

Court Actions and Boosting Domestic Revenue Mobilization in Uganda

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BACKGROUND

- ❖ Tax dispute resolution is a central component of the operation of any modern tax system around the world (Walpole and Binh, 2010).
- ❖ Taxpayers' ability to access an independent, efficient and impartial tax dispute resolution process is important to;
- ❖ Improve voluntary tax compliance by boosting tax morale;
- ❖ Reduces the costs of resolving disputes
- ❖ Minimizes the amount of government revenue trapped in tax disputes
- ❖ It fulfils the principle of social justice which demands that everyone is treated equally by the law.

- ❖ Since the 1990s, Uganda undertook administration, legislative and policy reforms geared towards increasing domestic revenue collection (AfDB, 2010; Ayoki *et al*, 2005).
- ❖ Among the legal reforms, was the establishment of the Tax Appeals Tribunal (TAT) in 1997 under Article 153(2) of the constitution to settle tax disputes between taxpayers and Uganda Revenue Authority.
- ❖ Specifically, the tribunal was formed to provide a mechanism for a taxpayer to appeal against any decisions undertaken by the Commissioner General of URA without taxpayers' satisfaction (URA, 2004)

MOTIVATION & OBJECTIVES

- Despite, existence of this tribunal, the total amount of taxes held up in tax disputes in 2017 was UGX 1.1 trillion (Approx. USD 289 Million) (Amamukirori, 2017).
- Before the landmark Supreme Court ruling in 2017, between Uganda Revenue Authority versus Rabbo Enterprises Limited, most taxpayers had shunned the TAT to seek for tax dispute resolution at the High court.
- This study sought to understand how operations of the TAT affect domestic revenue mobilization in Uganda.

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- To analyze the performance of TAT in settling tax disputes

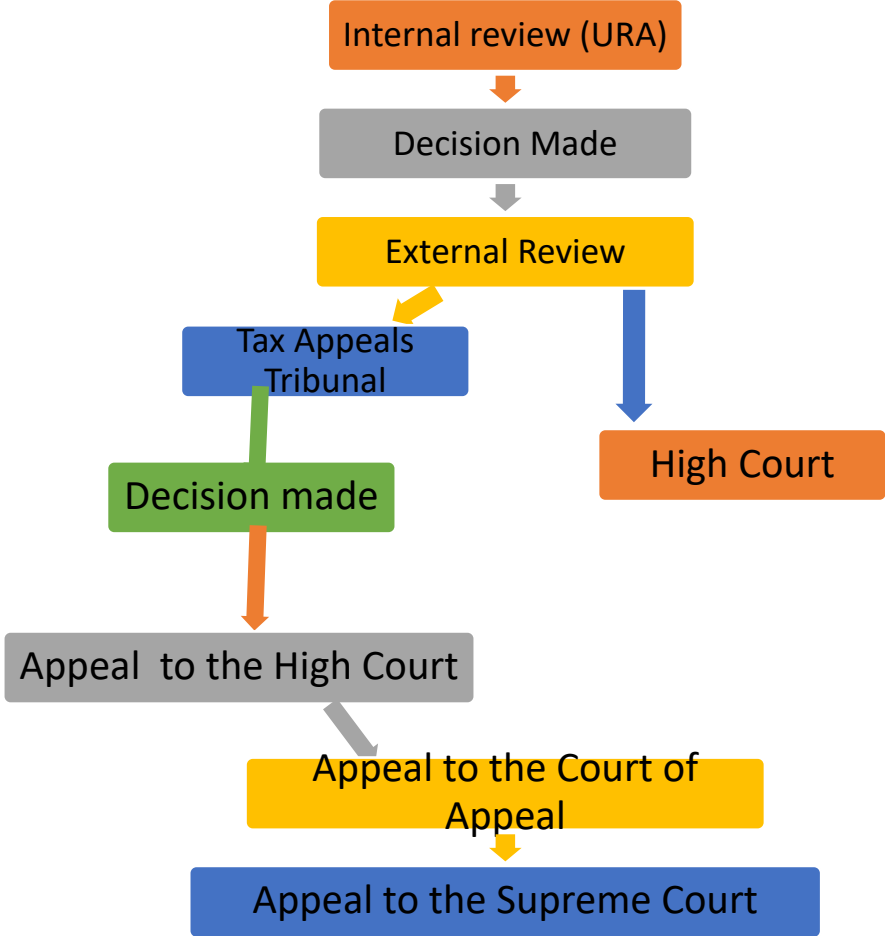
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- To identify facts of disputation in tax disputes lodged at TAT

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- To identify gaps in the TAT Act that impede tax dispute resolution in Uganda.

