THE ADMINISTRATION OF VALUE ADDED TAX IN TANZANIA

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CERTIFICATION

The undersigned certify that they have read and hereby recommend for acceptance by the Open University of Tanzania a thesis titled; "**The Administration of Value Added Tax in Tanzania**" in fulfilment of the requirements for the award of degree of Doctor of Philosophy (PhD).

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Date

DECLARATION

I, **Baraka Saiteu,** declare that the work presented in this thesis is original. It has never been presented to any other University or Institution. Where other people's works have been used, references have been provided. It is in this regard that I declare this work as originally mine. It is hereby presented in fulfilment of the requirement for the Degree of Doctor of Philosophy (PhD).

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DEDICATION

This PhD thesis is dedicated to my lovely wife and children.

ACKNOWLDEGEMENT

I would like to thank Almighty God for His strengths, good health, patience, and wisdom during the whole period of writing this PhD thesis. I glorify His name and adore him for his love and blessings in my life.

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ABSTRACT

The Value Added Tax (VAT) was introduced in Tanzania to widen the tax base because is stable, neutral, flexible, and capable of increasing revenue. This requires clear laws that govern the administration of VAT. Despite the introduction of VAT in Tanzania, its administration has been hampered by legal barriers contributing to the loss of government revenue. This concern raises the issue of what Tanzania can do to increase revenue through VAT. The study reviews Tanzanian tax laws governing VAT and its role in increasing revenue. It also examines whether international principles and standards governing the taxation of VAT are fully complied with by Tanzania. In finding answers to the existing legal problems under the study, doctrinal legal research methodology complemented by empirical and comparative legal research methodology is employed. The study reveals that the objective of increasing tax revenue through VAT seems not to be fully realized. This is because the existing law governing VAT is not well articulated, lacks clarity in some areas, and does not reflect well the international principles and standards governing the administration of VAT. Consequently, the legal challenges in respect of VAT affect the effective administration of the VAT. This caused negative effects on the realization of the objectives for the introduction of VAT in Tanzania. The study recommends for amendment of the VAT law to address the identified legal challenges and also international standards with the aim of realization of the objectives for the introduction of value added tax. The amendment will guard against the loss of Government revenue.

Keywords: *Value Added Tax, VAT Challenges, VAT Administration, VAT imposition.*

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LIST OF ABBREVIATIONS

BAWASA	Babati Urban Water Supply and Sanitation Authority
BEPS	Base Erosion and Profit Shifting
CAD	Canadian Dollars
CAG	Controller and Auditor General
CAP	Chapter
CAT	Court of Appeal of Tanzania
CTI	Confederation of Tanzania Industries
EAC	East African Community
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EFD	Electronic Fiscal Devices
ESS	Electronic Suppression of Sales
EU	European Union
FIRS	Federal Inland Revenue Service
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
GDP	Gross Domestic Product
GN	Government Notice
GST	Goods and Services Tax
HST	Harmonized Service Tax
i.e.	id est. (that is to say)
Ibid	ibidem (in the same place)
ICT	Information and Communications Technology

IMF	International Monetary Fund
IRDP	Institute of Rural Development Planning Dodoma
MNE	Multinational Enterprises
MUHAS	Muhimbili University of Health and Allied Sciences
NBS	National Bureau of Statistics
NCAA	Ngorongoro Conservation Area Authority
NCC	National Construction Council
NECTA	National Examination Council of Tanzania
NHC	National Housing Corporation
NHIF	National Health Insurance Fund
No	Number
OECD	Organization for Economic Co-operation and Development
OEEC	Organization for European Economic Co-operation
PBFP	Property and Business Formalization Programme
PE	Permanent Establishment
QST	Québec Sales Tax
R.E	Revised Edition
RAHCO	Holding Company Limited
SADC	Southern African Development Community
SUMATRA	Surface and Marine Transport Regulatory Authority
SUWASA	Sumbawanga Urban Water Supply and Sanitation Authority
TAA	Tax Administration Act
TRA	Tanzania Revenue Authority
TRAB	Tax Revenue Appeals Board

TRAT	Tax Revenue Appeals Tribunal
UN	United Nations
URT	United Republic of Tanzania
USD	United States Dollar
v	versus
VAT	Value Added Tax
Vol.	Volume
WB	World Bank
WTO	World Trade Organization

CHAPTER ONE

INTRODUCTION

1.1 Background to the Problem

Tax revenue is important in funding public services and economic growth for any country's development. To obtain such revenue a country must expand its tax base both direct and indirect which must be administered in a required accepted laws and standards. Failure to adhere to the required laws and standards may lead to loss of revenue to the detriment of the country. VAT is one of the indirect taxes imposed on goods and services.

According to the Value Added Tax Act, VAT is the tax imposed on goods and services.[1] This type of tax replaced the sales tax[2] which was imposed only at the final stage of the sale.[3] The rationale for introduction of VAT is its stability, neutrality, flexibility, and a need to widen tax base.[4] The objective of VAT is to bring into the legal system a neutral tax regime and removes overlapping effect of taxes with the target of increasing revenue.

Generally, VAT is mainly imposed on goods and services in the chain of production and distribution whenever value is added. In this chain, there is a wholesaler, retailer,

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[1] S. 2 of Cap. 148 R.E 2019.

[2] Sales Tax Act, 1976.

[3] In December 1991 the Tax Commission, appointed by the Government of Tanzania, offered a proposal for reform of the Tanzanian tax system. The replacement of the current sales tax by a value-added tax (VAT) is the Tax Commission's central recommendation in the domain of indirect taxation. This proposal implies that VAT is regarded as the mainstay of Tanzania's future revenue system. The Government announced in the 1992 (June) Budget Speech its intention to introduce VAT in January 1994). It was introduced in 1997. See Working Paper by Chr. Michelsen, Institute Development Studies and Human Rights Value Added Taxation in Tanzania, Bergen Norway, 1995. p.1.

[4] Gilis, M, *The VAT and financial services* in Gilis, M, *et al,* (eds.), Value Added Taxation in Developing Countries, The World Bank, Washington D.C, 1990, pp.83-84 at p.84.

and final consumer. The wholesaler and the retailer in most cases are registered VAT traders save for the final consumer who might be a registered VAT trader or not. The administration of VAT is that the wholesaler sale the goods or services to the retailer at a price which he believes has profits in his business. After setting the profit price the wholesaler is required by the law to add VAT as stipulated by the law. The tax collected by the retailer from the final consumer is called output tax. The tax remitted to revenue authority is the difference between output tax and input tax.

The rule governing VAT is that businesses are not affected since they are just agents of the tax authority during the collection of VAT because VAT is added after setting the selling price of the goods or services.[5] Besides, in situations where input tax exceeded output tax the revenue authority is required to pay the refund to the claimant as stipulated by the law. To have a proper administration of VAT, it is important to have a good law that provides for effective management, imposition, collection, a simplified registration process, deterrence penalties, and a well-organized refund process.

Accordingly, the national laws need to reflect international standards in respect of VAT law for effective management and collection of enough revenue for the government. Any law which lacks these components result in poor administration of VAT law as a result it contributes to loss of government revenue. Similarly, the administration of VAT is not treated in isolation from other tax laws since there is

[5]Kathryn, J, The Rise of Value Added Tax, Cambridge University Press, USA, 2015, p.66.

interplay between VAT and other taxes.[6] The interplay is based on the fact that VAT is collected on the same goods and services as other taxes administered by TRA. Hence, proper administration of VAT is required for purpose of avoiding negative effects in the collection of other types of taxes and operations of the business by the taxpayer.

Originally, an idea of VAT is accredited to Wilhelm Siemens and Thomas S. Adams.[7] Siemens argues that, innovation allowed for VAT recovery of taxes on business inputs and avoided cascading or dropping problems that arise with a turnover tax.[8]To the contrary, Adam viewed value added tax as an alternative to business income tax and he wanted the major alteration of the existed American federal income tax system since there was no national sales tax.[9] The innovations by Adam and Siemens influenced the development of VAT law in different parts of the world.Since then countries embarked on developing VAT laws with a view of widening the tax base of countries.[10]

Internationally, Organization for Economic Co-operation and Development (OECD) published International Value Added Tax/Goods and Services Tax Guidelines (International VAT/GST guidelines) of 2017. This instrument sets international agreed standards and recommends an approach regarding the application and administration of VAT both at the international and national levels.The guidelines

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[6] S.93 of the Value Added Tax Act.
[7]Mahangila, D. and Nchmbi M.I., Taxation in Tanzania, Step Printers, Dar Es Salaam, 2016,p.265.
[8] Ibid.
[9] Ibid.
[10]Gilis, M, *The VAT and financial services* in Gilis, M, *et al*, (eds.), Value Added Taxation in Developing Countries, The World Bank, Washington D.C, 1990, pp.83-84 at p.84.

aims at minimizing inconsistencies in the application of VAT in across-borders to reduce uncertainty and risks of double taxation and intended non-taxation of international trade.[11] It also identifies objectives, and suggests means of achieving them. However, the states are sovereign in designing and application of their national laws.

The VAT/GST guidelines further provides principle of destination when imposing a VAT. It requires that tax should be levied on the final consumption that occurs within the taxing jurisdiction.[12] The Guidelines takes into consideration accepted principles of tax policy broadly applicable to VAT in both domestic and international trade. These are principles are neutrality, efficiency, certainty and simplicity, effectiveness and fairness, and flexibility[13] used as standards in determining whether the tax system is good or bad. In this context, these countries are using these standards in crafting their domestic VAT laws. Under obligation to adhere to these principles in administration of VAT, it should be noted that although VAT/GST guidelines is a regional instrument, it is highly accepted internationally and it has been applied across in both developing and developed countries.

Tanzania joined other countries of the world by introducing valued added tax in 1997[14] through the Value Added Tax Act (VAT Act).[15] This Act provides general

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[11] Paragraph 5 of of the International VAT/GST Guidelines 2017.
[12] Ibid, Guideline 3.1and 3.2.
[13] Ibid, paragraph 1.16.
[14] Chr. Michelsen, Institute Development Studies and Human Rights Value-Added Taxation in Tanzania, Bergen Norway, 1995. p.1.
[15] Cap 148 of 1997. The Act was assented on 21st October 1997 and came into operational on 1st July 1998.

administration of VAT in Tanzania Mainland.[16] The Act essentially repealed and replaced the sales tax Act[17] which imposed tax only at the final stage of the sale. The introduction of VAT meant that Tanzania will enact effective tax laws and adhere to the set international standards in administering VAT. The rationale is to expand tax base to increase revenue to fund public services for country's development.

While the introduction of the VAT was one step forward, its administration leaves much to be desired. The objectives of increasing revenue from VAT seem to be not realized. For example, since introduction of VAT, only 44,829 registered as VAT taxpayers by February 2022 out of the total number of taxpayers of 1,562,770 (business group).[18]VAT in domestic revenue for the year 2019/2020 is TZS 2,762,924, 000,000 and on imports is TZS 2,421,370, 000,000.[19] Also, for the year 2020/2021, the total VAT in domestic revenue is TZS 2,633,436,000,000 and on imports is TZS 2,584,454,000,000.[20]This calls for further investigation to establish problem surrounding administration of VAT in Tanzania.

1.2 Statement of the Research Problem

This study addresses the failure of the existing VAT law in increasing tax revenue in Tanzania. The failure is inherited from the law being not well articulate, lacking clarity and in some areas, and low reflection of international principles and standards governing VAT. Consequently, the objectives of widening the tax base and

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[16] Working Paper by Chr. Michelsen, Institute Development Studies and Human Rights Value Added Taxation in Tanzania, Bergen Norway, 1995. p.1.
[17] Sales Tax Act, 1976.
[18] Data obtained from Tanzania Revenue Authority (Head Quarters-Dar es Salaam) through emails in response to the researcher letter dated 24th February 2022 on 10th March 2022.
[19] Ibid.
[20] Ibid.

increasing revenue through VAT seem to be not fully realized. This is evidenced by the various provisions of the tax laws governing VAT. The law for example requires VAT traders to register and collect VAT on behalf of the Tanzania Revenue Authority (TRA) but it sets limitations as to who should register for VAT. The law sets the threshold of one hundred million and above to be registered for VAT.[21]The threshold set is likely to leave out a big number of people who could have been registered as VAT traders who can substantially contribute to revenue. Besides, the 18 percent VAT rate is high which may affect voluntary tax compliance leading to tax evasion and avoidance which in turn affects revenue collection by the government.

The administration of the VAT requires clear rules and guidelines in the proper administering of the VAT. This is necessary for avoiding arbitrary decisions and the imposition of tax by the tax administrator. However, this is not the case always. For example, the existing VAT Act provides discretion powers to Commissioner General to register any person regardless of the person turnover if he is satisfied that there is good reason to do so.[22] This is contrary to Article 138(1)[23] which provides that no tax of any kind shall be imposed save by a law enacted by Parliament or according to a procedure lawfully prescribed and having the force of law by a law enacted by Parliament. Lack of certainty in any law affects compliance and might lead to low revenue collection.

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[21]This is according to S. 5 of the Value Added Tax Act, 2014 and Rule 14 of the Value Added Tax (General) Regulation, 2015. S.29 (1) and S.29 (2) of the Value Added Tax Act, 2014 provides for persons who can be registered regardless of their turnover. These are professionals who are approved and licensed to provide professional services; Government entity or institution which carries economic activity.

[22]S.33(b) of the Value Added Tax Act, Cap 148 R.E 2019.

[23] The Constitution of the United Republic of Tanzania of 1977 as amended from time to time.

The powers vested to the Commissioner General seem to conflict with Constitution and it affects the administration of VAT and the culture of voluntary compliance of revenue laws by the taxpayers. The results of non-compliance may lead to loss of government revenue. Where input tax exceeds the output tax[24] after filing the return, a taxpayer is entitled to a refund.[25]The rationale behind this is not to affect the business because VAT traders are acting as collecting agents on behalf of the revenue authority in the process of production and distribution of goods and services. For a VAT refund claim to be effective the law must provide a clear mechanism to achieve the same.

However, the provisions of the law governing VAT refund are not well articulate in respect of the delay caused in payment of VAT refund. This includes methods to detect, investigate and prevention of value added tax abuse in refund claims. In addition, the delay in payment of refund has been caused by lack of a provision in the law that will make sure that funds needed for refund are always kept in a designated Special Fund in terms of Article 135 of the Constitution of the United Republic of Tanzania of 1977 (as amended) and section 12 of the Public Finance Act, 2001. The delay in payment of VAT claims within the stipulated period is likely to indirectly affect the collection of different taxes because of the poor performance

[24]Input tax is the tax paid on purchases by a registered dealer or valued added tax trader in course of its business. For example where A who is a registered value added tax trader purchases goods or services from B who is also a registered value added tax trader with the motive that the goods or services will be sold by him at added value to the final consumer, the tax between the two registered value added tax traders is referred as input tax. Output tax is charged on sale as opposed to input tax which is charged on purchases in the course of business between registered VAT traders. Output tax is a type of indirect tax charged to the selling price of goods or services and it is normally paid by the final consumer. For example where 'A' purchases goods or services from a registered VAT trader and sale the goods or service at an added value to 'B' who is the final consumer, the tax between 'A' and 'B' which is paid by 'B' is referred as output tax. This implies that 'A' collects output tax from 'B' on behalf of the tax authority and is required by the law to remit such amount of tax collected to the tax authority within the time stipulated by the law of particular tax jurisdiction.

[25] S.68, 81-84 of the Value Added Tax Act.

of the businesses. The consequences of not having an effective refund system might lead to the payment of refund or claim which are not genuine affecting both VAT trader and the revenue authority. As a result, the government may lose revenue and the VAT trader business may be affected negatively.

Further, the administration of VAT requires an effective enforcement mechanism and deterrence punishment for non-compliance. The provisions governing VAT offenses seem to lack deterrence spirit since they are not adequate to deter the commission of VAT offenses. This is evidenced by section 90 of the Tax Administration Act[26] which provides for VAT offenses. The given penalties might affect the collection of revenue since only a few people will comply with the provisions of the law since the penalties given are not of deterrence spirit.

Apart from legal challenges inherited from the law itself, the development of information communication technology and digital economy impacted VAT administration of taxes in the contemporary world and Tanzania is no exception. While there is a considerable increase in the digital economy or e-commerce the VAT laws in Tanzania seem not to keep pace with technology developments. The existing VAT law lacks clear provisions and mechanisms governing the taxation of digital business transactions taking place through the internet especially when traders are from outside Tanzania. Consequently, it is difficult to determine the residence of the person or the source of the income where there is no information sharing between countries. It is also difficult to impose VAT, especially where the business

[26] Cap 438 R.E 2019.

does not have a permanent establishment in the respective countries. Equally, it is not easy to ascertain the value of the supply of goods and services. The lack of unilateral approaches for taxation of the digital transactions, challenges in respect of place where the value is created, payment of taxes, and the nature of assets involved whether tangible or intangible are likely to contribute to loss of government revenue.

Despite the existence of the VAT Act in Tanzania, the problem of imposing VAT is still existing because a large number of taxpayers are left out and other legal challenges such as powers of the Commissioner General, penalties imposed, refund of VAT claims, taxation of the digital transactions have not been well articulated by the existing VAT law. All these legal challenges call for detailed research of to what extent these challenges might lead to loss of Government revenue and what are the legal reforms required to address the problem.

1.2.1 Literature Review

This part addresses different works written by various scholars on administration of VAT. It points out how they have addressed the problem under the study. Several scholars have written on the administration of the VAT from different angles. The literature is reviewed critically by showing the knowledge gap to fill in as the basis of this study.

Swai[27] in need to expand VAT registered taxpayers' calls for the preparation of a good policy that will widen the tax base to reach all the people and collect a lot of

[27]Swai, S. O., *Equality Before the Law: Presidential Tax Liabilities; Effects of Exemptions on Voluntarily Compliance*, The Open University of Tanzania Law Journal, Faculty of Law, Vol.7,No.1, 2016, p.177.

revenue. He argues that currently a number of registered VAT taxpayers is very low. The author argues that the working-age population comprised 25.8 million in 2014, of whom 61.3% reside in rural areas, 26.2% in other urban areas, and 12.5% in Dar es Salaam. He further argues that of the total working-age population 86.7% were economically active and 13.3% were economically inactive. Further, the largest proportion of the currently economically active population is in rural areas (63.5%), followed by other urban areas (25.5%) whereas Dar es Salaam had the smallest proportion (11.0%).

Furthermore, based on the 2014 integrated labor force survey analytical report, Tanzania had 25.8 million people are the working class. According to Swai, a large number of registered VAT will enable to lower the tax rate to a single digit. Generally, Swai argument is centered on the working class and informal activities in the informal sector. The argument by Swai is relevant to this work and will be used in establishing as to whether the law addresses this concern in registration of VAT taxpayers.

Mahangila and Nchimbi[28] addresses importance of low VAT threshold likely to attract many registered VAT taxpayers. They posit that the level at which registration for value added tax becomes compulsory is called value added tax registration threshold. This level determines the efficient operation of VAT. To them low threshold level likely to include many firms as taxable persons which may exceed tax authority administration capacity. To the contrary, a high threshold likely

[28]Mahangaila, D. N., and Nchimbi. M., Taxation in Tanzania, Step Printers, Dar es Salaam, 2016,pp. 304-368.

to eliminate many firms from being included in the VAT population. Although the authors raised the issue of registration threshold and other VAT administration issues like VAT refund claims, offenses, and penalties they have not addressed well the issue of putting the registration threshold in classes according to the nature and type of business.

Richard[29] in addressing the challenge of VAT refunds states that most significant vulnerability with VAT has proved to be the refund system in countries in which excess VAT credits are refunded. The author argues that dishonest businessmen have developed a variety of schemes to exploit weakness with the VAT refund scheme. The author provides an example of the so-called missing trader scheme which is estimated to cost European Union countries up to 10% of the VAT revenue.[30]The author argues further that the losses are so great that some EU countries have sought permission from EU Commission to shift from VAT system for exports to a system that would not involve a refund to exporters.

Further, James[31] argues that the net tax liability for the tax period will be the difference between the output charged on taxable sales and the input tax credits available for the tax paid on inputs/purchases. He further argues that if a registered entity receives more VAT than it pays, then it remits the differences between the VAT charged and the VAT paid to the revenue authorities. Besides, if the entity pays more VAT than it receives for example if the entity is an exporter, then the entity is

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[29] Richard, K. (eds).,VAT in Africa, University Law Press, South Africa, 2008.
[30]Ibid, p. 20.
[31]James, K., The Rise of the Value Added Tax, Cambridge University Press, New York, 2015,p.71.

entitled to a refund. The argument made by James is relevant in respect of payment of VAT refund claims; however, he did not explore to a large extent legal challenges associated with VAT claims which lead to loss of government revenue.

Similarly, Keith and Stephen[32]argue that the tax authority makes a refund to companies falsely claiming exports partly because the authorities are incapable of catching scam artists. This is because government employees receive bribes for processing an individual request for refunds. The authors further argue that because of these refunds for fake exports VAT services in Ukraine generate little net revenue. Likewise, International Monetary Fund[33]their report discusses that VAT refund cumbersome procedures create high administrative cost to the tax authority. This report points out that it is important to have a simple refund system. The more complex refund procedures the higher the likely hood of losing a lot of revenue if there are no effective refund schemes put in place to govern the process.

Ehtsham and Abdulrazah,[34]offer analysis on impact of small traders with turnover below the VAT registration threshold. They argue that small traders with annual gross sales or turnover below the VAT registration threshold are exempted from tax and are not required to be registered for tax. As a result they do not account for tax on their sales and not entitled to claim a credit for the tax paid on their business inputs since they are regarded as final consumers. Besides, small traders do not obtain refunds for the inputs taxes paid on imports and from other domestic

[32] Keith, C. and Stephen F.L, Encouraging Trade and Foreign Direct Investment in Ukraine, RAND Corporation, United States of America,2007.
[33] International Monetary Fund, Staff Country Reports, Fiscal Affairs Department, Washington, D.C, 2012, p.44.
[34] Ehtsham, A. and Abdulrazah, Al F. (eds)., Fiscal Reforms in the Middle East: Value Added Tax Guld Cooperation Council, Edward Elgar Publishing Limited, United Kingdom,2010.

suppliers.

Subscribing to this view, Alan[35] argues that VAT could be imposed on all persons making sales of taxable goods and services regardless of the dollar volume of sales requirements of the threshold for registration. He points out that a threshold is required for registration as a VAT trader and acting as the tax authority agent in the collection of revenue. The conclusion which can be drawn from Alan is that all persons making sales are required to be taxed irrespective of their dollar volume of sales for registration. In supporting this view, Deloitte European Compliance Centre[36] posits that, VAT application must be submitted as soon as the VAT registration threshold is exceeded. Alternatively should be when it expects that taxable supplies within thirty days will exceed the VAT registration threshold at the effective date of registration.

Tait[37] defines value added as the value added tax that a producer whether a manufacturer, distributor, advertising agent, hairdresser, farmer, racehorse trainer, or circus owner adds to his raw materials or purchases other than labor before selling the new improved product or service. He argues that the inputs which are raw materials, transport, rent, and advertising are brought, people are paid wages to work on these inputs and when the final good or service is sold, some profits are left. So, value added can be looked at from the additive side (wages plus profits) or the

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[35] Alan, S. *et al*., Value Added Tax: A comparative Approach, 2nd edition, Cambridge University Press, United States of America, 2015.

[36] Deloitte European Compliance Centre, European VAT Compliance, Kluwer Law International, Netherlands, 2011,p. 11.

[37]Tait, A.A., Value Added Tax: International Practice and Problems, International Monetary Fund (IMF), Washington, 1988, pp.4-6.

subtractive side (output minus inputs). He posits that subtractive method which is output minus inputs can be used. This is because the method is popular and generally accepted capable of calculating tax liability weekly, monthly, quarterly, or annually. It also allows the most up-to-date assessment and also allows more than a single rate to be used.

Liam [38]posits that the revenue produced by a VAT depends on the set of factors, firstly, rules describing rates, bases, threshold, and other structural features of the tax. Secondly, scale of taxable activities which are the amount of final expenditure on items taxable at the standard rate. Thirdly, degree to which the rules are complied with taxpayers. He argues that the interactions between these factors are important. Tax rates, for instance, are typically set in light of tax bases and revenue requirements. Thus, ease of enforcement will depend on the formal structure of the tax. According to him, multiple rates for example may lead to the misclassification of items and a high standard rate may encourage evasion. To understand fully the revenue yield of a VAT, these interactions would need to be explored in detail.

Mohan[39]analyzes VAT as a multi-stage levy collected on sales at all stages of the production and distribution process while fulfilling the criteria of neutrality. The VAT allows registered firms to take credit for the tax paid on purchases from registered suppliers against the tax payable on sales, whilst, sales tax is levied by the state government in a single-stage levied at the time of the last sale by the retailer to the consumer. Mohan argues that value added tax has different economic effects on

[38] Liam, E et al., The Modern VAT, International Monetary Fund (IMF), Washington, 2001, p.43.
[39] Mohan, P. et al., Economics of Value Added Tax, APH Publishing Corporation, India, 2008, pp.5-6.

prices, consumer welfare production process, account of neutrality and efficiency and economic growth via savings and investment. Mohan's argument is relevant to this study because where the VAT law in a particular jurisdiction is not well designed it will have negative economic effects. Likewise, it will cause problems in the administration of VAT.

Literature review by several scholars provides broader scholarship covering various aspects of VAT. The literature reveals challenges related to VAT to both developed to developing countries, Generally, the problem of VAT related to VAT threshold, inability of revenue authorities to take aboard a big number of taxpayers capable of being registered VAT taxpayers affecting increase of revenue through VAT. It also reveals important factors necessary to be considered in administering VAT necessary in increasing revenue. The other problems not well articulated by the authors are the abuse of the power by the Commissioner General, taxation of the digital transactions, VAT offenses and penalties imposed, and refund of VAT claims. It is not disputed that all scholars discussed above pointed out VAT problem.

However, most of literatures are addressing VAT from specific country or economic community point of view with no specific reference to Tanzania. The few literatures discussing VAT in Tanzania is limited to specific or single issues related to VAT problem. In some areas the solution suggested also meant to solve specific identified VAT problem and the wholes tic approach is largely missing. Notably, the literature on the role of law in administration of VAT in addressing existing challenges is largely missing. In addition, interplay between law and tax administrator is also missing. It in this context, the study explores in details VAT problem existing in

Tanzania from legal point of view in order to provide appropriate and implementable solution in order to increase revenue for countries' development.

1.3 Research Objectives

1.3.1 General objective

The main objective of this study is to analyze the value added tax laws and show to what extent are likely to contribute to loss of government revenue and recommend necessary legal reforms required in addressing the problem.

1.3.2 Specific objectives

a) To analyze tax laws governing the value added tax and show to what extent are likely to cause loss of government revenue.
b) To examine the extent to which Tanzanian value added tax law is in line with international principles and standards.
c) To propose the amendment of law governing value added tax in Tanzania with a view of increasing revenue.

1.4 Research Questions

a) Do the existing value added tax law likely to contribute to the loss of government revenue?
b) To what extent Tanzanian value added tax law is in line with international principles and standards?
c) What are the necessary legal reforms required in the value added tax law to address the loss of government revenue?

1.5 Significance of the Study

This study is significant in many aspects. Firstly, the study will influence legal reforms in the area of VAT registration, threshold and VAT tax rate, and taxation of the digital transactions, VAT refund claims, VAT offenses and penalties for effective administration and collection of revenue by the tax authority. Secondly, it will raise awareness to different stakeholders in respect of VAT administration in Tanzania with reflection to international standards and principles. Thirdly, it will also provide a platform for further research by other stakeholders who are interested in tax matters particularly VAT law.

1.6 Research Methodology

This study mainly used doctrinal legal research methodology[40]complemented by empirical and comparative legal research methodologies.

1.6.1 Doctrinal Legal Research Methodology

This study employed doctrinal method complemented by empirical and comparative method. Doctrinal[41]legal research methodology mainly focuses on what the law is on a particular issue or matter. It analyses the legal doctrine and the ways developed and applied in different circumstances as provided by the law. The main goal under this methodology is to locate, collect the law and case laws and apply to a specific set of

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[40] The methodology is the science or study of a particular subject whereas method is the way of doing something. See Ranjit, K, Research Methodology: A Step by Step for Beginners, 3rd edition, SAGE Publications Limited, California, 2011, p.1-15.

[41] The word doctrinal is derived from the Latin word doctrinal which is means instruction, knowledge, or learning. (See Dawn, W. and Mandy, B(eds), learning. Research Methods in Law, Rutledge, USA and Canada, 2013 p.9.

material facts given in solving the legal problem.[42]The theory of doctrinal legal research is that the character of legal scholarship is derived from the law itself and consequently there is a need to locate the law and apply the specific rules or principles in resolving a particular quandary.[43]

Further, documentary review and analysis were included but not limited to legislation, international instruments, cases, articles, reports, books, and law journals. As for documentary review, the researcher used various libraries such as the Open University of Tanzania, Kampala International University in Tanzania and University of Dar es salaam. Websites were also used to access information from various sources in the world, which are relevant to the current work. Legislation was used as a primary source of information by analyzing how they are effective in administration of value added tax in Tanzania.

The data collected from documentary method analysed by using deductive reasoning, inductive reasoning, and canons of statutory interpretation namely the golden rule, literal rule, and the mischief rule.The purpose is to examine the meaningful and symbolic content of qualitative data. Generally, the analysis of data collected is by way of explanation, or interpretation of the qualitative data in addressing the problem identified to provide credible answers. Besides, the researcher in examining various laws used a historical, analytical, and applied

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[42] McGrath, J.E, *Methodology Matters: Doing Research in the Behavioral and Social Sciences*, in Baecker R.M et al.(eds)., Readings in Human-Computer Interaction: Toward the Year 2000, Morgan Kaufmann Publishers, 1995, USA, p. 154.

[43]Chui, W.H and McConville, M (eds)., Research Methods for Law, Edinburgh University Press, 2010, p.4.

perspective approach.[44] Historical background and situations necessitated for the enactment of particular provisions of the law, however, the focus was on the mischief of a particular law. Generally, during analysis the spirit of the law as well as the letter of the law is considered.

1.6.2 Empirical Legal Research Methodology

Empirical legal research methodology serves only as a complement to doctrinal legal research methodology. Although it is a complement to doctrinal legal research, both can be used concurrently to examine legal issues.[45]Epstein and King States what make research empirical is based on observations of the world, in other words, data, which is just a term for facts about the world.[46] These facts may be historical or contemporary or based on legislation or case laws, the results of interviews or surveys, or the outcomes of secondary archival research.

Data can be precise or vague, relatively certain or uncertain, directly observed or indirect proxies, and they can be anthropological, interpretive, sociological, economic, legal, political, biological, physical, or natural. As long as the facts have something to do with the world, they are data, and as long as research involves data that is observed or desired, it is empirical.[47] Empirical data provides vital insights into the law in context that is how the law works in the real world.[48] This method

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[44]Kiunsi, H. B, Transfer Pricing in East Africa: Tanzania and Kenya in Comparative Analysis, Ph.D. Thesis, The Open University of Tanzania, Tanzania, 2017, p.22.

[45] Burns, K., and Hutchinson. T., *The Impact of Empirical Facts on Legal Scholarship and Legal Research Training*, The Law Teacher, 2009, Vol.43, No.2, pp.166-168.

[46] Ibid.

[47] Epstein, L and King, G., *Empirical Research and the Goals of Legal Scholarship: The Rules of Inference*, University of Chicago Law Review, 2002, Vol.69, No.1, 2002, pp.2-3.

[48]Razak, A.A, Understanding Legal Research: Department of Management and Marketing Faculty of Economics and Management, University Putra Malaysia, http://econ.upm.edu.my/researchbulletin/artikel/Vol%204%20March%202009/19-24%20Adilah.pdf,p.21.

deals with the externalities affecting the operation of law. Empirical legal research is valuable in revealing and explaining the practices and procedures of legal, regulatory, redress, and dispute resolution systems and the impact of legal phenomena on a range of social institutions, business, and citizens[49] in dealing with VAT-related matters.

To obtain the desired empirical data, the researcher visited various individuals and institutions. These include registered VAT taxpayers, final consumers of goods and services in respect of value added tax, academicians, and tax experts on one hand. On the other hand, Tanzania Revenue Authority (TRA) was also visited. The target population is one hundred and fifty respondents from the identified institutions and respective individuals.

The sample size from the target population is ninety five respondents. Purposive approach was used to obtain specific information from a particular group identified. It is in this context, the sample size has been selected based on expertise, role, and involvement in VAT issues that are under this study. The selected persons are subjects of the law, law enforcers' and makers of different policies or laws governing the VAT in Tanzania. Out of the sample size, the researcher obtained the relevant information and data regarding the study. They provided relevant and useful information regarding the legal challenges affecting the administration of VAT law in Tanzania as well as necessary reforms required to address the identified problems.

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[49] Makulilo, A. B, Protection of Personal Data in Sub-Saharan Africa, Ph.D. Thesis, University of Bremen, 2012, p.54.

As stated, the sample size is ninety five. The details are that the researcher interviewed ten TRA officers and three filled in the questionnaires submitted to them. The purpose is to establish legal challenges faced by TRA in administration of VAT in Tanzania. The researcher also obtained data from tax experts. Fifteen tax experts from audit firms on 14th May 2020 and 26th May 2021 within Dar es Salaam were interviewed by the researcher. Data was also obtained during the interview conducted on 15th May 2020 with the senior tax Manager from PwC-Arusha Branch. Besides, data were also obtained from the Questionnaire filled on May 25th, 2020 by the Head of Regulatory Affairs from the National Bank of Commerce within the Dar es Salaam Region. In general, the information and data obtained from the respondents are those focusing on the challenges in respect of administration of value added tax in Tanzania.

Furthermore, there were also data on challenges facing administration of VAT obtained from ten lecturers teaching tax law in Higher Learning Institutions within Dar es Salaam Region during the interview conducted on 18h May 2020 and 28th May 2021 with the researcher. There were also data obtained from ten final consumers at Mwenge Market and ten from Gongo la Mboto Market within Dar es Salaam Region during the interview conducted on 19th May 2020 and 27th May 2021 with the researcher.

Besides, responses of ten purchasers of NHC premises at Kinondoni District within Dar es Salaam Region during the interview conducted on 14th May 2020 and 29th May 2021 with the researcher have been discussed in the relevant chapter. There were also responses of ten (10) taxpayers at Karikoo Market and fifteen (15) from

Gongo la Mboto Market within Dar es Salaam Region during the interview conducted on 17th May 2020 and 30th May 2021 with the researcher. The data obtained from these respondents centers on the threshold issue, VAT rates and VAT refund claims.

The sampling strategy used is purposive sampling. This technique seeks conceptual applicability rather than quantitative representativeness. It further seeks to capture the range of views and pursue saturation of data and draw theory from data. The sample is judged based on the purpose and rationale for each study and the sampling strategy used to achieve the study's purpose. Generally, the validity, meaningfulness, and insights generated from qualitative inquiry have more to do with the information-richness of the cases selected and the observation or analytical capabilities of the researcher with the sample size.

The data collection techniques or tools were interviews and questionnaires. The interview was used as a tool to collect information from identified persons. This method is flexible and assists to generate detailed information in respect of the problem since it gives room for additional questions for clarifications and also the opportunity to rephrase questions depending on respondents' explanations. Questionnaires were used by the researcher for respondents who were not available for the interview because of their schedule of work. The questions asked were open questions to solicit the relevant facts regarding the identified legal problem.

Empirical data has been analyzed by using qualitative method. This research method included behavioral observations, interview and open ended questions. The

researcher subjected the research questions basing on the relevance of the data collected from the field to solve the identified legal problems. The data collected were analysed to establish the effect of VAT laws in practice, Hence, the data were interpreted in context of law to establish whether the existing VAT problems are caused by the law itself.

1.6.3 Comparative Legal Research Methodology

This method seeks to compare one subject with another with the aim of explaining or establishing the differences and similarities of the compared items or subjects. This methodology is used in making a comparative perspective with international and Regional standards versus national laws. It assisted to highlight in brief to what extent VAT laws in Tanzania are in line with international or regional standards and principles. In general, this method assists in establishing whether those standards and principles can be adopted in the domestic laws directly or with modification to suit the local context. Alternatively, such instruments may be used as a benchmark upon which Tanzania VAT may be improved in responding to legal challenges raised. The canons of stutory interpretation which are literal rule, golden and mischief rule are used in interpretation of data under comparative methodology.

1.7 Scope of the Study

The study covers the revenue laws governing value added tax in Tanzania. The main focus being the Value Added Tax Act and the extent to which challenges inherited from this law are causing the loss of government revenue. The challenges discussed in this study are the threshold issue, abuse of powers by the Commissioner General, VAT rate, taxation of the digital transactions, VAT offenses and penalties imposed,

refund of VAT claims. The administration of value added tax by TRA is negatively affected by the identified challenges and hence affects the collection of revenue. Further, international and regional legal instruments have been also highlighted to show the benchmarks in respect of international standards and principles.

However, some international and regional bodies have not been discussed under this study for lack of legal instruments directly dealing with VAT issues. The international standards and principles discussed can be used to assess whether Tanzanian revenue laws are in line with international standards and principles. Also, it assists when making legal reforms to determine which international and regional principles, as well as standards, are to be incorporated into the law. The reflection of international principles and standards in domestic law assists to address the challenges identified and hence increases the collection of revenue.

1.8 Limitations of the Study

There are few limitations to this study. First, few local literatures in the area of value added tax, and hence the researcher was forced to use literature from other jurisdictions to fill in the gap. The use of literature from other jurisdictions did not affect the quality of this work; however, it assisted to know the standards, principles applicable in those jurisdictions to draw lessons for Tanzanian tax jurisdiction. Next, due to COVID 19 pandemic, the researcher used questionnaires as a method of data collection in some places instead of an interview. The change of the method did not negatively affect the data collection exercise since the questionnaires were designed in the manner that all the information required was captured.

1.9 Ethical Considerations

The researcher considered and complied with ethical considerations in this study. The ethical consideration includes obtaining informed consent of the respondents. This implies that respondents knowingly, voluntarily, and intelligently and clearly and manifestly provided their consent during the collection of data and even the use of data collected from them in the study. Further, the researcher also adhered to principles of anonymity and confidentiality. The source of information is acknowledged to avoid plagiarism and for academic fairness to authors of different kinds of literature.

1.10 Structure of the Thesis

This thesis is divided into eight chapters. Chapter one is on the general introduction. It generally sets out the research agenda of the study. It covers the background to the problem, statement of the research problem, objectives, and significance of the study, research questions, and literature review and research methodology, scope of the study, limitations, ethical considerations, and structure of the thesis.

Chapter two covers concepts and principles on the value added tax. Important concepts are defined to assist different stakeholders who are reading this study to understand the meaning of different concepts and their application per the context required. Different principles have been stated which guide this study throughout since the principles provide the benchmarks and the outcome of the study.

Chapter three is on the value added tax under international instruments. This chapter looks into the development of VAT worldwide. It also states different international

legal instruments providing for VAT administration. This chapter aims to see the international benchmarks and principles as far as VAT administration is concerned. Chapter four is on value added tax under regional legal instruments. This chapter provides different regional instruments governing value added tax. The regional instruments covered under this chapter which are model laws include treaties and guidelines. Different principles and regional standards and principles applicable to value added tax has been discussed in this chapter.

Chapter five is on the legal framework governing the value added tax in Tanzania. This chapter focuses on the laws governing value added tax in Tanzania, development of value added tax in Tanzania. The rationale behind of reviewing different laws is to show the position of the law in respect of VAT and how it affects the administration of value added tax in Tanzania. This chapter provides only the highlights of the law since the analysis will be done under chapter seven of the thesis.

Chapter six is on institutional framework governing the administration of the value added tax in Tanzania. The chapter covers different institutions dealing with administration of revenue laws. The institutions are TRA, TRAB, TRAT and the office of tax Ombudsman service. It also points out how disputes are handled under the respective institutions. Moreover, management, appointment, tenure of the officer in respect of these institutions is also covered under this chapter.

Chapter seven is on presentation, discussion and analysis of findings. This chapter presents the challenges and loss of government revenue in light of the research

questions and objectives of the study. It discusses different challenges in VAT administration and show the extent to which they contribute to loss of government revenue.

Chapter eight is on conclusion and recommendations. This chapter provides the summary of research findings which reflect the objectives of the study, research questions, and statement of the research problem. The findings justify the research questions of the study. The chapter also provides the conclusion of the study and recommendations basing on the findings for necessary legal reforms.

CHAPTER TWO

CONCEPTS AND PRINCIPLES ON THE VALUE ADDED TAX

2.1 Introduction

This chapter presents relevant concepts and principles governing the administration of value added tax. The concepts discussed assist to understand and appreciate the use and context of each concept in line with the administration of the value added tax. These concepts defined and interpreted play an important role in this study since it indicates whether the definition which is given or the interpretation assigned to it is likely to cause the problem or likely to play a role in solving the existing legal problem under the research.

The principles governing the administration of value added tax set the benchmarks which are relevant to any national tax authorities for the effective administration of the value added tax in their tax systems. These principles are relevant in this study since they establish the basis of a good tax policy for effective tax administration and realization of the objectives of the introduction of value added tax through the enactment of the Value Added Tax Act in Tanzania.

2.2 Concepts

Generally, the meaning and interpretation assigned to a particular concept assist in determining its context and the extent to which it is relevant to the study. Equally important it guides in addressing the challenges raised and in knowing whether the context given to a particular concept contributed to the particular problem and how the problem can be resolved. In general, the meaning or interpretation assigned to different concepts guides the study in knowing the areas of convergence and

divergence views. There are various concepts relevant to the administration of VAT. For purpose of this work the following concepts will be discussed, namely value added tax, input tax, output tax, VAT registration, final consumer, VAT rate, VAT threshold, tax returns, VAT refund, value added tax base, and tax administration.

2.2.1 Value Added Tax

Value added tax (VAT) plays an important role as far as widening the tax base is concerned. Hence, the definition and interpretation assigned to it is important since it can lead to the collection of revenue or leave a particular transaction untaxed. VAT has been defined differently by various laws and scholars. Section 2 of the VAT Act,[50] defines VAT to mean the tax imposed on taxable supplies or taxable imports, and includes interest, fine, or penalty payable under the provisions of the VAT Act. The definition comprises two key concepts namely taxable supplies and taxable imports. Taxable supply has been defined to mean a supply, other than an exempt supply,[51] that is made in Mainland Tanzania by a taxable person in the course or furtherance of an economic activity carried out by that person. The condition is that the supply must be made by a taxable person in course of carrying out an economic activity.

In the context of VAT, a taxable person means a registered person or a person who is required to be registered for VAT under the law.[52] While economic activity means an activity carried on continuously or regularly by a person, which involves or is

[50]Cap. 148 R.E 2019.
[51] S. 2 of the Value Added Tax Act defines exempt in relation to a supply or import to mean a supply or import that is specified as exempt under the Value Added Tax Act or a supply of a right or option to receive a supply that will be exempt.
[52] Ibid.

intended to involve the supply of goods, services, or immovable property.[53] Economic activity includes, an activity carried on in the form of a business, profession, vocation, trade, manufacture, or undertaking of any kind, whether or not the activity is undertaken for profit. A supply of property by way of lease hires, licenses, or similar arrangements is also deemed to be economic activities.

Other economic activities include a one-off adventure or concern like trade and anything done during or in respect of the commencement or termination of economic activity.[54] However, economic activities do not include economic activities of providing services by an employee to an employer, activities performed as a director of a company, except where the director accepts such office in carrying on economic activity in which case those services shall be regarded as being supplied in the course or furtherance of that economic activity.[55]

According to the law, taxable supplies cover a supply of imported services to a taxable person who is the purchaser and acquires the services in the course of economic activity been made in Mainland Tanzania in the course of furtherance of an economic activity.[56]The condition provided by the law is that it would have been taxable at a rate other than zero and the purchaser would not have been entitled to a credit for ninety percent or more of the value added tax that would have been imposed on the supply.

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[53] Ibid.
[54] Ibid.
[55] Ibid, s. 2.
[56] Ibid.

Similarly, VAT on imports means bringing or causing goods to be brought from outside the United Republic into Mainland Tanzania.[57]The rule governing VAT on imports requires VAT payable on a taxable import to be paid where goods are entered for home consumption in Mainland Tanzania.[58] This is done under the VAT Act and procedures applicable under the East African Customs Management Act.[59] The rules further require that the VAT payable on a taxable import be paid in any other case, where goods are imported for use in Mainland Tanzania in the manner prescribed by the law.[60]

The liability to pay VAT on a taxable import shall arise by the operation of the VAT Act and shall not depend on the making of an assessment by the Commissioner General of the amount of value added tax due.[61]The duty to collect VAT on imports is vested to the Commissioner General at the time of import.[62]Notably, the provisions of the East African Customs Management Act shall apply as if the value added tax payable on taxable imports were customs duty payable under the East African Customs Management Act.[63]

The defined VAT also considers interest, fines, and penalties imposed or payable under the Value Added Tax Act for non-compliance with the law to form part of value added tax. Section 90 of the Tax Administration Act,[64] provides for value added tax offenses that attract penalties or fines or interest. This implies that

[57] Ibid.
[58] Ibid.
[59] Ibid, s.8(1)(a).
[60] Ibid, s.8(1)(b).
[61] Ibid, s.8(2).
[62]Ibid,s.8 (3).
[63] Act No.1 R.E 2019.
[64] Cap.438 R.E 2019.

whatever is collected either by way of fine, or penalty from any person for non-compliance with the provisions of the Value Added Tax Act forms part of the value added tax.

The VAT is also defined as any national tax by whatever name or acronym it is known such as Goods and Services Tax (GST) that embodies the basic features of a VAT.[65]The basic features are that it is a broad-based tax on final consumption collected from businesses through a staged collection process. The purpose of a VAT is to impose a broad-based tax on consumption, which is understood as final consumption by households.[66] In principle only private individuals, as distinguished from businesses, engage in the consumption at which a VAT is targeted.[67]

In practice, however, many VAT systems impose a VAT burden not only on consumption by private individuals but also on various entities that are involved in non-business activities.[68]A necessary consequence of the fundamental proposition that a VAT is a tax on final consumption by households is that the burden of the VAT should not rest on businesses.[69] This follows as a matter of elementary logic from the proposition that the VAT is a tax on household consumption. This is because businesses are not households and at least as a matter of principle, are incapable of final or household consumption.[70] In practice, a business acquires goods, services, or intangibles that are used in whole or in part for the private

[65] Defined under the Preface to the International VAT/GST Guidelines of 2017.
[66] Paragraph 1.3 of International VAT/GST Guidelines of 2017.
[67] Ibid.
[68] Ibid.
[69] Ibid, paragraph 1.4.
[70] Ibid.

consumption of the business owners. However, VAT regimes must determine whether, or the extent to which, the purchase should be treated as acquired for business purposes or private consumption.[71]

The term VAT has been also defined by different scholars. Mahangila and Nchimbi define VAT as a tax assessed against businesses at each stage of the production and distribution process, usually whenever a product is resold or value is added to it.[72] To them, VAT is levied on the differences between the purchase cost of an asset and the price at which it can be sold. The way how value added tax operates is that each registered person in the chain between the first supplier and the final purchaser or user is charged tax on taxable supplies made to him and charges tax on taxable supplies made by him. This means that in the chain of production or distribution in respect of value added tax the tax on purchases charged is input tax and the tax charged on sales to the final users is output tax. The registered person for VAT pays to the tax authority the excess of output tax over input tax or recovers the excess of input tax over output tax from the tax authority.

