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**TAXPAYERS' RIGHTS AND OBLIGATIONS:
ANALYSIS OF IMPLEMENTATION AND ENFORCEMENT
MECHANISMS IN UGANDA**

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Abstract

This study uses Income Tax and Graduated Personal Tax to illustrate how taxpayers' rights and obligations are enforced. Existing literature on tax reform points to the fact that consideration of the rights and obligations of the taxpayers is central to the overall tax reform strategy. In fact, reform processes that do not effectively consider the rights of taxpayers will alienate and create discontent among the citizens. In the last few years, Uganda has taken keen steps to effectively reform its tax legal regime.

The aim of this analysis is to evaluate whether the reform of the tax structure has enhanced principles of good governance and democracy in enforcing and implementing taxpayers' rights and obligations. The analysis identifies the strengths and weaknesses in the tax legal regime and provides recommendations for its improvement.

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Abbreviations

CAO	Chief Administrative Officer
CG	Commissioner General, URA
CID	Criminal Investigations Department of the Police
ERP	Economy Recovery Program
GPT	Graduated Personal Tax
HCCS	High Court Criminal Session
IMF	International Monetary Fund
ITA	Income Tax Act
ITD	Income Tax Department of URA
ITDR	Income Tax Distraint Rules
KCC	Kampala Town Council
LC	Local Council
LDU	Local Defense Unit
LG	Local Government
LGA	Local Government Act
LGFC	Local Government Finance Commission
LGP	Local Government Police
NRMG	National Resistance Movement Government
PAYE	Pay As You Earn
SI	Statutory Instrument
SRPS	Special Revenue Protection Service
TAAT	Tax Assessment Appeals Tribunal
TAC	Tax Assessment Committee
TAT	Tax Appeals Tribunal
TATA	Tax Appeals Tribunal Act
TIN	Tax Identification Number
UCBL	Uganda Commercial Bank Limited
URA	Uganda Revenue Authority
VAT	Value Added Tax

List of cases

- A.B. Sindano V. Ankole District Administration* (High Court Criminal Session No. 463 of 1971)
- British American Tobacco Co Ltd V. Uganda Revenue Authority* (TAT No. 18 of 2000)
- Capital Finance Corporation Ltd V. Uganda Revenue Authority* (TAT No.3 of 1999)
- Capital Finance Corporation Ltd V. Uganda Revenue Authority* (Civil Appeal No 43 of 2000)
- Charles Odoki A/C Julius Ocen Odoga v Uganda Revenue Authority* (TAT No 13 of 1999)
- China Jiefang Uganda Ltd V. Uganda Revenue Authority* (TAT No .1 of 1999)
- John Damascus Mulwe V. Uganda Revenue Authority* (TAT No.12 of 2000)
- Rio Insurance Co. Ltd V. Uganda Revenue Authority* (TAT No 6 of 1999)
- Stanley Aijukye V. Uganda Revenue Authority* (TAT No. 16 of 1999)
- Uganda V. Erifazi Winyi* (Criminal Review Case No. 90 of 1969)
- Uganda V. Gidudu Lawrence* (Criminal Case Review No. 84 of 1998)
- Uganda V. Juliono Athocon* (Criminal Review Case No. 68 of 1972)
- Uganda V. Musoma John* (Criminal Review Case No. Msc. 75 of 1998)
- Uganda V. Okiror Paul* (Criminal Review Case No Msc. 23 of 1990, unreported)
- Uganda V. Rubundo s/o Raturu* (Criminal Review Case No. 615 of 1972)
- Uganda Consolidated Properties Ltd V. Uganda Revenue Authority* (TAT No.7 of 1999)
- Uganda Revenue Authority V. Uganda Commercial Bank* (Miscellaneous Application No 14 of 1999)
- Uganda Women's Entrepreneurs Association Ltd V. Uganda Revenue Authority* (TAT No 20 of 2000)

List of statutes

- Constitution of Uganda, 1995
- Finance Act 1992, Chapter 181 of the Laws of Uganda
- Income Tax Act, Chapter 340 of the Laws of Uganda
- Judicature Act, Chapter 13 of the Laws of Uganda

Local Government Act, Chapter 243 of the Laws of Uganda

Police Act, Chapter 303 of the Laws of Uganda

Tax Appeal Tribunal Act, Chapter 345 of the Laws of Uganda

Uganda Revenue Act, Chapter 196 of the Laws of Uganda

Subsidiary legislation

Income Tax (Withholding Tax) Regulation, 2000

Local Government Graduated Tax (Declaration of Rates) Instrument, 2001

Local Administrations Graduated Tax (Payment By Installments) Regulations, 1968

Tax Appeals Tribunals (Procedure) Rules, 1999

I. Introduction

A tax is part of the price one pays for living in a modern society. People pay taxes because of the obligation to do so. Taxation refers to the method by which the sources of government revenue are collected and re-apportioned amongst those who benefit from its services.

Conceptually, taxation includes all charges and burdens imposed by the taxing authority upon individual persons, corporate bodies, their property or property rights, the revenue from which can be utilized by that authority or its superior authority (such as the central government) to fulfill its obligations.

There are two main types of taxes: direct taxes and indirect taxes. Direct taxes are those taxes imposed upon the individual according to his/her ability to pay. Such taxes include Graduated Personal Tax (GPT) and Income Tax. Indirect taxes are those levied upon certain articles of consumption and include: customs and excise duties as well as property tax (rates) usually levied on buildings in urban centres.

A taxation system must be based on clear and solid legal foundations. It is, therefore, not appropriate for the tax authorities to require more taxes or to claim them earlier than prescribed by law or to enforce tax obligations using arbitrary means. In any taxation system, one of the greatest benefits for taxpayers is where the tax laws are binding to both taxpayers and taxing authorities. Thus effective enforcement of taxpayer's rights and obligations depends upon a well-established tax legal regime.

In the recent years there has been a growing public interest to improve tax administration. The OECD for example has published several reports aimed at improving tax administration.¹

In an effective tax system, taxpayers should meet their tax obligations on one hand and tax authorities should also enforce tax liabilities on the other hand using legal means. Uganda is still developing her tax legal regime, thus both the taxpayers and tax authorities have not yet fully appreciated the enforcement of tax rights and obligations within the parameters of rule of law.

¹ See OECD, (1990).

When the present National Resistance Movement Government (NRMG) assumed power in Uganda in 1986, one of its major tasks was to revamp the economy.² Assisted by the International Monetary Fund (IMF) and the World Bank, the government of Uganda launched the Economy Recovery Program (ERP) in 1987. ERP was intended to implement tax reforms among its responsibilities. Taxation can have serious implications on social and economic life, therefore tax reform particularly in a developing country like Uganda, is a complex undertaking with uncertain outcomes.

As Uganda strives to liberalize its economy, it is increasingly becoming important to review how tax reforms influence democratic governance. Reforms have tended to focus on economic considerations, while disregarding structures within the taxation system, particularly as they relate to the obligations and rights of taxpayers.

The main objective of this study is to analyse the legal framework for implementation and enforcement of taxpayers' rights and obligations in Uganda. Specifically, the study assesses the efficacy of tax laws in accommodating the emerging concerns about the State's relationship with tax authorities and taxpayers. It is clear that while taxpayers are failing to meet their obligations, their rights have also been ignored by the state. There are several taxes imposed in Uganda and one study cannot exhaustively cover the implications of all tax obligations on citizens' rights and responsibilities. Therefore, this analysis focuses on the legal regime of Income Tax (a central government tax) and GPT payable to local government. These two taxes pose the most frequent sources of conflicts between citizens and the tax authorities. The analysis is limited to the legal framework, the procedures of assessment, the enforcement mechanisms and identification of the strengths and weaknesses of the legal framework and its implementation.

The paper is divided into 9 main parts. Part one introduces the study and outlines the purpose of the study. Part two gives a brief history of Income Tax and Graduated Personal Tax. Part three examines the present legal framework for both taxes. Part four describes the obligations to pay Income Tax. Part five describes the methods of computation of taxes. Part six examines the enforcement mechanisms for collecting Income Tax. Part seven analyses taxpayer's rights and obligations of an income taxpayer. Part eight analyses the rights and obligations of a Graduated Taxpayer. The last part of the study provides conclusion and recommendations.

² See the first budget speech by the Minister of Finance in 1987.

2. Historical background of Income and Graduated Personal Taxes in Uganda

The present tax regime for Income Tax and GPT is a result of the political history of Uganda. GPT is an outcome of a compromise between the traditional/native tax system in the former territories forming the present Uganda and the British tax system that was imposed on Ugandans at the time of colonization. The nature of the tax system then was, however, not so much structured as the current one. A subject of the monarch only had to pay “something” to the King or Chief. GPT was further developed during the colonial period following the recommendations of the Wallis Report.³ That report recommended that GPT be assessed according to wealth and income. The recommendation was incorporated in the 1955 Local Government Administration (District Councils) Ordinance.

In 1962 the Buganda Kingdom further developed GPT by enacting a law that levied tax according to one’s ability to pay. The law obliged every male in Buganda, who was of or above the apparent age of 18 years, and every unmarried female resident in Buganda of the same age to pay GPT on the 1st day of January of each year.

The assessment process was rudimentary because it was based on non-monetary qualification such as coffee trees and livestock. The current assessment process is based on income rates set by the Local Governments Act.

Income tax was certainly not known to have existed in Uganda before the time of the country’s colonization. The majority of the indigenous people in Uganda at that time were peasants who relied on harnessing natural resources for a living. Only foreign settlers of Asian and European origin initially paid income tax under the Income Tax Ordinance. The tax was subsequently extended to African residents via employment emoluments or Pay as You Earn (PAYE). That was done in 1962/63 under the auspices of the East African Income Tax Management Act of 1958. The Act was repealed by the Income Tax Decree of 1974 following

³ Willis (1953).

the disintegration of the East African Community in 1971. The Decree was again repealed by the Income Tax Act 1997, which brought several reforms that will be discussed later.⁴

⁴ The Income Tax Act 1997 has also been revised and is now Chapter 340 of the Laws of Uganda.

3. The present legal framework for Income Tax and Graduated Tax

Income tax is a central government tax. Article 189 of the Constitution of Uganda, 1995 outlines the functions of the central government. The Sixth Schedule to the Constitution gives the responsibility for *inter alia* taxation and taxation policy to the central government. Article 152 (1) states that “No Tax shall be imposed except under the authority of an Act of Parliament”⁵. It further provides that “where any law empowers any person or authority to waive or vary a tax imposed by that law, that person is required to report to Parliament periodically on the exercise of those powers as Parliament shall by law require.”⁶

The Income Tax Act (ITA) covers both procedural and substantive law for income tax administration in Uganda. Uganda Revenue Authority (URA), which was established in 1991 by the URA Statute, does the enforcement and implementation of income tax.⁷

GPT, on the other hand, is a tax collected by local governments. The collection of GPT is enforced under a decentralization government policy that devolves powers to local people to manage their own affairs based on democratic principles. Thus the Local Governments perform functions delegated to them by the Central Government. In practice, they adopt any other duty not otherwise specified in the Sixth Schedule of the Constitution. The Constitution and the Local Governments Act (LGA) empower local governments to levy, charge, collect and appropriate fees and taxes in accordance with the law enacted by Parliament.⁸ The fees and taxes to be levied, charged, collected and appropriated consist of rents, royalties, stamp duties, personal graduated tax,⁹ fees on registration and licensing and any other fees and taxes that Parliament may prescribe.¹⁰ Laws also allow LGs to collect some taxes on behalf of the

⁵ Art. 152 of the Constitution of Uganda.

⁶ *Ibid.*

⁷ The Uganda Revenue Authority was set up on September 5, 1991 by the Uganda Revenue Statute No. 6 of 1991 as a central body for the assessment and collection of specified tax revenue and to account for all revenue to which those laws apply.

⁸ The LGA Chapter 243 of the Laws of Uganda, Section 80.

⁹ The Fifth Schedule empowers every District or Urban Local Council to levy an annual tax to be known as graduated tax.

¹⁰ *Supra*, LGA, Section 81.

central government for payment into the Consolidated Fund.¹¹ In some instances, LGs can retain a specified proportion of the revenue collected to support their functions and services.

¹¹ Article 192, 1995 Constitution of Uganda. Article 153 establishes a Consolidated fund where all revenues or other moneys raised or received for the purpose of or on behalf of, or in trust for the Government shall be paid.

4. Obligations to pay Income Tax

4.1 GENERAL OBLIGATIONS TO PAY INCOME TAX

The Constitution of the Republic of Uganda, provides that it is the duty of every citizen of Uganda to pay taxes.¹² Therefore, a person who earns an income and fails to pay income tax will have breached a constitutional obligation. Section 5 of the Income Tax Act, 1997 requires every Ugandan who earns income to pay an annual tax on his or her income for each year (twelve months) ending on the 30th June.

Income tax is defined as a tax charged on income of any person who has chargeable income for each year of income.¹³ The year of income commences on or after the 1st day of July of every calendar year. The term income includes any gains, profits, interest, dividends and also non-monetary benefit, advantages or facility obtained by a person through employment. The Income Tax Act defines a person to include an individual, a partnership, a trust, a company, retirement fund, a government, political sub-division of a government and an institution listed in the First Schedule to the Act. Each of these persons may be assessed for income tax if he or she or it earns taxable income. The obligation to pay income tax can be categorized as follows:

4.2 INDIVIDUAL INCOME TAX

This is a tax levied on income earned by an individual¹⁴ such as a sole trader. This term is usually applied to persons who are self-employed in business. However, individual income tax is not limited to business income alone. It includes all income earned by an individual from all sources except that income which is assessable separately, such as individual rates of tax.¹⁵

¹² The Constitution of Uganda, 1995 Article 17 (g).

¹³ ITA Chapter 340 of the Laws of Uganda, Section 5 (1).

¹⁴ *Ibid*, ITA section 7.

¹⁵ The assessment is done according to Part I of Schedule 3 of the ITA.

4.3 CORPORATE INCOME TAX (CORPORATION TAX)

This tax is levied on income earned by an entity or “person” other than an individual such as a company or a trust. Corporate income also includes income from various sources of the taxpayer like individual income.¹⁶ Corporate income is taxed at the corporation rate of tax.¹⁷

4.4 RENTAL INCOME TAX

Rental Income is levied on income earned by a corporate landlord. For example an entity or “person” who benefits from rental income is taxed under corporate income tax laws.¹⁸ Rental income earned by an individual landlord is separated from income earned from other sources by the same individual and is taxed separately under the Rental Tax rate structure.¹⁹

4.5 PAY AS YOU EARN (PAYE) TAX

PAYE also commonly referred to as the “employment tax” is a form of individual tax charged on employment income. The tax deducted from each employee’s emoluments before effecting the last payment of what is normally a monthly pay period.²⁰ Section 117 of the ITA requires every employer to withhold tax from payment of employment income. This tax is deducted from the employment emoluments before effecting the last payment for the period of normally a month to any employee. PAYE is also called a source (withholding) tax because the money is collected before it reaches the employee. The employer remits the total tax deducted directly to URA accounting to the employee that the tax has been actually paid to government. Section 125 of the ITA makes the employer personally liable for non-payment of PAYE. However he or she is entitled to recover it from the employee.

4.6 WITHHOLDING TAX

Like PAYE, withholding tax is another form of source tax deducted at a source by a person, (withholding agent) on the basis of the gross value of another person to whom the tax is applicable. Regulation 3 of the Income Tax (Withholding Tax) Regulations requires every employer under Section 117 of the ITA to withhold tax from payment of employment income

¹⁶ See Section 8 of the ITA.

¹⁷ The assessment is done according to Part II of the 3rd Schedule.

¹⁸ Section 1 of the ITA.

¹⁹ The assessment is done according to Part IV of Schedule III of the ITA.

²⁰ Section 117 of the ITA.

to an income of an employee.²¹ Withholding tax is in fact income tax paid in advance or as a final tax depending on the circumstances.

While most withholding tax is applicable to payments to certain persons, it also applies to the value of imports as determined under the Department of Customs, and payable at the point of importation together with other taxes. Any withholding agent who fails to withhold tax is personally liable to pay the amount that has not been withheld. However, he is entitled to recover it from the payee.²²

4.7 INCOME TAX FOR SMALL BUSINESS TAXPAYERS

According to the ITA, a small Business Taxpayer is defined as a person (individual or corporate) whose annual sales turnover does not exceed Uganda Shillings Fifty Million.²³

The income tax payable by such a person is estimated and varies according to the segment of the gross turnover in which his/her sales fall for any given year.²⁴ This definition excludes taxpayers engaged in the following lines of business: medical/dental practices; architecture; engineering of any kind; audit/accountancy; legal practice; other professional service; public entertainment; public utility service and construction service.²⁵

²¹ Income Tax (Withholding Tax) Regulations, 2000.

