THE LEGAL EFFECTS OF TAX EVASION,
A CASE FOR REFORM IN UGANDA

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AWARD OF A BACHELOR OF LAWS DEGREE OF
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UNIVERSITY

MAY, 2015
DECLARATION

I declare that this dissertation is from my own findings and has never been produced by anybody else for any award in any institution.

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Date .............................................

18/6/2015
APPROVAL

This is to certify that this dissertation has been done under my supervision and submitted to the faculty of law for examination with my approval.

Mrs. Okumu Patricia Ringa  
(supervisor)

Signature: [Signature]  
Date: 20/06/2015

[Score: 60/100]
DEDICATION

I dedicate this dissertation to my family Mr. Richard Kyeyamwa and Florence Kyeyamwa for leading me towards the right path, educating me and guiding me in becoming a righteous gentleman. My friends I have studied with from year one till the end of the four years may God make the world a better place for you.
Sincere thanks to the Almighty GOD for enabling me to overcome all the hardships in doing this research.

I am grateful to my supervisor Mrs. Okumu Patricia Oringa for her tremendous guidance and constructive criticisms in doing this research paper thus all errors noted remains mine. Thanks also go to my Deputy Dean Ms. Twikirize Parton for the constant advise throughout my four years in Law school.

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I wish to acknowledge my mother Florence Kyeyamwa for leading me towards the right path, educating me and guiding me in becoming a righteous gentleman, paying for my education and taking care of me since I was little until this time when am able to differentiate between right and wrong.

Lastly I acknowledge the people of Kansanga where I have resided for my whole four year term of education at Kampala International University, and the trader who me their time to be interviewed during my research I thank you all so very much my GOD bless the work of your hands.
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<tr>
<th>Acronym</th>
<th>Full Form</th>
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<td>V.A.T.</td>
<td>Value Added Tax</td>
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<td>FY</td>
<td>Financial year</td>
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<td>URA</td>
<td>Uganda Revenue Authority</td>
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<td>KRA</td>
<td>Kanye Revenue Authority</td>
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<td>TRA</td>
<td>Tanzania Revenue Authority</td>
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<td>RRA</td>
<td>Rwanda Revenue Authority</td>
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<td>GATT</td>
<td>General Agreement on Tariff and Trade</td>
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<td>TIN</td>
<td>Tax Identification Number</td>
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<td>GDP</td>
<td>Gross Domestic Product</td>
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<tr>
<td>PAYE</td>
<td>Pay As You Earn</td>
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<td>LTD</td>
<td>Large Tax Payers Department</td>
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<td>TAT</td>
<td>Tax Appeal Tribunal</td>
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<td>ITD</td>
<td>Income Tax Decree</td>
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<td>ITA</td>
<td>Income Tax Act</td>
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<tr>
<td>HC</td>
<td>Harmonized cords</td>
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<tr>
<td>COMESA</td>
<td>Common Market for East and Southern Africa</td>
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<tr>
<td>RADDEX</td>
<td>Revenue Authorities Digital Data Exchange</td>
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<tr>
<td>DRC</td>
<td>Democratic Republic Of Congo</td>
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<tr>
<td>IGG</td>
<td>Inspectorate of Government</td>
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<tr>
<td>NRM</td>
<td>National Resistance Movement</td>
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<tr>
<td>KCCA</td>
<td>Kampala City Council Authority</td>
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<tr>
<td>MP</td>
<td>Member of Parliament</td>
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APPENDIX II: INTERVIEW QUESTIONNAIRE FOR RESEARCH PAPER ON THE LEGAL EFFECTS OF TAX EVASION AND CASE FOR REFORM IN UGANDA .... 76
ABSTRACT

The research is about the critical analysis of the evasion in Uganda, its legal effects and a proposal for possible changes in the tax administration system. Looking at the methods used by tax payers in evading tax, the reasons why they tax evasion is still in existence given the measures put in place, to find the legal effects of tax evasion and to propose a way forward focusing on the Uganda revenue authority as established by the income tax Act cap 340.
CHAPTER ONE

1.1 Introduction and the Background of the Study

Ayoki, Obwoni and Ogwapis state that tax evasion has been universal and persistent problem throughout history with manifold economic consequences. Two thousand five (hundred years ago, Plato while writing about tax evasion, and stated that the Ducal Palace Venice had a stone with a hole in it, through which people once informed the Republic about tax evaders, Plato stated that "Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government Servant not to eat up at Least a bit of the king’s revenue". The basic assumption was that without control, man self-serving by nature, would appropriate more than his share of the king’s revenue.