Generally, the broad effect of the value added tax is that businesses are not affected since they are acting as collecting agents of the tax authority. The burden of the tax falls on the final consumer. Likewise, VAT has also been defined as a system of tax that is based on tax collection in a staged process with successive taxpayers entitled to deduct input tax on purchases.[73] According to the OECD, VAT account is given

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[71] Ibid.
[72] D.N, Mahangila, M.M. Nchimbi., Income Tax in Tanzania, KH Publishers, Kampala Uganda,2013, p.261.
[73]OECD, Consumption Tax Trends: VAT/GST and Excise Rates, Trends and Administration issues, 2008, p.9.

for output tax on sales in such a way that the tax finally collected by the tax authorities equals the VAT paid by the final consumer to the last vendor or seller.[74]

This means that the VAT is the value that a producer whether a manufacturer, distributor, advertising agent, hairdresser, farmer adds to his raw materials or purchases other than labour before selling the new or improved product or service.[75] Therefore, inputs which may include raw materials, transport, rent, advertising, and so on are bought.[76]The people are paid wages to work on these inputs and when the final goods or services are sold, some profit is left.[77]Hence, the value added can be ascertained from the additive side which is wages plus profits, or from the subtractive side which is output minus inputs.[78]

From the foregoing, VAT can be generally explained as the tax that is usually charged on goods and services in all stages of production and distribution. It allows the businesses or firms to offset the tax they have paid on their purchases of goods and services against the tax they charge on the sale of goods and services. In this context, businesses are not affected since they are just acting as agents of the revenue authority for the collection of VAT. This concept is relevant to this study since it provides key elements to be considered in the administration of VAT, especially in the imposition of value added tax on various economic activities giving rise to taxable income.

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[74] Ibid.
[75] Ibid.
[76] Ibid.
[77] Ibid.
[78] Ibid.

2.2.2 Input Tax

Input tax is another concept relevant in the administration of VAT. Input tax is the tax paid on purchases by a registered dealer or VAT trader in course of its business.[79]Likewise, input tax is the tax that is charged between two or more registered VAT traders in course of business. It is a tax on purchases done by a registered VAT trader for re-selling the goods or services or using the goods or services to manufacture other goods or services to be sold. For this type of tax to apply goods and services are sold to the VAT trader in the course of its business and not the final consumer of goods and services, who ultimately consumes the goods and services since his intention is not business but consumption.[80] For example where A who is a registered value added tax trader purchases goods or services from B who is also a registered value added tax trader with the motive that the goods or services will be sold by him at an added value to the final consumer, the tax between the two registered value added tax traders is referred as input tax.

Input tax is also defined by various legal instruments. According to the VAT Act, input tax means the tax imposed on a taxable supply made to the person including VAT payable by the person on a taxable supply of imported services and VAT imposed on a taxable import of goods by the person.[81]Similarly, the OECD VAT/GST Guidelines provide that, the purchaser is allowed to credit input tax against the output tax charged on its sales, remitting the balance to the tax authority

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[79] CCH Walters Kluwer Business, Master Tax Guide, CCH New Zealand Limited, New Zealand, 2013, p.1342.
[80] Ibid.
[81] S. 2 of the Value Added Tax Act.

and receiving refunds when there are excess credits.[82] This means that the input tax paid by the purchaser during the purchase of goods and services where there are excess credits against the output tax, refund is allowed by the law.

In general, the OECD imposes the tax at every stage of the economic process and allows deduction of taxes on purchases.[83] This design feature gives VAT its essential character in domestic trade as an economically neutral tax.[84]The full right to deduct input tax through the supply chain, except by the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain, and the means used for its delivery (e.g. retail stores, physical delivery, internet downloads).[85] As a result of the staged payment system, VAT thereby flows through the businesses to tax supplies made to final consumers.[86]

The system is based on tax collection in a staged process, with successive businesses entitled to deduct input tax on purchases and accounts for output tax on sales.[87] Each business in the supply chain takes part in the process of controlling and collecting the tax, remitting the proportion of tax corresponding to its margin on the difference between the VAT paid out to suppliers and the VAT charged to customers.[88]Generally, input tax is the tax paid on purchases by a registered dealer or VAT trader in course of its business. It is in this context that the purchaser is allowed

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[82]Rule 1.6 of the OECD VAT/GST Guidelines, 2017.
[83] Deloitte, GST, A Comprehensive Perspective: A Comparative Analysis of Provisions Under Indian GST Law with International Best Practices and OECD, (2nd Ed,), Wolters Kluwer, India, 2017,p.193.
[84] Ibid.
[85] Ibid.
[86] Ibid.
[87] Ibid.
[88] Ibid.

to credit input tax against the output tax charged on its sales. This means that the purchaser is required by the law to remit the balance to the tax authority and receive refunds when there are excess credits as a result full right to deduct input tax through the supply chain except by the final consumer ensures the neutrality of the tax. The input tax concept is relevant in establishing the application of the neutrality principle in the administration of VAT. This is because it ensures businesses are not affected by allowing refunds where there is an excess credit. The concepts will be very useful in examining refund processes in Tanzania in the administration of VAT.

2.2.3 Output Tax

Output tax is defined as indirect tax charged to the selling price of goods or services and it is normally paid by the final consumer. The output tax is charged on sales as opposed to input tax which is charged on purchases in the course of business between registered VAT traders.[89]The final consumer may be a registered VAT trader or not. Consequently, where the sale is made to VAT trader or consumer not for business activity but for another purpose which in most cases is for consumption purpose, the supply will be subject to output tax. For example, where 'A' purchases goods or services from a registered VAT trader and sale the goods or service at an added value to 'B' who is the final consumer, the tax between 'A' and 'B' which is paid by 'B' is referred as output tax. This means that 'A' collects output tax from 'B' on behalf of the tax authority and is required by the law to remit such amount of tax collected to the tax authority within the time stipulated by the law of the particular tax jurisdiction. The rule is that where the output tax exceeds the input tax the

[89]Victor Thuronyi (ed), Tax law Design and Drafting, IMF, Volume 1, 1996, p.145.

business pays the difference to the tax authority, and where the input tax exceeds the output tax, the tax authority refunds the difference to the business or the person concerned.[90] The rationale behind this is that businesses are not affected since the final burden in any VAT transaction fall on the final consumer.

The output tax is also defined as VAT payable by the person in respect of a taxable supply made or imported services acquired.[91] The law essentially requires tax payable by the final consumer in respect of a taxable supply made to him or tax paid in respect of the taxable supply of imported acquired by him. Thus, the purchase and sale done by the registered VAT trader need to be well managed by the tax authority through the well-established system. This means that the absence of control and management of the same may result in losses to the tax authority since taxpayers will file returns that are not genuine from refund claims which are not genuine contrary to the requirement of the law.

It should be noted that VAT collection is a staged process. For that reason, successive taxpayers are entitled to deduct input tax on purchases and account for output tax on sales.[92] Each business in the supply chain takes part in the process of controlling and collecting the tax. Therefore, remitting the proportion of tax corresponding to its margin on the difference between the VAT paid out to suppliers and the VAT charged to customers is necessary.[93]

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[90] Anna A.Et al., Influence of Social-Economic Environment on the Development of Small and Medium-Sized Enterprise, Technical University of Lodz Press, Poland, 2011,p.347.
[91] Section 2 of the Value Added Tax Act.
[92]Rule 1.5 of the OECD VAT/GST Guidelines, 2017.
[93] Ibid.

Generally, what can be derived from this concept is that output tax is charged on sales to the final consumer. Taxpayers are entitled to deduct input tax on purchases and account for output tax on sales to the tax authority. Where the input tax exceeds the output tax the tax authority refunds the difference to the business or the person concerned. Therefore, output tax imposed on sales as opposed to input tax on purchases requires a well-established system for both taxpayers and the tax authority for effective management and payment of genuine refunds for those who are claiming refunds from the tax authority. Thus, the output concept will be useful in analyzing refund processes in Tanzania.

2.2.4 VAT Registration

Effective administration of VAT requires taxpayers to be registered according to the criteria set by the law. VAT registration is the process of listing or registering a business with the government or tax authority if it qualifies to be registered according to conditions or requirements provided by the law of the relevant country. Upon registration, a taxpayer shall be issued with a Certificate of Registration stating the name and principal place of business of the taxable person, the date on which the registration takes effect, his Taxpayer Identification Number (TIN), and VAT registration number. A TIN and his VAT registration number should be shown in any return, a notice of appeal, or other documents used for official VAT purposes.[94] The certificate of VAT registration number issued by the revenue authority should be placed in a noticeable position at the principal place of business.

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[94] S. 35 of the Value Added Tax Act.

Registration for VAT is important in the administration of VAT.VAT registration can be either mandatory or voluntary varying from country to country. In Tanzania for example, registration for VAT is mandatory for every person upon attaining the registration threshold of 100 million in twelve months and above or 50 million in six months ending at the end of the previous months.[95] This condition applies to all types of registration except for professional service providers, Government entity, or institution which carries on economic activity, and intending trader after the fulfillment of sufficient evidence such as contracts, tenders, building plans, business plans, and bank financing.[96]

The procedure for registration in Tanzania requires a person to make an application to Commissioner General within thirty days (30) but an intending trader may make such an application at any time.[97] Likewise, if the Commissioner General is satisfied that a person is required to be registered with VAT and there is a good reason including protection of Government revenue but has not applied for it, shall register and notify such person not later than 14 days after the day on which registration is done regardless of the turnover.[98]

The VAT registration concept in the administration of the VAT is very crucial in either increasing or decreasing revenue collection. The bigger the number of taxpayers likely to increase the amount of revenue to be collected from the value added tax. On the contrary the lower number the small/low revenue collections. In

[95]Rule 14 of the VAT (General) Regulations, 2015 and S. 28 of the Value Added Tax Act.
[96] Rule 11. Rule 12 and Rule 13 of the VAT (General Regulations, 2015.
[97] S.30 of the Value Added Tax Act and Rule 11. Rule 12 and Rule 13 of the VAT (General Regulations, 2015.
[98] S. 33 of the Value Added Tax Act.

this context rules and procedures governing the registration of VAT traders must be effective to ensure a large number of VAT traders are taken aboard. An overview of the understanding concept of VAT registration reveals that, firstly, taxpayers are registered based on the threshold provided by the law. Secondly, the law provides a time limit for VAT registration. Thirdly, the law provides categories of persons required to register for VAT. Fourthly, the registration can be voluntary or compulsory. The four elements of VAT registration shall be useful in establishing to what extent existing criteria are likely to affect revenue collections either positively or negatively.

2.2.5 Final Consumer

A final consumer in the context of VAT is a person in the chain of VAT transactions who bears the economic burden of VAT and misses the right to claim VAT refunds from the tax authority.[99] This is inherited from the neutrality principle that businesses should not be affected by VAT except in so far as they are required to administer it. Consequently, the burden of the tax falls on the final consumer. In the context of VAT, the final consumer may be either non or a registered VAT trader. This is because what matters is the objective of purchasing the goods or services. However, the burden of the tax should not rest on businesses but rather on the final consumer.[100]To achieve this there should be a well-established mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods, services, and intangibles. It is in this context that the law allows taxpayers to deduct

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[99]Michael K., VAT, Tariffs, and Withholding: Border Taxes and Informality in Developing Countries, IMF Working Paper,2007,p.3- 4.

[100]Paragraph 1.6 of the OECD VAT/GST VAT Guidelines 2017.

the VAT they pay on their purchases while accounting for the VAT they collect on their sales.

From the foregoing, it is concluded that a final consumer is a person who bears the burden of VAT in a value added tax transaction. The goods or services bought by the final consumer in most cases are for consumption purposes. In this context, the final consumer in most cases is not allowed by the law to claim refunds from the tax authority. Therefore, the principle that the burden of VAT falls on the final consumer and not businesses must be well adhered to accordingly to avoid negative effects on the performance of businesses and collection of other taxes provided by the law. Besides, the context of the definition given to the final consumer must in most cases consider the purpose of the goods or services bought by the person.

2.2.6 VAT Rate

The VAT rate is another key concept used in the administration of VAT. It is a rate of tax imposed in terms of percentage on goods or services supplied within a particular country or imported from another country or exported to another destination. The VAT rate is the indicator used to determine whether the tax system is fair or not based on the ability to pay principle. VAT rates vary from one tax jurisdiction to another but it can be either standard or reduced or zero rate. For example, the Gulf Cooperation council provides a standard five (5) percent rate [101] of the value of the supply or the value of imports unless the Agreement provides for an exemption or the zero-rate on such supplies. The standard rate of 5% is fair and

[101]Article 25 of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC).

likely to encourage voluntary tax compliance and hence the collection of enough revenue in the respective states. In Tanzania, the standard rate of 18% applies to supplies of goods or services, and zero rates in most cases apply to exports. VAT law in Tanzania covers only standard rate and zero rate.

For the VAT rate to apply there must be specific ways and requirements upon which the rate can be calculated. The requirements are guided by the law governing the administration of VAT. The law provides that the amount of value added tax payable be calculated by multiplying the value of the supply or import by the value added tax rate, which is eighteen percent (18%).[102]In case the zero rate applies to imports or export, the value added tax rate shall be zero percent.[103]In addition, where a supply is both exempt and zero-rated, the supply shall be zero-rated. Furthermore, where the supply is both exempt and taxable at the standard rate, the supply shall be taxable at the standard rate.[104] The zero percentage applies also where the supply of locally manufactured goods by a local manufacturer if goods are supplied to a taxable person registered under the VAT law administered in Zanzibar and such goods are removed from Mainland Tanzania without being effectively used or enjoyed in Mainland Tanzania.

From the aforesaid, the VAT rate can be used to determine whether the tax system is fair or not based on the ability to pay principle. Accordingly, it can be regressive as it is imposed at a flat rate without considering the ability of the person to pay and

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[102] S.5 (1) of the Value Added Tax Act.
[103] Ibid, s.5 (2).
[104] Ibid, s.5 (4).

hence encourage tax evasion and avoidance. Moreover, the absence of multiple rates of VAT basing on categories of persons and classes of threshold negatively affects the objectives for the introduction of value added tax in Tanzania. Therefore, where the set VAT rate is high and not fair or is not distributed according to the ability of the people to pay in multiple rates it defeats the objectives for the introduction of value added tax in most tax jurisdictions including Tanzania. The VAT rate concept is very important under this study as it is used to analyze to what extent the existing 18% VAT rate imposed in Tanzania is affecting the increase of revenue through VAT.

2.2.7 Value Added Tax Threshold

Generally, the VAT threshold is set in the VAT laws. The set VAT threshold determines the type of persons to be registered basing the turnover provided by the law. It sets the turnover a person is required to have or is anticipating to have in a certain period provided by the law of the relevant country for VAT registration.[105]In some tax jurisdictions, the threshold is divided into classes to accommodate different persons and goods or services offered. For example, in the Economic Community of West African States(ECOWAS) countries that the amount of the yearly turnover, including all duties and taxes which constitute the liability threshold is between USD 12,000 and USD 200,000 for the supply of goods and USD 10,000 and USD 150,000 for provision of service.[106] This ensures that there is a distribution of tax liability.

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[105] Robert F. V. A. and Richard K., (eds)., VAT and Financial Services: Comparative Law and Economic Perspectives, Springer, Singapore, 2017, p.58.

[106]Article 6 of Directive C/DIR.1/05/09 on the Harmonization of the ECOWAS Member States' Legislation on Value Added Tax (VAT) of 2009.

In Tanzania registration for VAT is mandatory for every person upon attaining the registration threshold of 100 million and above in twelve months or 50 million in six months ending at the end of the previous months.[107]The turnover shall be the sum of the total value of supplies made, or to be made, by the person in the course of an economic activity carried out during that period; and the total value of supplies of imported services made, or to be made, to the person during the period that would be taxable supplies if the person was a taxable person during that period.[108]The requirements of the threshold apply to all types of registration except professional service providers, Government entity, or institution which carries on economic activity, and intending traders after fulfillment of sufficient evidence such as contracts, tenders, building plans, business plans, and bank financing.[109]

From the aforesaid, it is posited that the threshold set determines categories of persons to be registered for value added tax. Also, the law sets the time frame within which a person is required to register for value added tax. In addition, other persons can be registered for value added tax regardless of their turnover. However, the set threshold excludes different persons who are not within the threshold provided by the law. Thus, the set threshold excludes different taxpayers who could have been registered for value added tax. Besides, the absence of classes of businesses or categories in respect of registration of persons basing on different turnover defeats the purpose of introducing of value added tax of widening the tax base. Widening the tax base result in the collection of enough revenue for the government and also it

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[107] S.28 of the Value Added Tax Act, and Rule 14 of the Value Added Tax (General) Regulations 2015.
[108] S.28 (5) of the VAT Act.
[109] S. 29(2) and 29(3) of Value Added Tax Act, R.E 2019 and Rule 2 of the Value Added Tax (General) Regulations 2015.

reflects the international standards regarding taxation policy. This concept will be useful in examining to what extent the existing VAT threshold set in Tanzania affects many taxpayers eligible for VAT registration regardless of their turnover. In addition, it will be useful in examining the discretion powers of commissioner in registering VAT traders.

2.2.8 Tax Returns

The tax return is very essential in assessing or determining the amount of tax payable in a defined period as provided by the law. The tax return has been defined by case law and also different pieces of legislation. A tax return is defined as the information in the tax return form which is submitted for the establishment of the amounts in which a person is chargeable to income tax and capital gain tax for the relevant year of assessment and the amount payable by him by way of income tax that year.[110]Lord Hodge further stated that whilst treating everything on the tax return form as the tax return in its simplicity, it would expose the revenue to irrelevant claims made in the form which have no merits and which serve only to postpone the payment of the tax due.[111]

The tax return is also defined as a statement filed to the tax authority which declares the estimated income and tax payable or the final income and tax payable for each year of income.[112]Under the income tax law, a company is required to submit tax

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[110] Cotter (Respondent) Versus Commissioners for her Majesty Revenue & Customs (Appellant) on Appeal from the Court of Appeal [2012] EWCA CIV 81(Supreme Court-United Kingdom).
[111] Ibid.
[112] OECD, Glossary of Tax Terms, available at https://www.oecd.org/ctp/glossaryoftaxterms.htm(Accessed on 16/04/2022).

returns even if it has no taxable income.[113]Every registered company and individual who is required to prepare the audited account shall file to the tax authority a statement that shows the estimated tax payable in each year of income.[114]Likewise, a tax return is also defined as a form(s) filed with a taxing authority that reports income, expenses, and other pertinent tax information.[115] Tax returns allow taxpayers to calculate their tax liability, schedule tax payments, or request refunds for the overpayment of taxes.[116] In most countries, tax returns must be filed annually for an individual or business with reportable income.

In the context of VAT, the tax return is not done arbitrarily but rather is guided by the law. The law requires the taxable person to lodge a value added tax return in the form and manner prescribed by the Minister on the 20th of a month after the end of the tax period to which it relates, whether or not that person has a net amount of value added tax payable for that period.[117] Tax returns may be lodged in two ways namely, electronic and paper form.[118] The key elements in respect of tax return are fourfold; first, the tax return declares the estimated income and tax payable or the final income and tax payable for each year of income.

Second, it is used to assess the amount of tax due. Third, claims by the taxpayers can be established using the tax return filed. Fourth, tax returns can be lodged in two

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[113] S.91 of the Income Tax Act, Cap 332 R.E 2019.
[114] Ibid.
[115] Section 3 read together with the First Schedule of the Tax Administration Act defines returns differently in the context of applicable law.
[116] Ibid.
[117] S.66 of the Value Added Tax Act provides that where the 20th day falls on a Saturday, Sunday, or a public holiday, the value added tax return shall be lodged on the first working day following a Saturday, Sunday, or public holiday.
[118] Rule 20(1) of the Value Added Tax (General) Regulations, 2015 as amended by Rule 4 of the Value Added Tax (General) (Amendment) Regulations, GN No. 608 of 2018.

ways namely, electronic form and paper form. Generally, the tax return information needs to be accurate for assessing the amount of tax due. Besides, the revenue authority must have a well-established mechanism to assess and estimate the tax payable. It is in this context that the tax return concept will be used in examining other tax returns outside the set VAT threshold in establishing whether a certain type of turnover can be taken aboard and registered for VAT.

2.2.9 VAT Refund

VAT refund to taxpayers is important for making sure that businesses are not affected since businesses are just agents of the tax authority in the collection of the value added tax. Refunds refer to money paid back to the trader or a taxable person wherein a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns for prescribed accounting periods regularly result in excess credits.[119] The refund once is processed is paid to the taxpayer through Interbank Settlement System (TISS) or VAT trader bank account. The refund is normally paid where the input tax exceeds the output tax. There are other circumstances where a refund can be paid such as a refund for overpayment [120] refund without carrying forward.[121] VAT claims are one of the ways of complying with the neutrality principle. This ensures that businesses are not affected. It states that delaying a refund of tax to a person entitled to such a refund has a negative impact on that person and cross-border VAT transactions create risks of fraud.[122]

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[119] S.81-84 of the Value Added Tax Act.
[120]Ibid, s. 83.
[121] S.82 of the Value Added Tax Act.
[122] Guideline 12 of the Guidelines for Co-operation in value added taxes in the SADC Region, October 2016.

From the discussion above it can be stated that VAT refund is paid where the input tax exceeds the output tax. Thus, it is paid to taxpayers to make sure that businesses are not affected since taxpayers are agents of the tax authority in the collection of value added tax. Accordingly, the refund can be paid also where there is an overpayment of tax. The amount of VAT refund to be paid to the taxpayer can be ascertained using the return filed by the taxpayer in a prescribed period. Generally, payment of refund claims from the taxpayers requires a well-established system for assessing the amount of refund to be paid and also the mechanisms to detect and investigate fraud practices. This assists in making sure that only genuine VAT claims are paid by the tax authority. The concept therefore useful in examining the procedure and mechanism set for VAT refund in the administration of VAT.

2.2.10 Value Added Tax Base

Determining the base to be used in charging VAT is key in the effective administration of VAT. Tax base refers to what is taxed by the tax authority. VAT in most cases, goods, and services are subject to VAT. There are different VAT bases with divergent views in respect of their effectiveness in the administration of value added tax. The first one is the consumption VAT base. This is the type of base whereby a firm adds value to the goods and services it buys from other firms by using its labor force and capital equipment for example buildings and machinery.[123] Other includes the production of raw materials such as cotton or, one or more steps down the line, manufacture goods textiles and leather clothing, or, down further,

[123]Carl S.S., *Choosing Among Types of VATs* in Malcolm, G.et al., (eds), Report on Value Added Tax in Developing Countries, The World Bank, Washington DC, 1990,p.5.

provide the services of whole selling these goods and moving them into retailers' stores, where they are sold to consumers.[124] The final price paid by consumers has to cover all the values added at the successive stages.[125]

Likewise, the base of the consumption VAT is the total private consumption in the country which is the chosen target for any form of indirect taxation. Value added can in the process of computing the base, give rise to the possibility of obtaining a negative value-added for a given assessment period.[126] Under such circumstances, the problem of refunding the taxes previously paid by the firm or business on its purchases arises.[127] As an alternative, and to gain the administrative advantage of avoiding refunds of taxes previously paid, carry forward is sometimes allowed.[128]

The effect of consumption VAT is that in a closed and static economy, the sum of values added at various stages equals the aggregate of all retail sales since the stock of inventories remains constant in such an economy.[129] The total value of sales to consumers at the retail stage can be fully captured through the consumption type of VAT. However, in a dynamic economy, all economic activities are not reflected in this type of VAT since VAT is confined to consumption and does not interfere with capital formation in any manner.[130] Normally, in an open economy, the value added on goods produced abroad is not reflected in the value addition in the consuming

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[124] Ibid.
[125] Ibid.
[126] Reserve Bank of India Bulletin, Tax on Value Added Tax for India: Issues and Alternatives, Volume 30, issue 1-6, 1976, p.197.
[127] Tait, A.A., Value Added Tax: International Practice and Problems, International Monetary Fund, Washington D C. 1988, p.3.
[128] Victor, T., Tax law Design and Drafting, Volume 1, International Monetary Fund, USA, 1996,p.228.
[129] Carl S.S., *Choosing Among Types of VATs* in Malcolm, G.et al.,(eds), Report on Value Added Tax in Developing Countries, The World Bank, Washington DC, 1990,p.5.
[130] Ibid.

country since the value added abroad cannot be directly taxed.[131] A tax on imports or the wholesale transaction immediately after importation becomes necessary as a result of this the value added domestically exceeds the retail sales because of the consumption of imported goods.[132]

Similarly, in the case of exports, the value added by the producing country is not reflected in the retail sales. To strike a convenient balance, the normal practice is to impose a VAT on imports and exempt exports.[133]The most attractive feature of consumption VAT is that it is neutral to various methods of production, capital and current expenditure, savings, and consumption. This quality of VAT enhances economic efficiency as it does not distort consumers' preferences or producers' choices. This feature would perhaps justify the worldwide popularity and acceptance of consumption VAT.[134]

Another basis is the income value added tax base. The income value added tax base is the type of base whereby the income variant allows a deduction only to the extent of depreciation on capital goods.[135] The base of income VAT is the same as that of a comprehensive income tax which imposes a tax on consumption including investment and gives a deduction for deprecation on capital goods.[136] Example of the countries using the income VAT includes Argentina, Peru, and the State of Michigan.[137]

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[131] Ibid.
[132] Victor, T., Tax law Design and Drafting, Volume 1, International Monetary Fund, USA, 1996,p.207.
[133] Ibid.
[134]P. Shome (Ed.)., Tax Policy Handbook, Fiscal Affairs Department, International Monetary Fund, 1995,p.75.
[135]Carl S.S., *Choosing Among Types of VATs* in Malcolm, G.et al.,(eds), Report on Value Added Tax in Developing Countries, The World Bank, Washington DC, 1990,p.6.
[136] Ibid.
[137] Ibid.

The last base is the gross product VAT base. This is a type of base whereby subtraction is given only for purchases of current consumption goods and not allowed for the replacement of capital goods.[138] The value added in the case of gross product VAT far exceeds the retail sales in a particular year. The main challenge of this form of VAT is, that it disallows the deduction of both purchases of capital goods and depreciation and discriminates strongly against the use of capital goods. Examples of countries using a modified version of the gross product value added tax base includes Finland, Morocco, and Senegal.[139]

From the foregoing, gross product value added tax has the broadest base among the three variants, and the consumption value added tax has the narrowest.[140] The broadness of the gross product value added tax base is bought, however, at a potentially high economic price.[141] Imposing a tax burden on gross purchases of capital goods without giving any relief even on depreciation, the gross product VAT discourages investment.[142] To the extent that businesses succeed in shifting at least part of their capital costs forward, taxing capital goods would result in cascading if the gross product VAT uses the credit invoice method.[143] By similar reasoning, these shortcomings, albeit to a lesser extent, are also present with income VAT.[144] While, the consumption VAT, being a general consumption tax, is economically the most neutral and is, therefore, generally regarded as the superior variant among the

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[138] Ibid.
[139] Ibid.
[140] Odd-Helge F., Value Added Tax in Tanzania, Chr. Michelsen Institute Development Studies and Human Rights, Working Paper, Norway, 1995, p.5.
[141] Ibid, p.5-6.
[142] Ibid.
[143] Ibid.
[144] Ibid.

three.[145] It is also the most widely adopted variant in countries that have a value added tax system.[146]

Generally, in respect of VAT base, it can be stated that firstly, there are three variants in respect of imposition of value added tax which are gross product value added tax base, income VAT base, and also consumption value added tax base. Secondly, gross product value added tax has the broadest base among the three variants, and the consumption value added tax has the narrowest. Thirdly, while, the consumption VAT is a general consumption tax, it is economically the most neutral and is, therefore generally regarded as the superior variant among the three.

Fourthly, taxing capital goods would result in cascading if the gross product VAT uses the credit invoice method. Fifthly, the consumption base is the most widely adopted variant in countries that have a value added tax system. The selection of the appropriate base to be used in a particular country in the collection of value added tax is crucial for the effective administration of value added tax and also the growth of the economy. Besides, the selection of the base may have negative effects on the economy if it is not neutral. This will affect also the collection of other taxes and hence contribute to the loss of government revenue.

2.2.11 Tax Administration

Tax administration in many countries is normally done by an established organ or authority under the Ministry of Finance or related ministry. Tax administration is the art of administering taxes as imposed by the revenue laws of the country. The

[145] Ibid.
[146] Ibid.

revenue authorities of the countries are tax administrators established and empowered by the law to administer taxes of the country. In general, tax administration focuses on the implementation and enforcement of tax legislation, regulations by the tax authority or by any designated entity or organ to collect revenue for the government expenditure, and other designed purposes or objectives of the imposition of a particular type of tax.[147] The activities performed by the tax authority include identification and registration of taxpayers, processing of tax returns and third-party information, examination of correctness of tax returns, assessment of tax obligations, collection or imposition of taxes, and provision of services to taxpayers.[148]

The rationale for the establishment of revenue authorities is to enhance public revenue, create efficiency in public resource utilization, employment of competent, disciplined, and qualified staff by providing higher compensation than other civil service and freedom to hire and fire, promotion of taxpayer compliance with a view of reducing compliance costs and reduce corruption and bureaucracy among other reasons.[149] In this context, revenue authorities are seen as solutions in leading to better revenue collections compared to the administration of revenue under the ministries of finance departments.

Generally, from this concept tax administration of VAT exercise is vested to tax authorities according to revenue laws. It includes among other things the

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[147] Matthijs A, Victor V. K., Handbook on Tax Administration, IBFD, Netherlands, 2011,p.109.
[148] Ibid.
[149] Fjeldstad. O. H ., and Moore M., Revenue Authorities and Public Authority in Sub Saharan Africa, Journal of Modern African Studies, 47,1, pp.1-18, Cambridge University Press, 2009, p. 4.

implementation and enforcement of tax legislation and regulations. It covers also identification and registration of taxpayers, processing of tax returns and third-party information, examination of correctness of tax returns, assessment of tax obligations, collection or imposition of taxes, and provision of services to taxpayers, Therefore, where there are challenges found in the law the tax administration process by the tax authority becomes difficult. This result in problem in the enforcement of revenue laws and may contribute to the loss of Government revenue.

In conclusion, the concepts discussed are relevant to this study since they provide insight in respect of value added tax and also the international standards and principles to comply for the effective administration of value added tax. Besides, the context discussed in each concept needs to be considered also since they have interplay with the collection of other types of taxes provided by different revenue laws. The concepts meaning or interpretation may contribute to the loss of government revenue or not depending on how it is applied by the relevant authority. The concepts guided this study in analyzing different challenges affecting the administration of value added tax. Further, the concepts guided the extent to which our VAT law is in line with international standards and principles.

2.3 Principles Governing Value Added Tax

Generally, the principles governing VAT are fundamental in any tax jurisdiction since they play a major role in the implementation and enforcement of VAT law. Compliance with the VAT principles as provided by international standards yields in the realization of the objectives for the introduction of value added tax in any particular tax jurisdiction. The principles in the field of consumption taxes were

welcomed by Ministers in 1998.[150]These principles remain valid for the more global interaction of consumption tax systems. They broadly reflect the philosophy of the existing tax rules in most countries although they were designed in the context of e-commerce taxation.[151] The principles are broadly applicable to VAT in both domestic and international trade. Indeed, the Ottawa Taxation Framework Conditions themselves derived from the same principles that the governments apply to the taxation of conventional commerce.[152]It is believed that Adam Smith[153]is the first writer who attempted to provide tax principles in respect of a sound tax system.

These principles were applicable in conventional taxation; however, they were later modified to suit the local context of different tax jurisdictions. Likewise, there were also other principles developed by the different writers to supplement Adam's Smith principles. Generally, the principles provided below are purely taxation principles developed by Adam Smith and later supplemented by different writers and also further developed in different international, regional and national tax jurisdictions to suit the local context. These principles are now found in different domestic laws and regional and international legal instruments. Herein below are the principles governing general taxation and relevant to the administration of VAT:-

2.3.1 Origin Principle

The fundamental policy issue about the VAT is whether the charge should be imposed by the jurisdiction of the origin or by the jurisdiction of the destination. The

[150]The Ottawa Taxation Framework Conditions were welcomed by Ministers from the 29-member countries and 11 non-member economies at the Ministerial Conference on Electronic Commerce held in Ottawa on 7 - 9 October 1998.
[151]OECD International VAT/GST Guidelines on Neutrality, 2011, p.4.
[152] OECD VAT/GST Guidelines, 2017, p.18.
[153] A. Smith, The Wealth of the Nations, Book V, Chapter II,1776, Part II.

origin principle provides that VAT is imposed on all taxable products that are produced domestically whether exported or internally consumed.[154]In short, exports are taxable under this principle while imports are exempt.[155]The weakness of this principle is that it confines VAT only to goods originating in the country of consumption. Under the origin principle, each jurisdiction would levy VAT on the value created within its borders.[156] The principle under the origin-based regime is that exporting jurisdictions would tax exports on the same basis and at the same rate as domestic supplies.[157] Importing jurisdictions would give a credit against their VAT for the hypothetical tax that would have been paid at the importing jurisdiction's rate.[158]

The weakness of this principle is that it runs counter to the core features of a tax on consumption, in which the revenue should accrue to the jurisdiction where the final consumption takes place. In most cases, revenues are shared amongst jurisdictions where value is added. Imposing tax at the various rates applicable in the jurisdictions where value is added, the origin principle could influence the economic or geographical structure of the value chain and undermine neutrality in international trade.[159] For these reasons, there is widespread consensus that the destination principle, with revenue accruing to the country where final consumption occurs, is

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[154]Alan S, Oliver O., Value Added Tax: A Comparative Approach, Cambridge Law Series, United Kingdom, 2007, p.183.
[155] Ibid.
[156] Paragraph 2.5 of OECD International VAT/GST Guidelines, Guidelines on Neutrality 2011.
[157] Ibid.
[158] Michael L.et al.,(eds)., Value Added Tax and Direct Taxation: Similarities and Differences, IBFD, Netherlands, 2009, p.260-263.
[159] OECD, Consumption Tax Trends 2012 VAT/GST, and Excise Rates, Trends and Administration Issues: VAT/GST and Excise Rates, Trends And Administration Issue, OECD Publishing, 2002,p.1.

preferable to the origin principle from both a theoretical and practical standpoint.[160] The destination principle is the international norm and is sanctioned by World Trade Organization (WTO) rules.[161]

Generally, the origin principle provides that tax is levied in the various jurisdictions in which value was added to the supply chain.[162]Also, the origin principle places consumers in different jurisdictions on an even footing.[163]The origin principle is not favored in most tax jurisdictions because it does not support neutrality in the tax system.

2.3.2 Destination principle

Destination principle[164] provides that VAT is imposed on all taxable products that are consumed domestically.[165] Under this principle in most cases, exports are exempt while imports are taxable. It is normally used along with the consumption type of VAT. The difference between the origin and destination principle is based on the location of production and consumption, and not the type of products being produced or consumed.[166] The two principles are identical in a closed economy whereas, in an open economy, the differences between them lie in the treatment of exports and

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[160] Ibid.
[161]Lexandre M.et al., Tributação da economiadigital, Saraiva, Brazil, p.170.
[162] Michele B. et al., The Increasing Importance of Destination in Tax Regimes, Eversheds Sutherland (US) LLP, USA, 2018, p.10.
[163] Ibid.
[164]The application of the destination principle in VAT achieves neutrality in international trade. According to this principle, which is the international norm, exports are exempt with a refund of input taxes (that is, free of VAT), and imports are taxed on the same basis and with the same rates as local supplies. This implies that the total tax paid concerning a supply is determined by the rules applicable in the jurisdiction of its consumption and therefore all revenue accrues to the jurisdiction where the supply to the final consumer occurs. Reference is made to paragraph 2.5 of OECD International VAT/GST Guidelines, Guidelines on Neutrality 2011.
[165] Zee, Howell H., *Value-added tax* inParhasarathi S(ed.) Tax policy handbook, Washington D.C.: Fiscal Affairs Department, International Monetary Fund, 1995, pp.86-99.
[166] This distinction is analogous to that between the residence and source principles in income taxation.

imports. This implies that under the origin principle, exports are taxed but imports are not, while the converse is the case under the destination principle.

However, the destination principle has been widely accepted as the basis for applying VAT to international trade, its implementation is nevertheless diverse across jurisdictions. This can lead to double taxation or unintended non-taxation and complexity and uncertainty for businesses and tax administrations.[167] To apply the destination principle, VAT systems must have a mechanism for identifying the destination of supplies. The reason being VAT is generally applied on a transaction-by-transaction basis. VAT systems contain place of taxation rules that address all transactions, building on proxies that indicate where the good or service supplied is expected to be used by a business in the production and distribution process (if the supply is made to a business) or consumed (if the supply is made to a final consumer).[168]

Generally, under the destination principle, exports are not subject to VAT, and suppliers are allowed a refund of input VAT exports are free of VAT or zero-rated, while imports are taxed on the same basis and at the same rates as domestic supplies.[169]Therefore, the total tax paid about a supply is determined by the laws of the jurisdiction of consumption, and all revenue accrues to the jurisdiction where the supply to the final consumer occurs.[170] Likewise, when a transaction involves goods

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[167]Susanne K.S., *Mutual Recognition as a New Mode of Governance*, Journal of European Public Policy, 2007, Vol. 14, No. 5, pp. 667-681.
[168] Ibid.
[169] Michele B. et al., The Increasing Importance of Destination in Tax Regimes, Eversheds Sutherland (US) LLP, USA, 2018, p.11.
[170] Ibid.

being moved from one jurisdiction to another, the goods are generally taxed where they are delivered.[171] This suggests that exported goods are free of VAT in the seller's jurisdiction (and suppliers are entitled to an input VAT refund), while imports are subject to the same VAT as equivalent domestic goods in the purchaser's jurisdiction.[172] The VAT on imports is generally collected at the same time as customs duties; although, in some jurisdictions, the collection is postponed until declared on the importer's VAT return.[173]Allowing deduction of the VAT incurred at importation in the same way as an input VAT deduction on a domestic supply ensures neutrality and limits distortions in trade.[174]Implementing the destination principle for international trade in services and intangibles is more difficult than for goods; services and intangibles are not subject to border controls in the same manner as goods.[175]

The destination principle ensures that tax on cross-border supplies is charged only in the jurisdiction in which the final consumption occurs. This principle applies equally to goods, services, and intangibles.[176] However, determining the jurisdiction of the final consumer is less clear in the provision of services and intangibles.[177]The rules for determining the jurisdiction of consumption depend on whether the supply is a business-to-business (B2B) supply or a business-to-consumer (B2C) supply.[178]This distinction is attributable to the different objectives of taxing B2B and B2C supplies.

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[171] Ibid.
[172] Ibid.
[173] Ibid.
[174] Ibid.
[175] Michele B. et al., The Increasing Importance of Destination in Tax Regimes, Eversheds Sutherland (US) LLP, USA, 2018,p.13.
[176] Ibid.
[177] Ibid.
[178] Michele B. et al., The Increasing Importance of Destination in Tax Regimes, Eversheds Sutherland (US) LLP, USA, 2018,p.14.

Taxation of B2C supplies involves the imposition of a final tax burden, while taxation of B2B supplies is merely a means of achieving the ultimate objective of the tax, which is to tax final consumption.[179]

2.2.3. Neutrality Principle

The neutrality principle needs to be complied with to avoid double taxation and discrimination in favor of or against any particular economic choice. Neutrality entails that tax should be levied on different persons in such a way that the economic position of the person remains neutral and the inequality of the income is not affected.[180]This means that the tax authorities should levy or impose taxes in a manner that does not affect the taxpayer's choice of the corporate form, location of the tax base, debt-equity level, choice of pricing policy, and so on within domestic borders.[181]Thus, tax should not affect private decisions whether or not these decisions are efficient or whether or not market price equals marginal social cost.[182]

The neutrality principle seeks to be neutral and equitable between different forms of business activities or transactions since a neutral tax contributes to efficiency by ensuring that optimal allocation of the means of production is realized. In this sense, neutrality also entails that the tax system raises revenue while minimizing discrimination in favor of, or against, any particular economic choice.[183] This means that the same principles of taxation should apply to all forms of business while

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[179] Ibid.
[180] Chand, S.N., Public Finance, Atlantic Publishers and Distributors (P) LTD, New Dheli, 2008,p..91.
[181]Lorraine E., Taxing Multinationals: Transfer Pricing and Corporate Income Taxation in North America, University of Toronto Press, Canada, 1998, p.74.
[182] Ibid.
[183] Ibid.

addressing specific features that may otherwise undermine an equal and neutral application of those principles.

The critic in respect of the neutrality principle is that the principle was developed in the arena of domestic taxation, where the country is implicitly viewed as a closed economy without any contact with foreign persons, foreign investments, and foreign tax regimes.[184] This being the case, neutrality has no role to play under international tax as a rational country will exploit its tax system to promote the welfare of its constituents without regard to which investments it would have attracted in a no-tax world.[185] This suggests that there are challenges in the application of the neutrality principle in international taxation since there are different interpretations of tax rules applicable in different tax jurisdictions.

2.3.4 Efficiency Principle

The efficiency principle entails that the administration of tax collection should not negatively affect the allocation and use of resources in the economy, and certainly shouldn't cost more than the taxes themselves.[186]The efficiency principle requires that compliance costs to businesses and tax administration costs for governments should be minimized.[187]This means that tax efficiency minimizes the cost of complying with the tax laws by reducing its administrative burden and by

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[184] David E., *A Critical Re-assessment of the Role of Neutrality in International Taxation*, 40 Northwestern Journal of International Law & Business, Vol. 40, No. 1, available at https://scholarlycommons.law.northwestern.edu, p.7.
[185] Ibid, p.1.
[186]Stuwart, A., Tax Design: The Mirrlees, Review Oxford University Press, United States, 2011,p.22-23
[186]Doina M. R., CGE Models, and Capital Income Tax Reforms: The Case of a Dual Income Tax for Germany, Springer, New York, 2007, p.26.
[187] Ibid,p.26.

minimizing any distortions in the economy caused by the tax.[188] The reduced administrative burden benefits both the taxpayers and also the economy. Compliance costs or burden is normally contributed by complex laws and regulations in a particular tax jurisdiction. A good example can be drawn from the preparation and filing of VAT returns as required by the law attracts high compliance costs. This is because a huge number of taxpayers are not able to prepare the same without engaging tax consultants. If the tax laws are simple they will be easy to be adhered to by the taxpayers and also be implemented and enforced by the tax authorities. This will reduce tax burdens and compliance costs.

Generally, the efficiency principle depends on the design of the tax system to operate effectively and yield the desired results. Besides, in cross-border, transactions or taxation of the digital economy to invoke the efficiency principle create difficulties and hence may not yield desired results since different tax jurisdictions are involved.

2.3.5 Fiscal Adequacy Principle

The sources of revenue must be adequate to meet government expenditures and other public requirements. The fiscal principle entails that the tax system as a whole should sufficiently yield the revenue needed to meet the expanding expenditures of the government. This is regardless of business conditions, export taxes, trade balances, and the problem of economic adjustment.[189] This means that the revenue should be capable of expanding annually in response to variations in public

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[188] Etisham A. N. S., The Theory and Practice of Tax Reform in Developing Countries, Cambridge University Press, New York, 1991,p.3.

[189] Bon, K.G.G., Economics: Its Concepts & Principles (with Agrarian Reform & Taxation, Rex Book Store, Philippine, 2007, p.286.

expenditures.[190] The law must provide sufficient sources of income to raise revenue to finance government expenditure. The sources identified must be enough to make sure that adequate revenues are collected. In case the sources are not sufficient government is likely to resort to other sources of revenue such as borrowing from different sources for example from financial institutions, and development partners. In Tanzania, the main sources of revenue are income from employment, business, and investment.[191] Value added tax was introduced in Tanzania with the main objective of broadening the tax base to raise revenue for the Government expenditure and provision of social services.

Generally, the fiscal adequacy principle focuses on the way the legal system has been designed to collect enough revenue for the government. This suggests that where the laws are not reflecting well the international benchmarks in respect of good taxation policy it will affect the collection of revenue. Besides, where taxation involves cross-border transactions and domestic laws have not well addressed the mechanism of dealing with international taxation this will negatively affect the implementation of the fiscal adequacy principle for example taxation of the digital transactions. Taxation of digital transactions involves different tax jurisdictions and therefore requires both domestic legislation and international legal framework initiatives.

2.3.6 Administrative Feasibility Principle

The administrative feasibility of the revenue laws determines the realization of the

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[190] Ibid.
[191] Sections 7, 8, and 9 of the Income Tax Act.

objectives of the introduction of a particular type of tax. In this context, the realization of objectives of the introduction of a particular types of tax such as VAT. To a large extent, such tax depends on the manner the law has been designed and the enforcement mechanism thereto. In this context, tax should be certain[192] and plain to the taxpayers, capable of enforcement by an adequate and well-trained staff of the public office. It also should be convenient as to the time and manner of payment[193] and unduly burdensome upon or discouraging business activity. [194]

Equally important, tax rules should be clear and simple to understand so that taxpayers know where they stand. A simple tax system makes it easier for individuals and businesses to understand their obligations and entitlements.[195] As a result, businesses are more likely to make optimal decisions and respond to intended policy choices. Complexity also favors aggressive tax planning, which may trigger deadweight losses for the economy of the country. Generally, the cost of collection of revenue should not be overly high as stated by Adam Smith.[196] The tax system should not be excessively costly to administer by the tax authority.[197] If this is the

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[192] Tax is clear when a person liable to pay tax knows how much he is required to pay and for that he may take appropriate steps beforehand. Reference is made to Sampat M., Modern Economic Theory **(**4thed), New Age International Publishers, New Dheli, 2005, p.824. Also, certainty implies that taxpayers should be certain about the quantum of tax to be paid. Tax rates should be certain, items of taxation are precisely defined and no discretionary power be left to the tax collecting officials because the uncertainty of any kind may result in fraud and corruption. The taxpayer might defraud the state by not paying his due tax in full, although he could afford to pay; or the tax collectors might oppress the taxpayers by exacting more out of them. Adam Smith states this principle in the following words: The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the quantity to be paid, ought to be very clear and plain to the contributor and every other person Refer to Wealth of Nations (Canon's edition), Bk, V, Ch. II, Part II. p. 777.

[193] The time and mode of payment of a tax should be such as to cause the minimum inconvenience to the tax-payer. Adam Smith lays down that Every tax ought to be levied at the time and in a manner in which it is most likely to be convenient for the contributors to pay it

[194] Bon, K.G.G., Economics: Its Concepts & Principles (with Agrarian Reform & Taxation), Rex Book Store, Philippine, 2007, p.286.

[195]Parthasrathi S., Tax Policy Handbook, IMF, Washington DC, 2002, p .3.

[196]Charles, Y.M., Tax Administration in Developing Countries: An Economic Perspective, International Monetary Fund. Research Dept, IMF Staff papers: Volume 35, Issue 1, 1988, Washington, D.C, p.183.

[197] Ibid.

case it will affect the collection of revenue and also causes challenges in the administration of tax by the tax authority. If there is certainty in taxation the tax authority will be able to estimate the probable yield of a tax with a certain degree of accuracy so that the expenses can be managed according to the revenue or the purpose for which the tax is being levied or imposed.

