

Rethink tax dispute resolution regime

EDITOR: There are mounting concerns on the vast sums trapped in prolonged tax disputes, with the Auditor General (AG's) recent report revealing that by June 2024, unresolved cases had locked up over sh330b.

This staggering figure, irrespective of whether the contested assessments are ultimately upheld or overturned, highlights a deeper systemic issue.

If the assessments are accurate, public funds remain inaccessible, delaying essential government programmes, whereas if they are erroneous, taxpayers have already parted with sh110 billion under the 30% prepayment requirement, depriving businesses of capital that could otherwise drive private sector expansion. Against this backdrop, this article calls for targeted reforms to enhance the efficiency, fairness, and predictability of Uganda's tax dispute resolution framework.

The absence of an independent tax ombudsman to oversee Uganda Revenue Authority's (URA) expansive administrative mandate is increasingly questioned, as jurisdictions with such oversight mechanisms provide taxpayers with a layer of impartial review that ensures fairness, transparency, and accountability in tax administration while also mitigating the risk of administrative overreach by subjecting the tax authority's actions to independent scrutiny.

While the Government has in recent years sought to strengthen alternative dispute resolution (ADR) aiming for a less formal and ostensibly more amicable mechanism for resolving tax disputes, many taxpayers remain skeptical of its effectiveness, largely because ADR operates within the very institution that issues the assessments, thereby creating an inherent conflict of interest, particularly when assessments are driven by revenue targets, as ADR officials may be reluctant to adjust or overturn assessments for fear of undermining institutional revenue objectives, ultimately eroding taxpayer confidence.

Moreover, ADR in practice is more successful with deciding less contentious, lower-value disputes, while the more complex, high-stakes cases remain unresolved, a reality that curtails ADR's potential to deliver substantive outcomes.

While the constitutionality of the requirement to pay 30% of the disputed tax before contesting URA's assessments remains debated, it is both the prevailing practice and jurisprudence.

The rationale appears pragmatic allowing government to secure some revenue while dispute resolution is ongoing. However, a deeper issue arises when the assessment is erroneous. In such cases, the prepayment imposes an unfair financial burden, forcing taxpayers to part with funds they may never owe in the first place.

This is further compounded by the absence of a tax ombudsman to review the administrative environment within which assessments are raised before escalation to the Tax Appeals Tribunal (TAT).

Without independent oversight, taxpayers have no assurance that the assessments they challenge are fair or accurate. The lack of such a safeguard may create room for tax demands driven by revenue targets rather than objective determinations.

The necessity of a 5-tier appellate process in Uganda's tax dispute resolution framework is increasingly scrutinized, particularly in light of the extended timelines it is taking to have final determination of tax disputes. In some cases, disputes have dragged on for over 15 years, creating an untenable situation for commercial matters, where swift resolution is essential to the stability and growth of businesses and the broader economy.

To address this issue, establishing a tax ombudsman would provide an essential layer of independent oversight, fostering greater confidence in administration environment under which tax assessments are raised. With a reliable mechanism for impartial review, taxpayers would have increased trust in the dispute resolution process, potentially reducing the volume of adjudicated cases.

Moreover, the appellate process should limit appeals beyond the TAT to the High Court. Given the specialised nature of tax disputes, there is little evidence to suggest that a prolonged appellate process yields fairer outcomes. On the contrary, it only prolongs uncertainty for both taxpayers and tax authorities, further diminishing the overall efficiency of the system.

Streamlining the appeals process and instituting safeguards against unfair assessments would ensure a more equitable system.

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