Ayoki and others further state that tax evasion has been a major problem in most revenue authorities established to manage administration of tax in different countries. Means of evading tax has continuously been formulated by non-compliant tax payers, bribe payment for example to tax officials is perceived as a means of gaining favors in the form of reduced tax obligations or payments. Widespread corruption, bribery, smuggling, falsification/ forging of documents, under-declaring of goods and income tax fraud in the tax system has undermined growth in revenue in Uganda. They further argue that Corruption has persisted despite several anti-Corruption measures undertaken by the government, including privatization of some of the Customs operation and use of automated system in customs and the Value Added Tax (V.A.T operations), special services of revenue protection/anti-smuggling (Para-military) unit, and the better pay of Uganda Revenue Authority (U.R.A) employees. It is from this background that this research has analyzed ways through which tax evasion occurs in Uganda, its legal effects in Uganda.

Major tax reforms have been implemented since 1990s aimed at addressing tax evasion in Uganda which aimed at rationalizing the tax structure and rates, widening the tax base, reducing exemptions and simplifying tax procedures. High and Differentiated taxes and tariff rates, burdensome bureaucratic requirements, discretionary exemptions and tax

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3 Zambia, Tanzania, Malawi, and Kenya.
incentives were considered to be a source of inefficiency in the tax systems. Uganda Revenue Authority was set up in 1991 as a semi-autonomous agency to collect taxes. Value-added-tax was introduced in 1996⁴, and a new Income Tax Act was enacted in 1997⁵. Substantial attempts were also made to modernize and automate customs and Value Added Tax (V.A.T) administration. In addition, Tax Identification Number, the Large Tax Payer Department, pre-shipment inspection and General Agreement on Tariff and Trade (G.A.T.T)⁶ valuation system and the Tax Appeal Tribunal, as well as a system of paying taxes through commercial banks were introduced⁷.

As a result, revenue increased from 7.82 percent of G.D.P in 1990-1991 to 12.6 percent in 2008/09. In 2009/2010 domestic revenue was below the budget by 15%⁸. The reforms had a bigger impact on direct taxes than on indirect taxes, suggesting that tax evasion is still a major problem for indirect taxes especially import duties⁹.

1.2 Statement of the Problem

The government relies on tax revenues as one of its major sources of funds for fulfilling its obligations towards its citizens. The Government further imposes taxes for mobilization of capital for investment, stabilization of the economy by checking on the fluctuation in the prices and maintaining economic stability and distribution of wealth by attempting to reduce the gap between the rich and the poor. Where the citizens do not realize this and continue evading taxes, this habit therefore threatens to seriously curtail government activities, thus the need to find ways to strengthen tax compliance in the country. On 1st March 2007 Allen Kagina the former Uganda Revenue Authority's Commissioner General in a seminar on tax education at hotel Africana said that the level of ignorance about taxes was still very high among Ugandans. She said, “People are evading taxes when they do not need to,” and added that businesses were also failing because proprietors were ignorant of their tax obligation, this occurs despite tax clinics that Uganda Revenue Authority (U.R.A) has been conducting. Therefore tax evasion becomes a serious issue that needs urgent attention.

⁴ Value added Act chapter 349 laws of Uganda 2000
⁵ Income tax Act chapter 340 laws of Uganda 2000
⁶ 1994
⁷ The act broadened the definition of taxatable income, and eliminated (most) discretionary tax exemptions tax
⁸ The economy, a review on performance of the economy during the fiscal year 2009/10
1.3 **Objective of the Study**

The study sought to critically analyze tax evasion in Uganda with the following key objectives:

(i) To examine the methods used by taxpayers in evading payment of tax.
(ii) To find out the legal effects of tax evasion.
(iii) Lastly, the study proposes recommendations for reforms in the law governing tax payment and collection to curb on the evil of tax evasion in Uganda.