2.3.7 Flexibility Principle

The tax system should be flexible enough to accommodate both technological and commercial development. This principle entails that the taxation systems should be flexible and dynamic enough to ensure they keep pace with technological and commercial developments.[198] A tax system must be dynamic and flexible enough to meet the current revenue needs of governments while adapting to changing needs on an ongoing basis.[199] This means that the structural features of the system should be durable in a changing policy context, yet flexible. In addition, it should be dynamic enough to allow governments to respond to keep pace with technological and commercial developments, considering future developments will often be difficult to predict.[200]

In this context, the revenue laws should be flexible so that the tax authority and courts of law should interpret the same so that to cover different changing technological reforms and economic reforms taking place in respective tax jurisdictions. The flexibility of the tax system will allow the tax authority and tax

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[198]OECD., Fundamental principles of taxation in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris, 2014, p.30.
[199] Ibid.
[200] Ibid.

institutions to address the emerging challenges regarding the administration of different revenue laws and regulations made there under.

2.3.8 Equity Principle

Fairness of the tax system contributes to the collection of enough revenue because of voluntary compliance by the taxpayers and simplicity in the enforcement of the tax laws by the tax authority. The taxpayers feel obliged to pay the appropriate taxes since they see fairness in respect of rates of taxes basing the principle of ability to pay tax and also equity principle. The equity principle entails that the tax system must be fair, just, or equitable.[201]To establish whether the tax system is fair normally reference is made to the ability of the person to pay tax. This principle requires that individuals should be asked to pay taxes according to their ability to pay. In the context of this principle, the rich have a greater ability to pay; therefore, they should pay more tax to the government than the poor. Essentially, the ability to pay approach to fairness in taxation requires that the burden of tax falling on the various persons should be the same. [202]

The equity is divided into horizontal equity and vertical equity[203] based on the principle of ability to pay. Horizontal equity means equals should be treated equally, meaning that persons with the same ability to pay tax should be made to bear the same amount of tax burden.[204] According to vertical equity, unequal should be

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[201]Janice P, M. L.,(ed), The Elgar Companion to Feminist Economics, Edward Elgar Publishing Limited, USA, 1999, p.696.
[202] Ibid.
[203] Ibid.
[204]Joseph J. T, Dennis J. V., Tax Justice: The Ongoing Debate, The Urban Institute Press, USA, 2002, p.9.

treated unequally focusing on how the tax burden among people with different abilities to pay is divided.[205]Taxation should produce the right amount of tax at the right time while avoiding both double taxation and unintentional non-taxation.[206] The potential for tax evasion and avoidance can be minimized if the tax system is fair and just for all.[207] The consideration should be the enforceability of the law by the policy makers since it influences the collection and general administration of revenue by the tax authority.

From the foregoing, the principles discussed which are the origin principle, destination principle, neutrality principle, efficiency principle, fiscal adequacy principle, administrative feasibility principle, flexibility principle, and equity principle all are relevant to this study since they provide the international benchmarks and principles which are to be reflected in domestic laws. Despite, all of them being relevant in the administration of VAT, this study is guided by the destination principle. This is because it focuses on the imposition of VAT on all taxable products that are consumed domestically. Besides, the principle is the basis for applying VAT to international trade.

The principle ensures that tax on cross-border supplies is charged only in the jurisdiction in which the final consumption occurs. This is because the idea behind VAT is that taxation should be on consumption and not necessarily on the origin of goods and services. This being the case, the destination principle is most appropriate

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[205] Ibid.
[206]Dixit, S, and Amit, K. S., E-Retailing Challenges and Opportunities in the Global Marketplace, IGI Global, USA, 2016, p.281.
[207] Ibid.

to be invoked in the administration of value added tax. Notably, where value added tax is imposed using the destination principle, other principles such as neutrality principle, efficiency principle, fiscal adequacy principle, administrative feasibility principle, flexibility principle, and equity principle are also relevant and applicable at the place of consumption of goods and services. The reflection of these principles in domestic laws assists in the effective administration of VAT and also addressing the problem of loss of government revenue.

2.4 Conclusion

VAT concepts and principles are very important in the administration of VAT. For that reason, it is very important to understand them from the legal point of view in addressing existing VAT challenges. It is not disputed that such concepts and principles sometimes are applied differently by countries, nevertheless, they play important role in the administration of VAT. Similarly, effective tax administration is possible in the circumstances where the domestic laws are effective enough in addressing challenges facing VAT and also where the tax authority is well prepared to implement and enforce the revenue laws using the established tax machinery.

In this context, if the VAT laws are in line with the principles and benchmarks governing the administration of VAT worldwide, it is easy to realize the main objective of introducing VAT in the tax system in widening the tax base. A country aiming at switching over to VAT from the traditional sales tax system has to decide carefully which variant of VAT it is going to adopt. The VAT both in theory and practice may take a wide variety of forms. A variety of exemptions, rebates, deductions and zero rates, sectors and goods to be covered under VAT, sectors to be

left outside the tax net or exempted, and treatment of hard to tax items, can shape the tax base in different ways.[208]Moreover, the countries that have introduced the comprehensive VAT have shown a remarkable degree of unity in selecting the possible combinations. Different countries have adopted consumption type, destination principle, and multiple tax rates in addition to the zero rate and tax-exclusive VAT.

[208] Ibid.

CHAPTER THREE

VALUE ADDED TAX UNDER INTERNATIONAL INSTRUMENTS

3.1 Introduction

This chapter provides in-depth different international instruments governing value added tax. It also provides the origin and historical development of VAT worldwide. The international instruments referred to are model laws which include treaties and guidelines. The model laws made in most cases cover a particular area of interest as agreed by the states. The states have the liberty to choose to adopt or reject, in whole or in part a particular model law in their domestic law. After adopting a particular model law by either incorporating into the municipal law or ratifying it to be applicable, the same will be enforceable in that particular country or state. The international instruments provide the standards and principles governing the administration of value added tax. The standards and principles discussed are relevant to this study since they can be used as benchmarks for legal reforms to enact the law which reflects and comply with international standards and principles.

3.2 Historical Development of Value Added Tax Worldwide

The origins of the VAT have never been decisively settled. However, it is accredited to one of two sources namely the German businessman Wilhelm Siemens in 1918 and the American economist Thomas S. Adams in his writing between 1910 and 1921.[209] The two had different ideas concerning value added tax. According to Siemens's view, value added tax allowed for the recovery of taxes paid on business

[209] Siemens, C.F.V., Improving the Sales Tax (1921) in Clara K. Sullivan, The Tax on Value Added, New York, 1965), p. 17.

inputs and therefore avoided the cascading problems that arise with a turnover tax.[210] This innovation while important hardly meant the revolutionary overthrow of the fiscal order.[211] Siemens VAT concept was seen as a technical innovation that brought a key improvement to the turnover tax.[212] He is credited with coming up with the idea of a VAT in 1920.[213]To Siemens, the VAT was a way to resolve the cascading problems that arose in implementing gross turnover taxes and sales taxes.[214]

According to Adam, the VAT was an alternative to the business income tax.[215]He focused on federal tax policy since there was no national sales tax. His concern was not with technical modification to an extant regime but with a major alteration of the existing federal income tax system.[216]The providence of the VAT in Western Europe and the United States has largely reflected different motives of the tax's innovators. For example, Germany, along with much of Western Europe, came to clinch the value added tax as a superior technical modification to sales taxes already in place, and as an adjunct to the income tax.[217]

Following the ideas given by Siemens and Adam regarding value added tax, the concept of VAT started spreading to different countries. Adoption of VAT started slowly and early proposals to introduce the tax were made in France in 1920. It

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[210] James, K., The Rise of Value Added Tax, Cambridge Tax Law Series, Cambridge University Press, New York, 2015, p.1.
[211] Ibid.
[212] Ibid.
[213] Lilian, E et al., The Modern VAT, IMF, 2001, p.4.
[214] Ibid.
[215] Thomas S. A.," Fundamental Problems of Federal Income Taxation", Quarterly Journal of Economics, Vol. 35, no. 4, 1921, p. 553.
[216] Schenk, A and Oldman, O., Value Added Tax: A Comparative Approach, Cambridge Tax Law Series, Cambridge University Press, New York, 2015, p.433.
[217] Ibid.

initially started being applied at the manufacturing level and subsequently converted into consumption VAT in 1954.[218] Its original coverage was limited since France did not move to a full VAT that reached the broader retail sector until 1968. The first full VAT in Europe was enacted in Denmark in 1967, although the country did not join the European Economic Community until 1973.[219]

Notably, VAT adoption progressed in two major phases. The first phase occurred mostly in Western Europe and Latin America during the 1960 and 1970. The rise of the value added tax in Western Europe was accelerated by a series of European Economic Community (EEC) directives requiring member states to adopt a harmonized VAT upon entry to the European Union.[220] The second phase occurred in late 1980 in some high-profile industrialized countries outside the European Union (EU), such as Australia, Canada, Japan, and Switzerland.[221] This phase also witnessed the massive expansion of value added tax in transitional and developing economies, most notably in Africa and Asia.[222]

The International Monetary Fund (IMF) and the World Bank identified as key influences in the rapid adoption of value added tax in different parts of the world.[223] IMF attached considerable importance to the proper design and implementation of

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[218] Mandal R.K., Value Added Tax in North-East India: Issues and Strategies, Mittal Publications, India, 2009, p.129.

[219] Siemens C.F.V., Improving the Sales Tax (1921) in Clara K. S, The Tax on Value Added, New York, 1965, 17.

[220] First Council Directive (67/227/EEC) and Second Council Directive (67/228/EEC) of April 11, 1967. The Sixth Council Directive was the main document on harmonization: Directive 77/388/EEC of May 17, 1977 — the recast of this directive is the main operative directive on the EU VAT — VAT Directive 2006/112/EC of November 28, 2006.

[221] Kato, J., Regressive Taxation and the Welfare State: Path Dependence and Policy Diffusion, Cambridge University Press, New Yor,k, 2015, p.32

[222] Ebrill, L., et al., The Modern VAT,IMF. Washington, 2001, p.70.

[223]Siemens, C.F.V., Improving the Sales Tax (1921) in Clara K. S, The Tax on Value Added , New York, 1965, 17.

value added tax. The Fiscal Affairs Department of the IMF provided technical assistance in respect of the establishment of value added tax by different countries. The technical advice given by Fiscal Affairs Department (FAD) was given in conjunction with the IMF's Legal Department.[224] Most countries adopted VAT in their tax system since it was one of the ways of widening the tax base for revenue collection.

In general, the development of value added tax in developed countries can be classified into two groups of countries, namely, countries that have introduced a VAT based on the French and then European model, and the second group is countries that have implemented a different VAT system. The former group is mostly members of the EU. The EU law under Articles 96 to 99 of VAT Directive 2006/112/EC[225] allows EU member states to have a standard rate that cannot be lower than 15 percent and up to two reduced rates that cannot be lower than 5 percent.[226] Also, Chapter 4 of the VAT directive grants older member states reserved rights according to which they can continue applying a reduced rate lower than the minimum indicated in the directive if that rate was in place before 1991.[227]

The latter group is based on the different VAT system models. This model has a much broader base at the standard rate. Example of the countries following this model includes Australia, Canada, Korea, New Zealand, Singapore, and South

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[224]Munoz, S et al., 2003, "Social Impact of a Tax Reform: The Case of Ethiopia" IMF Working Papers Vol. 03, No. 232, pp 1, 1018-5941.
[225]November 28, 2006.
[226] Sebastian, P, Marlies, U., Global Trends in VAT/GST and Direct Taxation, Linde, Vienna, 2015, p.93.
[227] Ibid.

Africa.[228] In 1986 New Zealand value added tax reform introduced a broad-based value added tax with a low single standard rate, a low registration threshold, and few exceptions and exemptions.[229] It scores the highest on the OECD value added revenue ratio.[230] The VAT revenue ratio is an indicator that attempts to measure the gap between the revenues that would arise from a theoretically pure VAT system (a single rate with full compliance and full tax collection) and the revenues collected.[231] It is defined as the ratio between the actual VAT revenue collected and the revenue that would theoretically be raised if VAT is applied at the standard rate to all final consumption.[232] To calculate the ratio, final consumption is deemed to be reflected by the figures of national consumption taken from national accounts.[233]

Although several investment goods are not considered for consumption in national accounts whereas they are subject to VAT.[234] The VAT revenue ratio should be considered only as an indicator as some factors may distort the measurement.[235] Definition of final consumption, exemption, reduced rates, and taxation thresholds may affect the ratio, as well as other factors such as poor compliance or tax administration.[236]Another country is South Africa which implemented a value added tax in 1991 that broadly follows the New Zealand model; however, at inception it zero-rated basic food items.[237] This was extended in 2001 to paraffin, an energy

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[228] Alain, C., and Jeffrey O., An International Perspective on VAT, Volume 59, Number 12 September 20, 2010, available athttps://www.oecd.org/ctp/consumption/46073502.pdf, p.945.
[229] Ibid.
[230] Stéphane B., Consumption Tax Trends 2008, OECD Publishing, p. 67-71.
[231] Ibid.
[232] Ibid.
[233] Ibid.
[234] Ibid.
[235] Ibid.
[236] Ibid.
[237] Delfin S. G, et al., ‘‘An Analysis of South Africa’s Value Added Tax,’’ World Bank Policy Research Working Paper No. 3671, Aug. 2005, p.2 and 6.

source used by most low-income households.[238]It has, however, a relatively high VAT registration threshold to simplify the system by excluding small firms.

Singapore, which introduced VAT in 1994, also has a broad base with a high threshold and a single rate while Australia introduced the GST in 2000. It has a relatively wide base but has several zero rates (the Australian terminology is GST free supplies) for health and medical care, educational supplies, child care, and food and beverages. Single valued added tax rate systems have largely favored, for example out of 21 African countries that adopted a VAT between 1990 and 1999, 14 have a single-rate system.[239] Eight of the nine African countries that have adopted a value added tax since 2000 have a single-rate VAT system.

Generally, the countries with a wider base at the standard rate frequently have a standard rate less than the EU minimum of 15 percent, for example, 10 percent in Australia, 5 percent in Canada,[240]12.5 percent in New Zealand,[241] 7 percent in Singapore, and 14 percent in South Africa. The justification for introducing a different rate structure in Europe was the need to alleviate the tax on goods and services that forms a larger share of expenditures of the poorest households. Many countries had a specific higher rate for luxury products, probably reflecting earlier

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[238] Ibid.

[239]John, N., and Tehmina, S.K., ‘‘Tax Policy: Recent Trends and Coming Challenges,’’ IMF Working Paper No. WP/ 07/274, IMF 2007, p. 38.

[240] Since January 2008, the GST rate is 5 percent in Canada (previously 6 percent). However, five provinces (Nova Scotia, New Brunswick, Newfoundland, and Labrador, and — as of July 2010 — Ontario and British Columbia) harmonized their provincial sales tax with the GST to create the harmonized sales tax. The HST applies to the same base of goods and services as the GST. The HST rate is 13 percent (or 12 percent for British Columbia), with a 5 percent federal part and an 8 percent (or 7 percent for British Columbia) provincial part. Make reference to Canada: Harmonized Sales Tax for British Columbia and Ontario, available at http://www.craarc.gc.ca/tx/bsnss/tpcs/gst-tps/rts-eng.html, (Accessed on 23/01/2021).

[241] The GST rate in New Zealand has increased from 12.5 percent to 15 percent beginning October 1, 2010. This is according to the Taxation (Budget Measures) Act 2010.

sales taxes that were restricted to luxury goods. European countries enacted a VAT in the 1960s and 1970s.[242]

Other countries followed in the 1980s and thereafter. Before 1970 only Brazil and Uruguay among the developing countries had such a tax.[243] At present most developing countries have a comprehensive VAT extending through the retail level. [244] The rates and coverage of VAT differ considerably among developing countries because it is levied at a single rate while in others it is applied with multiple rates.[245]A recent IMF study concludes that the VAT can be a good way to raise resources and modernize the overall tax system but this requires that the tax be well designed and implemented.[246]There have been some significant weaknesses in the VAT's implementation in developing and transition countries.

The weaknesses include the lack of coordination of the direct and indirect tax administrations, which are not yet integrated into several countries. Another weakness is the difficulty of implementing workable self-assessment systems, under which taxpayers declare and pay taxes based on their calculations, subject to the possibility of a later audit by the tax authorities. The other weakness is the need for effective audit programs based on risk-analysis selection methods and the need to give prompt refunds of excess credits to certain taxpayers, particularly exporters.

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[242]The Tax Policy Centre, A citizen's guide to the fascinating (though often complex) elements of the US tax system, available at https://www.taxpolicycenter.org, (Accessed on 23/01/2021).
[243] Ibid.
[244] Ibid.
[245] Ibid.
[246] IMF, the Allure of the Value-Added Tax, Finance, and Development, A quarterly magazine of the IMF, Volume 39, Number 2, 2002 available at https://www.imf.org,(Accessed on 23/01/2021).
23/01/2021).

This is because exports are zero-rated exporters will have no output tax liability but will be entitled to a refund of the tax paid on their purchases. These weaknesses identified as affecting the implementation of value added tax affects also the implementation of VAT in Tanzania. The reason being the VAT law in Tanzania has not addressed well the identified weaknesses and hence contributes to the loss of government revenue.

The differences in approach to VAT lead to the establishment of different model laws and other documents at the international and regional levels governing VAT. These instruments are used as benchmarks for countries when crafting municipal laws. These instruments are made under Organization for Economic Cooperation and Development (OECD)[247] and the United Nations (UN) commonly known as model laws. These Model laws are not binding but they form the basis for negotiations between countries in respect of bilateral double tax treaties. Below are some of the model laws providing for different issues in respect of the VAT.

3.3 The Organization for Economic Cooperation and Development (OECD) International VAT/GST Guidelines 2017

Generally, the International VAT/GST Guidelines have been introduced as a model law in respect of the administration of value added tax. The guidelines came to fill

[247]The Organization for Economic Cooperation and Development (OECD) is a unique forum where the governments of 36 member states with market economies work with each other, as well as with more than 70 non-member economies to promote economic growth, prosperity, and sustainable development. The forum provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practices, and coordinate domestic and international policies. For more than 50 years, the OECD has been a valuable source of policy analysis and internationally comparable statistical, economic, and social data. Over the past decade, the OECD has further deepened its engagement with business, trade unions, and other representatives of civil society. Make reference to Discover the OECD: Better Policies for Better Lives available at https://www.oecd.org,(Accessed on 17/02/2020).

the gap in absence of the general model law providing for VAT at the international level. It should be noted that although VAT/GST guidelines is a regional instrument under OECD it is internationally accepted by both developed and developing countries. The objective of the guidelines is to assist policymakers in their efforts to evaluate and develop the legal and administrative framework in their jurisdiction.[248] The guidelines require countries while adopting the guidelines to consider their specific economic, legal, institutional, cultural, and social circumstances and practices.[249]

The Guidelines set forth some principles for the VAT treatment of the most common types of international transactions, focusing on trade in services and intangibles. It aims at addressing the uncertainty and risks of double taxation and unintended non-taxation that result from inconsistencies in the application of VAT in a cross-border context.[250] Further, the Guidelines do not aim at detailed prescriptions for national legislation since jurisdictions are sovereign for the design and application of their laws. It seeks to identify objectives and suggest means for achieving them. The purpose is to serve as a reference point. Thus, governments have an important responsibility for shaping effective tax frameworks, thereby assessing the likely effects, costs, and benefits of policy options in ensuring sufficient flexibility to respond to evolving circumstances and demands. The following part provides various standards as enshrined under VAT/GST 2017.

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[248] Paragraph 6 of the Preface to the International VAT/GST Guidelines 2017.
[249] Ibid.
[250] Ibid.

3.3.1 Core Features of the VAT

The introduction of value added tax in the tax system is guided by features that are accepted and applicable in other tax jurisdictions. This being the case it is important to have a law that reflects the VAT features set up to bring positive impacts in respect of the administration and enforcement of VAT law. Failure of the VAT law to accommodate well VAT features as required will cause negative effects on the economy and affect the administration and enforcement of value added tax by the tax authority. The realization of the objective for the introduction of VAT depends much on what extent these features are well reflected by the law. The VAT / GST guidelines provide four key features of VAT. These include the overarching purpose of the VAT, the central design feature of VAT, VAT under international trade that is destination principle, and application of the generally accepted principle of tax policy to VAT.

3.3.2 Purpose of the VAT

The overarching purpose of the VAT is to impose a broad-based tax on consumption, which is understood to mean final consumption by households.[251] This means that the VAT is regarded as a broad tax base since it is a tax based on household consumption that is collected incrementally by businesses at each stage of their production and distribution of goods and services. Private individuals or persons engaging in the consumption are subject to value added tax.[252] Value added tax systems impose the VAT burden not only on final household consumption but also on various entities that are involved in different activities covered by the law or

[251] Paragraph 1.2 of the International VAT/GST Guidelines 2017.
[252] Ibid

in value added tax-exempt activities.[253]

In such situations, VAT can be viewed alternatively as treating such entities as if they were end consumers, or as input taxing the supplies made by such entities on the presumption that the burden of the VAT imposed will be passed on in the prices of the outputs of those non-business activities. Similarly, businesses are not households and at least as a matter of principle are incapable of final or household consumption.[254] In practice, if a business acquires goods, services, or intangibles that are used in whole or in part for the private consumption of the business owners, the VAT regime must determine whether or the extent to which, the purchase should be treated as acquired for business purpose or private consumptions.[255]

3.3.3.1 Central Design feature of VAT

The central design feature of VAT is that the tax is collected through a staged process.[256] The staged process needs to be in place for effective administration and enforcement of VAT in any tax jurisdiction. The absence of the staged process results in challenges in the collection of revenue and enforcement of the law. Consequently, failure to realize the objective for the introduction of the value added tax. In a staged collection process, each taxable person in the supply chain is responsible for collecting the tax on its outputs and remitting the proportion of tax corresponding to its margin that is the value added, in a particular tax period.[257] This means that the taxable person remits the difference between the VAT imposed on its

[253] Ibid
[254] Ibid, paragraph 1.4.
[255] Ibid
[256] Ibid, paragraph 1.5.
[257] Ibid.

taxed outputs (output tax) and the VAT imposed on its taxed inputs (input tax) for the designated period.[258] This central design feature of the VAT, coupled with the fundamental principle that the burden of the tax should not rest on businesses, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods or services.

3.3.3.2 VAT under International Trade

Taxation of VAT is imposed on economic activities either import or export. The fundamental issue of economic policy concerning the international application of the VAT is whether the levy should be imposed by the jurisdiction of origin or destination. In the context of the guidelines under destination, the principle requires tax to be levied only on the final consumption that occurs within the taxing jurisdiction. Under the origin principle, the tax is levied in the various jurisdictions where the value was added.[259]

The key economic difference between the two principles is that the destination on principle places all firms competing in a given jurisdiction on an even footing whereas the origin principle places consumers in different jurisdictions on an even footing. The rule governing the destination principle is that exports are not subject to tax with a refund of input taxes that is free of VAT or zero-rated and imports are taxed on the same basis and at the same rates as domestic supplies. Accordingly, the total tax paid concerning a supply is determined by the rules applicable in the

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[258] Ibid.
[259] Ibid, paragraph 1.8.

jurisdiction of its consumption and all revenue accrues to the jurisdiction where the supply to the final consumer occurs.[260]

In the context of the origin principle, each jurisdiction would levy VAT on the value created within its borders. Exporting jurisdictions would tax exports on the same basis and at the same rate as domestic supplies while importing jurisdictions would give a credit against their VAT for the hypothetical tax that would have been paid at the importing jurisdiction's rate. [261] Tax paid on a supply would then reflect the pattern of its origins and the aggregate revenue would be distributed in that pattern. This would run counter to the core features of a VAT as a tax on consumption. The revenue should accrue to the jurisdiction where the final consumption takes place. These revenues are shared amongst jurisdictions where value is added. This implies that by imposing tax at the various rates applicable in the jurisdictions where value is added, the origin principle could influence the economic or geographical structure of the value chain and undermine neutrality in international trade.[262]

3.3.3.3 Application of the generally accepted principle of tax policy to VAT

The OECD VAT/GST Guidelines accepted the application of generally accepted principles of tax policy to VAT. The accepted tax policy principles are neutrality, efficiency, certainty, and effectiveness.[263]The neutrality principle provides that taxation should be neutral and equitable between forms of electronic commerce and

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[260] Ibid, paragraph 1.9.
[261] Ibid, paragraph 1.10.
[262] Ibid.
[263] See detailed discussion in chapter two.

between conventional and electronic forms of commerce.[264] This means that business decisions should be motivated by economic rather than tax considerations. For that reason, taxpayers in similar situations carrying out similar transactions should be subject to similar levels of taxation.

The efficiency principle entails that compliance costs for businesses and administrative costs for the tax authorities should be minimized as far as possible.[265] If VAT is not well administered it may result in high compliance costs which are burdens on businesses and burdens on the tax authorities. Examples of costs associated with VAT compliance include costs related to administration and the costs of collection and recovery. There are also costs associated with establishing systems and processes, including making software changes and finance. Similarly, tax administrations will incur costs and burdens in managing VAT systems, including the underlying procedures and policies.[266]

The certainty and simplicity principle, this principle provides that the tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where, and how the tax is to be accounted for.[267] The effectiveness and fairness principle, states that taxation should produce the right amount of tax at the right time.[268] The potential for tax evasion and avoidance should be minimized while keeping counteracting

[264] Paragraph 1.16 of the OECD VAT/GST Guidelines 2017.
[265]Ibid, paragraph 2.19.
[266] Ibid.
[267] Ibid.
[268] Ibid.

measures proportionate to the risks involved. Last, the flexibility principle, this principle states that the systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments.[269]Generally, the neutrality principle, efficiency principle, certainty and simplicity principle, effectiveness and fairness principle, and flexibility principles are all relevant to this study. They establish international standards to be reflected in municipal laws for the effective administration of VAT. The VAT law in Tanzania has reflected to some extent these principles, however, not to the degree required likely to affect the administration of the VAT in Tanzania.

3.3.4 Neutrality of VAT in the Context of Cross-Border Trade

Generally, the VAT rules should be framed in such a way that they are not the primary influence on business decisions.[270] If the VAT rules influence the decisions making, it implies that the rules are not in line with the neutrality principle. In addition, to support the neutrality principle, the VAT rules should be accessible, clear, and consistent.[271] There are a number of factors that influences business decisions such as financial commercial, environmental and legal factors. For the purpose of administration of the VAT in most tax jurisdictions, it is a settled position that VAT rules or policies should not induce businesses to adopt specific legal forms under which they operate.[272] The governing principle in respect of the administration of the VAT is that businesses should not be affected since they are just acting as collecting agents of the tax authority.

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[269] Ibid.
[270] Guideline 2.3 of the OECD VAT/GST Guidelines 2017.
[271] Ibid, paragraph 2.9.
[272] Ibid, paragraph 2.7.

Similarly, the general principles underpinning neutrality apply equally to domestic and international trade.[273]It is particularly important that the application of the rules for international supplies does not produce a tax advantage when compared with comparable domestic transactions. This includes the level at which taxation is applied, the costs of collection and administration, and the corresponding burdens placed on businesses and tax administrations.[274] The VAT structure or framework should be designed in a manner that ensures there is no unfair competitive advantage afforded to domestic or foreign businesses that may otherwise distort international trade and limit consumer choice.[275] Likewise, with respect to the level of taxation, foreign businesses should not be disadvantaged or advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid. Similarly, the VAT system should not encourage or discourage businesses from investing in or undertaking activities in a specific country. This means that such business decisions should be made on the basis of market and other non-tax considerations.[276]

For the purpose of ensuring administration and compliance with the law, VAT imposes compliance costs and burdens on businesses and administrative costs and burdens on the tax authorities. VAT compliance includes costs related to administration e.g. employees and the costs of collection and recovery, infrastructure e.g. costs associated with establishing systems and processes, including making software changes, and finance e.g. cash-flow costs and the costs of bank

[273] Ibid, paragraph 2.10.
[274] Ibid, paragraph 2.11.
[275] Ibid, paragraph 2.12.
[276] Ibid, paragraph 2.14.

guarantees.[277]

Likewise, tax administrations will incur costs and burdens in managing VAT systems, including the underlying procedures and policies. [278]Although some form of VAT refund or relief mechanism should generally be available to foreign businesses, the availability and scope of such systems or mechanisms may consider the related burdens of administration, collection, and enforcement. Equally, the tax administration should not be expected to incur disproportionate costs or burdens when dealing with foreign businesses, such as might be the case when dealing with low-value claims. In general, where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses.[279]

3.3.5 Determining the Place of Taxation for Cross Border Supplies of Services and Intangibles

Determination of place of taxation for cross-border supplies and intangibles is embedded under the destination principle. As noted earlier, the principle entails tax on cross-border supplies must be levied where final consumption occurs. This means that for consumption tax purposes internationally traded services and intangibles should be taxed according to the rules of the jurisdiction of consumption.[280] For that reason, the Guidelines recommend approaches that reflect the destination principle for determining the jurisdiction of taxation for international supplies of services and

[277] Ibid, paragraph 2.19.
[278] Ibid, paragraph 2.2.
[279] Ibid, Guideline 2.6.
[280] Ibid, Guideline 3.1.

intangibles. This can be done while ensuring that international neutrality is maintained, compliance by businesses involved in these supplies is kept as simple as possible, clarity and certainty are provided for both business and tax administrations, and the costs involved in complying with the tax and administering it are minimal, and barriers to evasion and avoidance are sufficiently robust.[281]

The Guidelines have established principles governing the taxation of supplies between business to business and business to consumer supplies. For business-to-business supplies, the jurisdiction in which the customer is located has the taxing rights over internationally traded services or intangibles.[282] This means that the place where the customer is located is vested with the right to impose tax on such supplies as governed by the laws applicable in that jurisdiction. The identity of the customer is normally determined by reference to the business agreement.[283]Business agreements consist of the elements that identify the parties to a supply and the rights and obligations with respect to that supply. They are generally based on mutual understanding. Further, when the customer has establishments in more than one jurisdiction, the taxing rights accrue to the jurisdiction(s) where the establishment(s) using the service or intangible is (are) located.[284]

Regarding, business-to-consumer supplies, the Guidelines provide that the jurisdiction in which the supply is physically performed has the taxing rights over business-to-consumer supplies of services and intangibles. Examples include

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[281] Ibid, paragraph 3.3.
[282] Ibid, Guideline 3.2.
[283]Ibid, Guideline 3.3.
[284] Ibid, Guideline 3.4.

services physically performed on the person (e.g. hairdressing, massage, beauty therapy, physiotherapy); accommodation; restaurant and catering services; entry to the cinema, theatre performances, trade fairs, museums, exhibitions, and parks; attendance at sports competitions.[285]

The conditions are that the supplies are physically performed at a readily identifiable place. In addition, the supply is ordinarily consumed at the same time as and at the same place where they are physically performed and ordinarily requires the physical presence of the person performing the supply. Moreover, the person consuming the service or intangible at the same time and place where the supply of such a service or intangible is physically performed.[286] There are circumstances that are not covered by Guideline in respect of business to consumer supplies.[287] This is because to a large extent the Guideline is aimed primarily at supplies that are typically consumed at an identifiable place where they are performed, rather than supplies that can be provided remotely or that can be consumed at a time and place other than the place of performance.[288]

For circumstances not covered, the Guideline provides that the jurisdiction in which the customer has its usual residence has the taxing rights over business-to-consumer supplies of services and intangibles.[289]Examples of supplies of services and intangibles that are not covered include consultancy, accountancy, and legal services, financial and insurance services, telecommunication and broadcasting services,

[285]Ibid, paragraph 3.117.
[286] Ibid, Guideline 3.5.
[287] Ibid.
[288] Ibid, paragraph 3.117.
[289] Ibid, Guideline 3.6.

online supplies of software and software maintenance, online supplies of digital content (movies, TV shows, music, etc.), digital data storage and online gaming.[290]

In conclusion, the VAT/GST Guidelines provide the international standards and principles governing VAT administration in any tax jurisdiction. These principles and standards highlighted in the Guidelines are relevant and can be adopted by Tanzania with or without modification in addressing the challenges facing the administration of the valued added tax. To a large extent, the VAT law in Tanzania leaves a lot to be desired when the comparison is made to the standards provided by the Guidelines. Hence, there is a need to reflect the international standards and principles provided under this Guideline with a major focus on realizing the objective of the introduction of the VAT in Tanzania.

3.4 OECD International VAT/GST Guidelines on Neutrality 2011

The Guidelines on neutrality are one of the building blocks of the OECD[291] International VAT/GST Guidelines. It was developed in a long-term project which aimed at guiding governments on applying VAT/GST to cross-border trade, to minimize the potential for double taxation or unintended non-taxation.[292]The

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[290] Paragraph 3.122 of the OECD VAT/GST Guidelines 2017.

[291] The original Member countries of the OECD are Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. The following countries became members subsequently through accession at the dates indicated hereafter: Japan (28th April 1964), Finland (28th January 1969), Australia (7th June 1971), New Zealand (29th May 1973), Mexico (18th May 1994), the Czech Republic (21st December 1995), Hungary (7th May 1996), Poland (22nd November 1996), Korea (12th December 1996) and the Slovak Republic (14th December 2000). The Commission of the European Communities takes part in the work of the OECD (Article 13 of the OECD Convention). At present, the OECD has 37 members which are Austria, Australia, Belgium, Canada, Chile, Colombia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Make reference to Discover the OECD: Better Policies for Better Lives available https://www.oecd.org/general/Key-information-about-the-OECD.pdf (Accessed on 23/01/2021).

[292] OECD in December 2010 published its draft Guidelines on VAT/GST Neutrality for public consultation, with

Guidelines were approved by the Committee on Fiscal Affairs on 28 June 2011.[293] The Guidelines among other things provide for neutrality as one of the main features of the valued added tax. It is the full right to deduct input tax through the supply chain.[294] This ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain, and the technical means used for its delivery such as retail stores, physical delivery, Internet.[295]

VAT can be neutral also in international trade since it is normally destination-based.[296] This implies that exports are free of VAT and imports are taxed on the same basis and at the same rate as domestic supplies. Most of the rules currently in place aim therefore at taxing supplies of goods, services, and intangibles within the jurisdiction where consumption takes place. Practical means of implementing this are, nevertheless, diverse across countries, which can, in some instances, lead to double taxation or unintended non-taxation, and uncertainties for both businesses and tax administrations.[297]

3.4.1 Rules of Principle of Neutrality

Essentially, the OECD guidelines on neutrality set out six guidelines for the administration of VAT.[298] First, it requires that the burden of value added taxes themselves should not lie on taxable businesses except where explicitly provided for

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comments due by 22 March 2011. Refer to Centre for Tax Policy and Administration, OECD International VAT/GST Guidelines, Guidelines on Neutrality Outcomes of the Public Consultation, 2011, p.2.

[293]Centre for Tax Policy and Administration, OECD International VAT/GST Guideline, Guidelines on Neutrality, 2011, p.1.

[294] Paragraph 2 of OECD International VAT/GST Guidelines on Neutrality, 2011.

[295] Ibid.

[296] Ibid.

[297] Ibid.

[298] Rule 3 of OECD International VAT/GST Guidelines on Neutrality, 2011.

in legislation.[299] This means that the business should not bear the burden of VAT since the tax burden eventually rests with the final consumer rather than the business intermediaries in the supply chain. However, countries may legitimately place a value added tax burden on businesses. Indeed, this is frequently the case where transactions made by businesses are exempt because the tax base of the outputs is difficult to assess especially in financial services or for policy reasons such as health care, education, and culture.

Tax legislation may also impose value added tax on businesses to secure effective taxation of final consumption. This will be the case when the business makes transactions that fall outside the scope of the tax for example transactions without consideration or the input tax relates to purchases that are not wholly used for the furtherance of taxable business activity. Likewise, countries may also provide legislation that disallows input tax recovery where explicit administrative obligations are not met for example insufficient evidence to support input tax deduction.

Second, businesses in similar situations carrying out similar transactions should be subject to similar levels of taxation.[300]The rule entails that tax should be neutral and equitable in similar circumstances. This is important in ensuring that tax ultimately collected along a particular supply chain is proportional to the amount paid by the final consumer. This is regardless of the nature of the supply, the structure of the distribution chain, the number of transactions or economic operators involved, and the technical means used.

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[299] Ibid, Guideline 1.
[300] Ibid, Guideline 2.

Third, VAT rules should be framed in such a way that they are not the primary influence on business decisions.[301] In most cases, several factors that can influence business decisions include financial, commercial, social, environmental, and legal factors. Whilst VAT is also a factor that is likely to be considered, it should not be the primary driver for business decisions. VAT considerations include the amount of tax ultimately paid to tax administrations, the compliance burdens related to the collection, payment, or refund of the tax such as filing of tax returns, maintaining adequate book-keeping, and the financial costs related to the cash-flow impact of the VAT system. Fourth, foreign businesses should not be disadvantaged or advantaged compared to domestic businesses in the jurisdiction where the tax may be due or paid.[302]VAT systems are designed to apply in a fair and even-handed way to ensure there is no unfair competitive advantage afforded to domestic businesses which may otherwise discourage international trade and limit consumer choice.

This is achieved by the application of the destination principle which means that exports are free of VAT and imports are taxed on the same basis and at the same rate as local production. This ensures that the tax levied on imports does not exceed the amount of tax levied on the same supplies in the domestic market. In addition, it also ensures that the amount of tax that is refunded or credited in the case of exports is equal to the amount of tax that has been levied. The embedded features of the VAT system, combined with the destination principle should ensure the same neutrality for international trade.

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[301] Ibid, Guideline 3.
[302] Ibid, Guideline 4.

However, there are inevitably some cases where the standard rules will not apply and foreign businesses will incur VAT in a jurisdiction where they are neither established nor registered. Normally, the right to deduction of VAT is exercised by reducing the net tax payable. Equally, when foreign businesses incur VAT on business expenditures in a jurisdiction where they are not registered or required to be registered for VAT, this process cannot be applied. Further, the application of the principle that VAT should be neutral and equitable in similar circumstances to international trade implies that the VAT system should not encourage or dissuade businesses from investing in or undertaking activities in a specific country. Such business decisions should be made based on market and other non-tax considerations. This means that legislation in place in the country where VAT is incurred by foreign businesses should not discriminate against them as regards the imposition of tax and their right to deduction or recovery of VAT compared to domestic businesses. Some tax administrations may refer to reciprocity when setting norms for refunds or equivalent mechanisms.

Fifth is to ensure foreign businesses do not incur irrecoverable VAT and governments may choose from several approaches.[303]The basic principles of VAT are broadly the same across countries that impose VAT, in that they aim to tax consumption in the jurisdiction where it occurs. However, differences exist between them as to the means used to achieve this as a result of many things, including local history and traditions and the need to achieve specific policy objectives. This

[303] Ibid, Guideline 5.

includes the approach countries take to ensure neutrality of taxation in respect of foreign businesses. The approaches adopted by countries ensure the principle that foreign businesses should not incur irrecoverable VAT. The approaches include the operation of a system of applying for direct refunds of local VAT incurred.

Further, there is making supplies free of VAT. Also, there are enabling refunds through local VAT registration. Furthermore, the countries may shift the responsibility to locally registered suppliers. They may also carry out the granting of purchase exemption certificates. In general, each approach seeks to ensure that foreign businesses do not incur irrecoverable VAT. As a result, none of the approaches is to be preferred as a general rule. Each approach will likely have its merits in particular circumstances. This is because it seeks to strike a balance between the relative compliance costs for businesses for both local suppliers and foreign customers on the one hand.

On the other, hand administrative costs and the risks of tax fraud and avoidance for the tax authorities. Sixth, where specific administrative requirements for foreign businesses are deemed necessary, they should not create a disproportionate or inappropriate compliance burden for the businesses.[304] It may be appropriate for tax administrations to impose specific compliance requirements on different categories of businesses. This may apply, for example, to small enterprises and enterprises in specific sectors. It may also apply to foreign businesses. Indeed, dealing with foreign businesses with no legal presence in a jurisdiction inevitably brings an element of

[304] Guideline 6 of the OECD International VAT/GST Guidelines on Neutrality, 2011.

risk for tax administrations and they may need to take appropriate measures to protect against fraud or avoidance.

3.5 OECD Principles of Good Administration 2001

The Principles of Good Tax Administration[305] is a practice note which was initially released in June 1999 for comment as a Secretariat note, "Principles of Good Tax Administration" [DAFF/CFA (99)50].[306] This was one of the tax administration papers prepared for the OECD Committee of Fiscal Affairs Forum on Strategic Management (FSM).[307]According to the Principles of Good Tax Administration[308] the main role of revenue authorities is to ensure compliance with tax laws for effective collection of revenue.[309] However, the effectiveness of these tax authorities depends on a variety of external factors such as the state of the economy, public support for the priorities of the government, and the willingness of taxpayers to comply with tax rules.[310] Nevertheless, in an ever-changing environment, revenue authorities must have a clear focus on what their goals are and continually review their operating approaches and procedures to ensure they are making the most effective and efficient use of the resources available to them.[311]

This implies that by adapting and adopting appropriate technologies as well as by being open to the benchmarking and testing of their operations to achieve best practice, good revenue authorities improve both their public image and the

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[305] 2011.
[306] Centre for Tax Policy and Administration, Principles of Good Tax Administration 2001, p.9.
[307] Ibid.
[308] 2011.
[309] Paragraph 2 of the OECD General Administrative Principles 2001.
[310] Ibid.
[311] Ibid.

organization of work processes.[312]Likewise, good tax administration in most cases depends on the legal framework and tax authorities in place for the administration of the revenue laws. There are features or principles of good tax administration which are recognized at the international level. These principles act as benchmarks for different tax jurisdictions when making their municipal laws or domestic laws.

According to the Guidelines, the following are principles of good administration: [313] First, revenue authorities should apply tax laws fairly and transparently and should outline and communicate to taxpayers their rights as well as the available complaints procedures. Second, tax authorities should consistently deliver quality information and treat inquiries and appeals from taxpayers in an accurate and timely manner. Third, the revenue authorities should provide accessible and dependable information services on taxable rights and obligations for the law and ensure that compliance costs are kept at the minimum level necessary to achieve compliance with the tax laws. Fourth, where appropriate tax authorities should give taxpayers opportunities to comment on changes to administrative policies and procedures.

Fifth, tax authorities should use taxpayer information only to the extent permitted by law. Sixth, tax institutions should develop and maintain good working relationships with client groups and the wider community and actively facilitate the exchange of information with treaty partners in a timely fashion and provide feedback on results. Seventh, provide relevant information obtained in regular audit activities to treaty partners on a spontaneous basis and request from tax treaty partners only information

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[312] Ibid.
[313]Ibid, paragraph 15.

that is relevant, significant, obtainable, and useable. Eighth, inform taxpayers of the mutual agreement procedure and the results of negotiations under the procedure and support the arm's length principle and the OECD guidelines on transfer pricing. Ninth, Tax authorities should apply the provisions of tax treaties fairly and consistently and promote the fair sharing of taxing rights in tax treaties and the development of domestic laws.

Ten, tax authorities should not promote or facilitate tax evasion or avoidance by residents of other countries and improve access to bank and financial information for tax exchange purposes. Eleven, they provide the same treatment and redress mechanisms to all otherwise similarly situated taxpayers regardless of their nationality and treat the information obtained from tax treaty partners with the same or greater confidentiality protection as that required under domestic laws. Last, make recommendations and assist policymakers in the re-negotiations of areas of mutual concern in existing tax treaties.

Generally, the principles of good tax administration are relevant to this study since they provide the international standards and principles to be adopted in municipal laws for the effective administration of value added tax. The VAT law in Tanzania has not reflected well these principles of good tax administration as result it affects tax administration and contributes to loss of government revenue.

3.6 Multilateral Convention on Mutual Administrative Assistance in Tax Matters, 2011

The Multilateral Convention on Mutual Administrative Assistance in Tax Matters

was developed jointly by the OECD and the Council of Europe in 1988 and amended by Protocol in 2010.[314] The Convention aims to help governments enforce their tax laws, and provides an international legal framework for cooperation among countries in countering international tax avoidance and evasion.[315] It offers a variety of tools for administrative co-operation in tax matters, providing all forms of exchange of information, assistance in tax collection, and service of documents.[316] It also facilitates joint audits and information sharing to counter other serious crimes such as money laundering, and corruption when certain conditions are met. It preserves the rights of taxpayers and provides extensive safeguards to protect the confidentiality of the information exchanged, in particular with personal data. The operation of this self-standing multilateral convention is overseen by a coordinating Body comprised of the Parties to the Convention. Likewise, the Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance.

According to the Convention, a Party to the Convention shall, without prior request, forward to Party information of which it knows in the following circumstances.[317]First, where the Party has grounds for supposing that there may be a loss of tax in the other Party. Second, a person liable to tax obtains a reduction in or an exemption from tax in the first-mentioned party which would give rise to an increase in tax or to liability to tax in the other Party. Third, business dealings

[314] https://www.oecd.org (Accessed on 1/06/2021). Reference is made also to the Preamble of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, 2011.
[315] The preamble of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, 2011. Reference is made also to Article 1 of the Convention.
316 Article 1(1) of the Convention.
[317] These circumstances are provided under Article 7 of the Convention.

between a person liable to tax in a Party and a person liable to tax in another Party are conducted through one or more countries in such a way that a saving in tax may result in one or the other Party or both. Fourth, a Party has grounds for supposing that a saving of tax may result from artificial transfers of profits within groups of the enterprise. Last, information forwarded to the first-mentioned Party by the other Party has enabled information to be obtained which may be relevant in assessing liability to tax in the latter Party.

The Convention facilitates international co-operation for a better operation of national tax laws while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative co-operation between states in the assessment and collection of taxes. Administrative assistance shall comprise of exchange of information,[318]including: -

First, simultaneous tax examinations, indeed, at the request of one of them, two or more Parties shall consult together to determine cases and procedures for simultaneous tax examinations. Each Party involved shall decide whether or not it wishes to participate in a particular simultaneous tax examination. According to the Convention, a simultaneous tax examination means an arrangement between two or more Parties to examine simultaneously, each in its territory, the tax affairs of a person or persons in which they have a common or related interest, to exchange any relevant information.

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[318]The Parties shall exchange any information, in particular as provided in this section, that is foreseeable relevant for the administration or enforcement of their domestic laws concerning the taxes covered by this Convention. Any Party may, by a declaration addressed to one of the Depositaries, indicate that, according to its internal legislation, its authorities may inform its resident or national before transmitting information concerning him, in conformity with Articles 5 and 7. Refer to Article 4 of the Convention. Make Reference to Article 8 of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters as Amended by the 2010 Protocol, 2011.

Second, participation in tax examinations abroad,[319] generally, at the request of the competent authority of the applicant State, the competent authority of the requested State may allow representatives of the competent authority of the applicant State to be present at the appropriate part of a tax examination in the requested State. The competent authority of the requested State shall, as soon as possible, notify the competent authority of the Applicant State about the time and place of the examination. This is done after acceding to the request. The convention requires the Authority or official designated to carry out the examination and the procedures and conditions required by the requested State for the conduct of the examination. In addition, all decisions concerning the conduct of the tax examination shall be made by the requested State. A Party may inform one of the Depositaries of its intention not to accept. Such a declaration may be made or withdrawn at any time. [320]

Last, assistance in recovery,[321]including measures of conservancy and service of documents.[322] Moreover, at the request of the Applicant State, the requested State shall, with a view to the recovery of an amount of tax, take measures of conservancy even if the claim is contested or is not yet the subject of an instrument permitting enforcement. The Convention entails that at the request of the Applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the

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[320]Article 9 of the Convention.

