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# Towards an Effective Taxpayer Complaint Handling Mechanism: The Case for a Tax Ombudsman in Uganda

Solomon Rukundo

March 2023

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# Towards an Effective Taxpayer Complaint Handling Mechanism: the Case for a Tax Ombudsman in Uganda

Solomon Rukundo

## Summary

It is increasingly common in many jurisdictions around the world to find an independent government office where complaints against the tax administration can be submitted. Traditional mechanisms, such as tribunals and courts, may not be effective, as these are usually very slow and costly. Many governments have developed the institution of a tax ombudsman to safeguard taxpayers' rights and improve the overall tax system.

This paper makes the case for the establishment of a tax ombudsman in Uganda. It begins with examining the concept of an ombudsman in general, and a tax ombudsman in particular. The paper proceeds to highlight the limitations of the Uganda Revenue Authority, the country's tax administrator, and its existing oversight bodies, which justify the need for a tax ombudsman. The paper further elaborates on other justifications for the establishment of this office. The paper then briefly examines five country case studies of a tax ombudsman in operation – the United Kingdom, United States, Australia, South Africa and Tanzania. Drawing from these case studies and other literature, the paper sets out the ideal powers and roles for a tax ombudsman in the Ugandan context.

**Keywords**: Uganda; tax administration; complaints; revenue mobilisation; ombudsman; tax reform.

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# Contents

# Acknowledgements

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# Acronyms

| | |
|---|---|
| ATO | Australian Taxation Office |
| CIAT | Inter-American Center of Tax Administrations |
| COSASE | Committee on Public Accounts-Commissions, Statutory Authorities and State Enterprises |
| CSC | Client Service Charter |
| DRMS | Domestic Revenue Mobilisation Strategy |
| HMRC | His Majesty's Revenue and Customs |
| IBFD | International Bureau of Fiscal Documentation |
| IGG | Inspectorate General of Government |
| IGT | Inspector-General of Taxation |
| IMF | International Monetary Fund |
| IRS | Internal Revenue Service |
| KACITA | Kampala City Traders' Association |
| MoFPED | Ministry of Finance, Planning and Economic Development |
| MP | Member of Parliament |
| NTA | National Taxpayer Advocate |
| OAG | Office of the Auditor General |
| OECD | Organisation for Economic Cooperation and Development |
| SARS | South African Revenue Service |
| SSMO | SARS Services Monitoring Office |
| TA | Taxpayer Advocate |
| TAD | Taxpayer Advocate Directive |
| TADAT | Tax Administration Diagnostic Assessment Tool |
| TAO | Taxpayer Assistance Order |
| TAT | Tax Appeals Tribunal |
| TPD | Tax Policy Department |
| TRA | Tanzania Revenue Authority |
| UK | United Kingdom |
| UN | United Nations |
| URA | Uganda Revenue Authority |
| US | United States |
| VAT | Value added tax |

# 1 Introduction

It is increasingly common in many jurisdictions around the world to find an independent government office that handles complaints against poor service delivery by the tax administration. There needs to be a balance between the considerable coercive powers (inspection, search, seizure, fines and penalties) granted to the tax administrator, and the rights and incentives (privacy, fair treatment and refunds) granted to the taxpayer to support voluntary compliance. It is necessary to have a mechanism to address taxpayer complaints of rights violations and poor service delivery by the tax administrator. Traditional mechanisms, such as tribunals and courts, may not be effective, due to delays and the cost involved. As a result, the office of tax ombudsman has been established in many countries to safeguard taxpayers' rights and improve the overall tax system.

This paper makes a case for the establishment of a tax ombudsman in Uganda. It begins with examining the concept of an ombudsman in general, and tax ombudsman in particular. The paper proceeds to highlight the limitations of the Uganda Revenue Authority (URA), the country's tax administrator, and its existing oversight bodies – to establish the need for a tax ombudsman. The paper further elaborates how the office can support revenue mobilisation. The paper then briefly examines five country case studies of a tax ombudsman in operation – the United Kingdom (UK), United States (US), Australia, South Africa and Tanzania. The UK and Australia were selected because they are Commonwealth countries, and Uganda has earlier followed some of their legislative precedents. The US was chosen because it has had a tax ombudsman for over 40 years, and information regarding its operation is readily available. South Africa and Tanzania were selected because they are African countries with an operational office of tax ombudsman. Drawing from these case studies and other literature, the paper sets out the ideal powers and roles of a tax ombudsman in the Ugandan context.

This paper relies on primary sources, including domestic and foreign statutes, and case law from Uganda and other jurisdictions; and secondary literature, including academic articles and government reports – which help clarify the general rationale for the creation of the office of tax ombudsman, and the experience of other jurisdictions in which the office exists. Analysis of foreign statutes is useful for comparative assessment of the role played by the tax ombudsman. Case law from Uganda and newspaper articles are used to highlight the shortcomings of the tax system as it exists, justifying the need for a tax ombudsman. Foreign case law is analysed to understand judicial interpretations of different provisions relating to tax ombudsmen.

The author conducted 12 interviews with staff of the URA, Ministry of Finance, Planning and Economic Development (MoFPED), tax advisory audit firms and law firms. One manager, one supervisor and two officers were interviewed at the URA, and two economists in the Tax Policy Department were interviewed at MoFPED. Three interviews were conducted with staff at reputable audit firms that handle tax matters, and another three with law firms known to handle tax matters.

# 2 The ombudsman concept

The ombudsman is an independent government official who receives complaints against public agencies and officials, investigates the complaints, and makes recommendations to solve the complaints (Ferris et al. 1980). The development of large-scale bureaucracies in

the 20th century led to opportunities for arbitrary and incompetent exercise of power and abuse of rights. The resulting citizen complaints led to the conclusion that the complex challenges arising from relations between citizens and public bodies could not easily be overseen by the courts alone. A new office, the ombudsman, was necessary (Buck et al. 2011).

The modern ombudsman was first established in 1809, when the Swedish Parliament created the office of Justitieombudsman to safeguard the rights of the people in their dealings with government (Buck et al. 2011). The idea was adopted by various other countries. Between 1966 and 1984 over 80 national and provincial ombudsmen were set up around the world (Hatchard 1986). Tanzania was the first African country to establish an Ombudsman in 1965, followed by several other African countries – Ghana in 1966, Mauritius in 1970 and Zambia in 1974 (Hatchard 1986). Between 1966 and 1985 nine African states established the office of ombudsman (Hatchard 1991). In Uganda the office of the Inspector-General of Government (IGG) was established by statute in July 1986 (Hatchard 1991). With the promulgation of the 1995 Constitution, the IGG was made a constitutionally created office.[1]

# 3 The tax ombudsman

The protection of taxpayers' rights may fall under a general ombudsman who oversees the activities of all public agencies, including the tax administrator. Alternatively a dedicated tax ombudsman may be established (Thuronyi and Espejo 2013). In its *Handbook on the Avoidance and Resolution of Tax Disputes*, the United Nations (UN) observes that:

> The increased use of tax ombudsman bodies may reflect a recognition across countries of the complexity of their respective tax systems and the importance of ensuring that the rights of taxpayers are respected, that the services of the tax administration are provided in an equitable and efficient manner and that the government should facilitate the resolution of controversies between the tax administration and taxpayers.
> (UN 2021: 100)

In its 2019 *Field Guide*, the Tax Administration Diagnostic Assessment Tool (TADAT) Secretariat noted the key role of a tax ombudsman 'with powers to investigate taxpayer complaints of, for example, unfair treatment, poor service, and uncorrected administrative mistakes' (TADAT Secretariat 2019: 116).

The Organisation for Economic Cooperation and Development (OECD) observes that: 'in some OECD countries a dedicated agency has been established to deal with complaints from citizens and business concerning the specific operations of the revenue body' (OECD 2009: 116).

Further, among the actions recommended by the OECD to help build trust and improve transparency and communication between tax administrations and taxpayers, is the creation of a tax ombudsman (OECD 2022).

[1] Article 223 of the Constitution of the Republic of Uganda.

The International Monetary Fund (IMF) notes the value of creating the tax ombudsman function through legislation to ensure accountability by autonomous revenue authorities. According to the IMF:

> the ombudsman role would be limited to administrative areas, including issues of service quality and overall taxpayer treatment, and would exclude issues directly related to tax or customs administration for which there are normally redress mechanisms already in the base legislation. An ombudsman function of this type can be seen as a reasonable means of ensuring accountability in a more autonomous organization.
> (Kidd and Crandall 2006: 79)

In the second revised edition of its *Handbook on Tax Administration*, the International Bureau of Fiscal Documentation (IBFD) observes that: 'To assure an independent assessment of taxpayers' complaints it is highly recommended to have an independent ombudsman function' (Alink and Kommer 2015: 294). A 2021 IBFD survey of 48 countries found that 28 countries had a tax ombudsman or its equivalent (IBFD 2021: 208).

The Inter-American Center of Tax Administrations (CIAT), in its 2015 Tax Code Model, provides for the office of the tax ombudsman under Article 76:

> The entity of Taxpayers Defender shall be created in the form of a public entity independent from the Tax Administration, in order to guarantee the timely assistance, respect for the rights of the Taxpayers and customs users and fair assistance and processes in Tax Administration performance of their legal functions.
> (CIAT 2015: Article 76)

The United States Agency for International Development (USAID) in its *Detailed Guidelines for Improved Tax Administration in Latin America and the Caribbean* (*Detailed Guidelines for Improved Tax Administration*) argues that:

> There is a need for a third party to act as a referee, since the tax administration and the taxpayer may not be able to deal with each other in an impartial, objective, and calm manner … It is suggested that countries that do not already have an ombudsman give serious consideration to establishing one.
> (USAID 2013: 306-307)

In Uganda, the *Domestic Revenue Mobilisation Strategy* (DRMS) for 2019/20-2023/24 adopted by MoFPED in 2019 observes that:

> Uganda does not provide a credible avenue for taxpayers to vent their unresolved service, procedural, and administrative complaints, such as a Taxpayer Ombudsman or Advocate. Taxpayers' perceptions regarding the transparency and fairness of revenue administration operations are critical in fostering voluntary compliance. These perceptions are often formed by frustrations with systems and processes, or belligerent application of these processes by URA officers.
> (MoFPED 2019: 87)

DRMS recommends the establishment of: 'a separate Taxpayers Ombudsman function to investigate service-related complaints with clear rules, procedures, and implications … This function will improve URA's credibility, transparency, and accountability, as well as give taxpayers the confidence that administering tax laws is an objective process' (MoFPED 2019: 88).

According to the DRMS Road Map in the *URA Corporate Plan 2020/21-2024/25*, a taxpayers' ombudsman is to be established in 2022/2023 (URA 2020). However, the 2022 DRMS semi-annual report reveals that no progress had been made towards establishing this office (MoFPED 2022a).

