, a partnership, a trust, a company, a retirement fund, a government, a political sub-division of a government or a listed institution. A good example of a direct tax is Pay As You Earn (PAVE) under section 19 of the Income Tax Act.

Indirect taxes are levied on certain items of popular consumption. The tax payer liability varies in proportion to the volume of the particular goods sold or purchased. The tax is levied on expenditure or consumption of commodities and includes taxes such as customs duty, excise duty and value added tax.

Direct and indirect taxes are distinguishable mainly in terms of shift ability. For direct taxes, the impact of the tax falls on the person charged and cannot be easily transferred or passed on to another person. An indirect tax on the other hand is normally shifted to the consumer.

Both direct and indirect taxes apply in Uganda.

2.3 Canons of a Good Tax System

Taxes may be one of the two certainties, but taxes themselves are not immutable. Governmental policies and revenue requirements change, and social structures alter; these encourage imposition of new taxes and abolition of old taxes.

Adam Smith in his book, “An Inquiry into the Nature and Causes of the Wealth of Nations (1776)²⁹ developed what are now known as the canons of taxation, these were principles upon which a tax system could be evaluated. The canons have been further developed to include;

- a) **Certainty** — this means that the scope of a tax should be clear. The tax which each individual is bound to pay ought to be certain not arbitrary. The time for payment, the manner of payment, the amount to be paid, ought to all be clear and plain to the contributor and every other person.
- b) Convenience - According to this canon every tax ought to be levied at the time, or in the manner in which it is most likely to be convenient for the contributor to pay it.
- c) Economy - That is, every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the state.
- d) Consistency with economic goals - This is seen as efficient allocation and full employment or utilization of resources, rising living standards and economic stability. Taxes should restrict private spending during inflation and expand during depression. Also that they should interfere least with incentives and conversely stimulate the will to work and entrepreneurship.

2.4 Functions and Objectives of Taxation³⁰

One of the most famous quotations in tax law, is that of Justice Oliver Wendell Holmes in the American Case of *Compania de Tabacos —vs- Collector*³¹. In that case, the Judge stated that, inter alia that “*taxes are what we pay for civilized society...*”

²⁹ David Salter, Julia Kerr, “Easson: Cases and Materials On Revenue law”, (1990) Sweet & Maxwell, London, at page 1.

³⁰ See; The Structure and reform of Direct Taxation. Report of a committee chaired by Professor i.E Meade (1978), at page 7 —21, 30— 41, (cited at David Salter, Julia Kerr, “Easson: Cases and Materials On Revenue law”, (1990) Sweet & Maxwell, London, at page 3

³¹ 275 U.S 87

The Role of taxation and fiscal policy in the development strategy has to be viewed in the background of the functions which a taxation system performs. Its main functions in relation to economic development are as follows;

a) The primary function of a tax system is to raise revenue for the government for its public expenditure. So the first goal in the development strategy as regards taxation policy is to ensure that this function is discharged adequately.

b) To reduce inequalities through a policy of redistribution of income and wealth. Higher rates of income taxes, capital transfer taxes and wealth taxes are some means adopted for achieving these ends.

c) For social purposes such as discouraging certain activities which are considered undesirable. The excise taxes on liquor and tobacco, the special excise duties on luxury goods, betting and Gaming Levy are examples of such taxes, which apart from being lucrative revenue sources have also goals. To ensure economic goals through the ability of the taxation system to influence the allocation of resources. This includes.

- i. Transferring resources from the private sector to the government to finance the public investment program;
- ii. The direction of private investment into desired channels through such measures as regulation of tax rates and the grant of tax incentives etc. This
- iii. includes investment incentives to attract foreign direct investment (FDI) into the country;
- iv. Influencing relative factor prices for enhanced use of labor and economizing the use of capital and foreign exchange.

d) To increase the level of savings and capital formation in the private sector partly for borrowing by the government and partly for enhancing investment resources within the private sector for economic development. e) To protect local industries from foreign competition through the use of import duties, turnover taxes/VAT and excises. This has the effect of transferring a certain amount of demand from imported goods to domestically produced goods.

f) To stabilize national income by using taxation as an instrument of demand management. Taxation reduces the effect of the multiplier and so can be used to dampen cyclical fluctuations on the economy.

2.5 CONCLUSION:

In conclusion therefore it can be noted that taxation is one of the oldest functions of a government in running government affairs. Apart from the cost of running the government, normally there are some services which have to be met by the state. Imperatively government have to provide social services, maintain law and order, ensure defense and a horde of other undertakings which the free market cannot provide or which the state feels are better provided by itself.

In this regard the government has to raise revenues to cater for such expenses thus, government finance is all about budgeting the revenue and expenditure of government. The government financier normally has five sources to choose from namely: taxes, the sale of goods and services, grants, the creation of new money and borrowing. There is no universal formula of how the government should raise such revenue to cater for government expenses, but in most cases the government relies on taxes as a major means of raising such revenue. Therefore, out of the five sources from which the government can raise her revenue, taxation is a handmaid for raising revenue to meet government expenditure.

CHAPTER THREE

INTERPRETATION OF TAX LEGISLATIONS

3.0 INTRODUCTION

Parliament makes the laws, the judiciary interprets them. When Parliament legislates, the role of the judiciary is confined to ascertaining from the words that Parliament has approved as expressing its intention what that intention was, and to giving effect to it.