²² *Ibid.*

²³ Section 5 (5) of the ITA.

²⁴ The Assessment is done according to rates indicated under Schedule 2 of the ITA.

²⁵ Section 5 (7) of the ITA.

5. Assessment of tax in Uganda

Income taxes in Uganda are categorized for administrative purposes according to source and method of collection. Thus, assessment of income tax depends on how much a taxpayer earns in the year of income. The more one earns the more income tax he or she pays.

5.1 INCOME TAX RATES IN UGANDA PER YEAR

The Second Schedule and the Third Schedule of the Income Tax Act provides the rates applicable to individuals, companies, trustees and retirement funds and small business taxpayers. These are summarized in Table 1.

5.2 EXEMPTIONS FROM PAYING INCOME TAX

Section 22 of the Income Tax Act exempts certain categories of income to be liable for taxation:

- Income of listed institutions;
- Income of diplomats accredited to Uganda;
- The official employment income derived by a person in the Public Service of a government of a foreign country;
- Any allowance payable outside Uganda to person working in a Ugandan foreign mission;
- Income of any local authority;
- Any grant for educational and research purposes;
- Income of exempt organisation;
- Pension;
- Alimony;
- Proceeds of life insurance policy;
- Gifts;
- Foreign income by short term residents;
- Employment income from a grant agreement between the Government of Uganda and foreign Government;
- Interest payable on Treasury Bills or Bank of Uganda Bills;
- A lump-sum payment made by a resident retirement fund to a member of the fund or a dependant of such member;
- Official employment income of an employee of the Armed Forces, Uganda Police and Uganda Prisons Services.

Table 1: Income tax rates in Uganda per year (Ugandan Shs)

A: Individual income tax rates chargeable income (resident)		Tax liability
1. Not exceeding 1,560,000		0
2. Exceeding 1,560,001 but not exceeding 2,280,000		10% of the amount by which chargeable income exceeds 1,560,000.
3. Exceeding 2,860,001 but not exceeding 4,920,000		126,000 + 20% of the amount by which chargeable income exceeds 1,560,000.
4. Exceeding 4,920,001		546,000 + 30% of the amount by which chargeable income exceeds 4,920,000.
B: Total income (non-resident)		Tax liability
1. Not exceeding 2,820,000		10%
2. Exceeding 2,820,001 but not exceeding 4,920,000		282,000 + 20% of the amount by which chargeable income exceeds 2,820,000.
3. Exceeding 4,920,001		702,000 + 30% of the amount by which chargeable income exceeds 4,920,000.
C: Pay as you earn (PAYE) Total monthly employment income		Monthly PAYE tax
0-130,000		0
130,000-235,000		10%
235,001-410,000		10,500 + 20% of excess
410,001 and over		45,500 + 30% of excess
D. Individual rental income 20%		Computed at 80% of Gross rent after allowing threshold of 1,560,000 taxable separately
E: Corporate income tax rate structure		
30%		Resident Companies
30%		Non-Resident Companies
25%-45%		For Mining Companies
F: Tax for small business taxpayers	Gross turnover bracket	Annual tax payable
	0 –20 Million	100,000
	2. 20-30Million	Shs. 250,000 or 1% of gross turnover, whichever is lower
	3. 30-40 Million	Shs. 350,000 or 1% of gross turnover, whichever is lower
	4. 40-50 Million	Shs. 450,000 or 1% of gross turnover, whichever is lower

Table 1 continued

G. Withholding tax		
Commercial Transactions	4%	Of gross payment
Imports	4%	Of gross customs value of goods imported
Dividends/interest	15%	Of gross payment
Non residents	15%	Of gross payment
Shipping & Aircraft	2%	Of gross payment
Trustee Income	30%	Of chargeable trust income
Retirement Fund	30%	Of chargeable income of a retirement fund

Source: Tax Information Centre, URA 2001 and the Second and Third Schedule of the Income Tax Act, 1997.

6. Mechanisms for collecting income tax

6.1 THE ROLE OF UGANDA REVENUE AUTHORITY

URA is empowered to implement the provisions of the Income Act Tax. The Income Tax Department (ITD) of URA administers and collects income taxes in Uganda. The Department has its head office in Uganda with a number of branches called District Revenue Offices, all over the country. Each income taxpayer must pay his or her dues at the District Revenue Office under which the business is located. It is important to note that the revenue office nearest to the taxpayer is usually the district to which the individual pays income taxes and not necessarily the political district of his or her origin.

6.2 SPECIFIC OBLIGATIONS OF THE TAXPAYERS

The Taxpayers Charter is a document that has been developed by the URA to guide taxpayers.²⁶ The Charter lists taxpayers' rights and obligations that are contained in the Income Tax Act. The obligations include the following:

6.2.1 Obligation to register

Section 136 of the ITA empowers the Commissioner General (CG) to issue a Tax Identification Number (TIN) to every taxpayer. Thus, any income tax payer is supposed to register with the URA for purposes of obtaining a TIN.²⁷ TIN is issued free to every applicant and it is a taxpayer's unique identifier for all tax purposes. Income Tax payers are also required to register for income tax and obtain an income tax file number.²⁸ This obligation is supposed to guide URA in assessing the taxpayer based on proper records. However, the implementation of this obligation is being affected by poor recording systems within the URA.

6.2.2 Obligation to file returns and entries

According to section 93 of the ITA each taxpayer is required to file a return of income for each year of income. He or she must do it not later than four months after the end of that year. It is the duty of the taxpayer to file tax returns so that tax liability can be assessed. In the

²⁶ The first edition was produced in 2002.

²⁷ Section 36 of ITA provides that the Commissioner General may issue a number to be known as a Tax Identification Number TIN to every taxpayer.

²⁸ *Ibid.*

case of **Sam Rutega V URA**²⁹ the issue was whether the applicant was obliged to file tax returns in respect of his income as a local consultant. It was held that any taxpayer with chargeable income is required to file returns on income received and on which tax has not been paid and if he does not there are two options; the taxpayer files returns or if the taxpayer fails to file returns the CG raises assessments on him.

A taxpayer who files a correct return of income is assessed on the basis thereof. However, the Commissioner-General reserves the right to assess a taxpayer on the basis of any information available if the taxpayer files an incorrect return or fails to file a return. Where a taxpayer files returns for more than he or she owes, he or she is entitled to receive credits towards future taxes and a refund of any paid tax excess.

6.2.3 Obligation to pay on the due date of payment

Section 104 of the ITA provides the procedures relating to the due date of payment of taxes. A tax charged in any assessment is payable in a number of ways. Where the taxpayer has furnished a return for a year of income, the tax is due within forty-five days from the date of service of the notice of assessment.³⁰ Where a taxpayer has lodged a notice of objection to an assessment, the amount of tax payable by the taxpayer pending final resolution is thirty per cent of that tax assessed or that part of the tax not in dispute, whichever is greater.³¹ Where the taxpayer has made reasonable objection to assessment, the CG may waive the amount or accept a lesser amount than is required.

6.2.4 Obligation to Disclose/Declare

Section 143 of the Income Tax Act requires an income tax payer to make full disclosure of information and correct declaration of all transactions at all times. It is an offence to evade tax or give information that leads to under-taxation. This obligation is important for an effective tax system. One challenge, however, is that at times taxpayers connive with tax collectors to conceal some information so that the tax liabilities are reduced.

²⁹ Application No. TAT 27 of 2000.

³⁰ This is self-assessment under Section 97 of the ITA. If a taxpayer carries out self-assessment, the CG is deemed to have made the assessment of the chargeable income of the taxpayer and the tax payable on the chargeable income for that year, being those respective amounts shown in the return.

³¹ Section 104 (2) of the ITA.

6.3 POWER TO SECURE THE PAYMENT OF TAXES

6.3.1 Enforcement of Tax Obligations against Third Parties

Section 107 provides for the recovery of tax owing by a taxpayer from a third party, who in turn owes money or holds money on behalf of the taxpayer. The section defines a third party as any person who owes money to, or holds money on for the taxpayer for example: bankers, real estate agents or employers. The section requires that two conditions be satisfied before the CG can resort to this measure. The taxpayer must have failed to pay income tax by the due date and the tax payable is not disputed by the CG or the taxpayer. The procedure of enforcing this obligation involves the CG serving a notice in writing on any person who owes money to, or holds money for, the taxpayer to pay the money or a specified part of it to the CG in satisfaction of the taxpayer's liability. The amount, which may be paid to the CG, must not exceed the amount of income tax due and payable by the taxpayer. It is important to note that the notice should not be used in anticipation of failure to pay the tax by a taxpayer. This power has so far been used by the URA in two reported cases, namely; Uganda Consolidated Properties Ltd³² and Uganda Women's Enterprises Association.³³

Enforcement of this obligation against a taxpayer may have implications to his or her rights because the notice is served on the taxpayer's banker's directly and without the order of court. This process may be unfair to the taxpayer because he or she is not given the right to be heard by an independent body. The matter of issuing an agency notice by URA against a taxpayer was considered in the case of **Uganda Women's Entrepreneurs Association Ltd V URA**³⁴ where an agency notice was issued by URA to collect taxes in dispute from their bankers (third parties). In this case the taxpayer assumed that it was an exempt organisation and therefore did not pay income tax. As a result URA assessed the income tax and a penalty. The taxpayer raised an objection and it was refused. The tribunal held that the agency notice was properly issued as an enforcement measure to collect the tax due. The tribunal further stated that it was unfortunate, as conceded by both parties, that the taxpayer was made to believe that it was an exempt organisation.

³² See Uganda Consolidated Properties Ltd V URA Application No TAT 7 of 1999.

³³ See the case of Uganda Women's Entrepreneurs Association Ltd V. URA Application No. TAT 20 of 2000 where the TAT held that the agency notice issued was proper because it was issued after the applicant had been accorded ample time within which to settle the tax obligation.

³⁴ *Ibid.*

Taxpayer's bankers under this arrangement are served with extra-judicial orders to appropriate monies credited in their taxpayer-client's accounts towards payment of the tax due. This amounts to an abuse of both the taxpayers' and their bankers' rights. This is because the law does not require the CG to notify the taxpayer that a notice to appropriate monies from bank accounts is to be served. The enforcement of the obligation may also induce large taxpayers not to maintain large sums of money in local banks for fear of being attached³⁵ to recover money due in taxes.

6.3.2 Distress and sale of property

A further remedy open to the CG is provided for under Section 107 of the ITA. It is to recover any unpaid tax by distress proceedings against the movable property of the taxpayer.³⁶ The CG is empowered under the section to issue a distrainment warrant specifying the taxpayer whose property is to be distrained for tax collection. In enforcing this power the CG is also empowered under the Income Tax (Distrainment) Rules to appoint distress agents to assist him or her to execute the distrainment warrant³⁷ The movable properties to be distrained upon include what is commonly referred to "as goods and chattels" and these must be the absolute property of the liable taxpayer. They include trading stock, furniture, jewelry, machinery and plant and equipment of a movable nature, livestock or agricultural produce. The distrainment warrant has to be in writing and must specify the person liable, the location of the property and the tax liability to which the proceedings relate.

The implementation of the distress proceedings will necessitate the officer authorized to do so to go to the place where the movable property is to be found, accompanied by a court bailiff and a police officer. The presence of a police officer during execution of distress proceedings is to maintain law and order.³⁸

The CG executing the distress order may at any time enter any house or premises described in the order authorizing the distress proceedings. However, while entering the house, the outer door of a dwelling house is not to be broken unless that dwelling house is occupied by the

³⁵ Attachment is an order to deduct specified money to clear tax dues.

³⁶ Distress is defined as the act of taking movable property out of the possession of a wrongdoer (taxpayer), to compel the performance of an obligation. See Roger Bird, (1983) p. 121.

³⁷ See Rule 3 of the Income Tax (Distrainment) Rules, 2000.

³⁸ Income Tax (Distrainment) Rules, 2000 define a distrainor as an officer in the service of URA authorized to levy distress under a warrant.

distrainee and he or she refuses, or in any way prevents access to it.³⁹ Having gained access the distrainor is authorized to break up the door of any room which he or she has reason to believe contains property of the distrainee. Breaking open doors of dwelling houses of tax defaulters is a rude approach of collecting tax, which may be abused if not regulated. In the first instance, it amounts to a violation of the right to privacy in the taxpayer's home and, secondly, it may lead to improper destruction of property. The law ought to provide friendly means of distress of property of a taxpayer so as to avoid destruction of property.

In executing distress orders, the privacy of some women is protected. Regulation 7 of the Income Tax (Distraint) Rules (ITDR) requires that where a room in a dwelling-house is in the actual occupancy of a woman who according to her religion or local custom does not appear in public, the distrainor is obliged to give notice that she is at liberty to leave the room. After giving a reasonable time and facility to leave, the distrainor may enter that room for the purpose of attaching any goods in it. He/she must take precautions in order to avoid the clandestine removal of goods from the dwelling house.

The property upon which distress is levied, unless it is perishable, is kept for ten days either at the premises where the distress was levied or at any other place considered appropriate by the CG at the cost of the person liable. Where a distrainee pays or gives security, which is acceptable by the CG for the whole sum of the tax due together with the costs and expenses incurred by the distrainor during the distress, and the payment or security occurs within ten days after the attachment of his or her goods, the distrainor must immediately restore the attached goods to the distrainee at his or her cost. The warrant is then returned to the CG for cancellation.⁴⁰ When attaching livestock, the distrainor must make appropriate arrangements for the transport, safe custody and feeding of the livestock and meet any costs and expenses incurred in the process. If ten days or ("reasonable period" with perishable goods) passes from the time the distress is levied and the liable party has failed to pay tax due together with the costs of distress, the property may be sold by public auction or in any other manner as the CG may direct. The sale is stopped as soon as the sale has generated a sum equal to or exceeding the original debt and the cost and expenses incurred by the distrainor.⁴¹ Proceeds of the disposal are applied towards the cost of taking, keeping and selling the property distrained upon and then towards the tax due and payable. Any money remaining is returned to the liable

³⁹ *Ibid*, Regulation 7.

⁴⁰ *Ibid*, Regulation 11.

⁴¹ *Ibid*, Regulation 9.

party.⁴² However, if the proceeds do not meet the costs of the distress procedure and the tax due, the CG can apply to court to recover the remaining balanced.⁴³

The distress and sale powers are legitimate when applied to recover taxes that are not disputed. Two problems are likely to occur. First, the distress can be levied to collect half of the amount of the tax that is disputed by a taxpayer or the amount that is not disputed by the taxpayer. Secondly, the distress and sale can be executed notwithstanding that the taxes sought to be collected are subject to judicial proceedings. This manifestly affects the rule of law and may bring injustice. It impinges on the taxpayers' rights.

The power of distress has not been commonly applied by URA because of the legal requirement that it can only be done with sanction of the CG and it is a tough measure.⁴⁴ Sale of property has not been applied in income tax collection, however, it has been used in enforcing customs tax. In the case of **Charles Odoki A/C Julius Ocen Odoga V URA**⁴⁵ the tribunal was of the view that where the interests of the taxpayer and URA are at crossroads, their interests must be weighed carefully. It also considered the issue of whether URA can hold goods due to non-payment of customs tax. The tribunal was of the view that both the interests of the taxpayer and URA where at crossroads and must be weighed carefully. Thus, the tribunal held that detaining the goods of the taxpayer, on which some taxes had been paid, without taking into account their value, was both unreasonable and unjust.

6.3.3 Audit and investigation

Tax authorities often rely upon their auditing and investigative powers to determine taxable income. Section 132 of the ITA provides that in order to enforce the provisions of the Act, "the CG or any other officer authorized in writing by the CG shall have at all times and without any prior notice full and free access to any premises, place, book, record, or computer." The CG or any other officer authorized in writing by the CG may make an extract or copy from any book, record, or computer-stored information; or seize any book which is relevant in determining the liability of any person to tax, penal tax or any other penalty under

⁴² *Ibid*, Regulation 11.

⁴³ Section 105 of the ITA provides that when tax becomes due and payable it is a debt of the Government and may be recovered by suing the person by the CG acting in the Commissioner's official name subject to the general directions of the Attorney-General.

⁴⁴ For example since 1999 it has only been used against one company, i.e Beta Enterprise.

⁴⁵ Application No.TAT 13/99.

the Act; or retain any such book or record for as long as it may be required for determining a person's tax liability or for any proceedings under the Act; or, where the hard copy or computer disk of information stored is not provided, seize and retain the computer for as long as is necessary to copy the information required.

