

# **COURT ACTIONS AND BOOSTING DOMESTIC REVENUE MOBILIZATION IN UGANDA**





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**COURT ACTIONS AND  
BOOSTING DOMESTIC  
REVENUE MOBILIZATION IN  
UGANDA**

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## **ABSTRACT**

The study analyzed how court actions particularly with respect to the operation of the Tax Appeals Tribunal (TAT), affect domestic revenue mobilisation in Uganda. Based on time series data combined with stakeholder analysis, the study aimed to analyze the performance of TAT in settling tax disputes, examine the source of tax disputes, identify legal and non-legal factors affecting dispute resolution, and propose policy options for improving the operations of TAT. The results revealed that tax disputes are resolved slowly, resulting into a large back log of outstanding disputes, very few cases are resolved by the High Court due to the back log of cases appearing in the this Court. Moreover, tax disputes are commonly settled through mutual consent or withdrawn by taxpayers due to lengthy legal bureaucracy. Disputes generally arise out of tax exemptions and excessive or aggressive assessments by the Uganda Revenue Authority. The study recommends introduction of mediation as a dispute resolution mechanism, limiting the frequency of amendments of tax laws as this contributes to undue complexity and expanding the jurisdiction of the tribunal to allow the awarding of damages to injured parties.

## 1. INTRODUCTION

Tax dispute resolution is a central component of the operation of any modern tax systems around the world (Walpole and Binh, 2010). Taxpayers' ability to access an independent and impartial tax dispute resolution process is important in two ways. First, access to tax justice may improve voluntary tax compliance by boosting tax morale; second, access to tax justice fulfils the principle of social justice which demands that everyone is treated equally by the law. While effective access to a legal system is important in resolving conflicts with other individuals or organizations, the elaborate system of administrative tribunals can be ineffective if individuals are discouraged from using those forums for dispute resolution. According to Mpembamoto (2009), tax tribunals may be ineffective due to the slow pace with which the tribunal delivers its rulings, weak institutional and administrative setup, weak enforceability of tribunal rulings, inadequate financial resources for effective and efficient functioning of the tribunal, the low frequency of sittings of the tribunal, limited jurisdiction, high cost of litigation before the tribunal, low perceived credibility of the tribunal with regards to the number of appeals to the high court and limited accessibility to the tribunal by taxpayers due to centralization.

Therefore, an ineffective tax dispute resolution system could result in undesirable state of affairs from many different perspectives (Binh, 1999). First, it increases the cost of resolving tax disputes and hence deters taxpayers from seeking independent tax dispute resolution. Second, it negatively impacts on tax payers' perception to tax procedural justice which in turn lowers their tax morale and ultimately their voluntary tax compliance. Furthermore, it increases the amount of tax revenue trapped in disputes and hence denies government of timely collection of revenue.

In order to streamline tax administration, Uganda has, since the 1990s, implemented a number of reforms geared towards increasing domestic revenue collection. Such reforms included tax administration reforms, legislative and policy reforms (AfDB, 2010; Ayoki *et al*, 2005). Notable, among the legal reforms

was the establishment of the Tax Appeals Tribunal (TAT) in 1997 as a tool for enhancing justice delivery through efficient adjudication over tax disputes. The tribunal was established under Article 152 (3) of the Constitution of Uganda to hear appeals under the different taxing Acts administered by Uganda Revenue Authority (URA). These Acts include the Value Added Tax Act, the Income Tax Act, the Customs and Excise Act, and the East African Customs Management Act, among others. 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). Despite existence of the TAT, the total amount of taxes held up in court disputes in 2017 was UGX 1.1 trillion (Amamukirori, 2017). The tax body had 297 civil cases, 260 cases in the High Court and Magistrate's courts, and 90 criminal cases, in addition to cases in the TAT (*ibid*). Moreover, before the landmark Supreme Court ruling in 2017 of *Uganda Revenue Authority versus Rabbo Enterprises Uganda Limited and Mt. Elgon Hardware Limited*<sup>1</sup>, which declared the TAT as the court with original jurisdiction in handling all tax disputes, most taxpayers had found loopholes in the law and shunned the TAT to seek for tax adjudication in the High Court, an institution which according to the Tax Appeals Tribunal Act is solely responsible for handling appeals from the TAT on only grounds of law (Sempijja *et al*, 2017).

It is against this background that the study seeks to analyze how court actions (operation of the TAT) affect domestic revenue mobilization in Uganda. Specifically, the study aims to (i) analyze the performance of the TAT in adjudicating tax disputes; (ii) identify the facts of disputation in tax disputes lodged at the TAT; (iii) identify the legal and non-legal factors affecting tax dispute resolution in TAT; (iv) propose policy options for follow-up to improve the operation of the TAT. Broadly, the study contributes to the limited body of literature on tax dispute resolution in Uganda and provides research evidence and information to substantially improve the operation of courts in tax dispute resolution.

1 Supreme court Civil Appeal NO.12 of 2004

The rest of the paper is organized as follows: the next sub-section discusses the legislative and institutional framework governing civil litigation in Uganda and is followed by a description of the evolution of tax disputes in Uganda. Section Two contains the data and methods of analysis. Section Three provides the study findings, and the last section presents the conclusion and policy options.

### **1.1 Review of the legal framework governing civil litigation in Uganda**

In Uganda, all civil law tax matters arise from disputes relating to the accuracy of assessments made by the Uganda Revenue Authority (URA). The principle pieces of legislation governing civil tax litigation are as below.

#### **Constitution of the Republic of Uganda, 1995**

The provisions about taxation enshrined in Uganda's constitution include Article 152 (1) which powers the Parliament to impose taxes and further empowers it in Chapter 3 to make laws to establish tax tribunals for the purpose of settling tax disputes. In addition to settling tax disputes, all tax appeals from the TAT are heard in the High Court. This provision is enshrined in the constitution under Article 139 and in section 16 (1) of the Judicature Act which confers power on the High Court with unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred on it by this Constitution or other law (GoU, 1995).

#### **Income Tax Act (Cap 340), 1997**

The Income Tax Act was enacted in 1997 with the objective of amending and consolidating the law relating to income tax. The Act's main objective was to levy taxes on a residential basis, ensure simplicity and promote a flat tax rate. The Act abolished the Minister of Finance's power to grant discretionary exemptions, removed tax holidays offered under the investment code, and introduced capital gains tax (AfDB, 2010). With regards to settling tax disputes, the Income Tax Act gives provisions for the tax appeals tribunal under section 99, 100 and 101 of the Income Act as amended.

#### **Value Added Tax Act (Cap 349), 1997;**

VAT was introduced in 1997 to replace sales tax and

commercial transaction levy. The Act was amended in 2015 to increase the annual registration threshold, provide for tax treatment of the oil and gas and mining sectors. As regards to resolution of tax disputes, the VAT Act gives provisions for the tax appeals tribunal under sections 33A, 33B, 33C and 33D of the VAT Act as amended.

#### **The East African Community Customs Management Act, 2004**

This Act underpins the establishment of common external tariffs and elimination of internal tariffs. It also brought about the harmonization of the customs principles and procedures and removal of suspended duty. Tax dispute resolution under the Act is provided for under sections 229, 230 and 231.

#### **Tax Procedures Code Act, 2014**

This Act provides for a code to regulate the procedures for the administration of specified tax laws in Uganda and to harmonize and consolidate the tax procedures under the existing laws. The Act has the objective of adopting uniform procedures for registration, assessment and collection of all domestic taxes etc (URA, 2016). Tax dispute resolution under this Act is provided under sections 24 and 25.

Other principal pieces of legislation which govern civil tax litigation include; Excise Duty Act 2000; the East African Excise Management Act No 28 of 1970 (as amended); East African Customs Management Act No 1 of 2005; Stamps Act (Cap 342) of 1915 (as amended); Gaming and Pool Betting Act of 1968; and Civil Procedure Act of 1929 and civil procedure rules) (Birungyi *et al*, 2016; SEATINI, 2017 and NPA, 2015).

From the review of legislation concerning civil tax litigation, it is evident that the current legal framework is comprehensive as various taxing Acts have provisions for tax appeals and objections. However, there are several limitations in the some of these provisions which could negatively impact on tax dispute resolution and hence domestic revenue mobilization. For example, the Income Tax Act limits grounds of appeals to the High Court to questions of law only, yet it is silent on appeals to the tax appeal tribunal.

## 1.2 Review of the institutional framework for tax dispute resolution in Uganda

The institutional framework for civil tax litigation involves the following institutions, Ministry of Finance Planning and Economic Development, Uganda Revenue Authority, Tax Appeals Tribunal, the High Court, Court of Appeal, and the Supreme Court.

The Ministry of Finance, Planning and Economic Development (MoFPED) is mandated with the formulation of sound economic and fiscal policies. It is also responsible for the mobilization of resources for the implementation of government programmes. The ministry is also responsible for the disbursement of public resources as appropriated by Parliament and accounted for in accordance with national laws and international best practice (Muhakanizi, 2016). The ministry works closely with the Uganda Revenue Authority and supervises and finances the Tax Appeals Tribunal.