3.1 INTERPRETATION

Often, many word and phrases which are used in taxing statutes either have no technical meaning in law or they simply have no precise meaning in ordinary use. An example, is the words “*profits or gains*” of a “*business*” in the Income Tax Act, Cap 340. The terms “*profits or gains*” are not statutorily defined, whereas the term “*business*” lacks a satisfactory statutory definition, it is difficult to ascertain its meaning in its ordinary usage.

Revenue law is a creature of statute and therefore approach to interpretation of tax statute is required to be fully consistent and based on certain guidelines, this is important because tax statutes are rather special types of statutes demanding a predictable and strict form of interpretation.

It is often stated that the general rules of statutory interpretation apply; but;

*“The basic principles of statutory interpretation are not to be found in any statute. They have developed from the decisions of the courts. The principles which have thus evolved are sometimes called ‘rules1’ but it would be more accurate to describe them as different approaches to interpretation, on which different period of our legal history greater or lesser emphasis has been placed.”*³²

Historically, the courts took a literal approach to revenue statutes to determine legislative intent. The written expression almost exclusively prevailed over legislative intent and purpose. The literal interpretation, coupled with the restrictive interpretation, placed the onus on Parliament express itself clearly, and it did not, the benefit of the doubt went to the tax payer;³³

³²Law commission Report, The Interpretation of Statutes (1969) H.C. 256 P. 14, para 22.

³³ Per Lord Simonds in Russel —vs- Scott (1948) AC. 422 at P.433

*“The subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him.”*³⁴

Tax must be expressly imposed upon the subject by clear words of a statute, the intention to impose the tax must be clearly shown. Therefore, even where it may be within the spirit of the Act to impose tax on some item no tax would be imposed if the statute is silent or has no clear provision or the subject should not be required to pay tax. A clear example of this principle can be seen in the case of *Cape Brady Syndicate —vs- IRC*³⁵

“In taxing Act one has merely look at what is clearly said. There is no room for any intendment ... There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at language used.”

This principle is enshrined in the Constitution of the Republic of Uganda, 1995 which by Article 152(1) prohibits imposition of tax of any kind save by an Act of Parliament.³⁶ Further, in the case of *W. T Ramsy Ltd —vs- I. R. C*³⁷, Lord Wilberforce stated that;

“A subject is only to be taxed upon clear words, not upon “intendment” or upon the “equity” of an Act. Any taxing Act of parliament is to be construed in accordance with this principle. What are “clear words” is to be ascertained upon normal principles; these do not confine courts to literal interpretation. There may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should be regarded.”

The above principles governing interpretation of tax or fiscal legislation have been applied in cases in East Africa. For example in *Kanje Naranjee —vs- Income Tax Commissioner*³⁸ it was held that if the language of a revenue Act is obscure, the tax payer is entitled to demand that his liability to a higher charge should be made out with reasonable clearness, before he is adversely affected . In the Ugandan case of *Alibhai—vs- The Commissioner of income Tax*,³⁹ the appellant disputed an additional assessment to income tax in respect of the year of income 1957. His appeal to the High Court of Uganda was dismissed.

³⁴ Per Lord Simonds in *Russel —vs- Scott* (1948) AC. 422 at P.433

³⁵ (1921) 1 KB 64 at 71.

³⁶ See; *Ormond co. Ltd —vs- Betts* (1928) AC 143 at 151; and *Russel —vs- Scott* (1948) AC 422 at 433

³⁷ (1982) AC 300.

³⁸ (1961) E.A 257.

³⁹ (1961) E.A 610.

On appeal to the East African Court of Appeal , the court considered the construction to be put on certain words in Section 22(2) of the East African Income Tax (Management) Act, 1952. The issue was whether the words “in the course of such period” in the passage;

“and any such shares have in the course of such period , been in fact, freely transferable by the holders to other members of the public”

were to be construed as meaning “throughout the whole of such period” or “at any time during such period”.

It was held that the grammatical construction and ordinary meaning of the words “in the course of such period” in Section 22(2) of the Act are “at any time during such period”.

Counsel for the Commissioner conceded that the words could bear this meaning if taken out of their context, but contended that regard must be had to the evil aimed at by the section. That so to construe the words would make nonsense of the Section, and that therefore in the context of the section the words must mean “throughout the whole period”.

Sir Alstair Forbes, V-P said;

*“In my view the Construction contended for by Mr. Summerfield, while it is a possible one, is the more strained of the two and I am of opinion that strong grounds must be shown to induce court to accept it, particularly bearing in mind the fact that the Act is a taxing enactment”.*⁴⁰

The Court further held that there was ambiguity in the provisions of Section 22(2) of the Act, which was then construed in favor of the tax payer. The Court of Appeal followed the dictum or maximum of income tax law stated by Lord Simonds in *Scott —us- Russel (inspector of Taxes)*⁴¹ that ‘the subject is not to be taxed unless the words of the taxing statute unambiguously impose the tax upon him’.

However, the above maximum does not prevent the Court from construing a taxing statute against the subject, where that appears to be the correct interpretation of a provision the meaning of which it may be difficult to understand. Difficulty does not absolve from the duty of construing a statute. It is only when the ambiguity entitled to decide in favor of the taxpayer. Hence legislation must be expressed with clarity.