The process of investigation has problems for both the taxpayer and URA. On one hand some unscrupulous taxpayers may present incorrect information or forged documents. This will obviously make the investigation process unsuccessful. On the other hand, these powers of investigation are exercised by the Department of Audit and Investigation in the URA and sometimes the Special Revenue Protection Service (SRPS),⁴⁶ who may abuse their powers by carrying out arbitrary investigations. In the absence of statutory criteria that have to be satisfied in order to initiate and carry out an audit or initiate tax investigation, taxpayers' rights may be abused. This is especially so with SRPS which is not an institutional organ under URA but under the President's office. Whereas this is not a serious problem at the moment, absence of statutory provisions on conducting audits and investigations means the process can easily be abused and may infringe upon the taxpayer's right of confidentiality and privacy especially where there is no search warrant. For instance in the case **Rwaburindore Tarsis Bishanga t/a Betar Enterprises V URA**,⁴⁷ URA sought to rely on the taxpayer's bank statement to assess Value Added Tax (VAT). The bank statements were in the possession of URA without the knowledge of the taxpayer. Whereas this case was dealing with VAT matters, it is an example to show that the right to confidentiality of the taxpayer may be violated in the process of investigation.

6.3.4 Security on property for unpaid tax

Section 111 of the ITA provides for a procedure whereby the CG can apply to the Chief Registrar of Titles for the land or buildings of a person who has not paid tax due to be subject to tax. Security on unpaid taxes is applied under the following circumstances: when the taxpayer is unable to pay tax at once; when the taxpayer is in arrears and when taxes are paid but after investigations and audit more taxes are to be paid. The CG is empowered to write to a person who owns land and buildings in Uganda and has failed to settle his or her tax liability of an intention to register an encumbrance on such land or building with Chief Registrar of Titles as security for unpaid tax.

⁴⁶ This is a special investigative body attached to URA under the President's Office.

⁴⁷ Application No. TAT 9 of 1999.

If within thirty days after the service of notice, the taxpayer has not paid the whole of the outstanding tax, then the CG is empowered under a “notice of direction” to oblige the Chief Registrar of Titles to register the charge. This will be at no fee though the security will have the effect of a legal mortgage over the land to the extent of the amount of the unpaid tax. If the taxpayer paid all tax for which security or charge is attached to the property, then the CG will serve a notice canceling the direction made to the Chief Registrar.

Like other enforcement mechanisms, this procedure gives the CG powers to use extra-judicial powers⁴⁸ to enforce tax obligations. He/she has power to charge property or attach property/premises till the payment is made. The danger with this approach is that there are no provisions that require the CG to comply with the requirements that the taxpayer should be summoned and be given a right to be heard. As a result, the taxpayer has no remedy under the law to challenge the powers of the CG in case they are used in an arbitrary manner. This is not yet a problem as the CG has not acted arbitrarily. The practice has been to enter into deferred payment agreements with the taxpayer. However, as URA continue to strengthen its tax obligation mechanisms, the attachment of property as security for unpaid taxes is likely to affect the relationship between the URA and taxpayers because property may be lost due to non-payment of taxes.

6.3.5 Arrest and detention

Arrest powers are not commonly used in the prevention and prosecution of tax crimes. However, they can be used in certain circumstances. Section 142 of the ITA provides that a person who knowingly or recklessly uses a false taxpayer identification number, including the taxpayer identification number of another person, on return or document prescribed or use for other taxation purposes commits an offence and is liable on conviction to a fine of not less than twenty-five currency points⁴⁹ or to a term of imprisonment not exceeding one year or both. Similar punishment is imposed on any person who aids and abets another person to commit original offence or counsels or induces another to commit an original offence.⁵⁰

⁴⁸ Extra-judicial powers refers to those powers which URA may use without the order of court. Judicial orders include a court warrant from a magistrate or judge.

⁴⁹ See n.60 infra

⁵⁰ Aiding is defined as helping a person to commit an offence and abetting implies encouraging a person to commit an offence.

Any person who bribes or conspires with a URA officer to commit tax fraud is also subject to arrest and is liable upon conviction to a fine of not less than twenty-five currency points or to imprisonment for a term not less than three months. This procedure is commonly used to arrest URA officers. However, it has not been used against income taxpayers. The procedure may not be easy to enforce against income taxpayers because URA officers are not trained to prosecute offenders and yet do not have powers of arrest. The police who have powers of arrest and prosecution are not trained in income tax issues. The gap in the law culminates in taxpayers getting acquitted or being given lighter punishments if arrested and prosecuted. Therefore, this procedure should be streamlined to allow police and URA cooperate so as to arrest taxpayers that bribe.

6.3.6 Compounding offences

The power to compound income tax offences means that the CG can agree to disregard a certain offence in return for payment of money. It envisages that a tax defaulter may admit that he or she is guilty and a compromise is reached to payment of money. In other words, it is an alternative to criminal prosecution that would be commenced if the compromise between the CG and taxpayer is not reached. Section 149 of the ITA provides that where any person commits any offence (other than a URA officer committing bribery), the CG may at any time before the commencement of court proceedings compound the offence and order the person to pay a sum of money specified by the CG. However, the money to be paid should not exceed the amount of the fine prescribed for the offence. For the CG to compound an offence the following requirements must be met:

- The person concerned must admit (in writing) that he or she has committed the offence;
- The CG must (in writing) specify the offence committed, the sum of money to be paid, the due date of payment and attach the written admission of the offender;
- The person concerned must be served with the CG's order;
- The person concerned has no right of appeal because the order is final;
- The order may be enforced in the same manner as a decree of any court for the payment of the amount stated in the order.

Where the CG compounds an offence, the person concerned is exempted from prosecution in respect of that offence or for penal tax.

Compounding is one aspect of compromise that, if properly applied, can facilitate the administrative machinery of settling tax disputes. In tax disputes there may be cases where it would be cost effective to compound tax offences so as to shorten the process of litigation. The intention is to allow URA some discretion to settle tax disputes in a more user friendly way instead of going to court. One advantage with this method is that it allows the taxpayer to continue with his or her business unlike if he or she was to be prosecuted. However, the use of compounding mechanism to enforce tax liability has three problems. First, it is contrary to the principles of natural justice because it presumes guilt of the taxpayer. Secondly, in cases where the CG delegates this power it may be abused by other tax officers who may use it arbitrarily. Thirdly, it confers the power of administrative discretion to the CG to decide which offences are admissible for compounding. This discretion may lead to collusion of offences and corruption and disrespect of the tax system. In any case, serious tax offences should not be a subject of compounding. The compounding of offences should only apply to minor tax offences. Whereas there is no concrete evidence that compounding of tax offences is generally abused by the URA, it is possible that it can encourage corruption if not properly regulated thus defeating its objectives.

6.3.7 Payment of tax during dispute

Section 16 of the Tax Appeals Tribunal Act⁵¹ requires a taxpayer who has lodged notice of objection to pay 30% of the tax assessed or part of the tax assessed not in dispute, whichever is greater pending final resolution. This provision is unfair not only because it negatively impacts on the cash flow of the taxpayer, but also because it may tempt URA to raise exorbitant assessment with the hope of collecting 30%, because it expects a taxpayer to pay a portion of the tax that is in dispute, before the resolution of the dispute. It is also a presumption that the taxpayer is guilty before the tribunal arrives at a final verdict.

This issue was considered in the case of **John Damacus Muluwe V URA**.⁵² In that case, URA raised the issue of the mandatory 30% deposit as a prerequisite to the hearing of the application. The TAT, in interpreting the provision, held that the deposit would be due and payable by an applicant who had filed a formal notice of objection. The TAT further decided that requiring the applicant to pay 30%, which he did not have, would be most unreasonable and amount to denial of access to justice. This case is evidence to show that URA can impose payment of 30 % of the tax assessed when the taxpayer has filed a notice of objection. This is

⁵¹ The TATA Chapter 345 of the Laws of Uganda

⁵² Application No. 12 TAT of 2000.

indeed a violation of the taxpayer's rights since it does not allow him or her a right to be heard before the 30% is imposed on him or her. Thus, a taxpayer who does not file his application to the Tax Tribunal may have his or her rights violated.

6.4 PENALTIES, FINES, INTEREST AND ADDITIONAL PAYMENTS ON TAX DEFICIENCY

6.4.1 Payment of penal tax

Penal tax is imposed on a taxpayer in respect of the following infringements: failure to furnish a return of income for a year within the required time,⁵³ or failure to maintain records,⁵⁴ or a person who knowingly or recklessly makes or omits to make a statement to an officer of the URA that is false or misleading in material particular, or understating the estimate of chargeable income or gross turn over for the purpose of provisional tax.⁵⁵ The issue of whether a taxpayer should pay penal tax was considered in the case of **China Jiefang (U) Ltd V URA**.⁵⁶ In this case the taxpayers failed to remit PAYE to URA and as a result they were charged penal tax of Shs 1.2 million. The tribunal held that the taxpayers failed to prove that the penalty was wrongly charged. The penal tax is assessed by the CG. The disadvantage of this assessment to the taxpayer is that it is an independent assessment from the principal tax assessment.

The Minister of Finance is empowered to remit the whole or any part of penal tax charged. He or she can exercise this discretion on the advice of the Commissioner General if the person liable to pay the penal tax has good reason or cause in writing to deserve this treatment.⁵⁷ The problem with this power is that the Minister may use his or her discretion to favour a taxpayer due to political or personal reasons. If not properly regulated it may be abused to favour some taxpayers for political reasons or selfish reasons. Therefore there should be guidelines that the Minister should follow to remit penal tax. The guidelines should be under the circumstances that are beyond the control of the taxpayers. Such circumstances can include serious misfortune befalling the taxpayer.

⁵³ *Supra*, ITA Section 152.

⁵⁴ *Ibid*, Section 153.

⁵⁵ *Ibid*, Section 154.

⁵⁶ Application No. 1 of 1999.

⁵⁷ *Ibid*, Section 156.

6.4.2 Payment of interest

Many taxpayers do not pay their taxes on or before the due dates. Section 137 of the Income Tax Act provides that such taxpayers will be obliged to pay interest on any tax that remains unpaid. Interest is imposed when a taxpayer fails to pay income tax or provisional tax or rental tax or penal tax by the due date. The rate of interest is 2% per month of the relevant amount remaining unpaid.⁵⁸ The amount of interest payable is calculated on the basis of simple interest. Where interest is paid on tax, which, subsequently, is found not to have been due and payable, such interest shall be refunded. This issue was discussed in the case of **Sam Rutega V URA**⁵⁹ where the issue was whether or not a taxpayer is liable to pay interest on delayed remittance. Applying Section 137 of the ITA, the tribunal held that the Section cannot apply to the taxpayer where the CG should have exercised his or her power to waive interest since the taxpayer acted diligently in meeting his tax obligations once they were established. That takes into account taxpayer's rights not to be taxed more than once on the same aspect.

Like in the case of the penal tax the Minister of Finance is also empowered to remit the whole or any part of interest charged on the advice of the CG where the person liable to pay the interest has given good reasons or cause in writing to deserve this treatment. Similarly, this power may also be abused. Again, the guidelines should be developed to guide the Minister so as to make objective decisions.

6.4.3 Payment of fines

The ITA imposes payment of a fine for any person who commits any of the following tax offences. Any taxpayer is to pay a fine not exceeding twenty five currency units,⁶⁰ when he or she fails to furnish returns, or fails to maintain proper records, or fails to comply with recovery provisions, or fails to give information/evidence to the CG when required, or uses improper Tax Identification Number (TIN) or makes misleading statements or obstructs a URA officer, or bribes a URA officer. The implementation of this mechanism is affected by poor investigative machinery in the URA. The Department of Internal Audit and Tax Investigation and SRPS that handle investigations related to tax fraud and audits are not properly equipped to carry out investigations. The staff is not properly trained in investigation and they lack investigative machinery. Cooperation with the Criminal Investigation

⁵⁸ *Ibid*, Section 137.

⁵⁹ Application No. 27 TAT of 2000.

⁶⁰ Eighth Schedule of the Income Tax Act provides that one currency point is equivalent to Shs. 200,00/=.

Therefore in case of a fine it will not exceed Shs. 5,000,000.

Department of the Police (CID) would strengthen the investigative process. Further, the investigation process may be affected by corrupt URA officers, who may not prosecute the tax offenders because they have been bribed.

6.5 USE OF COURT PROCEDURES TO ENFORCE TAX OBLIGATIONS

URA can use civil proceedings to enforce the obligations of a taxpayer to pay taxes. Section 105 of ITA makes unpaid taxes a Government debt.⁶¹ The Attorney General may on behalf of the CG, therefore, sue a taxpayer that has not paid tax.⁶² Under Order 33 of the Civil Procedure Rules, a taxpayer can be sued by summary procedure because he or she has not paid income tax, which is taken as a Government debt. In the suit the production of a certificate by the CG stating the name and address of the taxpayer liable is sufficient evidence of the amount of tax due and payable by such taxpayer.⁶³ Although this procedure is available to the Government, URA has not used it because most taxpayers do not wait to be taken to court. However, it should be used in case large taxpayers default in their obligations so that the Government does not lose income lest it fails to meet its budgetary estimates.

⁶¹ Section 105 of the ITA.

⁶² *Ibid.*

⁶³ *Ibid* (3).

7. Analysis of rights of an income taxpayer

7.1 THE MEANING OF TAXPAYERS' RIGHTS

Taxpayers' rights have evolved as a new mode of rights. These rights can be viewed at two levels. One type concerns the ordinary rights of most taxpayers who comply with the law and want to see fairness and efficiency in the daily operation of tax administration, collection and enforcement process.⁶⁴ These rights tend to occur at an interface between the tax authorities and taxpayers. The second type of taxpayers' rights involves those rights that relate to the specific validity, operation and application of the law.

Taxpayer's rights are not specifically provided in the Uganda Constitution of 1995. They are implied and based on the constitutional provisions with respect to general rights.

7.2 THE LEGAL FRAMEWORK FOR ENFORCEMENT OF TAXPAYER'S RIGHTS

7.2.1 The constitutional principles

The Constitution of Uganda does not explicitly provide for taxpayers' rights. However, it restricts imposition of a new tax without the authority of an Act of Parliament⁶⁵ and requires that any person who has powers or authority to waive or vary tax as imposed by the law must report to Parliament periodically on the exercise of those powers.⁶⁶ This constitutional provision acts as a check on any person who wants to impose arbitrary tax. Under Article 153 (4) the Constitution also requires the establishment of tax tribunals to settle tax disputes.

The Constitution is silent on whether a taxpayer can petition to a Constitutional Court in case his/her rights have been violated. Article 50 of the Constitution provides that: "Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent court for redress, which may include compensation." Lack of specific provision on taxpayer's rights may make the taxpayer, whose rights have been violated, hesitate to petition to the Constitutional Court for redress. However, since Article 50 of the Constitution provides for a right to petition to court,

⁶⁴ See Duncan Bentley Ed. (1998) p. 4.

⁶⁵ See Article 152 of the Constitution of Uganda.

⁶⁶ This power is limited to the taxes of Central Government.

it could be used in tax matters if all other remedies available to the taxpayers under the laws have been exhausted. Moreover, constitutional proceedings are lengthy, laborious and expensive. A private citizen may therefore, find it difficult to go to the Constitutional Court to enforce his or her rights.

7.2.2 The Taxpayer's Charter

The Taxpayer's Charter was developed by the URA because of the need to correct a wrong impression about the tax law. Further, taxpayers had developed a habit of resisting paying taxes. It was, therefore, necessary to develop an acceptable taxing system and to implement the corporate plan of the URA, and to minimize costs of tax administration and compliance.

The Taxpayer's Charter is a document developed by the URA in close cooperation and consultation with its stakeholders and clients.⁶⁷ The Charter addresses the fundamental rights and obligations of the taxpayer and the URA in fulfillment of its responsibility of enhancing awareness and promoting equity and fairness to all taxpayers.

The Charter states in simple language the general rights of a taxpayer and those under the tax law. The rights identified include the following:

7.2.3 The right to certainty

The right to certainty is a primary legal right that should be availed to every taxpayer. It requires that taxpayers' rights and obligations be clearly stated by law. The enforcement of this right means three things: that tax laws and obligations must be brought to the attention of taxpayers; that tax obligations cannot be imposed with retroactivity; and that it is only the Parliament that makes tax laws unless otherwise delegated.⁶⁸

The right to certainty is sometimes breached because tax legislation could be passed so that it applies from a date earlier than the date that the legislation was first announced. Typical examples in Uganda are the Finance Acts under which the legislative intentions are announced at the budget time and what is announced takes effect before it is enacted as a law. For instance the amendments brought by the Finance Act 2000 to provisions of the Income Act, 1997⁶⁹ took effect before they were enacted by Parliament. This situation creates uncertainty

⁶⁷ It was launched on 21st September, 2002.