Evolution and process of tax dispute resolution



Source: Author's construct

Data/Methods

Data sources

- Administrative data on tax disputes (2008-2016) obtained from office of the registrar, TAT
- Uganda Legal Information Institute-Finalized tax cases database.
- Key informant interviews

Analysis

- Descriptive statistics: Performance of TAT.
- Qualitative analysis of finalized tax cases
- Document review.
- While, tax litigation consists of both civil and criminal matters, the study, only focused on the civil law tax matters (appeals from tax assessments) since the TAT can only exercise jurisdiction over civil matters.

RESULTS

PERFORMANCE OF TAT IN RESOLVING TAX DISPUTES

Disposal of tax cases remains slow

	Lodged* cases	Tax in dispute (UGX billions)	Finalized cases#	Tax in dispute (UGX billions)	Outstanding Cases at year end	Tax in dispute (UGX billions)
2008	44	14.2	31	12.5	13	1.7
2009	33	16.8	28	12.1	5	4.7
2012	31	15.3	26	13.3	5	2.0
2013	31	6.4	20	4.2	11	2.2
2014	28	7.9	21	4.5	7	3.4
2015	35	9.9	29	8.1	6	1.8
2016	55	88.4	37	56.6	18	31.8
Average	36	22.5	28	15.9	10	6.8
Growth(%)	25%		19.4%		38.5%	

* Includes only cases that reduce to formal complaints for TAT hearing. Figure includes pending cases from previous year

Source: Author's computation using Administrative data form TAT

Includes tax cases finalized during a particular year but not necessarily lodged within that particular year

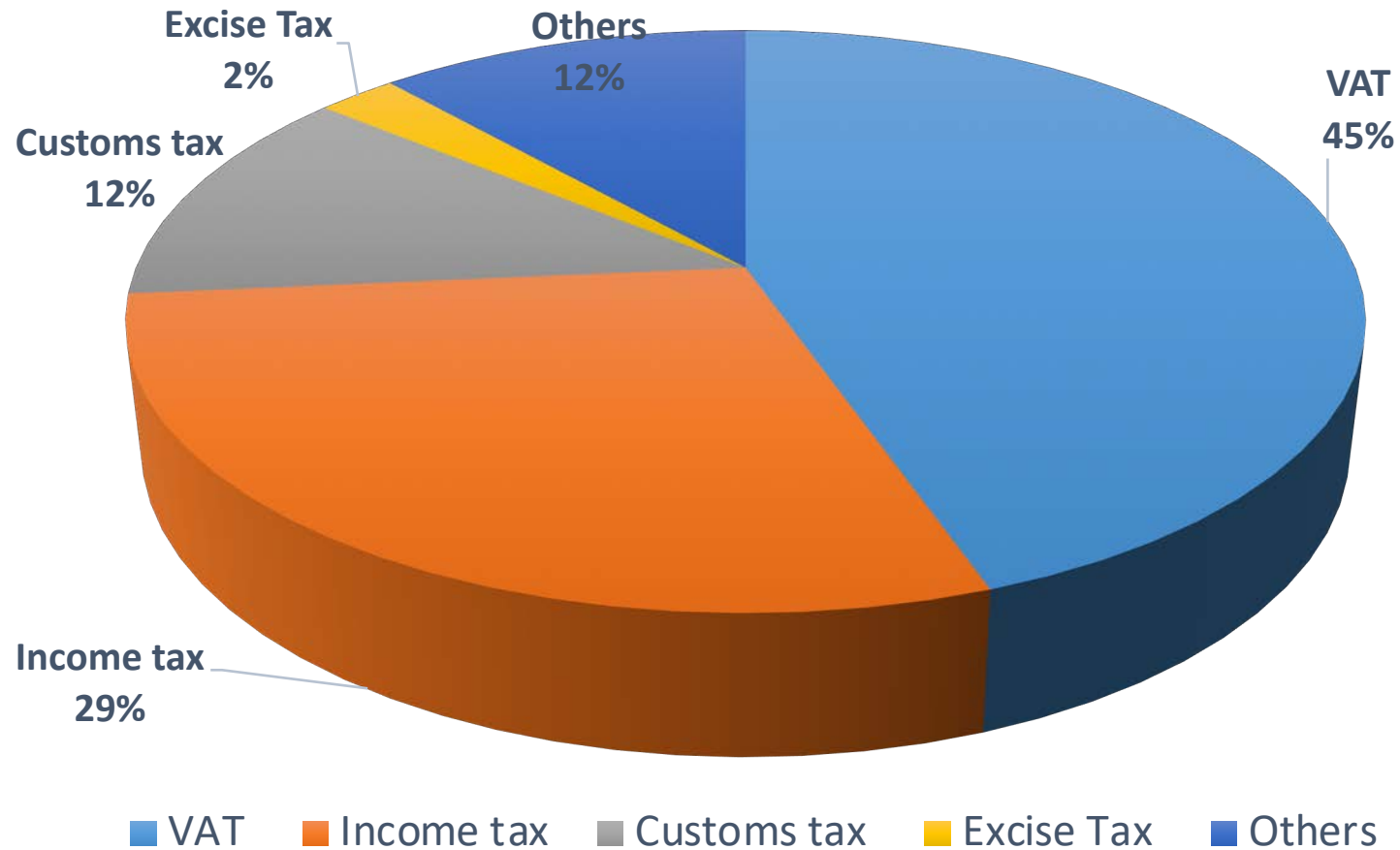
Type of cases lodged at TAT –By Taxpayer type