⁴⁰ (1961) E.A at P.612

⁴¹ (1948) 2 All E.R. 1

Where the words of taxing statute are clear, the courts have construed them based on their ordinary meaning. In *United Manufacturers Ltd —vs- WAFCO Ltd*⁴² it was held that a primary liability for the payment of duty is laid on the importer, although payment may be deferred or passed on to someone else.

Furthermore, in the case of *Commissioner of Income Tax —vs- Holdings Ltd*⁴³ the respondent company deducted all its income received from dividends from resident companies from its chargeable income. The Commissioner of Income Tax contended that this was incorrect, and that only the net income from such dividends (that is after deduction of expense) should have been deducted. The High Court having held against the Commissioner, he appealed. The argument turned on the interpretation of 5.58 (c) of the East African Income Tax (Management) Act, 1958. It was held that in interpreting the section the whole Act must be considered in relation to the particular section and especially with reference to the interpretation Section and the methods set out in the Act to arrive at what is chargeable income.

The general rule is that the taxpayer's business or other ventures are considered together as one. Chargeable income should be arrived at by aggregating all the tax payer's income and then deduction all the expenditure incurred in the production of this income. It was further held that Section 58(c) meant that the entire dividend received from resident companies should be deducted from the chargeable income and not the net dividend income after deducting expenses. So the appeal was dismissed.

In the case of *Rennel —vs- IRC*⁴⁴, it was held that interpretation of tax statutes one has to simply look at words of the statute and construct them fairly, reasonably and results in a particular case must be accepted whether its the tax authority or the tax payer who is thereby disadvantaged.

One has to pay regard to all the words used without making any addition to them. Where there is ambiguity the taxing statute should be construed in favor of the tax payer.⁴⁵

Where meaning of a statute is clearly expressed, the court will not have regard to any contrary intention to or belief in the legislation. Courts must adhere firmly to literal interpretation of tax

⁴² (1974) E.A 233

⁴³ (1972) E.A 128

⁴⁴ (1963) 1 ALL ER 803

⁴⁵ *Mandavia —vs- CIT 2 EATC 426; Coutts & Co. —'is- IRC (1913) AC 267 at 281.*

CHAPTER FOUR

ENFORCEMENT MECHANISM

4.0 INTRODCTON

Uganda among other African countries have been faced with a challenge of efficient tax collection system for a very long period of time. To some extent this has been ignored in the name of being Third world countries. Several factors however have been known to be the main cause of such inefficiency .As a result the government has lost billions of monies for revenue, and thus left most African government projects and budgets dependant on foreign donors or aid that most of the time unfortunately have taken advantage of the situation and attach high prices paid at the expense of the common man/taxpayer.

This therefore has been a major hindrance in the development of African nations since the little profit made is used to pay up the large depts. To external donors, while African economies have been forced to follow the direction of the western demands instead of meeting the demands of the African people themselves.

4.1 ENFORCEMENT MECHANMS.

Every taxing statute or Act has provisions for enforcement where there is failure to pay tax or breach of provisions of the law. For instance Section 35(4) of the Value Added Tax provides that;

“If a person fails to pay tax when it is due and payable, the Commissioner general may file, with a court of competent jurisdiction, a statement certified by the Commissioner general setting forth the amount of the tax due, and that statement shall be treated for all purposes as a civil judgment lawfully given in that court in favor of the Commissioner General for a debt in the amount set forth.”

It thus follows that after obtaining judgment under the above provision, the Commissioner General can have it executed like a distress for rent. Section 40 of the Value Added Tax Act provides that the Commissioner General may close business premises and attach goods in the premises where a person fails to remit tax payable within prescribed time.

Section 36 of the Value Added Tax Act provides that where it appears to the Commissioner General necessary to do so for protection of revenue, he or she may require person making

taxable supply give security for an amount for the payment of tax which is or may become due by the person.

Another way of recovering tax due and payable is through seizure of goods. This is provided under Section 38(1) of the Value Added Tax Act. The provision states that,

“For years a battle of maneuver has been waged between the legislature and those who are minded to throw the burden of taxation off their own shoulders onto those to their fellow subjects..... it should not shock us in the least to find that the legislature has determined to put an ended to the struggle by imposing the severest of penalties.”

So the courts have expressed disapproval of the conduct of taxpayers who are parties to highly artificial schemes of tax avoidance and also their professional advisers.⁵¹

Taxing Act should be considered as a whole. Sometimes the meaning of a word or phrase in the Act though vague or ambiguous in one place, is clear in another or two are clear when considered together. Hence sometimes considering the Act as a whole gives a clue as to the meaning of a part.⁵²

“The Commissioner General may seize any goods in respect of which he has reasonable grounds to believe that tax that is due and payable in respect of the supply or import of those goods has not been, or will not be paid”.

The above provision could lead to abuse of power. How should the phrase “reasonable grounds to believe’ be construed. In the case of *Reg —vs- IRC, Exp. Rossminster*⁵³ Browne, L.J held that,

“It is not enough for an officer to swear that he has reasonable cause to believe — he must state the facts on which his belief was based so that the court can judge whether or not his belief was reasonable”.

Additional assessment is one of the ways to enforce compliance of tax laws. Section 97 of the Income Tax Act provides for additional assessment in an year of income. Additional assessment arises where by reason of fraud or any gross or willful neglect by, or on behalf of the tax payer, or the discovery of new information in relation to the tax payable for any year of income.