⁶⁸ See Art.152 of the 1995 Constitution of Uganda.

⁶⁹ The Finance Act 2000, amended Sections 3, 29 and 120.

because it would require taxpayers to obey a law, which has yet to be sanctioned by Parliament.

7.2.4 Right to equality

Article 21 of the Constitution of Uganda provides that all persons are equal before and under the law and should enjoy equal protection of the law. The Taxpayer's Charter provides that URA shall promote equity by applying tax laws and procedures uniformly, handle all taxpayers' affairs with impartiality, presume the taxpayers and their agents honest until proven otherwise, and collect only the fair and correct taxes. Under the Ugandan legal framework, the right to equality in taxation has three aspects. First, it requires of national uniformity of taxes. Under the Income Tax Act this implies that income tax is assessed according to the income regardless of residence and status. Second, the principle of non-discrimination dictates that the income tax base must apply to all who fall within that tax bracket. However, discriminatory taxation is common. Civil servants must pay as they earn. Their taxes are deducted from the source. Yet, source deductions are not strictly enforced in the private sector. Similarly, social security fund taxes and other taxes on employment are enforced differently in the private and public sectors.

The third aspect of the right to equality in taxation deals with the discretionary remission of tax obligations. Section 162 of the ITA provides that where the CG is of the opinion that the whole or any part of the payment due by the a taxpayer cannot be effectively recovered due to hardships or impossibility, he or she may bring the case to the Minister of Finance who may remit in whole or part of the tax due by the taxpayer. This power may be abused to gain political favours or elicit bribery, which adversely affects the tax collection procedure. Favouring one sector of the business community in preference to others is against the tenets of the Constitution, which outlaws discrimination of all sorts.

7.2.5 The right to pay no more than the correct amount of tax

This is an important right to taxpayers. URA is required to ensure that each taxpayer's tax payments are accounted for accurately at all times, tax records maintained up to date and tax credits are processed promptly and properly accounted for. However, this right may be difficult to achieve due to the nature of the tax assessment process. Section 96 of the ITA states that the CG may use the taxpayer's return and any other information available to make an assessment of the chargeable income of the taxpayer. However, the CG may also use his/her judgment to make an assessment of the chargeable income of the taxpayer and the tax payable thereon for that year where a taxpayer defaults in furnishing a return of income or where the CG is not satisfied with a return of the income for a year of income furnished by a

taxpayer. Sometimes there may be payment of excess of tax to URA and it would want to retain the money. This issue was raised in the case of **Stanley Aijukye V Uganda Revenue Authority**⁷⁰ where an employer of a taxpayer wrongly paid excessive PAYE to URA. The tribunal held that both the employer and URA were responsible for wrong assessment. Therefore, the problem with the assessment procedure is that the CG may use his/her discretion to retain wrongly assessed tax or raise the tax liability of taxpayers. There may be violation of taxpayers' rights because the procedure envisages the existence of efficient rules of tax assessment that are well known to them and that will enable the determination of correct tax liability, which affords an automatic relief in case of an error. It also envisages professional tax collection that does not compromise taxpayer's rights in favour of tax collection. Therefore, a taxpayer who may not have professional advise on proper calculation of how much tax he or she should pay, may end up paying more than the tax due.

Section 97 permits a taxpayer to do his/her self-assessment. Thus where a taxpayer has furnished a return of income for a year, the CG is deemed to have made an assessment of the chargeable income of the tax payable on the chargeable income for that year, being those respective amounts shown in the return. While this procedure appears to be simple in theory, it has practical problems because it envisages a system with tax professionals who are available to assist the taxpayers in assessments. The reality shows that self-assessment is still a problem because most people are not aware of the tax assessment requirements under the law. As a result, taxpayers are either overtaxed or undertaxed.

7.2.6 Tax refunds

The Income Tax Act gives a right to a taxpayer to apply to the CG for tax refund in respect of any year of income of any tax paid by withholding, installments or excess payment of tax. URA is required to process tax refunds within 30 days from the date of the application. In case the taxpayer is dissatisfied with the decision of the CG, he or she has a right to appeal according to objection and appeal procedures as provided under the Income Act. This right of appeal enhances the taxpayers' rights to pay only that tax which is due and payable. The enforcement of this right, however, depends on whether the taxpayer can be able to determine whether he or she has paid more or not. In Uganda, where many taxpayers cannot evaluate their tax liabilities, the enforcement of this right is still problem.

⁷⁰ Application No. TAT 16 of 1999.

7.2.7 Right to privacy

Article 27 of the Constitution of Uganda 1995 provides that no person shall be subjected to unlawful search of the person, home or other property of that person, or to unlawful entry by others of the premises of the person. It further provides that no person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property. The Taxpayers' Charter requires that URA should give prior notice to any taxpayer whose premises are to be inspected or upon whom an audit is to be conducted. However, Section 130 of the ITA empowers the CG or any URA officer authorized by the CG in writing, to have full and free access at all times without any prior notice, access to any premises, place, book, record, or computer. The ITA contradicts the Constitution⁷¹ and the Charter. Moreover, there are no detailed regulations as to how the search is to be conducted. Lack of procedure may culminate into URA frequently violating the right of privacy of taxpayers when searching taxpayers' homes and premises or obtaining information concerning the affairs of a taxpayer, especially from third parties (usually banks). In the case of **Uganda Women's Entrepreneurs Association Ltd V Uganda**⁷² the issue was whether or not URA should have issued an agency notice under Section 107(i) of the Income Tax Act to collect the tax in dispute from third parties. The Tribunal held that the third party notice was properly issued to settle the tax obligation.

As earlier mentioned, The Income Tax (Distraints) Rules 2000, restricts forceful entry in premises when executing distress order. Regulation 7 provides that the outer door of a dwelling house shall not be broken unless that dwelling house is occupied by the distrainee and he or she has refused access. This regulation implies that the officer enforcing a distraint order has to take precaution. However, the enforcement officer may break open the door of any room in which he or she has to believe any goods of the distrainee to be. The Regulations protect the privacy of women. Thus where a room in a dwelling house is in the actual occupancy of a woman, who according to her religion or local custom does not appear in public, the distrainor is required to give notice to her that she is at liberty to leave the room. The notice must give the woman a reasonable time to leave the premises and the distrainor after entering the room for the purpose of confiscating any goods, must take precaution to prevent clandestine removal. At present this is not a serious problem, but it is likely to become one in the future. Therefore, the law should be to ensure that a woman is given reasonable time.

⁷¹ Article 2 of the Constitution makes it the supreme law of Uganda and with binding force on all authorities and persons throughout Uganda.

⁷² *Supra* 32.

7.2.8 Right to confidentiality and secrecy

This right compliments the right to privacy. It implies that URA information on an individual is confidential and will only be used for purposes as specified in the income tax law.⁷³ Section 158 of the ITA provides that every person appointed under or employed in carrying out the provisions of the Act shall regard and deal with all documents and information, which may come to the person's possession or knowledge in connection with the performance of duties under the Act, as secret and shall not disclose information or documents except in accordance with the provisions of the Act. However, the same Section 158 also limits the right to confidentiality and secrecy. The disclosure of information or documents to the Minister or any other person is authorized "where necessary under the law." Any person in the service of the Government in revenue or statistical departments as well as the Auditor General or any person authorized by him/her, can access information if necessary for performance of official duties. Finally, information will be disclosed where the competent authority of the government of another country with which Uganda has entered into agreement requires such information in order to avoid double taxation or merely to exchange information to the extent permitted under the agreement. This overly broad provision can be used to disclose information for non-tax purposes. For example a political opponent may have access to this information and may use it to disclose the wealth the opponent has. Although this has not been invoked, it remains a potential danger to the privacy of taxpayers.

Indeed, the right to confidentiality and secrecy is very important to a taxpayer because misuse of information may have legal implications. The information of a taxpayer should only be used for tax purposes, not for any other purpose. This point was emphasized in a Canadian case of **Re Glover V Glover**⁷⁴ where the Court of Appeal of Ontario held that the address of a taxpayer was a necessary and integral part of information that could only be disclosed to authorized persons and should not be disclosed to court or any other person. The taxpayer's information should not be used to initiate criminal proceeding, it can only be used as evidence to substantiate the case once the charges have been laid against a taxpayer. In another Canadian case of **MNR V Fawett**,⁷⁵ the Supreme Court of British Columbia granted the Ministers' petition to have a search warrant quashed, documents seized returned, where the documents in question had been released to the police before a criminal charge had been laid. These two cases emphasize what is contained in Section 158 of the ITA. Thus, taxpayers'

⁷³ The Taxpayer's Charter emphasizes this right.

⁷⁴ (1980) CTC 531.

⁷⁵ (1988) 2 CTC 62.

information should not be disclosed for any reason except as stated under the Income Tax Act.

7.2.9 Right to facilitation of tax compliance

The Taxpayer's Charter requires URA to facilitate the taxpayer in order for him or her to comply with tax obligations. URA officials are supposed to exercise professionalism in the administration of all taxes including income tax. They should provide taxpayers and their authorized agents with clear, precise and timely information; ensure that courtesy and considerate treatment are extended unconditionally to all taxpayers; respond expeditiously to every taxpayer's enquiry, complaint or request; explain the grounds for assessment and derivation of every tax assessment; provide proper technical advice to the taxpayer on the request about tax implications; assist in registration; and educate the taxpayers about their rights. To implement this right the internal procedure of the Internal Revenue Department, which is in charge of income tax, requires that the assessing officer handles all the complaints of the taxpayer at the first instance. This is done by Senior Revenue Officers, who take decisions on behalf of the CG.

URA is also required to process all the returns, entries and any other documents relating to any taxpayer's affairs as stipulated under the Income Tax Act.⁷⁶

The right to facilitation of tax compliance is not yet enforceable in Uganda. The recruitment procedure in the URA is frustrated by lack of qualified personnel in the country to run specific departments. Recruitment outside the country would be expensive to the government and hence that alternative is only resorted to in case of very senior appointments. As a result, some of the URA officers do not have professional touch of tax issues. The shortage of qualified personnel, unqualified staff has made URA to recruit people to be trained on the job. At times those trainees are permitted to handle sensitive taxpayers' issues. In some cases those trainees have been found not to be prudent persons, and they are unable to provide taxpayers with the necessary professional advice. As a result taxpayers are left without knowing their clear rights and even obligations.

7.3 MECHANISMS OF ENFORCING TAXPAYERS' RIGHTS

7.3.1 Compromises

Reaching a compromise is one way of settling tax disputes between URA and taxpayers. This mechanism is similar to the power to compound offences. However, unlike compounding of-

⁷⁶ This is stated in the Taxpayer's Charter of 2002.

fences, compromising is not clearly stated in the Income Tax Act. It is an administrative measure intended to enable the taxpayer and the URA to settle their tax dispute amicably. Compromises can be reached in two ways; The first one is that after assessing tax liability and the tax payable is too high for the taxpayer, he or she can write to the CG requesting for payment of his or her tax due in installments. Such an applicant has to specify the kind of installment he or she is able to pay and reasons why he or she chooses those installments. The CG may accept or reject or amend the request. Alternatively, the Minister of Finance, on the advice of the CG, may remit in whole or in part any penal tax payable. When properly implemented, compromises enhance taxpayers' rights because they encourage settlements out of court and reduce litigation costs. URA applies this procedure to settle its disagreements with the taxpayers. However, the system has to be regulated so that the URA officials or the Minister do not abuse it and to enable taxpayers to know when to apply for it.

7.3.2 Objection to the Commissioner General

Under the ITA the taxpayer has a right of objection. Section 100 of the ITA provides that within 45 days of the date of assessment a taxpayer may file with the CG notice of objection against the assessment. However, a taxpayer may lodge his objections if he or she can prove that he or she was absent from Uganda at the time of assessment or was sick or has any other reasonable cause. In lodging his or her objection, the taxpayer must state precisely in writing his or her reasons of the objection. The intention of the objection is to allow URA to reconsider the assessment of the tax assessed. After considering the objection, URA may allow in whole or in part the assessed tax or amend the assessment accordingly. The ITA does not specify the time within which the decision should be made. It just states that the CG shall serve the taxpayer with the notice of the decision as soon as practicable. This may be prejudicial to a taxpayer especially where the objection is due to excessive taxation. The power of the CG has to be cautiously exercised, taking into account other rights.

7.3.3 Review by the Tax Appeals Tribunal

The Tax Appeals Tribunal (TAT) was established under Article 152 (3) of the 1995 Constitution of Uganda, which requires the establishment of Tribunals to settle tax disputes. As a result, Tax Appeals Tribunal Act (TATA)⁷⁷, which established the TAT, was enacted. The TATA was enacted because of the following reasons. First, disagreements between taxpayers and tax collectors typically concern three issues: the interpretation of tax laws, the administration of taxes and the content of tax laws. Where problems arise relating to the first and second issues, the underlying cause is essentially the institution or department, which is

⁷⁷ The Tax Appeals Tribunal Act No 12 of 1997.

charged with tax collection, URA and sometimes the taxpayers. While URA is obliged to enforce tax liabilities, it may misapply the law and at the same time the taxpayer may not appreciate their obligations. The establishment of the Tax Appeals Tribunal (TAT) as a specialized tax court was to address the above-mentioned problems.

The primary mission of the TAT is to provide the taxpayers with easily accessible, efficient, fair and independent means of tax arbitration. It gives a taxpayer an opportunity to settle disagreements with the URA on matters arising under the taxing acts. Table 2 shows a selection of income tax related cases that have been handled by TAT since its establishment.

Table 2: Selected cases on income tax that have been handled by TAT as at 31/08/01

Case No.	Case name	Nature of the dispute	Amount (Shs)	Settled in favour of
TAT 2/99	International Distillers Ltd	Income Tax	56 Million	Taxpayer
TAT 3/99	Capital Finance Corp. Ltd	Income Tax	63 Million	Taxpayer
TAT 5/99	National Insurance Corporation	Income Tax	870 Million	Withdrawn by consent
TAT 8/99	Uganda Electricity Board	Income Tax	918 Million	Withdrawn by consent
TAT 12/00	John Muluwe	Income Tax	16 Million	URA
TAT 19/00	Simba Steel Products	Income Tax	3 Million	Taxpayer
TAT 20/00	Uganda Women Enterprises	Income Tax	22 Million	URA
TAT 26/00	International Distillers	Withholding Tax	81 Million	Withdrawn by consent
TAT 27/00	Sam Rutega	Income Tax	14 Million	URA
TAT 28/00	Stanbic Bank	Income Tax	267 Million	Withdrawn by consent
TAT 1/01	Bank of Baroda	Income Tax	163 Million	Taxpayer
TAT 2/01	Total (U) Limited	Withholding Tax	453 Million	URA
TAT 3/01	Roadmaster Cycle (U) Limited	Withholding Tax	57.6 Million	Settled out of court
TAT 4/01	Imperegilo Salin JV	Income Tax	13 Billion	Settled out of court

Source: TAT Report for the period August 1998 to August 2001

N.B. This list contains cases on income tax. The TAT has also handled cases on other tax matters, which are beyond the scope of this paper.

Any taxpayer that is aggrieved by a taxation decision made by URA can apply to the TAT for review of the decision.⁷⁸ Section 101 (1) of the Income Tax Act provides that “ a tax payer dissatisfied with an objection decision may at his or her discretion apply for review of the decision to a tax tribunal established by Parliament by Law for the purpose of settling tax disputes in accordance with clause (3) of Article 152 of the Constitution.” The TAT was established for that purpose. Thus, the TAT may review taxation decisions in respect of whether an application is properly made by an aggrieved taxpayer, that is any assessments, determinations, decisions or notices made under a taxing statute. This mandate appears strict and specific in that 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. Sometimes, there may be matters that require adjudication, but which do not necessarily fall within the meaning of the mandate given under Section 15 of the Tax Appeals Tribunal Act. This position was discussed in the case of **Uganda Commercial Limited (UCBL) Bank V URA**.⁷⁹ In that case, UCBL was supposed to have withheld tax on management fees paid out to the Westmont Land Asia. UCBL remitted tax at only 4%, which URA disagreed with. In response URA also withheld certain payments due to UCBL as agency commission on revenue collections. UCBL appealed against these actions of the URA to the TAT. The issue for determination was whether the TAT was a proper forum to entertain the matter. UCBL was not the taxpayer but the withholding agent and, therefore, it was contended that an action for refund brought against URA was not an application against a taxation decision and it did not fall under the jurisdiction of the TAT. However, the TAT resolved the issue by ruling that a letter written by the CG constituted a taxation decision within the meaning of the Act. Clearly, the TAT would have to justify its jurisdiction over tax disputes. It appears that the mandate of the TAT should be widened to cover tax disputes not necessarily viewed as arising out of the taxation decisions.