# 4 Rationale for a tax ombudsman in Uganda

## 4.1 Administrative shortcomings of the URA

The URA was established by statute in 1991, and has a mandate to administer and give effect to tax laws.[2] Over the years the URA has earned a reputation as one of the Government's 'pockets of effectiveness', due to the relative efficiency with which it operates (Hickey et al. 2021).

As part of its commitment to quality service, in 2002 URA launched the *Taxpayers' Charter*, laying out taxpayers' rights and obligations (Kasimbazi 2004). Significantly, the *Taxpayers' Charter* was cited by the High Court in at least one case where URA was condemned for failing to fulfil its obligation to explain 'the grounds for and derivation of every tax assessment' as stated in the Charter.[3] However, largely due to inefficient investigation procedures and following up taxpayers' complaints, the *Taxpayers' Charter* was generally ineffective (Kasimbazi 2004).

The URA abandoned the *Taxpayers' Charter* in 2019, and adopted the *Client Service Charter* (CSC) – this was updated in 2021 (URA 2021). The CSC lays out taxpayers' rights and obligations, the URA's service standards, and the contact details of the Assistant Commissioner Staff Compliance, to whom staff misconduct can be reported (URA 2021). Taxpayer rights include the right to fair treatment, the right to be informed of their obligations, and the right to 'prompt, courteous and professional assistance' from URA. The service standards in the CSC include income tax refunds in 30 days, value added tax (VAT) refunds in 15 days, and processing exemptions within 30 days (URA 2021). URA regularly communicates the contents of the Charter on its social media accounts. However, in one court case where a taxpayer tried to rely on the CSC in their submission, it was ignored by the court.[4] URA uses social media platforms as well as client surveys to obtain performance feedback from taxpayers, but the results are not publicly available (SEATINI Uganda 2018).

Despite these efforts service delivery challenges persist, and the lofty service standards set in the CSC appear to be more honoured in the breach than in the observance. In recent years there have been growing cries against low quality service delivery and highhanded actions by the URA. In a June 2020 article, 'The trouble with URA', a prominent journalist, Andrew Mwenda, notes that:

> Every Ugandan who has set up a business and registered with URA will tell you horror stories of the organisation calling and harassing them for revenues, looking for every small law and excuse to demand they pay more taxes. This is the real problem of tax administration in Uganda: the everlasting harassment of a few compliant taxpayers, which in turn threatens many from formality.
> (Mwenda 2020)

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2 Section 3 of the Uganda Revenue Authority Act Cap 196 [hereinafter URA Act].

3 *Okello v URA* [2015] UGCommC 114.

4 *Mini Bakeries v URA* [2021] UGTAT 16.

This has been acknowledged by the URA Commissioner General. Taxpayers complained about harassment by URA staff at a stakeholder meeting in August 2022. The URA Commissioner General acknowledged the existence of this challenge, stating: 'I want to assure everybody that we appreciate the mistakes highlighted, that need correction … and we promise to improve because we cannot continue being rude to our taxpayers' (Bahingwire 2022).

### *4.1.1 Delays in service delivery*

Delays in accessing services remains a challenge. URA reportedly delays approving refunds, processing tax exemptions, and responding to written requests for guidance (MoFPED 2019). In 2016 the Minister of Finance publicly threatened to dismiss URA officers who were delaying making decisions that resulted in loss of revenue (Ladu 2016).

Delayed handling of objections to assessments is a challenge at URA. The law requires that decisions on objections are issued within 90 days, but the URA sometimes delays for several months. In one case a taxpayer received an objection decision from the URA after ten months.[5] Uganda's 2019 TADAT Performance Assessment Report notes that 20 per cent of objections were not resolved within 90 days (Okello et al. 2019). Although the law allows taxpayers to treat an objection as allowed if they do not receive a response in 90 days, in practice the URA does not generally allow taxpayers to exercise this right.[6]

Delayed refunds are also a challenge for taxpayers. Uganda's 2019 TADAT Performance Assessment Report observed that 'The rate of processing VAT refund claims is extremely low and the funding available to pay refund claims is insufficient' (Okello et al. 2019: 7). The report noted that only 6 per cent of VAT refunds were processed within the 30-day standard prescribed by TADAT, and that, although the law provides that 2 per cent per month interest will be paid to the taxpayer for delayed refunds, in practice no interest is paid unless there is a court case (Okello et al. 2019). The DRMS notes that often refund payments are arbitrary, and less than the full amount approved (MoFPED 2019). In one case a taxpayer applied for a refund and URA started an audit that went on for more than two years. The taxpayer appealed to court, which stated that:

> An audit cannot be carried out in perpetuity. An audit should be carried out in the financial year in which the application was made or at least not later than six months from the date of the application. The Tribunal finds the respondent's explanation inconceivable.
> (*East Africa Cranes Limited v URA* TAT No 51 of 2018)

In 2019, at an engagement with the Uganda Manufacturers' Association, the Ugandan president decried the undue delays in issuing VAT refunds resulting in liquidity challenges for companies. He cited a company, Paramount Dairies, which he said became insolvent due to URA delaying refund of its money (Mwesigwa 2019).

### *4.1.2 Disregard of statute of limitations*

The URA sometimes disregards the statute of limitations regarding maintenance of records and raising assessments. Under tax law, a taxpayer is required to keep records for five years after the end of the tax period to which they relate.[7] An assessment can be issued within three years from the filing of the tax return or issuing of the prior assessment to which it

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5 *Kumi Orthopaedic Centre Limited v URA* TAT No. 23 of 2018.

6 See *Photon Technologies Ltd v URA* [2016] UGCommC 69; *Kumi Orthopaedic Centre Limited v URA* TAT No. 23 of 2018; and *Amiran Enterprises Ltd v URA* [2012] UGCommC 93.

7 Section 15(1)(c) of the Tax Procedures Code Act [Hereinafter TPC Act].

relates.[8] Despite these limitations, URA staff regularly audit and raise assessments going back several years beyond the statutory limitations. This forces taxpayers to incur the cost of keeping records going back over decades. In one case the URA raised assessments in 2018 relating to the period 2007-2014.[9] In an engagement between URA and taxpayers, one taxpayer complained that URA raised assessments relating to 2013 in 2022, with attendant interest and penalties (Langol 2022).

### *4.1.3 Contradicting its own guidance*

On several occasions the URA has gone against its own written guidance to taxpayers.[10] In one case, the URA issued guidance to a taxpayer supplying jet fuel to international carriers that the supply was zero-rated for VAT purposes. Almost 10 years later, the URA reversed itself and declared the supply to be exempt.[11] In 2001, the URA issued guidance to a taxpayer that certain payments made to its members could be expensed. More than ten years later, in 2013, the URA reversed its position, and sought to recover the retrospective principal tax over the years with interest. The court rejected the URA's attempt to apply its reinterpretation retrospectively.[12] In another case URA advised in writing that certain items were exempt from taxes at importation. A year later, the URA assessed the taxpayer for non-payment of duties on the same items. The court found in favour of the taxpayer, noting that: 'A good tax system should have certainty in order to encourage investment and prevent the abuse of power. A taxpayer should be able to arrange his affairs in such a way that its business operates smoothly without uncertainty in payment of taxes'.[13]

In one unfortunate case the taxpayer was given guidance from URA, based on an administrative practice at the time, to appeal by writing to the Commissioner instead of to the Tax Appeals Tribunal (TAT). As a result, the statutory time within which to appeal to the TAT elapsed, and the Commissioner rejected the taxpayer's appeal. The taxpayer's subsequent attempt to appeal to TAT outside the statutory time was rejected.[14]

Perhaps the most peculiar disregard of its own guidance has been the URA's attempts to act contrary to its own practice notes and private rulings without prior revocation – while these are legally binding on the Commissioner.[15] Practice notes are regularly published, setting out the Commissioner's interpretation of a tax law. In one case the URA attempted to assess a taxpayer contrary to its own practice note. The taxpayer appealed to the High Court to get redress.[16] Private rulings are issued to a taxpayer setting out the tax treatment for a transaction entered or proposed to be entered into by the taxpayer. In one case the URA issued a private ruling giving guidance that a transaction was not taxable, then subsequently raised an assessment regarding the same transaction without revoking the private ruling. The court held that the transaction was not taxable, in accordance with the private ruling.[17] Significantly, in at least two cases in which private rulings were revoked, the URA did so without giving the taxpayers a prior fair hearing, and the court nullified the revocation.[18]

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8 Section 23(2)(c) of the TPC Act.

9 *AIRTEL Uganda Limited v URA* [2020] UGTAT 9.

10 For example, in *Kampala Nissan v URA* [2011] UGHC 139 where URA demanded taxes contrary to an earlier letter to the taxpayer signed by the Commissioner General. See also *URA v Tata (U) Ltd* [2016] UGCommC 8; *K.M. Enterprises and others v URA* [2008] UGCommC 21; and *Gordon Sentiba & Ors v URA* [2010] UGCommC 27.

11 *Total Uganda Limited v URA* TAT No 5 of 2009.

12 *National Social Security Fund v URA* [2020] UGCommC 139.

13 *M-KOPA Uganda Limited v URA* TAT No 15 of 2017.

14 *Nile Teas v URA* TAT Misc. App 36 of 2022.

15 Sections 44 and 45 of the TPC Act.

16 *APA Insurance (U) Limited & 22 Others v URA* High Court Civil Appeal No 40 of 2017.

17 *Registered Trustees of Free Masons v URA* TAT No 51 of 2019.

18 *Salim Alibhai v URA* HCMA No 123 of 2020 and *Gordon Sentiba & others v URA* [2010] UGCOMMC 27.