⁵¹ See Observations of Viscount Simon L.C in *Latilla —vs- C.I.R* (1943) a.c 377 at p.381

⁵² See; *IRC —VS- Herbett* (1913) AC 326 at 332.

⁵³ (1980) AC 979.

Tax is a debt due to the Government of Uganda and the Commissioner may institute a suit to ensure recovery of the same as per Section 104(2) of the Income Tax Act. Another enforcement mechanism is collection of taxes from persons leaving Uganda permanent without paying all the taxes due, this is provided under Section 105 of the Act.

The Commissioner can also recover taxes from a third party as per Section 106 of the Income tax Act. He may also recover unpaid taxes by distress proceedings against movable property of a person liable to pay tax as per Section 107 of the Act. Taxes may also be recovered from an agent of a non-resident as per Section 108.

The cumulative effect of lodgment of security on property for unpaid taxes as per Section 110 may be compared to lodgment of caveat on property. The Commissioner is allowed to write to the Chief Registrar of Titles informing him or her that the property is subject to security.

The various legislation in relation to taxation matters in Uganda do not define what constitutes a tax offence. However, under article 106 of the Russian Tax Code, a tax offence is defined as, *“an unlawful (in violation of tax legislation) act (action or in action) of a taxpayer, tax agent or other persons entailing liability under the present Code⁵⁴.”*

In other words, the above article in the Russian Code ensures that the act cannot be regarded as a tax offence unless four elements are proved, that is;

- I) The act should be unlawful;
- ii) there must be guilt in the composition of the act;
- Hi) the act should have been committed by one of the subjects mentioned in the article (taxpayer); and
- iv) Tax Code foresees a responsibility for such an act.

The above criteria clearly reflects the criteria in all criminal offences, that is, mens rea and actus reus.

⁵⁴ <http://www.russian-tax-code.com/PartI/Section6/chapter15.html>, cited on 24/12/2008

The doctrines depict 'tax offence' "as an unlawful, culpable action or inaction, that results in non-fulfillment or inappropriate fulfillment of tax obligations foreseen in the tax legislation and such action or inaction breaches the rights and legal interests of participants of tax relations and legislation foresees legal responsibility for that⁵⁵."

One of the major approaches to compliance relies upon the element of coercion represented by the enforcement activities of the role of taxation, police, and taxation officials as well as the sanctioning behavior of the courts and other agencies. Although enforcement activities only indirectly effect compliance and direct enforcement against the individual engenders hostility, widespread failure to enforce creates cynicism and distorts reference norms.

In England the Keith Committee⁵⁶ argued that enforcement powers should be precise and logically formulated, consistent across the range of taxation legislation, should allow for the minimum of administrative discretion and should be subject to ultimate judicial control which in turn should be capable of being applied in a summary and expeditious way.⁵⁷ Although the Keith Committee recommended that civil sanctions and surcharges should be the primary means of enforcing compliance, it argued that effective criminal sanctions should be available in cases of deliberate and serious fraud.

Tax offences, however, have been treated as a special form of offending, quarantined from the general types of criminality, in that the non-enforcement of the law, together with the use of civil rather than criminal penalties has, in the past, allowed the taxation system to decay and fall into disrepute. Further, by allowing major illegalities to go unsanctioned, enforcement authorities have allowed the development of endemic cynicism and general disrespect for the law that may take years to reverse.⁵⁸ In terms of achieving a deterrent effect, enforcement authorities also appear to have failed.

However, it has been suggested that the whole notion of tax compliance is a social construct. There is no objective standard of the appropriate levels of compliance and that the level 'is a

⁵⁵ Shaulov D.I and Cann U., "Foundations of tax legislation", "World of economics and law" Publishing House, 2000, P. 710

⁵⁶ Lord Keith of Kinkel, Committee on Enforcement Powers of the Revenue Departments, (London: HMSO Cmnd 8822) (1983) Report Number 2, 9

⁵⁷ Ibid.

⁵⁸ A Freiberg, 'Enforcement Discretion and Taxation Offences' (1986) 3 *Australian Tax Forum* 55, 59.

product of the negotiation of law and legal institutions.⁵⁹ The notion of compliance is a political one so that what is perceived as an acceptable level of compliance at one time may not be acceptable at another.⁶⁰

The economic definition of taxpayer compliance views taxpayers as 'a perfectly moral, risk neutral or risk adverse utility maximizing individuals who chose to evade tax whenever the expected gain exceeded the cost.'⁶¹ Thus a pure 'cost-benefit' approach is given for why or why not taxpayers may comply with the tax laws. Some researchers propose that individuals are expected to weigh 'the uncertain benefits of successful evasion against the risk of detection and punishment.'⁶² consequently; a penalty structure has an impact upon compliance.

Studies of criminal behavior have found that the probability of apprehension is more important than the sanctions imposed.⁶³ Another influence may be the precision of information regarding the probability that punishment will be imposed. Consequently, vague information about the relatively low probability of detection and punishment enhances the low deterrent value.⁶⁴

However, some studies have found that taxpayers are more sensitive to the magnitude of the penalty than to the probability of detection when the probability is very low.⁶⁵ This could have implications for Uganda due to the fact that URA is encouraging self assessment. Other researchers observed a significant relationship between the severity of the criminal sanctions and compliance by one group of taxpayers-high-income self- employed individuals.⁶⁶ This has also been supported by similar work on sanctions.⁶⁷ Another salient issue involves the existence of thresholds. Studies have provided evidence that in reaching a threshold probability of detection,

⁵⁹ R Tomasic and B Pentony, 'Defining Acceptable Tax conduct,' (Discussion Paper No 2 centre for Nationalcorporate Law Research University of canberra 1990) 1.