The Tax Appeals Tribunal Act requires that an application to the TAT for review must: (i) be in writing in the prescribed form and (ii) include a statement of the reason for the application and be lodged with the TAT within thirty days after the person making the application has been served with notice of the decision. The period within which one is to make an application for review is not clear. Courts have attempted to make the position a bit clearer. In case of **Uganda Consolidated Properties V URA**,⁸⁰ the Court of Appeal of Uganda in an

⁷⁸ Section 15 of the TATA.

⁷⁹ Miscellaneous Application No 14 of 1999.

⁸⁰ Application No. 7 of 1999.

application arising from the TAT proceedings stated that the thirty days notice in S. 17(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 S. 17 (7) of the same act refers to the date of the taxation decision itself. Therefore it would appear that the application for review period is presumed to start on receipt of the notice of the taxation decision.

However, it is important to note that before a taxpayer exercises his right to apply for review to the tribunal all channels of objections available in the Taxing Act must first be exhausted. This point was raised in the case of **British American Tobacco Ltd V URA**⁸¹ where the applicant filed tax return and computations for the years 1996, 1997 and 1998. He sought to amend the 1996 tax return to allow expenses, which according to it, were erroneously added back in computing the chargeable income. The TAT held that correspondences and reconciliation meetings between the two parties meant they exhausted the channels of objections under the ITA and, therefore, a good ground for the taxpayer to apply for review to the TAT had been established.

An application is settled after both parties have been given an opportunity to appear before the Tribunal and present their case. It is a legal requirement that the onus is on the applicant to prove that the taxation decision of URA is wrong or that a different decision should be made. The Tribunal then gives a decision on the appeal based on the arguments and evidence presented to it.

A person filling an application has to pay non-refundable fee of Shs.20,000 to the registry of the Tribunal. Section 16 of the TATA requires that where an application arises out of a notice of objection to an assessment, the applicant has to pay either 30% of the assessed tax or part of the tax that is not in dispute, whichever is greater. URA has interpreted this section to mean that this amount should be deposited before the TAT accepts an application. This interpretation by URA is unfair to a taxpayer because it may not only affect his or her cash flow but also it may tempt URA to raise exorbitant assessments with the hope of collecting at least 30% of the assessed tax since the taxpayer is expected to pay a portion of the tax that is in dispute, before the resolution of the dispute. This issue was discussed in the case of **John Damascus Muluwe V URA**⁸² where the URA raised the mandatory 30% deposit as a prerequisite to the hearing of the application. The TAT interpreted Section 16 of the TATA

⁸¹ Application No 18 TAT of 2000.

⁸² Application No. TAT 12 of 2000.

expansively to mean that the deposit would be due and payable by an applicant who had filed a formal notice of objection. The TAT further decided that requiring the applicant in that case to pay 30%, which he did not have, would be most unreasonable and amount to the denial of access to justice.

Section 17 of the TATA provides that when applying to the Tribunal an applicant may represent himself/herself or be represented by a lawyer or agent such as an accountant or even employee/partner. However, given the complexity of tax disputes, it may be detrimental for some taxpayers to appear before the TAT without representation. The nature of tax disputes is such that they require specialized expertise in tax law and practice both in arguing and adjudication of tax disputes. Such specialized representation has an impact on the expense because it is impossible to keep the costs of application for review to the TAT low when one needs professional and expert representation to argue his or her case before the TAT. The likely effect of this is to alienate the ordinary taxpayers who may not afford to engage representation and yet feel they have been unfairly treated by the tax authorities and ultimately deny them access to justice.

An applicant has to comply with the procedure of filing his/her objection. One has to lodge an application in writing using a prescribed form, TAT1 that is in triplicate. This form can be obtained from the TAT offices at a cost of 2,000/= . The application form should bear full names, mailing address, telephone and fax numbers, e-mail address, tax identification number, income tax file number, nature of business, particulars of the tax dispute and details of assessment, year of income, amount of tax in dispute/objected, reasons for review, list of documents/books that will be produced before the tribunal, names and addresses of witnesses, if any, and the date of application and signature of the applicant.

An application is commenced by returning Form TAT1 filled out in triplicate, accompanied by the filing fees, to the Registry of the Tax Appeals Tribunal.

On receipt of the application and all the relevant documents, the Commissioner General of the URA will be served within 5 days after filing of the application with the application. The Commissioner General should respond within 30 days after being served. The Tribunal Registrar will fix the date of hearing by giving both parties to the application not less than 14 days notice of the date, place and time of hearing using Form TAT4.

All tribunal hearings are public subject to the provisions of Article 28 of the Constitution unless either party wants a hearing closed to the public. An applicant has to inform the

Tribunal Registrar in advance as to what information/documents/trade secrets one would like to be treated as confidential and the reasons for the request.

In case the applicant is not able to file his/her application for extension of time within the stipulated 30 days after the URA decision, the Rules of Procedure for the TAT allow an applicant to seek an extension of time in filing their applications against taxation/objections.⁸³ The right to apply for extension is not available to URA. This scenario arose in the case of **Rio Insurance V URA**⁸⁴ where the issue was whether the CG or URA could seek an extension of time to file its defence. TAT stated that:

“The Tribunal has no authority under section 18 of the Act to extend time in order to allow the CG to file a late defence that goes beyond the 30 days. The word “shall” is mandatory and cannot by stretch of imagination be attributed to discretionary meaning”

This interpretation of the law may affect URA in enforcing tax liabilities because in case it is unable to file its defence due to unavoidable circumstances, it automatically loses any other opportunity to enforce the liability. It, however, enhances the rights of a taxpayer whose interests would be jeopardized if URA would be allowed to engage in protracted arguments before the TAT.

The Tribunal is empowered to discontinue/dismiss an application without review if the applicant has given notice in writing to the Tribunal to discontinue the application, or the applicant fails without reasonable excuse to appear at the hearing, or if the applicant fails within reasonable time to proceed with the application or to comply with a direction by the Tribunal in relation to the application. However, in case of the last two reasons, the applicant has a right to apply for the reinstatement of the application 30 days after receiving notification for the dismissal.

Both the applicant and URA can commit several offences. First, failure to comply with a summons, failure to answer proper questions, thirdly giving false or misleading evidence and lastly contempt of the tribunal. In the event that one commits the first three offences, he or she becomes liable to pay a fine not exceeding Uganda Shillings 1.2 million or imprisonment for a term not exceeding two years or both. In case one commits the offence of contempt, he

⁸³ Rule 12 of the Tax Appeals Tribunal (Procedure) Rules, 1999.

⁸⁴ Application 6 of 1999.

or she is liable to pay a fine not exceeding Uganda Shillings 500,000/= or serve a term of imprisonment not exceeding two years or both.

7.3.3.1 The importance of TAT for taxpayers' rights

As mentioned above, the TAT is a tax court, which gives the taxpayer an opportunity to resolve tax disputes with URA on matters arising under the taxing acts. This role was emphasized in the case of **Simba Steel and Aluminum Products Ltd V URA**⁸⁵ where the tribunal held that S. 15 of the Tax Appeals Tribunal Act allows any person aggrieved by a decision made under a taxing act by Uganda Revenue Authority to apply to the tribunal for the review of the decision. The tribunal further held that lack of the appeal process in the Uganda Revenue Authority Statute was addressed by setting up the Tax Appeal Tribunal to review the decision made by URA.

The primary mission of TAT is to protect the taxpayer from the possible unfair assessment and collection methods and procedures by URA in their effort to maximize revenue collection. However, it should be noted that guaranteeing the right to redress, does not mean that the taxpayers should misuse it to frustrating revenue collection efforts. Rather, the establishment of TAT is part of the process of building a tax culture by ensuring that the taxpayer pays fair and correct taxes while at the same time the Government receives the revenue due to it in a timely and orderly manner. In essence, the Tribunal provides a neutral forum to solve any conflict arising without losing sight of the objectives of profit maximization and revenue collection. The importance of the TAT for taxpayer rights can be summarized as follows:

- It is independent of URA and other government organs;
- It is empowered to review any tax decision of URA;
- It possesses all powers of the High Court and is the 1st level of appeal for the taxpayer;
- It discharges its functions independently and is not subject to directions or control of any person or authority;
- Its decisions have the effect as decisions of a court and are enforceable as if it were a decision of a court;
- The proceedings before the Tribunal are conducted with as little formality and technicality as possible;
- The decisions of the TAT are appealable to the High Court but only on questions of law
- TAT can make a ruling and award costs.

⁸⁵ Application No TAT 19 of 2000.

7.3.4 Appeals to civil courts

Appeal to the High Court

A taxpayer that is aggrieved by the decisions of the Tax Appeals Tribunal, has a right to appeal to the High Court. Section 101(1) of the Income Tax Act gives a taxpayer right of appeal if he or she is dissatisfied with an objection decision of the Tax Appeal Tribunal.⁸⁶ This right was exercised in the case of **Shell Malindi (U) Limited V URA**⁸⁷ where the TAT held that the appellant was not entitled to tax exemptions under Section 162 of the Income Tax Act 1997 and Section 25 of the Investment Code of 1991 on withholding tax paid on dividends and interest paid on non residential shareholders in respect of 1998 and 1999. Although this appeal failed, it demonstrated that a right of appeal exists in such circumstances.

Appeal to the Court of Appeal

A taxpayer is further given a right of appeal to the Court of Appeal. Thus 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.⁸⁸ In the case of **Capital Finance Corporation Ltd V URA**,⁸⁹ where jurisdiction of the Court of Appeal was contested, the Court of Appeal held that it has jurisdiction to hear appeals from the High Court as the appellant first challenged the taxation decision in the Tax Appeals Tribunal.

Appeal to the Supreme Court

A taxpayer that is not satisfied with the decision of the Court of Appeal can, with leave of court, further appeal to the Supreme Court. The Supreme Court is the final court of appeal in Uganda.⁹⁰ Thus an appeal from the decisions of the Court of Appeal lies to the Supreme Court as a third appeal.⁹¹ Unfortunately, there is no case that has been handled by the Supreme Court since the enactment of the Income Tax Act, 1997. As a final appellate court, it would be a good development in the jurisprudence of tax law in Uganda if the Supreme Court

⁸⁶ See also section 27 of the TATA, which provides for appeal to the High Court on a question of law, not that of fact. Section 101 of the Income Tax Act applies when one goes straight to the High Court. Indeed a question of law has a bearing on the rights and obligations of a taxpayer.

⁸⁷ Civil Appeal No. 07 of 2001.

⁸⁸ See also section 10 of the Judicature Act Chapter 13 of the Laws of Uganda, which provides that appeals from the High Court shall lie in the Court of Appeal.

⁸⁹ Civil Appeal No 43 of 2000.

⁹⁰ Art. 132 of the 1995 Constitution of Uganda.

⁹¹ Section 4 of the Judicature Act.

would hear a case to test the new tax principles under the Constitution and the Income Tax Act.

7.3.5 Burden of proof in tax cases

The burden of proof in tax appeal cases lies on the taxpayer who shows that URA violated his or her rights. Section 103 of the ITA puts the onus of proof on a taxpayer in any objection to assessment against any decision of the High Court or its review or a decision of a tax tribunal, to prove that his or her assessment was excessive or erroneous. On the other hand, the CG is only required to prove his case on the balance of probabilities. The reason for the taxpayer to bear the burden of proof in appeal cases is that the taxpayer almost exclusively possesses the facts. Thus, the taxpayer cannot rely on URA in challenging the assessment. Section 96 of the ITA empowers the CG to make assessment based on his best judgment in case he or she is not satisfied with a return of income for a year of income. Moreover, there is no statutory requirement that his or her assessment should be supported by other evidence. This burden of proof in tax appeal cases may be cumbersome for taxpayers in Uganda because a taxpayer must prove to the tribunal that URA's assessment is based on arbitrary figures or incorrect calculations or even guesswork. This burden is excessive to the taxpayer because he is the one required to keep proper records. This is indeed difficult in Uganda because most taxpayers do not have systems of keeping proper records of relevant tax assessment thereby failing to prove the tribunal or court that the assessment was excessive. This could provide an avenue for infringement of the right to fair assessment especially to those who are not educated.

7.4 PROBLEMS ASSOCIATED WITH THE ENFORCEMENT OF TAXPAYERS' RIGHTS

7.4.1 Lack of professional experts

Since tax law is a developing area in Uganda, there are few experts on tax matters. As a result taxpayers do not get timely advice on their tax obligations and do not know when and how their rights are violated.

7.4.2 Lack of tax education and ignorance of tax rights

Most taxpayers are not aware of their tax obligations and rights due to lack of massive tax education in this country. As a result, most taxpayers are not aware of their tax rights and obligations. At the same time, they do not fully appreciate the importance of taxes. All these culminate into taxpayers not knowing how to enforce their tax rights.

7.4.3 Inefficient Investigation Procedures

The procedures of investigating and following up of taxpayers' complaints in Uganda are slow and poor. This leads to dragging in handling of tax cases.⁹²

⁹² For example, there are cases that are still pending before the Tribunal and other courts of law since 1992.

8. Analysis of rights and obligations of graduated personal tax payers

8.1 DEFINITION OF GRADUATED PERSONAL TAX

The term - graduated tax - has various definitions. It can be defined as a sum of money to be paid by citizens according to their income to the government for public purposes. It may also be defined as “a crude form of income tax levied in Uganda upon the entire population of able-bodied adult males and some women by the District Administration and Urban Authorities where they reside.”⁹³ It is also defined as a tax levied on income, actual or presumed, from all sources including land and other assets used for subsistence.⁹⁴ In Uganda, various items are liable to be imputed for purposes of levying GPT. These include all cash crops which can be sold at a commercial basis such as cotton, coffee and tea and food crop such as bananas, maize, cassava and Irish potatoes. Livestock items such as cattle, goats, sheep, chicken, pigs and other animals which the assessor may consider taxable from a commercial point of view.⁹⁵

In addition, business activities such as butchers, tailors, taxi operators, lorry owners, hides and skin dealers, petrol station owners, handicrafts, bicycle repairers, watch repairers, fish mongers, cattle traders, bar operators, hawkers, restaurant owners and shopkeepers are all liable for assessment of this tax.

8.2 GPT AS A SOURCE OF REVENUE

The Constitution of Uganda requires each local government to have a sound financial basis with a reliable source of revenue.⁹⁶ Therefore, local governments and councils are supposed to generate their own income. With the decentralization policy in Uganda GPT is a greater source of income for the local governments. According to the statistics available it contributes

⁹³ See Davey, K. (1974) p. 31.

⁹⁴ See Ghai, D.P (1966) p. 19.

⁹⁵ Circular DAC No 97, Ref. 1942/VI dated October 14th, 1983 Para 3: Assessment on Income Taxable Items including Cattle”.

⁹⁶ Article 176(1)(d) of the Constitution of Uganda

the biggest percentage to the local councils' budgets. Table 3 shows the revenue collected by Districts in the 2000/2001 financial year. For some districts the figures are not available.