In Uganda, tax administration is implemented by the Uganda Revenue Authority (URA), an agency formed by the URA Act of 1991. The URA is a central body for assessment and collection of specified revenue, administering and enforcement of laws relating to such revenue. The Act incorporates the URA as a body corporate capable of suing and being sued. The URA is headed by a Commissioner General who is appointed by the Ministry of Finance, Planning and Economic Development. Although regarded as a quasi-autonomous institution, the URA is regarded as a department under MoFPED (SEATINI, 2017). According to Section 25 of the Tax Procedures Code Act, any tax payer dissatisfied with any URA tax assessment may lodge an application with the Tax Appeals Tribunal for review of the objection decision.

The Tax Appeals Tribunal (TAT) was established under Article 152 (3) of the Constitution of Uganda, which requires establishment of tribunals to settle tax disputes. The tribunal was established to deal with three main concerns namely; the interpretation of tax laws, the administration of taxes, and the content of tax laws (Kasimbazi, 2004). The primary mission

of the TAT is to provide the taxpayers with easily accessible, efficient, fair and independent means of tax arbitration. It gives any taxpayer an opportunity to settle disagreements with the URA on matters arising under the taxing acts. However, if a tax payer is aggrieved by the decision of the TAT, Section 27 of the TAT Act allows a taxpayer to appeal to the High Court.

The High Court is the third court of record in order of hierarchy and has unlimited original jurisdiction enabling the court to try any case of any value or crime of any magnitude (GoU, 2017)<sup>2</sup>. The court derives its power from Article 139 (1) of the Constitution and Section 16 (1) of the Judicature Act<sup>3</sup>. Any taxpayer that is aggrieved by the decisions of the TAT, has a right to appeal to the High Court. According to Section 27 of the Tax Appeals Tribunal Act, all appeals from the TAT are heard by the High Court. Despite this provision, appeals to the High Court from the TAT are only permissible only on questions of law.

The Court of Appeal came into existence following the promulgation of the 1995 Constitution, and the enactment of the Judicature Statute, 1996. Article 134 of the Constitution established the structure of the Court of Appeal. The Court of Appeal is the second highest court in Uganda. It is this court that constitutes itself into a Constitutional Court in accordance with the Constitution to hear constitutional cases. With regards to tax dispute resolution, a taxpayer who is a party to proceedings before the High Court and who is dissatisfied with the decision of the High Court, may with the leave of the Court of Appeal, appeal against a decision of the High Court to the Court of Appeal<sup>4</sup>. The Supreme Court is the final court of appeal in Uganda<sup>5</sup>. A tax payer who is not satisfied with the decision of the Court of Appeal can, with leave of court, further appeal to the Supreme Court. Thus, an appeal from the decisions of the Court of Appeal lies to the Supreme Court as a third appeal.<sup>6</sup>

2 The judiciary website, Government of the Republic of Uganda accessed on: [www.judiciary.go.ug/data/smenu/9//High%20Court.html](http://www.judiciary.go.ug/data/smenu/9//High%20Court.html)

3 Tibatemwa et al, 2017 Civil Appeal No. 12 of 2004 between Uganda Revenue Authority and Rabbo enterprise Uganda limited and Mt. Elgon Hardware limited.

4 Section 10 of the Judicature Act Chapter 13 of the Laws of Uganda

5 Article 132 of the 1995 Constitution of Uganda.

6 Section 4 of the Judicature Act

A review of the institutional framework of tax dispute resolution in Uganda is robust and similar to that of other countries such as Kenya, Tanzania, Rwanda, Nigeria, and Zambia, among others. However, there are challenges to the efficient operation of the various institutions involved in tax dispute resolution. These include; inadequate staffing, limited funding, inadequate skills capacity, lack of autonomy of URA (SEATINI, 2017) Secondly, where a taxpayer decides to appeal the decisions of the TAT, the High court, Court of Appeal and Supreme Court can only make decisions on questions of law only and not fact.

### 1.3 Evolution of tax disputes in Uganda

According to Section 20 of the Tax Procedures Code Act, all tax types are subject to self-assessment, where taxpayers have the first priority to declare their tax liability in the relevant tax returns and make the necessary payments. There exist various categories of tax returns namely, corporate tax returns, filed annually while PAYE, VAT and Excise tax returns are filed on a monthly basis. Since 2009, URA introduced the electronic tax system (e-Tax) to enable tax registration, filing of tax returns and payments to be completed using online services. In the e-Tax system, any return filed online is automatically checked to ensure the accuracy of its calculations. In case of inconsistencies, the return is rejected by the system. All domestic tax returns are uploaded onto the URA's e-Tax system and verified by URA officials through a desk audit. In the desk audit, URA officials audit the taxpayer using information filed and any previous documents within the e-Tax system. For customs, taxpayers' declarations are filed in the ASYCUDA system. Any inconsistencies in the self-assessment are rejected and an administrative assessment is raised against the taxpayer to correct any inaccuracies identified. Conversely, Uganda's tax laws permit taxpayers to file amended returns. For example, under the Value Added Tax Act (Cap 349), a taxpayer dissatisfied with a return can apply to the Commissioner General of URA to make an addition or alteration to the return. However, this is permissible within a period of three years for income tax and five years for VAT. Nonetheless where an assessment was amended under an order of the High Court or Court of Appeal, the law does not allow

URA to make an additional assessment in respect of the amount in question.

### 1.4 Current process of tax dispute resolution in Uganda

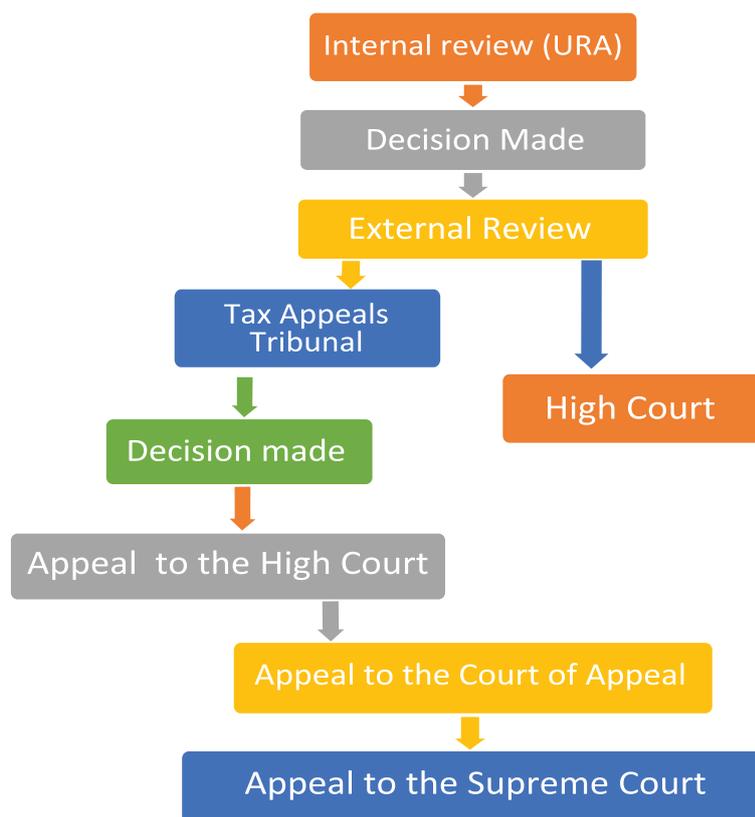
Tax disputes may arise at any stage after the disagreement between tax administrators and taxpayers. In Uganda, all civil law tax matters arise from disputes relating to the accuracy of assessments made by URA (Birungyi *et al* 2016). The cases cover various issues namely; (i) assessments for all types of tax (ii) administrative decisions taken by URA against a taxpayer and (iii) URA's response to taxpayer's complaints or inquiry. In addition, any assessment, determination, decision, or notice provided by the URA is a taxation decision that can be challenged in court. Figure 1 illustrates the avenues available to taxpayers in Uganda to resolve tax disputes with the URA. According to Figure 1 below, tax dispute resolution in Uganda is divided into two components namely; the internal and external review processes.

#### The URA's internal review process

Under this review process, the URA normally raises an administrative assessment based on information provided in the tax return. An administrative assessment can be raised in situations where a taxpayer defaults on filing a return within the required time, the Commissioner General is not satisfied with the return filed by the taxpayer or the Commissioner General has reasonable grounds to believe that the taxpayer will become liable for but is unlikely to pay tax when it falls due (Birungyi *et al* 2016). Tax disputes between the taxpayer and URA would commence at a point where the assessment is under review. According to Section 24 of the Tax Procedures Code Act<sup>7</sup>, any taxpayer who is dissatisfied with a tax decision by URA may lodge an objection with the Commissioner General according to the time limit allowed by the specific taxing act in which the objection is made. For example, Section 100 of the Income Tax Act specifies that an objection should be made within 45 days after the notice of assessment has been served to the taxpayer while the time limit specified by the VAT Act is 30 days. Similarly, the Tax Procedures Code act gives URA a

7 Section 24 of the Tax Procedure Code Act, 2014

Figure 1: The tax dispute resolution process in Uganda



Source: Author's construct

maximum of 90 days to respond to a decision on an income tax objection and 30 days for a VAT decision. However, if an objection is raised and disallowed by the Commissioner General, a tax payer may proceed to appeal to the TAT or the High court.