[321] Ibid, Article 11.

[322] Ibid, Articles 2 and 13. The request for administrative assistance under this section shall be accompanied by: a declaration that the tax claim concerns a tax covered by the Convention and, in the case of recovery that, subject to paragraph 2 of Article 11, the tax claim is not or may not be contested, an official copy of the instrument permitting enforcement in the applicant State, and any other document required for recovery or measures of the conservancy. The instrument permitting enforcement in the Applicant State shall where appropriate and following the provisions in force in the requested State, be accepted, recognized, supplemented, or replaced as soon as possible after the date of the receipt of the request for assistance, by an instrument permitting enforcement in the latter State.

necessary steps to recover tax claims of the first-mentioned State as if they were its tax claims. The provision of Article 14 paragraph 1 of the Convention shall apply only to tax claims which form the subject of an instrument permitting their enforcement in the Applicant State and unless otherwise agreed between the Parties concerned, which are not contested. However, where the claim is against a person who is not a resident of the Applicant State, Article 14 paragraph 1 of the Convention shall only apply, unless otherwise agreed between the Parties concerned, where the claim may no longer be contested. The obligation to assist in the recovery of tax claims concerning a deceased person or his estate is limited to the value of the estate or of the property acquired by each beneficiary of the estate, according to whether the claim is to be recovered from the estate or the beneficiaries thereof

Indeed, Mutual administrative assistance in tax matters is crucial in addressing among other things the problem of tax evasion and tax avoidance. In the circumstances of taxation of digital economy or collection of value added tax from digital transactions exchange of information is paramount; otherwise, some transactions will go untaxed by any of the state or there will be double taxation. Generally, cooperation in tax matters between states is very crucial since tax authorities in respective countries will exchange relevant tax information within their jurisdictions. The shared information will be useful for the collection of taxes and general enforcement of domestic laws in the appropriate tax jurisdiction. For value added tax administration exchange of information is relevant especially in taxation of digital transactions, reporting of committed offences and information in respect of refunds of VAT claims.

3.7 The United Nations Double Taxations Convention between Developed and Developing Countries 2017

The United Nations Model Double Taxation Convention between Developed and Developing Countries (UN Model) 2017 forms part of the continuing international efforts aimed at eliminating double taxation.[323]Broadly, the general objectives of this Convention include the protection of taxpayers against double taxation with the view of improving the flow of international trade and investment and the transfer of technology. It aims also to prevent certain types of discrimination between foreign investors and local taxpayers. Similarly, the Convention provides a reasonable element of legal and fiscal certainty. In addition, the Convention seeks to improve cooperation between the taxing authorities in carrying out their duties. This can be done by exchange of information to prevent tax avoidance and tax evasion.[324]This convention covers also issues regarding the value added tax as follows: -

3.7.1 Taxing Rights

The UN Model generally favors retention of greater so-called source country taxing rights under a tax treaty. It favors the taxation rights of the host country of investment as compared to those of the residence country.[325] This has long been regarded as an issue of special significance to developing countries. In the context of the model, the host country is where the investment is taking place. This suggests that the destination principle is applied as opposed to the origin principle. This approach is relevant even in Tanzania since the VAT law provides taxation on a

[323]Paragraph 1 of United Nations Model Double Taxation Convention between Developed and Developing Countries 2017.
[324] Ibid, Paragraph 6.
[325] Ibid, Article 3.

consumption basis. In addition, where the principle to be applied is certain in the administration of value added tax, the collection of revenue becomes easy by the tax authority. Tanzania is vested with taxing rights in respect of any transaction or economic activity taking place here. This is because of the governing principle of destination in respect of VAT transactions. VAT in most cases is imposed at the place where the consumption of goods and services takes place. Further, even for digital transactions taking place in different tax jurisdictions but consumption takes place in Tanzania, it is also subject to tax. Therefore, this Convention is relevant to value added tax transactions.

3.7.2 Exchange of Information and Enforcement of Domestic Laws

Enforcement of domestic laws in most cases where there are cross border transactions requires the exchange of information among the tax authorities of the relevant countries.[326]The Article requires competent authorities of the Contracting States to exchange such information.[327] The information received by a Contracting State is treated as secret in the same manner as information obtained under the domestic laws of that State. Disclosure is allowed only to persons or authorities concerned with the assessment, collection, enforcement or prosecution, and determination of appeals.

The persons or authorities are required to use the information only for such purposes. However, they may disclose the information in public court proceedings or judicial decisions. Moreover, information received by a Contracting State may be used for

[326] Ibid, Article 26.
[327]Ibid, Article 26(2).

other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use.[328]

The information exchanged may be concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities insofar as the taxation thereunder is not contrary to the Convention. The exchanged information is helpful to a Contracting State in preventing tax avoidance or evasion of such taxes.[329]The Contracting State is required to use its information gathering measures to obtain the requested information by the other State even though the other state may not need such information for its tax purposes. This means that the Contracting State is not permitted to decline to supply information solely because it has no domestic interest in such information. Moreover, in no case the Contracting State is permitted to decline to supply information solely because the information is held by a bank, other financial institution, nominee, or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. The competent authority through consultation is required to develop appropriate methods and techniques concerning the matters in respect of exchanges of information between the states.[330]

Generally, taxation of digital transactions, refund of VAT claims, and enforcement of revenue laws require the exchange of information among the tax authorities. The

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[328] Ibid.
[329] Ibid, Article 26(4) (5) (6).
[330] Ibid.

information is normally obtained by the country through joining different tax forums and also entering into treaties with other countries concerning cooperation in tax matters. The absence of this type of cooperation among tax authorities leaves certain transactions untaxed. This contributes to the loss of government revenue of the respective tax authorities.

3.7.3 Fairness of Tax Laws

Generally, one of the principles of taxation policy is fairness. This implies that the administration of taxation including value added tax should consider among other things principle of ability to pay tax, rate of tax, and fair treatment of all the taxpayers without discrimination. Article 24 of the UN Model provides for the non-discrimination of nationals. The Article requires that nationals of a Contracting State should not be subjected to any taxation or any requirement connected therewith which is other or more burdensome. This means that taxation of the nationals of the other state should be fair if subjected to the situations like nationals of the Contracting State.[331] The treatment should extend also to persons who are not residents of one or both of the Contracting States.[332] The imposition of taxes including value added tax should not be discriminatory. Nationals of different tax jurisdictions should be treated fairly to those of contracting states when subjected to taxation of similar manner or circumstances in a given situation.

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[331]Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstances, in particular concerning residence, are or may be subjected. Article 24(2) of the UN Model Convention.

[332]Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected. Article 24(5) of the UN Model Convention.

3.8 Conclusion

The international legal instruments discussed reveal that most of the international instruments originate from OECD countries but are relevant in developing countries like Tanzania. This is because the instruments provide standards and principles which are internationally accepted. It also reveals that there is no comprehensive United Nations model law of VAT. The UN model discussed above does not deal directly with VAT but it provides some principles relevant to VAT administration. In addition, it covers principles that are generally accepted in any tax administration system globally. Thus, the set standards, principles, and methods shall be useful in analyzing and examining the extent Tanzania is complying with the international instrument. The analysis in the Tanzanian context is important in suggesting solutions for the existing VAT administration in Tanzania.

CHAPTER FOUR

VALUE ADDED TAX UNDER REGIONAL INSTRUMENTS

4.1 Introduction

An increase in economic interaction between countries through regional integration brought another challenge to the administration of VAT across countries. It is in this context many economic regional communities have established regional instruments to govern VAT across countries. This chapter reviews various regional instruments of the East African community Tanzania being a member, the European Union (EU), Gulf Cooperation Council (GCC), Southern African Development Community (SADC), and Economic Community of West African States (ECOWAS). Although Tanzania is not a member of all the regional instruments, the study of the same is important in understanding the way such economic communities handle the administration of VAT. Although EAC has no comprehensive regional instrument, other regional instruments provide lessons upon which Tanzania may learn in improving the administration of VAT.

4.2 The East African Community

The East African Community (EAC) is a regional intergovernmental organization of 7 Partner States. The Democratic Republic of the Congo, the Republics of Burundi, Kenya, Rwanda, South Sudan, Uganda, and the United Republic of Tanzania, with its headquarters in Arusha, Tanzania.[333] The EAC is home to an estimated 300 million citizens, of which over 22% is the urban population with a land area of 4.8

[333] EAC, Overview of the East African Community, available at https://www.eac.int/ (Accessed on 11/03/2022).

million square kilometers.[334] The work of the EAC is guided by Treaty establishing the East African Community signed on 30th November 1999 and entered into force on 7th July 2000 following its ratification by the original three partner states - Kenya, Tanzania, and Uganda. The other members acceded to the Treaty. The objective of the Community is to develop policies and programmes that aim at widening and deepening co-operation among the partner states.

The cooperation is in the areas of economic, social, and cultural fields, research and technology, defense, security, and legal and judicial affairs, for their mutual benefit.[335]Concerning VAT administration, the EAC currently has no harmonized regional instrument providing standards and principles governing the VAT. This means that each partner state has its law governing the administration of VAT. These are the Value Added Tax Act, Cap 476(Kenya), Law No 02/2015 of 25/02/2015 modifying and complementing Law No 37/2012(Rwanda), Law No37/2012 of 09/11/2012 establishing the value added tax(Rwanda), Law No. 1/12 of 29 July 2013 revising Law No. 1/02 of 17 February 2009 on the introduction of the value added tax (VAT)(Burundi), Ministerial Ordinance No. 540/1351 of 23 September 2013 on measures for the implementation of Law No. 1/12 of 29 July 2013 revising Law No. 1/02 of February 2000 introducing the value added tax (VAT) (Burundi), The Value Added Tax Act, Chapter 349(Uganda).

There are matters which are common in these laws though from different perspectives such as VAT rates, refund of VAT Claims, powers of the

[334]Ibid.
[335] Article 5 of the Treaty Establishing the East African Community, 1999.

Commissioner General, taxation of digital transactions, registration threshold, offenses, and penalties. However, the VAT threshold and rates differ significantly. For example, the VAT rate in Kenya is 16%[336] while in Tanzania is 18%. In Uganda is 18% [337]while in Burundi and Rwanda[338] is 18%.The absence of harmonized EAC regional instrument on VAT paved the way to look for other regional instruments in addressing cross border VAT related issues.

4.3 European Union

Generally, the application of VAT under the European Union (EU) is decided by national tax authorities but there are some standards EU rules which govern the administration of VAT by member states.[339]The EU represents a coming together of twenty seven European different countries since World War II to ensure lasting peace on the European continent.[340] The EU began as an economic union and later become a political union as well. In joining the EU, each country has agreed to give up some political and economic authority.[341] In exchange, members benefit from a single European market, the free movement of people, goods, and services. Also, money throughout the EU bloc, and regional development funds, help poor regions and develop infrastructure and technologies to compete in a global economy.[342]This makes the European Union a unique governing body and the world's first supranational organization.

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[336] S. 5 of the Value Added Tax Act, Cap 476 (Kenya).
[337] S. 4 of the Value Added Tax Act, Chapter 349 (Uganda).
[338] Article 3 of the Law No37/2012 of 09/11/2012 establishes the value added tax (Rwanda).
[339]European Commission, Taxation and Customs, available at https://ec.europa.eu,(Accessed on 6/10/2020).
[340] Centre for European Studies (EUS), Why is there a European Union, available at https://europe.unc.edu, (Accessed on 10/04/2022).
[341] Ibid.
[342] Ibid

The EU regional instrument governing VAT administration is the VAT Directive (2006/112/EC) and VAT Directive Refund (Directive 2008/9/EC. Others are VAT Refund - EU business,[343] VAT Refund non-EU business,[344] VAT-free importation,[345] private consignments,[346] and Travelers' allowances.[347]These directives are binding upon each member state to which it is addressed but leave the choice of form and methods to the national authorities who transpose it into national legislation.[348] To implement such Directives, there are binding implementing measures to ensure uniform application of the VAT Directive.[349] Those measures are directly applicable without transposition into national law. However, member states are allowed to derogate from the VAT directives if the purpose of doing the same is to prevent fraud. EU VAT Directive (2006/112/EC) (here referred to as EU VAT Directive) sets standards which all EU member states have to Comply.

4.3.1 VAT Rates

The VAT Directives sets the framework for the VAT rates in the EU. However, it gives national governments freedom to set the number and level of rates they choose, subject only to two basic rules. The VAT Directive requires member countries to set a standard rate for all goods and services. However, EU countries can opt to apply one or two reduced rates but only to goods or services listed in the VAT Directive. The standard VAT rate set is no less than 15%but there is no maximum.[350]

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[343]Directive 2008/9/EC.
[344]Directive 86/560/EEC.
[345]Directive 2009/132/EC.
[346]Directive 2006/79/EC.
[347]Directive 2007/74/EC.
[348] European Commission, Existing Legal Framework, Available at https://ec.europa.eu, (Accessed on 24/02./2020).
[349] VAT Implementing Regulation (Council Regulation (EU) No 282/2011).
[350]Article 97 of the EU VAT Directive.

However, there are exceptions to the set rules, whereby special rates are allowed. EU countries in some instances are allowed to depart from these rules by using a reduced rate under 5% including zero rate for goods and services other than those listed in the Directive.[351]Generally, the European VAT Directive does not fix a specific VAT rate applicable in the EU Member States but rather it sets 15% as a minimum rate, with the option for EU Member States to set lower VAT rates (with a minimum of 5%) for certain goods and services.[352]

VAT rates differ widely in the EU Member States, which apply standard rates between 15% and 27% and lower rates between 5% and 10%.[353] The EU VAT Directive has listed options for the use of a lower VAT rate, including admission to cultural performances and the services of performing artists.[354] Nevertheless, with a low VAT rate, the price for the consumer is lower, without a negative impact on the deductibility of the VAT paid on the inputs for the taxable person. This is likely to make a low VAT rate more profitable than the exemption for persons and institutions working in the cultural sector.

4.3.2 VAT Refund

The EU Directives sets standards for refunds of cross-border transactions where the VAT is incurred by people or businesses not based in the EU into three categories.[355] These are cross-border VAT refunds to EU Businesses, VAT refunds to non-EU

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[351]Ibid, Articles 102-128.
[352] Dick M., The Ultimate Cookbook for Cultural Managers, VAT in an International Context, EFA- European Festivals Association, Brussels, 2017, p.10.
[353] Ibid.
[354] Ibid.
[355] European Union, VAT Refunds, available at https://ec.europa.eu/taxation_customs/business/ vat/eu-vat-rules-topic/vat-refunds_en (Accessed on 6/10/2020).

Businesses, and VAT refunds to foreign tourists.[356]Under cross-border VAT refunds to EU businesses, the Directive requires the claimants to send an electronic refund claim to their national tax authorities.[357]The national tax authorities then forward it to the EU country where the claimant incurred the VAT after confirming the claimant's identity and VAT identification number and the validity of their claim.[358]If the tax authorities in the EU country where they incurred the VAT are late in making the refund, claimants are entitled to interest.[359] To qualify for a refund the Directive requires a business must not have been based in the refunding EU country or supplied goods or services[360] or supplies to customers liable for payment of the related VAT under the reverse-charge mechanism.[361]Likewise, the claimant's home will not forward the claim to the refunding country if the claimant is not a taxable person for VAT purposes or makes exempt supplies without the right of deduction.[362]Also, in the situation that the claimant is covered by the special scheme for small businesses or is covered by the flat-rate scheme for farmers.[363]

Relate to businesses that are not based in the EU but incur VAT in connection with their activities in an EU country where they do not habitually supply goods or services are entitled to deduct the VAT.[364] In most cases, these businesses are not required to register for VAT.[365] The deduction is made through a refund from the EU

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[356] Ibid.
[357] Articles, 3, 4, 5, 6, 8 of the Directive 2008/9/EC.
[358]Ibid.
[359] Ibid, Articles 26, 27.
[360]Articles 144, 146, 148, 149, 151, 153, 159, 160 of the EU VAT Directives.
[361] Ibid, Articles 194-197 or 199.
[362]Articles 6, 7, 18 Directive 2008/9/EC.
[363] Ibid.
[364]Articles 2, 3, 4 of Directive 86/560/EEC.
[365]Ibid.,

country where they paid the VAT. The claimant is required to send an application to the national tax authorities in the EU country where they incurred the VAT. Besides, to qualify for a refund under this category,[366] a business must not have been based in any EU country or territory or supplied goods or services in the country where they incurred the VAT except exempted transport and ancillary services[367]or services to customers solely liable for payment of the related VAT under the reverse-charge mechanism.[368]Any EU country may refuse to refund VAT if the claimant's country does not grant reciprocal refund rights for VAT.[369] Equally, the country can impose restrictions on the type of expenditure qualifying for refunds or insist that the claimant appoint a tax representative.[370]

Further, EU retailers can provide a VAT refund for goods sold to non-EU tourists when exporting them.[371] Specifically, this covers tourists whose permanent address or habitual residence as stated in their passport or other recognized identity document is not in the EU.[372] It covers also EU nationals living outside the EU who can prove this with a residence permit or similar.[373] The conditions for refund are that tourists must provide proof of residence for example non-EU passport or residence permit.[374] Also, must prove that the goods were taken out of the EU within three months of being bought.[375]Besides, the tourist must provide a stamped VAT

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[366]Ibid, Article 1.
[367] Articles 144, 146, 148, 149, 151, 153, 159 or160 VAT Directive.
[368] Ibid, Articles 194, 196, or 199.
[369] Articles 3, 4, and 5 of the Directive 86/560/EEC.
[370] Ibid.
[371] Articles 146, 147, 153 of the 2006/112/EC).
[372] Ibid.
[373] Ibid.
[374] Ibid.
[375] Ibid.

refund document as proof for refund.[376]Retailers can either refund the VAT directly or use an intermediary.[377]

4.3.3 Exchange of Information

Through information technology and other means, the EU allows for co-operation and exchange of information among its member countries on all sorts of taxes, particularly savings taxation and VAT.[378]The EU has signed agreements with several neighboring countries and participates in all international initiatives aimed at preventing tax abuse.[379]Also, tax havens are increasingly targeted. The exchange of information is vital in the collection of taxes and combating tax fraud and tax evasion. Equally important in the taxation of electronic transactions, countries exchange information on various transactions for tax purposes in the respective tax jurisdiction. In most cases, fraud happens across borders and to a single country acting on its own will not achieve a lot. Therefore, it requires the collective efforts of all the members. Fraud affects the taxation of electronic transactions as well as the refund process. This is because some transactions may go untaxed because of fraud in declaring income and claiming false VAT claims.

4.3.4 VAT Threshold

EU VAT Directives provide for the registration of taxable persons.[380] The Directive entails that a taxable person[381] mean a person who independently carries out in any

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[376] Ibid.
[377] Ibid.
[378]Articles 1, 2, 5, 6, 7, 24of theCouncil Regulation (EU) No 904/2010.
[379] Ibid.
[380] Article 9 of the Council Directive 2006/112/EC.

place economic activity whatever the purpose or results of that activity. Example of economic activity includes any activity of producers, traders, or persons supplying services, mining and agricultural activities, and professional activities. The exploitation of tangible and intangible property for the purpose of obtaining income is regarded also as an economic activity.[382] The Directive provides an occasional basis where some supplies are regarded as an economic activity. For example, where a person supplies a new means of transport which is dispatched or transported to the customer by the vendor or the customer outside the territory of a member state but within the territory of the Community shall be regarded as a taxable person for the purpose of value added tax.[383]

Further, EU VAT law allows groups of closely linked companies (including non taxable entities) to be treated as a single taxable person.[384] The law requires these companies to make a joint registration for VAT and they become a VAT group. This arrangement ensures low compliance burdens because members can account for VAT as a single entity. For example, filing one VAT return for the whole group.[385]In general, the companies or other corporate bodies to be allowed to form a VAT group must have close financial, economic, and organizational links.[386] Moreover, any EU country that uses VAT groups is allowed to introduce its own measures to combat any associated tax avoidance or evasion.

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[381] Ibid, Article 13.
[382] Ibid, Article 9.
[383] Ibid, Article 9(2)
[384] Ibid, Article 11.
[385] Ibid.
[386] Ibid.

Regarding the threshold for VAT registration effective from July 2021 a new EU wide threshold of 10,000€ has been introduced.[387] This threshold replaced the previous country-specific VAT thresholds. However, all revenue through distance selling below the set threshold is still subject to VAT in the country of origin or the home country of the business.[388] This means that all sales above the set threshold are subject to tax in the countries the goods and services are distance sold.[389] The new VAT threshold applies across the EU. This means that as soon as this threshold is reached across the board for example through sales to Poland, France, and Spain, VAT registration is due in all these countries at the same time without necessarily reaching individual thresholds.

Generally, the instrument provides the flexibility of VAT rate which seems to be effective in the administration of VAT. It also provides clear guidelines upon which refunds can be made necessary in VAT administration. Issues of exchange of information and VAT registration are also well covered by the instrument. For example, the instrument allows groups of closely linked companies including non-taxable entities to be treated as a single taxable person in respect of VAT registration. This is a good idea that Tanzania can adopt since it widens the tax base for the collection of enough revenue.

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[387] European Commission, Explanatory Notes on VAT e-commerce rules Council Directive (EU) 2017/2455 Council Directive (EU) 2019/1995 Council Implementing Regulation (EU) 2019/2026, 2020, pp.39-40 Available at https://vat-one-stop-shop.ec.europa.eu/system/files/2021 07/vat eCommerce explanatory notes(Accessed on 20/04/2022) Reference is made also to Article 59c (1)) of the VAT Directives of 2006/112 as amended.

[388] Ibid.

[389] Ibid.

4.4 Value Added Tax under the Cooperation Council for the Arab States of the Gulf

The Gulf Cooperation Council (GCC) is a political and economic union of Arab states bordering the Gulf.[390]The member states are the Kingdom of Bahrain, the Kingdom of Saudi Arabia, the Sultanate of Oman, the State of Qatar, the State of Kuwait and the United Arab Emirates. GCC entered into the Economic Agreement of 2001 which seeks to reach advanced stages of economic integration, and develop similar economic and financial legislation and legal foundations amongst member states. The desire was to promote the GCC economy and proceed with the measures that have been taken to establish economic unity amongst member states. This move has been also influenced by the Supreme Council decision at its 36th meeting (Riyadh – 9-10 December 2015) for the common imposition by the GCC States of VAT at a rate of 5%.

The member states passed the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), 2018. This is the instrument governing VAT under GCC. The Agreement aims to establish a common legal framework for the introduction of a general tax on consumption in the GCC known as (VAT) levied on the import and supply of goods and services at each stage of production and distribution. This instrument seems to have set good standards and principles in respect of VAT administration. Although Tanzania is not a member but there are

[390]Value Added Tax was introduced in the United Arab Emirates on 1 January 2018. Make reference to UAE, The Value Added Tax, Available at https://government.ae/en/information-and-services/finance-and investment/taxation/valueaddedtaxvat (Accessed on 29/2/2020).

some lessons to learn that can be incorporated into our VAT law for the effective administration of VAT.

4.4.1 VAT Rate

Generally, the VAT rate is one of the indicators which can be used to determine whether the tax system is fair. This means that where the VAT rate is high, it discourages voluntary tax compliance of taxpayers, and hence tax evasion and tax avoidance contributing loss of government revenue. The Common VAT Agreement of the states of the Gulf Cooperation Council (GCC) requires that the standard rate of 5% of the value of the supply or the value of imports to be applied unless the Agreement provides for an exemption or the zero-rate on such supplies.[391]The article further requires a local market for goods and services must include VAT. The standard rate of 5% is fair and likely to encourage voluntary tax compliance and hence the collection of enough revenue in the respective states.

4.4.2 VAT Registration

Value added tax registration whether compulsory or voluntary is important for the effective administration of value added tax. Different tax jurisdictions have provided criteria for VAT registration. Article 50 of the (GCC) provides for mandatory registration whereas Article 51 provides for voluntary registration. Article 50 requires a taxable person be obliged to register if he is resident in any member state and the value of his annual supplies in that member state exceeds or is expected to

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[391] Article 25.

exceed the mandatory registration threshold.[392] The mandatory registration threshold is Saudi Riyal (SAR 375,000). The Ministerial Committee has the right to amend the mandatory registration threshold after it has been in force for three years. A taxable person who makes only zero-rated supplies may request to be excluded from the mandatory registration requirement for tax purposes under the conditions and provisions determined by each member state.

Besides, Article 50 gives conditions for the registration of non-citizens that a non-resident of a member state be registered in that state regardless of business turnover. Registration can be done directly or through the appointment of a tax representative with the consent of the competent tax administration. The tax representative is required to take the place of the non-resident person in all its rights and obligations provided for in the Agreement, subject to the provisions of Article 43(2) of this Agreement.[393]

Further, Agreement requires a person not eligible for VAT registration under Article 50(1) of the Agreement but resides in any member state may register provided that

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[392]Article 54 of the Agreement provides for Deregistration. A Taxable Person who is registered for Tax purposes must apply for deregistration in any of the following cases: a) cessation of carrying on of the Economic Activity; b) cessation of making Taxable Supplies; c) if the value of the Taxable Person's supplies falls below the Voluntary Registration Threshold under the provisions of Article (51) of the Agreement. The Taxable Person may apply for deregistration if the total annual revenue of its business falls below the Mandatory Registration Threshold but exceeds the Voluntary Registration Threshold. To apply items (b) and (c) of the first paragraph and the second paragraph of this Article, each Member State may determine a minimum period to keep the Taxable Person registered for Tax purposes as a condition of deregistration. Each Member State may determine the conditions and provisions necessary to reject an application for deregistration of a Taxable Person or to deregister him in cases other than those provided for in the first and second paragraphs of this Article. The Tax Authority shall notify the Taxable Person of his deregistration and the effective date of the same.

[393] Article 43(2) provides that each Member State may determine other instances of joint liability other than those provided for in this Article. Article 43(1) of the Agreement provides that A Person who willfully participates in violating any of the obligations provided for in this Agreement and the Local Law shall be jointly liable with the Person obliged to pay the Tax and any other amounts due as a result of the violation.

the value of his annual supplies in that member state is not less than the voluntary registration threshold.[394]The voluntary registration threshold is 50% of the mandatory registration threshold. The voluntary registration approach is a good idea that can be adopted in Tanzania.

4.4.3 Exchange of Tax Matters Information

Administration or enforcement of municipal laws requires the exchange of information among the tax authorities. Different tax jurisdictions have joined tax forums and others have entered into tax agreements or treaties in respect of sharing of tax information. Article 70 (GCC) provides for the exchange of information among member states. The GCC requires the tax administrations in the member states to exchange information relevant to the implementation of the provisions of the Agreement related to VAT.

The Article further requires that the information obtained by the tax authorities shall be treated as confidential information in the same manner as the information obtained under the local laws of that administration.[395] This means that information should be disclosed only to persons or entities concerned with the tax assessment, collection, enforcement, or judicial claims or determining appeals relating thereto or supervising the tax matters. The Article put further restrictions that such persons or authorities may not use the information obtained save for those purposes, and may disclose such information in judicial rulings in public courts or judicial decisions. Regardless of the foregoing, the information obtained by authorities may be used for

[394] Article 51.
[395]Article 70(3.

other purposes when the laws of both states permit its use for other purposes, and the tax administration in the state that provides the information permits such use.

An overview of the GCC Agreement reveals that it provides the lowest VAT rate of 5%. Likely to accommodate more people to be registered for VAT and hence increase revenue collection in the respective countries. The exchange of information provided is likely to assist the disclosure of information to other member states, especially in digital transactions. The disclosure of the information is useful in avoiding double taxation, tax avoidance, and tax evasion. Although Tanzania is neither a member of GCC or her social-economic background is not equal to GCC countries, Tanzania may use the GCC instrument as a benchmark in improving VAT laws in the administration of VAT.

4.5 Value added tax under the Southern African Development Community

The Southern African Development Community (SADC) is a Regional economic community comprising 16 Member States which are Angola, Botswana, Comoros, Democratic Republic of Congo, Eswatini, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Seychelles, South Africa, Tanzania, Zambia, and Zimbabwe established in 1992.[396]SADC is committed to Regional Integration and poverty eradication within Southern Africa through economic development economic and ensuring peace and security.[397] There was a need within SADC to facilitate legitimate business and regional trade through fair and efficient tax regimes and also the need for member states to sustain and enhance their domestic tax revenues on an

[396]https://www.sadc.int/about-sadc/(Accessed on 1/06/2021).
[397] Ibid.,

equitable and efficient basis. The VAT implemented in each member state should be designed to achieve a broad tax base, revenue generation, economic neutrality, administrative efficiency, similarity, equity, certainty, and simplicity.[398] In order to achieve an efficient tax regime, the Southern African Development Community (SADC) passed the Guidelines for co-operation in VAT matters.

The Guideline is referred to as Guidelines for co-operation in value added taxes in the SADC Region, 2016. There is a disclaimer given on the cover page of the Guidelines that the Guidelines have been produced for the use of tax officials in the SADC Region as part of regional cooperation in taxation and related matters as mandated by the SADC Protocol on Finance and Investment. In no way must these Guidelines be construed to be law, or an interpretation of the law, or any policy or practice of any of the Member States or the SADC region. The accuracy or completeness of the information contained in these Guidelines has not been verified by independent sources and no reliance should be placed on it in any legal or another context.

The Guidelines represent a framework for cooperation in the design and application of VAT in the SADC region.[399]These Guidelines are not binding on member states and hence do not require member states to undertake or refrain from any actions. Generally, member states are required gradually to substitute taxes on internationally traded goods and services with broad-based indirect taxes on consumption. It further requires that member states to take such steps necessary to harmonize their VAT

[398] Guideline 1 of the Guidelines for co-operation in value added taxes in the SADC Region, 2016.
[399]The preamble of the Guidelines for co-operation in value added taxes in the SADC Region, 2016.

regimes and set minimum standard VAT rates.[400]Also, member states should harmonize the application of zero-rating and VAT exemption of goods and services.[401] Like other regional instruments, the SADC guidelines on VAT provide standards on VAT registration, VAT threshold, refund, and exchange of information.

4.5.1 VAT Registration

The manner the taxpayers are handled by the tax authorities assists to build the culture of voluntary payment of taxes. Guideline 10 of the co-operation in value added taxes in the SADC Region recognizes the benefits of equal treatment of registered persons across the Region including businesses operating in more than one-member state. It further cautions on compulsory registration for VAT that it imposes requirements on persons to account for the tax and on revenue administrations to administer the tax and denial or termination of VAT registration may have a detrimental impact on some persons.

In this context, SADC member states under the Guideline are required to take a common approach to VAT registration and de-registration including applying the best practice regarding VAT registration.[402]This means that a threshold for compulsory registration is put in place that maximizes the number of registered taxpayers. This considers the capacity of the revenue administration, the compliance costs to persons compulsorily registered, and revenue efficiency. Further, there is a need also to consider, in addition to the compulsory registration threshold, the option

[400] Ibid.
[401]Ibid.
[402] Guideline 10(3) of the Guidelines for co-operation in value added taxes in the SADC Region, 2016

of specific registration requirements for selected activities. Voluntary registrations[403] should be permitted and that persons situated outside a member state supplying services that are consumed in the member state, may be required to register for value added tax.

4.5.2 VAT Refund Claims

Refund of VAT claims is one of the ways of complying with the neutrality principle. This ensures that businesses are not affected. The Guideline[404] provides for VAT refunds. The Guideline requires that subject to reasonable requirements with regard to administration and revenue security, it is best practice to make VAT refunds/credit on valid claims as soon as is practicable. Delaying a refund of tax to a person entitled to such a refund has a negative impact on that person. It is important to refund genuine VAT claims within the required time to avoid negative effects on business carried by the person and effects also in the collection of other taxes.

Payment of VAT claims creates a lot of risk to tax authorities if there are no well-established mechanisms or procedures to be complied with in payment of VAT claims. For example, cross-border VAT transactions create risks of fraud and hence require a well established mechanism for VAT refunds. The Guidelines require expediting refunds to low risk registered persons and considering entering into cross border arrangements with other member states to avoid the need for importers to

[403]According to the definition and glossary section of the Guideline for co-operation in value added taxes in the SADC Region, 2016, Voluntary registration means registration for VAT of a person making taxable supplies who is not required by law to do so.

[404] Guideline 12 of the Guidelines for co-operation in value added taxes in the SADC Region, 2016.

have to reclaim the VAT from the export member state and to pay VAT to the member state of import.[405]

4.5.3 Exchange of Information

The exchange of information in tax matters is necessary to guard against tax evasion and avoidance. Tax evasion and avoidance contribute to the loss of government revenue. The Guideline[406] provides co-operation in value added taxes in the SADC Region for the exchange of information and mutual assistance. SADC members have agreed to exchange information and mutually assist each other to prevent unlawful activities such as fraud and smuggling. The exchange of information may be in different ways. This can be done by using existing agreements and mutual assistance channels, or entering into new agreements for mutual assistance. Also by way of establishing standardized VAT registration databases, and making standardized arrangements for the routine transfer of data between revenue administrations and verification of specific transactions.

An overview of the Guidelines for co-operation in value added taxes in the SADC Region provides for voluntary VAT registration and factors to consider when setting a threshold for registration. This approach may likely accommodate more people to be registered for VAT and hence increase revenue collection in the respective countries. The exchange of information provided is likely to assist the disclosure of information to other member states, especially in digital transactions. The disclosure of the information is useful in avoiding fraud and other VAT offences. Similarly, the

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[405] Ibid.
[406] Ibid, Guideline 15.

Guideline provides that it is best practice to make VAT refunds/credit on valid claims as soon as is practicable. This will encourage voluntary tax compliance and increase the performance of the business as the money obtained from VAT refunds will be invested. This increases the collection of revenue and growth of the economy generally. Tanzania is a member of SADC and hence may use this Guideline as a benchmark in improving VAT laws in the administration of VAT.

4.6 Value Added Tax under the Economic Community of West African States (ECOWAS)

The Economic Community of West African States (ECOWAS) regional group was established on May 28 1975 via the treaty of Lagos with 15 members.[407]Member countries making up ECOWAS are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Sierra Leone, Senegal, and Togo. ECOWAS is considered as one of the pillars of the African economic Community.[408] It was set up to foster the ideal of collective self-sufficiency for its member states. As a trading union, it is also meant to create a single, large trading bloc through economic cooperation. Integrated economic activities as envisaged in the area revolve around but are not limited to industry, transport, telecommunications, energy, agriculture, natural resources, commerce, monetary and financial issues, and social as well as cultural matters.

The documents governing value added tax within ECOWAS are the Protocol Establishing Value Added Tax in ECOWAS Member States of July 1996 and

[407]ECOWAS, Basic Information, available at https://ecowas.int, (Accessed on 13/04/2022).
[408] Ibid.

Directive C/DIR.1/05/09 on the Harmonization of the ECOWAS Member States' Legislation on Value Added Tax (VAT) of 2009.[409]Article 2 of the Protocol Establishing VAT in the ECOWAS Member States, July 1996 establishes a consumer tax known as value-added tax (VAT) which shall replace the other indirect taxes on turnover. The ECOWAS like other regional instruments provides standards for members in respect of VAT administration as follows: -

4.6.1 VAT Threshold

Registration of taxable persons is important for the effective administration of the VAT and enforcement of revenue laws. ECOWAS through the Directive requires natural or legal persons[410] including local government administration or public law organizations undertaking taxable operations to register for VAT.[411]The operations which are subject to the VAT involve an economic activity carried out in exchange for payment. The activity should be carried out within a member state by any natural or legal person engaged habitually or occasionally in acts on an industrial, commercial, non-commercial, or artisanal activity, except for salaried activities. [412]

The categories of persons covered by the Directive are the importers and producers. Regarding the threshold for VAT registration, the Directive requires persons having

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[409] The preamble of the Directive C/DIR.1/05/09 on the Harmonization of the ECOWAS Member States' Legislation on Value Added Tax (VAT) of 2009.

[410]Article 7of the Directive C/DIR.1/05/09 on the Harmonization of the ECOWAS Member States' Legislation on Value Added Tax (VAT) of 2009 requires that where a taxpayer is not resident in a Member State, he must appoint a resident representative who shall fulfill all obligations about value added tax on his behalf. Failing this, all such obligations shall be honored by the person on whose account the operations are undertaken. Natural or legal persons who undertake as their principal or secondary activity, the extraction, manufacture, or transformation of goods, whether to manufacture other products or for final use; b) Natural or legal persons who in effect, act as manufacturers and· carry out, within or outside their factories, all operations involving the manufacture or final

[411]Ibid, Article 4.

[412] Ibid, Article 3.

a turnover between USD 12,000 and USD 200,000 for the supply of goods and USD 10,000 and USD 150,000 for the provision of service to register for VAT.[413] The amounts indicated shall be liable to a review by the Council of Ministers, upon the proposal of the Commission, to consider the dynamics of the economies in the Community. However, each member state is allowed to determine a VAT-free annual turnover threshold, on the basis of which any natural or legal person shall be liable for VAT. This can be made according to the actual regime, no matter the legal form or nature of the activities carried out.[414]

Regarding the taxable amount, the Directive indicates that the taxable amount in respect of operations liable to value added tax carried out on the national territory of a member state will base on the turnover. Besides the principal price of the goods or service, it comprises the ancillary costs such as bank commissions, packaging, transport, and insurance demanded by the supplier from the purchaser or subscriber. It covers also amounts of customs duties, excise duties, or any other taxes applicable to products or services, except for the VAT itself. In general, it covers all amounts, assets received or to be received by the supplier or service provider in exchange for the delivery or the service.[415]

4.6.2 VAT Rates

The VAT rate may encourage or discourage voluntary tax compliance in various tax jurisdictions. The reason being where the VAT rate is high it will discourage voluntary tax compliance and hence contribute to loss of government revenue. In this

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[413] Ibid, Article 6.
[414] Ibid, Article 5.
[415] Ibid, Article 24.

context, the Directive has given liberty to members of SADC to fix the VAT rate applicable to taxable operations within a bracket ranging between 5 and 20%.[416] However, member states are free to establish a reduced rate whose scope and rate will be determined by the Council of Ministers. Moreover, the VAT rate will be applicable to merchandise and services produced locally. Also, to taxable goods imported with the exclusion of the export of goods or equivalent, which are operations submitted to zero tax. The zero tax will apply solely to exports whose declarations have been approved by the Customs services and to the taxable activities, but not subject to effective payment of VAT.[417]

4.6.3 VAT Refunds

The refund of VAT claims is vital in the administration of the VAT because of the principle of neutrality. The businesses should not be affected since they are acting as agents of the tax authority, and therefore refunds should be provided as governed by the law of the respective country. According to the Directive, member states are required to determine rules applicable to VAT refund. The rules among other things should provide the practical procedures for the presentation and appraisal of requests especially those linked to the operations of necessary prior controls, as well as those relating to the execution of the refunds.[418]

The Directive has set some guidance regarding the contents of the rules to be made by the member state. It provides that when the amount of deductible tax for a month

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[416] Ibid, Article 30.
[417] Ibid.
[418] Ibid, Article 58.

is higher than that of the liable tax, the excess shall constitute a tax credit charged to the liable tax for the next period.[419] Similarly, exporters and industrialists who have made investments whose amounts are fixed by each State as companies that have ceased activity may benefit from refund of the VAT credit.

4.7 Conclusion

Generally, all the regional instruments provide the standards for VAT administration. These include the VAT registration and threshold, VAT refunds, VAT rates, and exchange of information. The reflection of these standards in national laws not only brings a positive impact on the administration of VAT but also will increase the collection of revenue. Although Tanzania is not a member of some regional instruments but there are standards provided in these instruments which are relevant to improving its VAT law. This will ensure the widening of the tax base and realization of the objective for the introduction of the VAT in Tanzania. Hence, Tanzania can adopt with or without modification some standards provided in different regional instruments and incorporate into her VAT law.

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[419] Ibid, Article 55.

CHAPTER FIVE

THE LEGAL FRAMEWORK GOVERNING THE VALUE ADDED TAX IN TANZANIA

5.1 Introduction

Desire to increasing revenue for countries development led to introduction of VAT in Tanzania. The introduction of VAT was meant widening of tax base upon which more businesses were expected to be registered. To achieve a desired results tax administration must be effective and guided by laws governing VAT. Equally important, VAT laws must be effective, fair without ambiguous, sufficient to guide both taxpayers and tax administration. In absence of effective laws, administration of VAT may not yield desired results.

This chapter review laws governing VAT in Tanzania. It provides also for social, economic and political context of Tanzania, development of the VAT in Tanzania. The rationale behind of reviewing different laws is to show the position of the law in respect of VAT and how it affects the administration of value added tax in Tanzania. The chapter also looks into tax agreements entered by Tanzania with other countries recognized and treated as part of the law in Tanzania to establish how cross border VAT and other type of taxes are handled.

5.2 Social, economic and political context of Tanzania

Tanzania Mainland, formerly known as Tanganyika attained political independence on 9th December 1961.Tanganyika joined with the People's Republic of Zanzibar after the revolution on 12th January 1964 and formed the United Republic of

Tanzania on 26th April 1964.[420]Tanzania is located in Eastern Africa between longitudes 29^0 and 41^0 East and longitudes 1^0 and 12^0 South.[421]The total area of the United Republic of Tanzania is 945,000sq.km.[422] The population of the United Republic of Tanzania has increased more than four times from 12.3 million in 1967 to 57.6 million in 2020. The average annual growth rate according to 2012 population and housing census is 3.1 percent.[423]

Economically, it inherited the colonial economy and remained an appendage of the metropolitan economy.[424] Essentially, the economy of Tanganyika was export economy directly or indirectly integrated in the world of capitalist system via export sector.[425] Following the economic instability experienced in the 1970s and the first half of the 1980s Tanzania took deliberate efforts to reform the economy. The intention was to eliminate controls and introduce the market based economy.[426]

Pursuant to this goal, in 1988 a Commission of Enquiry (Nyirabu Commission) was formed to address the financial sector at that time. The recommendations made by the Commission brought impact in the financial sector and other areas of the economy for example there was enactment of different laws such as the Banking and Financial Institutions Act of 1991 which paved way for entrance of private, foreign

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[420]The United Republic of Tanzania, Tanzania in Figures 2020, National Bureau of Statistics (NBS), 2021, p.1.
[421]Ibid,p.2.
[422] Ibid.
[423] Ibid, p.20.
[424]Kiunsi, H.B, Transfer Pricing in East Africa: Tanzania and Kenya in Comparative Analysis, Ph.D. Thesis, The Open University of Tanzania, Tanzania, 2017,p.226.
[425]Shivji I.G., Classes struggle in Tanzania, Dar es Salaam, TPH, 1976, p.36.
[426] Bank of Tanzania (BOT), Tanzania Mainland's 50 Years of Independence: A Review of the Role and Functions of the Bank of Tanzania (1961—2011), 2011, pp.1-3.

and domestic investors in the financial sector.[427] These changes were accompanied by the International Monetary Fund (IMF) and World Bank (WB) backed adjustment programs.[428] It set target for various important macroeconomic indicators. Measures were taken in crucial areas including imposition of ceilings on government financing, devaluation of the shillings to reflect prevailing market conditions and structural measures to eliminate controls in the foreign exchange market.[429]

The most remarkable development in respect of the economy in Tanzania was pronouncement of Zanzibar Resolution, which officially abandoned socialism ideology in Tanzania.[430] The resolution necessitated formation of a new policy and law with a view of attracting foreign investments. [431]That was followed by establishment of Investment and Protection Act of 1995, which was repealed and replaced by Tanzania Investment Act 1997.[432] The Act brought various legal reforms in the economy including establishment of the Tanzania Investment Centre (TIC) as agency to coordinate, promote, encourage and facilitate investments in the country.[433]

Currently, the economy of Tanzania despite the challenges posed by Covid-19 but continued to record positive economic growth. According to the statistics the Real Gross Domestic Product (GDP) growth slowed down to 4.8 percent in 2020 from 7

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[427] Ibid, p.15.
[428] Ibid, p.14.
[429] Ibid.
[430] United Republic of Tanzania, Investment Promotion policy, Dar es Salaam, Government Printer,1990.
[431]Kiunsi, H.B, Transfer Pricing in East Africa: Tanzania and Kenya in Comparative Analysis, Ph.D. Thesis, The Open University of Tanzania, Tanzania, 2017, pp 228-229.
[432] Ibid.
[433] S.4 of Tanzania Investment Act, 1997.

percent in 2019.[434]In nominal terms GDP was TZS 148.5 trillion in 2020, up from to TZS 139.6 trillion in 2019.GDP per capital increased to TZS 2,468,241 from TZS 2,327,152 in 2019.[435]

5.3 Development of the Value Added Tax in Tanzania

The VAT was introduced in Tanzania in 1997 through the Value Added Tax Act.[436] The introduction of the VAT was a result of the study and recommendations made by the Commission of Enquiry into Public Revenues, taxation, and expenditure to review the central and local tax systems and its administration.[437] Specifically, the commission recommended changes to the then existing tax system to widen the tax base, enhance revenue collections and promote greater efficiency of production in the economy.[438] The recommendation made by the Commission in respect of indirect taxation was that there was a need to introduce VAT to replace sales tax since it was considered as a major component of Tanzania's future revenue system and extensions to a wider tax base.[439] The potential benefits of replacing the existing sales tax[440] by VAT were expected to be of five-fold as indicated in the Commission's Report:-[441]

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[434] Bank of Tanzania (BOT), Bank of Tanzania Annual Report 2020/21,p.8.
[435] Ibid.
[436]This Act may be cited as the Value Added Tax Act, 1997, and it came into operation on the 1st day of July 1998, save that, for the provisions of part IV came into operation on the 1st day of January 1998 and of Parts VII, VIII, IX, X, and XI came into operation on the 1st day of March 1998, except for the provisions of Section 71 which appears in Part XII of the Act.
[437] Odd-Helge F., Value Added Tax in Tanzania, Working Paper Chr. Michelsen Institute Development Studies and Human Rights, Bergen Norway, 1995:5, p.1.
[438] Odd-Helge F., Taxation and Tax Reforms in Tanzania: A Survey, Working Paper Chr. Michelsen Institute Development Studies and Human Rights Bergen Norway, 1995:4, p.12.
[439] Ibid.
[440] Osoro, N.E. *Revenue productivity of the tax system in Tanzania, 1979- 1989*, Journal of African Economies, VoL. 1, No. 3, 1992a, pp. 395-415.
[441]URT, Commission of Enquiry into Public Revenues, Taxation and Expenditure Report, 1991a, paragraph 12.

First, to provide flexibility of setting the VAT rates expected to give wide scope for generating increased revenue. Second, it is to minimize unintended distortion to avoid the tax cascading of the existing sales tax system through the use of the invoice credit method. Third, by applying the destination principle the VAT should ensure that commodities were taxed in the country where they were consumed (not in the country where they were produced) as required under the provisions of the General Agreement on Tariffs and Trade (GATT). This was assumed to be achieved by levying the same tax on imported goods and goods domestically produced and freeing exports from tax. Fourth, simplicity was expected to be achieved by limiting the number of VAT rates as well as the number of exemptions.