Table 3: Collected revenue of districts in 2000/2001 financial year

District	Graduated Tax	Other rev. sources	Property Tax	Rev. from dept.
Adjumani	16,671,870	9,387,166	30,000	4,638,000
Apac	-	-	-	-
Arua	595,664,764	19,397,894	-	3,909,272
Bugiri	-	232,556,653	-	-
Bundibugyo	73,422,356	83,379,205	-	-
Bushenyi	926,745,893	123,123,100	351,393,720	-
Busia	-	-	-	-
Gulu	-	-	-	-
Hoima	-	215,370,788	-	-
Iganga	-	-	-	-
Jinja	174,173,717	42,319,410	9,609,280	56,324,952
Kabale	322,140,016	227,525,486	24,443,501	-
Kabarole	-	-	-	-
Kalangala	13,270,704	76,480,375	365,000	-
Kampala	3,192,993,000	15,802,967,000	3,494,218,000	-
Kamuli	-	-	-	-
Kapchorwa	-	-	-	-
Kasese	-	330,683,336	-	-
Katakwi	-	-	-	-
Kibale	135,224,386	92,309,210	-	-
Kiboga	45,830,987	53,592,715	792,500	74,350,000
Kisoro	105,664,907	60,533,594	-	3,929,548
Kitgum	-	-	-	-
Kotido	65,520,695	-	-	4,062,758
Kumi	227,907,830	20,691,827	472,800	7,299,250
Lira	344,766,032	113,928,204	7,579,200	-
Luwero	308,693,580	192,962,925	-	-
Masaka	359,207,614	142,845,762	-	-
Masindi	-	1,808,495,181	-	-

Table 3 continued

Mbale	-	-	-	-
Mbarara	1,220,381,921	571,214,833	28,605,406	-
Moroto	63,838,600	36,453,300	5,002,000	-
Moyo	141,107,732	130,500	-	-
Mpigi	386,000,000	40,000,000	-	12,000,000
Mubende	-	607,987,735	-	-
Mukono	437,631,934	615,000,587	-	-
Nakasongola	148,830,588	59,974,874	-	32,579,132
Nebbi	77,249,975	36,414,169	4,229,435	51,906,281
Ntungamo	-	-	-	-
Palissa	-	-	-	-
Rakai	-	-	-	-
Rukungiri	-	-	-	-
Soroti	-	-	-	-
Ssembabule	267,912,708	1,345,000	5,168,000	16,047,630
Tororo				
Total	9,650,851,809	21,617,070,829	3,931,908,842	267,046,823

Source: Local Government Finance Commission Report 2002

Table 3 shows that GPT continues to be the major tax in almost all the districts. However, some districts are reducing their reliance on GPT largely through increases in the yields from market dues and licences but there are variations between the districts. For example Bushenyi District Council has reduced its reliance on GPT from 93% of total income to 66% through the imposition of taxes on surveyed land through ground rents, surveyed land and planning fees. Jinja District has also reduced its reliance on GPT through licenses and land rent.

8.3 THE LEGAL BASIS FOR IMPOSING GPT

The 1995 Constitution of Uganda empowers local governments to levy, charge, collect and appropriate tax in accordance with any law enacted by Parliament by virtue of Article 152 of the Constitution.⁹⁷ It further provides that the fees to be levied/charged include *inter alia* GPT. Article 152 (2) restricts imposition of tax except under the authority of an Act of Parliament. The Constitution further provides that where a law enacted under Article 152 confers powers on any person or authority to waive or vary a tax imposed by the law, that person or authority must report to Parliament periodically on the exercise of those powers⁹⁸. Parliament is further

⁹⁷ *Supra* the Constitution of Uganda, Article 152.

⁹⁸ This power is limited to central government taxes.

enjoined by law to provide for the taxes that may be collected by a local government for payment into the Consolidated Fund. Local governments for their proper functioning can retain specified revenues. Such funds are initially collected for or on behalf of the Government from the district. The Local Government Act (LGA) enacted in 1997 regulates taxation at the local level.⁹⁹

The Local Government Revenue Regulations, made under the LGA¹⁰⁰ provide that the first revenue of a local government is “graduated tax” imposed by the local government. Regulation 2 provides that every District, City, Municipal or Town Council is empowered to levy an annual tax to be known as graduated tax on every male person who, on the first day of the financial year, is of or above the apparent age of eighteen years, and is residing within the local jurisdiction of that particular district. GPT is also levied on female persons of or above the apparent age of eighteen years, who are engaged in any gainful employment or business. The Regulations further provide that where a person takes up residence in the local jurisdiction of District Council after the first day of the financial year, tax payable shall be due and payable on the first day residence is taken. “Residence” is defined to mean the continuous residence for at least four months in a city, town, municipality, district or other local government. The period of four months may be either entirely within the relevant tax year or partly in that year and partly in the preceding year. Thus, if any person who, within four months of the tax becoming due, proves to the satisfaction of an assessment officer that he was not resident in the area of the District, City, Municipal Council or Town Council in the previous year or that he has paid a similar tax outside that jurisdiction in respect of the current year, such person is entitled to exemption from graduated tax in respect of the current year.

The Local Administration Graduated Tax (Payment by Installments) Regulations¹⁰¹ imposes a legal duty on employers to collect GPT from employees’ income and remit it to the Municipal or Town Councils or District Councils in case of rural areas. The employers are not required to enquire where the employees reside. They are only supposed to assess graduated tax in liaison with the urban authority on behalf of the District Councils.

⁹⁹ *Ibid*, Article 192.

¹⁰⁰ *Supra*, LGA Fifth Schedule.

¹⁰¹ The Local Administrations Graduated Tax (Payment by Instalments) Regulations, 1968; S.I. No 174 of 1968 as amended by S.I No 41. of 1969.

8.4 OBLIGATIONS AND ASSESSMENT OF GPT PAYER

8.4.1 Registration

A person liable to pay GPT is required to register him or herself with either the Urban Council Tax Office or the Sub-County Chief or any authority having jurisdiction over him or her before the expiry of the second month from the date he or she takes up residence in the area.¹⁰² Non-compliance with this requirement may warrant arrest and prosecution of the offender who may be liable to pay a fine of not more than one currency point or imprisonment not exceeding one month.¹⁰³

8.4.2 Assessment

Article 194 of the Constitution established the Local Government Finance Commission (LGFC). One of the functions of the LGFC is to advise the local government on appropriate tax levels to be levied by local governments.

According to the Local Government Revenue Regulations, no one is required to pay graduated tax more than once in respect of any tax year.¹⁰⁴ The Regulations further provide that graduated tax should be payable at the place of assessment. Every person assessed for GPT is required to complete the payment of graduated tax within the first six months of the financial year assessed.¹⁰⁵ A taxpayer is liable to pay additional graduated tax as assessed by the local government provided that a tax already paid elsewhere does not amount to the maximum tax liability determined by Government for that year.¹⁰⁶ In case the sum of taxes already paid together with the additional tax to be paid exceed the maximum graduated tax liability determined by Government for the year, a taxpayer is required to pay only the difference between the maximum liability and the sum of the graduated tax already paid. Graduated tax is paid on the basis of an assessment and each graduated taxpayer is required to keep evidence of his or her assessment.¹⁰⁷

¹⁰² The Local Government Revenue Regulations, 1997, Regulation 2 (13).

¹⁰³ *Ibid*, Regulation 2 (15). On currency points, *Supra*, n. 60

¹⁰⁴ *Ibid*, Regulation 2 (10).

¹⁰⁵ *Ibid*, Regulation 2 (7).

¹⁰⁶ *Ibid*, Regulation 2(11).

¹⁰⁷ *Ibid*, Regulation 8.

Who may assess?

Section 81 (5) of the LGA¹⁰⁸ provides that “the Minister of Local Government may by Statutory Instrument and in consultation with the Minister of Finance declare the scales or rates of Graduated Tax to be levied by Local Governments throughout the country”. The Minister of Local Government has made a Statutory Instrument to implement this section. Table 4 shows the rates of graduated tax to be imposed by local governments throughout the country.

Table 4: The local government graduated tax (declaration of rates) instrument, 2001

Annual Amount of Income (Shs)	Rate of Graduated Tax (Shs)
60,000 and less	3,000
Exceeding 60,000 but not exceeding 160,000	8,000
Exceeding 160,000 but not exceeding 260,000	13,000
Exceeding 260,000 but not exceeding 360,000	18,000
Exceeding 360,000 but not exceeding 460,000	23,000
Exceeding 460,000 but not exceeding 560,000	28,000
Exceeding 560,000 but not exceeding 660,000	34,000
Exceeding 660,000 but not exceeding 760,000	38,000
Exceeding 760,000 but not exceeding 860,000	43,000
Exceeding 860,000 but not exceeding 960,000	48,000
Exceeding 960,000 but not exceeding 1,060,000	55,000
Exceeding 1,060,000 but not exceeding 1,160,000	60,000
Exceeding 1,160,000 but not exceeding 1,260,000	65,000
Exceeding 1,260,000 but not exceeding 1,360,000	70,000
Exceeding 1,360,000 but not exceeding 1,460,000	75,000
Exceeding 1,460,000 but not exceeding 1,560,000	80,000
Exceeding 1,560,000 onwards.	100,000

Source: The Local Government Graduated Tax (Declaration of Rates) Instrument, 2001

Because of massive poverty in the country, most GPT payers are assessed at the minimum rate of three thousand.¹⁰⁹ A person under that category is the one who does not earn Shs. 60,000 or less in a year¹¹⁰ and the law exempts certain categories of persons from paying

¹⁰⁸ Local Governments (Amendment) Act 2001.

¹⁰⁹ See the Local Government Graduated Tax (Declaration Rates) Instruments, 2001.

¹¹⁰ *Ibid.*

GPT.¹¹¹ Indeed, poverty has always been one of the aspects to be considered when assessing a taxpayer.

The rates and income ranges for assessment of GPT are not fixed for all times. The Minister of Local Government, by way of amendment of the existing statutory instrument, fixes graduated tax rates almost for each financial year. In the financial year 2001 the minimum GPT rate was Shs. 3000 while the maximum was Shs. 100,000 all over the country. This system of assessment has several disadvantages. The tax incidence is regressive within each income bracket and between low and high incomes. A simple analysis of the rates indicates that the low-income groups pay higher proportion of their income than do the higher income groups.

In respect of the ceiling of Shs. 100,000, there are two disadvantages. First, a substantial change in incomes necessitates revision of the ceiling to prevent the local governments from receiving less or more revenue in real terms as the case may be and secondly, after the ceiling the tax ceases to be proportional or graduated but becomes merely regressive. Such a ceiling has to be fixed so that the operation of the tax does not interfere with the income tax.

The Tax Assessment Committee (TAC) appointed by the District Council does assessment in rural areas at the sub-county level. In urban areas, the TAC appointed by the Urban Council does the assessment.¹¹² A taxpayer is entitled to an interpreter in a language he or she understands in case she or he is unable to speak or understand the language of the TAC. Within one year of making the assessment by TAC, the Council can order amendment of an assessment if they discover that the TAC made an error or miscalculation. In case the amendment is higher than the previous assessment, the amendment will not be done unless the taxpayer is given a hearing and he or she has a right of appeal against the amended assessment. If the amendment results in lowering the tax, the taxpayer is credited with the balance in his or her favour for the tax of the following year.

¹¹¹ These examined are in Section 8.4.5.

¹¹² *Supra* Local Government Revenue Regulations, Regulation 5. The members are as follows: Chairperson is the Sub-County Chief Members: LCII and LCIII Chairpersons, a Parish Chief of the Parish in question plus another Parish Chief appointed by the County Chief. During the assessment, the Committee moves to the Parish where the assessment takes place.

In practice every year, the Assessment Committee sits to assess the potential taxpayers for the coming year. This regular assessment of taxpayers' ability to pay the assessed GPT enhances their rights in that no one is presumed to pay a tax, which he or she cannot afford to pay. At the same time, it reminds the taxpayer of his or her obligation to be assessed and pay GPT annually. The problem, however, is that this is not usually done, which affects the rights of GPT payers.

Who may be assessed?

Every male adult is assessed and liable to pay GPT if, on the first day of the financial year, he is of or above the apparent age of 18 years. He must be a resident in the particular area where he is assessed. A female adult is assessed and liable to pay tax if she is of or above the age of apparent age of 18 years and is engaged in gainful employment or business.¹¹³ It is interesting to note that residence is not a requirement in case of women taxpayers. One wonders whether this is intentional or an omission. "Residence," which applies only to male taxpayers, means continuous residence of at least four months in the area and is deemed broken by reason of the absence from there less than 5 weeks on each occasion.¹¹⁴ This law is discriminatory against women and thus needs review for the purposes of ensuring gender equality.

8.4.3 Factors determining assessment

Several factors are considered when assessing GPT. Age is the first and foremost factor considered. Monetary income is also a major factor when assessing GPT. Other factors that may be considered include the following. First, economic factors such as agricultural growth rates and inflation rates in the country. These have a big bearing on the taxpayers' income and his or her capacity to meet his financial obligations. Second, the assessment committees may also take minimum wage levels into consideration. In fixing graduated tax grades, especially the minimum grade, the assessment committee has to consider the government minimum wage as set by the Ministry of Public Service. That ensures that poor persons are not taxed highly to their disadvantage.

The taxpayer's levels of GPT are also determined on the basis of imputation levels. These levels depend on production yield from the taxpayers' land acreage as well as the value based on ex-farm gate prices. These two are usually determined on the basis of information given by the technical field staff, especially those from the Ministry of Agriculture and Animal Industry

¹¹³ *Ibid*, Regulation 2.

¹¹⁴ *Ibid*, Regulation 2 (4).

as well as the Ministry of Trade and Industry. The technical officers only give ex-farm gate prices for various commodities without considering estimated and reliable yield per acre of the items.

The essence of using imputation levels is to make sure that tax is paid from a portion of a person's actual income. In case of GPT, the assessment is done on property capable of yielding income whether such income is yielded or not. This is not fair because the assessment done in such a manner is speculative. In some cases, a taxpayer assessed on such estimates may end up paying far above what he or she could readily dispense from his or her income if he or she does not appear before the Assessment Committee to contest the assessment.

The assessment of income in agricultural areas, in respect of peasants and farmers, is done by determining a "standard rate of return per unit" on every source of income found in the area. For example, so many coffee trees bearing so much per season or so much head of cattle or other animals. In fishing areas, in respect of fishermen, so much fish per fishing boat is taken into consideration.¹¹⁵ This system of assessment based on the income presumed is not fair due to several reasons. First, the costs of production are not put into consideration. Secondly, the assessment is based on gross income and it does not consider farm expenditure. Lastly, the assessment fails to allow for fluctuations in profitability due to market, disease and other forces of nature such as drought. Although the tax assessment officials made this observation many years ago, the situation has not changed. It prejudices the rights of graduated personal taxpayers in this country.

For taxpayers in formal employment, the law requires an employer to deduct the tax in four monthly installments from the taxpayer's monthly salary with effect from the first month of the financial year.¹¹⁶ This ensures that the tax is paid before the end of the four months without any expenses of collection and the payer almost imperceptibly pays while the employer is freed from the anxiety of being deprived of a large number of employees owing to their being harassed for GPT defaulting. The self-employed taxpayers are required to pay at once. This is unfair because their income may not come at once. They are discriminated against compared to their counterparts in formal employment who are permitted to pay the assessed tax gradually.

¹¹⁵ See Due (1964) p. 57.

¹¹⁶ See The Local Administration Graduated Tax (Payment by Instalments) Regulations, 1968 S.I. No 174 of 1968 as amended by S.I. No 41 of 1969.

Casual labourers are regarded as poor persons and are supposed to pay the minimum rate of Shs.3.000/= . This may not be a fair assessment because the assessment system presumes that such persons earn income that should be taxed. In some cases people leave their home to go and work for wages in far away places and yet their pay is little. Indeed it is unfair to tax a poor person because he or she earns actual income from a place far away from his home income that he or she may spend immediately.

8.4.4 Powers to increase graduated tax rates

The Local Government Revenue Regulations require that no person shall pay more than the maximum graduated tax liability determined by Government for that year.¹¹⁷ The Minister of Local Government is empowered to prescribe the scale of GPT on the advice of the Local Government Finance Commission (LGFC) as provided for in Article 194 (4) of the Constitution. Therefore GPT can be increased by the Minister of Local Government on the advise of the Local Government Finance Commission.¹¹⁸

8.4.5 Exemptions

Regulation 2(9) of the Local Governments Revenue Regulations provide categories of people who are exempted from payment of graduated tax. These include the following:

- Every male person below the apparent age of eighteen years;
- Every female person not engaged in any gainful employment or business;
- A person holding a visitor's pass or transit pass issued by the Immigration Department and who does not reside in the area of jurisdiction of a local council for more than four months;
- A student studying in a recognized school or institution during the year in which payment may have been due;
- Diplomatic and consular personnel, employees of international organisations and representatives of other states or international organisation or members of their national organisations, members of their staff and families;
- Members of the Uganda Peoples Defence Forces, the Police Force, the Prisons and the Local Defence Forces.

¹¹⁷ *Supra*, Local Government Revenue Regulations, Regulation 10.

¹¹⁸ The Current GPT rates were declared by the Minister under the Local Government Graduated Tax (Declaration Rates) Instrument, No 38 of 2001 (see table 4, p 57).

In addition, the Chief Administrative Officer (CAO) or Town Clerk may, on the recommendation of the Parish Administrative Unit Council, grant partial or complete exemption from the payment of graduated tax either generally or in respect of any year to any person, who, in his opinion, is unable to pay the amount due from him or her due to poverty arising from old age, infirmity or other good cause.¹¹⁹ The regulations do not define what is “good cause”. Therefore it is at the discretion of the CAO or the Town Clerk. However, good cause may be sickness, wars, droughts or cattle raids or absolute poverty. Unfortunately, the courts have not appreciated some of those reasons as causes of failure to pay GPT. For instance in Soroti in the case of **Uganda V Okiror Paul**,¹²⁰ the accused admitted not paying graduated tax but said that he lost his sister and mother and had orphans to look after. The court nonetheless sentenced him to one month imprisonment. Thus, the discretion to grant exemption has been limited in most cases to old age but not other reasons such as lack of source of income. This in some cases is inequitable and unjust to young GPT payers.