### External review by the Tax Appeals Tribunal

According to Section 14 of the TAT Act, a taxpayer aggrieved by a decision made under a taxing Act by the URA may apply to the tribunal for a review of the decision. An application to the tribunal for a review of a tax decision must be lodged within thirty days after a taxpayer has been served with a notice of the decision. In addition, the applicant must deposit a prescribed non-refundable fee and the application must be in writing in a prescribed form and should include a statement of the reasons for the application<sup>8</sup>. The applicant is also required to serve URA with a copy of the application within five days after lodging the application with the tribunal. In reviewing the taxpayer's application, the role of the tribunal is to

ascertain the accuracy of the tax assessment made by URA and make a decision to either affirm the decision under review, vary the decision, set the decision aside, make a new decision or refer the matter back to the URA for consideration in accordance with any directions or recommendations made by the tribunal<sup>9</sup>. Conversely, if a tax payer is dissatisfied with decision of the TAT, they can choose to appeal the decision directly to the High Court within thirty days after being notified of the decision or within such further time as the High Court may permit. However, the High Court can only make decisions on questions of law and not of fact.

8 Section 16 of the Tax Appeals Tribunal Act

9 Section 19 of the Tax Appeal Tribunal Act

## 2. METHODOLOGY

The study utilized both qualitative and quantitative methods to evaluate the performance of the Tax Appeals Tribunal (TAT). In particular mixed methods including document and tax cases reviews, key informant interviews, and administrative secondary data on tax cases were analyzed. Key informant interviews were also conducted to validate and elaborate the data obtained from the various sources. Simple descriptive statistical analysis was utilized to analyze the data. Tax dispute cases for 2010 and 2011 were excluded from the analysis since these were outlier cases that emanated from the landmark objection of tax assessment by Tullow Uganda Limited in respect of capital gains tax amounting to US\$ 472.7 million. Document reviews examined the current legal and institutional framework including the different policy documents and different taxing Acts administered by URA. In addition, a total of 37 finalized tax cases spanning the period 2000 to 2017 were reviewed in order to identify the major facts of disputation involved in tax disputes at TAT.

### 2.1 Data

The study utilized both secondary data from various sources. Secondary administrative data on tax disputes was obtained from the Office of the Registrar, Tax Appeals Tribunal. In addition, data on finalized tax cases was collected from the Uganda Legal Information Institute website (<https://ulii.org/content/about-ulii>).

### Key informant interviews

The study mapped various key stakeholders in the tax dispute resolution system in Uganda. These include; Uganda Revenue Authority (Litigation; Appeals and Objections departments), Tax Appeals Tribunal, the High Court (Commercial division), tax and legal consultants (Birungyi Barata and Associates) as well as taxpayers who have been in dispute with URA. The key stakeholders provided their perceptions and opinions on the process of tax dispute resolution in Uganda and how the Tax Appeals Tribunal can be strengthened to enable a more effective and faster tax dispute resolution in light of boosting domestic revenue mobilization.

### 2.2 Scope of the study

The current study is limited to the establishment, jurisdiction, composition, powers and functions of the TAT in adjudicating on disputes arising from taxation within the tax administrative system in Uganda. While tax litigation consists of both civil and criminal matters, the current study only focused on the civil law tax matters (appeals from tax assessments) since the TAT can only exercise jurisdiction over civil matters.

## 3. RESULTS AND DISCUSSION

### 3.1 Performance of the Tax Appeals Tribunal in settling tax disputes

The performance of the TAT in resolving tax disputes in Uganda was analyzed by taking into consideration the number of tax dispute applications brought before TAT, the types of tax disputes, timeliness of resolving tax disputes, outcomes of tax dispute cases and number of appeals that proceed to the High Court from the TAT. These are in turn discussed separately as below.

#### 3.1.1 Number of tax dispute applications

A review of the caseload at the TAT presented in Table 1 reveals that during the study period, the TAT received an average of 38 cases per annum, worth an average of UGX 22.5 billion that proceeded for formal TAT hearing<sup>10</sup>. Out of these lodged cases, only an average of 28 cases per year worth UGX 15.9 billion were finalized leaving, on average, 10 tax dispute cases worth an average of UGX 6.5 billion pending per year. And while the number of tax disputes lodged at the tribunal increased by 25 percent from 44 cases in 2008 to 55 in 2016, the number of tax disputes finalized by the TAT increased at a lower rate of 19.4 percent. Besides, the TAT registered tremendous growth in the number of outstanding tax disputes during the study period. Specifically, the number of pending tax disputes at TAT increased from 13 in 2008 to 18 in 2016, representing a growth of 38.5 percent.

<sup>10</sup> Only tax disputes that reduce into formal complaints for court hearing are considered for this study, otherwise TAT receives hundreds of informal complaints that are attended to and resolved by way of advising. Most of the taxpayers go ahead and pay the taxes.

**Table 1: Number of tax disputes lodged at TAT**

	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%	

\* Lodged cases represent only cases that are reduced to formal complaints for TAT hearing. TAT receives hundreds of informal complaints that are resolved by way of advising. Total cases lodged for a particular year is the sum of cases filed during the current year and number of cases outstanding from the previous year. # Includes tax cases finalized during a particular year but not necessarily lodged within that particular year.

Source: Author's computation using Administrative data from TAT

The large growth in the number of incomplete tax disputes is partly explained by a number of factors namely; lack of performance targets for tribunal members in terms of the minimum number of cases to be finalized within a particular time, limited manpower, rigidity in the TAT Act which requires that a TAT ruling must be made by a member equivalent to a High Court judge. This restriction essentially requires presence of the TAT chairperson for each and every hearing for a ruling to be made. This is unlike in Kenya and Rwanda where any three members of the TAT can at any one time constitute the court for purposes of hearing a dispute. The requirement not only delays disputes resolution but also biases outcomes of decisions. Moreover, the TAT processes in Uganda are conducted in a manner similar to a conventional court hearing process, with stringent requirements on provision of evidences, witnesses etc. which makes the TAT tax dispute resolution a very slow process (Interview with legal and tax consultant).

### 3.1.2 Types of tax dispute cases

#### (a) Taxpayer type

With regards to what type of taxpayers are involved in tax disputes lodged at the TAT, results presented in Table 2 indicate that majority of tax disputes lodged at TAT are filed by the large taxpayers. Specifically, tax disputes filed by corporations averaged 24 cases per year worth UGX 19.0 billion against an average of 2 cases per year worth UGX 390 million from individual/

small tax payers. The results confirm the barriers that confront small taxpayers in accessing tax justice in Uganda. A number of reasons are provided for the observed trend. First, small taxpayers are unable to pay the mandatory 30 percent of the tax assessed or that part of the tax assessed not in dispute whichever is greater as specified in the TAT Act. Secondly, they lack the necessary requisite requirements such books of accounts, formal registration, and legal representation of a tax lawyer required for a formal TAT hearing. In addition, small taxpayers fear to approach the court because they fear that URA may harass them<sup>11</sup>. Moreover, URA tax audits have previously targeted large tax payers, with little or no concern on the small taxpayers. Also, the tax amounts involved with small taxpayers are usually small and do not attract small taxpayers to go through all the bureaucracy of the TAT process.

<sup>11</sup> Key informant interview

**Table 2: Tax dispute applications lodged by taxpayer type**

	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

Source: Author's computation using Administrative data from TAT

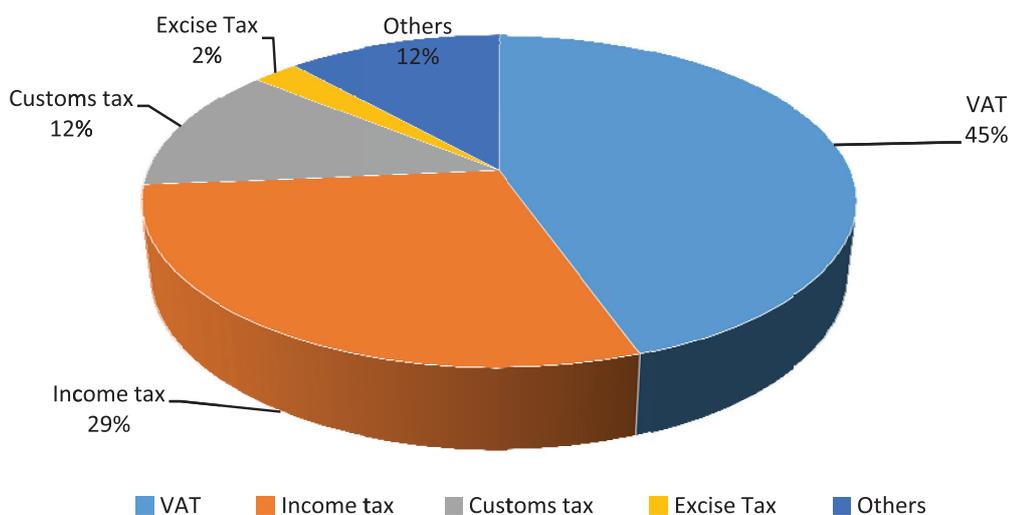
**(b) Case type (Tax head)**

A further analysis of the source of tax disputes filed at TAT (Figure 2) reveals that almost half of the tax disputes registered at TAT are VAT cases (45%), followed by Income tax (29%), Customs tax (12%), while Excise taxes (2%) contribute the least number of cases registered at TAT. During the study period (Annex C), the average number of VAT related cases was 12 per year compared to 8 for income tax, 3 for customs tax and 1 for excise taxes. The observed high number of income and VAT related tax disputes is partly attributed to the fact that both the VAT and Income tax laws are complex and broad thereby raising the likelihood of potential tax disputes. In addition, the continuous yearly adjustments to tax policy mainly targeting the income tax and VAT combined with an unstable tax exemption schedule lead to disputes.