### *4.1.4 Actions contrary to law*

The URA has sometimes acted contrary to the law, resulting in taxpayers paying more tax than is due. The rates applicable to small business presumptive taxpayers were significantly reduced with effect from 1 July 2020. However, the URA did not change the rates on its online payment portal until 11 months later – in June 2021 – resulting in low-income taxpayers making overpayments (Okwero 2021). Further, although the law allows small business presumptive taxpayers to claim credits for tax withheld in the course of the year, the URA presumptive tax return template does not provide for this, forcing small businesses to pay more than is due.[19] The URA has also continued to apply statutory payment allocation rules retrospectively to the period prior to their coming in force, to the detriment of taxpayers, despite a court decision holding that their retrospective application is illegal.[20] TAT has even accused URA of deliberately misinterpreting the law to get around an amendment that benefitted taxpayers.[21]

In many other cases the URA has taken action in disregard of clearly established legal principles and procedures. The URA took the unusual position that it was not liable for taxpayers' goods lost in its custody, until the Court of Appeal ruled to the contrary.[22] In another case the URA impounded a taxpayer's vehicle without following proper procedure, and ignored the taxpayer's written complaints. Court awarded punitive damages, stating that URA had: 'acted maliciously in total disregard of the rules of procedure which would have mitigated the damages. There were personal egos involved at the expense of reason. This type of behaviour is what punitive damages are meant to address'.[23]

In another case the URA illegally suspended the licence of a customs clearing agent, and only consented to a meeting to resolve the issue after a court order. URA compelled the agent to pay taxes owed by another company due to an error in its system.[24] In finding URA liable for exemplary damages worth USh100 million (US$ 27,000), the judge of the Court of Appeal observed that:

> I am inclined to view the conduct of the Commissioner for Customs and his staff as having been extremely reckless and oppressive to the respondent … This was not simply a case of negligent conduct. It revealed an established pattern of oppressive behaviour by public servants.
> (*Commissioner of Customs v Prompt Packers and Forwarders Limited* [2022] UGCA 182)

In another case the URA was held liable for malicious prosecution for persisting in criminal proceedings over tax evasion, despite overwhelming evidence of innocence. The court found that the URA: 'acted without reasonable or probable cause. The defendant's officials had all the necessary material to satisfy a prudent and cautious man not to institute criminal proceedings against the plaintiff'.[25]

In another case the URA issued an objection decision lowering an assessment from USh5.57 billion (US$1.5 million) to USh2.56 billion (US$692,000), but then proceeded to raise the

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19 Section 4(5)(c) of the Income Tax Act.

20 *Multi-Konsults Limited v URA* TAT No 72 of 2019.

21 *K-Files Ltd v URA* TAT No 69 of 2021.

22 *Bagala v URA* [2019] UGCA 2046.

23 *Jacob Twikirize Manyindo v The commissioner customs & Anor* [2014] UGHCCD 154.

24 *Prompt Packers & Forwarders Ltd v URA* [2014] UGCommC 221.

25 *Mohammed Tumusiime v URA* [2019] UGHCCD 145.

assessment figure back to USh5.57 billion. TAT held this to be illegal, as the law clearly provides that the Commissioner cannot alter an objection decision once issued.[26]

Finally, in another case a taxpayer alleged harassment by the URA during an audit, claiming to have been targeted for his political leanings. The court awarded damages to the taxpayer, acknowledging that the URA officers 'were overzealous in the manner they conducted the special audit', and breached their commitments under the *Taxpayers' Charter*.[27]

A common view among respondents was that the URA does not follow court precedents. One example is that the URA continued to impose VAT penalties administratively, despite a High Court decision holding that VAT penalties could only be imposed upon conviction of a taxpayer.[28] Another example is URA continuing to impose interest during court disputes with taxpayers, despite a Court of Appeal ruling that interest does not run when a taxpayer is disputing an assessment in court.[29] Another example is the URA denying a VAT-registered taxpayer input tax credit where the supplier had not accounted for output tax – contrary to a High Court ruling that the taxpayer has no obligation to ensure the supplier accounts for VAT, as this is the URA's mandate.[30] Respondents explained that they often have to threaten court action before the URA applies court precedents as the law.

The URA also sometimes disregards court orders. In one case URA was excoriated by a judge for disobeying a court order 'with impunity' and acting unconstitutionally.[31] In another case the URA ignored an interim order staying enforcement action, and demanded that a bank remit funds owed by its client. When the bank objected on grounds of the interim order, the URA Commissioner General wrote a letter declaring that prosecution of the bank's managing director had started and the bank should expect a visit from the Criminal Investigation Department of the police. The bank made payment of the money under protest. The court subsequently found URA in contempt of its interim order, and required it to pay a fine of USh100 million to purge the contempt.[32]

In yet another case, URA spent 11 years disregarding court orders to release five trucks belonging to a taxpayer involved in transportation. The taxpayer only accessed a remedy through a Constitutional Petition, where the puzzled Justices observed that:

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26 *Welt Machinery Engineering Limited v URA* [2022] UGTAT 10.

27 *Okello v URA* [2015] UGCommC 114.

28 *Ndimwibo & Anor v URA* [2017] UGCommC 39.

29 *Airtel Uganda Limited v URA* [2019] UGCA 2022; See *Airtel Uganda v URA* TAT No 43 of 2020 and *Fresh Handling Ltd v URA* TAT No 83 of 2019.

30 *Target Well Control (U) Ltd v URA* HCCS 751 of 2015. Despite this decision, in *East African Investment Limited v URA* [2020] UGTAT 22 URA denied the taxpayer input tax credit because the supplier had not accounted for VAT. TAT reiterated that the taxpayer 'has no duty to make a follow-up on the suppliers'.

31 *Kirenga v URA* [2014] UGHCCD 18.

32 *Stanbic Bank (U) Ltd & Jacobsen Uganda Power Plant Company Ltd v The Commissioner General URA* HC Misc. App. No.0042 of 2010.

> In this case there are court orders against the first Respondent which have not been discharged or stayed. The first Respondent has in its wisdom chosen not to comply with them. The first Respondent is the Revenue Authority of Uganda. It is as equal before the law as any other party. It too benefits from court orders that it vigorously enforces against tax payers how can it now fail to comply with orders made against it in favour of a taxpayer? An apology is not what is required of the first respondent; it is compliance with the court Orders. In this regard we find that the first Respondent has impeded the course of justice and has done so for an unacceptably long period of time.
> *(Imaniraguha John v Commissioner General URA & Attorney General* Constitutional Petition No 37 of 2012-Ruling)

URA was found in contempt of court and ordered to release the trucks within three weeks.

### *4.1.5 Creation of own law*

The URA sometimes takes action that amounts to creating its own law – often for administrative convenience. Nonetheless, these actions are contrary to the fundamental constitutional principle that no tax shall be imposed except under the authority of an Act of Parliament.[33]

In one case the URA Commissioner Customs suspended the use of the transaction value method, which is the primary valuation method provided for under the law, in determining customs duties for used motor vehicles. The alternative methods used by URA resulted in the taxpayer paying three times the tax they would have paid under the transaction value method. The URA explained that the decision was prompted by challenges faced in valuation of used motor vehicles, including undervaluation and use of false documents by importers. The court held that the Commissioner had no power to exclude the transaction value method as the primary method of valuation of used motor vehicle, and therefore had acted illegally.[34] This position was reiterated in another case where the URA rejected a customs value of US$5,500 for a motor vehicle, and insisted on applying a value of US$10,156.88. The TAT took cognisance of the challenges faced by URA in determining the custom value of used items, such as fraud and false declarations, but went on to state that: 'However, the said challenges should not overlook the need of fairness when assessing taxes. A taxpayer ought not to pay more taxes than what he actually should pay'.[35]

In another case the URA came up with a non-statutory formula to make a finding that a taxpayer's agricultural products were processed and therefore subject to VAT. Court condemned URA's attempt to create its own law through the formula, stating:

> the VAT Act does not prescribe any formula for computing value addition. Any attempt to insert a formula into the VAT which is not prescribed would be an attempt to amend the Act which is the duty of the legislature… Instead of concocting high-sounding formulas the parties ought to have given the VAT Act paragraph 3 of the Second Schedule a literal or simple interpretation.
> *(Wabulungu Multipurpose Estates Ltd Uganda v URA* [2018] UGCommC 69)

In another case the Commissioner General issued a practice note that contravened the law. The practice note attempted to treat all imported rice as exempt from VAT, even though the

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33 Article 152 of the Constitution of the Republic of Uganda.

34 *Testimony Motors Ltd v Commissioner of Customs URA* [2013] UGCommC 139.

35 *John Kamanyire v URA* [2018] UGTAT 6.

law allowed some rice to be zero-rated. The Tribunal found the practice note to be illegal, observing that:

> a statute cannot be extended to a case not within its terms nor curtailed by leaving out a case that the statute literally includes … the Commissioner General cannot make any additions or subtractions to an Act of Parliament … In the present case however, the Practice Note attempts to amend the Law by nullifying the 5% value addition test to determine if rice is processed or unprocessed.
> *(Tumusiime v URA* (TAT No 31 of 2007) [2007] UGTAT 1)

In another case TAT considered a practice note issued by the Commissioner General, laying out certain conditions for a taxpayer to access an exemption. TAT stated:

> The Tribunal notes that the said conditions are not in the Income Tax Act. The Commissioner General does not have powers to legislate; that is the duty of Parliament. The Tribunal therefore agrees with the applicant that the said Practice Note does not bind taxpayers.
> *(AFGRI Uganda Ltd v URA* TAT No 18 of 2019)

In 2019 the URA issued a directive to financial institutions in the country requiring people who transfer more than USh50 million (US$13,500) out of the country to receive clearance from URA. This directive was only rescinded following push-back from the banks, who pointed out, among other things, that the law on which this directive was premised had been repealed in 2016 (Senyonyi 2019).[36]

Perhaps the most egregious attempt at creating its own law yet was the case of 'domestic VAT'. Between 2002 and 2020, the URA collected a tax it termed as domestic VAT, which was 15 per cent at importation. This was in effect a surcharge paid by importers who were not VAT-registered on top of the normal import VAT, which was 18 per cent. In 2020 the Court of Appeal held that this tax was unconstitutional, with no basis in statute. The court observed that no statute provided for the rate of 15 per cent, and Barishaki JA stated:

> I have not been able to find any law which authorised the respondent to collect domestic VAT at the rate of 15%. The levy of domestic VAT at 15% was done by the respondent without any authority of law and therefore contrary to Article 152(1) of the Constitution. This was not irregular but illegal.
> *(Margaret Akiiki Rwaheru & 13,945 others v URA* CACA No 98 of 2015)

### *4.1.6 Irrational exercise of discretion*

Tax administration requires the Commissioner General to have some discretionary power in order to be effective. However, on several occasions the URA has exercised its discretion in a manner that courts have rightly described as irrational.

The URA sometimes discriminates in its treatment of taxpayers, giving preferential treatment to some. In one case a taxpayer applied to URA to be permitted to use a particular method of accounting for VAT that the law provided for, where traditional methods would disadvantage them. The URA approved the application, but declined to apply it retrospectively as this would remove a liability that had arisen from a previous audit. In court the taxpayer provided evidence that URA had approved retrospective application of the method in two other cases. The URA argued that such an approval was purely within the discretion of the Commissioner. The court held that the method would be applied retrospectively, observing that the

[36] Section 77 of the TPC Act which came in force on 1 July 2016 repealed Section 134 of the Income Tax Act.