8.4.6 Assessment of employed taxpayers

The law regarding assessment of employed taxpayers is not very clear. The Local Government Revenue Regulations provide that every person liable to pay tax and resident in a sub-county shall be assessed by a TAC appointed by the District Council, and a person resident in an urban area shall be assessed by the TAC appointed by the Urban Council. This implies that a person can only be assessed for tax in an area where he or she resides and pay the tax in that area. The notion of residence is not applicable to employees of Government.

8.4.7 Collection and administration

Regulation 10 (5) of the Local Government Revenue Regulations states that tax due includes tax due and payable during the two years immediately preceding the year in which proceedings are instituted. This means that a person is liable as tax defaulter if he or she does not possess tickets for the last years. In case of a person paying GPT for the first time, the ticket issued indicates that one is a first payer.

Tax collectors usually move from house to house in normal working hours and at times set road blocks to check for graduated tax tickets and arrest tax defaulters. The Local

¹¹⁹ *Supra* Local Government Revenue Regulations, Regulation 15 (4).

¹²⁰ Criminal Review Case No Msc. 23 of 1990 (Unreported)

Government Police¹²¹ does the enforcement of graduated tax though, in some cases, this is done by Local Defence Unit's officers (LDUs). The power of LDUs to enforce GPT collection is not clear.¹²² The practice is that LDUs normally accompany Chiefs to arrest tax defaulters. They do not collect the taxes themselves. In cases where a warrant of arrest has been issued by court, and there are no local government police staff, LDUs may execute the arrest warrant by arresting the defaulters and handing them over to the Chief. They, however, may abuse such powers by extorting ransoms from the tax defaulters and letting them free or evade arrest.

As far as employed persons are concerned, collection and administration of tax is according to the Local Administrations Graduated Tax (Payment by Installments) Regulations. It is a legal duty of the employers to collect GPT from their employees. Under Regulation 3, the employer is bound to deduct the tax at the source in accordance with the rates of tax. Regulation 4 requires the employer to notify the taxpayer in writing. This notification is usually done through the payment receipt. Under Regulation 6, the employer must hand over the deducted taxes to the relevant taxing authorities.

In order to ensure compliance with the Regulations, certain guarantees are imposed under them. Regulation 7 provides that if the employer does not hand over the tax, a proper officer¹²³ such as the Treasurer of a District Local Council, Municipal or Town Council may give notice to him requiring him to render a return showing the names and address of each of his employees who are liable to pay the graduated tax to whom he or she made emoluments, together with such documents as salary vouchers, wage sheets or records relating to the payment of emoluments as may be stated in the notice. The officer has to ascertain what tax then would have been deductible and payable to the employer. This requirement is designed to guard against unscrupulous employers unwilling to comply with the Regulations. Regulation 9 requires the employer to ascertain who the taxing authority is. Regulation 13 allows the proper officer to inspect the employers' records. There is a penalty for failing to comply with the requirements of the regulations. Regulation 16 provides that any employer or person who

¹²¹ Section 67 of the Police Act, Chapter 303 of the Laws of Uganda empowers the Local Administration Police to work under the local government system.

¹²² There is no law that deals with the powers of arrest of the LDU's. At the moment they work under the police.

¹²³ Regulation 17 of the Local Administration Graduated Tax (Payment By Installment) Regulations, 1968 defines a proper officer to mean the Treasurer of a district administration, municipality or town council and includes an officer appointed to perform the duties of a treasurer.

fails to deduct or pay graduated tax is liable to pay a penalty of 50% of the amount of tax which, had it not been for his failure, delay, neglect, deferment or agreement, would have been deductible and payable. Such penalty is deemed to be part of the amount of tax due and recoverable from the employer or person.

8.4.8 Effective date of liability

The Local Government Revenue Regulations provide that the graduated tax shall be due and payable on the first day of the beginning of the financial year in each year. Where a person takes up residence in the area of jurisdiction of a District, City, Municipal or Town Council after the first day of the financial year, the tax is due and payable on the day residence is taken.¹²⁴ Residence is defined to mean continuous residence for at least six months in that area.¹²⁵ A taxpayer is required to complete the payment of GPT within the first six months of the financial year assessed.¹²⁶

The financial year of Local Government is from 1st July to 30th June of the next calendar year. Therefore one commits an offence of non-payment of GPT if, by the 1st day of July, he or she has not paid graduated tax as assessed. However, some local council officials, especially in rural areas, start announcing that people should pay taxes before the due date. They end up using unacceptable and illegal means of collecting taxes including coercive means. Sometimes tax collectors unnecessarily harass taxpayers. At times taxpayers are assaulted, wrongly arrested and falsely imprisoned. The courts have, sometimes, been fair to protect taxpayers. Thus in the case of *A.B. Sindano V Ankole District Administration*,¹²⁷ the local Muluka Chief and his askaris, while seeking to arrest graduated tax defaulters, arrested the Plaintiff, who for some years had been a magistrate and was a respected personality in Ankole. They forcibly removed him from a bus in which he was traveling, tied his hands and tied him to an electric post at a trading center. Later they led him to the Gombolola headquarters where he was detained for some hours and later released. The Court held that the arrest and imprisonment were unlawful, false and unjustified. In awarding heavy damages against the defendant, the learned judge observed:

¹²⁴ *Supra*, Local Government Revenue Regulations, Regulation 2.

¹²⁵ *Ibid*, Regulation 2 (4).

¹²⁶ *Ibid*, Regulation 2 (7).

¹²⁷ HCCS 463.

“Heavy awards of damages against Local Administrations may well encourage those authorities to choose and train their local chiefs and officers with more care, and the public will ultimately benefit from more competent, truthful and better trained local officers.”

The decision of the learned judge emphasized the need to train local council officials in the elementary provisions of the law regarding their duties, which include collection and administration of graduated tax. If not trained, they tend to apply impetuous means of collecting tax to taxpayers who may not even know their rights.

8.5 ENFORCEMENT MECHANISMS FOR PAYMENT OF GPT

8.5.1 Arrest by the Local Government Police (LGP)

Section 68 of the Police Act provides that the Local Administration Police Force shall be under the local government system. Thus, local government police officers have powers of arrest. The usual means of enforcing payment of GPT is to stage roadblocks and arrest people who are travelling but who have no GPT tickets. A person who on the surface of it appears to be eligible to pay GPT is required to present his or her GPT ticket or identity card in case he or she is a person exempt from payment of GPT.

8.5.2 Arrest by local council officials

The powers of the LC officials to arrest the GPT defaulters are not clearly defined. Under the Local Government Act, they are given powers to assist in the maintenance of law, order and security.¹²⁸ The LC officials enforce the collection of GPT. They move from house to house usually in the company of a chief or local government police officers or LDUs either at night or in the morning looking for GPT defaulters. This system of enforcement of GPT interferes with the right of privacy. Sometimes the defaulters are crudely arrested in front of the family members.

8.5.3 Imprisonment

Regulation 10 (3) provides that any person who without lawful excuse, the proof of which shall lie on him or her, refuses, neglects or fails to pay the tax to which he or she is liable within six months from the date the tax is due, commits an offence. On conviction, such a

¹²⁸ *Supra*, LGA section 27(c).

defaulter is liable to a term imprisonment not exceeding one month or to a fine not exceeding double the amount of the tax due.¹²⁹

Imprisonment is imposed on a tax defaulter for having failed to pay GPT at the due date. It does not matter whether he has an excuse or not. In **Uganda V Okiror Paul**¹³⁰ the accused pleaded guilty of defaulting payment of GPT because his mother and sister died and being the first born he had orphans to look after. The court still sentenced him to a term of one month imprisonment. This particular case illustrates what actually happens in court when it comes to handling GPT cases. However, most of the GPT cases are handled by the magistrates' courts, not the High courts. In Uganda, decisions of the magistrate courts are not reported and they rarely come to the attention of the High Court because most convicts do not appeal against the convictions.

Generally, the courts seem not to recognize that poverty can be an excuse for non-payment of tax. As a result prisons are overcrowded with many tax defaulting prisoners at times spending days without food or medical facilities.

Since 2001, there has been limited prosecution of GPT defaulters because of the declaration by the President in the campaigns¹³¹ of the presidential elections of 2001 that the minimum GPT should be Shs 3000. This has created confusion between the taxpayers and the local governments. Some persons who had been assessed to pay higher taxes insisted on paying the minimum of Shs. 3.000 after the presidential pronouncement. Local Government officials are reluctant to prosecute GPT defaulters because the assessment process is still inadequate. Moreover, they are also hesitant to handle a matter that was controversial in the presidential campaigns because it may be taken as if it is undermining the President's manifesto. As a result paying GPT by non-salaried taxpayers is still a problem.

8.5.4 Recovery of tax and penalty for non-payment

The Local Government Regulations provide that where a taxpayer does not pay the required tax or any part of the tax remains unpaid at the end of the first six months of the financial

¹²⁹ In the City hall Court of Kampala, for example in 1997-2000, the punishments have ranged from a caution, a fine of 5000 to 50,000 or one week, two weeks up to 3 months imprisonment or both. The punishment of three months imprisonment is contrary to the Local Government Act.

¹³⁰ Criminal Review Case No Msc. 23 of 1990 (unreported).

¹³¹ This was declared by President Yoweri Museveni as a campaign strategy.

year, a surcharge of 50% of the unpaid amount shall be charged.¹³² The procedure of collecting and enforcement of surcharge shall apply. The District Council or Urban Council can sue a taxpayer for recovery of tax.

The implementation of this provision by court may still be difficult because of poverty. In the case of **Uganda V Musoma John**,¹³³ a casual labourer of 21 years pleaded guilty to tax defaulting and was convicted and sentenced to pay the tax due, a surcharge and a court fine. Since he could not pay the tax and the surcharge, he was imprisoned. Similarly, in the case of **Uganda V Okaule**,¹³⁴ the accused, aged 58 years and a cultivator, pleaded guilty to having not paid graduated tax contrary to Regulation 10 (3). He said that he had been sick all long and pleaded for mercy. The court sentenced him to a fine of Shs. 2000 or 14 days imprisonment upon recovery and in addition to pay the assessed tax and the surcharge. Since he did not have the money he served the 14 days in prison. This method of recovery seems unjust because the GPT payers are punished for being poor. Poverty can be a cause of failure to pay GPT.

Generally in the late 60s and early 70s courts seemed to have recognized that poverty can be an excuse for non-payment of GPT. For example in the case of **Uganda V Erifazi Winyi**,¹³⁵ the accused was charged in the Magistrate' Court with failure to pay graduated tax c/s 69 (3) of the Local Administration Act (now repealed). In his answer to the charge the accused said that he failed to pay the tax because he had no money. The accused was found guilty and sentenced to a fine. On revision, the High Court (per Jones J) held that a person's lack of money may, according to his circumstances, amount to a lawful excuse for non-payment of tax within a stipulated period under that Act. The judge held the same view in the case of **Uganda V Rubondo s/oRuturu**,¹³⁶ where the accused pleaded that he was poor and could not find 15 cents, let alone the assessed tax. He was sent to prison. On revision the judge held that "poverty" if proved, must be the best lawful excuse since tax assessment is based on property. Thus, when one has no property he/she has no income. Present courts, however, do not seem to appreciate that poverty is a good reason for failure to pay GPT as seen in the above cases. The recent Local Government Revenue Enhancement Study¹³⁷ has revealed that

¹³² *Supra*, Local Government Revenue Regulations, Regulation 10.

¹³³ Criminal Review Case No. Msc 75 of 1998.(Unreported)

¹³⁴ Criminal Law Review 75 of 1998 (Unreported)

¹³⁵ Criminal Review Case No. 90 of 1969 (Unreported).

¹³⁶ Criminal Review Case No. 286 of 1971.

¹³⁷ Local Government Revenue Enhancement Study, Final Report, 2000.

there is widespread poverty in rural areas. For instance it was indicated in the survey that some 44% of the population were estimated to consume less than required to meet basic necessities of life while 25% could not meet their daily food requirements. This survey is evidence to show that a reasonable percentage of the population is poor, and therefore, they cannot afford to pay GPT. Given the widespread poverty in Uganda and the unequal access to key public services, the enforcement of GPT needs to be consistent with equity and poverty considerations so as not to violate taxpayers' rights.

8.6 ENFORCEMENT OF RIGHTS OF A GRADUATED PERSONAL TAXPAYER

Graduated tax like Income tax should conform generally to accepted rights of taxpayers. Therefore a GPT taxpayer should be accorded rights such as certainty, neutrality, equality and equity, which are designated as “canons of taxation” that a good tax system should conform to and which are contained in the Taxpayer’s Charter.¹³⁸ These canons of taxation are guidelines towards fair tax liability assessment.¹³⁹ Unlike the Income Tax Act, the GPT legal framework is obsolete. It does not contain modern principle of taxation. Therefore the assessment of GPT rights is de facto limiting common rights unlike income tax which has wider rights. The rights that can be analysed are as follows:

8.6.1 The right of certainty

Certainty of GPT requires that the tax should be clear to both the taxpayer and the tax collector. In enforcing the right to certainty there are three areas of concern: The first one is the time of payment. It is known by taxpayers that GPT is an annual tax, payable once a year. However, there is some controversy as to the time of payment. Section 82 of the Local Government Act provides that the financial year of Local Government Councils shall be the period beginning from the 1st day of July, and ending on the 30th day of June the following year. Further, Regulation 2 (2) of the Local Government Revenue Regulations¹⁴⁰ stipulates that graduated tax shall be due and payable on the first day of the beginning of the financial year and regulation 2 (7) adds that it should be completed in the first six months. Adherence to the regulations would require that the local councils assess the eligible taxpayers between the 1st January and 30th June and collect the tax between 1st July and 31st December. In practice this is not done instead the local councils do it the other way round. They collect tax between

¹³⁸ See Taxpayer’s Charter 2000, *Supra*.

¹³⁹ See Davies (1996).

¹⁴⁰ *Supra*, Local Government Revenue Regulations.

January and June and assess them between June and December. The situation for salaried GPT payers is equally confusing. Employers deduct GPT from the salaries of the employees in four monthly installments beginning from January if the employee had taken up the employment by 1st January. In other cases, deductions begin as soon as a person takes up the employment even after 30th June up to December. This unclear position of application of the law brings uncertainty as to when the GPT taxpayer should pay tax according to the law.

The second issue is uncertainty as to the manner of payment. The regulations do not expressly stipulate that the payment of tax can only be paid in monetary terms. However, it has been implied that payment of GPT should be done in form of money. This lack of clarity of payment causes possible uncertainty as to the mode of payment. This is especially so since most rural GPT payers do not have cash and yet they may be willing to pay by livestock or crop harvest.

The third is the uncertainty as to the amount to be paid. The assessment of GPT, especially in rural areas, is based on the use of enumeration forms, which list the items and property the taxpayer owns and the monetary imputation attached to each item. The problem with computation of the amount lies in the use of imputation values. These are hypothetical values attached to items or activities. Thus, where the values are off mark, injustice will occur because one may be easily over assessed or under assessed.

8.6.2 The right to neutrality

Neutrality means that a tax should influence as little as possible the way in which economic activities are carried out. It should not interfere with the activities of the community. The present practice is that collection of GPT disrupts activities particularly during the tax swoops and on apprehension of defaulters. People such as hawkers lose their items when trying to escape from GPT enforcement officers. Others spend a number of days hiding and others avoid traveling for fear of being arrested.

8.6.3 The right to equality

This principle is to the effect that tax liability must match with the taxpayer's income and expenditure levels. The principle of equity has two facets: horizontal and vertical equity. Horizontal equity means that those with similar levels of income should pay similar levels of tax. This is derived from the "ability to pay" principle. In other words, those with equal incomes should pay equally.

The assessment of graduated tax is based on the use of enumeration, which lists the items, or property, a taxpayer owns and the monetary imputation values of each item. The prices or imputation values are largely uniform regarding the enumeration and assessment. In practice, however, the monetary gain from these products not only varies from sub-county to sub-county but are also remarkably different at district or regional level. Apart from that, the GPT system does not consider those who may fail to sell their produce or whose yields are affected by drought, disease or storms. This is coupled with the use of imputation values and not the amount actually attained. This makes the realization of horizontal equity virtually impossible and it is unjust to the GPT payers.