The large contribution of disputes from customs duty (12%), arises out of the VAT component of the customs duty<sup>12</sup>.

As already highlighted, most VAT and income tax related tax disputes arise out of continuous yearly adjustments of tax policy that originate from government's efforts to close revenue leakages, increase revenue scope and hit revenue collection targets. Therefore, effort is required by the Ministry of Finance, Planning and Economic Development to stabilize tax policy by adopting more consistent tax regimes to reduce the amount of tax trapped in disputes.

**Figure 2: Share of tax disputes applications lodged at TAT by tax head (2008-2016)**



Source: Author's computation using Administrative data from TAT

<sup>12</sup>Since custom duties are made of three tax heads namely import duty, VAT and withholding tax.

### 3.1.3 Timeliness of tax dispute cases

The timeliness of tax dispute resolution by the TAT was taken into account by considering the number of tax dispute cases finalized within 12 months of lodgment. In this regard, results presented in Table 3 below reveal that tax disputes at the tribunal take a long time to be finalized. On average, only 6 cases worth UGX 2.3 Billion were finalized within 12 months of lodgment during the period of the study, representing yearly average completion rates as low as 16.6 percent. And while the number of tax disputes finalized within 12 months of lodgment doubled between 2015 and 2016, overall, the number of cases finalized beyond 12 months of lodgment was greater for all years studied. The high number of cases finalized beyond 12 months of lodgment partly explains the large amount of tax revenue trapped in tax disputes.

### 3.1.4 Outcomes of tax dispute cases

The results on the outcome of tax disputes presented in Figure 3 indicate that during the study period, the tax commissioner's assessment and/or decisions were upheld in about 24 percent of the tax disputes and varied in only 13 percent of the cases. In addition, about 25 percent of the tax disputes lodged at TAT were withdrawn by applicants while 13 percent of the tax disputes were dismissed by the tribunal. It is also worth noting that about 25 percent of the cases at TAT were finalized by mutual consent. The large percentage of cases finalized through mutual consent and withdrawn is an indication of the aggressive assessments and tax audits undertaken by URA in order to meet annual revenue targets. This is because

after a review with TAT, most taxpayers reach an agreement with the URA (mutual consent). In addition, taxpayers withdraw their applications in the interest of saving time, since the court process takes a long time. As already mentioned, the TAT does not have targets with regards to the number of cases to be finalized within a particular time. Unlike in Rwanda, where the law stipulates a maximum period of six months from filing to judgement for all courts (Government of Rwanda, 2014), tax disputes in Uganda can last for significantly longer periods. The lack of performance targets derails the speed of resolution of these cases.

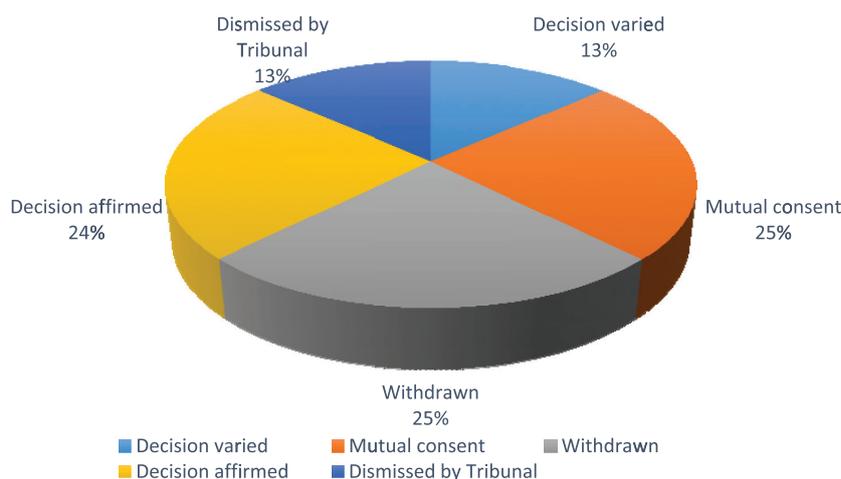
Furthermore, a breakdown of the outcome of the tax disputes by winner (URA versus taxpayers) (Table 4) reveals that during the study period, on average both URA and taxpayers won an equal number of cases. The findings reveal that there is no overt bias in the TAT ruling. Nonetheless, the value of taxes involved for cases decided in URA's favour were on average greater than that decided in the favour of taxpayers. This is an indication that URA audits and reassessments tend to be skewed toward large taxpayers. The evidence further reveals that overall, both the number of cases decided in favour of the URA and taxpayers exhibited a declining trend during the study period. The observed trend in the outcome of the tax disputes could be partly be attributed to an increasing number of cases that are either dismissed, consented or withdrawn before final TAT ruling is reached. Hence is a need to strengthen URA's audit and assessment functions to reduce on aggressive assessments which sometimes result in frivolous cases which are either dismissed, withdrawn or consented after reassessment by TAT.

**Table 3: Tax dispute applications finalized by TAT**

	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%

Source: Author's computation using Administrative data from TAT

**Figure 3: Applications finalized by outcome (2008-2016)**



Source: Author's computation using Administrative data from TAT

**Table 4: Outcome of TAT applications by winner\***

	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

Note: \* Values for consented, dismissed or withdrawn cases are not included

Source: Author's computation using Administrative data from TAT

### 3.1.5 Appeals to the High Court

With regards to the number of tax disputes for appeal to High Court (Table 5), findings reveal that during the study period, an average of one case per year proceeded for appeal at the High Court from the TAT.

The low number of cases that proceed for appeal to the High court is partly attributed to the heavy backlog of cases at the High Court. According to the National Court Case Census (2016)<sup>13</sup>, the High Court, registered the second highest number (32%) of pending cases in the Judiciary. The High Court registered a total of 36,313 pending cases of which 10,723 were civil cases. The high contribution of civil cases to the

total pending cases at the High Court is an indication that tax disputes take significant amounts of time to be heard and let alone resolved. There is no priority given to tax related disputes at the High Court since all cases are treated the same way. Furthermore, Section 27 of the TAT Act states that appeals to the High Court from TAT are to be made on questions of law only. Therefore; filing of appeals to the High Court implies that tax disputes are heard like conventional cases, requiring strict adherence to the Civil Procedure Act, which follows the law and court procedures strictly. This slows down the process of tax dispute resolution at the High court.

<sup>13</sup>The judiciary: Report of the Judiciary National Court Case Census, 2016 accessed at <http://www.judiciary.go.ug/files/downloads/Census%20Report%202015.pdf>

**Table 5: Number and value of appeals to the High Court.**

	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	

Source: Administrative data from TAT

### 3.2 Facts of disputation in tax disputes at the Tax Appeals Tribunal

In order to ascertain the facts and issues that culminate into in tax disputes, a random sample of 37 finalized tax disputes spanning the period 2001 to 2017 were reviewed (Annex D) in order to trace tax disputes with common issues/elements. This is important for policy as it enables government to devise a joint solution for cases with similar issues (Thuronyi and Espejo, 2013, Lemgruber *et al*, 2015). The findings presented in Table 6 reveal that majority of tax disputes emanate out of tax exemption related issues (11 cases), followed by excessive and or aggressive assessment by URA (9 cases) while disputes related to miscellaneous applications for judicial review come in third place appearing in eight cases. The major issues challenged as far as tax exemptions are concerned relate to ad hoc amendments of the VAT and Income Tax Acts which limits tax incentives to some taxpayers and or items (Total Uganda Limited versus URA)<sup>14</sup>, irregular exemption schedules and ambiguities in the items on the exemption schedule (Crane Bank versus URA)<sup>15</sup>. In addition, tax exemption related disputes also originate out of lack of harmony between tax incentives and exemptions offered to investors by the Uganda Investment Authority under the Investment Code 1991 and those specified by the different taxing acts (Meera Investments versus URA<sup>16</sup>, Capital Finance Corporation Limited versus URA<sup>17</sup>).