⁶⁰ Ibid.

⁶¹ VCMilliron and DR Toy, 'Tax compliance an Investigation of Key Features,'(1988) 10 Journal of AmericanTaxation Association 84-104, 85.

⁶² CM Fischer, M Wartick and MM Mark, 'Detection Probability and Taxpayer compliance: A Review of theLiterature'(1992) 11 Journal of Accounting Literature 1-46, 2.

⁶³ Tittle and c Logan, 'Sanctions and Deviance; Evidence and Remaining Questions' (1973) Spring Law and Society Review 371-389.

⁶⁴ N Friedland, 'A Note on Tax Evasion as a Function of the Quality of Information about the Magnitude and creditability of Threatened Fines: Some Preliminary Research' (1982) Journal of Applied Social Psychology 54-59.

⁶⁵ Jackson and S Jones, 'Salience of Tax Evasion Penalties Versus Detection Risk,' (1985) Spring Journal of the American Taxation Association, 7-17

⁶⁶ A Witte and D Woodbury, The Effect of Tax Laws and Tax Administration on Tax Compliance (1983) (Working paper, Department of Economics, University of North Carolina Chapel Hill, North Carolina USA) 83

⁶⁷ 19 R Schwartz and S Orleans, 'On Legal Sanctions' (1967) Winter University of Chicago Law Review 274-300

mild punishment may be as effective as deterrent as a more severe one⁶⁸ The severity of sanction does not necessarily produce a linear effect with tax compliance. Other authors submit that the social cost of sanctions could outweigh the benefits. Taxpayers as a group may become alienated if law.⁶⁹

However, the positive effect of increased sanction levels on taxpayer compliance has been found to hold up even where relatively low (and realistic) penalty levels are used.⁷⁰ What is of major concern, though, has been that taxpayers' perceptions of the true penalty levels are higher than what the penalties actually are. There is evidence that suggests that a tax system that combines both penalties and rewards is more effective in maximizing compliance than a system that focuses solely on sanctions.⁷¹ As such, positive inducements for compliance may also have a key role to play. Whether these inducements come in the form of quicker tax refunds, or a percentage reduction in tax payable, is open to question.

Researchers⁷² summarize the effect of factors that determine the monetary cost of compliance as including the tax rate, detection probability, the level of income and penalty structure, and suggest, for all of them, that existing empirical evidence provides no firm conclusions.⁷³ On the other hand, social psychology models inductively examine the attitudes and beliefs of taxpayers in order to understand and predict human behavior. Researchers indicate that taxpayers' behavior is directly determined by their intentions that are a function of their attitude towards behavior and perception of social norms.⁷⁴ From a tax administration viewpoint, researchers⁷⁵ have concluded that compliance could also be improved, by educating taxpayers of their social responsibility to pay and thus their intention would be to comply.

⁶⁸ M Allingham and A Sandmo, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1 *Journal of Public Economics* 323-38.

sanctions are perceived as too severe, resulting in general antagonism and disrespect for the

⁶⁹ BR Jackson and VC Milliron, 'Tax Compliance Research: Findings, Problems, and Prospects' (1986) 5 *Journal of Accounting Literatures* 125-165, 142.

⁷⁰ GA Carnes and TO Eglebrecht, 'An Investigation of the Effect of Detection Risk Perceptions, Penalty Sanctions and Income Visibility on Tax Compliance' (1995) 17 *Spring Journal of the American Taxation Association* 26-41.

⁷¹ JA Falkinger and H Walther, 'Rewards versus Penalties: On a New Policy on Tax Evasion' (1991) 19 *Public Finance Quarterly* 67-79.

⁷² JA Roth, iTScholz and AD Witte (eds), *Taxpayer Compliance- an Agenda for Research Vol I* (1989) 21.

⁷³ J Hasseldine, 'Linkages between Compliance Costs and Taxpayer Compliance,' (2000) 54 *Bulletin for International Fiscal Documentation* 299-303.

⁷⁴ I Ajzen and M Fishbein, 'Understanding Attitudes and Predicting Social Behaviour' (Englewood Cliffs, Prentice Hall, 1980).

⁷⁵ RB Cialdini, 'Social Motivations to Comply: Norms, Values and Principles' in JA Roth, iTScholz and AD Witte (eds), 'Taxpayer Compliance Social Science Perspectives' (1989) 2 Philadelphia, PA: University of Pennsylvania Press: 200-227.

As a behavioral problem the success of income tax depends on the cooperation of the public. Consequently, there are greater gains in assisting compliant taxpayers meet their fiscal obligations rather than spending more resources pursuing the minority of non-compliers. Assisting taxpayers by improving the flow and quality of information or educating them into becoming more responsible citizens (e.g. TV campaigns) might yield greater revenue rather than if it were spent on enforcement activities. URA has a fully fledged Tax Education Department that is responsible for educating the public on various tax issues. The Department normally organizes seminars, public lectures and distribution of information through brochures.