Fifth, it was anticipated that once the traders became used to filling in the VAT forms, evasion would decline due to the self-policing nature of value added tax.[442]In this respect, it was also expected that VAT would encourage traders and manufacturers to keep proper records and encourage purchasing and recording inputs on which tax had been paid. As the practice of keeping proper records, one expected that the tax base for VAT would grow to wider coverage than sales tax and revenue would increase. Further, VAT was favored because it was assumed that it had a relatively high tax elasticity and buoyancy compared to sales tax.[443]

In 1992, the government of Tanzania through the Ministry of Finance during its budget speech announced its intention to introduce VAT in January 1994. However, in 1994 the VAT was not introduced as announced since a substantial amount of

[442] Ibid.
[443]Ibid.

time was required to make VAT fully operational.[444]Generally, after the legal reforms the Value Added Tax Act, 1997 was replaced by the Value Added Tax Act.[445] There are also regulations made under this Act among them include the Value Added Tax (General) Regulations 2015,[446] as amended by the Value Added Tax (General) (Amendment) Regulations [447] and the Value Added Tax(General) (Amendment) Regulations 2021.The objectives of the enactment are to broaden the tax base, to link the value added tax law with the international best practices, to reduce the powers of the Minister for Finance in the administration of VAT, to address intra union trade issues between Mainland and Zanzibar, simplify the imposition, collection, administration, and management of VAT and other related matters.

5.4 Laws Governing Value added Tax in Tanzania

5.4.1 The Constitution

The Constitution is a mother law and all the laws including the revenue laws derive their validity from the Constitution. The Constitution of the United Republic of Tanzania of 1977 as amended under Article 138(1) requires that no tax of any kind be imposed save by a law enacted by the Parliament or according to a procedure lawfully prescribed and having the force of law or under a law enacted by the Parliament. It is in this context all the revenue laws derive their validity and enforceability from the Constitution for the collection of revenue by the tax

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[444] Fjeldstad, O., Value-added taxation (V AT) in Tanzania, Bergen: Chr. Michelsen Institute, Working Paper 1995b, p.5.
[445] Cap.148 of 2014.
[446] Rule 37 of Value Added Tax (General) Regulations revoke all the regulations which were made under the Value Added Tax Act, 1997.Make reference to G.N 225 of 2015.
[447] GN No. 608 of 2018.

authority. Thus, the tax laws enacted must be according to the lawfully prescribed procedure set under Article 99 of the Constitution governing the enactment of financial matters legislation. For that reason, the tax authority is restricted by the law to impose any type of tax not provided in the respective laws. VAT Act also derives its validity from the Constitution and any administration of the same must be in accordance with the Constitution.

5.4.2 The Value Added Tax Act

Generally, the main law governing the VAT in Tanzania is the Value Added Tax Act.[448] The Act is enacted to make a legal framework for the imposition and collection of tax, administration, and management of the value added tax.[449]The Act also provides for other related VAT matters.[450]The main objective of the Act is to broaden the tax base.[451]This is thought to be achieved by linking the VAT law with the international best practices, reducing the powers of the Minister for Finance in the administration of value added tax and to address intra union trade issues between Mainland and Zanzibar. In implementing the VAT Act the minister responsible for finance made VAT (General) Regulations 2015[452] as amended by the Value Added Tax (General) (Amendment) Regulations [453] and the Value Added Tax (General) (Amendment) Regulations 2021.There are also other regulations such as the VAT (Exemption Monitoring Procedures) Regulations, 2018 and the Value Added Tax

[448] Cap 148 R.E 2019.
[449] Long title to the Value Added Tax Act.
[450] Ibid.
[451] Part II of the Value Added Tax Act.
[452]Government Notice No.255 of 2015. Rule 37 revokes all the regulations which were made under the Value Added Tax Act 1998as amended by the Value Added Tax (General) (Amendment) Regulations.
[453] GN No. 608 of 2018.

(Registration of Non-Resident Electronic Service Suppliers) Regulations, 2022.The following part critically examines specific provision of law governing VAT.

5.4.2.1 Value Added Tax Registration

Generally, for VAT to work as required in any tax jurisdiction persons responsible must be registered to act as agents in the collection of VAT from the final consumers on behalf of the tax authorities. In Tanzania, VAT registration can be categorized into different categories. The first category is normal registration. Under this category of registration the VAT Act requires persons with an appropriate threshold of one hundred million be registered[454]and others regardless of their threshold to register for the VAT. This means that that the turnover[455] can be 100 Million or more than in the period of twelve months ending at the end of the previous month.

Registration is also allowed in the situation where the turnover is equal to or greater than half of the threshold which is 50 Million or greater than in the period of six months.[456] This means that a taxable person is required, in respect of any month, to be registered for VAT from the first day of that month. However, there are exceptions to this rule in which certain[457] amounts are excluded when calculating the person's turnover. The excluded amounts are the value of a supply that would not be a taxable supply if the person were a taxable person and also the value of a sale of a capital asset of the person. There is also value of a supply made solely as a consequence of selling an economic activity or part of that economic activity. In

[454]Rule 14 of the Value Added Tax (General) Regulation, 2015.
[455] S. 28(5) of the Value Added Tax Act.
[456] Ibid, s.28 (2)(b).
[457] Ibid, s.28 (6).

addition, it is value of supplies made solely as a consequence of permanently ceasing to carry on an economic activity.[458]

Apart from the registration threshold, there are certain categories of persons who can register for value added tax regardless of their threshold. These persons include persons who are approved and licensed to provide professional services.[459]These include but not limited to advocates, engineers, accountants, tax consultants. Under this category registered professionals are required to secure and use Electronic Fiscal Devices (EFD) machines when offering their services to the public. Government entities or an institution that carries on economic activity can also be registered irrespective of their turnover.[460]The Act defines government entity to mean the government of the United Republic or a Ministry, Department, or Agency of that government, a statutory body, authority, or enterprise owned or operated by the Government of the United Republic or local government authority.[461] These entities are required to register in accordance with procedures prescribed under Rule11 and Rule 12 of the VAT (General) Regulations 2015.

The second is compulsory registration. This is a type of registration whereby the Commissioner General is empowered to register any person for VAT irrespective of the turnover.[462] In context of the law, the Commissioner General is mandated to register a person where the person failed or declined to register for VAT as required

[458] Ibid.
[459] Ibid, s.29(1).
[460] Ibid, s. 29(2).
[461] Ibid, s. 2.
[462] Ibid, s. 33.

by the law.[463]However, the registration by the commissioner is discretional as it depends solely on his satisfaction and the taxpayer may not be consulted. This is evidenced by the law which states that where the Commissioner General is satisfied that a person is required to be registered for value added tax and that person has not applied for registration, he shall register that person.[464]

Similarly, where the Commissioner General is satisfied that there are good reasons including protection of Government revenue, may register the person for VAT regardless of the person's turnover.[465]The law requires commissioner General to inform registered person within fourteen days.[466]The discretional powers by Commissioner General are very wide as it gives Commissioner General chances to invoke as he deems fit.

The Commissioner also has the power to register intending trader. This is a person in the process of setting up an economic activity with the intention of making taxable supplies with a turnover in excess of the VAT registration threshold but not yet commenced to make taxable supplies.[467]This means that a person can be registered for VAT even if that person has not commenced the business of making taxable supplies. The condition for registration is that the person should provide sufficient evidence to satisfy the Commissioner of his intention to commence an economic activity such as contracts, tenders, building plans, business plans, bank

[463] Ibid.
[464] Ibid.
[465] Ibid.
[466] Ibid.
[467] S.29(3) of the Value Added Tax Act and Rule 14 of the VAT (General) Regulations 2015.

financing.[468]Another condition is that the person makes or will make supplies that will be taxable supplies if the person is registered.[469] To implement this requirement the law requires the person should specify the period within which the intended economic activity commences the production of taxable supplies.[470] Upon registration, a registered person shall use a Taxpayer Identification Number (TIN) and a VAT Registration Number on all documents required to be issued under the law. The registration by a person under the VAT Act shall be a single registration, which shall cover all economic activities undertaken by that person's branches or divisions.[471]

Generally, the VAT Act allows deregistration of the registered persons. A person may apply for deregistration if he ceases to make taxable supplies or is not carrying on an economic activity.[472] Likewise, deregistration can also be done suo motto by the Commissioner General if the person obtained registration by providing false or misleading information, [473]or ceases to produce taxable supplies or taxable turnover falls below the registration threshold.[474]The application for deregistration shall be made in the manner prescribed by the law[475] within fourteen days after the date on which the person permanently ceased to make taxable supplies.[476]

Although the law provides the requirements for VAT registration, the objective for the introduction of VAT has not been realized. The reason being the set requirements

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[468] S.29 (3) of the Value Added Tax Act.
[469] Ibid.
[470] Ibid, s. 29(3)(c).
[471] Ibid, s.36.
[472] S.39 of the Value Added Tax Act and Rule 15 of the Value Added Tax (General) Regulations.
[473] Ibid.
[474] Ibid.
[475] Ibid, Rule 15.
[476] Ibid.

exclude so many taxpayers and hence affect the collection of revenue. Also, the law does not provide registration of businesses according to classes of the threshold to widen the tax base as a result collection of enough revenue for the government is negatively affected. Notably, the registration of advocates for VAT has raised concerns in respect of provision or access to justice by the public since the imposition of VAT to legal fees has increased the rate of fees charged by the advocates and the burden falls on the final consumers.

5.4.2.2 Imposition of Value Added Tax

The imposition of VAT in different goods and services is governed by the Value Added Tax Act. Tanzania Revenue Authority is an institution that is mandated by the law to administer the imposition of VAT in Tanzania. According to the Act, VAT is imposed on taxable supplies and imports. Taxable supplies mean a supply other than an exempt supply that is made in Mainland Tanzania by a taxable person in the course or furtherance of an economic activity carried out by that person.[477] It covers also a supply of imported services to a taxable person who is the purchaser and acquires the services in the course of an economic activity.[478]

The focus being anything capable of being supplied by any person other than money or capable of being made is recognized as a supply of goods.[479] In the context of the VAT Act, goods mean all kinds of tangible moveable property, excluding shares, stocks, securities, or money.[480] A supply of goods includes a sale, transfer of the

[477] S. 2 of the Value Added Tax Act.
[478] Ibid.
[479] Ibid, s.12 (1).
[480] Ibid, s.2.

right to dispose of goods as owner, including under a hire purchase agreement and a lease, hire or other right of use granted in relation to goods including a supply of goods under a finance lease.[481]

Likewise, every supply that or capable of being made is recognized also as a supply of immovable property.[482] Immovable property includes an interest in or right over land, a personal right to call for or be granted an interest in or right over land, a right to occupy land or any other contractual right exercisable over or in relation to land and the provision of accommodation.[483] Further, it is also a supply of services.[484] Services mean anything that is not goods, immovable property or money including but not limited to a provision of information or advice; a grant, assignment, termination, or surrender of a right; the making available of a facility, or advantage; an entry into an agreement to refrain from or tolerate an activity, a situation, or the doing of an act; and an issue, transfer, or surrender of a license, permit, certificate, concession, authorization, or similar right. [485]

Moreover, in the process of imposing VAT on taxable supplies, there are important matters to take into concern. Those matters are consideration of supply, number of supplies either single or multiples, when VAT becomes payable, value of taxable supplies, exceptions for supplies to connected persons, progressive or periodic supply, sale of economic activity, the tax treatment on rights, vouchers and options,

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[481] Ibid, s.12 (3).
[482] Ibid, s.12 (2).
[483] Ibid, s. 2.
[484] Ibid.
[485] Ibid.

pre-payments for telecommunication services, in kind employees benefits, sale of property of a debtor are also considered.[486]

Generally, taxation of digital transactions among other things requires time of supply to be ascertained. The reason being the time of supply is also the time for the imposition of value added tax. Therefore, it is important to establish a time of supply for the purpose of value added tax. Rules governing the time of supply differ from one tax jurisdiction to another. For example, in Tanzania the law has provided rules governing the time of supply.[487] First, the time of supply in relation to a supply of goods is the time at which the goods are delivered or made available. Second, the time of supply in relation to a supply of services is the time at which the services are rendered, provided, or performed. Last, the time of supply in relation to a supply of immovable property is the earlier time at which the property is created, transferred, assigned, granted, or otherwise supplied to the customer, or delivered or made available.

5.4.2.3 Place of Taxation

Generally, all the issues related to value added tax are centered on the place of taxation. It is generally accepted worldwide that the imposition of VAT is governed by destination basis rules of particular tax jurisdiction. This implies that the place where consumption takes place is the place of taxation. The rules governing the place of taxation differ from one tax jurisdiction to another. For example, in Tanzania there are rules governing supplies of goods and services made in Mainland

[486] Ibid, s. 13-27.
[487] Ibid, s. 2.

Tanzania. On the other hand, there are also rules governing supplies of goods and services for use outside the United Republic. Likewise, there are special rules governing the place of taxation. From the aforesaid, the rules governing place of taxation of supplies of goods and services made in Mainland Tanzania are as follows: -

First, a supply of goods is treated as a supply made in Mainland Tanzania, if the goods are delivered or made available in Mainland Tanzania.[488] This means that the place of supply of goods is the place where the ownership of goods changes. In situations where there is no movement of goods the place of supply is the location of goods at the time of delivery to the recipient. For example, in the case of sales in a supermarket, the place of supply is the supermarket itself. Likewise, goods supplied after they are imported into Mainland Tanzania but before they are entered for home consumption in Mainland Tanzania are treated as having been delivered or made available outside Mainland Tanzania.[489]Additionally, goods installed or assembled in Mainland Tanzania by or under a contract with the supplier shall be treated as a supply made in Mainland Tanzania.[490] In most cases, a supply of this nature involves complex machinery or equipment requiring the expertise of the manufacturer to make it operational.

The supplier and a customer normally enter into a contract in respect of the installation or assembly of the machinery. Therefore, the title in most cases passes on the goods after they have been installed and the place of supply for value added tax

[488] Ibid, s. 44(1).
[489] Ibid, s.44 (2).
[490] Ibid, s. 45(1).

purposes will be where the goods have been installed or assembled.[491]Where there are separate contracts with the same supplier for example one to supply the goods and the other to perform the installation or assembly it should be treated for the place of supply purposes as a single supply of installed or assembled goods. Besides, where the supplier of the goods sub-contracts the work of installation or assembly, the place of supply of the goods remains the place of installation or assembly.[492]

A supply of goods is treated as a supply made in Mainland Tanzania if the goods are dispatched or transported from Mainland Tanzania to a place outside the United Republic.[493] This means that the act of sending off something through email or any other form or transporting it from Mainland Tanzania to a place outside the United Republic, the place of supply shall be treated as made in Mainland Tanzania for purposes of VAT. For this rule to apply there must be evidence that the goods have been dispatched or transported outside Mainland Tanzania.[494]This means that the goods have physically left Mainland Tanzania from which they were dispatched or transported to another place outside the United Republic.

Also, a supply of immovable property situated in Mainland Tanzania or a supply of services directly related to land situated in Mainland Tanzania is treated as a supply made in Mainland Tanzania.[495] Service directly related to land means service physically rendered on land or service of experts and estate agents relating to specific land or service relating to construction work undertaken or to be undertaken on

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[491] Ibid.
[492] Ibid.
[493] Ibid, s. 45(2).
[494] Ibid.
[495]Ibid, s. 46.

specific land.[496] The place of supply of services connected with immovable property is the place where the immovable property is located. Similarly, a supply of services directly related to land situated outside Mainland Tanzania is treated as a supply made in Mainland Tanzania if the supplier is a non-resident who is operating through a fixed place in Mainland Tanzania.[497]

In this context a non-resident having a fixed place of business in Mainland Tanzania makes a supply of services directly related to the land situated outside Mainland Tanzania such supply is treated as made in Mainland Tanzania for purposes of value added tax.[498] Section 3 of the Income Tax Act[499]defines fixed place of business or permanent establishment to mean a place where a person carries on business. It includes a place where a person is carrying on business through an agent, other than a general agent of independent status acting in the ordinary course of business as such or a place where a person has used or installed, or is using or installing substantial equipment or substantial machinery or a place where a person is engaged in construction, assembly or installation project for six months or more, including a place where a person is conducting supervisory activities in relation to such a project.

Generally, fixed place of business or permanent establishment is a fixed place of business through which the business of an enterprise or company is wholly or partly carried on. Profit attributable to a permanent establishment in the state of source is

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[496] Ibid, s. 2.
[497] Ibid, s. 47.
[498]Ibid, s.46 (2).
[499]Cap 332 R.E 2019.

either exempted in state of residence or the state of residence allows a credit of taxes paid by the permanent establishment on such profits. The taxing jurisdiction by the state of residence is said to be transferred to the state of the source, where the person needs to file his return of income and comply with domestic tax laws of the source country. For purposes of VAT services performed by a fixed place of business directly related to immovable property of land outside Mainland Tanzania, the place of supply is treated as Mainland Tanzania.

Furthermore, where water, gas, oil, electricity, or thermal energy is supplied through a pipeline, cable, or other continuous distribution network and delivered to a place in Mainland Tanzania or from a place in Mainland Tanzania to a place outside the United Republic such supply is treated as a supply made in Mainland Tanzania.[500] This means that a supply of essential services through a pipeline or other distribution network delivered to a place in Mainland Tanzania or place outside the United Republic of Tanzania such supply is treated as made in Mainland Tanzania for the purposes of VAT.

Accordingly, supply of services by a non-resident who is a registered person to a customer who is a registered person shall be treated as a supply made in Mainland Tanzania.[501] This does not apply if the customer is a non-resident who carries on an economic activity at or through a fixed place outside Mainland Tanzania and the supply is made for the purpose of that economic activity; or to that fixed place.[502] A

[500] S. 48 of the Value Added Tax Act.
[501] Ibid, s. 49(1).
[502] Ibid, s. 49(2).

supply of telecommunication services is treated as a supply made in Mainland Tanzania, if a person in Mainland Tanzania, other than a telecommunications service provider, initiates the supply from a telecommunications service provider, whether or not the person initiates the supply on his behalf.[503] The law provides further that a person who initiates a supply of telecommunication services is the person who controls the commencement of the supply, pays for the supply, and contracts for the supply.[504] If it is impractical for the supplier to determine the location of a person due to the type of service or the class of customer, the person who initiates the supply of telecommunication service shall be the person to whom the invoice for the supply is sent.[505]

However, section 50(4) of the VAT Act provides an exception upon which sections 50(1), 50(2) and 50(3) do not apply. These sections do not apply if the person who initiates the call in Mainland Tanzania is a non-resident or is global roaming while in Mainland Tanzania and who pays for the supply under a contract made with a non-resident telecommunications service provider,[506] through a place outside the United Republic at which the non-resident is established.[507]Services supplied to unregistered persons in Mainland Tanzania are treated as a supply made in Mainland Tanzania when supplied to a customer who is not a registered person.[508] The rule is that if the services are received by a person in Mainland Tanzania who effectively uses or

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[503] Ibid, s. 50.
[504] Ibid, s.50 (2).
[505]Ibid, s.50 (3).
[506] S. 2 of the Value Added Tax Act defines telecommunication service provider to mean a person licensed by the Tanzania Communications Regulatory Authority or an equivalent foreign body to provide telecommunication services.
[507] Ibid, s.50 (4).
[508] Ibid, s. 51(1).

enjoys the services in Mainland Tanzania the law regards the services as performed in Mainland Tanzania. Likewise, a supply of services received for radio or television broadcasting at an address in Mainland Tanzania to a non-registered person shall be treated as a supply made in Mainland Tanzania. Equally, the law further provides that a supply of electronic services[509] delivered to a person who is in Mainland Tanzania at the time when the service is delivered is treated as a supply made in Mainland Tanzania.[510]

Moreover, other services supplied to unregistered persons within Mainland Tanzania are treated as a supply of service made in Mainland Tanzania. This is where the supply is made to the customer resident of Mainland Tanzania but not a registered person. Also, it is regarded as supply if the supplier is a resident of Mainland Tanzania or a non-resident who carries on an economic activity at or through a fixed place in Mainland Tanzania.[511] The supply must be made in the course of that economic activity or through that fixed place of business.

Apart from the rules governing the place of taxation of supplies of goods and services made in Mainland Tanzania, there are also rules governing supplies of goods and services for use outside the United Republic. Herein below are the rules:- First, a supply of immovable property is zero-rated if the land to which the property

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[509] S. 51(2) the Value Added Tax Act defines electronic services to mean any of the following services provided or delivered through a telecommunications network websites, web-hosting, or remote maintenance of programmes and equipment; software and the updating thereof; images, text, and information; access to databases; self-education packages; music, films, and games, including gaming activities; and political, cultural, artistic, sporting, scientific, and other broadcasts and events including broadcast television.

[510] Ibid, s. 51(a), 51(b), 51(c).

[511] Ibid, s. 52.

relates is outside the United Republic.[512] This means that if a supply in respect of the immovable property located outside the United Republic of Tanzania takes place for the purposes of VAT such supply shall be treated as zero rated supply. The tax jurisdiction where the supply has taken place will have the taxing right in respect of a supply that relates to the immovable property. The supply is normally zero rated for the purpose of avoiding double taxation and also allowing input tax credit as provided in the revenue laws of the respective countries.

In context of VAT Act, a supply of goods is zero-rated if the goods are exported within the meaning of the term export[513] as provided for under section 2 of the Value Added Tax Act. A supply of goods is zero-rated if the goods are supplied to a tourist or visitor by a licensed duty-free vendor who holds documentary evidence, collected at the time of the supply. Thus, the goods must be removed from the United Republic without being effectively used or enjoyed in the United Republic.[514] The most important condition to be complied with by the visitor or tourist is that the goods label or packaging must be intact as they were bought.

A supply of locally manufactured goods by a local manufacturer is zero-rated if the goods are supplied to a taxable person registered under the VAT law administered in Zanzibar and such goods are removed from Mainland Tanzania without being effectively used or enjoyed in Mainland Tanzania.[515]It is worth noting that Zanzibar has its VAT law and for the purposes of VAT, Zanzibar is treated as outside

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[512] Ibid, s. 54.
[513] Ibid, s.2.
[514] Ibid, s. 55.
[515]Ibid, s. 55A.

Mainland Tanzania. To qualify for zero rate the supplier must fulfill the following condition. First, supply goods must be locally manufactured by a local manufacturer. [516] Second, goods must be supplied to a registered person in Zanzibar. Third, the goods' label or packaging must be intact as they were bought. Fourth, goods should not have been used or effectively enjoyed in Mainland Tanzania.[517]

In a situation goods are supplied in Mainland Tanzania by way of lease, hire, license, or similar supply, the supply shall be zero-rated if and to the extent that the goods are used outside the United Republic.[518]The condition provided by the law for this rule to be applicable is that the use of leased goods in the international territory shall be treated as a use wholly within the United Republic if immediately before that use the goods are used in the United Republic. However, the supply is not treated as zero-rated if the goods are a means of transport and the total period of the lease, hire, license, or similar supply is equal to or less than thirty days.[519]The prerequisite requirements in respect of goods regarding the number of days given, mode of supply, place of supply, use of goods provided under the VAT Act need to be adhered to for the goods to be treated as zero rated supply.

Where a supply of goods made in the course of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting temporary import goods shall be zero-rated.[520] To qualify for zero rate the following condition must be

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[516] Ibid.
[517] Ibid.
[518] Ibid, s. 56(1).
[519] Ibid, s.56 (2).
[520] Ibid, s.57, 57(a) and 57(b).

met. First, the goods being supplied are attached to or become part of those temporary import goods, or become unusable or worthless as a direct result of being used to repair, maintain, clean, renovate, modify, treat, or otherwise physically affect the temporary import goods.

Second, the temporary import goods are imported under a special regime under the East African Customs Management Act, or brought temporarily into Mainland Tanzania for the purpose of the performance of the services. Third, the temporary import goods are removed from the United Republic after the services have been performed. Fourth, the temporary import goods are not used in Mainland Tanzania for any purpose other than to enable the services to be performed or to enable the temporary import goods to be brought into Mainland Tanzania, or outside the United Republic.[521]

Furthermore a supply of goods or services are zero-rated if relates to the repair or replacement of goods under warranty.[522]To qualify for zero rate under this category, the law requires that the supply is provided under an agreement with and for consideration given by the warrantor, who is a non-resident and is not a registered person.[523]Besides, it is presumed that the goods under warranty were under the Value Added Tax Act previously subject to value added tax when imported, unless no value added tax was payable.[524]

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[521] Ibid, s.57 (b) (iii).
[522] Ibid, s. 58.
[523] Ibid, s.58 (a).
[524] Ibid, s.58 (b).

A supply of goods for use in international transport services[525] is another category under zero rate supply. To qualify for the zero rates the law requires the following conditions be complied. Firstly, a supply of goods is for use in repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting an aircraft or ship engaged in international transport services.[526] Second, a supply of aircraft's stores[527] or ship's stores,[528] for an aircraft or ship if the stores[529] are used for consumption or sale on the aircraft or ship during a flight or voyage that constitutes international transport services.

The VAT Act has specifically provided supplies of services that are treated as zero-rated supply. The supplies that are treated as zero rated supplies are a supply of international transport services. It covers also a supply of insuring the international transport services of goods. Likewise, it covers a supply of the services of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting an aircraft or ship engaged in international transport services. Equally, it covers a supply to a non-resident who is not a registered person of services that consist of the handling, pilotage, salvage, or towage of a ship or aircraft engaged in international transport services; or is provided directly in connection with the operation or management of a ship or aircraft engaged in international transport

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[525] S. 2 of the Value Added Tax Act define international transport services to mean the services, other than ancillary transport services of transporting passengers or goods by road, rail, water, or air from a place outside the United Republic to another place outside the United Republic, from a place outside the United Republic to a place in Mainland Tanzania; or from a place in Mainland Tanzania to a place outside the United Republic.

[526] Ibid, s. 59(1).

[527] S.59 (4) of the Value Added Tax Act defines aircraft's stores to mean stores for the use of the passengers or crew of an aircraft, or for the service of an aircraft.

[528] S.59 (4) of the Value Added Tax Act defines ship's stores to mean stores for the use of the passengers, crew of a ship, or for the service of a ship.

[529] S.59(4) of the Value Added Tax Act define stores in relation to aircraft's stores and ship's stores to includes goods for use in the aircraft or ship, fuel, and spare parts, and other articles or equipment, whether or not for immediate fitting.

services. Besides, there is also a supply of ancillary transport services of goods in transit through Mainland Tanzania in circumstances where the services is an integral part of the supply of an international transport services; and in respect of goods stored at the port, airport, or a declared customs area for not more than thirty days while awaiting onward transport.[530]

Another category of supply eligible for zero rate is a supply of services directly related to land outside the United Republic.[531] The law further requires a supply of services physically performed on goods situated outside the United Republic at the time the services are performed shall be zero-rated.[532]In additional supply of services, of which the services are physically received at no time and place other than the time and place at which the services are physically performed is eligible for zero-rate if the services are performed outside the United Republic of Tanzania.[533]Furthermore, a supply of services consists of repairing, maintaining, cleaning, renovating, modifying, treating, or otherwise physically affecting goods is treated as zero rate.[534]

The law has provided the following requirements under this category to qualify for zero rate; -One, goods should be imported under a special regime for temporary imports under the East African Customs Management Act, or are brought temporarily into Mainland Tanzania for the purpose of the performance of the services and will be removed from the United Republic after the services have been

[530] Ibid, s.59 (3).
[531]Ibid, s.60 (1).
[532] Ibid, s. 60(2).
[533] Ibid, s. 60(3).
[534] Ibid, s. 61(a) and s. 61(b).

performed. Two, the goods must not be used in Mainland Tanzania for any purpose other than to enable the services to be performed or to enable the goods to be brought into Mainland Tanzania or outside the United Republic.[535]

Zero rates also applies to a supply of services if the customer is outside the United Republic at the time of supply and effectively uses or enjoys the services outside the United Republic.[536] The condition provided by the law is that the services are neither directly related to land situated in the United Republic nor physically performed on goods situated in the United Republic at the time of supply.[537]However, a supply of services is not zero-rated if the supply is of a right or option to receive a subsequent supply of something else in the United Republic or the services are supplied under an agreement with a non-resident but are rendered to a person in the United Republic who is not a registered person.[538]

Likewise, a supply of services in respect of intellectual property rights for use outside the United Republic is treated as zero rated supply.[539]In context of VAT the supply under this category recognized by the law include filing, prosecuting, granting, maintaining, transferring, assigning, licensing, or enforcing intellectual property rights for use outside the United Republic.[540] The rationale behind is to promote and protect intellectual property rights within the country and also it is a

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[535] Ibid, s.61 (b).
[536]S.61 (A) (1) of the Value Added Tax Act. S.48 of the Finance Act 2019 has amended S. 61A of the Value Added Tax Act by adding immediately after it s. 61B. The amendment provides that a supply of electricity services by a supplier of electricity service in Mainland Tanzania to another supplier of electricity service in Tanzania Zanzibar shall be zero rated.
[537] Ibid, s.61A1 (b).
[538] Ibid, s. 61(A) (2).
[539] Ibid, s. 62.
[540] Ibid.

way of strengthening the local industry dealing with intellectual property issues. Likewise, a supply of telecommunication services by a service provider to a non-resident telecommunications service provider is zero-rated.[541] This including but not limited to a supply involving the termination of calls in Mainland Tanzania or the transmission of signals in or through Mainland Tanzania.

There are also specific or special rule governing the supply of services and place of taxation in respect of representatives of non-residents and services from a foreign branch. The rules are as follows:-First, a non-resident who carries on economic activity in Mainland Tanzania without having a fixed place in Mainland Tanzania, and makes a taxable supply for which the non-resident is liable to pay value added tax is required by the law to appoint a value added tax representative in Mainland Tanzania.[542]

The Commissioner General of TRA sometimes may direct a non-resident carrying on economic activity without a fixed place of business to furnish security where necessary. The role of the VAT representative is to do all things required under the VAT Act. It includes applying for registration or cancellation of registration and fulfilling other obligations in relation to registration.[543] The representative is required also to pay any value added tax or any fine, penalty, or interest imposed on the non-resident under the law.[544] The registration of a value added tax representative shall

[541] Ibid, s. 63.
[542] Ibd, s. 64(1).
[543] Ibid.
[544] Ibid, s. 64(2).

be in the name of the principal.[545]A person who is the value VAT representative of more than one non-resident should be registered separately.[546]

Rule 17(1) of the VAT (General) Regulations[547] provides conditions for one to be appointed as a VAT representative of a non-resident who is carrying on economic activity without a fixed place in mainland Tanzania. The conditions are that a person must be a company or individual, a taxpayer with a Tax Identification Number and must possess a statement of declaration of representative capacity to deal with the value added tax affairs of the non-resident. Another requirement is that a representative must have a fixed, well known and acceptable place of business and must have a good tax compliance history. Likewise, Rule 17(2)[548] requires a nonresident to notify commissioner in writing before the VAT representative assumes responsibilities. The law further requires the Commissioner General to respond within fourteen days from the date of receipt of the notice.[549] After acceptance by the Commissioner General of the appointment of a non- resident and his representative shall be jointly and severally liable for any value added tax liabilities accrued to the non-resident.[550]

Where a taxable person carries on economic activities at a fixed place in Mainland Tanzania and at one or more fixed places outside Mainland Tanzania the person shall be treated as two separate persons corresponding respectively to the economic

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[545] Ibid, s.64 (3).
[546] Ibid, s.64 (4).
[547] 2015.
[548] The VAT (General) Regulation 2015.
[549]Rule 17(3) of the Value Added Tax (General) Regulations, 2015.
[550] Ibid, Rule 18.

activities carried on inside and outside Mainland Tanzania for VAT purposes. Likewise, a taxable person who carries on economic activities at a fixed place in Mainland Tanzania and at one or more fixed places outside Mainland Tanzania the person outside Mainland Tanzania shall be deemed to have made a supply of imported services to the person inside Mainland Tanzania consisting of any benefit in the nature of services that is received by the person in Mainland Tanzania through or as a result of the activities carried on by the person outside Mainland Tanzania.[551] The time of supply shall be determined on the assumption that a supply has been made.

There is a condition provided by the law in respect of a supply made and allocation of costs. The condition is that where, within twelve months from the time of making a supply referred the person outside Mainland Tanzania makes an allocation of costs to the person inside Mainland Tanzania in respect of the supply, the allocation of costs shall be treated as consideration for the supply.[552] Another condition is that where a supply referred is a taxable supply, the value of the supply where the provision of section 65(2) of the Value Added Tax Act applies, shall be equal to the amount of the costs allocated, reduced by that part.

Not only that but also the law indicates that if any of the amounts allocated that represents salary or wages paid to an employee of the person outside Mainland Tanzania and interest incurred by the person outside Mainland Tanzania and in any

[551] S. 65(1) of the Value Added Tax Act.
[552] Ibid, s. 65(2).

other case, it shall be assumed to have been made by a non-resident outside Mainland Tanzania to a connected person in Mainland Tanzania.[553]

The VAT Act also imposes VAT on taxable imports. Import is defined under section 2 of VAT Act to mean bringing or causing goods to be brought from outside the United Republic into Mainland Tanzania. The law requires taxable import be paid where goods are entered for home consumption in Mainland Tanzania.[554] This must be paid in accordance with the VAT Act and procedures applicable under the East African Customs Management Act. In any other case; the VAT payable on a taxable import is paid where goods are imported for use in Mainland Tanzania.[555] This must be on the day the goods are brought into Mainland Tanzania and in the manner prescribed by the law.

The liability to pay VAT on a taxable import arises by the operation of the VAT and does not depend on the making of an assessment by the Commissioner General of the amount of VAT due.[556] Besides, the Commissioner General shall collect VAT due under the VAT Act on a taxable import at the time of import.[557]Considering value added tax on imports there are other matters which are important to be taken into considerations. They include the value of imported goods,[558] the Value of returning goods[559] and deferral (postponement) of value added tax on imported

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[553] Ibid, s. 65(3).
[554] Ibid, s. 13-27.
[555] Ibid.
[556] Ibid.
[557] Ibid.
[558] Ibid, s. 9.
[559] Ibid, s.10.

capital goods.[560] VAT is also imposed on different persons.

The person liable to pay value added tax, in the case of a taxable import, the importer and in the case of a taxable supply that is made in Mainland Tanzania, the supplier and in the case of a taxable supply of imported services, the purchaser.[561] The person includes individual, a company, an association of persons, a Government entity, whether or not that entity is ordinarily treated as a separate person, a foreign government or a political sub of a foreign Government, a non-government organization or a public international organization.[562]

5.4.2.4 Exemptions

Tax exemptions granted by the Government originates from various pieces of legislation enacted by the Parliament. Also, there are exemptions given through subsidiary legislation issued by the Minister responsible for Finance and Planning as empowered under the parent legislation.It can also be granted through agreements between the Government and Donor countries/institutions and investors. Generally, not all supplies are subject to VAT. There are circumstances upon which the law provides exemption to VAT. For VAT purposes, the exemption in relation to supply and import means a supply or import that is specified as exempt under the law or a supply of a right or option to receive a supply that will be exempt.[563]However, the exemption differs depending on the goods supplied or imported. The law has provided different categories of exemptions.

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[560] Ibid, s.1 and Rule 2 and 4 to 9 of the Value Added Tax (General) Regulations 2015.
[561] S. 4 of the Value Added Tax Act.
[562] Ibid, s. 2.
[563] Ibid, s. 2.

First, exemptions provided by the Value Added Tax Act. Section 6(1) of Value Added Tax Act requires that except as otherwise provided for under the Value Added Tax Act or the schedule a supply shall not be exempted or persons shall not be exempted from paying value added tax. The first schedule to the Value Added Tax Act provides a comprehensive list of supplies and imports which are exempted from the VAT. This means that for exemption to be granted it must be provided by the law or the schedule and not otherwise.

Likewise, the VAT Act empowers the Commissioner General of TRA to grant exemption to as provided in the law[564]The Commissioner General may upon application grant value added tax exemption on imports by a Government entity or supply to a Government entity of goods or services to be used solely for implementation of the project funded by the Government.[565] The exemption covers also concessional loan, non-concessional loan or grants through an agreement between the Government of the United Republic of Tanzania and another government or representative of another government, donor or lender of concessional loan or non-concessional loan, or a grant agreement duly approved by the Minister in accordance with the provisions of the Government Loans, Grants and Guarantees Act entered between local government authority and a donor.[566] VAT exemptions can be granted also to goods or services used for relief of natural

[564] S.6 (2) of the Value Added Tax Act as amended by S.74 of the Finance Act, 2021.
[565] S. 6(8) of the Value Added Tax Act provides that a project financed by the Government mean a project financed by the Government in respect of transport, water, gas, or power infrastructure; buildings for the provision of health or education services to the public; or a centre for persons with disabilities. Refer also to S.74 of the Finance Act, 2021.
[566] S.6 (2) of the Value Added Tax Act as amended by S.74 of the Finance Act, 2021.

calamity or disaster.[567]

Exemption can be granted to importation by or supply of goods or services to an entity having an agreement with the Government of the United Republic of Tanzania to operate or execute strategic project.[568] In addition, exemption is granted on importation by or supply of goods or services to a Non governmental organization.[569] The condition for granting exemption is that the said Non governmental organization is required to have the agreement with the Government. The agreement shall solely be for the project implemented by that Non governmental organization.[570]Further, the law provides the condition for exemption. The condition is that the exemption granted shall cease to have an effect and the value added tax shall become due and payable as if the exemption had not been granted if the said goods or services are transferred, sold or otherwise disposed off in any way to another person not entitled to enjoy similar privileges conferred the VAT Act. [571]

There is also an exemption given by way of agreement. The Act provides exemption by way of the agreement entered between the Minister responsible and international agency listed under the Diplomatic and Consular Immunities and Privileges Act.[572] The exemption shall be effected under the Value Added Tax Act by exempting the import of goods imported by the person or refunding the value added tax payable on

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[567] Ibid.
[568] S.6 (2) of the Value Added Tax Act as amended by S.74 (2) (d) and (e) of the Finance Act, 2021.
[569] Ibid.
[570] Ibid.
[571] Ibid, s. 6(3).
[572] Ibid, s. 7.

taxable supplies made to the person upon application by the person.[573]

5.4.2.5 VAT Returns and Payments

Generally, the revenue laws in Tanzania do not define tax returns but they provide the manner of filing the tax return according to the type of taxes. For example, the tax return is defined as a return prescribed in the first schedule of the Tax Administration Act. The first schedule defines return in the context of the Value Added Tax Act as a return filed according to section 66 of the VAT Act.[574] The section shows only how to file tax return but does not define it. In this context, it is important to refer to other literatures to define tax return. According to OECD tax return is statement filed to the tax authority of which declares the estimated income and tax payable or the final income and tax payable for each year of income.[575] In general, the forms filed with the tax authority within a particular tax jurisdictions reports income, expenses and other relevant information as provided by the law governing the tax return depending on the type of tax.

According to the law, lodging a VAT return is done in the form and manner prescribed by the Minister.[576]It is normally filed on the 20th of a month after the end of the tax period to which it relates, whether or not that person has a net amount of value added tax payable for that period. In case, the 20th day falls on a Saturday, Sunday or a public holiday, the value added tax return shall be lodged on the first

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[573] Ibid.
[574] Paragraph 1(b) of the first schedule to the Tax Administration Act.
[575]OECD, Glossary of Tax Terms, available at https://www.oecd.org/ctp/glossaryoftaxterms.htm (Accessed on 16/04/2022).
[576] S.66 (1) of the Value Added Tax Act.

working day following a Saturday, Sunday or public holiday. [577]

The law further requires a non-taxable person to file the return as directed by the Commissioner General. Likewise, section 66(2) of the Value Added Tax Act requires non -taxable person who is required to pay an amount of value added tax under the law to file a return in respect of that value added tax at the time prescribed by the Commissioner General. Besides, Rule 23(1) of the Value Added Tax (General) Regulations, 2015 requires a non- taxable person to obtain a Tax Identification Number before paying the amount of value added tax as provided by the Value Added Tax Act.

Further, the law allows a taxable person to apply to the Commissioner General for amendment of returns within a prescribed period by the law. Section 66(3) of the Value Added Tax Act allow a taxable person by way of application in the prescribed manner and not later than three years after the end of the tax period to which the returns relate to request the Commissioner General to amend the returns to correct any genuine omission or incorrect declaration made in the returns.

The Commissioner General may make a decision on the application based on the information provided in the application without undertaking an audit or investigation of the applicant's tax affairs; or amend the original return or accept the filing of an amended return.[578] The decision by the Commissioner General shall be made not later than ninety days after receiving the application. The law requires the

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[577] Ibid, s.66 (7).
[578]Ibid, s.66 (4).

Commissioner General to make his decision in writing. The decision should indicate the details, if any, of the amendment made and the reasons for the decision. Also, the decision should provide the details of the applicant's rights to object and appeal against the decision and the time, place, and manner of filing a notice of objection. [579] A taxable person, who makes an application to amend a value added tax return before the receipt of a notice of audit or investigation, if any, shall pay the unpaid tax and the applicable interest for late payment.[580]

Moreover, tax returns shall be lodged in two ways.[581] The first way is paper form. Under this way, the return is lodged using form ITX240.02.B as provided and should be accompanied by a declaration of details in form ITX241.02.B provided under the schedule. Besides, a return filled in paper form shall be lodged to the Commissioner General in the manner prescribed under section 32[582] of the Tax Administration Act. Further, there is a second way of filing return which is an electronic form. Under this way, the return is lodged using form ITX240.02.B as provided and must be accompanied by a declaration of details in form ITX241.02.B provided by the schedule. A return filled in an electronic form shall be lodged to the Commissioner

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[579] Ibid, s. 66(3), 66(4) and 66(5).
[580] Ibid, s. 66(6).
[581] Rule 20(1) of the Value Added Tax (General) Regulations, 2015 as amended by Rule 4 of the Value Added Tax (General) (Amendment) Regulations, GN No. 608 of 2018.
[582] S.32 provides that a paper document shall be considered to have been filed with the Commissioner General under a tax law whenphysically delivered to the office of the Authority, sent by way of a registered post to an office of the Authority; or sent by way of a registered post to an office of the Authority; or sent at any other place as the Commissioner General may specify a document referred shall be treated to have been received by the Commissioner General in the case of service by fax or electronic mail, at the time the transmission is sent; in the case of service by handing to an officer of the Authority or leaving at a place, at the time of handing or leaving; in the case of service by registered post, at the time the document is delivered or the Authority is informed that the document awaits the Authority; in the case of other service by post ten days after posting; and in the case of other services by the post from an address outside the United Republic, the time at which the document would normally be delivered in the ordinary course of post.

General in the manner prescribed under section 34[583] of the Tax Administration Act. The law allows amendment of original VAT return, correction of minor errors, and adjustment.[584]

From the aforesaid, filing of return is important in ascertaining input tax and output tax. The tax return is useful in ascertaining the VAT refund. The principles governing output and input tax in respect of the return filed by the person are provided under section 67.[585]First, the net amount of VAT payable by a taxable person in relation to a tax period should be calculated by adding all output tax that becomes payable by the person in that tax period. Followed by subtracting all input tax credits[586] allowed in that tax period and adjusting the resulting amount by adding all increasing adjustments required to be made in that tax period and subtracting all decreasing adjustments allowed in that tax period.

Second, where the amount of output tax payable in a tax period is nil, it shall not prevent the subtraction of input tax credits or the addition and subtraction of adjustments. Besides, where the net amount for a tax period is a positive amount it shall be accounted for and paid by the taxable person at the time when the value

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[583] S.34 provides that the Commissioner General may establish and operate an electronic system for filing and furnishing of documents and servicing documents. An electronic document is considered to be filed by a person and received by the Commissioner General under a tax law when a document registration number is created by using the person's authentication code. S.34 (2) shall not apply to a person who has proved to the satisfaction of the Commissioner General that he did not send the document or the document was sent without his authority. An electronic document is considered to be served on a person by the Commissioner General under a tax law when a document registration number is created and the document can be accessed by using the person's authentication code. The Commissioner General may authorize a printed document to be treated as a copy of an electronic document filed under subsection 34(2) or served under S. 34(5). A court or tribunal shall accept a copy authorized under S.34(5) as conclusive evidence of the nature and contents of an electronic document unless the contrary is proved

[584] Rules 21-28 of the Value Added Tax (General) Regulations 2015 as amended by the Value Added Tax (General) (Amendment) Regulations, GN No. 608 of 2018; S. 71-74, 76-80 of the Value Added Tax Act.

[585] The Value Added Tax Act.

[586] Ibid, s.68 (1).

added tax return is due to be filed. Besides, the liability to pay the net amount shall arise by operation of section 67 of the Value Added Tax Act and shall not depend on the making of an assessment of the amount due by the Commissioner General. Third, where the net amount for a tax period is a negative amount, shall be carried forward into one or more subsequent tax periods, unless an immediate refund is allowable under the law.[587]

5.4.2.6 Value Added Tax Refund Claims

Refunds refer to money paid back to the taxable person where in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns, for prescribed accounting periods, regularly result in excess credits.[588] The refund once is processed is paid to the taxpayer through Interbank Settlement System (TISS) or through the taxpayer bank account. The refund in most cases is paid where the input tax exceeds the output tax. The VAT Act provides other circumstances for payment of VAT refund in respect of VAT claims. as follows, first, refund for overpayment where a taxable person paid more than the net amount shown on the person's VAT return for a given tax period.[589]

However, the overpayment must arise when calculating the net amount payable for a tax period. This may include an amount of output tax or an increasing adjustment exceeded the amount that should have been included in those calculations or an amount of input tax, or a decreasing adjustment, which is less than the amount that

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[587] Ibid, s.81 and 82.
[588] Ibid, s.67.
[589] Ibid, s.83.

should have been included in those calculations. Second, it is a refund for carry forward of negative net amount. This entails refunding a taxable person for negative net amounts carried forward from earlier tax periods.[590] This means that the refund was not allowed and carried forward.

Section 67 of the VAT Act requires net amount of VAT payable by a taxable person in relation to a tax period be calculated by adding all output tax that becomes payable by the person in that tax period subtracting all input tax credits allowed in that tax period. This is followed by adjusting the resulting amount by adding all increasing adjustments required to be made in that tax period and subtracting all decreasing adjustments allowed in that tax period.

The principle is that where the amount of output tax payable in a tax period is nil, it shall not prevent the subtraction of input tax credits or the addition and subtraction of adjustments. Conversely, where the net amount for a tax period is a positive amount it shall be accounted for and paid by the taxable person. It is paid at the time when the VAT return is due to be filed and the liability to pay the net amount shall arise by operation of section 67 of the Value Added Tax Act and shall not depend on the making of an assessment of the amount due by the Commissioner General. Besides, where the net amount for a tax period is a negative amount, it shall be carried forward into one or more subsequent tax periods in accordance with section 81 of the Value Added Tax Act unless an immediate refund is allowable under section 82 of the Value Added Tax Act.

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[590] Ibid, s.81.

Generally, the law provides that if the result is a positive amount the person shall be allowed a decreasing adjustment for such part of one or more negative net amounts carried forward from an earlier tax period. This will reduce the net amount for the current period to a positive amount or to nil. The negative net amounts from earlier tax periods will be taken into account in chronological order, with the oldest being taken into account first and the most recent being taken into account last. The law gives restriction in respect of decreasing adjustment to the effect that any part of a negative net amount for which a decreasing adjustment cannot be made and shall be carried forward and applied in accordance with section 81 (b) of the VAT Act until it has been reduced to nil or it has been carried forward for six consecutive tax periods without being reduced to less than minimum amount prescribed in the regulations.