TAT is grossly inaccessible to small taxpayers

	Individual Cases	Tax in dispute (UGX Billions)	Corporation Cases	Tax in dispute (UGX Billions)
2008	1	0.24	22	11.1
2009	1	0.01	19	14.3
2012	0	0.00	18	14.3
2013	2	0.01	26	5.3
2014	1	0.34	16	5.8
2015	3	1.63	25	7.4
2016	4	0.49	45	72.0
Average	2	0.39	24	19.0

Type of cases lodged at TAT –By Tax head (2008-2016)

Tax disputes arise out of the VAT and Income tax laws



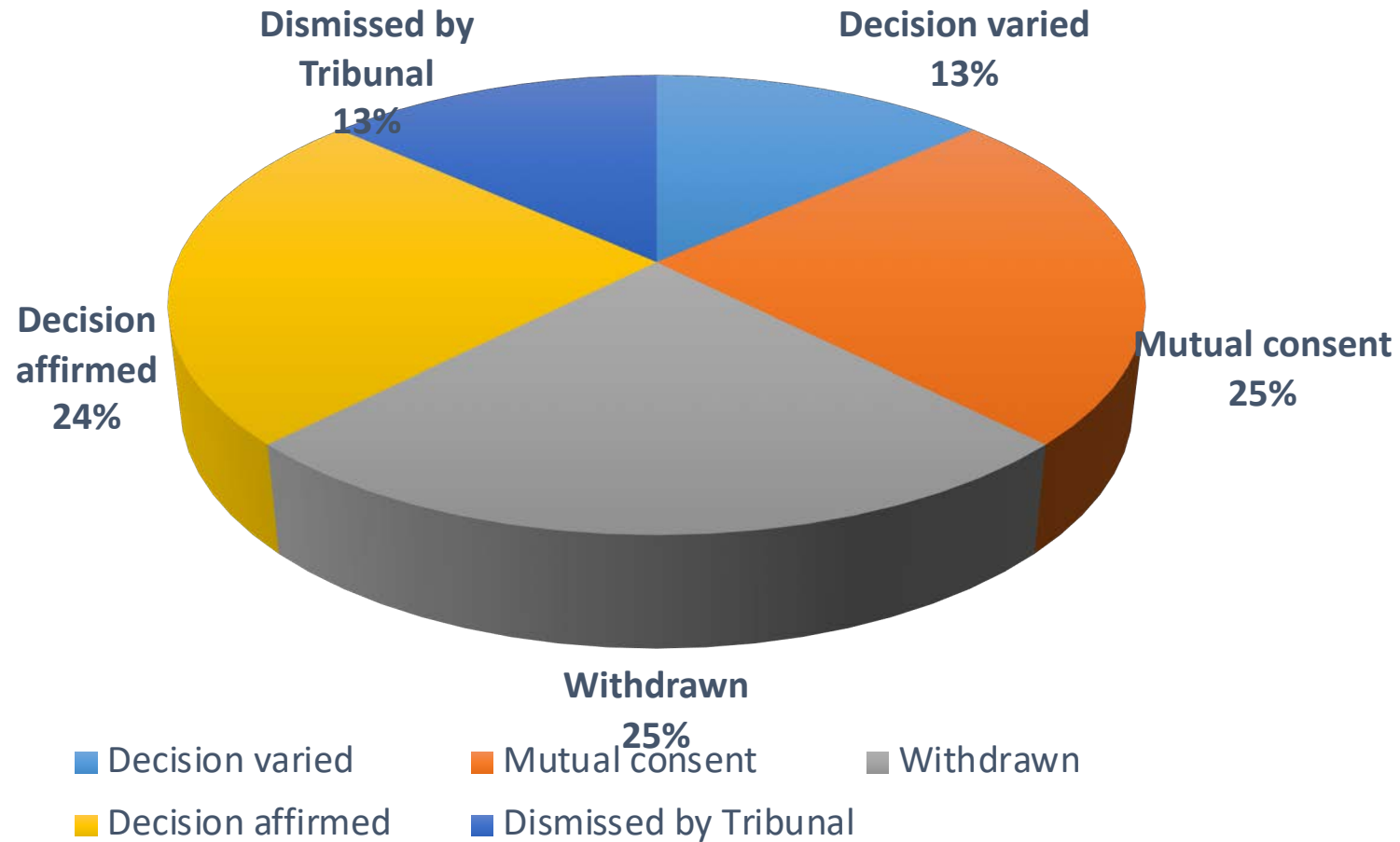
Timeliness of Tax dispute cases

Very few tax cases are finalized within 12 months of lodgment

	Cases finalized within 12 months	Tax Amount (UGX Billions)	Cases finalized beyond 12 months	Tax Amount (UGX Billions)	Total cases filed	% cases finalized within 12 months
2008	9	4.5	35	8.9	44	20.5%
2009	5	2.7	28	11.7	33	15.2%
2012	3	2.2	28	12.1	31	9.7%
2013	3	0.4	28	4.9	31	9.7%
2014	6	0.7	21	5.5	27	22.2%
2015	6	1.0	32	8.0	38	15.8%
2016	12	4.9	37	67.6	49	24.5%
Average	6	2.3	30	17.0	36	16.6%

Outcomes of Tax dispute cases- By decision

Majority of tax cases are finalized through Mutual consent and or are withdrawn



Outcome of Tax dispute cases- By winner

There seems to be no overt bias in the TAT ruling

	Cases in favour of URA	Tax in dispute (UGX Billions)	Cases in favour of taxpayers	Tax in dispute (UGX Billions)
2008	9	7.4	7	4.0
2009	4	7.2	8	2.6
2012	6	7.7	6	3.3
2013	7	1.8	2	0.7
2014	4	2.5	6	1.3
2015	2	0.6	3	3.6
2016	7	8.4	11	2.2
Average	6	5.1	6	2.5

Appeals to the High court from TAT

Heavy backlogs at the High Court deter appeals from TAT

	Number of cases	Tax in dispute (UGX Billion)
2008	0	0.0
2009	2	2.1
2012	0	0.0
2013	0	0.0
2014	0	0.0
2015	5	4.7
2016	0	0.0
Average	1	

Facts of disputation in tax disputes

Tax exemptions are a major source of Tax disputes

Reasons for litigation	Number of cases
Tax exemptions related cases	11
Time barred cases	5
Excessive assessments by URA	9
Failure to comply with Section 15 of the TAT act (payment of 30 percent of the assessed tax or that part of the tax that is not in dispute whichever is greater)	3
Failure to meet burden of proof	1
Miscellaneous cases for judicial review*	8

Excessive exemptions lead to ambiguities in the items on the exemption schedule
Inconsistencies between tax incentives and exemptions offered to investors and those specified in taxing Acts.

* a procedure by which a court can review an administrative action by a public body and secure a declaration, order, or award