Other social and psychology models also effect compliance by way of exchange equity; this means that where taxpayers believe they are not receiving the benefits from the government in exchange for taxes paid. Although tax fairness is only one factor in achieving overall compliance, URA, for example, has continuously placed great emphasis on this criterion. Consequently, fiscal psychologists maintain that a taxpayer's belief in the tax system rather than the penalty structure is more salient in generating compliance.⁷⁶

Although researchers have found general support for the idea that sanctions encourage compliance, there is conflicting evidence on the merits of legal sanctions and interpersonal sanctions. Furthermore, the impact of the severity of sanctions was found to be unresolved.⁷⁷ 39 Given the empirical theories and findings on tax compliance, it is evident that the relative effectiveness of the perceived severity of legal sanctions alone remains open to question. It is this uncertainty that demands further research into the appropriateness of increasing penalties and sanctions in order to improve taxpayer compliance. The statistical tables that follow (albeit from a limited sample of audited taxpayers) will at least provide some further insight into taxpayer non-compliance from an Anglo Saxon perspective. Before proceeding with the statistical analysis, the main criminal tax penalty provisions examined within the tables and the amendments to those provisions will be briefly outlined.

⁷⁶ LM Tan, 'Taxpayers Perceptions of the Fairness of the Tax System — A Preliminary Study' (1998) 4 New Zealand Journal of Taxation Law and Policy 59-71, 61.

⁷⁷ M Richardson and Al Sawyer, 'A Taxonomy of the Tax compliance Literature: Further Findings Problems and Prospects' (2001) 16 Australian Tax Forum 137-320, 149

4.2 Main Legislative Penalty Provisions Dealing With the Different Types of Criminal Taxation Offences

Section 92 of the Income Tax Act (I.T.A) requires tax payers to furnish returns for each year of income not later than six months after the end of that year. Failure to furnish returns attracts criminal sanctions as provided for under Section 137 and 151 of the Act.

Section 106 of the I.T.A provides for sanctions against a tax payer who fails to pay due date when the tax becomes due or payable and the tax payable is not subject of a dispute. The breach of this provision attracts a fine of 25 currency points on conviction. In addition the person convicted is required to pay to the Commissioner the amount to which the failure relates as per Section 138(1).

When a tax payer fails deliberately to maintain proper books of accounts, is liable on conviction to a fine not less than 15 currency points or imprisonment for a term not exceeding one year as per Section 139 of the I.T.A.

When a person makes any false or misleading information to a URA officer, commits an offence and is liable on conviction to a fine of not less than 25 currency points or to imprisonment for a term not exceeding one year or both as per Section 142 of the I.T.A. In the case of *Hare Care Centre —vs- URA*⁷⁸ where a tax payer appealed the orders of the Tax Appeals Tribunal requiring him to pay taxes, penalties and demurrage on consignment of goods. The Appellant argued that he had not authorized the clearing agent who under declared the goods. It was held that its not proper to penalize someone for an offence which another is independently guilty.

Obstructing an officer of URA in the performance of his duties is an offence punishable on conviction to a fine not exceeding 25 currency points as per Section 143 of the I.T.A.

Aiding or abetting commission of tax offences is an offence under Section 144 of the I.T.A and on conviction is liable to a fine not exceeding 25 currency points or imprisonment for a term not exceeding one(1) year or both.

⁷⁸ (2002) UG HC 44.

When a tax payer wrongly uses Tax Identification Number (TIN) attracts criminal sanction and is liable on conviction to a fine of 25 currency points or imprisonment to a term not exceeding one(1) year or both as per Section 141 of the I.T.A.

Officers of the revenue body, U.R.A, are also liable to criminal sanction as per Section 145 of the I.T.A.

Section 51 - 60 of the Value Added Tax Act, prescribe offences and stiff penalties for specified breaches of the Act.

4.3 Tax Evasion and Avoidance

Black's Law Dictionary⁷⁹, defines tax evasion as,

“Illegally paying less in taxes than the law permits, committing fraud in filing or paying taxes. An example includes reporting less income than actually received or deducting fictitious expenses. Such act is a crime.”

While it defines tax avoidance as,

“the minimization of one's tax liability by taking advantage of legally available opportunities.”

In the case of *Regina —vs- Branch*⁸⁰ it was stated that,

“in my opinion the word evasion implies something of an underhanded or deceitful nature ... A deliberate attempt to escape the requirement of paying tax on income that had been earned. This intention can be inferred from acts of omission or commission.”

Ordinarily tax evasion involves, inter alia;

- a) Not filling an income return at all;
- b) Filling an income tax return but willfully omitting there from income earned by tax payer during the relevant year of income;
- c) Filling an income tax return containing a willful misrepresentation of the nature or amount of income earned;
- d) Arranging receipt of income in a jurisdiction or form whereby that income will not come to the attention of the tax authorities.

In other words, tax evasion involves the tax payer failing to do what is required by law.

⁷⁹ 6 Edition.

⁸⁰ (1976) CTC 193.

According to *Black's Law Dictionary*, tax avoidance may be contrasted with tax evasion which entails the reduction of tax liability by using illegal means. Tax evasion is subject to criminal sanctions being imposed if a party is found guilty.

Tax avoidance may be said to be the art of dodging tax without actually breaking the law. In *IRC—vs- Duke Westminster*⁸¹ where Lord Tomlin observed that,

“Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however unappreciative the Commissioners of Inland

Revenue or his fellow taxpayers may be of his ingenuity he cannot be called to pay increased tax.”