Commissioner had applied double standards in exercise of their discretion. The court stated that:

> where a tax statute gives the Commissioner General discretion then that discretion should be exercised judiciously or in other words fairly. In this case the appellant has exercised its discretion to grant SAM retrospectively to other companies while saying at that same time that based on the same law that is not legally possible to the respondent. That to my mind is not discretion applied fairly and amounts to double standards.
> (*URA v ITAL Trade Limited* HCCA No 10 of 2008)

In another case a taxpayer applied to URA to pay the statutory 30 per cent of tax in dispute prior to appealing to TAT in instalments due to the challenges of the COVID-19 pandemic, but the URA declined. TAT held that:

> The question that the Tribunal must answer is this; would a reasonable authority addressing itself to the widespread economic losses occasioned to the manufacturing sector and the economy at large, as a result of the COVID-19 pandemic, reject a request by a taxpayer to pay Sh. 7bn in instalments? This question should be understood in light of the fact that not only does the authority in question have powers accorded to it by statute to grant such a request, but that it has in the past granted such requests, in times much less precarious than these and for amounts much smaller than what the applicant is required to pay … we find that the decision of the Commissioner General rejecting the application to pay 30% of the tax assessed in instalments was so outrageous in its defiance of logic that no sensible person who had applied his mind to the question to be decided could have arrived at it.
> (*Century Bottling Company Limited v URA* TAT No. 33 of 2020)

URA officers also exercise their discretion to reject legitimate applications by taxpayers. In one case a taxpayer dealing in standard-rated supplies applied for VAT registration. The application was rejected without any explanation, and the taxpayer continued trading without registering for VAT. When this was discovered by URA during an investigation of the taxpayer, URA assessed the taxpayer retrospectively for USh256,937,053 (US$69,000) (OAG 2015). In another case the URA denied a taxpayer a refund of VAT paid to suppliers in error and remitted to URA, on the peculiar grounds that the law did not provide for a refund of such an overpayment. TAT held that any overpayment can be refunded stating:

> The VAT Act is a bit silent about where a payment is made in error … Where a party makes a payment in error, it is an overpayment … The Tribunal does not see any reason why a person who paid a tax in error cannot reclaim it.
> *(Roraima Uganda Limited v URA* TAT No 68 of 2021)

In another case the URA declined to issue a private ruling to a taxpayer in relation to a transaction involving a forced sale of shares, on the grounds that it was within the discretion of the Commissioner whether or not to issue one. TAT noted that this amounted to an abdication of duty by the Commissioner, as the intention of the law in providing for private rulings was to allow the taxpayer to clarify their liability. TAT observed that: ‘It would defeat the intention of the legislature if the Commissioner abdicates from his statutory duty because he or she is not in the right mood … The Commissioner did not exercise his or her discretion reasonably’.[37]

[37] *Birungyi Barata & Associates v URA* [2017] UGTAT 1.

In another case the URA declared certain goods not eligible for customs warehousing, and gave taxpayers three days' notice to cease warehousing them. The taxpayers argued that this was inadequate notice. TAT agreed with the taxpayers that three days' notice was unreasonable stating:

> Notice is required as the applicants must brace themselves for the change in bringing in goods. This is because the respondent all along allowed the applicants to warehouse their goods and allowed them to pay duty thereafter. Notice of two to three months would be adequate. The decision by the respondent to give the applicants three days' notice … was irrational.
> (*RI Distributors Limited and 11 Others v URA* TAT No. 103 of 2019)

### *4.1.7 Absence of an adequate complaint handling mechanism*

The current complaint handling mechanism in URA is inadequate. Currently, a dissatisfied taxpayer may raise their complaint with the person they have been dealing with or their supervisor. They may also write a letter of complaint to URA, or report to the Staff Compliance Division in-person, by letter, phone call or email. Finally, the taxpayer may initiate a service request on the URA web portal, or call the URA contact centre for assistance. There is no publicly accessible report of taxpayer complaints submitted to URA (SEATINI Uganda 2018). URA recognises the limitations of the current complaints management system. At an engagement event with the Uganda Hotel Owners Association, the URA Commissioner General committed to the creation of a special unit to attend to complaints by hotels owners (Bahingwire 2022). The subtext of this commitment was the inadequacy of the existing complaint handling mechanism to address the issues raised, which included harassment by URA officers.

Similarly, as stated in the DRMS, MoFPED considers the current complaint handling mechanism inadequate. The URA actions that are frustrating the taxpayer may not amount to illegal, unethical or corrupt behaviour that can be reported through these channels (MoFPED 2019). The 2019 TADAT Report on Uganda similarly found the existing complaints handling processes in URA inadequate. The report decried the absence of independent external oversight of URA's operations, with the ability to investigate suspected wrongdoing and maladministration (Okello et al. 2019).

Moreover, in the absence of an effective legitimate mechanism through which their frustrations can be addressed, taxpayers have resorted to tools such as strikes and civil disobedience. In 2013 members of the Kampala City Traders' Association (KACITA) closed their shops protesting against pre-import verification fees introduced by URA (Olukya 2013). In 2015 KACITA once again closed their shops, protesting against URA's administrative decision to begin arresting and prosecuting tax cheats. Hitherto URA had been compounding the offence, allowing the taxpayer to pay the tax due and a fine without prosecution (Mwesigwa and Lyatuu 2015).

Dissatisfied taxpayers have, on occasion, even resorted to violence. In March 2018 a mob attacked URA vehicles and set them on fire following an operation in which URA impounded unregistered motorcycles (Daily Monitor 2018). In April 2021 a mob attacked, disarmed and brutally murdered a URA enforcement officer in Arua district, in retaliation for perceived highhandedness in conducting their operations (Mulengera News 2021). In February 2022 as a result of a URA enforcement team seizing a motorcycle, a mob attacked a URA office and had to be dispersed by army officers (Ariaka 2022).

### *4.1.8 Tax ombudsman as a remedy to the URA shortcomings*

The URA has many more administrative shortcomings than can be listed here. In many of the cases above, the taxpayers were able to access justice through the court process. However, few taxpayers can afford the costs in time, money and other resources involved in the court process (Brian and Lakuma 2019). Indeed, for every case cited above, where the taxpayer accessed a remedy through the courts, one must envisage many more who were left helpless.

As can be seen from the cases cited above, it is not only lack of strict adherence to the law by URA that is a challenge. Even the rigid application of the law to a particular set of facts may lead to an unfair or unjust outcome. Moreover, the taxpayers' challenges may simply be frustration with systems and service delivery, without a legal component (MoFPED 2019). The service delivery challenges may arise because of URA staff operating under various constraints like limited time, limited information and chronically inadequate resources. Nonetheless, an adequate remedy is necessary for taxpayers. In explaining the creation of the UK tax ombudsman the revenue adjudicator, Leonard Beighton – the former deputy chairman of the UK Board of Inland Revenue – notes:

> Public sector bodies inevitably lack the discipline of the marketplace which forces businesses to focus on their outputs and the service they provide to purchasers. The public sector has been more inclined to look to its inputs and to determine its approach from the viewpoint of the producer. That is not necessarily a bad thing if it leads, for example, to greater cost efficiency, but it may also result in the needs of the public being given insufficient weight, not from any deliberate attempt to place their interests below that of the organisation, but simply because that is the nature of the mindset.
> (Beighton 1996: 45)

A tax ombudsman who acts as an advocate in the defence of individual taxpayers who are disadvantaged by the tax system, and assesses and evaluates the overall fairness and efficiency of the tax administration at a systemic level, is necessary as a remedy for the shortcomings of the URA.

## 4.2 Limitations of existing oversight institutions

At least five institutions have an oversight role over the URA, with the power to correct some of its shortcomings. These are MoFPED, parliament, the Office of the Auditor General (OAG), the courts and the IGG. However for various reasons, as we shall see, these institutions cannot adequately address complaints about the URA.

### *4.2.1 Ministry of Finance, Planning and Economic Development*

The URA is under the general supervision of MoFPED.[38] Within MoFPED, the Tax Policy Department (TPD) in the Directorate of Economic Affairs has the mandate of general supervision of URA operations (MoFPED 2019). However, TPD has no direct mandate for handling complaints regarding the URA. Moreover, TPD is understaffed and overstretched, as its status is not commensurate to its wide mandate (MoFPED 2019). The 2022 Ministerial Policy Statement lists 27 staff belonging to TPD, of which six are support staff and 21 are technical staff (MoFPED 2022b). As such, it is unable to manage complaints relating to URA service delivery.

[38] Section 2 of the URA Act.

### *4.2.2 Office of the Auditor General*

The OAG has a mandate to audit and report on all public offices and organisations established by an Act of Parliament.[39] Subsequent to any audit of a public body such as the URA, the OAG is required to submit a report to the president, MoFPED, the Minister of Ethics and Integrity, and the public body audited.[40]

However, a review of OAG reports on URA reveals that it generally focuses on shortcomings and inefficiencies in raising revenue, with little consideration of taxpayer needs and correcting abuses. For example, the section of the 2015 report on tax refunds focuses on the legitimacy of refunds paid out by URA, with no mention of the challenge of delayed refunds (OAG 2015). The 2018 OAG report highlights failure of the URA to collect identified taxes and issuance of Tax Clearance Certificates to taxpayers with tax arrears, without mention of delays in issuing Tax Clearance Certificates (OAG 2018). The OAG assesses URA's success based almost exclusively on the revenue figures.

### *4.2.3 Inspectorate General of Government*

The IGG was established by statute in July 1986 and was included in the Constitution in 1995 (Hatchard 1991).[41] The key functions of the IGG are to promote and foster strict adherence to the rule of law and principles of natural justice in administration; to eliminate and foster the elimination of corruption, abuse of authority and of public office; and to promote fair, efficient and good governance in public offices.[42]

The IGG has investigated URA staff for corruption on several occasions over the years. The 2019 TADAT Report noted that URA's Internal Audit Department, which is responsible for receiving and investigating wrongdoing by URA staff, works closely with the IGG, and that the IGG handles taxpayer complaints on an ad hoc basis (Okello et al. 2019). The limitation of the IGG is that it focuses primarily on corruption, without much focus on taxpayer complaints related to maladministration and inefficiencies in service delivery.

### *4.2.4 Parliament of Uganda*

As the law-making body that created the URA by statute, parliament plays a key role in oversight of URA. This oversight is largely exercised through standing committees whose mandate includes motivating improvements in service delivery efficiency in the public bodies that they oversee (Parliament of Uganda 2017).

The committees on finance, public accounts, budget and national economy all have oversight over the URA. The URA submits reports to these committees, and its senior officials regularly appear before them in public hearings. On occasion, parliamentary committees have addressed questions of fairness in treatment of taxpayers. However, this is sporadic, and therefore inadequate as a means of handling taxpayer complaints.

Committee members are generally overstretched and have insufficient time, capacity or expertise to undertake regular and rigorous empirical investigation of a public body like the URA (Kakaire 2012). Even when an investigation into complaints is undertaken, it can only be focused on selected systemic challenges that affect taxpayers broadly. As a purely practical matter, it is not possible for the committees to attend to each individual taxpayer complaint.

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39 Sections 3 and 13 of the National Audit Act, 2008.