Gaps in the TAT Act affecting tax dispute resolution

- Deposit of a portion of tax pending determination of objection (section 15)
- Limited jurisdiction* (Act has no power to award damages)
- Appeals process to the High Court (Section 3)
- Mediation (Act unable to refer disputes for mediation)
- Judicial powers of the registrar- Act silent on judicial responsibilities of the registrar i.e. handling interim orders.
- Terms of appointment (Section 6)

* Damages measure in financial terms the extent of harm a plaintiff has suffered because of a defendant's actions.

Damages are distinguishable from costs, which are the expenses incurred as a result of bringing a lawsuit and which the court may order the losing party to pay

Mediation is a process in which parties to a dispute, with the assistance of a neutral third party (mediator) identify the disputed issues, consider alternatives and endeavor to reach an agreement. The mediator may have an advisory role on the content of the dispute and give expert advice on likely settlement terms.

Key Messages

- Over the last decade, tax disputes have been disposed off at a slow pace leading to a tremendous growth in the number of outstanding tax disputes.
- Majority of tax disputes lodged at TAT have been observed to emanate out of disputes linked to VAT and Income tax Acts, mainly filed by the large taxpayers.
- Most of tax disputes emanate out of tax exemption related issues, followed by excessive and or aggressive assessment by URA.
- The gaps in the TAT Act slowing tax dispute resolution include mandatory deposit of 30 percent of the assessed tax pending final resolution of the objection, inability of the tribunal to award damages, lengthy appeals process at the High Court, inability of the TAT Act to provide for mediation and limited judicial powers of the registrar.

Policy Recommendations

- Mediation needs to be introduced in tax dispute settlement at TAT to reduce the escalating number of tax disputes finalized beyond 12 months of lodgment.
- Government needs to minimize the frequency of amendment of tax laws especially VAT and Income tax.
- The current jurisdiction of TAT requires to be expanded to enable the tribunal award damages to successful parties.
- Appeals process at TAT requires to be streamlined to allow appeals from the tribunal to lie straight to the Court of Appeal instead of the current practice where appeals from TAT lie with the High court.