14 Civil Appeal No. 6 OF 2001 High Court ( commercial division) (Arising out of Tax Appeals Tribunal Case No. 2 of 2001)

15 High court (Commercial court division) HCT-00-CC-CA-18 -2010 (arising from TAT of 2010)

16High court (Commercial court division) HCT-00-CC-MA-0218-2006 (Arising from HCT-00-CC-CS-0189-2006)

17 Court of Appeal (Court of Appeal Civil Appeal No. 43 of 2000 (on appeal from high Court Civil Appeal no.2 of 2000)

Considering excessive assessments by URA, the major issues of litigation arise out of discrepancies in assessment methods between taxpayers and URA (Classy Photo Mark Limited versus URA<sup>18</sup>, URA versus Rugarama Construction Company Limited<sup>19</sup>), inconsistencies in the method of computation of penalties and controversy over assessments for bond sales for motor vehicles (URA versus Tata Uganda Limited<sup>20</sup>) as well as excessive/aggressive tax audits/assessments (Tullow Uganda Limited & Tullow Operational Pty Limited versus URA<sup>21</sup>, Mandela Auto Spares Ltd versus URA<sup>22</sup>). Additionally, taxpayers contest dismissal of their applications by courts (TAT and the High Court) due to inability to pay the mandatory 30 percent of the tax assessed or that part of the tax not in dispute whichever is greater, as stipulated in the TAT act (Uganda Projects Implementation and Management Centre versus URA<sup>23</sup>, Elgon Electronic Limited versus URA<sup>24</sup>). In the same vein, tax disputes also arose out of taxpayers' inability to provide a burden of proof as per Section 18 of the TAT act (Steel Corporation of East Africa Ltd versus URA). Furthermore, a number of tax disputes were filed as miscellaneous<sup>25</sup> challenges to the exercise of administrative power through judicial review.

18 High Court (Commercial court division) HCT - 00 - CC - MC - 30 - 2009

19 High Court (Commercial court division) HCT-00-CC-CA-12 -2011 (arising from TAT No.1 of 2011)

20 High Court (Commercial court division) Civil Appeal No. 007 OF 2008

21 TAT Application No. 4 of 2011

22 High Court (Commercial court division) HCT - 00 - CC - CS - 201 - 2011

23 Supreme Court (Constitutional Appeal No. 2 of 2009)

24 High Court (Commercial Court division) HCT - 00 - CC - CA - 11 - 2007 (appeal arising from TAT decision of 2007)

25 Miscellaneous case numbers are normally assigned to a variety of matters filed with the court which are not considered a civil case. They are ancillary and supplementary proceedings not defined as a civil action.

**Table 6: Issues challenged in tax disputes at TAT**

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 <sup>1</sup>	8

Source: Author's compilation based on finalized tax cases on the Uganda Legal Information Institute website.

### 3.3 Gaps in the Tax Appeals Tribunal Act affecting tax dispute resolution

The following gaps in the Tax Appeals Tribunal Act were identified by various stakeholders as key barriers to efficient operation of the TAT.

#### Deposit of a portion of tax pending determination of objection.

Section 15 of the Tax Appeals Tribunal (TAT) Act, states that “a taxpayer who lodges a notice of objection to an assessment shall pending final resolution of the objection, pay 30 percent of the tax assessed or part of the tax assessed not in dispute, whichever is greater”. This provision of the TAT Act presents difficulties for taxpayers in accessing the TAT and has previously called for constitutional interpretation in the Supreme Court case between Uganda Projects Implementation and Management Centre versus URA<sup>26</sup>. This is because the mandatory payment of the 30 percent not only affects taxpayers' business cash flows but could tempt URA to raise excessive assessments in a bid to achieve their annual revenue collection targets. URA could raise the excessive assessments assured of collecting 30 percent of the assessed tax before end of financial year, with prior knowledge that the 30 percent shall only be refunded to the tax payers in the event that the TAT decides in favour of the tax payer.

Furthermore, when a tax payer appeals to the High Court, interest continues to run on the tax assessed from the date the tax ought to have been paid to the date it is actually paid at a rate of 2 percent on the unpaid amount (Birungyi *et al*, 2016). Unlike Uganda,

there is no requirement for a tax payer to pay the disputed tax before appealing against a tax decision at the TAT in Kenya (Odour *et al*, 2016). Taxpayers are only required to pay Kenya shillings 20,000 (approximately US\$ 200) before lodging an appeal to the TAT. In addition, interest and penalties stop accruing on the submission of the objection notice by the taxpayer. If the taxpayer subsequently loses the appeal, they have a right to apply to the commissioner for waiver of the penalties and interest. Therefore, to make it easier for taxpayers to pursue justice in the tribunal, it is prudent that the TAT Act be amended to remove the requirement of the 30 percent deposit. The requirement to deposit the 30 percent of tax in dispute has been removed from all tax laws including the Tax Procedure Code Act. Nonetheless URA is of the view that removing of the requirement will encourage taxpayers to file frivolous cases at the TAT which might deprive the tax body ability to collect taxes on time.

#### Limited jurisdiction

Currently under the TAT Act, the tribunal has no powers to award damages<sup>27</sup> to successful parties. The tribunal currently only has powers to award costs. In order for a successful taxpayer to get damages, they must first file a fresh suit in the High Court for that purpose. This has been one of the basis, why taxpayers found it convenient to file tax related matters to the High Court instead of TAT, where they could be awarded damages. In light of the above, the TAT Act needs to be amended to empower the tribunal to award general damages to

<sup>26</sup> Constitutional Appeal No.2 of 2009

<sup>27</sup>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.

successful parties. This would significantly reduce the cost of litigation in tax disputes.

### Appeals process to the High Court

According to Section 3 of the TAT Act, “a person is not qualified to be appointed chairperson of a tribunal unless he or she is qualified to be appointed a judge of the High Court”. The chairperson is vetted by the judicial service commission before appointment and is required to sit with two other experts during TAT hearings. In this regard, it is unnecessary to appeal their decision to a single judge at the High Court. Despite this provision in the TAT Act, appeals from the decisions of the tribunal still proceed to be heard in the High Court. This requirement makes the appeals process unnecessarily long. Therefore, to streamline the appeal process, all appeals from the TAT should instead lie with the Court of Appeal as is the case with the Industrial Court.

### Terms of appointment

Section 6 of the TAT Act specifies that the Chairperson shall hold office for a three year term. Stakeholders at the TAT feel that for purposes of tax dispute resolution, this length of contract is very short. They are of the view that it takes two years for a member of the tribunal to get the right experience in tax dispute resolution. They are of the view that the term of service of the member should be made five years as is the case in Kenya. This shall allow members who have gained experience more time to contribute more meaningfully to the tribunal.

### Mediation

Under the current TAT Act, the tribunal is unable to refer tax disputes for mediation. Mediation is important as it allows for faster and more amicable resolution of disputes. It is therefore prudent that a section providing for mediation is added to the TAT act as is done in the courts of law. This would require amendment of section 13(1) to enable one member to constitute a tribunal for purposes of mediation. In Kenya, Alternative Dispute Resolution comprising arbitration, conciliation and mediation has already been established by the Kenya Revenue Authority and can be invoked at various stages of the tax dispute

resolution process.

### Judicial powers of the registrar

The TAT Act is silent about the judicial responsibilities of the registrar. The powers of the registrar are only provided for by Regulations which may be challenged in future since the parent Act does not confer such duties. Therefore, amendments are required in the TAT Act to expressly enable the registrar discharge judicial powers such as handling interim orders and taxing costs.

### Mandate of the tribunal to review taxation decisions

Section 14 (1) of the TAT Act empowers the tribunal to review taxation decision. Taxation decisions are defined in section 1(k) of the Act to mean “any assessment, determination, decision or notice. This section specifies that “any person who is aggrieved by a decision made under a taxing Act by the Uganda Revenue Authority may apply to the tribunal for review of the decision”. Therefore, TAT’s jurisdiction entails handling only civil law tax disputes arising out of the taxing Acts administered by the Uganda Revenue Authority. In addition, the jurisdiction of the tribunal is set out in the various taxing Acts.

From the above provisions, it is evident that the core function of the tribunal as a specialized tax court is to review taxation decisions in respect of any assessments, determinations, decisions or notices made under any taxing Act. Nonetheless, an analysis of Section 14 of the TAT Act reveals that TAT’s mandate is strict and specific since any action, which does not fall within the meaning of review of taxation decision, would be challenged as not technically falling within the jurisdiction of the TAT. This is because there have been tax disputes which did not necessarily fall within the meaning of the mandate given under Section 14 of the TAT Act (*URA versus Rabbo Enterprises Uganda limited and Mt. Elgon Hardwares limited; and Uganda commercial (UCBL) Bank limited versus URA*). It therefore follows that TAT’s mandate needs to be widened to cover tax disputes not necessarily perceived as arising out of taxation decisions.