40 Section 17 of the National Audit Act, 2008.

41 Article 223 of the Constitution of the Republic of Uganda, 1995.

42 Article 225 of the Constitution of the Republic of Uganda, 1995.

Parliament's oversight of URA is further impaired by the fact that members of parliament (MPs) are also taxpayers, and, as such, may be hesitant to publicly castigate the tax authority that has the power to retaliate through its control of the tax system. Many MPs are businesspeople, and may not be keen to risk URA's ire. In October 2021 MoFPED submitted a list to parliament of more than 800 tax defaulters, which included six current and 8 former MPs. One MP observed that even MPs on the Budget Committee (which has oversight over URA) were listed among the defaulters (URN 2021).

The final possible reason for hesitancy of parliament to exercise rigorous oversight of the URA is the simple fact that parliament is dependent on the URA for revenue. As a result, parliament's occasional inquiries and investigations into URA operations focus on reasons for revenue shortfalls, rather than quality-of-service delivery to taxpayers (Akello 2019). In explaining the US Congress' hesitation to investigate the Internal Revenue Service (IRS), Senator William Roth observed that Congress was reluctant to fetter the IRS' ability to collect revenue in line with the folk saying, 'Never shoot the horse you're riding' (Roth and Nixon 1999: 29).

### *4.2.5 The Tribunal and the courts of law*

Courts in Uganda exercise a form of oversight over the URA, as part of the statutory tax dispute resolution system. Where a taxpayer is dissatisfied with an assessment or any other URA action, they may lodge an objection with the Objections Unit of URA.[43] Where the taxpayer is dissatisfied with the objection decision, the taxpayer may appeal to TAT within 30 days after being served with a notice of the objection decision.[44] However, taxpayers have to pay 30 per cent of the tax assessed, or that part of the tax assessed not in dispute, whichever is greater, upon appealing to the TAT.[45]

The TAT was established with five members in 1998, as an easily accessible, efficient and independent means of arbitration of tax disputes.[46] In 2022 the number of members was increased to nine.[47] An application to TAT is done by the taxpayer or their representative by filling in and submitting prescribed forms, along with payment of a non-refundable fee of USh20,000 (US$5). The taxpayer must then serve a copy of the forms to the URA within five days (TAT 2009). The tribunal sits three times a week to hear cases, and receives an average of thirty-eight cases per year (Brian and Lakuma 2019). A taxpayer dissatisfied with the TAT decision can appeal to the High Court without payment of additional tax.[48] The desire for an alternative simplified mechanism for dealing with taxpayer challenges is reflected in the recent introduction of alternative dispute resolution in URA.[49] The court process is an inadequate means of redressing all taxpayer complaints for several reasons.

The disputes resolved by courts generally involve breaches of the law, not failure to meet service standards. The URA may engage in maladministration, rather than breach of the law, which courts may not address. For example, in several cases a court has allowed URA to give the wrong advice to a taxpayer, then subsequently penalised the taxpayer for following that advice on the grounds that a statutory body like the URA cannot have its powers fettered by estoppel.[50] The courts, in applying the law strictly and rigorously, may treat a taxpayer

43 Section 24 of the TPC Act.

44 Section 25 of the TPC Act.

45 Section 15 of the Tax Appeals Tribunal Act, 2014 [Hereinafter TAT Act].

46 TAT Act.

47 TAT (Amendment) Act, 2022.

48 Section 27 of the TAT Act.

49 Section 24 of the TPC Act.

50 See *Pride Exporters Ltd v URA* HCCS 563 of 2006; *K.M. Enterprises v URA* [2008] UGCommC 21; *Golden Leaves Hotels & Resorts Limited v URA* CACA 64 of 2008.

unfairly. As TAT has stated, 'the Tribunal cannot invoke the principle of equity to reduce the hardship caused to the taxpayer by any of the taxing Acts in force'.[51]

The inadequacy of the judicial process in addressing the service standard related issues was highlighted in one case before the TAT where URA raided the taxpayer's business premises, chased away customers, ransacked the place, seized records and sealed off the premises, then proceeded to issue third party agency notices to six different banks demanding collection of USh3 billion (US$810,000) – yet it had only assessed VAT of USh551 million (US$149,000). TAT found that URA had not followed the law, and even the USh551 million assessment 'was not only unlawful, excessive and arbitrary but also not in accordance with Value Added Tax Statute'. However, regarding the harassment by URA, TAT could only offer its sympathy, stating:

> The Tribunal is unable to offer any immediate remedy other than sympathising with the applicant. The best that the Tribunal could wish for is for [URA] to find better and more customer-friendly ways of handling taxpayers as these happen to be its only clients. That the applicant finally closed his business as a result is a clear indication of what can befall a taxpayer faced with such a delicate situation.
> (*Rwaburindore Tarsis Bishanga T/A Betar Enterprises v URA* TAT No. 9 of 1999)

There is evidence that many small taxpayers are unaware of the existence of TAT or the role it plays, and those that are aware are put off by the formality, procedures and bureaucracy involved (Brian and Lakuma 2019). Formal court processes may be intimidating to the ordinary taxpayer. Although taxpayers can represent themselves before TAT, URA is always represented by lawyers – creating the legal equivalent of a David and Goliath situation for self-representing taxpayers. Moreover, the tax amounts involved and potential inconvenience may not be significant enough to justify going through all the bureaucracy and formality of the TAT process (Brian and Lakuma 2019).

Furthermore, it can be quite costly to pursue cases in the Tribunal and in the courts of law. The requirement to pay 30 per cent of any tax in dispute is one barrier. The legal fees involved when using the professional assistance of a private tax attorney is another (Brian and Lakuma 2019). The UN *Handbook on the Avoidance and Resolution of Tax Disputes* observes that while taxpayers may have the right to resolve tax disputes in court: 'practice has shown that taxpayers often seek recourse through other mechanisms before resorting to litigation so as to avoid the costs and delays associated with litigation, which can be substantial, or to avoid adverse publicity as court proceedings are generally public' (UN 2021: 95).

The Tribunal and the courts involve considerable delays in resolving matters. A 2019 study of TAT found that on average it completes only 16.6 per cent of the cases filed within 12 months (Brian and Lakuma 2019). Cases can take years to be resolved in the Tribunal. One case filed on 9 December 2011 was decided on 4 August 2017.[52] The High Court similarly has considerable backlog (The Judiciary 2017).

Finally, taxpayers may be reluctant to go to TAT because of its perceived bias. While the 2019 TAT study found no evidence of bias, it observed that stakeholders perceived a conflict of interest because the Minister of Finance, who appoints TAT members, also appoints the URA Commissioner General and its board members, and sets its revenue targets (Brian and Lakuma 2019). The study found that TAT is perceived as working closely with the URA,

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51 *New Vision Printing and Publishing Corporation v URA* TAT No. 12 of 1999.

52 *Birungyi Barata & Associates v URA* [2017] UGTAT 1.

therefore approaching it would mean exposing one's business to URA. Similarly, the DRMS observed that:

> Many taxpayers view TAT as an arm of URA and a tax-collecting institution, which negatively impacts on the perception of TAT's autonomy and ability to fairly adjudicate disputes. Furthermore, Members of Parliament and MFPED often quantify TAT's performance in terms of revenue generated, complicating its incentives.
> (MoFPED 2019: 111)

MoFPED and parliament enquire into how much revenue TAT has generated in a financial year prior to approving its resource allocation (Brian and Lakuma 2019). TAT is thus perceived as biased and ineffective as a mechanism for addressing taxpayer complaints.

### *4.2.6 Tax ombudsman as a remedy for the shortcomings of existing oversight*

The tax ombudsman can complement some of the existing oversight institutions, without infringing on their respective mandates. The ombudsman can supplement parliamentary activity by providing technical scrutiny that can be used to hold the URA to account. Through reports submitted to parliament highlighting individual complaints and systemic faults within URA, the tax ombudsman can provide independently verified information and analysis that is necessary to scrutinise URA's service delivery.

The tax ombudsman can support proportionate dispute resolution. This is the idea that disputes should be resolved in a manner that reflects their nature (Buck et al. 2011). Disputes that raise serious or important issues for the parties or the general public call for more thorough and rigorous methods of dispute resolution. On the other hand, trivial or unimportant disputes, whose outcome is unlikely to have a major impact, should be subjected to simpler dispute resolution methods for cost-effectiveness, expedition and accessibility (Adler 2008). As has been argued:

> The complementary nature of the relationship between courts and Ombudsmen means that their co-existence does not lead to unnecessary duplication or to competition, as some would claim, but rather allows citizens and users of public services to choose the appropriate form of dispute resolution for their particular circumstances.
> (Serrano 2007: 340)

The ombudsman's inquisitorial methodology may be more proportionate in, and better suited to, adjudicating certain disputes in the complex world of government bureaucracies, than the adversarial system of the courts (Buck et al. 2011).

The tax ombudsman can also help reduce the challenge of tax-related case backlog. An IMF Tax Law Note on dealing with excessive volumes of tax disputes discusses a range of approaches to reducing case backlog, and recommends establishing the tax ombudsman for smoother interaction between tax officials and taxpayers, thereby resolving disputes, or, better yet, preventing them from arising (Thuronyi and Espejo 2013).

Finally, the office of tax ombudsman can support equity and access to justice in resolution of tax disputes. More affluent taxpayers have easier access to courts and other forms of dispute resolution. For example, the Presidential Investors' Round Table is a high-level forum chaired by the president through which a select group of investors can have their complaints regarding government agency service delivery addressed (BusiWeek 2020). The UN's 2030 Agenda sets 17 sustainable development goals (SDGs), and SDG16 is access to justice for all (De Langen 2020). Three aspects of the institution of tax ombudsman make it suitable as a tool to promote access to justice for all: free and easy access for citizens to submit

complaints; flexible approaches to resolving complaints; and the interaction between individual cases and structural improvements, for example periodic reports to parliament (De Langen 2020). The ombudsman's ability to address maladministration goes beyond individual complaints, as they can present in-depth reports on aspects of administrative activity that affect many people. These reports can secure redress for people not involved in the original complaint, who due to various constraints may not have been able to submit a complaint (Buck et al. 2011).

## 4.3 Supporting revenue mobilisation

By providing an independent and efficient means of redress for taxpayer complaints, the role of tax ombudsman can support revenue mobilisation.

### *4.3.1 Building tax morale in the country*

Tax morale, broadly defined as the intrinsic motivation to pay taxes, is affected by the nature and quality of the complaint handling mechanisms available (OECD 2022). Trust, transparency and communication between tax administrations and taxpayers are essential to support tax morale. In the absence of an adequate means of redress for their grievances, frustrated taxpayers may become non-compliant or exit the market (OECD 2022). This is illustrated in a letter written to a newspaper editor in 2010 by a woman who, after describing maltreatment suffered under URA officers, declared: 'I have never been one to advocate non-payment of taxes, but given the shoddy treatment I have received at the hands of the URA, I think Ugandans would be justified to evade tax. Enough is enough!' (Kauma 2010).

