B&E AKO LAW

Arusha
NSSF Mafao House
9th Floor| Left Wing
P.O.Box 1526
+255 786 532 222

Dar Es Salaam
Plot No. 30, House No. 7
Ursino Street, Regent Estate
P.O. Box 71748
+255 22 2771145

Mwanza
Plot No 7, Block D
Isamilo Area
Postcode No. 33104
+255 28 2542445

The Six Months Rule under the Tax Administration Act-Is it effective?

During the recent days, I have tasked my mind regarding the effectiveness of the six months rule which was established for purposes of speeding up resolution of tax disputes.

Section 52(10)) of the Tax Administration Act provides that the Commissioner General shall determine an objection to a tax decision within six months from the date of admission of the notice of objection.

Section 52(11) of the same law provides that where the Commissioner General fails to determine the objection within the time prescribed under subsection (10) 'meaning the six months', the tax assessment or tax decision shall be treated as confirmed and the objector shall have the right to appeal to the Board in accordance with the Tax Revenue Appeals Act.

Plainly, the above law indicates that the intention of the Parliament was to push the Tanzania Revenue Authority (TRA) to ensure that all the objections against tax assessments are resolved within a period of six months. This was a good move. Not sure though, if what drove the desire to push the TRA to ensure objections are resolved within a period of six months considered other important factors. Factors such as budget constraint, lack of personnel within the TRA and complexity for some of the tax disputes which are raised by the taxpayers.

In fact, sometimes, a situation arises where the six months have lapsed before the TRA responds to an objection. The Taxpayer files an appeal under the deemed confirmation route. While the appeal is pending before the Board, the TRA issues a proposal and if the process was approaching to an end, it issues the final determination which sometimes agrees with the objection.

A question therefore arises, which route should the Board follow. Should it continue to determine the appeal while the TRA has issued a final determination letter which tallies with the objection? The current directives from the Board (through various court cases) are that the final determination letter is ineffectual legally because it was issued outside the six months indicated in the law. So, the best route is to determine the appeal.

Author

WILSON MUKEBEZI

Partner

QUALIFICATIONS

LLB | M.A in Revenue Law and Administration | Advocate

EXPERTISE

Tax | Dispute Resolution | Procurement | Competition | Employment and Labour Relations | Banking

CONTACT

wilson.mukebezi@beakolaw.co.tz
+255 784 645 690 | +255 766 645 690

However, if it continues to determine the appeal (which is now affected by the final determination letter, how doe sit resolve the agreed dispute points in the final determination letter between the TRA and the taxpayer?

The reality is that the TRA is overburdened with tax disputes and as such compliance with the six-month rule has been highly affected. This has resulted in a flood of appeals arising from the non-compliance of the rule to the Tax Revenue Appeals Board (the Tax Board). The said appeals however, are one sided because they are only based on objections lodged by taxpayers as primary complainants challenging the deemed confirmed tax assessments.

This means, the Board is limited to hearing one side of the coin without having the other side from the TRA. However, this is an appeal, and the other side must respond to charges brought against him or her.

In that regard, the TRA has always defended themselves against such appeals based on audit reports only. The TRA at this time has nothing to present before the Tax Board because no response was given against the objection.

So basically, what the law has done is to give the right to object. However, at the same time and because the law did not consider the other important factors pointed out before, then the same law takes away the right of both parties to have a fair dealing before referring their differences to the Tax Board. This has increased the burden on the Tax Board because the six months rule appeal procedure has created another 'tax appeals regime' unnecessarily.

There are only two options which can get taxpayers, the TRA and the Tax Boad out of that quagmire. The first is to repeal section 52(10). This will revert the previous dispute resolution mechanism to the original position (full objection process) and reduce pressure on the TRA.

The risk, however, is that the TRA will relax, and disputes will again take long to be resolved. To remedy the situation, then the second option is to amend section 52(11) by giving the Tax Board to pronounce directly (ex parte) (upon scrutinizing the appeal documents) and declare either the appeal is dismissed, or the assessment is vacated. The Board should not be drawn into a long process of hearing, which is the case now.

The problem still remains that if the regime is not reviewed and the law remains intact, six months rule appeals will continue to be lodged before the Board something which will still overburden the Tax Board by requiring it to determine these appeals instead of focusing on other substantively lodged appeals.

This is a long debate probably. A better approach is still required to ensure that disputes at the objection stage are resolved quickly and if that capacity is not there then that should not be an alternative route to flood the Tax Board with one-sided appeals.

There are two suggestions. The first is to set a self-independent objection department within the TRA similar to the newly established Tax Ombudsman. This can probably accelerate resolution of objections.

The second is to amend section 52(11) of the TAA by borrowing leaf from the repealed section 229(5) of the East African Community Customs Management Act (which was operational before the coming into force of the dispute resolution mechanism under the TAA).That provision provided that '*Where the Commissioner has not communicated his her decision to the person lodging the application for review the period specified in subsection (4) the Commissioner shall be deemed to have made a decision to allow the application'*.

Section 229(4) of the EACCMA provided that the commissioner must determine applications for review (objections) within thirty days from the date of receiving the objection.

So, if the Commissioner had only thirty days to determine a dispute arising from customs laws, then a period of six months should be enough to resolve an objection. The impact is that, if the Commissioner fails to resolve an objection within six months, then the burden should not be placed on the taxpayer or the Tax Board rather the Commissioner General should be deemed to have allowed the objection and vacate the assessment.

If this happens, the Tax Board will no longer be tasked to deal with the six months rule appeals and pack aside the substantive appeals. Probably efficiency will increase, revenue will rise, and justice will also be served on time.

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