### **Lack of clarity in the timeframe for application and review of a taxation decision.**

According to Section 16 (1) of the TAT Act, an application to the tribunal for review has to be (i) in writing in the prescribed form, (ii) should include a statement of the reasons for the application and must be lodged with the tribunal within thirty days after the person making the application has been served with notice of the decision. In addition, Section 16(7) of the same Act states that an application for review of a taxation decision shall be made within six months after the date of the taxation decision. This lack of clarity in the TAT act has resulted in disputes (*URA versus Uganda Consolidated Properties Limited*<sup>28</sup>). Although the Court of Appeal clarified that the thirty days' notice in Section. 16(1) (c) of the Tax Appeals Tribunal Act refers to the date when notice has been given to the applicant, while the six months limit in Section 16 (7) of the same act refers to the date of the taxation decision itself. It would therefore appear that the application for review period is assumed to start on receipt of the notice of the taxation decision. From the above provisions of the TAT Act, the period within which a tax payer is supposed to make an application to the TAT for review of a taxation decision by URA is not specific.

Moreover, while a taxpayer is under liberty under Section 16 of the TAT Act to extend the time of application in case they have not been able to file an objection within the required 30 days after URA's decision, Section 17 of the same Act offers no liberty to URA to seek for the same extension. The inability of URA to seek an extension of time to file its defence affects its ability to enforce tax liabilities because if the organization is unable to file its defence in the required time for any unforeseen occurrence, it loses any chance to enforce the tax liability (Kisambazi, 2004). This limitation in the TAT Act may give leeway to taxpayers to evade any outstanding taxes with URA.

### **Burden of proof**

Section 18 of the TAT Act, requires that a taxpayer proves that the taxation decision of URA is wrong or that a different decision should be made. This provision is

based on the fact that it is the taxpayer who possesses those facts about the tax objection and hence a tax payer would not have to rely on URA in challenging the assessment. However, providing a burden of proof in tax appeals cases is difficult since most taxpayers in Uganda do not keep proper records for tax assessment and hence fail to prove to the tribunal or court that URA assessment was excessive. The inability to provide a burden of proof may discourage taxpayers from seeking tax justice and thereby reduce tax morale and hence voluntary tax compliance.

From the foregoing discussion, it is evident that there exist gaps in the TAT Act that may negatively affect Uganda's ability to boost domestic revenue mobilization.

### **3.4 Non-legal barriers to operation of the Tax Appeals Tribunal**

The efficient operation of the Tax Appeals Tribunal can also be affected by non-legal factors such as inadequate financial resources, human resources, composition of the court, centralization of court operations and limited public awareness and confidence of the institution.

#### **Financial resources**

With regards to funding for the operations of the tribunal, the TAT has been receiving subventions from the government through the Ministry of Finance Planning and Economic Development. However, the evidence presented in Table 7 below reveals that the tribunal's budget request has hardly been matched with the resource envelope availed by the Ministry of Finance Planning and Economic Development during the study period. As a result, the tribunal's operational deficit has increased consistently from UGX 0.86 billion in 2006/07 to UGX 1.86 billion in 2016/17. According to the TAT registrar, a large portion of the tribunal's budget is spent on sitting allowance for the TAT members. Currently, the tribunal sits three times a week to hear cases and whereas the tribunal would like to increase the frequency of sitting to clear some of the pending cases, they have been limited by resources to meet members' sitting allowances. The inadequacy of resources has also precluded the TAT from securing adequate office accommodation for

<sup>28</sup> Civil Appeal NO.31 of 2000

**Table 7: Budget funding for Tax appeals Tribunal (2006/07-2016/17)**

Year	Budget Request (UGX Billion)	Budget releases (UGX Billions)	Operational deficit (UGX Billions)
2006/07	1.5	0.64	0.86
2007/08	1.5	0.87	0.63
2008/09	1.5	0.87	0.63
2009/10	1.5	0.99	0.51
2010/11	1.7	0.99	0.72
2011/12	1.7	1.01	0.70
2012/13	2.5	0.99	1.51
2013/14	2.5	1.00	1.50
2014/15	2.5	1.04	1.46
2015/16	2.5	1.54	0.96
2016/17	3.4	1.54	1.86
Average	<b>2.07</b>	<b>1.04</b>	<b>1.03</b>

Source: Administrative data from TAT

hearing and determining tax cases. In addition, limited resources have also constrained capacity development in form of trainings required by TAT members to deal with complex tax disputes especially those involving multinational companies.

### Centralization of operation of the court

Despite the establishment of branches in Arua, Mbale, Mbarara and Gulu districts, TAT operations are to a large extent still centralized. Stakeholders reported that over 90 percent of tax cases received are filed by Kampala based businesses, non- governmental organizations (NGOs) as well as nearby district local governments. Most upcountry business fear approaching the court due to the perception that the court closely works with the URA and therefore approaching it would mean exposing one's business to URA. In addition, there were incidences due to lack of human resources and/or finances that tax payers from upcountry districts were informed to come to Kampala offices for hearing of their tax disputes. Such occurrences not only increase litigation costs, but also undermine public trust in TAT's ability to effectively adjudicate tax disputes in a timely manner.

### Human resources

With regards to human resources, currently the tribunal is made up of only five members, who sit at least three times in a week to hear tax cases. While all supportive administrative staff at the TAT are on permanent terms

of employment, all the five members that constitute TAT for purposes of hearing a tax disputes are part-timers. This is unlike in Kenya where the TAT is made of 18 members<sup>29</sup>. This therefore implies that it is much easier to constitute a tribunal to hear a tax dispute in Kenya than it is in Uganda. In addition, evidence presented in Table 8 reveals that the tribunal's operational deficit with regards to human resources increased from five in 2006/07 to seven in 2016/17. Therefore, with the result of the Supreme Court ruling of 2017 which requires all tax disputes to commence at the TAT, the human resources deficit needs to be reduced to enable faster tax dispute resolution.

**Table 8: Number of Human Resources at TAT**

Year	Target request	Actual Available	Operational deficit
2006/07	23	18	5
2007/08	23	18	5
2008/09	25	18	7
2009/10	25	20	5
2010/11	25	20	5
2011/12	25	21	4
2012/13	25	21	4
2013/14	25	22	3
2014/15	25	22	3
2015/16	25	22	3
2016/17	27	20	7

Source: Administrative data from TAT

<sup>29</sup><http://www.judiciary.go.ke/portal/blog/post/tax-appeals-tribunal-members-sworn-in>

### **Limited public awareness of TAT operations.**

Despite the tribunal's existence since 1998, very few taxpayers and the general public are aware of the operation and objectives of the TAT. Stakeholders revealed that even Members of Parliament as well as some officials at the Ministry of Finance, Planning and Economic Development consider TAT to be a tax/revenue collecting institution. This perception sometimes negatively impacts resource requests from the responsible committee of Parliament since they always ask how much money the tribunal has generated in a particular financial year. This in turn affects the operations of the tribunal.

### **Limited public confidence in TAT to fairly adjudicate tax disputes**

The TAT Act vests the power with the Minister of Finance, Planning and Economic Development to appoint members of the tribunal. The Minister however, consults with the judicial commission on the suitability of the members being proposed for the position. In addition, the same minister appoints the board members of URA and again sets revenue targets for URA. The role of the minister in appointing administrative members for these sister organizations impacts negatively on the public confidence on the TAT's autonomy to fairly adjudicate tax disputes. Stakeholders are of the view that for avoidance of the perceived conflict of interest, members of TAT should be appointed or selected by the Chief Justice or the Minister of Justice and Constitutional Affairs, in consultation with the Minister of Finance, Planning and Economic Development. This will go a long way to reduce the negative perception of TAT as a revenue collecting body.

## **4. CONCLUSION AND POLICY RECOMMENDATIONS**

The study aimed to achieve the following objectives (i) examine the performance of Tax Appeals Tribunal in adjudicating tax disputes, (ii) identify the major facts of disputation in tax disputes lodged at TAT (iii) identify the legal and non-legal factors affecting tax dispute resolution at TAT. The analysis was conducted using

administrative data from the Tax Appeals Tribunal on civil tax disputes arising out of objections to URA's assessment. Key informant interviews were carried out to augment the administrative data. The findings have revealed that over the last decade, tax disputes have rather been disposed of at a slow pace leading to a tremendous growth in the number of outstanding tax disputes. Moreover, 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. The findings further indicate that majority of disputes at TAT are settled through mutual consent or are withdrawn by taxpayers. Moreover, there are very few appeals to the High Court from TAT owing to the heavy backlog of cases at the High Court.

With regards to the facts of contention in tax disputes at TAT, findings reveal that majority of tax disputes emanate out of tax exemption related issues, followed by excessive and or aggressive assessment by URA as well as miscellaneous applications filed for judicial review. Tax exemptions disputes arose out of ad hoc amendments of the VAT and Income Tax Acts, irregular exemption schedules and lack of harmony between tax incentives offered to investors by the Uganda Investment Authority and those specified by the different taxing Acts. Furthermore, disputes have also arisen out of discrepancies in assessment methods between taxpayers and URA, inconsistencies in the method of computation of penalties as well as from requests for constitutional review of the provisions of the TAT Act.