Further in *IRC—vs- Brebner*⁸² where it was stated,

“where there are two ways of carrying out a genuine transaction by one which the maximum amount of tax would be payable and by other of which no tax or much less tax would be payable, it is wrong to draw as necessary consequence the inference that, in adopting the latter course, one of the main objects is enabling tax advantages to be obtained.”

Therefore, tax avoidance is a transaction which;

a)

Avoids tax;

b) Is entered into for the purpose of avoiding tax or adopts some artificial or unusual form for the same purpose;

c) Is carried out lawfully; and

d) Is not a transaction which the legislature has intended to encourage.

4.4 Courts of Law Approach

The traditional common law approach is based on the principle that fiscal statutes must be construed strictly. The House of Lords in the case of *IRC v. Duke of Westminster (supra)* laid down the doctrine that courts are prevented from going behind the legal effect of transaction and taxing it as if their transaction had some different legal effect. According to this judicial

⁸¹ (1936) AC 1.

⁸² (1967) 2 AC 18.

approach the Revenue Department carried the burden of showing that that a taxpayer fairly fell within the scope of the charge.

In effect, as demonstrated in the case of *Ayrshire Pullman Motor Services v. IRC*⁸³ the judges saw nothing inherently evil in tax avoidance as distinct from tax evasion.

In recent however, “strict construction” of taxing statutes has come under attack by a trend which favors a more liberal construction aimed at giving effect to the intention of the legislature especially when interpreting anti — avoidance provisions because it is impossible for the legislature to foresee and forestall ingenious taxpayer schemes of avoiding tax.

A number of techniques have been used by courts to put limits on the ingenuity of taxpayers in arranging their affairs so as to minimize tax. The *IRC v. Duke of Westminster (supra)* has been reconsidered to a great extent. Now it is possible for the courts to render transactions or documents ineffective and hence counteract their intended tax impact: or transactions that are shown are taxed according to their real transaction where the same is discovered.

4.5 Statutory Mechanisms for Limiting Tax Avoidance and Evasion

Section 39 of Income Tax Act, aims at neutralizing the device of changing accounting periods in order to take advantage of changes in tax rates during a year of income thereby reducing tax.

Section 76 of Income Tax Act, provides for dividend stripping. Section 76 (1) is to the effect that,

“Where a company takes part in a transaction in the nature of dividend stripping and receives a dividend from a resident company in the transaction, the company receiving the dividend shall include the dividend in its gross income to the extent to which the Commissioner considers necessary to offset any decrease in the value of shares in respect of which the dividend is paid or in the value of any other property caused by the payment of the dividend”.

Section 64 of Income Tax Act, counteracts the income splitting device between taxpayer and another person. Section 64 (1) further give the Commissioner power to adjust the chargeable

⁸³ (1989) 14 TC 754.

income of the taxpayer and the other person to prevent any reduction in tax payable as a result of the splitting of income.

Section 129 of Income Tax Act, empowers the Commissioner to examine books of account or records held by a taxpayer.

Section 134 of Income Tax Act, aims at enforcing tax payment by requiring listed tax payers under the section to obtain tax clearance certificate from the Commissioner.

Section 137 — 150 of Income Tax Act, prescribe offences and stiff penalties for specified breaches of the Act.

Section 70 — 73 of Income Tax Act, are aimed at preventing the use of trusts as devices for accumulating capital.

According to Section 92(1) of the Income Tax Act, a taxpayer is required to furnish a return on income subject to Section 93 of the Act and he/she is required to sign the return and declare it be complete and accurate as per Section 92(3). The Section further imposes obligation on a tax payer who is carrying on a business to furnish return on income a statement of income and expenditure and a statement of assets and liabilities as per Section 92(5). If the Commissioner is not satisfied with a return on income, Section 92(10) provides that the Commissioner may, by notice in writing, require the person who has furnished the return to provide a fuller or further return of income. Section 92 goes along way in preventing evasion in that it requires tax payers to furnish returns which are accurate and complete. Further, Section 130 requires “Business Information Return” to be filed with Commissioner within sixty days after the end of the year of income in which the payment was made.

Section 137 Income Tax Act, provides that *“A person who fails to furnish a return or any other document within fifteen days of being so required under this Act commits an offence and is liable on conviction to a fine not exceeding fifteen currency points”*. This provision ensures that returns are filed. It is an offence for failure to maintain proper records as required by the Act as provided under Section 139. Section 142 makes it an offence making false and misleading statements.

4.6 Causes for Tax Offences

In a democratic society one of the most important aspects of a tax system is that the taxing authorities should be accountable to the electorate at large⁸⁴. This can be so only if the tax system is such that a man and woman in the street can comprehend clearly what the nature of the tax payers' liability is. This therefore calls for constant reforms of the Uganda Revenue Authority.

There are so many varied reasons as to why tax related offences are committed. It is a general principle of the law that ignorance of the law is not an a defense, the law therefore presupposes all tax payers must, irrespective of their literacy levels, be aware of the multiple provisions relating to taxation matters in Uganda.

Some of the laws relating to taxation are complex in nature and require professional input for an average tax payer. This has led to a number of people failing to meet their obligations as provided in the various taxing Acts. Complex tax system increases the costs of a tax payer in relation to compliance with the law. U.R.A has a department in-charge of tax education. It organizes seminars and clinics, distributes brochures, this is in a bid to widen tax knowledge within the population.