Another restriction is also given to the effect that a taxable person who has carried forward all or part of a negative net amount for six or more tax periods may apply for a refund of the unadjusted amount. The condition given by the law regarding this restriction is that if the amount is equal to or greater than the minimum amount same as in section 81(1)(c)(ii) it has been carried forward for six consecutive tax periods without being reduced to less than minimum amount prescribed in the regulations) of the Value Added Tax Act or the sum of all the unadjusted amounts the person has carried forward for more than six tax periods exceeds that amount and in any other case.

Therefore, the person shall continue to carry forward the unadjusted amount under section 81(1) until the amount has been reduced to nil or an entitlement to a refund arises because of section 81(2)(a)(ii) of the VAT Act, whichever occurs first. To

reduce the number of refunds and opportunities for abuse particularly non exporters are allowed to carry forward their excess value added tax credits for a specified period.[591] A refund is paid only if an amount of excess credit remains to be recovered by the taxpayer at the end of the carry-forward period.[592] The rationale of the carry-forward scheme is that, for a non exporting business, an excess VAT credit in one tax period should normally be followed by periods where net value added tax liabilities are sufficient to absorb the credit brought forward. [593]

As a general rule, carry-forward measures are not applied to regular exporters, given that a business that exports most of its products will consistently have excess VAT credits that are unlikely to be absorbed by value added tax liabilities in subsequent tax periods. [594] Furthermore, the refund to a taxable person may be processed without carry forward. This is a type of refund whereby a taxable person shall be entitled to a refund of a negative net amount if fifty percent or more of the person's turnover is or will be from supplies that are zero-rated or fifty percent or more of the person's input tax is incurred on acquisitions or imports that relate to making supplies that are or will be zero-rated.[595]

The law allows also refund in other situations where the Commissioner General of TRA is satisfied that the nature of the person's business regularly results in negative net amounts. Generally, a taxable person who is entitled to refund without carry

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[591] Harrison, G. and Krelove, R., Vat Refunds: A Review of Country Experience, IMF Working Paper, pp. 1-43, 2005, p.14.
[592] Ibid.
[593] Ibid.
[594] Ibid.
[595] S.82 of the Value Added Tax Act.

forward, a refund of a negative net amount may have two options, one is to apply for a refund of the amount or to choose to carry the amount forward under section 81 of the Value Added Tax Act until such time as the person applies for a refund of the amount in section 82(2) (a) of the Value Added Tax Act.

The VAT Act also provides refund to diplomats and international bodies.[596] The law empowers the Commissioner General to refund part or all of the input tax incurred on an acquisition or import. The refund is given to a public international organization, a foreign government, to the extent that the person is entitled to exemption from VAT under an international assistance agreement.[597]This means that the extent or the scope of the exemption is defined under the signed international assistance agreement. Refund is allowed to a diplomat to the extent that such person is entitled to exemption for VAT under the Vienna Convention on Diplomatic Relations or under any other international treaty or convention having the force of law in the United Republic, or under recognized principles of international law. In addition, refund is given to a diplomatic or consular mission of a foreign country established in Mainland Tanzania, relating to transactions concluded for the official purposes of such mission.[598]

The law requires application for refund to be made by using form ITX262.02 to justify the diplomatic status or status of an international body. The form should be endorsed by the Ministry responsible for foreign affairs and international

[596] Ibid, s.85.
[597] Ibid, s.2
[598] Ibid, s.85.

cooperation accompanied by tax invoice[599] related to the taxable supplies on which refunds claim is made.[600]The law requires the Commissioner General to respond within ninety days and inform the applicant of the decision in writing stating the amount refundable and pay the amount refundable to the applicant.[601]

Further, the law provides conditions governing refund in respect of carry forward of negative net amount, refund without any carry forward and refund for overpayment.[602] The conditions governing refund process are as follows: -First, the application for the refund shall be made in a manner prescribed in the regulations and shall be accompanied by supporting information as the regulation may require. Rule 29 of the Value Added Tax (General) Regulations 2015 requires the application for refund under section 81 and 82 of the VAT Act to be made using form ITX260.02.E. It should be accompanied by a certificate of genuineness, computation of refund amount. Also, with the checklist for the applicants' value added tax repayment and other information as the Commissioner General may require. The certificate of genuineness shall be issued by an auditor who has been registered by National Boards of Accountants and Auditors and who is registered as a tax consultant,[603] by Tanzania Revenue Authority.

The application for the refund shall not be made in case the application is made under section 81 or 82 of the Value Added Tax Act more than three years after the

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[599] S.2 of the Value Added Tax Act defines tax invoice to mean a document issued in accordance with S. 86 of the Value Added Tax and regulations made under the Value Added Tax Act.
[600]Rule 30 of the VAT (General) Regulations 2015.
[601]S.84 (3) (b) of the Value Added Tax Act.
[602] Ibid, s.81, 82 and 83.
[603] Rule 3 to 12 of the Tax Administration (General) Regulations 2016.

end of the tax period to which the negative net amount relates. Also cannot be made in case the application is made under section 83, more than three years after the overpayment was made. Further, the Commissioner General may, subject to the proof of the credibility of the taxpayer, decide on the application based on the information provided without undertaking an audit. The law empowers the Commissioner to decide the application without making the investigation of the applicant's tax affairs. Also, the Commissioner General is required by the law within ninety days of its receipt to decide on the application. In addition, to inform the applicant of the decision by notice in writing stating the amount of the refund allowed and the period during which the refund shall be made.

Additionally, where the Commissioner General is not satisfied that the refund should be allowed, or is satisfied that the amount refundable is less than the amount requested he shall give the reasons for the decision. The Commissioner General is required also to state the applicant's rights to objection and appeal against the decision, and the time, place, and manner of filing a notice of objection. Further, the Commissioner General shall refund if he is satisfied that the person is entitled to a refund of the amount requested or a lower amount represents the person’s actual entitlement to a refund. Besides, the Commissioner General shall not refund the person if he is satisfied that such person is not entitled to a refund.

Furthermore, where the Commissioner General allows a refund, the refund shall not be paid unless the applicant has filed all value added tax returns which the applicant is required to file. The Commissioner General may apply for the refund first in reduction of any outstanding liability of the person for taxes payable under the VAT

Act or under another tax law. This includes any interest, penalties, or fines payable under the VAT Act or under that tax law.

Also, where the amount remaining after applying section 84(7)(b) of the VAT Act does not exceed the minimum amount prescribed in the regulations, the Commissioner General may refund the amount or require the taxable person to take the refund as a decreasing adjustment in a tax period prescribed by the Commissioner General. Besides, where the Commissioner General allows a refund, the taxable person may, with the agreement of the Commissioner General, take the refund as a decreasing adjustment in a tax period agreed with the Commissioner General.

In conclusion, much as the VAT law has addressed to some extent regarding the payment of VAT claims, however, it leaves a lot to be desired. The law has not addressed well verification of value added tax claims by TRA from different taxpayers as it seems to take long before effecting payment of VAT claims. Also, detecting and investigating the genuineness of VAT claims by TRA is not well covered by the law, hence likely to result in loss of government revenue.

5.4.2.7 VAT Rate

VAT is chargeable on the taxable supplies of goods and services. The rates applicable are the standard rate of 18% and zero rates (0%).[604]The law requires that the amount of value added tax payable be calculated by multiplying the value of the

[604] S.5 of the Value Added Tax Act.

supply or import by the value added tax rate, which shall be eighteen percent (18%).Regarding the zero rated supply, the law requires that where the supply or import is zero-rated, the value added tax rate shall be zero percent.

Similarly, where the supply is both exempt and zero-rated, the supply shall be zero - rated. Likewise, where the supply is both exempt and taxable at standard rate, the supply shall be taxable at the standard rate.[605] Also, a supply of locally manufactured goods by a local manufacturer shall be zero rated. The condition is that if goods are supplied to a taxable person registered under the Value Added Tax law administered in Zanzibar. For this condition to apply, goods are removed from Mainland Tanzania without being effectively used or enjoyed in Mainland Tanzania.[606]

Generally, the VAT rate set may have positive or negative impacts in respect of tax collection. This is because it may affect voluntary tax compliance if the taxpayers feel that it is not fair and not reflecting the ability to pay principle. This may result into tax avoidance and evasion, hence loss of government revenue.

5.5.3 The Tax Administration Act

Generally, the Tax Administration Act, 2019 (TAA) is an Act to easing administration and enforcement of revenue laws by TRA and other machinery. The Tax Administration Act[607] provides approaches, directions, powers, and obligations upon which the TRA officials may manage taxes. The TAA is crafted in such a way ensures taxpayers pay their tax liability justly and timely. TRA is empowered to

[605] Ibid.
[606] Ibid
[607] Cap 438 R.E 2019.

administer and give effect to revenue laws. The Act gives powers to TRA to administer all revenue laws including the VAT Act.[608]It also provides for offences and penalties in respect of VAT. These include failure to apply for registration, to notify the Commissioner General of ceasing to be liable for value added tax and change in circumstances, failure to notify the Commissioner of interest or ownership of property for any reasons provided in the Act.[609]Other offences include failure to notify the Commissioner General of a transfer and a person holding himself out as a taxable person while is not taxable.

Section 90(2) of the TAA provides penalties for VAT offences. A person who commits an offence shall be liable. On conviction where the failure or holding out is made knowingly or recklessly, to a fine of not less than 100 currency points and not more than 200 currency points or to imprisonment for a term of not less than one year and not more than two years, or to both. For any other case, to a fine of not less than 50 currency points and not more than 100 currency points or to imprisonment for a term of not less than one month and not more than three months, or to both.

The Second Schedule to the TAA provides for penalty equivalent to 1 currency point equals to 15,000/= Tanzania Shillings. This implies that 50 currency points equals to 15,000 x 50= 750,000 Tshs. and 100 currency points equals to 15,000 x 100= 1,500,000 Tshs. and 200 currency points equals to 200 x 15,000= 3,000,000 Tshs. According to these calculations, the minimum fine which can be imposed is Tshs

[608] S. 15 of the Tax Administration Act provides that the Authority shall be responsible for administering and giving effect to the tax laws in accordance with the provisions of the Tanzania Revenue Authority Act, Cap 399 R.E 2019.
[609] S. 90(1) of the Tax Administration Act.

700,000 and the highest is Tshs. 3,000,000. The minimum term for imprisonment is one month and the highest is two years. The question is whether the fines or penalties provided by the law are deterrence in nature to ensure compliance with the law and avoid negative impact in the collection of revenue.

In conclusion, the TAA gives a mandate to TRA to administer all the revenue laws including the Value Added Tax Act. It is mandated to implement and enforce all the provisions of the Value Added Tax Act. The implementation is in respect of the collection of revenue in the manner provided by the law. Equally, to enforce the law where there is a violation of the same by the taxpayers. Enforcement of the law is necessary to realize the objectives and the goal of the enactment of a particular law. The implementation and enforcement of the Value Added Tax Act by TRA is facing different challenges as pointed out under the statement of the problem and hence causes loss of government revenue.

5.6 Tax Agreements

Generally, tax agreements govern cross-border tax transactions and other related tax matters between the countries that signed the tax agreement. The VAT Act recognizes treaties entered by Tanzania with other countries and also international agencies listed under the Diplomatic and Consular Immunities and Privileges Act.[610]Section 3 of the Tax Administration Act, defines tax law to include any international agreements concluded under section 7 of the Tax Administration Act.[611]Likewise, section 143 of the Income Tax Act[612] recognizes tax agreements

[610] S.7 of the Value Added Tax Act.
[611] Ibid, s.7 (2).

entered by Tanzania with other countries. Normally these agreements are registered in a tax agreements register available in the relevant Ministry. Tanzania has signed tax agreements with Canada-Tanzania Income and Capital Tax Treaty(1995), Denmark-Tanzania Income and Capital Tax Treaty(1976),Finland-Tanzania Income and Capital Tax Treaty(1976), India-Tanzania Income Tax Treaty(1979),Italy-Tanzania Income Tax Treaty(1973), Norway-Tanzania Income and Capital Treaty(1976),South Africa-Tanzania Income Tax Treaty(2005),Sweden-Tanzania income and Capital Tax Treaty(1976), Tanzania - Zambia Income Tax Treaty (1968).[613]

Most of these agreements are focusing on the exchange of information in tax matters. The rationale behind is to prevent fiscal evasion and also avoids double taxation. Exchange of information is important in the taxation of digital transactions, refund of VAT claims, and also in the enforcement of revenue laws. Where there is no reliable information some of the transactions may go untaxed and hence contribute to loss of revenue in the respective tax authorities. The agreements are having the same contents. For that reason, Agreement between the Government of the Republic of South Africa and the United Republic of Tanzania is reviewed on matters related to VAT for reference purposes.

The Agreement between the Government of the Republic of South Africa and Government of the United Republic of Tanzania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on income

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[612] Cap 332 R.E 2019.
[613] TRA, Double Taxation Agreements, available at www.tra.go.tz (Accessed on 20/8/2020).

concluded on 22nd September 2005 and came into force on 15th June 2007. According to the Agreement the tax authorities or institutions of the contracting States shall exchange such information as is necessary for carrying out the provisions of the Agreement or of the domestic laws.[614]

The agreement requires any information received by a contracting State be treated as secret in the same manner as information obtained under the domestic laws of that State.[615] The information can be disclosed only to persons or authorities concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred. Accordingly, authorities are required to use the information only for the purpose requested and not otherwise.[616]The information obtained may also be disclosed in public court proceedings or in judicial decisions in accordance with appropriate conditions, methods, and techniques agreed between partner states.[617]

Therefore, information exchanged related to tax matters may be relevant in tax refund, taxation of digital transactions, and administration of value added tax between the tax authorities or institutions. This will assist to increase revenue collected since all the transactions identified through the exchange of information will be taxed according to the domestic revenue laws of the relevant tax authority.

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[614]Article 24 of the Agreement between the Government of the Republic of South Africa and the Government of the United Republic of Tanzania.
[615] Ibid.
[616] Ibid.
[617] Ibid.

5.7 Conclusion

The challenges facing the administration of value added tax are inherited from the law. The challenges are VAT registration threshold, powers of the Commissioner General in respect of value added tax registration, taxation of the digital transactions, refund process, VAT rate, value added tax offences and penalties. The laws above have highlighted among other things the challenges and brief explanation of the same. However, analysis of these challenges in depth has been provided under the chapter seven of the thesis. The VAT law in Tanzania needs to reflect international and regional benchmarks and principles. This will assist to improve the VAT law and realize its objective. Moreover, addressing the identified challenges will likely contribute to the collection of enough revenue and also assist in the realization of the objectives for the introduction of value added tax in Tanzania.

CHAPTER SIX

INSTITUTIONAL FRAMEWORK GOVERNING THE ADMINISTRATION OF THE VALUE ADDED TAX IN TANZANIA

6.1 Introduction

The administration of the VAT in Tanzania is premised under the TRA which is mainly responsible for assessment, collection, and account for all revenue on behalf of the Government. The TRA is required to administer the VAT in the manner prescribed by the law. This requires a clear structure and mechanism upon which TRA can administer VAT effectively. In addition, the administration of VAT requires clear rules and mechanisms upon which VAT disputes can be handled. This chapter provides an overview of institutions governing the administration of the VAT law. The institutions are the Tanzania Revenue Authority (TRA), the Office of Tax Ombudsman Service, the tax Revenue Appeal Board (TRAB), and the Tax Revenue Appeal Tribunal (TRAB). Under these institutions among other things, the way disputes are handled within the same is covered.

6.2 The Tanzania Revenue Authority

Before 1995 there was no autonomous organ that was responsible for revenue administration in Tanzania. The collection of taxes was placed under various departments in the Ministry of Finance. To effectively and efficiently implement the fiscal policy, the Government during 1995/96 established an autonomous revenue administration, the Tanzania Revenue Authority (TRA).[618]

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[618] Tanzania Revenue Authority, *Taxation in Tanzania: The Tanzania Investment and Trade promotion,* Paper available at www.tra.go.tz(Accessed on 17/04/2022), p.3.

TRA is a government agency charged with the mandate and responsibility of managing the assessment, collection, and accounting of all central Government revenue. It is a semi-autonomous body that operates under the Ministry of Finance and Planning. TRA was established by Act of Parliament No. 11 of 1995 and started its operations on 1st July 1996. [619] In carrying out its statutory functions, TRA is regulated by law and is responsible for administering impartially various taxes of the Central Government.[620]

The major functions of the Tanzania Revenue Authority are to assess, collect and account for all Central Government Revenue.[621] It also administers effectively and efficiently all the revenue laws of the Central Government.[622] Besides, it advises the Government on all matters related to fiscal policy.[623] Further, it promotes voluntary tax compliance and improves the quality of services to the taxpayers.[624] TRA also counteracts fraud and other forms of tax evasion and produces trade statistics and publications.

The TRA is also responsible for administering and giving effect to the tax laws in accordance with the provisions of the Tanzania Revenue Authority Act.[625]This means that the administration of tax in Tanzania is done by Tanzania Revenue Authority as provided under the First Schedule to the Tanzania Revenue Authority

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[619] Kitillya, M. H., Tax Administration Reforms in Tanzania: Experience and Challenges, TRA, A paper presented to the Conference on Revenue Mobilization in Developing Countries, IMF-Fiscal Affairs Department, Washington, D.C, 2011, p.3 available at https://www.imf.org/external/np/seminars/eng/2011/revenue/pdf/kitilly.pdf(Accessed on 17/04/2022).
[620] Ibid.
[621] S.5 of Tanzania Revenue Authority Act.
[622] Ibid.
[623] Ibid.
[624] Ibid.
[625] S.15 of the Tax Administration Act.

Act.[626] The amendment of 2016 designated all the statutes found under the First Schedule to the TRA Act as Part A and adds Part B immediately after part A. The First Schedule now to the TRA Act is divided into Part A[627] and Part B.The Value added Tax Act is found under Part A of the First Schedule to the TRA Act and it is administered by Tanzania Revenue Authority. This means that the provisions of the VAT Act are implemented and enforced by TRA to make sure that the objective of enacting this law is realized by the Government.

The TRA is governed by the board of directors which is established under the TRA Act.[628] The Board consists of the Chairman appointed by the President on the recommendation of the Minister of finance and planning. Other members include one representative from the Ministry responsible for finance, the principal secretary of the Ministry of Finance of Zanzibar Government, the Governor of the Bank of Tanzania, the Commissioner General, the permanent secretary of the ministry of finance and planning, four other members appointed by the Minister with professional knowledge and experience in finance, commerce, economics or law.[629] The Board is a statutory organ responsible for the formulation and implementation of the policy of the Authority.[630] The tenure of office for the board of directors is three

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[626] It was amended by S.51 of the Finance Act, Act No. 2 of 2016, and S. 46A of the Finance Act, Act No.4 of 2017.

[627] The laws found under Part A include The Income Tax Act Cap 332, The Value Added Tax Act Cap 148, The East African Customs Management Act, (No.1 of 2005), The Excise (Management and Tariff) Act Cap 147, The Stamp Duty Act Cap 189, The Road and Fuel Tolls Act Cap 220, The Airport Services Charges Act Cap 365, The Motor Vehicle (Tax on Registration and Transfer) Act Cap 124, The Ports Service Charges Act Cap 264, The Cashew nut Board of Tanzania Act Cap 203, Vocational Education and Training Act Cap 82, The Foreign Vehicles Transit Charges Act Cap 84, The Gaming Act Cap 41, The Tax Administration Act Cap 438, The Road Traffic Act Cap 168. S. 105 of the Tax Administration Act amended the First Schedule of the TRA Act.

[628] S.10 (1) of the TRA Act.

[629] Ibid.

[630] Ibid, s.10 (2), s.13 and s.14.

years and the law allows for re-appointment only for a subsequent period not exceeding three years.[631]

Regarding the management of the Authority, the law provides for the appointment of the Commissioner General and Deputy Commissioner General. Both are appointed by the President on the recommendation of the Minister of finance and planning.[632]The former shall hold office for a period of five years and the latter for a period of four years. Both are eligible for re-appointment according to the tenure governing their offices.[633] The Commissioner General is the chief executive officer of the Authority and is responsible for day to day operation of the Authority, the management of the funds, property, and business of the Authority, and the administration, and control of the staff.[634] Likewise, the Deputy Commissioner General is responsible for the day-to-day management of business and affairs of the Authority.[635]

Generally, the Commissioner General (CG) as the chief executive officer of the Authority is vested with the power to make sure that the functions of the Authority as provided under section 5 of the TRA Act are implemented and enforced accordingly. The section among other things provides for administration and giving effect to the laws set in the First Schedule to the TRA Act.[636] Similarly, the CG is required to ensure the fair, efficient and effective administration of revenue laws.

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[631] Ibid, s.11.
[632] Ibid, s.16 and s.17.
[633] Ibid.
[634] Ibid, s.16(3).
[635] Ibid, s.19.
[636] Ibid, s.5 (1).

Among the laws provided under the First Schedule to the TRA Act is the Value Added Tax Act. This means that the Commissioner General is vested with powers to administer and give effect to this law to make sure that revenue is collected. The powers of the Commissioner General if not well defined and guided according to the law and where the law is not well drafted to reflect international standards and principles it is likely to affect the administration of such particular law. Hence, the objective for the enactment of the law may not be realized as a result it will affect the collection of revenue.

Further, the tax administration in Tanzania has a three-tier structure, namely Central Government tax administration, tax administration in Zanzibar, and Local Government tax administration.[637]The Central Government taxes comprise direct and indirect taxes. Direct taxes account for around 30% of total tax revenue, while indirect taxes account for around 70% of total tax revenue.[638] Direct taxes include personal income taxes (PIT), corporate income tax (CIT), and withholding taxes on business, capital and investment incomes.[639] The indirect taxes comprise taxes on international trade transactions and domestically produced goods and services, namely the VAT, excises, and import duties.[640]

The Tanzania Revenue Authority (TRA) administers the Central Government taxes whereas Zanzibar Revenue Board administers domestic consumption taxes in

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[637] Tanzania Revenue Authority, *Taxation in Tanzania: The Tanzania Investment and Trade promotion,* Paper available at www.tra.go.tz(Accessed on 17/04/2022), p.1.
[638] Ibid.
[639] Ibid.
[640] Ibid.

Zanzibar.[641] The Local Authorities administer the various local imposts. Central Government taxes are the major revenue earner for the Government, accounting for about 90% of domestic revenue.[642] Likewise, the Constitution of the United Republic of Tanzania recognizes the two parties of the union, namely Zanzibar and Mainland Tanzania. As such, the Constitution has identified union taxes[643] and non-union taxes.[644] TRA collects the Union taxes whereas the Zanzibar Revenue Board collects all non-union taxes in Zanzibar.[645] Taxes on income imposed under the Income Tax Act,[646] and customs duties under the East African Customs Management Act 2004 are union taxes.[647] Domestic consumption taxes including the value added tax, excise duties, hotel levies, stamp duties, motor vehicles taxes, and other charges are non-union taxes.[648]

From the foregoing, the core tasks of a tax administration are centered on the implementation and enforcement of tax legislation and regulations.[649] As pointed out TRA is responsible for the implementation and enforcement of revenue laws. However, because of the challenges inherited from the VAT law, the administration

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[641] Ibid.
[642] Ibid.
[643] Tax is also among the union matters as provided for by paragraph 10 of the first schedule to the Constitution of the United Republic of Tanzania of 1977 as amended. The paragraph provides for income tax payable by individuals and by corporations, customs duty, and excise duty on goods manufactured in Tanzania collected by the Customs department. The union taxes in most cases are collected by Tanzania Revenue Authority (TRA) whereas non-union taxes or consumptions taxes applicable in Zanzibar are collected by Zanzibar Revenue Board (ZRB). This implies that some taxes are not union taxes and hence collected by the relevant authority i.e. TRA or ZRB.
[644] Ibid,p.4.
[645] Ibid.
[646] Cap 332 of 2004.
[647] Tanzania Revenue Authority, *Taxation in Tanzania: The Tanzania Investment and Trade promotion*, Paper, available at www.tra.go.tz(Accessed on 17/04/2022), p.4.
[648] Ibid.
[649] Matthijs A, Victor V. K., Handbook for Tax Administrations Organizational structure and management of Tax Administrations 2000, Inter-American Center of Tax Administrations, Netherlands, 2000,p.3.

of VAT by TRA is affected and hence negative impact on the realization of the objectives for the introduction of VAT in Tanzania.

6.3 Dispute Settlement under the Commissioner General

The Commissioner General of TRA among other things is mandated to resolve disputes arising from the enforcement of revenue laws. This includes tax disputes arising from the administration of the VAT Act. The rationale behind this is not to make the Commissioner General the judge in his own cause rather to give the Commissioner chance to reconsider the matter and correct or decide otherwise where necessary and appropriate. In other tax jurisdictions, there is a division of tax experts to handle tax objections from the taxpayers. The division to handle tax disputes is important since the duty is only to handle tax disputes leaving out the issue of meeting with taxpayers with other tax officers. This will assist them also to be impartial in resolving tax disputes filed before the division by the taxpayers.

It is in this context a taxpayer not satisfied with the decision of the CG has the right to file an objection to the tax decision made by CG. The law requires an objection to tax decisions to be made by filing an objection to the Commissioner General within thirty days (30) from the date of service of the tax decision.[650] The objection should be in writing stating the grounds upon which it is made. The law also requires that objection to any tax decision shall be admitted once the taxpayer has paid the amount of tax that is not in dispute or one-third of the assessed tax whichever

[650] Rule 92(2) provides that an objection to a tax decision shall be made to the Commissioner General in the prescribed form set out in the eleventh schedule to The Tax Administration (General) Regulations, GN No.101 of 2016. Refer also to S. 51(1) of the TAA 2015.

amount is greater[651]

The payment of any tax not in dispute or one-third of the assessed tax is required to be made on or before the due date for lodging the objection.[652] It is clear from the law that where a person has lodged a notice of objection without paying the amount of tax that is not in dispute or one-third of the assessed tax whichever amount is greater, the Commissioner General will not admit the objection and the objection will be deemed to have not been filed.[653] The amount is normally paid back where the decision is made in favour of the taxpayer.

The Finance Act of 2016 under section 56 has amended section 51(5) of TAA 2015 to the effect that an objection to any tax decision shall not be admitted unless the taxpayer has within thirty days from the date of service of tax decisions paid the amount of tax which is not in dispute or one-third of the assessed tax whichever amount is greater. The condition which the law has set is that where the taxpayer fails to pay the amount of tax as stated within thirty days the assessed tax decision is confirmed as final tax assessment and therefore required to be paid accordingly.[654]

The requirement of payment of the amount of tax that is not in dispute or one-third of the assessed tax whichever amount is greater applies only to assessment objection and not all the objections.[655]Rule 93(4) of the Tax Administration (General)

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[651]Tax not in dispute with respect to an assessment or any tax decision means the amount that ought to be charged where the assessment or a tax decision is amended in accordance with the objection. and the whole of duty or any tax assessed on imports (S. 51(8) of TAA 2015).

[652] Rule 93(1) of the Tax Administration (General) Regulations 2016.

[653]Rule 93(2) of the Tax Administration (General) Regulations 2016.

[654].S.51 (5) of the Tax Administration Act.

Regulations 2016 provides that where in any circumstances the objection relates to the assessment of tax or any liability to pay tax and the time limit to lodge the objection has expired and no extension of time to object the tax decision has been lodged the Commissioner General shall be entitled to recover the tax. The Commissioner General decision to recover tax shall not be subject to objection.[656] This requirement of time and the consequences of failure to comply with it seem to be unfair and unjust since it bars many taxpayers from accessing justice. Access to justice is a constitutional right of every citizen and therefore should not be restricted or put in place conditions that oust many from accessing justice.

In case the Commissioner General is satisfied that there exist good reasons warranting reduction or waiver he may waive the amount to be paid or accept a lesser amount.[657]Besides, where a taxpayer files an objection and makes payment as required by the law the liability to pay the remaining assessed tax is suspended until the objection is finally determined.[658] An application for waiver of payment of tax shall be made within fifteen days (15) before the expiration of the time limit for lodging the notice of objection.[659]

The Commissioner General shall on or before the expiration of objection, determine the application for waiver of payment of the tax.[660] Where the taxpayer fails to file an objection within the prescribed time, the extension of time to file an objection

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[656]Rule 93(5) of the Tax Administration(General) Regulations 2016.
[657] S.51 (6) of the Tax Administration Act.
[658] Ibid, s.51 (7).
[659] Rule 95 of the Tax Administration (General) Regulations 2016.
[660] Ibid, Rule 96.

against a tax decision can be applied to the Commissioner General by stating reasonable grounds warranting an extension of time.[661] Where the Commissioner General extends the time to file an objection such extension shall not exceed thirty days (30).[662] The law further requires that an application for extension of time to be made within seven days before the expiration of the time limit for lodging the notice of objection and shall be made in the as prescribed form set out in the Twelfth Schedule to the Tax Administration (General) Regulations 2016.[663]

The Commissioner General may upon admission of an objection have two main options.[664] To decide by determining the objection; or determination of the objection by calling for any evidence or any other information as may appear necessary. The Commissioner General may amend the assessment or other tax decisions in accordance with the objection and any further evidence that has been received. Besides, the Commissioner General may refuse to amend the assessment or other tax decisions. If the Commissioner General agrees to amend the assessment or other tax decisions in accordance with the objection he shall serve a notice of the final assessment or other tax decisions to the objector. Besides, where the Commissioner General intends to amend the assessment or other tax decisions in accordance with the objection and any further evidence or refuses to amend the assessment or other tax decisions he shall serve the objector with a notice setting out the reasons for the intention or decision.

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[661]Ibid, s.51(2).
[662]Rule 92(3) the Tax Administration (General) Regulations 2016.
[663]Rule 94.
[664]S. 52 of the Tax Administration Act.

The objector shall within thirty days from the receipt of the notice make a submission in writing to the Commissioner General on his agreement or disagreement with the amended assessment or other tax decisions or the refusal.[665] The Commissioner General may after the receipt of the submissions by the objector may determine the objection in the light of the amended assessment or refusal and any submission made by the objector. Likewise, the Commissioner General may determine the objection partially in accordance with submission by the objector and proceed to issue a notice of final determination of objection. Any person who is aggrieved by the objection decision or other decision or omission of the Commissioner General may appeal to the Board in accordance with the provisions of the Tax Revenue Appeals Act.[666]

Apart from handling objections, the Commissioner General is also vested with the power to compound offences including VAT offences.[667] The law requires a person to admit in writing that he committed the offence and is ready to accept the proposed terms of the compoundment. After compounding the offence, the Commissioner General is mandated by the law to order a person to pay the fine that would have been paid had such a person prosecuted and convicted. Similarly, the CG may order forfeiture of any goods of the offences or both.[668] The analysis and discussion of the compounding of offences is given under chapter seven.

In general, the Commissioner General (CG) seems to have wide power in handling disputes arising out of revenue laws including the VAT law. This being the case, it is

[665] Ibid, s.52 (4).
[666] Ibid, s.53(1).
[667] Ibid, s.90 and s.92.
[668] Ibid, s.92.

likely to affect the administration of the VAT and hence affect the collection of revenue. Moreover, the exercise of power is likely to result in several disputes which is another window for the loss of government revenue due to administrative costs incurred to handle the disputes. Likewise, it may add compliance costs on the part of the taxpayer which is likely to affect the operation of the business and hence effect on the collection of revenue and the growth of the economy.

6.4 The Office of Tax Ombudsman Service

The office of tax Ombudsman service is an independent, impartial office introduced to address taxpayer complaints.[669]The tax complaints include also VAT complaints. The office has been introduced under section 45 of the Finance Act,[670] by amending the Tax Administration Act by inserting new Part III A immediately after section 28 of the Tax Administration Act. Section 28A of the Tax Administration Act establishes an office of the Tax Ombudsman Service. The office is responsible for reviewing and addressing any complaint by a taxpayer regarding service, procedural or administrative matters arising in the course of administering tax laws by the Authority, the Commissioner General, or staff of the Authority.[671] The Tax Ombudsman is in charge of and carries out the functions of the tax Ombudsman service independently and impartially without interference from any institution, agency, or department of the Government or any other person.[672]

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[669] S.28B of the Tax Administration Act provides that the Minister shall appoint a person with competent knowledge in tax administration matters to be a Tax Ombudsman. The Tax Ombudsman shall hold office for a renewable period of three years under such terms and conditions regarding remuneration as the Minister may determine.

[670] No.8 of 2019.

[671] S.28(A)(1) of the Tax Administration Act.

[672] Ibid, s.28(B)(2).

The tax Ombudsman in discharging his duties is given the power to review a complaint, and where necessary, resolve it amicably through mediation or conciliation.[673] The Ombudsman is required by the law to act independently and impartially in resolving complaints. Further, to follow informal, fair, and cost-effective procedures in resolving complaints. Not only that but also to provide information, training, and awareness to taxpayers on tax ombudsman service, functions, and procedures of making complaints. Besides, to facilitate the access by the taxpayer to dispute resolution processes within the Authority and identify and review tax administrative issues related to customer service, or procedures and behaviors which impact negatively on taxpayers.

Further, the principles observed by the tax ombudsman in the performance of his duties include acting independently and objectively, and observing informal, fair, and cost-effective procedures in determining any complaint received. [674]Also, is required to be impartial in safeguarding the interest of the complainant and that of the Commissioner General. Likewise, is required to accord due weight to considerations of equity, and devise means of effectively resolving complaints and causes of complaints. Maintain confidentiality, in respect of every complaint received, unless disclosure is required by law.[675]

The law requires any person not satisfied by the services rendered, procedural or administrative matter undertaken by the Commissioner General or staff of the

[673] Ibid, s.28C.
[674] Rule 7 of the Tax Administration (Administration of Tax Ombudsman Service) Regulation, 2022.
[675] Ibid.

Authority in the course of administering a tax law to lodge a complaint to the Tax Ombudsman Service. [676] A person may lodge a complaint to the Ombudsman orally or in writing. He can lodge either in person or through his authorized representative. Where the complaint has been lodged orally, the Ombudsman shall reduce such complaint into writing and cause the complainant to sign it.[677] Matters from which complaints may lie include non-compliance of procedures or mal-administration by the Authority in administering tax laws, delay in the release of documents or assets seized during the investigations of tax affairs, delay in responding to a complaint submitted by a taxpayer, the non-response of letters or documents sent to the Authority.[678]

Moreover, the law provides that a person intending to lodge a complaint is required to lodge the complaint to the Tax Ombudsman by filling out the Form as set out in the Schedule to the Regulation.[679] A person should lodge a complaint to the tax Ombudsman service within ninety days after the occurrence of the event giving rise to the complaint. In addition, a person may lodge a complaint after the expiry of the prescribed period by giving reasonable grounds for the delay to the satisfaction of the tax Ombudsman.[680] In determining the complaint, the Ombudsman may resolve the matter amicably through mediation, conciliation, or any other method that the Ombudsman may consider appropriate.[681]The Ombudsman may uphold the complaint, either wholly or in part. Also, he may decline to consider the complaint or

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[676] Rule 4 of the Tax Administration (Tax Ombudsman Service Complaint Procedure) Regulation, 2022
[677] Ibid.
[678] Ibid, Rule 5.
[679] Ibid, Rule 6.
[680] Ibid, Rule 7.
[681] Ibid, Rule 9.

dismiss the complaint. In the course of determination of the complaint, the Ombudsman is required to act judiciously.[682]

The Ombudsman within thirty days from the date of receiving the complaint is required to determine the complaint and record his findings and recommendations. Further, the ombudsman is required to submit the findings and recommendations to the Minister within fourteen days after determining the complaint.[683] The Minister may, upon receipt of the findings and recommendations of the Ombudsman, issue directives to the Authority. The decision of the Minister may be communicated to the complainant through the Ombudsman.[684]

Generally, the decisions or recommendations of the tax Ombudsman are not binding to a taxpayer whose complaint or matter formed the subject matter of such decision or recommendation. However, the tax Ombudsman is not mandated to review legislation or tax policy.[685] Also, the Ombudsman is restricted to reviewing the Authority's policy or practice save that which relates to service, administrative or procedural matters for the administration of tax laws. Further, not mandated to review a matter subject to a tax objection or Appeal, save for an administrative matter relating to such tax objection or appeal.

The Office of Tax Ombudsman service is relevant in handling complaints including VAT complaints from the taxpayers or registered VAT traders. However, it seems

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[682] Ibid.
[683] Ibid, Rule 10.
[684] Ibid, Rule 11.
[685] S.28D of the Tax Administration Act.

that the handling of complaints by the office is more administrative and lacks enforcement mechanisms in case there is no compliance. Similarly, what the office gives are recommendations to the Minister and not decisions and therefore the Minister is at liberty to accept the recommendations or not. Also, even after receiving the recommendations, the law does not compel the Minister to act. Hence, the handling of VAT disputes by this office leaves a lot to be desired.

6.5 Tax Revenue Appeal Board

Tax Revenue Appeal Board (TRAB) is a quasi-judicial institution established under section 4(1) of the Tax Revenue Appeals Act.[686] Its core function is to hear and determine civil disputes arising from revenue laws administered by TRA. The Board also has a duty of providing public education regarding its functions and mechanisms on how to resolve the tax disputes. The Board shall consist of the chairman who is appointed by the Minister, three vice-chairmen appointed by the Minister, one of whom is from Tanzania Zanzibar, and not more than twelve other members appointed by the Minister from each region.[687] The members shall sit in the Board to hear and determine any appeal originating in the region from which they are appointed. In general, the Board has both original and appellate jurisdiction.

The following are the procedures for instituting an appeal before the Board.[688] First, filing a written notice of intention to appeal to the Board.[689]The law requires a notice of intention to appeal to be filed within thirty days from the date of service of the

[686] Cap 408 R.E 2020.
[687] S.4 of the Tax Revenue Appeals Act.
[688]Part II of the Tax Revenue Appeals Board Rules, GN No.217 of 2018.
[689] Ibid, Rule 3.

notice of final determination of the appealable decision. This means that a person is required to appeal against the appealable decision after receiving a final determination of the matter from the Commissioner General. Further, a person cannot appeal if the matter has not been finalized by the Commissioner General. The Commissioner General must resolve the disputes first submitted or filed and make the final determination over the matter.[690]After the final decision of the Commissioner General which must be communicated also to persons who are affected by the decision, the appeal can be filed to the Board. A notice of intention to appeal shall state whether it is intended to appeal the whole or part of the appealable decision or tax assessed or the existence of the liability to pay any tax, duty, fee, levy, or charge.[691]

The Secretary is required by the law after receiving a notice of intention to appeal to endorse on it the date on which it was received and thereafter enter or cause to be entered into the register all relevant particulars to identify the appeal. Rule 3(4) of the Tax Revenue Appeals Board Rules, GN No.217 of 2018 provides that a notice of intention to appeal shall be in the Form TRB 1 as prescribed in the First schedule and shall be signed by or on behalf of the appellant. [692] The format and contents of the notice of intention to appeal shall be as prescribed in this form and not otherwise.

Second, serving copies of the notice of intention to appeal to the parties to an appeal. All the parties concerned with an appeal should be served with the notice so that they may be aware that the appeal has been filed and also to make them get prepared to

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[690] Ibid.
[691] Ibid.
[692] Ibid, Rule 3(4).

argue their case after getting all the relevant documents and when the matter is called for hearing by the Board.[693] Third, lodging a statement of Appeal. The law requires that a statement of appeal is to be instituted at the Registry of the Board within forty five days from the date of service of the notice of final determination of the appealable decision.

The days for filing a notice of intention to appeal and lodging a statement of appeal run concurrently since they start to be counted from the date of service of the notice of final determination of the appealable decision.[694] This means that counting 45 days starts from the date of service of the notice of final determination by the Commissioner General, and this applies also to counting days in respect of filing a notice of intention to appeal. A person who institutes an appeal is required to attach all the necessary documents including the appealable decision for the proper determination of the appeal.[695]

Generally, all the documents are required to be filed before the date fixed for hearing of the matter by the Board, however, the law allows any party to the appeal to file additional documents and serve a copy to the other party in relation to the appeal at least within three days before the date fixed for hearing.[696]Besides, the Board is also vested with the power to order any party to the proceedings to supply additional documents which may be necessary for proper determination of the matter before it.

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[693] Ibid, Rule 3(2)
[694] Ibid, Rule 5.
[695] Ibid, Rule 6.
[696] Rule 6(4) of the Tax Revenue Appeals Board Rules, GN No.217 of 2018.

The appellant when instituting an appeal to the Board shall pay the appropriate fees prescribed in the First Schedule of GN No.217 of 2018. The Board is vested with the mandate to reject the appeal if appropriate fees have not been paid as stipulated under the schedule. The secretary to the Board upon receipt of the statement of appeal shall endorse the date on which he received it. The law requires every appeal to be made in the Form TRB 2 prescribed in the First Schedule of GN No.217 of 2018. The law used the word shall, this means that appeal must be in a prescribed form and not otherwise. The form and contents of Form TRB 2 must be followed when making an appeal before the Board.

Fourth, serving a statement of Appeal to the Commissioner General. Generally, final determination over the matter is normally issued by the Commissioner General, as a result, it is expected that the affected person, in most cases taxpayer appeal against the Commissioner General's decision, therefore, the respondent will be the Commissioner General and not the taxpayer. In this regard, serving a statement of appeal obvious will be to the Commissioner General. Fifth, the statement in reply. The respondent is required within thirty days from the date of service of the statement of appeal, to lodge to the Board a statement in reply.[697] This means that the title of the document should be a statement in reply.

The statement in reply should address each paragraph raised in the statement of appeal by showing either admission of facts or otherwise. The reply to each paragraph should be specific to matters raised in each paragraph, otherwise, general

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[697] Ibid, Rule 10.

statements may be taken as an admission of the facts, and therefore, it is important to be very specific when replying to each paragraph contained in the statement of appeal. After the statement in reply, what follows is the secretary to the Board within a period of not less than fourteen days before the date fixed for hearing an appeal to serve to all the parties and their witnesses a notice of hearing. A notice of hearing shall specify the time, date, and place where it is intended that the hearing will be conducted.[698] Form TRB 3 is the prescribed form for notice of hearing.

Besides, the Board may in its discretion strike out an appeal where it is satisfied that any condition regarding an appeal has not to be complied with, however, the law allows the appellant to institute a fresh appeal in respect of the same matter subject to the law on limitation. The Board is required to give reasons for striking out of the appeal.[699]This means that the decision is done suo motto without any application made by either party to that effect and the Board can invoke these powers of striking out an appeal without inviting either party to the proceedings. It is important to make sure that all the appeals procedures are complied with, otherwise, in failure to do that the Board may strike out the matter without necessarily inviting either party for a hearing.[700]

The Board after hearing both parties as soon as practicable pronounce its decision in the presence of the parties or their advocates or representatives and shall cause certified copies duly signed by the members of the Board who heard the appeal or

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[698] Ibid, Rule 11.
[699] Ibid, Rule 9.
[700] Ibid

their successor in office to be served on each party to the proceedings. [701]The Chairman or the Secretary as the case may be or their successors in office may certify copies of the decisions or decree of the Board and furnish such copies to the parties. A party who is aggrieved by the decision of the Board is required by the law to appeal to the Tax Revenue Appeals Tribunal (TRAT).[702]

6.6 Tax Revenue Appeals Tribunal

The Tax Revenue Appeals Tribunal (TRAT) is established under the Tax Revenue Appeals Act.[703]It consists of the Chairman who is appointed by the President after consultation with the Chief Justice, two vice-Chairmen who are appointed by the President, one of whom is from Tanzania Zanzibar, and four other members appointed by the Minister responsible.[704] A person to be appointed as the Chairman of the Tribunal must be a judge of the High Court.[705]However, for a person to be a member of the Tribunal is required to posse's knowledge of and experience in taxation, commercial or financial matters. The qualification of Vice-Chairman is not provided by the law therefore it is possible for a person who is not a judge of the High Court or a person not trained in law to be appointed as a Vice Chairman of the Tribunal.[706]

The procedure for appealing to TRAT for a party who is aggrieved by the decision of TRAB is provided under Part II of the Tax Revenue Appeals Tribunal Rules 2018.

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[701] Ibid, Rule 22
[702] Ibid, Rule 26.
[703] S. 8(1) of Cap 408 R.E 2020.
[704] Ibid, S.8(2).
[705] Ibid, S.8(3).
[706] Ibid, 8(2)(b).

The following are the procedures. First, filing a written notice of intention to appeal. The notice is required to be filed within fifteen days from the date on which the decision in respect of which is intended to appeal against is made. This means that the fifteen days start to run the day the decision is made by the Board. The notice of intention to appeal shall be made in form TRT 1 prescribed in the first schedule of the rules and shall be filed in the Tribunal.[707]

Second, serving a notice of intention to appeal to all the parties. The law requires the appellant to serve copies of a notice of intention to appeal to the Board, the respondent, and all parties who are likely to be affected by the decision of the Tribunal on the matter intended to be appealed against.[708] The rationale behind of serving the notice of intention to appeal is to make the other party aware of the suit and also give him an opportunity to appear and defend the matter if necessary. Besides, it is also to give a chance to the other party to prepare in advance before exercising his right to be heard provided under the constitution.

Generally, the Registrar after receiving a notice of intention to appeal, shall endorse the date on which it was received and immediately send a copy of the notice to the appropriate zonal centre where the appeal shall be determined.[709] Third, lodging a statement of appeal. The law requires that a statement of appeal be lodged at the registry of the Tribunal within thirty days from the date of service of the decision and proceedings of the Board in respect of which it is intended to appeal against.[710]

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[707] Rule 3 of the Tax Revenue Appeals Tribunal Rules 2018.
[708] Ibid, Rule 3(2).
[709] Ibid, Rule 4.
[710] Ibid, Rule 5.

This means that the thirty days start to run the date of service of the decision and proceedings of the Board.

The law requires an appeal to be made in Form TRT 2 prescribed in the first schedule to the rules and be accompanied by all materials documents which are necessary for the determination of the appeal.[711] The appeal will be accompanied by a certified copy of the proceedings of the Board, a certified copy of the decision of the Board, a copy of the decision of the Commissioner, a certified copy of the decree or order of the Board, and a copy of the notice of intention to appeal to the Tribunal.[712] The proceedings shall not necessarily include exhibits and annexures during the hearing of the appeal.

Fourth, the statement in reply. The law requires that the respondent may within twenty-one days from the day of service of the statement of appeal lodged to the Tribunal a statement in reply.[713] This means that the title of the document should be a statement in reply. The statement in reply should address each paragraph raised in the statement of appeal by showing either admission of facts or otherwise. The reply to each paragraph should be specific to matters raised in each paragraph, otherwise, general statements may be taken as an admission of the facts, and therefore, it is important to be very specific when replying to each paragraph contained in the statement of appeal.

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[711] Ibid.5(3).
[712] Ibid.
[713] Ibid, Rule 9.