Regarding the legal factors affecting tax dispute resolution at the TAT, stakeholders identified the 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, lack of an Alternative Dispute Resolution mechanism at TAT, specifically mediation; short duration of employment terms for TAT members; and limited judicial powers of the registrar provided for by the TAT Act as the most salient factors affecting efficient adjudication of tax disputes at the TAT. The non-legal factors affecting operations of the tribunal include limited financial and human resources, limited

public awareness about the tribunal's operations as well as the lack of autonomy of the tribunal from the Uganda Revenue Authority and the Ministry of Finance, Planning and Economic Development. Therefore, to accelerate tax dispute resolution at the TAT and unlock taxes trapped in disputes, the following should be addressed.

Mediation as an alternative dispute resolution mechanism needs to be introduced in tax dispute settlement at TAT to reduce the escalating number of tax disputes finalized beyond 12 months of lodgment. Mediation allows for faster and a more amicable resolution of disputes. However, unlike other courts of law, the current TAT Act doesn't enable the tribunal to refer disputes for mediation.

Government needs to minimize the frequency of amendment of tax laws especially VAT and Income tax. This is because excessive rates of amendment and undue complexity of tax laws leads to disputes. In addition, there is a need to ensure that tax laws are technically well drafted, with care for precise language and policy that avoids legal distinctions that lead to problems of application.

The current jurisdiction of the tribunal requires to be further widened to enable the tribunal award damages to successful parties. This shall in turn eliminate the need for a successful party from filing fresh suits in the High Court for purposes of obtaining award of damages. This has been why most taxpayers opted to file their cases at the High Court instead of the TAT. In addition, the TAT Act needs to be amended to empower the registrar to expressly discharge judicial powers such as handling interim orders. This because the judicial responsibilities of the registrar are only provided for by regulations and could be challenged in future since the parent Act does not confer such duties.

With regards to the Appeals process, it is also paramount that appeals from the tribunal should be directed to the Court of Appeal instead of the current practice where appeals from TAT lie with the High Court. This is because the chairperson of the tribunal qualifies to be a High Court judge and sits with two

tax experts to constitute a TAT hearing. It is, therefore, unnecessary to appeal their decisions to a single judge which makes the appeals process unnecessarily long. This will go a long way to decongest the High Court and save on the time that cases held up in the High Court take before being resolved.

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## **ANNEX**

### **Annex A: General Guiding Questions for Key Informant Interviews**

1. Can you share with us what you know about the current structure of Uganda's tax dispute resolution system and laws governing it?
2. Do you feel that the current structure addresses the present and future requirements for resolving tax disputes?
3. In your view what are the current gaps in the Tax Appeal Tribunal Act that affect tax dispute resolution?
4. In your view, how effective is URA internal objection review process in reducing the number of tax disputes at TAT?
5. What are the various institutional challenges hindering the effectiveness of TAT?
6. What are key reform measures that should be undertaken to improve the efficiency of TAT in settling tax disputes? Are these measures consistent with the global best practices?
7. Do you think that there are gaps in the composition of TAT that could be limiting efficient operation of the tribunal?
8. In your view, how do appeals from TAT to the High court on only grounds of law affect tax dispute resolution in Uganda? Where should appeals from TAT go?
9. In your view what causes the heavy backlog of tax disputes at TAT and High Court? How can this be reduced?
10. What are some of the legal factors (provisions of the TAT Act) that impact on tax dispute resolution?
11. In your view does the tribunal have sufficient jurisdiction to adjudicate tax disputes? If not, how can the tribunal's powers be enhanced?
12. What non-legal factors limit TAT from carrying out its operations?

### **Annex B: List of key informants**

1. Samuel Khaukha (Mr.), Registrar, Tax Appeals Tribunal, Kampala, Uganda.
2. Vincent Emmy Mugabo (His Worship), Deputy Registrar Mediation/ Public Relations Officer, High Court, Commercial Division
3. Birungyi Cephaz Kagyenda (Mr), Partner at Birungyi Barata and Associates ( Advocates, Legal and Tax Consultants)
4. Arike Habibu (Mr), Litigation officer, Legal department, Uganda Revenue Authority.
5. Mutai Clara (Ms), finance officer at the East African Breweries Limited.
6. Jude Sseruwu (Mr), Court clerk, Mediation, High court, Commercial division
7. Nalukwago Milly Isingoma (Ms) Assistant commissioner, Research planning, development, Uganda Revenue Authority.
8. Kizito Garry, Assessment officer, Domestic Tax department, Uganda Revenue Authority

## Annex C: Tax disputes applications lodged by case type (2008-2016)

	VAT Cases	VAT tax in dispute (UGX Billion)	Income tax	Income Tax in dispute (UGX Billion)	Customs tax Cases	Custom Tax in dispute (UGX Billion)	Excise Tax cases	Excise Tax in dispute	Others	Others in dispute
2008	15	7.4	4	5.4	1	0.2	1	0.3	2	0.001
2009	11	5.9	6	7.1	3	1.3	0	0	0	0
2012	10	9.6	6	4.6	2	0.04	0	0	0	0
2013	10	1.4	8	3.7	1	0.01	2	0.1	4	0.2
2014	10	2.4	9	3.8	0	0	0	0	0	0
2015	12	3.0	6	5.2	4	0.8	0	0	6	0
2016	11	52.8	15	13.7	12	3.8	2	1.9	6	0.2
Average	11.3	11.8	7.7	6.2	3.3	0.9	0.7	0.3	2.6	0.1

Source: Administrative data from TAT

## Annex D: List of finalized cases at the Tax Appeals Tribunal

Case parties	Year of judgement	Case particulars	Objections & Issues involved	Amount involved
Total Uganda Limited Vs URA	2001	Civil Appeal No. 6 OF 2001 High Court (commercial division) (Arising out of Tax Appeals Tribunal Case No. 2 of 2001)	Tax exemptions/ incentives and amendment of the income tax act 1997 that repealed the exemptions.	UGX 453,000,000/-
URA Vs Tata Uganda Limited	2016	High court (Commercial court division) Civil Appeal No. 007 OF 2008	Objections to VAT assessments on bond sales of motor vehicles, and the method of computation of penalties.	UGX 799,160,119/-.
URA Vs Uganda Consolidated Properties Limited		Civil Appeal no.31 of 2000 (On appeal from high court civil appeal 75 of 1999)	Appellant's application for review by TAT being time barred. (URA was not served a notice of objection within the requisite period of 5 days). There is also the issue of which limit is to be observed under section 17 of the Tax Appeals Tribunal Act; whether it is 30 days or whether six months are the time limits. (Income tax)	UGX 504,152,054/-
Tullow Uganda Limited & Tullow Operational Pty LTD Vs URA	2014	TAT Application No. 4 of 2011	Objections to initial income tax (capital gains tax) Assessment of US\$ 472,748,128 by the respondent in respect of a transfer of their interests in Exploration Areas EA1, EA2 and EA3 to CNOOC and Total for the consideration of US\$ 2,933,330,400	US\$ 472,748,128
Kampala Nissan Uganda Limited Vs URA		High court (Commercial court division) Civil Appeal No. 7 of 2009 (arising from TAT No.28 of 2007)	Objections to VAT assessment of UGX 180,901,363/- and penalty of UGX 99,220,699/-	UGX 280,122,062/=
Cable Corporation Uganda Limited Vs URA	2011	Civil Appeal No. 1 of 2011 (arising from TAT No.6 of 2010)	The dispute arose from an income tax exemptions on interest expense payable on withholding tax. Appellant's case dismissed by TAT for being time barred. Application filed more than 30 days in contravention of the TAT act.	UGX 1,207,774,051/=
URA Vs Rugarama Construction Company limited	2012	High court (Commercial court division) HCT-00-CC-CA-12 -2011 (arising from TAT No.1 of 2011)	Objections by URA to self-assessment valuation method/ tax amount used/ reported by taxpayer in respect of importation of goods. (Custom duty)	UGX 118,342,742/=