The continued adoption by U.R.A of e-payment of taxes is a challenge to a number of tax payers whose computers literacy is so low or do not even have the slightest knowledge on use of computers. The rise in e-commerce is a challenge to both tax payers and the revenue body.

One of the criticisms leveled against the Ugandan tax system is that the rate of taxes are so high and increases the chances of a tax payer to not meet his or her obligations. Higher rates of taxes normally affect the willingness of a tax payer to meet his or her obligations.

Persons who violate tax laws are not treated in the manner in which other criminal persons are. This has led to the thinking that one can easily get away with committing tax offence. This has in turn led to a culture of tax avoidance to develop.

One of the greatest challenges to taxation in Uganda is corruption prevalence. Corruption undermines the tax payers confidence in a tax system, and it reduces the compliance willingness.

⁸⁴ The Structure and Reform of Direct Taxation. Report of a committee chaired by proffessor J. E Meade (1978), pp. 7-21, 30-41

Paying taxes has a long history, and so does the abuse of the way the tax money is spent. Taxpayers should be made aware exactly what the taxes they pay do. According to Francis Kamulegeya⁸⁵ argues that in making the payment of tax more acceptable to citizens, this would improve voluntary compliance. The Tax Payers Charter is one of the ways in making payment of tax more acceptable to citizens as it spells out obligations and the rights of tax payers.⁸⁶

⁸⁵ Tuesday, October 2, 2007. Daily Monitor.

⁸⁶ See; Uganda Revenue Authority website.

CHAPTER FIVE

RECOMENDATION AND CONCLUSION

5.0 RECOMENDATIONS

In order to enhance compliance of tax legislation and to prevent commission of tax offences, there is need to;

Improve the access to information especially when U.R.A is conducting tax audits. U.R.A heavily relies on the information provided by the tax payer, Revenue body should be empowered to seek information from third parties e.g. bankers, insurers, etc. The tax auditors should have access to the records of anyone who has financial dealings with taxpayers and who can provide relevant information on taxpayer's income and the accuracy of their tax declarations and books and records⁸⁷.

U.R.A should occasionally offer amnesty to tax payers to encourage voluntary disclosure. The basic idea of an amnesty is to encourage taxpayers to come forward and pay their long- past-due obligations and can be used to bring new taxpayers into the tax net. Tax amnesty when applied effectively can increase compliance. Voluntary Disclosure is defined by the Practice Note as "occurs when a taxpayer, on his/her own volition, comes forward willingly to disclose his/her tax liabilities, mis-statements or omissions in his/her tax declarations in order to return a compliant status with respect to legal obligations.

There is a misconception that tax offences are not treated with the same seriousness as other offences of fraud or dishonesty, and that tax offences are somehow "victimless" crimes. Conviction for violation of tax law can carry the very distinct risk of imprisonment as well as imposition of heavy fines⁸⁸. U.R.A should be encouraged to adopt procedure name and shame of tax offenders. The threat publication of tax offenders may create some amount of fear and induce offenders to pay their taxes⁸⁹. Tax offender's cases should be given wide publicity. Publicity should not only be limited to prosecuted cases, it should also be extended to personal income of taxpayers. By keeping the system honest, publicity increases taxpayer confidence in the fairness

⁸⁷ Victor T., Tax Law Design and Drafting, Vol.1, International Monetary Fund: 1996; (Ed.), p.301.

⁸⁸ <http://www.taxcounsel.co.nz/Services/Tax-i-Prosecutions.html>, accessed 24/06/2012

⁸⁹ <http://www.financialexpress.com>, accessed on 24/06/2012

of the system, which in turn has the salutary effects of increasing voluntary compliance and revenues.

5.1 CONCLUSION

The scope of administrative discretion should be reduced to a minimum, so that it is available only when required for strictly practical reasons. As a general rule particular consequences should follow particular acts or omissions in every case. In this way, everyone knows where they stand, and compliance is likely to be improved, If everyone is treated alike, grounds for complaint are minimized, provided always that the sanction is regarded as broadly fair.

Gradual improvement of tax legislation accompanied by elimination of systemic problems will also contribute to voluntary compliance by tax payers.

The enforcement mechanism that U.R.A normally uses or adapts should not only to coerce the dishonest and neglectful, but to encourage the honest and conscientious. Enforcement powers should be precise, and logically formulated, and should so far as practicable be harmonized over the whole direct and indirect tax field. All enforcement procedures should be subject to ultimate judicial control both broadly and in matters of detail, and such control should be capable of being applied in a summary and expeditious way. This is only reliable and satisfactory means of securing that the tax payer is adequately safeguarded.

While various tax statutes provide for legislative mechanism to prevent, detect and deal with various tax offences, is humbly submitted that the most effective way is having a holistic approach starting with massive tax education to tax payers.

Paying taxes has a long history, and so does the abuse of the way the tax money is spent. Taxpayers should be made aware exactly what the taxes they pay do. In making the payment of tax more acceptable to citizens, this would improve voluntary compliance. The Tax Payers Charter is one of the ways in making payment of tax more acceptable to citizens as it spells out obligations and the rights of tax payers⁹⁰

⁹⁰ See; *Uganda Revenue Authority website*

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