Generally, after receiving a statement in reply the Registrar shall issue a notice of hearing to all the parties to the appeal at least fourteen days before the hearing date. The notice of hearing shall specify the date, time, and place of hearing and shall be served to the parties by way of summons in the Form TRT 3 prescribed in the first schedule of the rules.[714] The law also gives a mandate to the Tribunal in its discretions to strike out an appeal where it is satisfied that any condition regarding the institution of an appeal has not been complied with. The Tribunal is required to give reasons for the rejection of an appeal. The appellant may bring a fresh appeal subject to the law of limitation.[715]

The Tribunal after hearing both parties as soon as practicable pronounce its decision in the presence of the parties or their advocates or representatives and shall cause certified copies duly signed by the members of the Tribunal who heard the appeal or their successor in office to be served on each party to the proceedings. The Chairman or the Registrar as the case may be or their successors in office may certify copies of the decisions or decree of the Tribunal and furnish such copies to the parties.[716] A person who is aggrieved by the decision of the Tribunal is given a right to appeal to the Court of Appeal of Tanzania. An appeal to the Court of Appeal shall be on matters of law only and the provisions of the Appellate Jurisdiction Act and the Court of Appeal Rules will apply mutatis mutandis.[717]

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[714] Ibid, Rule 10.
[715] Ibid, Rule 8.
[716] Rule 21.
[717] S. 25 of the Tax Revenue Appeals Act.

6.7 Conclusion

Generally, effective administration of the value added tax by the TRA requires a law that is designed well with reflection on international standards and principles. In this context, where it is not the case, it is likely to affect the administration of the value added tax and hence a negative impact on the collection of revenue and growth of the economy. Similarly, settlement of tax disputes requires well-established tax machinery with a major focus on settlement of tax disputes in a fairly and timely manner. The law establishes the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal to handle tax disputes. Also, the Commissioner General is given the power to handle tax disputes arising from the administration of revenue laws.

Likewise, is given the power to compound offences including VAT offences. The weak tax machinery delays resolving tax disputes and hence affects the provisions of social services by the government and also negatively affects the performance of businesses. Also causes compliance costs to the taxpayers and administrative costs to the tax authority. The number of pending cases before the TRAB and TRAT is increasing. Besides, the revenue tied up because of the pending cases is increasing. This being the case, it raises concern regarding the capacity of TRAB and TRAT to settle tax disputes and also leaves a lot to be desired in respect of the laws governing the settlement of tax disputes.

CHAPTER SEVEN

PRESENTATION, DISCUSSION AND ANALYSIS OF FINDINGS

7.1 Introduction

This chapter presents the discussion and analysis of findings. The challenges affecting the administration of the VAT in Tanzania have been discussed also in light of the research questions and objectives of the study. It discusses different challenges in VAT administration and shows the extent to which they contribute to the loss of government revenue. The challenges have been framed to reflect the objectives of the study and the research questions. The discussion regarding each challenge shows the extent to which it contributes to the loss of government revenue and objectives for the introduction of VAT in Tanzania.

7.2 Challenges

7.2.1 VAT Registration Threshold

VAT registration is very important in the administration of VAT as it determines the categories of taxpayers eligible for VAT. This means that with a greater number of the taxpayers' the collection of the tax will increase. The contrary is that the lower the number less revenue is likely to be collected. It is in this context that VAT law sets the registration threshold upon which taxpayers are registered for VAT. The rationale behind this is to widen the tax base and hence increase the collection of revenue for the provision of social services to the public and financing of government expenditures.

In Tanzania, section 28(2) of the VAT Act and Rule 14 of the VAT (General) Regulations 2015 require persons with an appropriate threshold of one hundred

million or more to register for the VAT. This means that the turnover can be 100 Million or more in the period of twelve months ending at the end of the previous month. Registration is also allowed in the situation where the turnover is equal to or greater than half of the threshold which is 50 Million or greater than in the period of six months. This means that a taxable person is required in respect of any month, to be registered for value added tax from the first day of that month.

However, the set criteria for value added tax registration under the law excludes a large number of taxpayers with less than the set threshold in the VAT system. This exclusion may lead to low revenue collection hence affecting the realization of the objectives for the introduction of VAT in Tanzania. Empirical evidence shows that there are fluctuations in the rate of annual growth increase registered VAT taxpayers from 2011/2012 to 2017/18. The number of registered VAT taxpayers was 32,141 in 2017/18.[718] This fluctuation has also affected the collection of revenue. This means that there is fluctuation in revenue collection from indirect taxes for example the total Domestic VAT revenues collected increased by 12.4 percent from TZS 2,158.5 billion in 2016/17 to TZS 2,426.3 billion in 2017/18, which is less than the average annual growth of 17.5 percent recorded in the period under review.[719] The trends show that there was an increase in revenue collected through VAT on domestic goods for the period of 2006/07 to 2017/18. However, a decrease in revenue collection was observed in 2012/13 and 2016/17.[720]

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[718] National Bureau of Statistics, The Tax Statistics Report of 2017/ 2018, NBS, Tanzania, 2019, p.16.
[719] Ibid, p.17.
[720] Ibid, 19.

Generally, the administration of VAT is not stand alone but rather in connection with other tax laws. In this context, the administration of other taxes affects also the collection of the VAT. This means that where there is low collection of other revenue it affects also the collection of the VAT. The VAT is collected through the registered businesses where other taxes are collected. The registered number of taxpayers including VAT registered persons affects the collection of revenue and as result, failure to meet the set target by the government. For example, total resources mobilized during the ten months period from July 2018 to April 2019 amounted to TZS 21.16 trillion equivalents to 65% of the annual target of 32.48 trillion.[721] These were mobilized from different sources.

The tax revenue amounted to TZS 12.9 trillion, which is equivalent to 87.4 percent of the target.[722] Likewise, the government had projected to collect TZS 34.88 Trillion for the income year 2020/21.[723] As of April 2021, the amount collected was TZS 24.53 trillion, equivalent to 86% of the targeted revenue collection.[724] Internal revenue collected by TRA amounted to TZS 14.54 trillion, which is equivalent to TZS 86.9% of the targeted revenue for the period.[725] Non-tax revenues performed considerably lower, (TZS 1.80 trillion) at 78.5% of the targeted revenues.[726]

Apart from the fact that the collection targets were not met due to some sectors being hit by the adverse impacts of the COVID-19. Notably, the low collection of revenue

[721] National Budget 2019/2020. by the Minister of Finance and Planning.
[722] Ibid
[723] The Budget Speech 2020/2021 by the Minister of Finance and Planning.
[724] Ibid.
[725] Ibid.
[726] Ibid

might have been contributed also by having few registered taxpayers because of the set VAT threshold which excludes the registration of persons below the set threshold. Also, the threshold is not put in classes to cover different categories and classes of businesses, hence excluding a large number of taxpayers. This results in the low collection of revenue and failure to realize the objectives for the introduction of the VAT in Tanzania.

The empirical evidence shows further that as of February 2022 the TRA has registered 4,259,568 taxpayers.[727] The total number of registered taxpayers is divided into two groups, those doing business with a total number of 1,562,770 and those under the category of non-business with a total number of 2,696,798.[728]The non-business group includes employees, people with TIN but not necessarily doing business, and persons who engage not frequently in transactions that attract tax liability. Out of 1,562,770 registered taxpayers doing business, only 44,829 are registered for VAT. The results of the low number of VAT registration is that VAT in domestic revenue collected for the year 2019/2020 was TZS 2,762,924, 000,000 and on imports is TZS 2,421,370, 000,000.[729] While in financial year 2020/2021, VAT collected in domestic revenue is TZS 2,633,436,000,000 and on imports is TZS 2,584,454,000,000. [730]

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[727] Data obtained from Tanzania Revenue Authority (Head Quarters-Dar Es Salaam) through emails in response to the researcher's letter dated 24th February 2022 on 10th March 2022.

[728] Non-business entails those with no business but are doing a single transaction at a time and paying VAT. For example, a person buying a car.

[729] Data obtained from Tanzania Revenue Authority (Head Quarters-Dar Es Salaam) through emails in response to the researcher's letter dated 24th February 2022 on 10th March 2022.

[730] Ibid.

Empirical evidence from the interview conducted[731] and questionnaires filled in by different tax experts[732] reveals that the VAT Act does not provide different levels or classes of threshold to eligible taxpayers to accommodate more taxpayers.[733]The problem of low registration is inherited from the law by not providing well different categories of business and turnovers to cover different economic activities. Consequently, a large number of taxpayers are left out as a result the government revenue from VAT is low. This is despite the fact that certain groups of professionals and government entities are required to register irrespective of their threshold.

Hence if reference is made to the total number of professionals and the total population in Tanzania and persons who are required to register for VAT plus those who are required to register because of the threshold requirement, TRA has recorded a very low number of VAT taxpayers. In addition, the law does not cover other persons and economic activities that can register irrespective of their threshold. Hence, registration of a large number of taxpayers for the VAT ensures growth of revenue collection for the Government. This approach will increase the level of revenue and hence the realization of the objectives for the introduction of value added tax in Tanzania.

Generally, the 44,829 registered for VAT is very low compared with the total number of eligible taxpayers outside the set threshold. The TRA has registered a very low number of VAT taxpayers when the comparison is made to the total

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[731] Response during the interview conducted on 15th May 2020 with Senior Tax Manager from PwC-Arusha Branch.
[732] Data collected from fifteen (15) tax experts from audit firms on 14th May 2020 and 26th May 2021 within the Dar es Salaam Region.
[733] An interview with the Senior Tax Manager from PwC-Arusha Branch conducted on 15th May 2020.

number of registered taxpayers, as a result, the revenue may not increase. It raises a lot of concerns and is not convincing that TRA has registered only 44,829 as VAT registered by February 2022 out of the total number of taxpayers of 1,562,770 from the business group. The failure to register a good number of VAT taxpayers has caused the Government to lose revenue that could have been collected by the registered VAT registered persons. This suggests that the low number of registered VAT taxpayers by TRA is due to the fact that the current requirement of threshold does not consider different levels of taxpayers eligible for VAT registration without classification of threshold according to the nature and type of business.

Apart from the formal sector, the VAT law does not cover the informal sector. The informal sector comprises all units that are engaged in the production of goods or services aiming at the generation of employment and incomes for persons concerned. The main characteristics of the informal sector include private unincorporated enterprises. This excludes quasi corporations owned by individuals or households that are not constituted as separate legal entities independent of their owners. Also, for which no complete accounts are available that would permit a financial separation of the production activities of the enterprise from the other activities of its owner(s).

Another characteristic is that private unincorporated enterprises include unincorporated enterprises owned and operated by individual household members or by several members of the same household. It covers also unincorporated partnerships and cooperatives formed by members of different households if they lack complete sets of accounts. Likewise, they are not registered under specific

forms of national legislation or regulations established by national legislative bodies as distinct from local regulations.

All or at least some of the goods or services produced are meant for sale or barter. Their employment size is less than 5 employees. They are engaged in non-agricultural activities, including secondary non-agricultural activities of enterprises in the agricultural sector.[734]The OECD estimates that informal work accounts for two-thirds of non-agricultural employment in sub-Saharan Africa. One of the notable features of the informal economy in all developing countries is the great composition of self-employment as compared to wage employment in the informal employment statistics.[735]

The informal sector in Tanzania is large and dynamic in the sense that the rate of entry for new entrants is high and the life span for many entrants into the sector is low (approximately less than five years) thus the rate of exit is also higher.[736] Also, there is the dominance of traditional business, mostly operated by youth and adult operators characterized by basic education conducting mainly trade as the main activity in the sector.[737] The dynamism of the sector is associated with the nature of the entrepreneurship participants.[738] The presence of many small businesses which are not registered, low capital equipment and machinery usage, and lack of permanent sites of business operation affect the formalization process and tax

[734] The National Bureau of Statistics (NBS), Integrated Labour Force Survey Analytical Report 2014, Dar es Salaam, 2015, p.7-8.
[735] TRA, Review of Informal Sector for Taxation Purposes, January 2011,p.9.
[736] University of Dar es Salaam, Report on the Nexus between Taxation of the Informal Sector and Inequality in Tanzania, Department of Economics, 2018,p.vi.
[737] Ibid.
[738] Ibid.

collection into the informal sector.[739] This behavior raises concern about the potential of the informal sector to be dependent as another main source of government revenue.[740]

Further, according to the available statistics regarding the informal activities in the informal sector obtained from NBS reports' of 2014 and 2020/2021, the wholesale and retail trade is the dominant employer in both main and secondary informal activities accounting for 47.9 percent and 50.7 percent respectively.[741] The second industry with a significant contribution of employed persons in the informal sector as main and secondary activities is accommodation and food service activities with 14.5 and 15.3 percent respectively.[742] Also, the working-age population comprises 25.8 million persons in 2014, of whom 15.8 million (61.3 percent) reside in rural areas, 6.8 million (26.2 percent) in other urban areas, and 3.2 million (12.5 percent) in Dar es Salaam.[743]

The largest proportion of currently economically active persons are in Rural areas (63.5 percent), followed by other Urban areas (25.5 percent) whereas Dar es Salaam had the smallest proportion (11.0 percent).[744] For Dar es Salaam self-employment is the leading source of income for households (63.4 percent) followed by wage employment, where 54.0 percent of households reported having at least one member

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[739] Ibid.
[740] Ibid.
[741] National Bureau of Statistics (NBS), Integrated Labour Force Survey Analytical Report 2014, Dar es Salaam, 2015, p.58.
[742] Ibid.
[743] Ibid, 28.
[744] Ibid, 30.

with this source of income.[745] Results also indicated that only 6.9 percent of households in Dar es Salaam reported having at least one member with agricultural income.[746]

According to NBS's report for 2020/2021[747] there is more or less the same distribution of employment by sector between 2014 and 2020/2021, although central and local government shrank. Significant differences are observed in the proportions of persons employed in agriculture (66.8% in 2014 and 58.4% in 2020/2021) and private sector non-agricultural activities (26.6% in 2014 and 22.7% in 2020/2021).[748] Further, the report indicates that employment in the informal sector has increased from 22.0% in 2014 to 29.4% in 2020/2021.[749]

Specifically, informal sector employment increased significantly in rural areas (from 9.1 in 2014 to 19.6 in 2020/2021) and other urban (from 39.7 to 52.5) while that for Dar es Salaam remained almost the same.[750] While the informal sector remains an important income source for the majority of the people who cannot be absorbed by the formal sector, its expansion in rural and other urban areas is of concern. In this regard, the implementation of policies aimed at formalizing the informal sector is crucial to guarantee operators' growth and economic development while expanding

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[745] Ibid, 24.
[746] Ibid.
[747] National Bureau of Statistics (NBS), Integrated Labour Force Survey Report 2020/2021, Dar es Salaam: NBS, 2021.
[748] National Bureau of Statistics (NBS), Integrated Labour Force Survey Report 2020/2021, Dar es Salaam: NBS, 2021, p.10.
[749] Ibid.
[750] Ibid.

the tax base.[751]

In general, the statistics provided show that large percentages of activities are in the informal sector. Also, the percentage of persons carrying out different economic activities in the informal sector is high if compared with those who are in formal employment.[752]This means that if a large part of the economy is made of informal economic activities, this causes a problem in the administration of revenue laws and hence contributes to the loss of government revenue. This is because it becomes difficult to register persons in the informal sector since it is not easy to ascertain their threshold and even their businesses are not formally registered. Implementation and enforcement of VAT law to taxpayers and businesses not registered become difficult and hence loss of government revenue.

To address the challenges caused by the taxation of the informal sector, TRA has designed a mechanism to tax individuals. The individuals are categorized into two groups, small individual traders who are not required to maintain audited accounts and medium individual traders who are required to maintain audited accounts.[753] Small traders are taxed by a presumptive tax system, whereas medium is taxed based on the annual profit determined from the audited accounts.[754] The presumptive tax system is a tax system where individuals are taxed based on their annual turnover. This means that the small individual traders are not obligated to prepare and submit

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[751] Ibid, p.21.
[752] National Bureau of Statistics (NBS), Integrated Labour Force Survey Analytical Report 2014, Dar es Salaam, 2015, p.55.
[753]Paragraph 2 to the First Schedule of the Income Tax Act. Refer also tohttps://www.tra.go.tz,(Accessed on 1/5/2020).
[754] Ibid.

audited accounts to the TRA.[755] The law allows the taxpayer to opt not to apply the presumptive system and prepare audited accounts and pay taxes based on profits.

Conditions that qualify to be in the presumptive tax system[756] includes the taxpayer must be a resident individual. Another requirement is that the annual turnover of the business should not exceed the threshold of Tshs100 million.[757]Further, the taxpayer must conduct business only for the year of income and not be engaged in any other activities such as employment or investments.[758] This means that under the presumptive tax system, an individual's income must be derived solely from business sources. If income is derived from other sources such as employment and/or investment the presumptive scheme cannot be used. The individual's income for any year must consist exclusively of income from business with sources in the United Republic of Tanzania. Under the presumptive system, tax payable is established based on annual turnover shown by taxpayer's records and in absence of complete records, the annual turnover will be estimated based on the best judgment of the commissioner. [759]

In general, the presumptive income tax system works better in attempting to collect revenue from the informal sector. [760]However, it may infringe on few who are small and are not in the position to pay the taxes or tax less than some who are supposed to

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[755] Ibid.
[756]Paragraph 2(2) to the First Schedule of the Income Tax Act. Refer also to https://www.tra.go.tz, (Accessed on 1/5/2020).
[757] Ibid.
[758] Ibid.
[759] Paragraph 2(3) to the First Schedule of the Income Tax Act, as amended by s.9 (a) of the Finance Act, 2019. Refer also to https://www.tra.go.tz,(Accessed on 1/5/2020).
[760] University of Dar es Salaam, Report on the Nexus between Taxation of the Informal Sector and Inequality in Tanzania, Department of Economics, 2018,p.vi.

be in the higher-income category.[761] This leads to the rise of inequality which has been viewed as the major policy issue in Tanzania in many sectors.[762] The existence of inequality in the informal sector in the country has been mainly contributed by taxes, the size of the informal sector, and income distribution.[763] Equally, the concern on the tax system particularly the presumptive tax system is that many presumptive regimes are deliberately designed to reduce the tax payments of smaller firms.[764] Thus, this fuels the problem of firms not wishing to graduate onto the standard regime when they can, and large firms making themselves appear small, and hence leads to inequality and affects on VAT registration process basing on the threshold.[765]

In this context, it is argued that the administration of the VAT can be problematic when the economy has a large informal sector. Although there is an argument that the VAT also taxes the informal sector indirectly since VAT is levied on some of the inputs and imports. This means that where the taxable persons are few because of the threshold set, it is obvious that the coverage and magnitude of the collection will be very low. Hence, some sectors are likely to be affected by not having enough taxable persons to collect VAT on behalf of TRA.

The fact that a large part of the economy of Tanzania is in the informal sector as discussed above, means a large number of taxpayers eligible for VAT registration

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[761] Ibid.
[762] Ibid.
[763] Ibid.
[764] University of Dar es Salaam, Report on the Nexus between Taxation of the Informal Sector and Inequality in Tanzania, Department of Economics, 2018,p.vii.
[765] Ibid.

are left out. This is because the law sets the threshold mainly focusing on the formalized business and not the informal sector. The move could have been to put more effort into making sure that businesses in the informal sector are formalized and hence registered for VAT.[766] Besides, the threshold set is not classified according to the size of different businesses leading to fewer taxpayers on board and hence low collection of revenue. This situation undermines the objective of the introduction of VAT in Tanzania.[767] The registered total number of value added taxpayers versus the total number of taxpayers is evidence that only a few have been registered by TRA for value added tax leaving out a big population who are in the informal sector since their businesses are not formalized.

Therefore, the approach of focusing on the few registered taxable persons and increasing the threshold affects the collection of revenue. The argument by the tax authority that it is because of administrative costs and compliance costs without taking appropriate measures to formalize the informal sector and also putting the threshold in classes according to the sizes of businesses to accommodate more people onboard contribute to a large extent loss of government revenue. Equally important is the argument provided by some tax experts[768] is that the most important thing is the mechanism of the collection that doesn't bring high administrative costs to TRA and high compliance costs to the taxpayers. Apart from the present

[766] Data obtained from ten (10) lecturers teaching tax law in Higher Learning Institutions within the Dar es Salaam Region during the interview conducted on 18h May 2020 and 28th May 2021 with the researcher.

[767] Response during the interview conducted on 15th May 2020 with Senior Tax Manager from PwC-Arusha Branch.

[768] Data obtained from ten (10) lecturers teaching tax law in Higher Learning Institutions within the Dar es Salaam Region during the interview conducted on 18h May 2020 and 28th May 2021 with the researcher.

requirement that professionals and Government entities are the ones required to register irrespective of their threshold for value added tax, the requirement should be expanded to cover other persons and economic activities to register irrespective of their threshold. This approach will increase the level of revenue and hence the realization of the objectives for the introduction of value added tax in Tanzania.

7.2.2 High VAT Rate

The setting of the VAT rate is important so that the consumers and taxpayers are well informed of their tax liability or obligations. The set VAT rate may influence the culture of voluntary tax compliance. Likewise, a high tax rate may discourage tax compliance. In Tanzania, the VAT rate is 18%. The rate is even high when the comparison is made to other EAC countries.[769] This means that where the VAT rate is high it is likely to encourage tax evasion and tax avoidance. Tax evasion refers to illegal means or ways of evading or escaping the payment of taxes and tax avoidance is defined as an act of dodging tax without breaking the law.[770]

Under tax evasion, the taxpayer employs various illegal ways which are contrary to the revenue laws to evade the tax liability. Examples of illegal means include concealing the income, claiming excessive expenditure, falsification of accounts, and willful violation of rules. The threshold and value added tax rate set in any particular tax jurisdiction in most cases may encourage voluntary tax compliance or may

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[769] Details are provided in chapter four of this thesis.

[770] K.K.Agrawal., Direct Tax Planning and Management: Incorporating, Corporate Tax Planning, Business Tax Procedure and Management, (5th, Ed,) Atlantic Publishers and Distributors (P) LTD, New Delhi, 2006,p.8.

encourage tax evasion.[771] The reason being people feel that the tax system is not fair as a result they resort to designing mechanisms for tax evasion and avoidance.[772] This means that a taxpayer arranges his financial activities in such a manner that they are within the four corners of the law but takes advantage of loopholes that exist in the tax law for the reduction of tax liability. This means that a taxpayer has complied with the letter of law but not the spirit behind the law. Examples of tax avoidance modes include transfer pricing (invoice values), tax deferral plans, tax deductions, tax credits, tax havens, and payments in kind.

Further, section 8(1) of the Tax Administration Act (TAA) provides for the powers of the Commissioner General in respect of any scheme conferring tax benefits to persons dealing at arm's length. The Commissioner General may determine the tax liability. The tax liability is for any tax imposed by the law and its amount as if the scheme has not been entered into or carried out or in such manner as in the circumstances of the case. The rationale behind is for the prevention or diminution of the tax benefits sought to be obtained by the scheme.

Section 3 of the TAA defines tax benefits in relation to a person to mean a benefit earned by avoiding, reducing, or postponing liability of that person or increasing a claim of the person for a refund of tax. It can be also preventing or obstructing the collection of taxes from the person. It covers also any other act for which the Commissioner General is of the opinion that it might result in the reduction of a

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[771] Deutsche G., Addressing Tax Evasion and Tax Avoidance in Developing Countries, ITC, 2010, p.11.

[772] In Tanzania, tax avoidance was provided under section 35 of the Income Tax Act of 2004. This section has been repealed by section 116 of the Tax Administration Act. Tax avoidance is now covered by section 8 of the Tax Administration Act which covers among other things schemes for obtaining undue tax benefits.

person's tax liability. Tax evasion and avoidance contribute to the loss of government revenue.

Empirical evidence shows that high VAT rate discourage people from registering as VAT traders.[773] In addition, the set VAT rate affects the individual saving opportunities and investments as a result many opt to use available loopholes in the law to avoid the payment of taxes.[774] This suggests the VAT rate is not fair as it does not bring on board a large number of taxable persons. Consequently, the balance between administrative and compliance costs versus the realization of objectives of VAT is missing.

Further, empirical evidence shows that where the rate of value added tax is high it causes a heavy burden when purchasing goods and different services.[775] For example, during an interview with purchasers of NHC houses, they admitted that the rate of VAT is high which makes the purchase price of NHC houses very high.[776] The rate of 18% discourages purchasers from purchasing NHC houses and hence the government may lose revenue originating from VAT. Likewise, where the VAT rate is not kept into relevant categories to accommodate more taxpayers is likely to increase the tax burden to the few taxpayers. As stated, the situation may affect voluntary tax compliance as a result realization of the objectives for the introduction of the value added tax in Tanzania remains a major challenge.

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[773] Data obtained from ten (10) lecturers teaching tax law in Higher Learning Institutions within the Dar es Salaam Region during the interview conducted on 18h May 2020 and 28th May 2021 with the researcher.
[774] Ibid.
[775] Data collected from ten (10) taxpayers at Karikoo Market and fifteen (15) from Gongo la Mboto Market within the Dar es Salaam Region during the interview conducted on 17th May 2020 and 30th May 2021 with the researcher.
[776] Data collected from ten (10) purchasers of NHC premises at Kinondoni District within Dar es Salaam Region during the interview conducted on 14th May 2020 and 29th May 2021 with the researcher

Moreover, empirical evidence shows that the VAT rate should be low or be in multiple rates so that a big number of VAT taxpayers can be registered for VAT and charged VAT rates according to their classes or classification, or categories of businesses.[777] There is an argument that there will be an erosion of the threshold by the taxpayers but if TRA could put a well-organized system in terms of technology and also encourage voluntary tax compliance by provision of tax education, taxpayers will comply with the law and their will be an increased level of revenue collection.[778] The rationale behind the introduction of the VAT in Tanzania was to broaden the tax base. VAT law which has been well-designed accommodates a large number of taxpayers. The mechanism designed should not cause high administrative costs and compliance costs to the taxpayers.

7.2.3 Discretional Powers of the Commissioner General in Respect of Value Added Tax Registration

Apart from the set threshold for VAT registration, Section 33(b) of the VAT Act gives discretionary powers the Commissioner General to register any taxpayer if satisfied that there is good reason including protection of government revenue regardless of the person's turnover. However, the law is not clear as to what amounts to the protection of government revenue. The VAT Act is also silent in respect of the procedures to be followed by the Commissioner General to register those persons without considering the issue of the threshold.

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[777] Data obtained from ten (10) final consumers at Mwenge Market and ten (10) from Gongo la Mboto Market within the Dar es Salaam Region during the interview conducted on 19th May 2020 and 27th May 2021 with the researcher.

[778] Data collected from ten (10) taxpayers at Karikoo Market and fifteen (15) from Gongo la Mboto Market within the Dar es Salaam Region during the interview conducted on 17th May 2020 and 30th May 2021 with the researcher.

Moreover, the Act does not clearly state what amounts to good reason by the Commissioner. This matter is left to the Commissioner General to determine himself based on his assessment and reasoning best known to him with the exclusion of taxpayers. This creates room for corruption.[779] The taxpayers just suffer the consequences of the decision of the Commissioner General which may result in unnecessary tax disputes with administrative costs and compliance costs.

This is reflected in the case of African Barrick Gold Mine PLC versus Commissioner General.[780]In this case, the appellant challenges the Board's holding which endorsed the respondent's decision to forcibly issue a VRN and a TIN Certificate to the appellant. Counsel for the appellant argued that a TIN is a number allocated by the Commissioner General to every resident person who carries on business anywhere, and to every non-resident person or entity which carries on business in Tanzania according to section 133 (2) of the Income Tax Act, 2004. The obligation to apply for TIN lies only where the person concerned carries on business in Tanzania, contended the appellant.

It is argued that the Appellant was not required to apply for the two certificates, as it carries no business in Tanzania. Merely holding a certificate of compliance and having subsidiary entities in the country does not amount to carrying on business, submitted counsel. Regarding VAT registration, it has been argued on behalf of the appellant that VAT registration does not apply to a person who does no business in

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[779] Data obtained from the Questionnaire filled on May 25th, 2020 by the Head of regulatory affairs from the National Bank of Commerce within the Dar es Salaam Region.

[780]Tax Appeal No. 16 of 2015(TRAT).

Tanzania, since only persons who have reached a particular threshold (Tshs. 40 Million in 2011) are registrable as provided by section 19(1) of the VAT Act, 1997 and Regulations made there under.

Learned counsel for the appellant opines that on the grounds, that their client is challenging the respondent's decision to demand tax (being, in their opinion, neither a resident person nor a person carrying on business in the country) and thus not liable to pay tax. The respondent was wrong to invoke the above provisions and register the appellant for TIN and VRN and issue the relevant certificates. The Board was therefore wrong, submitted counsel, to endorse the respondent's actions. The relevant provision in respect of forced registration for VAT is section 19(4) of the VAT Act, which states:-

> *"Where the Commissioner is satisfied there is good reason to do so, on grounds of national economic interest or for the protection of the revenue, he may register any person, whether or not an application to be registered has been made, regardless of the taxable turnover of the person"*

In general, VRN and a TIN Certificate issued to the appellant by the Commissioner General were after compulsory registration. However, the law has been changed to the effect that Rule 14 of the Value Added Tax (General) Regulations 2015 provides that at present the threshold is One Hundred million (100Million) and above. Besides, Compulsory registration by the Commissioner General has been retained under the current value added tax regime as provided by section 33 of the Value Added Tax Act.[781]

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[781]Cap 148 R.E 2019.

From the foregoing, it is argued that the powers given to the Commissioner General in respect of VAT registration is contrary to Article 138(1)[782] which requires no tax of any kind to be imposed save in accordance with a law enacted by Parliament or according to a procedure lawfully prescribed and having the force of law by virtue of a law enacted by Parliament. In addition, the powers given to the Commissioner General regarding registration of persons for value added regardless of the person's turnover contradict with taxation policy that tax law should be clear so that the taxpayers may know the consequences of it and comply accordingly.

The powers given to the Commissioner General to register any person for VAT also contradicts principles of certainty, simplicity, effectiveness, and fairness. This principle provides that the tax rules should be clear and simple to understand so that taxpayers can anticipate the tax consequences in advance of a transaction, including knowing when, where, and how the tax is to be accounted for. However, this is not the case with commissioners' power. It is not clear to the taxpayers what amounts to good reason and protection of government revenue.

In addition, the procedure invoked by the Commissioner General in the registration of persons for the protection of government revenue is also not clear. Ordinarily, taxpayers can not anticipate the tax consequences of the Commissioner General decision. This ambiguity of the law may, affects the morale of taxpayers in payment of taxes and voluntary tax compliance. Hence, the absence of morale and compliance is likely to lead to loss of government revenue and as a result if affect also the

[782] The Constitution of the United Republic of Tanzania of 1977.

realization of the objectives for the introduction of the VAT in Tanzania.

From the aforesaid, if the law has defined well the requirements and conditions for value added tax registration and the person does not comply accordingly, the Commissioner General to exercise his powers to register that person is acceptable under the law since he is enforcing the law because of non-compliance of the same. The major concern under this part is the powers given to the Commissioner General to register any person if he has good reason including protection of government revenue without considering the turnover of the person. This is contrary to international taxation policy principles of certainty and simplicity and also effectiveness and fairness principle.

This affects morale in the payment of taxes and also encourages tax evasion and avoidance because the taxpayers perceive the system to be unfair with full of uncertainty. This contributes to the loss of Government revenue since taxpayers may opt to evade or avoid payment of taxes because of unfairness. Besides, since there are no proper procedures of registration and the well-defined scope of the power given to the Commissioner General in respect of registration of persons without taking into consideration the turnover of the person, the Commissioner General may act arbitrarily which results in tax disputes and also causes high administrative costs and compliance costs.

7.2.4 VAT Refund Claims

Payment of VAT claims ensures that the businesses are not affected since they are acting just as collecting agents of the tax authority. A refund is normally paid to the

trader wherein a particular accounting period his tax liabilities are not exhausted by allowable deductions. It is also paid where the returns for the accounting period result in excess credits. Section 69 of the VAT Act provides for the timing of the input tax credits. The principle is that where a taxable person is allowed an input tax credit, the tax period in which the credit may be included in the calculations according to section 70 of the VAT Act will be the latter of the tax period in which the value added tax became payable. It is payable under the law on the supply or import to which the input tax relates or if the person did not claim the input tax credit in that period, any one of the six succeeding tax periods.

The input tax will not be deducted or credited after a period of six months from the date of tax invoice, fiscal receipt or other evidence referred to under section 70(3) of the VAT Act.[783] A taxable person is entitled to a refund of value added tax when in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns for prescribed accounting periods regularly result in excess credits. Besides, a taxable person may apply for a refund where a person has overpaid a net amount payable for a tax period.

Refund of value added tax claims requires a well-established and organized refund process which assists to make sure that only genuine claims are paid to the claimants. In most cases, taxable persons submit fraudulent claims to the tax

[783] S. 70(3) of the Value Added Tax Act provides that a taxable person shall not include an input tax credit in the calculations made in section 70, unless at the time of filing the value added tax return for the relevant tax period such person holds in the case of an import into the United Republic by the person, a proof for payment of tax, a Single Administrative Document or similar document, bearing the name, Taxpayer Identification Number and value added tax registration number of the importer which are duly cleared by customs for home consumption in Mainland Tanzania; and in the case of a supply made to a person in Mainland Tanzania, a valid tax invoice or fiscal receipt issued by the supplier under the Value Added Tax Act.

authority and cause a delay in verification of claims through auditing and also payment of refund within the prescribed period.

A large amount of value added tax revenue is likely to be lost as a result of VAT refund abuse. Registered taxpayers may not pay the correct amount of VAT for several reasons including error, deliberately understating their VAT liabilities, or systematic attacks on the VAT refund system.[784] While countries have generally found it difficult to estimate the size of the revenue leakage, it is thought to be substantial.[785] Some countries have made progress in recent years in estimating the scale of losses on VAT. However, most developing countries including Tanzania to a large extent have failed to establish the scale of losses of VAT because of the systematic ways used by taxpayers to manipulate the tax system.

Fraud and evasion come in many forms, ranging from traders omitting the occasional sale from their accounting records to the systematic suppression of sales and falsification of invoices.[786] Other fraudsters have little or no legitimate business activity and register for the sole purpose of stealing VAT through the refund system. The methods to detect, investigate, and prevent VAT abuse are big challenges in most countries including Tanzania.[787]The value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent VAT abuse refund process which causes loss of government revenue. The types of value added tax

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[784] Harrison, G. and Krelove, R., Vat Refunds: A Review of Country Experience. IMF Working Paper, pp. 1-43, 2005, p.16.
[785] Ibid
[786] Harrison, G. and Krelove, R., Vat Refunds: A Review of Country Experience. IMF Working Paper, Vol. , pp. 1-43, 2005, p.21.
[787] Tait, A, Alan.,Value Added Tax: International Practice and Problems, International Monetary Fund, Washington, 1988, p.304.

fraud and tax evasion include inflated refund claims. This is the method to create fake invoices for purchases never made.[788] Indeed, organized crime networks have been known to establish businesses solely to fabricate invoices for sale to those wishing to defraud the revenue.

Another form is underreported sales. This is the most usual way of evading VAT whereby by small operators, particularly in retail services where taxable inputs are small relative to taxable sales.[789] By concealing sales to the domestic market, traders may not only evade their obligation to charge VAT on their output but, also, generate excess credits to be refunded. There are also fictitious traders.[790] This involves the creation of short-lived sham enterprises that register for VAT and create the illusion of trading in goods and services.[791] A common ploy is to invent fake export invoices on non-existent goods and claim VAT refunds.[792]Besides, there are also domestic sales disguised as exports. Under this scheme, traders sell goods on the domestic market but claim a refund using a fake export invoice.[793]

There are cases or circumstances which raise questions in respect of TRA's ability to detect and investigate fraud and tax evasion which in turn affect refund claims and the whole process of refund. For example, Reli Assets Holding Company Limited (RAHCO) had a balance of input tax amounting to TZS 31.09 billion as at 30th June

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[788] Harrison, G. and Krelove, R., Vat Refunds: A Review of Country Experience. IMF Working Paper, Vol. , pp. 1-43, 2005, p.22.
[789] Ibid.
[790] Ibid.
[791] Ibid.
[792] Ibid.
[793] Ibid.

2018 relating to the period between June 2016 and June 2018.[794] In another case, RAHCO made an advance payment to YAPI MARKERZ a payment that attracted input VAT of TZS 53.3 billion, and this input VAT was not recorded in RAHCO's books of account.[795] There were also no tax returns filed to TRA in this regard. Considering the above two cases, RAHCO has input VAT credit of TZS 84.39 billion.[796]

However, RAHCO had not lodged refund claims to TRA. Further, RAHCO had an output VAT of TZS 3.11 billion during the year. However, the company had not filed returns in regard to this output VAT as required by Value Added Tax Act.[797] Failure to record input in books of account and also lodging tax returns, as well as output VAT of TZS 3.11 billion with TRA, is an offence that attracts fines and penalties. If TRA could have a well-established detective measure and investigation process could have identified this situation by RAHCO in 2016 instead of waiting for the audit by CAG which was conducted in 2018. This situation affects the refund process and could have caused a loss of revenue to the Government if the same could not have been identified by CAG.

Another example is provided in CAG's report of 2019/2020.[798] Under this report, the CAG noted that the returns of VAT payable amounting to TZS 19,674.13 million

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[794] The United Republic of Tanzania National Audit Office, Annual General Report of the Controller and Auditor General for the Financial Year Ended 30 June 2018, p.184.
[795] Ibid.
[796] Ibid.
[797] Ibid.
[798] The United Republic of Tanzania National Audit Office, Annual General Report of the Controller and Auditor General for the Financial Year 2019/2020.

were not filed.[799] These were from National Housing Corporation (TZS 2,124.65 million), KMC TZS 18 million, Ubungo Plaza Limited TZS 393.28 million), NSSSF (TZS 2,056.08 million), Tanzania Petroleum Development Corporation TZS 9,611 million, University of Dar es salaam TZS 2,882.33 million, and Tanzania Broadcasting Corporation (TZS 2,588.79 million).[800] Further, KADCO did not file VAT return for January 2020 for the total amount of TZS 314.88 million.[801]

The CAG after realizing non-compliance of revenue laws in respect of filing of VAT returns indicated that TRA should make close follow-ups and increase resources to identify all taxpayers who do not comply with tax laws and institute enforcement mechanisms accordingly.[802] Also, TRA has to regularly provide tax education programmes to taxpayers of all categories to enhance voluntary tax compliance.[803]The Public Authorities enhance tax compliance by paying required taxes on time and TRA should strongly enforce the tax laws on the collection of outstanding tax and duties.[804] In general, it seems that TRA is lacking the methods to detect, investigate, and prevent VAT abuse. As a result, it affects the payment of VAT claims and contributes to the loss of Government revenue.

Furthermore, verification of value added tax claims by TRA from different taxpayers seems to take long as a result it raises concern regarding the capacity of TRA to detect and investigate the genuineness of refund claims to avoid the loss of revenue

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[799] Ibid, p.244.
[800] Ibid, p.245.
[801] Ibid,p.246.
[802] Ibid, p.247.
[803] Ibid,p.246-247.
[804] Ibid,p.245.

to the government. For example, in 2018 most businesses including manufacturers did not receive any tax refunds for the past 2 to 3 years.[805] Sectors leading in huge outstanding refunds include construction, mining, trade in goods and services, industrial exporters and importers, and agriculture.[806] It is further found that tax refunds done by TRA for the past 4 financial year's amount to only 1.52 trillion while the figure for outstanding refunds amounts to TZS 2.3 trillion.[807] This implies that a huge sum of the funds remains un-refunded and such outstanding tax refunds were not budgeted for in the 2018/19 financial year.[808] This suggests that the problem will still exist in future financial years.

Again, the study finds a declining trend in both tax refund payments and the amount of funds set aside for refunds by TRA during the past 3 years.[809] This trend partly explains the reason for the increase in outstanding tax refund claims which is now approximated at 7.2% of the total budget for the Financial Year 2018/19.[810]It is further found that the length of time taken for tax refund claims differs by sector while in some sectors the average time for refund is one year, for others, it ranges between two to three (3) years.[811]

The findings by CTI regarding the delay in payment of refund seem to have been contributed by the challenges facing TRA in verifying the refund claims submitted by taxpayers and payment of the same within the prescribed period by the law. The

[805] Confederation of Tanzania Industries (CTI), Study Regarding Tax Refunds, 2018, Available at https://www.cti.co.tz (Accessed on 9/05/2020).
[806] Ibid.
[807] Ibid.
[808] Ibid.
[809] Ibid.
[810] Ibid.
[811] Ibid.

absence of a well-established mechanism to detect fraud and tax evasion as well as investigation in a refund process results in loss of government revenue. It affects also the realization of the objectives for the introduction of the VAT in Tanzania.[812]Accordingly, delaying in payment of value added tax refund in the respective taxpayer's business affect the operations of the business which indirectly affect the collection of revenue by TRA since payment of different type of taxes depend on the performance of the business.[813]

According to the interviewed businesses, the delays in VAT and 15% upfront payment for industrial sugar refunds have had a negative impact on manufacturers and the economy at large. The impacts include serious cash flow problems and increased business liabilities resulting from outstanding claims for tax refunds, and high-interest expenses in loans from commercial banks. They had to borrow additional funds to pay for tax when due, the cost is also in terms of interest expenses of between 7-13% of either short or long-term loans (overdrafts). The other impact of the delay in tax refunds includes a decline in credit rates due to delays or failure to pay for the credit facilities (loans/overdraft).

Moreover, there is an increase in business operation costs leading to stagnated growth of industrialization as some manufacturers stopped production for exports commodities that attract VAT and 15% additional import duty that is hardly refunded. Manufacturers also indicated other impacts of the delay in refunds

[812]Response during the interview conducted on 15th May 2020 with Senior Tax Manager from PwC-Arusha Branch.
[813]https://www.cti.co.tz (Accessed on 9/05/2020).

including stagnated investments and production while others had to retrench employees to cope with the reduced production capacities.

Delays in tax refunds cause time wastage and other transaction costs due to accounting and follow-ups, letter writing, and making visits to government offices. In general, all of these create red tapes for businesses and have multiplier effects that constrain industrial growth in Tanzania and distort the business environment. However, as the outstanding tax refunds have been cleared through audits hence represent business funds tied up in the Revenue Authority (TRA) for more than 2 years now for sure there are negative impacts/costs associated with delays in tax refund challenges.[814]

The money tied up with TRA could have been used to invest and expand the business portfolio for the growth of the economy and payment of the taxes required by different revenue laws.[815] The delay in payment of refund has been caused by the lack of a provision in the law that will make sure that funds needed for refund are always kept in a designated Special Fund in terms of Article 135 of the Constitution of the United Republic of Tanzania of 1977 as amended and Section 12 of the Public Finance Act. Practically money for tax refunds must be approved through a Government budget in which it is impossible to get the real figure needed as the budget depends on the revenue forecast, and the account currently used is just a normal Account whereby its funds are returned in a Consolidated Fund after the end

[814] Ibid.

[815] Data obtained through the questionnaire filled in by the Director, Legal Department Ministry of Finance and Planning on 14th May 2020.

of a financial year.[816]

Generally, total elimination of losses from refund abuse, VAT fraud, and evasion causes challenges because of the costs involved both for the tax administration and the business community. Tax administrations, therefore, need to strike a balance between applying effective controls to protect revenue, while ensuring that compliant taxpayers are not overburdened with compliance costs.[817] This calls for a comprehensive VAT compliance strategy and program that applies risk-management principles and encompasses critical taxpayer service and enforcement audit, investigations, and sanctions components.[818]

Further, the refund issue has become increasingly problematic in many countries not only Tanzania in recent years.[819] There is a troublesome tension between the importance of assuring prompt refunds without which the VAT loses many of its economic merits.[820] Also, the desire of governments to guard their revenues against fraud and the temptation they face to strengthen revenues by simply delaying refund payments.[821] Tax policy advice in this area has been greatly influenced by tax administration constraints because the adoption of best practice which is the prompt refunding of all excess credits is simply not possible in countries with weak administrative capacity.

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[816] Ibid.
[817] Harrison, G. and Krelove, R., VAT Refunds: A Review of Country Experience. IMF Working Paper, pp. 1-43, 2005 p.21.
[818] Ibid.
[819] IMF, The Allure of the Value Added Tax, Finance and Development, Vol.39, No.2, A quarterly magazine of the IMF, 2002, available at https://www.imf.org/external/pubs/ft/fandd/2002/06/ebrill.htm(Accessed on 23/01/2021).
[820] Ibid.
[821] Ibid.

The lack of effective audit mechanisms is usually the primary cause of these problems. Besides, the importance of developing such capacity may have been under-appreciated in much of the advice and technical assistance on the VAT. The IMF currently tends to advise paying refunds only to exporters and, sometimes, businesses importing large quantities of capital equipment, with streamlined procedures for those with established, reliable records in their tax dealing.[822]

7.2.5 Value Added Tax Offences and Penalties

Offences and penalties in most cases are provided in the law to ensure that there is compliance with the law. The rationale behind penalties is to deter the commission of the offence. This is because imposing a certain penalty for violation of the law, it will create fear to others and also reform the offender. The penalties imposed must be proportionate to the offence committed, if not, it will not deter the commission of the offence.

Section 90 of the Tax Administration Act (TAA)[823] provides for value added tax offences and penalties thereto for violation of the provisions of the law by the taxpayers. Section 92(1) of the TAA empowers the Commissioner General to compound the offence committed by a person and order him to pay a fine. The section provides that where a person commits an offence under a tax law, the Commissioner General may compound the offence and may order a person to pay the fine that would have been paid had such person been prosecuted and convicted for the offence or order forfeiture of any goods related to the offence or both. There

[822] Ibid.
[823] Cap 438 R.E 2019.

are conditions provided under section 92(2) of the TAA in respect of compounding of offences by the Commissioner General as follows:-

First, the Commissioner General shall not compound an offence unless the person admits in writing that he has committed the offence and accepts the proposed terms of compoundment. Second, the Commissioner General shall not compound an offence in respect of the conduct of a transaction referred to in section 87 of the TAA. The offences covered under this section are offences by authorized and unauthorized persons.[824]Last, the Commissioner General shall not compound an offence after court proceedings commence with respect to the offence unless the consent of the Director of Public Prosecutions is obtained.

The procedures for compounding offences are provided under Part (xi) of the Tax Administration (General) Regulations of 2016 as follows:-

First, notice of the offences.[825] Regulation 99 (1) of the Tax Administration (General) Regulations provides that where the Commissioner General reasonably believes that a person has committed an offence under the law, he shall serve such person with a notice of offence as set out in the Thirteenth Schedule to the Regulations. The notice of offence shall contain the name and address of the offender. Also, Taxpayer Identification Number, particulars of the offence committed and the period within which the offender admits in writing under section 92 of the Tax Administration Act and accepts the proposed terms of compoundment

[824] S. 87 of the Tax Administration Act.
[825]Regulation 102 of the Tax Administration (General) Regulations.

and any other information the Commissioner General may deem fit.[826]

Second, request by an offender. Regulation 100 of the Tax Administration (General) Regulations, 2016 provides that a person, who has been served with a notice of offence under regulation 99, may request the Commissioner General for the offence to be compounded in terms of section 92 of the Tax Administration Act. The request shall be made within seven days from the date of service of the notice of offence and shall be in the form prescribed in the Fourteenth Schedule to the Tax Administration (General) Regulations. The request shall be accompanied by a written statement of admission of the offence committed and acceptance of terms and conditions of compounding the offence including a fine imposed under the Tax Administration Act.