Administrative justice systems are crucial for retaining public trust in government. An important aspect of securing that trust, and concomitantly building tax morale, is the quality of services provided by public bodies, and allowing for redress where grievances arise.

### *4.3.2 Supporting tax certainty*

A tax ombudsman can support revenue mobilisation by providing certainty in tax administration. Tax authorities may behave in a manner that appears arbitrary and capricious to the taxpayers, and, in the absence of a proper mechanism to address these challenges, the resulting uncertainty may discourage taxpayers from engaging in some business transactions. It has been argued that investors depend on tax holidays as a means of escaping the burden of dealing with unpredictable, corrupt or inefficient tax administrations and government bureaucrats (Keen and Mansour 2009). These incentives, however, come at considerable cost in terms of revenue foregone. In a tax ombudsman, investors have a legitimate means of dealing with the inefficiencies of the tax authority, obviating one of the rationales for tax holidays – and resulting in increased revenue collection.

### *4.3.3 A tool against corruption in the tax authority*

One of the major challenges to revenue mobilisation in Uganda is corruption in the URA. For example, a 2022 study by the Tax Justice Alliance Uganda found that up to 38 per cent of persons who applied for an ostensibly free Taxpayer Identification Number had to make a payment to get it (Angurini 2022). According to the 2017 East African Bribery Index, 15.6 per cent of respondents in Uganda reported that they would not have received a tax service without paying (Transparency International 2017). In their book examining payment of bribes to public officers, Rose and Peiffer note that a reputation of delayed service delivery in institutions creates the opportunity for an official to demand a bribe, as citizens often seek prompt service delivery from such public agencies through corruption (Rose and Peiffer 2015). Taxpayers disputing an action by URA may also find corruption an easier form of

dispute resolution, as the official dispute resolution mechanisms may be too costly in terms of time, money and other resources (Brian and Lakuma 2019). Even a taxpayer with a legitimate grievance against the URA might opt for some means of corruption as a way of addressing that grievance, where no alternative equally expeditious and informal means exists. These dynamics allow venal URA officers to take advantage of taxpayers and deliberately delay or deny services due, knowing that taxpayers have no convenient means of redress other than corruption (Fjeldstad 2006).

#### *4.3.4 Tax ombudsman's role in revenue mobilisation*

The tax ombudsman would improve service delivery by the tax authority, which would lead to higher tax morale and growth in revenue (OECD 2022). Where taxpayers have a sense that the tax system is fair and their grievances can be redressed, they are more willing to cooperate with the tax authority. Verberne and Arendsen (2019) argue that one of the means of increasing formality and improving tax morale in Uganda is through protecting small businesses from harassment. This can be achieved through the creation of the office of the tax ombudsman.

The tax ombudsman contributes to the creation of tax certainty, which is especially important to multinational enterprises investing in developing countries (OECD 2022). With an efficient means of redress for grievances, there is less appetite for tools such as tax holidays as a means of achieving certainty and predictability in tax administration.

Finally, the creation of an office of tax ombudsman, where failure to meet service delivery standards can be reported, gives taxpayers an alternative to paying bribes. USAID notes the establishment of the office of the tax ombudsman as one of the trends in fighting corruption and ensuring the integrity of a tax collecting organisation (USAID 2013). Transparency International in *Approaches to curbing corruption in tax administration in Africa* argues that 'improving accountability in taxpayer-tax officer relations [is one of the] necessary steps to improve tax services and prevent corruption' (Martini 2014: 9). The government can collect the right revenue due without inefficient wastage of bribes paid to tax officials.

# 5 Tax ombudsmen in selected jurisdictions

## 5.1 United Kingdom

The tax ombudsman in the UK is known as the revenue adjudicator (James 2012). The office was set up in 1993, initially to investigate complaints about the Inland Revenue. It was subsequently expanded to investigate the Contributions Agency and the Insolvency Service (OECD 2009). It is established administratively, without statutory backing (Beighton 1996).

The role of the adjudicator is to consider complaints about the way in which His Majesty's Revenue and Customs (HMRC) has handled a person's tax affairs. The Adjudicator's Office investigates and helps to resolve complaints (OECD 2009). The adjudicator's remit is set out in service-level agreements with the HMRC (Adjudicator's Office 2018). Although the adjudicator is an office holder, external to and independent of HMRC, the HMRC provides staff, accommodation, equipment and materials to enable the adjudicator to resolve complaints (Adjudicator's Office 2018).

The adjudicator can only consider complaints about: mistakes, unreasonable delays, poor or misleading advice, processes, whether a policy has been followed, inappropriate staff behaviour and the use of discretion (Adjudicator's Office 2018). An aggrieved taxpayer must

exhaust the internal HMRC complaints review process before reporting to the Adjudicator's Office (Adjudicator's Office 2019). The Adjudicator's Office only accepts complaints submitted within six months from the HMRC review. The complaint can be submitted through an online form or submitted physically (Adjudicator's Office 2019).

The adjudicator is granted the authority to consult with all relevant HMRC staff to obtain information and data necessary for any investigation (Adjudicator's Office 2018). If a complaint involves HMRC's exercise of discretion, the adjudicator considers the process relating to the exercise of discretion without substituting their judgement for a reasonable judgement reached by HMRC (Adjudicator's Office 2018).

At the conclusion of an investigation, the adjudicator issues a final report with recommendations to the relevant HMRC director for implementation. Where appropriate, the adjudicator can recommend that HMRC compensates taxpayers financially (Adjudicator's Office 2018). The adjudicator's recommendations are not binding, but HMRC can only reject a recommendation based on a fair and consistent application of its published standards, guidance and codes of practice (Adjudicator's Office 2018). The adjudicator publishes an annual report highlighting how HMRC has handled complaints, and learning points from complaints received. The adjudicator has editorial control of the report, and HMRC has no veto power over the content (Adjudicator's Office 2018).

The adjudicator has registered some success. In their 2017 report they observed a persistent failure by HMRC to apply a tax credit policy called the Notional Entitlement policy (Adjudicator's Office 2017). As a result of the report, HMRC re-evaluated this policy and introduced better processes for handling the issue (West 2017).

## 5.2 United States

The office of the taxpayer ombudsman was established administratively by the Internal Revenue Service (IRS) in 1979 to administer its problem resolution programme, which was designed to resolve administration problems that were not remedied through normal operating procedures. The taxpayer ombudsman was a career civil servant selected by and serving at the pleasure of the IRS Commissioner (Roth and Nixon 1999).

This position was subsequently codified in the Taxpayer Bill of Rights included in the Technical and Miscellaneous Revenue Act of 1988. The statute gave the taxpayer ombudsman authority to issue taxpayer assistance orders (TAOs), where a taxpayer was suffering or about to suffer significant hardship because of the IRS's action. A TAO could require the IRS to cease any action, take any action, or refrain from taking any action with respect to a taxpayer. A TAO was binding on the IRS, unless modified or rescinded by the ombudsman or an IRS district director and above (Joint Committee on Taxation 1996). The ombudsman and the Assistant Commissioner (Taxpayer Services) were required to jointly provide an annual report to Congress about the quality of IRS's taxpayer services. The taxpayer ombudsman remained a career civil servant appointed by the IRS Commissioner, and serving at their discretion (Joint Committee on Taxation 1996).

In 1996, the Taxpayer Bill of Rights 2 replaced the office of the taxpayer ombudsman with the office of the taxpayer advocate (TA).[53] The rationale for the change was that the taxpayer ombudsman was not perceived as an independent advocate for taxpayers. The TA was appointed by and reported to the IRS Commissioner, but was now elevated to a position comparable to that of the Chief Counsel. The office of the TA was established within the IRS, with responsibility for assisting taxpayers in resolving problems with the IRS; identifying

[53] Taxpayer Bill of Rights 2 Public Law 104-168, 30 July 1996.

areas in which taxpayers have problems in dealings with the IRS; and proposing changes to the IRS's administrative practices and legislation to mitigate the problems identified (Joint Committee on Taxation 1996). A TAO could now specify a time period within which the IRS must act, and only the TA, the IRS Commissioner or Deputy Commissioner could, with reasons, modify or rescind (Joint Committee on Taxation 1996). Two reports would now be issued directly and independently by the TA to Congress. One report contained the objectives of the TA for the fiscal year, while the second report was on the activities carried out in the concluded fiscal year and identified the 20 most serious problems encountered by taxpayers, as well as administrative and legislative recommendations to mitigate those problems. The TA reports were not subject to review by anyone. The IRS Commissioner was required to establish internal procedures that ensure a formal IRS response within three months to all recommendations made by the TA (Joint Committee on Taxation 1996).

In 1997, the National Commission on Restructuring the IRS noted that the office of TA was still not viewed as independent, due in part to its placement within the IRS, and the fact that only career employees occupied the position (Kerrey and Portman 1997). In response to these concerns, the IRS Restructuring and Reform Act of 1998 renamed the TA as the national taxpayer advocate (NTA). The NTA is appointed by the Secretary of the Treasury in consultation with the IRS Commissioner and the IRS Oversight Board. They must not be an employee of the IRS for two years preceding or five years following their tenure (Joint Committee on Taxation 1998). Local taxpayer advocates were appointed in each state, reporting directly to the NTA. The situations in which a TAO could be issued were also expanded (Joint Committee on Taxation 1998).

In 2001 the NTA was authorised to issue a Taxpayer Advocate Directive (TAD).[54] While a TAO is specific to a particular taxpayer, a TAD deals with systemic issues affecting groups of taxpayers, mandating administrative or procedural changes to improve the operation of a functional process or grant relief to groups of taxpayers. The authority to modify or rescind a TAD is delegated to Deputy Commissioner for Operations Support, Deputy Commissioner for Services and Enforcement, and to the NTA (Joint Committee on Taxation 2022). In July 2019, the Taxpayer First Act codified the timeframes surrounding issuance of TADs. The IRS must respond to a TAD within 90 days, and the NTA may appeal that decision to the IRS Commissioner within 90 days if the IRS modifies or rescinds it. The NTA must report to Congress any TADs that were not honoured in a timely manner (Joint Committee on Taxation 2022). Reports to Congress must now contain a summary of the ten most serious problems taxpayers have in dealing with the IRS, initiatives taken and recommendations made by the NTA to improve taxpayer services and IRS's response, and the ten most litigated issues by taxpayers with recommendations for mitigating such disputes (Joint Committee on Taxation 2022).

The NTA website has a page dedicated to success stories, highlighting where individual cases and systemic administrative issues have been resolved are (TAS 2023). One notable success of the NTA was simplifying the earned income tax credit for workers with low to moderate income – this was notoriously complicated with intricate requirements. Nina E. Olson, who was the NTA from 2001-2019, successfully pushed for reform in the law and IRS procedures to simplify access to this facility (Lipman 2020).

