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Justice Delayed, Interest Accrued

1. Introduction

Interest on unpaid tax preserves the time value of money and nudges taxpayers towards timely compliance. But what happens when these legitimate objectives morph into a penalty for exercising one's legal rights? Interest on unpaid tax is charged from the date the tax is due. The interest continues to accrue (on compounding basis) until the tax is paid. This will invariably include:

- From the taxpayer's initial filing to TRA's audit and assessment; and
- From issuance of the assessment to final court's decision.

During this time, the taxpayer has no control over the pace of the process. Firstly, the TRA decides when to audit a return once it has been filed, and that may be one or two years after filing. We must hasten to add that we have seen significant improvement here: the period between filing and audit is now considerably shorter. While this may increase the administrative burden (a subject for another day), the upside is quicker resolution of tax matters. Hence less interest accrual. Secondly, should the matter proceed to court, the taxpayer has no control over the pace of proceedings. Throughout, interest on the unpaid tax continues to accrue.

Fundamentally, every taxpayer should have their day in court (which, in this context, includes the right to object to an assessment) without fear of potential financial ruin. Yet, interest continues to compound throughout the proceedings the taxpayer did not delay. The question is unavoidable: does interest strike the right balance between protecting public revenue and ensuring access to justice?

2. Access to Justice in Tax Disputes

Tanzania provides a structured process for challenging tax assessments. First, a taxpayer may lodge an objection against an assessment.

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The objection is validated by depositing the undisputed amount or one-third of the assessed tax, whichever is greater.

The one-third payment requirement is significant in twofold. First because it the amount can be significant if the assessed amount is colossal.

This is not unusual. Secondly, it provides the Government with immediate revenue protection while preserving the taxpayer's right to challenge the balance of the assessment. The objection process must culminate within six months of admission of the objection. If TRA fails to determine objection within such period, the assessed tax is deemed confirmed and the taxpayer’s only recourse is to escalate the matter to the Tax Revenue Appeals Board (the Board). The taxpayer can sustain further challenges at the Tax Revenue Appeals Tribunal (the Tribunal) and ultimately, on points of law, to the Court of Appeal.

3. Historical Development of Interest

Prior to 2017 our experiences inform us that the TRA was lenient. Additional interest would rarely be charged after the issuance of assessment and for the life cycle of the tax dispute.

In 2017, section 57 of the Finance Act amended section 76 by introducing subsection (4), expressly providing that interest would not be affected or waived because of delay arising from court proceedings or other dispute-resolution processes.

4. When Justice Takes Time: The Practical Reality

The Board and Tribunal are the specialised national forums for tax disputes arising across Tanzania, so their capacity dictates how quickly those disputes are resolved.

Since the framework was established under the Tax Revenue Appeals Act, 2000 (Act No. 15 of 2000), with the Tribunal becoming operational in 2002 and its Registry in 2003, both have for much of the intervening period sat with only one or two panels rather than the three the law requires.

Three panels have been hearing cases concurrently only in the last two to three years, and even then, the expiry of members’ tenures has at times reduced this to two panels serving the entire country. Fewer panels mean fewer hearing dates; fewer hearing dates mean longer disputes; and longer disputes mean more interest.

Further, our experience with the introduction of six-month rule for determining objections is that most of taxpayers’ objections are left undetermined by the TRA and most if not all those undetermined objections find their way to the Board by way of an appeal. And in addition, it has accelerated the speed at which appeals reach the Board. Thus, one can conclude that the Board now has more cases than before. This has not factored the pace of the economy or growth by numbers of taxpayers. This increases backlog of cases before the Board, Tribunal and ultimately the Court of Appeal.

Cumulatively, the tax dispute resolution process could take about five to six years to culminate. It may be longer if a particular dispute is fraught by technical/ procedural delays. All this while the interest continues to accrue on compounding basis.

Prolonged proceedings may therefore affect a taxpayer's cash flow, business operations and ability to pursue a legitimate challenge. An effective tax dispute resolution system must consequently provide both meaningful appellate rights and mechanisms for their timely exercise.

The proposition is that a right to object to tax assessment, a right to appeal against objection decision, all the way to the Court of Appeal are remedies which one must be able to pursue without risk of facing financial catastrophes. This might be a delicate balancing act.

The Court of Appeal's 2025 drive to clear the backlog of tax cases is commendable, but the backlog itself makes the point: institutional capacity has not kept pace with Tanzania's economic growth, its expanding taxpayer base, or the rising volume and complexity of tax disputes. Delay of this kind is not attributable to the taxpayer. It is a function of capacity, yet it is the taxpayer who pays for it, in accrued interest.

5. Striking the Right Balance

The solution may not necessarily lie in abolishing statutory interest during tax disputes. The more effective approach may be toincrease capacity TRA's capacity to determine objections. This could result in resolution of many disputes before they ever reach the Board. Incentives matter as much as resources. Deemed confirmation of the assessed tax rewards inaction: the TRA loses nothing by letting the six months lapse.

Thus, alongside greater capacity, the law could reverse that default: an objection left undetermined would be deemed accepted rather than the assessment deemed confirmed. That places the cost of delay on the party that controls it.

This is already applicable under the East African Customs Management Act.

The Board and Tribunal's capacity to handle tax cases could be further increased by establishing permanent Board and Tribunal panels in difference zones in the country, to hear the cases arising in those zones.

A better balance between revenue protection and access to justice may also lie in giving the Board and the Tribunal (and the court of appeal) discretion over whether interest continues to accrue for the period a dispute is before them. This may demand a rewriting of the hearing procedure before the Board and the Tribunal so that delay can be measured against a fixed timetable. Early identification of issues, settlement where appropriate, clear procedural timetables and case tracks differentiated by complexity would give every appeal an expected duration. Where a case exceeds that duration, the cause of the delay would be examined. If it is the taxpayer's doing, additional interest may be imposed for that period. Where it results from institutional constraints beyond the taxpayer's control, interest for that period could be suspended or remitted, leaving the Government's claim to the tax itself untouched.

The objective should not be to create an interest-free period during litigation, but to ensure that taxpayers who diligently pursue their legal remedies are not disproportionately burdened by delays over which they have no control.