Last, the decision and determination of the fine. The Commissioner General shall determine the request within thirty days from the date of the application and shall, forthwith, issue a compounding order in the form set out in the Fifteenth Schedule to the Tax Administration (General) Regulations.[827] Besides, where the Commissioner General compounds an offence under section 92 of the Tax Administration Act he shall, in determining the sum of money to be paid by a person who committed the offence, consider the fine imposed under the Tax Administration Act.[828]

In general, where the Commissioner General compounds an offence under the law, a person whose offence is compounded shall not be liable for prosecution for that

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[826] Ibid, Regulation 99(2).
[827] Ibid, Regulation 100(4).
[828] Ibid, Regulation 101.

offence.[829]Besides, any amount of penalty or fine imposed against any person under the Tax Administration Act or under any tax law by a court in a criminal proceeding or by the Commissioner General, such amount of penalty or fine shall be collected and deposited by the Commissioner General as tax revenue in the same manner as other taxes and Government debts.[830]

Generally, the penalty or fine imposed against any person under the Tax Administration Act or under any tax law by a court in a criminal proceeding or by the Commissioner General in respect of value added tax offences are not deterrence because the penalties or fine imposed are very low compared to the effects in revenue collection. The violation of the law contributes to loss of revenue and in absence of severe penalties or fines for those who violate the law the offences will continue to increase and as a result, it will contribute to loss of Government revenue. Herein below are specific circumstances or cases showing violation of value added tax law and also other revenue laws. There is an interplay between value added tax law and other revenue laws. This means that the collection of value added tax depends also on compliance with other revenue laws. Value added tax is collected along with other taxes provided by different revenue laws. This implies that any violation of other revenue laws affects also the collection of value added tax.

According to CAG's report, eleven (11) entities procured goods and services without demanding EFD invoices/receipts or made sales without issuing EFD receipts as

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[829] S.92 (4) of the Tax Administration Act.
[830] Ibid, s.92(A).

required by the law. [831] Table 32 from the CAG's report provides the name of the entity and the description of the violation of the law as follows:-[832]

First, Tanzania Postal Corporation made payments to suppliers that were not acknowledged with legal EFD receipts of TZS 515.96 million. Second, Babati Urban Water Supply and Sanitation Authority (BAWASA) made payments to third parties which were not supported by EFD tax invoice TZS 16 million. Third, TAFORI made payments to suppliers which had no invoices from vendors TZS 35.34 million. Fourth, National Health Insurance Fund (NHIF) made payments to various suppliers of services and goods which were not supported by EFD cash receipts of TZS 2.2 million. Fifth, Kariakoo Market Corporation conducted procurement of works/goods not supported by EFD acknowledgment receipts TZS 56.16 million.

Sixth, Mkulazi made payments for goods and services which lacked sufficient EFD receipts from suppliers TZS 15.76 million. Seventh, the National Examination Council of Tanzania (NECTA) has not issued EFD receipts to its customers for the year ended 30th June 2016 contrary to instructions issued through the letter with Ref. No. TRA /CDR/T.30/222/VOL.III/142. Last, SUMATRA made payments for goods and services not supported by EFD receipts TZS 431.45 million. Institute of Rural Development Planning Dodoma (IRDP) has no EFD machines hence had not started issuing EFD receipts. MUHAS has no EFD machines hence had not started issuing EFD receipts. SUWASA made a payment of TZS 18.56 million to suppliers lacking Electronic Fiscal Device (EFD) Receipts.

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[831] The United Republic of Tanzania National Audit Office, Annual General Report of the Controller and Auditor General for the Financial Year Ended 30 June 2018, p.185-186.
[832] Ibid.

Further, CAG's report for 2019/2020 shows that there is revenue earned of TZS 6,502.01 Million without issuing EFD Receipts and also payments of TZS 1,965.88 Million made without EFD receipts or fiscal invoices.[833] Section 36 (1) of the Tax Administration Act requires a person, who supplies goods, renders services, or receives payment in respect of goods supplied or services rendered to issue a fiscal receipt or fiscal invoice by using the electronic fiscal device (EFD). According to the Report, five (5) Public Authorities had not complied with the tax laws, as they rendered services to customers and earned revenues in return amounting to TZS 6,502.01 million but without fiscal receipts to customers in respect of the amount received.[834]

Also, eight (8) authorities made payments amounting to TZS 1,965.88 million to service providers without demanding electronic fiscal receipts or fiscal invoices.[835]Authorities that received revenue without issuing EFD receipts included Kariakoo Market Corporation (TZS 1,834.23 million), Dar es Salaam Institute of Technology Company Ltd (TZS 629.60 million), Cashewnut Board of Tanzania (TZS 9.4 million), Cooperative Audit and Supervision Corporation-COASCO (TZS 2,049.76 million), and Arusha Technical College-Production Consultancy Bureau (ATC-PCB) (TZS 1,980.01 million). [836]

Authorities that made payments without demanding EFD receipts included Cashewnut Board of Tanzania (TZS 41.23 million), Mbeya University of Science

[833] The United Republic of Tanzania National Audit Office, Annual General Report of the Controller and Auditor General for the Financial Year 2019/2020, pp.243-244.
[834] Ibid.
[835] Ibid.
[836] Ibid.

and Technology (MUST) (TZS 249.04 million), Mwalimu Nyerere Memorial Academy (MNMA) (TZS 94.83 million), Tabora Urban Water Supply and Sanitation Authority (TZS 100.24 million), Arusha Technical College(ATC) (TZS 159.31 million), University of Dodoma (UDOM) (TZS 853.91 million), Vocational Educational and Training Authority (VETA) (TZS 382.53 million), Tanzania Ports Authority (TZS 84.79 million).[837]

The violation of the law by these entities among other things is because the fines or penalties imposed are not deterrence and hence taxpayers or entities continue to violate the law which in turn contributes to loss of Government revenue. Furthermore, despite reports of the prior years by CAG public entities have not improved tax returns filing system to comply with requirements of tax laws and regulations which contribute to loss of Government revenue, for example, National Construction Council (NCC) and National Insurance Corporation did not file VAT returns for an amount of TZS 38.73 million in the financial year ended June 2018 hence, VAT returns were not submitted to TRA.[838]

Also, Ngorongoro Conservation Area Authority (NCAA) did not charge TZS 63.5 million as VAT on the disposal of assets.[839] In addition, NCAA had under-declared total sales in the VAT returns by TZS 1.6 billion (TZS 125.1 billion instead of TZS 126.7 billion) resulting in under declaration of the output tax of TZS 285 million.[840] National Insurance Corporation (NIC) delayed the remittance of VAT returns which

[837] Ibid.
[838] The United Republic of Tanzania National Audit Office, Annual General Report of the Controller and Auditor General for the Financial Year Ended 30 June 2018, p.180.
[839] Ibid.
[840] Ibid.

were due at the beginning of the year and were submitted in February 2018.[841]

Generally, where the penalties or fines imposed for non-compliance with the law is very low, taxpayers do not feel the deterrence nature of the penalty imposed and hence they will continue to violate the law. For example, CAG issued recommendations to these Public Entities in previous years but they never complied with the recommendations. The conclusion which can be drawn is that if the fines or penalties imposed are severe for non-compliance with the law these entities could have complied with the law as required to guard against loss of Government revenue. Non-compliance could also prompt TRA audit of these entities which will also add a burden to the Government because administrative costs is another way of losing Government revenue.

Another situation that demonstrates that fines or penalties imposed are not deterrence in nature and affect the collection of revenue by TRA are long outstanding cases at various tax appeals machinery.[842]TRA is having long outstanding cases at various tax appeals machinery amounting to TZS 366.03 trillion, of which TZS 363.98 trillion (99.44 percent) is stuck at the Tax Revenue Appeals Board, TZS 1.45 trillion (0.39 percent) at the Tax Appeals Tribunal, and the remaining balance of TZS 605.68 billion (0.17 percent) awaiting ruling at the Court of Appeal.[843]

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[841] Ibid.
[842] Controller and Auditor General, The Annual General Report of the Controller and Auditor General on the Audit of Financial Statements of the Central Government for The Financial Year 2018/2019, National Audit Office, Dar Es Salaam, 2019,p. 83.
[843] Ibid.

Generally, the number of cases increased from 817 cases worth TZS 382.6 trillion in the financial year 2017/18 to 950 cases worth TZS 366.03 trillion in the financial year 2018/19.[844] For the past five years, TRA has been missing the targets with the exception of 2015/2016, and revenue collection trends were below the approved estimate by 8.6 percent on average in the past five years.[845] Among the key challenges contributing to the missing of the target in the collection of revenue is the existence of several pending tax disputes.[846]

Despite the fact that among the reasons for pending tax disputes include limited financial resources in these entities which affect their performance and also affect the amount of tax to be collected by TRA,[847] the penalties or fines imposed are not deterrence in nature, as a result, the number of cases is increasing every year with a negative effect on revenue collection and also adding administrative costs to the Government. Besides, the more the number of cases the higher the administrative costs to the Government since the Government needs to facilitate or finance these entities to handle the cases by the taxpayers or TRA.

Therefore, where the penalties or fines imposed are not of deterrence in nature, the number of offences will increase every year and, in a situation, where TRA has not detected the violation of law, there will be a loss of Government revenue. Besides, the increased number of offences suggests that the penalties or fines imposed are not

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[844] Ibid.
[845] Controller and Auditor General, The Annual General Report of the Controller and Auditor General on the Audit of Financial Statements of the Central Government for The Financial Year 2018/2019, National Audit Office, Dar Es Salaam, 2019,p. 80.
[846] Ibid.
[847] Controller and Auditor General, The Annual General Report of the Controller and Auditor General on the Audit of Financial Statements of the Central Government for The Financial Year 2018/2019, National Audit Office, Dar Es Salaam, 2019,p. 81.

deterrence in nature but also it is an indication that there is no voluntary tax compliance by the citizens or entities. Besides, the more the number of cases the higher the administrative costs to the Government which is also another way of loss of Government revenue by way of financing the institutions or authorities responsible for handling tax cases.

7.2.6 VAT Under The Digital Transaction

Digital transactions are centered on the sale or purchase of items through electronic transactions. The business transactions taking place through the internet or any other medium need to be regulated to collect the revenue as required by the law. The advancement of technology and the growth of the economy in digital aspects require effective governance and administration. Taxation of digital transactions is a big challenge in most developing countries since most of their laws are focusing on traditional ways of doing business without much reference to digital transactions.

The digital economy involves the sale or purchase of goods or services, whether between businesses, households, individuals, or private organizations, through electronic transactions conducted via the internet or other computer-mediated (online communication) networks).[848]The concept of the digital economy has three main components namely e-business, e-business infrastructure, and e-commerce.[849] There are no agreed definitions of the digital sector, products, or transactions, let alone the digital economy.

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[848]Becker, A.S., Electronic Commerce: Concepts, Methodologies, Tools, and Applications, Information Science Reference, New York, 2008, p.2101.
[849] Ibid.

However, the digital economy is sometimes defined narrowly as online platforms and activities that owe their existence to such platforms.[850] In a broad sense, all activities that use digitized data are part of the digital economy and in modern economies, the entire economy.[851] If defined by the use of digitized data, the digital economy could encompass an enormous, diffuse part of most economies, ranging from agriculture to research and development.[852] For example in the Netherlands in 2015, businesses with an online presence accounted for 87 percent of turnover and 86 percent of employment in the business sector.

But when the internet economy was defined more narrowly as online stores, online services, and internet-related ICT services, its turnover share was 7.7 percent, and its share of business employment was 4.4 percent.[853] Several features are increasingly prominent in the digital economy and are potentially relevant from a tax perspective.[854] While these features may not all be present at the same time in any particular business, they increasingly characterize the modern economy.

The features of the digital economy include mobility, with respect to the intangibles on which the digital economy relies heavily on users. Another feature is that business functions as a consequence of the decreased need for local personnel to perform certain functions as well as the flexibility in many cases to choose the

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[850] IMF, Measuring the Digital Economy Report, IMF, Washington, 2018, p.7.
[851] Ibid.
[852] Ibid.
[853] Ibid.
[854] ECD (2014), Addressing the Tax Challenges of the Digital Economy, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2014, p.84.

location of servers and other resources.[855] There is also reliance on data, including, in particular, the use of so-called big data. It is also characterized by network effects and it is understood with reference to user participation, integration, and synergies.[856] Besides, there is the use of multi-sided business models in which the two sides of the market may be in different jurisdictions. There is also a tendency toward monopoly or oligopoly in certain business models relying heavily on network effects and volatility due to low barriers to entry and rapidly evolving technology.[857]

Under the digital economy, there is the internet which facilitates transactions such as ordering goods and services.[858] In addition, the internet has expanded the reach of smaller businesses, enabling them to reach markets that would not have been possible to reach without its existence. As a result, the number of firms carrying out business transactions over the internet has increased dramatically over the last decade. Besides, an online payment service provides a secure way to enable payments online without requiring the parties to the transaction to share financial information.[859]

Taxation of electronic transactions in Tanzania is affected by the weaknesses of the value added tax law which has not articulated well the taxation of the digital transactions as a result the country is losing a lot of revenue from the taxation of the digital transactions. The challenges in respect of taxation of the digital transactions

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[855] Ibid.
[856] Ibid.
[857] Ibid.
[858] OECD (2014), Addressing the Tax Challenges of the Digital Economy, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, 2014, p.75.
[859] Ibid.

includes problem of determining the value of the supply of goods and services.There are difficulties in measuring digital transactions and their value as well. This is caused by the lack of a universally accepted definition of the meaning of digital economy which makes international comparisons difficult.

The measurement of value in the digital economy in most cases covers three levels which are the digital sector, the digital economy, and the digitalized economy.[860] The use of the system of national accounts to measure the digital economy can present conceptual challenges associated with translating the new economic activities into statistical data. One challenge concerns the intangible nature of digital data and intelligence, which are major determinants of value creation in the digital economy.[861]In this context, accounting for related economic activities in the data-driven economy becomes problematic. [862]

It is also difficult to capture statistically how digitalization is having an impact on activities outside the production boundaries of the pure digital sector.[863] Moreover, some activities in the digital economy such as the creation of content or exchange of digital data may be monetized only indirectly for example by selling targeted advertising space online.[864] This applies to many online platforms that provide free-for-use services for the right to use the data generated by users of online services.[865]

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[860] United Nations, Digital Economy Report, United Nations Publications, New York, 2019, p.49.
[861] Ibid.
[862] Ibid.
[863] Ibid.
[864] United Nations, Digital Economy Report, United Nations Publications, New York, 2019, p.51.
[865] Ibid.

The transnational nature of major digital platforms also poses measurement challenges, especially regarding where to locate an economic transaction.[866] In the absence of an internationally agreed definition of the digital economy, and standardized methodologies to measure it, assessments of value within that economy must be based on partial national and sectoral statistical data.[867] The sparsity of statistical data is problematic for various reasons. Importantly, given the broad reach and scope of the digital economy, which affects all sectors of countries' economies, any assessment would require a systematic analysis of multiple and connected variables.

The paucity of data also hampers international comparisons. Several initiatives to remedy this situation are underway at the international and regional levels. However, they remain insufficient and are unable to cope with the rapid evolution and global implications of the digital economy. This implies that more needs to be done to enable better measurement of that economy.[868]This should include dedicated support to low-income countries to improve their statistical capacities to produce relevant information.[869]

Generally, the VAT law in Tanzania mainly focuses on the traditional way of doing business and with less focus on taxation of digital transactions. It is difficult to determine the value of the supply of goods and services taking place in digital form as a result it is also difficult to determine the threshold of the person as well as

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[866] Ibid.
[867] Ibid.
[868] Ibid.
[869] Ibid.

taxation of the transactions which are taking place in digital form.[870] Ascertaining the volume of supply of goods and services has not been well articulated by the Value Added Tax Act in Tanzania.

Besides there are also other challenges in respect of collecting value added tax from the digital transactions which include problem in defining the digital economy, lack of unilateral approaches for taxation of the digital economy, challenges in respect of place where the value is created and payment of taxes, lack of physical presence of some activities and also the nature of assets involved are intangible assets, which are difficult to value and measure.[871] There is also the problem of taxing rights which affects among other things profits allocation, especially for countries with where Tanzania does not have tax agreements with the respective countries.

All these challenges which have not well been articulated by the value added tax law in Tanzania make the Government lose revenue from the taxation of digital transactions. Moreover, one of the rules governing taxation is the establishment of permanent establishment and place of supply of goods and services to impose value added tax in a particular transaction. The imposition of value added tax on online sales constitutes a big challenge since in most cases there is no intermediary involved because the digital transaction can be carried out through emails, websites, distance selling, and digital downloads.[872]

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[870] Data obtained from the Questionnaire filled on May 25th, 2020 by the Head of Regulatory Affairs from the National Bank of Commerce within the Dar es Salaam Region.
[871] Data obtained from thirteen (13) TRA officers within the Dar es Salaam Region.
[872] Eli, H., Tax Challenges in the Digital Economy, European Parliament Policy Department, 2016,p. 30.

The collection of value added tax in the digital transactions causes a lot of challenges, especially where there is no physical presence for example it is difficult to collect value added tax in Business to Consumer (B2C) transactions if the foreign online vendor has no physical presence and does not register for value added tax in the market country.[873]The value added tax law in Tanzania requires a person to register for value added tax and where a person has not registered it is not possible to engage in the collection of value added tax on behalf of TRA. There is an interplay between other revenue laws and value added tax law.

The Income Tax Act under section 3 and sections 70, 71, and 72 provides for the permanent establishment and the rules governing the same. This means that for a business to be taxed it must have a place of business in Tanzania i.e permanent establishment. After having a permanent establishment as provided by the Income Tax Act is where now a business can register for value added tax according to the threshold and other requirements provided by the Value Added Tax Act and the regulations made there under.

In most cases, operations of the digital transaction do not require permanent establishment for it to operate since everything is done online, as a result, most countries including Tanzania are losing a lot of revenue since their laws are offline focusing on the traditional way of doing business without addressing legal challenges caused by the mode of operation and taxation of the digital transactions.

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[873] Ibid.

The concept of permanent establishment is not relevant for digital companies since it does not necessitate a physical presence. Open markets, intangibles, and the internet make it possible for businesses to supply markets and generate virtual profits without any need for legal or physical presence at the local level.[874] The permanent establishment can be described as the country, where the source of income of a business is generated. The source of income is the jurisdiction, in which value creation occurs and therefore has taxing right in respect of the income.[875]

Besides, traditionally, companies have a physical presence or a nexus in a given jurisdiction, where they are obliged to pay their taxes. E-commerce eliminates the need for a physical presence or nexus of a company to have access to its customers there.[876]The main challenges relate to the so-called nexus and profit-allocation rules.[877] Under the existing system, taxation is based on the physical presence or permanent establishment of companies in a country. This is also known as the nexus, or the connection between a business and the jurisdiction it would come under for taxation purposes.[878]

However, with increasing digitalization, many economic activities are taking place online without the need for a physical presence. Moreover, user participation on the

[874] Ibid, p.23.
[875] Ibid.
[876] Ibid,p.17.
[877] The OECD is currently leading global efforts to reach an international consensus. In 2015, in the context of the OECD/G20 BEPS Project, proposed 15 actions to respond to the problems of base erosion and profit shifting (BEPS) of which action 1 was Addressing the tax challenges of the digital economy (OECD, 2015). These were designed to close some of the loopholes that enable transfer pricing, in particular; but many of those loopholes still exist, and relatively little attention was given to several other problems involving the digital economy. While it has been recognized that the BEPS project represents significant progress, concerns have been raised that it has not addressed the roots of the problem, as companies continue to be able to shift profits to low-tax jurisdictions using transfer pricing (ICRICT, 2019; BEPS Monitoring Group, 2017). Further efforts to address this issue have been in the works since then, but with little consensus to date. Refer to the First draft of the UNCTAD Manual for the Production of Statistics on the Digital Economy 2020 Revised Edition.
[878] Eli, H., Tax Challenges in the Digital Economy, European Parliament Policy Department, 2016,p.142.

internet plays an important role in value creation. As this has significant implications for the concept of presence for taxation purposes, it is important to find ways to tax appropriately in jurisdictions where the value is created. A new approach is needed, which could look at digital presence in a given country based both on supply and demand (user) factors.[879]

Furthermore, payment services in digital transaction is another challenge in respect of the collection of value added tax in digital transactions. Paying for online transactions traditionally required providing some amount of financial information, such as bank account or credit card information, to a vendor, which requires a high degree of trust that is not always present in the case of an unknown vendor, particularly in the case of a consumer to consumer transaction.[880] Online payment service providers help address this concern by providing a secure way to enable payments online without requiring the parties to the transaction to share financial information. [881]

A payment service provider acts as an intermediary typically using the software as a service model between online purchasers and sellers, accepting payments from purchasers through a variety of payment methods, including credit card payments or bank-based payments like direct debit or real-time bank transfers.[882] The service provider processes those payments and deposits the funds to the seller's account.

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[879] Ibid.
[880] OECD (2014), "The digital economy, new business models and key features", in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris.p.77.
[881] Ibid.
[882] Ibid.

Electronic payment systems offer several benefits for users, such as protection against fraud, since the seller and buyer do not exchange sensitive information.[883] Besides, there is faster delivery of payment compared with traditional payment methods and also in many cases, there is the ability to transact in multiple currencies.[884] Payment service providers typically charge a fee for each transaction completed, which can be either a fixed charge or a percentage of the value of the transaction, though some payment service providers also charge monthly fees or setup fees for certain additional services.[885] The digital economy has also given rise to virtual currencies that can be used to purchase goods and services from businesses that agree to accept them, acting as an alternative to payment services.[886] In some cases, exchanges have arisen to allow the purchase and sale of these virtual currencies for real currency.[887]

The value added tax law in Tanzania has not well articulated the issue of payment service providers acting as an intermediary typically using the software as a service model between online purchasers and sellers who are accepting payments from purchasers through a variety of payment methods. There are circumstances where there is even more than one payment service provider and this complicates the matter more since they can operate from different tax jurisdictions with different requirements concerning registration for value added tax. The VAT law in Tanzania requires a person to register for value added tax when it has a threshold of one

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[883] Ibid.
[884] Ibid.
[885] Ibid.
[886] OECD (2014), "The digital economy, new business models and key features", in Addressing the Tax Challenges of the Digital Economy, OECD Publishing, Paris.p.78.
[887] Ibid.

hundred million and above.

The tracing of these payment service providers with different software models operating online from different tax jurisdictions is very difficult, especially where Tanzania doesn't have tax agreements with the states where these payment service providers are based or operating their businesses. Besides, there is also the question of taxing rights which is governed by the principle of source and residence principle or principle of origin and destination principle. The way these principles are interpreted or applicable varies from one tax jurisdiction to another hence may cause double taxation or leave some of the transactions tax-free.

Failure of the VAT law to articulate well the issue of the payment service provider is causing the government to lose a lot of revenue from the digital transactions in respect of value added tax. It is a wake-up call to the government to take unilateral measures and also where necessary to enter into tax agreements with other tax jurisdictions to share information and also resolve the issue of taxing rights over different digital transactions taking place in the respective countries. The government is losing revenue for failure to address well the issue of registration of online payment service providers which in turn affects the realization of actual supply chargeable with VAT especially when there are several intermediary services involved such as delivery fees, and transport fees, and storage fees.[888]

The Government of Tanzania, after realizing the problem of taxation of digital transactions amended the law to accommodate taxation of digital transactions.

[888] Data obtained from thirteen (13) TRA officers within the Dar es Salaam Region.

Section 59 of the Finance Act 2022 amended section 3 of the Income Tax Act, Cap 332 by defining the term business to include a transaction or activity carried out through the internet or an electronic means including an electronic service or transaction conducted in the digital market place regardless of the manner in which such transaction is carried out. Further, the law defines digital market place to mean a platform which enables direct interaction between buyers and sellers of electronic services.

Moreover, there arealso the Income Tax (Non Resident Electronic Services Provider) Regulations, 2022 providing for registration of non resident service providers. Likewise, there are the the Value Added Tax (Registration of Non-Resident Electronic Service Suppliers) Regulations, 2022 providing for registration non resident electronic service provides in respect of value added tax. Despite the step taken by the Government to address the problem of taxation of digital transactions the law to a large extent has concentrated on procedural issues regarding registration of non residents with little focus on substantive matters affecting taxation of digital transactions. For example the law has not addressed well the identified challenges affecting the taxation of digital transactions. Besides, the law has not provided the taxation of data bundles. A holistic approach is required for both procedural and substantive matters in addressing the challenges in taxation of digital transactions.

Generally, the trend of collection of revenue in Tanzania has been affected among other things by the identified challenges including challenges related to taxation of the digital transactions. These challenges affected also the collection of revenue from value added tax. For example, during the financial year 2018/2019, TRA collected a

total of TZS 15,744,608,757,106 against the set target of TZS 18,297,537,353,745 reflecting an under-collection of TZS. 2,552,928,596,639 equivalents to 14 per cent of total revenue targets.[889] These total revenue figures exclude collection from Treasury vouchers with respect to payments for tax exemptions and refunds which amounted to TZS 20,052,472,109.[890] Besides, the trend of revenue collection over the past five years was generally below the approved estimates except for the year 2015/16 where actual collections exceeded the target by 0.13 percent.

Further, in the financial year 2018/19, the performance of TRA recorded a downward movement in terms of the tax yield (tax to GDP ratio) of 11.4 percent as opposed to a 12.8 percent in 2017/2018.[891] This decline in tax yield calls for the government to continue exerting more efforts in increasing revenue collection.[892] Furthermore, the government had projected to collect TZS 34.88 Trillion for the income year 2020/21.[893] As of April 2021, the amount collected was TZS 24.53 trillion, equivalent to 86% of the targeted revenue collection.[894]

Internal revenue collected by TRA amounted to TZS 14.54 trillion, which is equivalent to TZS 86.9% of the targeted revenue for the period.[895] Apart from the fact that the collection of revenue by TRA has been affected by other factors not reaching the set target but challenges in taxation of digital transactions have also

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[889] Controller and Auditor General, The Annual General Report of the Controller and Auditor General on the Audit of Financial Statements of the Central Government for the Financial Year 2018/2019, National Audit Office, Dar Es Salaam, 2019, p.77.
[890] Ibid.
[891] Controller and Auditor General, the Annual General Report of the Controller and Auditor General on the Audit of Financial Statements of the Central Government for the Financial Year 2018/2019, National Audit Office, Dar Es Salaam, 2019, p.79.
[892] Ibid.
[893] The Budget Speech 2020/2021 by the Minister of Finance and Planning.
[894] Ibid.
[895] Ibid.

contributed to not reaching the set target by the Government in the collection of revenue.[896]

Furthermore, from 2011 to 2013, there was low VAT collection.VAT revenue in Tanzania amounted to 3.3 percent of GDP which is a full percentage point of GDP below the average of EAC countries (4.4 percent of GDP).[897] This is almost equivalent to the entire gap between the overall tax revenue to GDP in Tanzania (11.9 percent of GDP) and the corresponding EAC average (13.1 percent of GDP).[898]TRA should consider how best to collect revenues from new, emerging industries, such as the digital economy by addressing the legal challenges affecting the collection of revenue.[899]

7.3 Conclusion

The challenges identified and discussed are inherited from the law. These challenges include VAT registration threshold, high VAT rate, discretional powers of the Commissioner General in respect of value added tax registration, VAT Refund claims, VAT offences and penalties, and VAT under the digital transaction. The failure of the VAT law in Tanzania to address the challenges identified contributes to loss of Government revenue. The administration of the VAT and realization of the objectives for the introduction of VAT will be realized by benchmarking our law with international standards and principles. Also, standards and principles can be

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[896] Data collected from fifteen (15) tax experts from audit firms on 14th May 2020 and 26th May 2021 within the Dar es Salaam Region.

[897] IMF, IMF Country Report No. 16/254: The United Republic of Tanzania Selected Issues, IMF, Washington, 2016, p.17.

[898] Ibid.

[899] World Bank Group, The World Bank Group Macroeconomics, and Fiscal Management Global Practice Africa Region Report: Tanzania Economic Updates, Issue Number 7, 2015, p.41.

drawn from regional legal instruments for the improvement of the VAT law in Tanzania.

CHAPTER EIGHT

CONCLUSION AND RECOMMENDATIONS

8.1 Introduction

This chapter presents the conclusion of the study which essentially provides the main insights and key findings of the study. It also provides recommendations and suggestions for future research.

8.2 Main Insights of the Study and Key Findings

The study has carried out an in-depth examination and analysis of value added tax law in particular legal challenges facing the administration of value added tax in Tanzania. The study sought to address the potentials of losing government revenue because of the legal challenges identified under the law governing VAT. These are value added tax registration threshold, value added tax rate, taxation of the digital transactions, value added tax refund claims, the powers of the Commissioner General and value added tax offences and penalties. The main focus of the study is an examination of value added tax law and the extent to which is causing to loss of government revenue and recommendations for necessary legal reforms required in addressing the problem. The study was guided by the following research questions:-

(i) Do the existing value added tax law likely to contribute to the loss of government revenue?

(ii) To what extent Tanzanian value added tax law is in line with international principles and standards?

(iii) What are the necessary legal reforms required in the value added tax law to address the loss of government revenue?

The study mainly employed doctrinal legal research methodology supplemented by empirical and comparative legal research methodology. The data collection techniques used are interviews and questionnaires. The kinds of literature cited are from other jurisdictions with the few focusing on Tanzania but most of them are not particularly dealing with the administration of value added tax in Tanzania. Although they are relevant in this study it has been found that they have not well addressed in depth the identified challenges and effects related to value added tax administration in Tanzania. The value added tax law has not well articulated the challenges identified and hence causing loss of Government revenue that could have been used to finance government expenditure and provision of social services.

Generally, the following are the main summary of the research findings:-

First, the study found that the set criteria for value added tax registration under the Value Added Tax Act exclude a large number of taxpayers as a result the government is losing a lot of revenue and hence affect the realization of the objectives of the introduction of value added tax in Tanzania. Besides, the study compared the total number of taxpayers and the total amount of revenue collected versus the total number of registered VAT taxpayers and found that TRA has registered a very low number of VAT taxpayers when the comparison is made to the total number of taxpayers, the total population in Tanzania, as a result, the Government is losing a lot of revenue from VAT.

Second, the Value Added Tax Act in Tanzania does not reflect well the international principles and standards governing value added tax as a result it contributes to the loss of Government revenue. This is because the VAT Act in Tanzania in some areas

is not certain and simple. A good example can be cited from the powers given to the Commissioner General as indicated by section 33(b) of the Value Added Tax Act. The section allows the Commissioner General where the Commissioner General is satisfied that there is good reason including protection of Government revenue to register the person for VAT regardless of the person's turnover. The law just provides including protection of Government revenue but it doesn't define what amount to Government revenue and also what are other circumstances in which the Commissioner General is mandated to register any person irrespective of the turnover of the person. All these are left to the wisdom of the Commissioner General to decide. This is contrary to Rule 1.16 of the OECD VAT/GST Guidelines 2017 which provides for neutrality, efficiency principle, certainty and simplicity principle, effectiveness, fairness, and flexibility principle.

Third, the tax authority instead of concentrating on how to bring more taxpayers on board and also come up with new ideas on how to widen the tax base and realize the objectives for the introduction of value added tax is concentrating on increasing the threshold. The argument by the tax authority for increasing the threshold is for the purpose of managing or controlling the so-called administrative costs and compliance costs. The act of concentrating on increasing the threshold is against the principle of effectiveness, fairness, and neutrality principle. It affects business competition and also increases compliance costs to the taxpayers and also creates a burden on the final consumers.

Fourth, the study found that the threshold set is not in different categories or classes of businesses. Also, the absence of multiple VAT rates in the imposition of value

added tax in most cases has a negative effect on voluntary tax compliance. Equally, it encourages tax evasion since people feel that the tax system is not fair. This makes them design mechanisms for tax evasion and avoidance. Tax evasion and avoidance contribute to the loss of Government revenue. Also, the threshold set plus the rate of value added tax affects the individual saving opportunities and investments as a result many opt to use available loopholes in the law to avoid the payment of taxes. Further, having the threshold and value added tax rate which is not fair excludes more taxpayers instead of bringing them on board for distribution of the tax liability.

Fifth, the study further found that a large part of the economy in Tanzania is in the informal sector as indicated in the NBS reports' and the threshold has been set which mainly focuses on the formalized business. The registered total number of value-added taxpayers versus the total number of taxpayers is evidence that only a few have been registered by TRA for value added leaving out of a big population who are in the informal sector since their businesses are not formalized. This implies that with the set threshold it is obvious that a large number of taxpayers are not taken on board as a result the Government is losing a lot of revenue from value added tax in the informal sector.

Sixth, the study found that by continually focusing on the few registered taxable persons and increasing the threshold on the argument that it is because of administrative costs and compliance costs in the midst of the economy which the large part of it is in the informal sector as indicated without taking appropriate measures to formalize the informal sector and also without putting the threshold in classes according to the sizes of businesses to take more people on board, contribute

to a large extent loss of Government revenue.

Seventh, the study found that the Value Added Tax Act in Tanzania is the law that mainly focuses on the traditional way of doing business and with less focus on taxation of the digital transactions. The law has not articulated well how to determine the value of supply of goods and services taking place in digital form as a result it becomes difficult to establish the threshold of the person as well as taxation of the transactions which are taking place in digital form. Also, there is the problem of taxing rights which affects among other things profits allocation, especially for countries with where Tanzania does not have tax agreements with the respective countries.

All these challenges which have not well been articulated by the value added tax law in Tanzania make the Government lose revenue from the taxation of digital transactions. Further, the study found that the law doesn't define the digital economy, and also it doesn't provide well for unilateral approaches to taxation of the digital transactions. Besides, there are also challenges in respect of place where the value is created and payment of taxes, lack of physical presence of some activities, and also the nature of assets involved are intangible assets, which are difficult to value and measure. These challenges negatively affect the taxation of digital transactions and hence the loss of Government revenue.

Eighth, the study found that the value added tax law in Tanzania requires a person to register for value added tax, and where a person has not registered it is not possible to engage in the collection of value added tax on behalf of TRA. There is the

interplay between other revenue laws and value added tax law. The Income Tax Act under section 3 and sections 70, 71, and 72 provides for the permanent establishment and the rules governing the same. This means that for a business to be taxed in most cases it must have a place of business in Tanzania i.e permanent establishment. In most cases, operations of the digital transactions do not require permanent establishment for it to operate since everything is done online, as a result, most countries including Tanzania are losing a lot of revenue since their laws are offline focusing on the traditional way of doing business without addressing legal challenges caused by the mode of operation and taxation of the digital transactions.

Ninth, the study found that the value added tax law in Tanzania has not well articulated the issue of payment service providers acting as an intermediary typically using software as a service model between online purchasers and sellers who are accepting payments from purchasers through a variety of payment methods. Besides, there are circumstances where there is even more than one payment service provider and this complicates the matter more since they can operate from different tax jurisdictions with different requirements concerning registration for value added tax.

The tracing of these payment service providers with different software models operating online from different tax jurisdictions is very difficult, especially where Tanzania doesn't have tax agreements with the states where these payment service providers are based or operating their businesses. There is also the question of taxing rights which is governed by the principle of source and residence principle or principle of origin and destination principle. The way these principles are interpreted or applicable varies from one tax jurisdiction to another hence may cause double

taxation or leave some of the transactions tax-free.

Tenth, the study found that the failure of the Value Added Tax Act to articulate well the issue of the payment service provider is causing the Government to lose a lot of revenue from digital transactions in respect to value added tax. Besides, the government is losing revenue for failure to address well the issue of registration of online payment service providers in the law which in turn affects the realization of actual supply chargeable with VAT especially when there are several intermediary services involved such as delivery fees, transport fees and storage fees.

Eleven, the study found that the value added tax law in Tanzania has not well articulated well the methods to detect, investigate, and prevent value added tax abuse in refund claims which causes the loss of Government revenue. There is also a delay in the verification of refund claims which affects the timely payment of refund within the prescribed period. The delay in payment of refund is a reflection that the refund system is not effectively working as required. Delaying in payment of value added tax refund to the respective taxpayer's business affect the operations of the business which indirectly affect the collection of revenue by TRA since payment of different type of taxes depend on the performance of the business. The money tied up with TRA could have been used to invest and expand the business portfolio for the growth of the economy and payment of the taxes required by different revenue laws.

Twelve, the study found that the delay in payment of refund has been caused by the lack of a provision in the law that will make sure that funds needed for refund are

always kept in a designated Special Fund in terms of Article 135 of the Constitution of the United Republic of Tanzania of 1977 as amended and section 12 of the Public Finance Act. Practically money for tax refunds must be approved through a Government budget in which it is impossible to get the real figure needed as the budget depends on the revenue forecast, and the account currently used is just a normal account whereby its funds are returned in a Consolidated Fund after the end of a financial year.

Thirteen, the study found that the penalties or fines imposed are not of deterrence in nature and the number of cases is increasing every year. The number of cases increased from 817 cases worth TZS 382.6 trillion in the financial year 2017/18 to 950 cases worth TZS 366.03 trillion in the financial year 2018/19. Among the key challenges contributing to the missing target in the collection of revenue is the existence of several pending tax disputes. The increased number of cases suggests among other things that the penalties or fines imposed are not deterrence in nature. Also, it is an indication that there is no voluntary tax compliance by the citizens or entities. Besides, the more the number of cases the higher the administrative costs to the Government which is also another way of loss of Government revenue by way of financing the institutions or authorities responsible for handling tax cases.

Last, the study found that the powers given to the Commissioner General under section 33(b) of the Value Added Tax Act regarding registration of persons for value added regardless of the person's turnover contradict with taxation policy that tax law should be clear so that the taxpayers may know the consequences of it and comply accordingly. The powers given under this section empower the Commissioner

General to determine in respect of registration of persons basing on his assessment and reasoning best known to him with the exclusion of taxpayers. The taxpayers just suffer the consequences of the decision of the Commissioner General which may result in unnecessary tax disputes with administrative costs and compliance costs.

Also, the power is given to the Commissioner General to register any person if he has good reason including protection of government revenue without considering the issue of turnover of the person contradicts with the principles of certainty and simplicity and also the principle of effectiveness and fairness as provided by the OECD VAT/GST Guidelines 2017. It is not clear to the taxpayers as to what amounts to good reason and also what amounts to the protection of government revenue. The procedure invoked by the Commissioner General in the registration of persons for protection of government revenue is not also clear. Taxpayers can not anticipate the tax consequences of the Commissioner General decision. Besides, this affects morale in payment of taxes and also affects voluntary compliance in payment of taxes and hence loss of revenue to the Government. If the tax system is not fair to the taxpayers this will encourage tax evasion and tax avoidance as a result in loss of revenue to the government.

8.3 Recommendations

Generally, recommendations given, focuses on reforms required in the value added tax law in Tanzania. There are recommendations concerning the amendment of the Value Added Tax Act to be in line with the best practices provided by regional and international legal instruments. The study also provides recommendations to different institutions or authorities dealing with tax matters, especially issues related

to the administration of value added tax in Tanzania.

The suggested amendment of the Value Added Tax Act in Tanzania should take into account the following aspects:-

First, the Value Added Tax Act should be amended by providing provisions on the registration threshold which considers different categories or classes of businesses depending on the type and turnover of the business. This helps to accommodate more taxpayers on board and hence increases the collection of revenue. One of the objectives of the introduction of value added tax in Tanzania was to widen the tax base, therefore, having the threshold according to the type of business and turnover will widen the tax base and also increase Government revenue collection hence realization of the objectives of the introduction of value added tax in Tanzania. For example the threshold for taxpayers dealing with both goods and services can be TZS100, 0000, 000 and above and for those dealing with provisions of services only can be TZS 40,000,000 and above. For those dealing with goods only can be TZS 70,000,000 and above. This will accommodate more taxpayers and widen the tax base for collection more revenue.

Second, the value added tax rate should be in multiple rates or reduced according to the type or category of business and turnover of the business. This helps to distribute the tax burden to different final consumers depending on their consumption. It encourages also voluntary tax compliance since taxpayers feel that the tax system is fair since it accommodates different persons and also the tax burden is distributed to many people. For example VAT rates can be 15% for those taxpayers dealing with both goods and services and for those dealing with services only can be 12%.

Moreover, for those dealing with goods only VAT rate can be 13%.

Third, the Value Added Tax Act should have specific provisions governing the taxation of digital transactions. The provisions among other things should provide for the meaning of the digital economy, and how to determine the value of the supply of goods and services taking place in digital form. It should also provide unilateral approaches for the taxation of digital transactions. It should cover also where the value is created and the payment of taxes. It should recognize taxation of digital activities without necessarily having a physical presence or place of the business in Tanzania. The law also should articulate well the issue of taxation of intangible assets, payment services, and generally the mode of operation and taxation of the digital transactions. These amendments help in the taxation of digital transactions and increase Government revenue collection, especially in respect to value added tax.

Fourth, the value added tax law in Tanzania should articulate well the methods to detect, investigate, and prevent value added tax abuse in refund claims which causes loss of Government revenue. This will be successful if it goes along with the capacity building of TRA officials concerning how to detect, prevent and investigate the submission of false claims which result in payment of refund claims which are not genuine. This helps to avoid loss of Government revenue.

Fifth, there should be a provision in the law in respect of having the funds needed for refund of VAT claims. The funds should be kept in a designated Special Fund in terms of Article 135 of the Constitution of the United Republic of Tanzania of 1977

as amended and section 12 of the Public Finance Act, 2001. This ensures that the VAT claims are paid timely without any delay and negative effects on businesses.

Sixth, the provisions under the Tax Administration Act providing for value added tax offences and penalties should be amended. The amendments should provide for penalties or fines which are deterrence in nature. The consequences caused to the community for lack of provision of social services because of non-compliance of the law which in turn lead to loss of Government revenue call for heavy punishment to those who violate the law. For example, incase a person is found guilty of tax offences the sentence can range from 10 years to 30 years imprisonment as the court may determine or payment of the amount due twice plus interest as the court may determine basing on the market forces.

Seventh, the provisions governing powers of the Commissioner General in respect of registration of persons where he has good reason to do so including protection of Government revenue should be amended. The amendment should provide clearly what amounts to good reason and protection of Government revenue. It should also provide the issue of threshold instead of just giving the mandate to the Commissioner General to register persons without considering the issue of turnover of the person.

The lack of clear provisions in the law makes the taxpayers suffer the consequences of the decision of the Commissioner General which may result in unnecessary tax disputes with administrative costs and compliance costs. The law should provide the procedure invoked by the Commissioner General in the registration of persons for

the protection of government revenue. This helps the taxpayers to anticipate the tax consequences of the Commissioner General decision. Besides, where the procedures are very clear it will increase morale in payment of taxes and also voluntary compliance in payment of taxes and hence reduce loss of Government revenue. If the tax system is not fair to the taxpayers this will encourage tax evasion and tax avoidance as a result loss of Government revenue.

Last, the Value Added Tax Act should be amended to reflect well the international standards and principles. For example, principles of tax policy which are neutrality principle, efficiency principle, certainty and simplicity principle, effectiveness and fairness principle, and flexibility principle. The Value Added Tax Act in Tanzania doesn't reflect well the international standards and principles governing value added tax as a result it contributes to loss of Government revenue and hence calls for amendment of the same.

Apart from the recommendations in respect of amendments to the Value Added Tax Act, there are also recommendations to TRA. Herein below are the recommendations: -

First, the Authority should concentrate on how to bring more taxpayers on board. It should also come up with new ideas on how to widen the tax base and realize the objectives for the introduction of value added tax. The Authority instead of concentrating on increasing the threshold and the value added tax rate on the basis that it is managing or controlling the so-called administrative costs and compliance costs should design a well manageable mechanism that balances between the administrative costs and compliance costs. This will widen the tax base and ensure

that enough revenue from value added tax is collected for the Government.

Second, TRA should increase the rate of provision of tax eduction to taxpayers and the general public. This will increase the leval of awareness of tax matters to the public and likely to influence voluntary tax compliance and morale in payment of taxes as provided by different revenue laws. Third, TRA should strengthen the capacity of their officers generally in the interpretation and enforcement of tax laws. Where the officers are well acquainted with the law it becomes easy to interpret and enforce the same according to the spirit of the law. This assists to avoid unnecessary tax disputes between the tax authority and taxpayers. Tax disputes cause a delay in the payment of revenue to the Government and also create a burden to the Authority due to administrative costs and compliance costs on the side of the taxpayers.

Last, TRA should join more different tax forums and also should advise the Ministry of Finance and Planning to enter into tax agreements with different countries. This will assist in the exchange of information in tax matters and also resolve issues concerning taxing rights, especially for cross-border transactions. It will also assist in addressing problems of tax evasion and tax avoidance since the countries will be exchanging information in respect of tax matters concerning their jurisdictions.

8.4 Suggestions for Future Research

Similar research can be conducted with the major focus on legal challenges facing value added tax in EAC countries with international benchmarks and coming up with model law for EAC countries governing value added tax.

8.5 Conclusion

Generally, the VAT was introduced in Tanzania for the purpose of widening the tax base so as to increase the collection of revenue for the provision of social services and financing of Government expenditure. Despite, this good intention, the objective seems not to have been realized because of the challenges identified affecting the administration of the value added tax in Tanzania. This call for a need to amend the law governing VAT as recommended for the purpose of realizing the objective for the introduction of the VAT in Tanzania. This will contribute for the collection of more revenue for the Government.

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APPENDIX

Research Clearance Letters

THE OPEN UNIVERSITY OF TANZANIA

DIRECTORATE OF POSTGRADUATE STUDIES

P.O. Box 23409
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Our Ref: PG201705932

5th December 2019

Commissioner General,
Tanzania Revenue Authority,
Ilala CBD,
P. O. Box 11491
DAR ES SALAAM.

RE: RESEARCH CLEARANCE

The Open University of Tanzania was established by an Act of Parliament No. 17 of 1992, which became operational on the 1st March 1993 by public notice No.55 in the official Gazette. The Act was however replaced by the Open University of Tanzania Charter of 2005, which became operational on 1st January 2007.In line with the Charter, the Open University of Tanzania mission is to generate and apply knowledge through research.

To facilitate and to simplify research process therefore, the act empowers the Vice Chancellor of the Open University of Tanzania to issue research clearance, on behalf of the Government of Tanzania and Tanzania Commission for Science and Technology, to both its staff and students who are doing research in Tanzania. With this brief background, the purpose of this letter is to introduce to you **Mr. SAITEU, Baraka Reg No: PG201705932** pursuing **Doctor of Philosophy (PhD).**

We here by grant this clearance to conduct a research titled ***"The Administration of Value Added Tax in Tanzania"*** He will collect his data at your area from 6th December 2019 to 30th April 2020.

In case you need any further information, kindly do not hesitate to contact the Deputy Vice Chancellor (Academic) of the Open University of Tanzania, P.O.Box 23409, Dar es Salaam.Tel: 022-2-2668820.We lastly thank you in advance for your assumed cooperation and facilitation of this research academic activity.

Yours Sincerely,

Prof.Hossea Rwegoshora
For:VICE CHANCELLOR
THE OPEN UNIVERSITY OF TANZANIA

MAMLAKA YA MAPATO TANZANIA

Ref. No. JA.118/435/01 31st October, 2022

The Open University of Tanzania,
P.O. Box 23409,
Kinondoni Centre,
Kinondoni District,
DAR ES SALAAM.

Re: Request for Tax Statistics Reports from 2018/2019 to 2020/2021 of Tanzania Mainland

Reference is made from your letter dated **21st February, 2022** requesting Tax Statistics Reports from 2018 to 2021 of Tanzania mainland to finalize your PhD studies in Law Program at Open University.

With this letter, kindly receive the requested data as shown in **Table 1, 2 and 3** of this letter.

"Together We Build Our Nation"

A. J. Kidata
Commissioner General