[54] Internal Revenue Manual (IRM) 1.2.2.12.3, Delegation Order 13-3 (formerly DO-250, Rev. 1), Authority to Issue Taxpayer Advocate Directives (17 January 2001).

## 5.3 Australia

The commonwealth ombudsman was established in 1976 to investigate complaints about the actions of statutory agencies, including the Australian Taxation Office (ATO).[55] They report findings to the agency concerned and to the responsible minister, with recommendations for remedial action.[56] If the ombudsman's recommendations are rejected, the ombudsman can inform the prime minister and report it to parliament.[57]

In 1993 a parliamentary committee reviewed ATO operations and recommended the creation of a taxation ombudsman within the commonwealth ombudsman's office (JCPA 1993). The Ombudsman Act was amended in 1995, allowing the commonwealth ombudsman to appoint a taxation ombudsman.[58] The taxation ombudsman was within the office of the commonwealth ombudsman and focused on individual complaints, but could also conduct own motion investigations (Moss 2003).

Following growing taxpayer complaints about aspects of tax administration, such as delays and inconsistent advice, it was proposed that another office be created to handle systemic taxpayer complaints (SELC 2002). The Inspector-General of Taxation Act 2002 established an office to review tax administration and report to the government, with recommendations for improvements. The taxation ombudsman would focus on individual complaints, leaving the Inspector-General of Taxation (IGT) to conduct reviews of systemic issues (Moss 2003). The ATO Commissioner must be notified of an investigation, and authorise the provision of information by the relevant officers. The IGT has discretion to not investigate a complaint that is frivolous or was not made in good faith (SELC 2020). On completion of a review the IGT reports directly to government, and provides an annual report to parliament on its operations (OECD 2009).

In 2014 the law was amended to create a single port of call for all matters of tax administration involving the ATO, by transferring the tax complaints function from the ombudsman to the IGT (IGT 2015).[59] With effect from 1 May 2015 individual complaints about the ATO were directed to the IGT (Commonwealth Ombudsman 2015).

A 2020 review of IGT operations notes that it largely serves small taxpayers – 78 per cent of complaints between 2015 and 2020 were from individuals, and the vast majority lodged complaints without any representation. Many of those represented were represented by family members or friends (SELC 2020).

## 5.4 Tanzania

The Tax Ombudsman Service was established by statute in 2019, and is responsible for 'reviewing and addressing any complaint by a taxpayer regarding service, procedural or administrative matter arising in the course of administering tax laws' by the TRA.[60] The minister is required to appoint a person with competent knowledge in tax administration matters to be a tax ombudsman.[61] The tax ombudsman is required to act independently and impartially, and holds office for a renewable period of three years.[62]

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55 The Ombudsman Act No. 181 of 1976 [Hereinafter the Ombudsman Act].

56 Sections 15 of the Ombudsman Act.

57 Sections 16 and 17 of the Ombudsman Act.

58 Section 4(3) of the Ombudsman Act.

59 Schedule 2 of the Tax and Superannuation Laws Amendment (2014 Measures No.7) Act 2015.

60 Section 28A of the Tanzania Tax Administration Act, No.10 of 2015 [TTA Act].

61 Section 28B(1) of the TTA.

62 Section 28B(2) & (5) of the TTA.

The tax ombudsman's findings are submitted to the Minister of Finance.[63] In discharging their duties, the tax ombudsman reviews a complaint and, where necessary, resolves it amicably through mediation or conciliation in an informal, fair and cost-effective manner.[64] The tax ombudsman also identifies and reviews issues related to customer service, or procedures and behaviour that impact negatively on taxpayers.[65] The tax ombudsman is required to provide information, training and awareness to taxpayers on its service, functions and procedures for making complaints.[66] TRA is required to allow the tax ombudsman access to information that relates to the ombudsman's powers and duties.[67] The tax ombudsman is not permitted to review legislation or any TRA policy not related to service, administration or procedures. The tax ombudsman can only review administrative aspects of a matter under objection or appeal.[68]

In 2021, the law was amended to allow even persons not registered as taxpayers to lodge complaints with the tax ombudsman, and to add a qualification of requisite experience in tax administration before one can be appointed tax ombudsman.[69] In 2022 Regulations were passed to operationalise the office. These provided that complaints to the ombudsman may be made orally, in writing or electronically.[70]

## 5.5 South Africa

The Katz Commission was appointed in 1994 to review various aspects of the tax system and recommend reform. In its third interim report in 1995, the Katz Commission recommended the creation of an independent tax ombudsman to protect taxpayers' rights, and mediate between taxpayers and the South African Revenue Service (SARS) (Katz Commission 1995).

In October 2002, the Minister of Finance launched the SARS Services Monitoring Office (SSMO). The SSMO was to be a tool for aggrieved taxpayers who were not satisfied with the service from SARS (Ofori-Boateng 2014). Prior to reporting to the SSMO, the taxpayer had to exhaust remedies at SARS. The SSMO would function independently of SARS branch offices, report directly to the Commissioner, and provide regular reports to the Minister of Finance (Ofori-Boateng 2014). The typical complaints referred to the SSMO included delay in processing returns, decision-making and correction of administrative errors; failure to respond to queries, objections and appeals; and the conduct and attitude of SARS staff. SSMO remained an integral part of SARS, and was not considered independent (Ofori-Boateng 2014). Neither SSMO or SARS published a report detailing the complaints received, nor was there any obligation to submit any report to parliament. The SSMO could not compel any action from SARS (Ofori-Boateng 2014).

In 2011 the Tax Administration Act 28 of 2011 was enacted providing for the tax ombud, who was appointed in 2013 (Tax Ombud 2022a). The tax ombud is appointed by the Minister of Finance for a term of three years, and must have a good background in customer service as well as in tax law.[71] The taxpayer must first exhaust all of SARS's internal resolution mechanisms prior to approaching the ombud.[72] The ombud is restricted to dealing with

63 Section 28B(3) & (4) of the TTA.
64 Section 28C of the TTA.
65 Section 28C(f) of the TTA.
66 Section 28C(d) of the TTA.
67 Section 28E(3) of the TTA.
68 Section 28D of the TTA.
69 Section 53 of the Finance Act, 2021.
70 Regulation 3 of the Tax Administration (Administration of Tax Ombudsman Service) Regulations, 2022.
71 Section 14 of the Tax Administration Act 28 of 2011 [Hereinafter TAA].
72 Section 18(4) of the TAA.

matters of disagreement involving procedural administration of the tax law, but not those concerning disagreement on interpretation of tax law, non-service-related SARS policy, or a matter subject to objection and appeal.[73]

Tax ombud is not a separate distinct unit from SARS, as it is housed within SARS, SARS employees are seconded to the ombud's office, and all expenditure including staff salaries is met by SARS.[74] The tax ombud resolves issues by way of investigation, mediation and recommendation.[75] The tax ombud submits an annual report to the Minister of Finance which is then laid before parliament, detailing systemic service challenges or legal provisions that can potentially have a negative impact on SARS service delivery.[76] The tax ombud is further obliged to submit a quarterly report to the Commissioner.[77] Neither SARS or the taxpayer are bound by the recommendations of the tax ombud.[78]

In addition to its annual reports focusing on individual complaints, the tax ombud has released two reports on systemic issues. One in 2017 highlights delayed refunds as a challenge, and offers practical solutions that SARS adopted speeding up the refund process (Tax Ombud 2017, 2022b). Another report in 2020 addresses the fluidity of the Pay As You Earn Statements of Account, and SARS' failure to adhere to statutory dispute resolution timeframes (Tax Ombud 2020).

# 6 The proposed tax ombudsman in Uganda

## 6.1 Creation of the office

The office of tax ombudsman should be a juristic personality created by statute to augment the objectivity of the office for investigating and giving recommendations without fear of criticism. As seen from the example of Australia, attempting to simply carve out a special office in the general ombudsman (IGG) is inadequate. Further, the non-statutory ombudsman office model, such as the adjudicator in the UK, is unlikely to succeed in the political economy and governance structure of a country like Uganda. Previous non-statutory bodies, such as the 2002 Commission of Inquiry into Corruption in the URA, faced a great deal of resistance, with many questioning their legality and powers. In 2004, when the Commission submitted its report, two commissioners abjured it, its release to the public was blocked, its legality was questioned by MPs, and finally the High Court nullified the report (Fjeldstad 2006).

## 6.2 Appointment and removal

The Minister of Finance should appoint the tax ombudsman. Nomination or approval of a parliamentary committee would be fraught with challenges, like delays and political in-fighting. Appointment by the Commissioner General would imperil the independence of the office. In the US the tax ombudsman was initially appointed by the IRS Commissioner, this created doubts about independence and impartiality of the office, until it was changed to the Secretary of the Treasury.

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73 Section 16 & 17 of the TAA.

74 Section 15 of the TAA.

75 Section 18 of the TAA.

76 Section 19 of the TAA.

77 Section 20 of the TAA.

78 Section 20(2) of the TAA.

The tax ombudsman should ideally be someone intimately familiar with the tax administration of the country. In South Africa the current tax ombud is a professor of tax law (Tax Ombud 2022b). In Australia the IGT is an expert in tax law with practising experience (IGTO 2023). The current NTA in the US is a lawyer who spent 15 years in the IRS, and 20 years in practice at a prominent accounting firm (TAS 2023). In Uganda, a former URA staff member, or practitioner from an audit or law firm with extensive tax experience, would be a good candidate.

The tax ombudsman must have a fixed, long term of office that may provide for reappointment. Whereas Tanzania and South Africa provide for three-year terms, a five-year term would be recommended in Uganda to allow the individual to gain real command of the office, and implement change where necessary. Once appointed, to preserve the autonomy of the office, the ombudsman should be difficult to remove. This can be achieved through security of tenure provisions limiting the circumstances under which termination can occur. Further, the pay ought to match pay bands of top government officials, such as judges.

Despite being appointed by the executive, it is recommended that, similar to all the jurisdictions surveyed above, the tax ombudsman have some linkage with the legislature, through a statutory requirement to submit periodic reports – this would help mitigate the comparative weakness of the office. This way the work of the ombudsman parallels and complements the traditional work of parliament in holding the executive to account.

## 6.3 Guarantee of independence

Ensuring independence is imperative for any ombudsman scheme. The tax ombudsman must be, and be perceived to be, independent and impartial. USAID, in its *Detailed Guidelines for Improved Tax Administration,* argues that:

> An Ombudsman office … must be established in a way that the taxpayer feels comfortable that individuals assigned to this position are independent of the state and the tax administration. A wholly independent office of the Ombudsman affords the opportunity to the general public to file complaints of harassment or corruption, with the reassurance that any genuine complaint will be promptly redressed.
> (USAID 2013: 447)

The UN *Handbook on the Avoidance and Resolution of Tax Disputes* observes that:

> The establishment of a tax ombudsman body outside the tax administration may enhance the confidence that taxpayers will have in the ability of the tax ombudsman to perform its functions because taxpayers may consider that a separate agency is more likely to ensure an equitable treatment of disputes with the tax administration.
> (UN 2021: 101)

In the commentary to its Tax Code Model, CIAT emphasises that, to promote independent and impartial proceedings, the taxpayers defender should be an independent government office, not part of the tax administration (CIAT 2015).