Vertical equity means that people in different economic circumstances should pay an approximately different amount of tax. The principle proceeds from the premise that the more you earn the more you should pay. This calls for different amounts of tax to be paid by people with different abilities. The current GPT structure, which took effect from July 1st, 2001,¹⁴¹ set the minimum GPT tax rate at Shs. 3,000 and the maximum at Shs. 100, 000/-. This tax structure has not yet addressed the issue of horizontal equity because those who earn a lot are still paying less compared to those who earn little or nothing.

8.6.4 Right of appeal

The Local Government Revenue Regulation gives a GPT payer, who is dissatisfied with the assessment of his or her tax, a right of appeal within 30 days against the decision of the Assessment Committee.¹⁴² Thus any of the following GPT payers may appeal: those assessed to pay tax for which he or she is not liable under the regulations; those assessed to pay a rate of tax higher than the standard rate of tax; those refused exemption from the payment; and those whose complete exemption or partial exemption from payment of tax has been revoked or varied by a Tax Assessment Committee.¹⁴³ A chief in charge of a sub-county or a town clerk in an urban council, in which that taxpayer resides, may also appeal to the Tax Assessment Appeal Tribunal (TAAT) where he or she is satisfied that a taxpayer has not been required to pay graduated tax for which he or she is liable to pay, or has been required to pay tax at a lower rate than she or he should pay, or has been granted partial or complete exemption from the payment of tax unreasonably.

¹⁴¹ This legalized President Yoweri Museveni promise in the Presidential Campaign. See Statutory Instrument No 38. of 2001 issued by the Minister of Local Government Jaberu Bidandi Ssali.

¹⁴² *Supra*, Local Government Revenue Regulations, Regulation 7 (4).

¹⁴³ *Ibid*, Regulation 7.

The TAAT is composed of the following members: The Chief Administrative Officer (CAO) as Chair Person, the Chief Finance Officer, the Secretary of Finance for LC V, the District Tax Office as the Technical Advisor and the Assistant Chief Administrative Officer. This Tribunal may confirm or vary the decision appealed against.¹⁴⁴ This process of appeal may not favour the rural GPT payers because the 30 days given to the taxpayer are inadequate. In most cases, the assessed get to know their tax liability on the day tax collectors come to arrest the tax defaulters. This problem stems from the fact that many assessment forms are not returned in time while others are lost. The composition of the tribunal also makes it inefficient. The tribunal is composed of members who, due to various responsibilities and busy schedules cannot, for practical reasons, always convene to constitute the tribunal. This culminates into many appeals pending before the tribunal. These people also have conflicts of interest. They decide on appeals, yet benefit from GPT payment.

Any person aggrieved by the decision of the TAAT may appeal to the Minister of Local Government.¹⁴⁵

8.7 PROBLEMS ASSOCIATED WITH THE ENFORCEMENT OF THE RIGHTS AND OBLIGATIONS OF GPT PAYERS

There are several problems associated with administration, assessment and collection of GPT that affect the rights and obligations of GPT payers.

8.7.1 Assessment methods

Assessment of tax is difficult because GPT payers do not keep accounts. This, therefore, means that there are no guidelines to determine one's income. This leads to under or over assessment of taxpayers.

In addition, the assessment rules are not observed by the TACs. Their assessment depends upon the accurate reading of the taxpayer's sources of livelihood by the parish and village chiefs. Sometimes assessment committees do not complete assessment forms and there is no record of the method of liability, which was adopted to compute the tax. This leads to strong suspicion that assessments have been based upon arbitrary judgment of the individual circumstances rather than an arithmetical connection between the sources of income and the tax grade stipulated in the rules and regulations. The situation is aggravated by lack of people's

¹⁴⁴ *Ibid*, Regulation 7 (3).

¹⁴⁵ *Ibid*, Regulation 7 (5).

representation on the assessment committees.¹⁴⁶ The assessment may be unfair and sometimes biased if the person being assessed is not present at the time of assessment in person or through a legal representative.

Favouritism, and not transparent process of appeal, encourages arbitrary assessment. Thus, in some cases there is discrimination and over or under assessment of taxpayers. The Commission of Inquiry of Iganga Tax Riots¹⁴⁷ revealed that there was favoritism and cheap popularity by the assessment team and that chiefs and LCs used arbitrary means in assessing tax. Further, the taxpayers conceal sources of income by, for example, assigning ownership of property to other taxpayers already on the maximum tax rate or resident elsewhere. Yet, the TAC may not have information about the taxpayers' property, especially where it is scattered and easily transferable.

8.7.2 Taxpayers' registration

Lack of well-compiled registration and up-date taxpayers registers also complicates enforcement of taxpayers' obligations. The local councils cannot readily and efficiently access information regarding those persons eligible to pay graduated tax in their districts and those in neighbouring and far ones. As a result the accused defaulters plead that they had paid in other districts but their tickets were lost and so the courts would dismiss such cases if it cannot be proved that the tax was paid. This was the situation in the case of **Uganda V Gidudu Lawrence**,¹⁴⁸ where the accused was charged with defaulting to pay graduated tax. The accused said that he had paid but the ticket was lost and could not be traced. The court entered a plea of not guilty. Prosecution stated that the taxpayer register cannot be traced and he was acquitted.

8.7.3 Lack of an effective investigative machinery

A major problem that affects enforcement of GPT obligations is lack of an investigative machinery by the District Councils. They simply arrest whoever has no GPT ticket on him or her since they cannot accept the reasons why he or she is not in possession of the ticket while arresting him or her. However, the burden shifts to the prosecution to prove beyond

¹⁴⁶ The present composition of chiefs and LCs excludes representation from ordinary taxpayers. See footnote 114 for the composition.

¹⁴⁷ Ministry of Local Government, The Republic of Uganda (1994), Iganga Tax Riots Commission of Inquiry Report.

¹⁴⁸ Criminal Review Case No Msc 84 of 1998.

reasonable doubt that he or she is a defaulter. As a result, GPT cases are either withdrawn or dismissed. This is because once taxpayers produce evidence of payment of the due tax, they must as of right be set free.

8.7.4 Corruption

Another problem is corruption and fraud by the tax collectors.¹⁴⁹ The most commonly used method of perpetuating these frauds includes: double numbering of tax tickets and actual embezzlement of the money collected. Moreover, there is also lack of effective sanctions against tax collectors. The selection, discipline and discharge of tax collectors are in the hands of local councils whose decisions may not be easily reviewed. This may lead to negligence of tax collectors.

8.7.5 Gross ignorance

There is no adequate tax collection staff and those that are employed lack training and experience or may be biased or succumb to political pressure. The high percentage of illiteracy in Uganda for both tax collectors and payers make them fill the assessment forms improperly or not fill them at all. Moreover those who fill them do not follow computation rules.

Sometimes the tax collectors do not have the proper knowledge about the effective date of liability to pay. Thus, a lot of innocent citizens have been harassed and wrongly prosecuted for non-payment of tax when it is not due. Political influence on the tax collectors makes them lenient and inconsistent in tax collection.

Some taxpayers even do not know that it is their obligations to pay GPT. This ignorance was portrayed in the case of **Uganda V Epure Joseph**¹⁵⁰ where the accused pleaded to non-payment of GPT contrary to Regulation 10 of Local Government Revenue Regulation. In court the accused stated that his boss, who was liable to pay the graduated tax, was not present. The court could not excuse that ignorance and the accused was convicted and sentenced to a term of three months imprisonment.

Tax administration is the most difficult in areas with large immigrant populations. In areas such as Kibaale, Kotido and Moroto Districts, where people migrate from time to time, it is

¹⁴⁹ See *Supra* Ministry of Local Government, Iganga Tax Riots Commission Inquiry Report.

¹⁵⁰ Criminal Review No Msc. 69 of 1998.

not easy to track the tax defaulters. Immigrants are able to evade tax or pay it to their district of origin thus depriving their newly acquired district revenue.

8.7.6 Poverty

Poverty is another obstacle for graduated tax. In the north, eastern and parts of western Uganda, there has been insecurity and poverty is rampant. People do not have money to pay GPT but even in other regions most people rely on subsistence economy therefore their income is meager.

8.7.7 Tax evasion

There is a widespread evasion of GPT. The recent Local Government Study¹⁵¹ has revealed that the problems of tax evasion are more complex. The problems identified can be summarized as follows:

- Most people do not see a clear link between paying taxes and service improvements;
- GPT and user fees for health in particular are regarded as unfair. GPT does not reflect the ability to pay;
- There is no proper tax collecting culture. There is use of excessive force especially against the poor defaulters;
- There is lack of accountability;

8.7.8 Legislation

Lastly, the law regarding collection of GPT is not elaborate enough. As a result, its interpretation and enforcement cause a lot of injustice to the taxpayers. For example people of equal income in various parts of the country pay different rates because of the generalization by imputation values and also because of corruption and inefficiency of chiefs and tax assessors.

¹⁵¹ Local Government Finance Commission (2000), Local Government Revenue Enhancement Study Final Report.

9. Conclusion and recommended measures

This study has looked at a number of issues with regard to the implementation of obligations and rights in income tax and graduated tax in Uganda. It can be concluded that the NRMG has made several measures to improve the efficiency of the tax system in respect to the two types of taxes.

For income tax, measures that have been adopted include the establishment of URA, which is vested with powers to collect and administer income tax, and the enactment of the new ITA with elaborate provisions on income tax administration. There are comprehensive provisions on assessments, incentives, accounting and objections and appeals. The establishment of the TAT has strengthened the procedure of objection. The establishment has to some extent strengthened the URA's practices with respect to the administration of the income tax laws. The Tribunal has gone beyond the initial task to determine facts of cases and now also interpret taxing provisions and the effect they have on total tax liability. To that end, the Tribunal has made a recommendable contribution towards the development of tax law in Uganda. There is a compendium of the rulings of tax cases, which provides the interpretations of the income tax laws by the tribunal. The interpretation has made the taxpayers to start appreciating their rights. This is shown by the increase in the number of tax cases being handled by the Tribunal. Therefore, the administration and collection of income tax is becoming more user friendly and effective.

Nevertheless, there are still many problems. Table 5 below shows a summary of the analyses of the various loopholes with respect to the taxpayers' rights in the ITA. As the table shows some of the loopholes are major ones because they are often used by URA in practice while some loopholes are not actually very important in practice because in practice they are rarely used.

Table 5: Summary of findings with respect to taxpayer rights in relation to income tax

Loopholes in tax legislation	Use of loophole in practice	
	<i>Often</i>	<i>Rarely</i>
<i>Major problem</i>	<p>6.3.1 Third party notices to bankers issued without court warrants; may be abused.</p> <p>6.3.3 Investigation and audit conducted without regulation; is abused.</p> <p>6.3.7 Imposition of 30% payment not clear and may be abused</p> <p>6.4.3 No proper body to carry out investigation.</p> <p>7.2.5 No legal provision for keeping tax records and cross checking them.</p> <p>7.2.7 Privacy rights poorly defined and not respected.</p> <p>7.2.8 Right to privacy broadly defined and abused.</p> <p>7.2.9 No legal provision requiring URA to ensure professionalism.</p>	<p>6.3.5 No proper procedures of arrest.</p> <p>6.3.6 No procedure for compounding offences; may be abused.</p> <p>6.4.1 No independent assessment for penal tax.</p> <p>6.4.2 Powers of Minister not regulated; may be abused.</p> <p>7.2.3 Right to certainty not clearly provided for in the tax acts.</p>
<i>Minor problem</i>		<p>6.3.2 The law on distress and sale of property harsh; may be abused.</p> <p>6.3.4 Power to enforce security on property for unpaid tax not regulated; may be abused.</p> <p>7.2.7 The legal requirements for tax refunds are too high.</p> <p>7.3.5 Burden of proof imposed on a taxpayer too high.</p>

Note: Numbers in this table refers to Sections 6 and 7 of this Report.

Apart from the loopholes in the income tax laws, there are also problems in enforcing tax obligations due to lack of modern facilities and trained personnel and corruption. This greatly affects the collection processes. Further, some provisions of the Income Tax Act permit the

URA to exercise extra-judicial powers when enforcing taxpayers obligations. These include accessing books, bank accounts, records and computers without a search warrant. Moreover the process of objection and appeal is laborious and expensive for the taxpayers and they have not yet fully appreciated their rights.

For Graduated Personal Tax, the Local Government Act was enacted with elaborate provisions that regulate its administration and the Minister of Local Government has made a Statutory Instrument that declares the minimum and maximum rates of graduated tax. The process of implementing taxpayer’s rights of GPT also has similar problems to those of income tax. The problems are, however, graver because the illiteracy rate is higher in rural areas and generally for GPT collectors and payers. This is in addition to poverty and, therefore, inability to pay and the arbitrariness of collection and enforcement.

Table 6 below provides a summary of the loopholes in the Local Government Act, both those which are important in practice and those which are not. Unlike in income tax, most of the loopholes are major because of the nature of administration and enforcement of GPT, which is still arbitrary and crude.

Table 6: Summary of findings with respect to taxpayer rights in relation to GPT

Loopholes in tax legislation	Use of loopholes in practice	
	<i>Often</i>	<i>Rarely</i>
<i>Major problem</i>	8.5.1 Powers and methods of arrest not clearly defined; abused. 8.6.1 The right to certainty not clear; not respected. 8.6.3 Right to fair assessment not clear; abused. 8.7.2 Right to effective registration system not clearly regulated; violated. 8.7.3 Right to proper investigation process not properly stated; abused.	8.5.2 Recovery of tax and penalty for non-payment of tax harsh and unfair.
<i>Minor problem</i>	Right of Appeal laborious and not utilized.	

Note: The numbers in this table refer to Section 8 of this report.

Generally for both taxes, there is lack of a tax culture, which affects the effective administration thereof.

In view of the above conclusions the following recommendations can be made:

Income Tax:

- All the income tax laws should be simplified so that they are easy to interpret by both the tax collectors and taxpayers;
- Income tax assessment should be computerized to avoid errors and reduce corruption;
- Tax collectors should undergo training in order to develop professionalism;
- Tax appeal arbitration procedures should be decentralized by opening up regional offices to avoid bureaucracy and improve access;
- Tax appeal rules of procedure should be amended in order to simplify them and make them more informal and also to expedite the process of resolving the tax disputes;
- The Tax Appeals Tribunal should explore the possibility of cooperating with other relevant tribunals such as the Commercial Court. This may include sharing of library facilities and training programs. This approach is cost effective and could reduce the running costs of the Tribunal;
- Tax education about taxpayer's obligations and rights should be enhanced.

Graduated Tax:

- The assessment process should be made simple and translated into local languages;
- The assessment of taxpayers whose income is not fixed should be assessed at market rate; Thus the formula of assessing tax should be proportional rather than progressive. This will especially apply to farmers;
- In areas where the economy is predominantly subsistence and money is scarce, produce rather than money should be paid as tax;
- There should be training programs for local government officials responsible for tax assessment and collection;
- Self-employed and rural farmers, if they have to pay cash, should be allowed to pay by installments because their revenue does not come at once;
- The tax collectors should be sensitized so that they do not act arbitrarily;
- The Tax Appeals Assessment Committees should be strengthened to make it more representative;
- Tax should be waived on those with evidence that they do not have income at all.

References

- Assessment on Income Taxable Items including Cattle (1983). Circular DAC No 97, Ref. 1942/VI dated October 14th .
- Davey, K. (1974). *Taxing a Peasant Society*, London: Charles Knight and Co. Ltd., p. 31.
- Davies. (1996). *Principles of Tax Law*, 3rd Edition, London: Sweet & Maxwell.
- Due F.J. (1964). *Reform in the East African Taxation*, East Africa Economics Review, Vol.1.
- Duncan Bentley Ed. (1998). *Taxpayers Rights: An International Perspective*, Adelaide: The Revenue Law Journal.
- Ghai, D.P. (1966). *Taxation for Development: A Case Study of Uganda*, East Africa Publishing House.
- Local Government Finance Commission (2000). Local Government Revenue Enhancement Study Final Report.
- Local Government Finance Commission (2000). Local Government Revenue Enhancement Study Final Report.
- Local Government Revenue Enhancement Study Final Report (2000).
- Ministry of Local Government, Iganga Tax Riots Commission Inquiry Report.
- Ministry of Local Government, The Republic of Uganda (1994), Iganga Tax Riots Commission of Inquiry Report.
- OECD (1990). *Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries*, Paris: OECD.
- Roger Bird (1983). *Osborne's Concise Law Dictionary*, London: Sweet & Maxwell.
- Taxpayer's Charter 2000.
- Willis C, A, G. (1953). Report of the Commission of Inquiry into African Local Government in the Protectorate of Uganda, Entebbe: Government Printer.