Case parties	Year of judgement	Case particulars	Objections & Issues involved	Amount involved
Crane Bank Vs URA	2012	High court (Commercial court division) HCT-00-CC-CA-18 -2010 (arising from TAT of 2010)	Dispute arose from an assessment of tax on interest on agricultural loans which the applicant considered to be exempt from tax under the Income Tax Act Cap 340	UGX 399,684,725/=
Airtel Uganda Limited Vs URA	2012	High court (Commercial court division) HCT-00-CC-CS-457 -2010 (arising from TAT of 2004)	Objections to payment of interest on a disputed but later settled tax	UGX 1,555,836,915/=
Savannah Commodities Ltd Vs URA	2012	High court (Commercial court division) Civil Appeal No. 17 of 2010 (arising from TAT No.4 of 2009)	Objections to VAT assessments on tax exempt agricultural commodities and zero rated	UGX 642,720,372/=
Kahooro Enterprise Uganda Ltd Vs URA	2012	High court (Commercial court division) miscellaneous cause no 8 of 2012	Dispute arose out of URA's declaration that the Applicant's goods are standard and not zero rated. Appellant's application for review by TAT being time barred Application filed under rules 3 (1) (2), 6 and 8 of The Judicature (Judicial Review) Rules, 2009	3,133,974,827/=
Warid Telecom Uganda VS URA	2012	High court (Commercial court division) Civil Appeal no 24 of 2011	Objection to a VAT assessment for imported services arising out of the customs post clearance audit. Appellant's application for review by TAT being time barred.	UGX 11,021,513,660/=
URA Vs Total Uganda limited	2012	High court (Commercial court division) Civil Appeal no 8 of 2010 (arising from TAT No.5 of 2009)	Total Uganda sought interpretation of tax treatment of jet fuel under the VAT Act cap 349. (whether it is zero-rated or VAT exempt)	
Mandela Auto Spares Ltd Vs URA	2013	High court (Commercial court division) HCT - 00 - CC - CS - 201 - 2011	Objections for the recovery of 3,912,381,187/= in over paid taxes in relation to imported pneumatic rubber tyres. (URA assessed imported goods under a wrong HSC code)	UGX 3,912,381,187/=
Mix Telematics East Africa Ltd Vs URA	2016	High court (Commercial court division) Civil Appeal no 26 of 2014 (arising from TAT No.2 of 2013)	Objections to VAT assessment resulting from a TAT case ruling that the taxable supply is subject to standard rated VAT since the appellant did not qualify for zero-rated VAT.	UGX 87,198,707/=
URA Vs Uganda Taxi Operators and Drivers Association (UTODA)	2017	Supreme court Civil Appeal No 13 of 2015	Appeal against the decision of Court of Appeal. The issue at High Court was "whether UTODA was exempt from paying VAT for its services of management of taxi parks and Taxi Operators in Kampala City.	UGX 3,903,136,565/=

Case parties	Year of judgement	Case particulars	Objections & Issues involved	Amount involved
Elgon Electronic Ltd Vs URA	2008	High court (Commercial court division) HCT - 00 - CC - CA- 11 – 2007 ( appeal arising from TAT decision of 2007)	Objection to VAT & Corporation tax assessment. Application before TAT was premature because the Appellant/Applicant had not paid 30% of disputed tax or that part of the assessed tax which was not in dispute whichever is the greater pending the final resolution of the objection as provided for under the law.	UGX 134,402,000/=
URA Vs Bank of Baroda-India	2007	High court (Commercial court division) HCT - 00 - CC - CA- 05 – 2005 ( appeal arising from TAT No.5 of 2005)	Appeal from the TAT ruling that Bank of Baroda was not liable to pay any capital gains tax and any tax paid should be refunded together with interest.	UGX 451,442,456/=
URA Vs Uganda Communication Commission	2007	High court (Commercial court division) HCT - 00 - CC - MA- 0654 – 2006 (Arising from HCT-00-CC-CA No. 11 of 2006, TAT Application No. 4 of 2006 )	Failure to respond to the objection within the stipulated 90 days.	UGX 4,491,548,930/=
Samuel Mayanja Vs URA	2006	High court (Commercial court division) HCT - 00 - CC - MC- 0017 – 2005 (Arising from TAT No. 22 of 2006)	Objection to URA from collecting VAT and Income tax. Non-functionality of the tax appeals tribunal. The tenure of its last members expired and no new members had been appointed. Failure to pay the mandatory 30% of accessed tax.	UGX 229,336,136.00
Classy photo mark Ltd Vs URA	2010	High court (Commercial court division) HCT - 00 - CC - MC- 30 – 2009	Objections to URA's assessment of imported photographic paper based on different valuation methods (cartons vs rolls)	UGX 26,520,926/=
Uganda Projects Implementation and Management Centre Vs. URA	2010	Supreme court ( Constitutional Appeal No. 2 of 2009)	Whether Section 34 c (3) of the Value Added Tax Act, contravenes Articles 21 and 126 (2) (a) of the 1995 Constitution in so far as it requires a person to pay 30% of the tax in dispute before filing an application before the Tax Appeals Tribunal – Access to court.	UGX 394,700,051/=
Capital Finance Corporation Ltd Vs URA	2001	Court of Appeal (Court of Appeal Civil Appeal No. 43 of 2000 (on appeal from high Court Civil Appeal no.2 of 2000)	Objections to payment of corporation tax, withholding tax and taxes on dividends for a period of six years with effect from September 1995 due to tax exemptions provided by the certificate of incentives granted by the Uganda Investment Authority under Section 25 of the <i>Investment Code</i>	UGX 42,000,000

Case parties	Year of judgement	Case particulars	Objections & Issues involved	Amount involved
Steel Corporation of East Africa Ltd Vs URA	2012	High court (Commercial court division) HCT - 00 - CC - CA- 0 – 2010	Failure to provide burden of proof i.e. 1. TAT dismissed with costs due to applicant's failure to show how an agreement between the applicant's shareholders tantamount to a disposal of assets to the applicant. 2. Failure to advance evidence to show that depreciation allowances and initial allowances had already been granted or claimed by the applicant on these assets prior to 1994.	UGX 5,337,159,439
Uganda Revenue Authority Vs China Jiefang (U) Ltd	2000	High court (Civil Appeal No 57 of 1999)	Appeal against payment of interest originating from an excessive assessment of income tax by URA.	UGX 77.6 million
Okello Okello Vs URA	2015	High court (Commercial court division) Hccs no.229 of 2010	Objections to URA's over assessment for VAT and Income tax assessments.	UGX 435,790,946
International school of Uganda Vs URA	2016	High court (Commercial court division) Civil Appeal no.004 of 2016 (Arising from objection decision no. 5378053 of 2006)	Objections to payment of Income tax due to possession of certificate of exemption under Section 2 (bb) of the Income Tax Act.	
Meera investments versus Commissioner general URA	2007	High court (Commercial court division) HCT-00-CC-MA-0218-2006 (Arising from HCT-00-CC-CS-0189-2006)	Objections to collection of income tax on the basis of a certificate of incentives in accordance with the Investment Code 1991.	UGX36,514,786,374.00
Otim Talib, Bosco Ogwang Gabriel Okumu Jane Birungi & 1397 others versus URA &KCB	2017	High court (execution and bailiffs division) miscellaneous application no. 94 of 2017 (arising out of ema no. 1939 of 2016) (arising out of misc. application no. 157 of 2016) (arising out of civil suit no. 455 of 2002)	Application brought under S.33 of the Judicature Act, S.98 CPA and 0.52 rr 1, 2 and 3 C.P.R	UGX 1,034,442,861/
URA versus m/s Muwema & Mugerwa advocates & solicitors	2008	High court (Commercial court division) MISCELLANEOUS APPLICATION NO.394 OF 2008 [Arising Out of Civil Appeal No.393 of 2008] [Arising Out of Miscellaneous Cause No.376 Of 2008]	Application to stay execution of the order of the Registrar of this Court in Misc. Cause No. 376 of 2008, pending the determination of Civil Appeal No. 393 of 2008.	UGX 1,389,888,465/=

Case parties	Year of judgement	Case particulars	Objections & Issues involved	Amount involved
Rio insurance versus URA	2000	HIGH COURT CIVIL APPEAL NO. 12/2000 (EXPARTE) (APPEAL FROM ORDERS IN MISCELLANEOUS APPLICATION NO. 15 OF 1999 ARISING OUT OF TAT 6/99 IN THE TAX APPEALS TRIBUNAL)	Application sought an order reversing the Tax Appeals Tribunal on the question whether in a Tax appeal before the tribunal, where the Uganda Revenue Authority did not file a defence; the applicant ought to have a default judgment entered in its favour	UGX 24,546,000
Speke Hotel (1996) Ltd Versus URA	2009	High court (Commercial court division) HCT-00-CC-OS-0003 OF 2009	Application for Judicial Review brought by way of Originating Summons under Order 46 A rule 6 (2) of the Civil Procedure Rules.	
URA versus Toro & Mityana Tea Co. Ltd	2007	High court (Commercial court division) HCT-00-CC-CA-0004-2006 (Arising out of TAT MA-010/2005) (Arising out TAT Application No 16/2004)	Application contesting an assessment of tax in respect of withholding tax on management fees and Pay As You Earn on expatriate staff salaries and interest on loan accounts for the years 1993 – 2003.	
URA versus Kirenga Fred	2015	Court of Appeal of Uganda MISCELLANEOUS APPLICATION NO. 91 OF 2014 [Arising from Miscellaneous Application No. 90 of 2014]	Application seeking for an Interim Order to stay execution of the orders of the High Court sitting at Nakawa made in Miscellaneous Cause No 15 of 2013, until the final disposal of Miscellaneous Application No. 90 of 2014, the main application to stay execution of the said orders.	UGX 230,983,291 =
Stanbic bank (u) ltd & Jacobsen Uganda Power Plant Company Ltd. versus URA	2011	High court (Commercial court division) MISCELLANEOUS APPLICATION NO.0042 OF 2010 (Arising from civil suit No.0479 of 2010)	Objection to VAT assessments due to part of the tax being tax exempt. Application for an interim order to restrain the Commissioner General and/or her agents or servants from enforcing any further tax collection measures against Jacobsen until final hearing and determination of M/A 726 of 2009.	UGX 14,376,624,376/

Source: Author's compilation based on finalized tax cases on the Uganda legal Information Institute website.

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