The office of tax ombudsman should ideally be separate from the URA. However, setting up a separate office will require considerable resources, which may not be readily available. It is therefore recommended that, though appointed by the Ministry of Finance, the tax ombudsman office is housed within the URA, with URA staff seconded to the office and all expenditure funded through the URA, as in South Africa and the UK. The tax ombudsman should be permitted to make their own budget and account for their expenditure, in line with

the UN recommendation that, where the ombudsman is established within the tax administration, their independence may still be guaranteed where their budget is allocated and administered separately (UN 2021).

The tax ombudsman must be someone who has not worked for the URA in the preceding five years, and should undertake not to work there in the next five years after leaving office. This is similar to the restrictions introduced for the NTA in the US.

## 6.4 Remit of the tax ombudsman

The tax ombudsman should be able to review all forms of maladministration. The tax ombudsman, unlike other administrative law bodies, is not concerned primarily with law, but with justice, and maladministration is a concept that goes to justice rather than law. Inquiring into maladministration allows the ombudsman to tackle issues where there is no obvious available legal test, such as where service standards are not met (Buck et al. 2011). Taxpayers should be able to go to the tax ombudsman even regarding the sort of acts that would not ordinarily be challenged before courts.

In line with the DRMS, the tax ombudsman ought to handle complaints relating to: (a) mistakes, omissions and oversights, (b) undue delays, (c) poor or misleading information, (d) unfair treatment, and (e) staff behaviour (MoFPED 2019: 88). Matters unrelated to functional processes, procedures and service delivery, as well as matters pending objection or appeal to court, should be outside the ombudsman's remit.

## 6.5 Public awareness

Public awareness of the existence of the tax ombudsman and the role the office plays should be championed. However, it is important to avoid inflated claims of what the tax ombudsman can deliver, so as not to encourage unrealistic public expectations. Any campaign ought to project the office in a position of neutrality between citizen and the URA, rather than as the citizen's advocate.

The general public need not necessarily know about the tax ombudsman, but a citizen who has experienced a grievance at the hands of the URA does. Therefore, awareness campaigns can focus on points of citizen interaction with the URA. To achieve this at low cost, the tax ombudsman can ride on the coattails of the URA. Advertisements explaining the ombudsman's role can be placed on the URA website, in brochures and on posters placed in URA offices around the country. Social media can also be helpful in promoting awareness. URA officers at the service desk and contact centre should be trained to advise taxpayers to report appropriate cases to the tax ombudsman.

## 6.6 Complaint-handling procedure

Gaining access to the ombudsman should not be difficult. The tax ombudsman procedures should emphasise informality, flexibility and ease of access as much as possible. Complainants should be able to approach the tax ombudsman physically, in writing or through electronic means. As in Tanzania, even persons not registered for tax should be able to submit complaints.

Submitted complaints should be examined to ensure that: they are made within a stipulated timeframe; are within the office's jurisdiction; URA has been given an opportunity to respond to the complaint; TAT or court is not a more suitable remedy; there is prima facie evidence of a justifiable complaint; and that the complainant has potentially suffered an injustice. The ombudsman should have the power to reject complaints that are premature or pertain to

matters outside the office's remit. In such cases the taxpayer can be redirected to the appropriate body or provided with tailored procedural advice.

Taxpayers ought not to be penalised for seeking redress.[79] Therefore interest and penalties should not be imposed while the taxpayer's complaint with the tax ombudsman is pending. Furthermore, the law establishing the tax ombudsman ought to clarify that any other timelines in statute, such as the time within which to appeal to the TAT, will not run against a taxpayer while their application to the tax ombudsman is pending. To limit abuse of the system, it is advisable to create and adhere to strict timelines within which complaints are managed.

The ombudsman should rely on investigatory techniques, so that once a complaint has been submitted the ombudsman takes ownership of it, without requiring further input from the complainant. This reduces the stress and cost of complaining. However, to avoid disenfranchising the complainant, the ombudsman ought to keep them updated.

## 6.7 Powers of ombudsman during investigation

As is the case in Tanzania, the statute establishing the office should allow the tax ombudsman unfettered access to any records or information necessary to carry out their investigatory role. As such, the tax ombudsman must be bound by the same confidentiality laws that bind URA officials. The tax ombudsman should also be able to interview or otherwise interact with any URA official without any prior authorisation, so that investigations are not bogged down in procedural formalities. A Senate review of the IGT in Australia found that a requirement for the ATO Commissioner to authorise disclosures to the IGT by tax officers severely limits the IGT's ability to fulfil its role, and recommended that this requirement be removed (SELC 2020).

Where appropriate, the tax ombudsman should be able to conjoin similar complaints into one piece of work. This can be done where the ombudsman notes a trend of complaints in a particular area. The ombudsman may then choose a few of these complaints that are sufficiently representative of the whole for more detailed investigation. This way the tax ombudsman can interrogate systemic issues that may be plaguing the URA. The tax ombudsman should be able to initiate own motion investigations or at the request of other stakeholders, such as the MoFPED, committees of parliament or the URA.

## 6.8 Remedies available from the tax ombudsman

As in all jurisdictions reviewed above other than the US, the tax ombudsman recommendations should not be binding on the URA, as this would override URA's legal discretionary authority. Further, giving the ombudsman full powers to award binding remedies, such as in the US, introduces a quasi-judicial element to the office that opens it up to judicial review – and therefore would require greater formality in its procedures to avoid constant litigation. This may defeat the purpose of the office.

The tax ombudsman should produce a report recommending appropriate action to be taken following any investigation, which is then submitted to the URA, the complainant and MoFPED. The URA can then decide whether to follow the ombudsman's recommendations. The recommendations should be very practical, addressing the needs of the complainant and the injustice experienced. Where the URA has a legitimate reason for rejecting the recommendations, this ought to be communicated in writing. The ombudsman may then choose to alter the recommendations accordingly. The main enforcement weapon of the

[79] *Airtel Uganda Limited v URA* [2019] UGCA 2022.

ombudsman is publicity, and in appropriate cases reports on individual complaints should be made public with the consent of the complainant. However, this should be in exceptional circumstances, as the relationship between the tax ombudsman and the URA should be more collaborative than antagonistic.

As with all jurisdictions reviewed, there should also be a statutory requirement to submit a publicly accessible annual report to the URA, MoFPED and relevant parliamentary committees. This should include statistics on the number of complaints and their outcomes, with relevant examples. The report should include scenarios where the tax ombudsman's recommendations were ignored. As is done by the NTA in its reports to Congress and the tax ombud in South Africa, the tax ombudsman's report should include systemic challenges with possible remedies. For bodies such as parliament that have oversight over the URA, this report can be very useful in holding the body to account. A UK study of the ombudsman role in overseeing HMRC noted that although compliance with its recommendations cannot be compelled, laying the report before the requisite parliamentary committee 'is generally sufficient to ensure compliance on the part of the offending public body' (Daly 2016: 19).

The main responsibility for pursuing the implementation of recommendations should lie with the ombudsman. This should primarily be through persuasion and relying upon the goodwill that the office has built up over the years. Goodwill can be built up through positive interaction with the URA that shows an understanding of the constraints faced by URA officers, while ensuring that the taxpayers' challenges are addressed. As has been argued: 'The strength of this institution lies in the moral influence it can exert over the taxpayers and Tax Administration under its control. A strength that must be founded upon its capacity to persuade' (Serrano 2007: 340).

Where the URA remains intransigent, further persuasion can be sought by the tax ombudsman reporting to MoFPED. Where URA persists, such cases can be made public with the complainant's consent, or reported to the relevant parliamentary committee.

The tax ombudsman can also act as a mediator between the taxpayer and the URA where this is appropriate, as in situations of delayed service delivery. The tax ombudsman can contact the URA to find out the actual cause of the delay, and mediate between the aggrieved taxpayer and the URA to address it and ensure speedy delivery of services. In 2021 the Tax Procedures Code Act was amended to allow for alternative dispute resolution mechanisms in tax matters.[80] The tax ombudsman can have powers to settle disputes under alternative dispute resolution.

The tax ombudsman may recommend an apology from the URA to the complainant. Complainants often desire a positive recognition of the hurt suffered, together with an acknowledgement of responsibility. The law should, however, clarify that apologies issued by the URA under the aegis of the tax ombudsman should not be interpreted as recognition of legal liability by the tax authority.

The ombudsman should be able to recommend compensation for the complainant where appropriate. Compensation may be used as a consolation to recognise the distress, expenses and/or inconvenience suffered. These compensation recommendations should remain non-binding on the URA, and should only be done in cases of particularly egregious behaviour on the part of the tax authority. Further, the compensation should be capped at an amount such as USh50 million (US$13,500), to limit risk of abuse. Higher compensation may only be pursued upon approval from the Minister of Finance.

[80] Sections 24(11) and (12) of the TPC Act.

# Conclusion

The relationship between the taxpayer and the tax authority is inherently tense. In Uganda, this is aggravated by poor service delivery on the part of URA. The tax ombudsman is a suitable remedy to this challenge. As summarised by Professor Fernando Serrano, the tax ombudsman for the municipality of Madrid in Spain:

> The creation of a Tax Ombudsman has two effects: first, it supplements the civic instruments for dialogue and defence that should be available to all taxpayers; and secondly, in the medium term, the Tax Ombudsman's action has positive and valuable effects on the smooth functioning and quality of services provided by the Tax Administration.
> (Serrano 2007: 340)

As has been noted, many jurisdictions have created this office as a means of engendering equity and boosting tax morale by improving relations between taxpayers and tax authorities. The need for this office in Uganda has already been recognised by MoFPED in the DRMS (MoFPED 2019). A smoother relationship between the URA and taxpayers is key to domestic revenue mobilisation. As was stated by Justice Walton in the UK case of *Vestey v IRC*:[81] '[a] tax system which enshrines obvious injustices is brought into disrepute with all taxpayers accordingly, whereas one in which injustices, when discovered, are put right (and with retrospective effect where necessary) will command respect and support'.

This is not exhaustive research on the need for a tax ombudsman in Uganda. Further research is needed to clarify the potential benefits and costs of creating this office, which groups among taxpayers will benefit and how, how the office may be run on a day-to-day basis, and how to mitigate potential abuse of the office. What appears to be undeniable, however, is the need for an independent office to address administrative shortcomings of the tax authority.

[81] *Vestey v IRC* [1979] Ch D 177 at 198.

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