1.4 **Scope of the Study**

The study will consist of an analysis of the Income tax act cap 340 of Uganda, its subsequent amendments and other relevant laws, government documents that is to say, the value added tax act cap 349 as amended, the east African community double taxation agreement, a listing of Uganda double taxing Agreements, exercise tariff rates, statutory instruments under the gaming and pool bating (control and taxation) Act, extracts from the finance Acts and fees under various enactments, and also reference to be made to practice notes under the ITA and VATA issued by the former commissioner general of the Uganda revenue authority.

1.5 **Hypothesis**

In writing this research paper the following assumptions have been made.

That tax evasion has since time immemorial been preferred by taxpayers thus given an opportunity they will more often than not evade paying tax. Graft and corruption has largely been attributed to this thus despite reform measures made corruption will only be reduced and not completely be destroyed.

1.6 **Significance of the Study**

The study gives a clear insight as to the consequences as law provide for any form of tax invasion. Bearing in mind that taxation is one of the important sources of government revenue and also an economic policy tool by the government in ensuring economic growth, an attempt to evade tax should be dealt with seriously in order to ensure smooth running of government activities. This study thus proposes for better ways to curb on tax evasion in Uganda.
1.7 Methodology
In conducting this research, information was obtained from different books and materials from libraries, internet, government documents and newspapers. This research is as of necessity qualitatively and heavily depended on prior published documents. This research has included work done by various tax experts/consultants in Uganda and the rest of the world. Because this work is sometimes not up to date and in other cases quite theoretical, as a researcher I have also held interviews with Taxpayers and members of the private sector to gain further insight into the topic.

1.8 Literature Review
It is important to note from the onset that this area of study has been widely researched and written on; policy reforms implemented have been as a result of the recommendations from the previous research. However most of the writings reflected tax evasion during their time thus the need to revisit the field and analyze taxpayers' compliance behavior for instance whether evasion is still a major problem and recommend measures to curb it. 

Bird Richard and Oldman (1967) “Reading in Taxation in Developing Countries” conducted a research on non compliance in developing countries and blamed evasion on perception of tax revenue misuse by the authorities. They stated that taxpayers' will not comply with their obligation of paying tax if they believe that the revenue is not well spent. They further stated that however where there are fierce detection, enforcement and punitive measures then the taxpayers will be left with no option but to pay. Bird and Oldman argue that voluntary compliance depends on national attitudes towards a tax system and administration. This research was written long time ago, it was extensive and outlined most of the general reasons as to why taxpayers evade tax. It however needs to be revised in relation to the reforms that have been lately carried out in Uganda and analyzed closely in relation to the present condition. Mr. Kaweesa Kiwanuka Christopher.Taxation and Investment in Uganda, Structure and Trend (May 2004). The paper was presented to the business community in London. It discussed the measures that have been taken to reduce on evasion for instance broadening the tax base by bringing the hitherto difficult to tax areas of the economy under the tax net, and among others improving on compliance by reducing tax burdens and

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increasing the level of awareness through intensive taxpayer education programs\textsuperscript{11} such as proactive information dissemination. The paper further stated that various strategies have been adopted such as seminars, workshops, and tax clinics, live radio talk shows on tax education, tax literatures and the UR.A website. The research however failed to appreciate the weakness of the measures that have been implemented. I would argue that the aim of the paper was to encourage investors more than to analyze the issue of tax evasion. On 1\textsuperscript{st} of March 2007 Allen Kagina\textsuperscript{12}, the former Uganda Revenue Authority's Commissioner general in a seminar at hotel Africana in Kampala, while advocating for the incorporation of tax education into the university syllabus stated that the level of ignorance was still very high thus leading to rampant evasion. This seems to have departed from Kawesa's earlier report making it insufficient to be relied on as reflecting the current true position.

Odd-Helge Fjeldstad - *Corruption in Tax Administration, Lessons from Institutional Reforms in Uganda*\textsuperscript{13} - The Researcher analyzed the level of corruption in U.R.A and concluded that despite the semi-autonomous nature of Uganda Revenue Authority (U.R.A). The respectable salaries of the workers and improved working conditions of the officers, corruption still thrives. He stated that in an environment where the demand for corrupt services is extensive, monitoring ineffective wage increase may end up functioning as an extra bonus on top of the bribes taken by corrupt officers.

The researcher proposed for the breaking the influence of kin-based network on the perations of the revenue administration. He further advocated for introduction of a rotational system for the staff where revenue collectors remain only for a short period in the same post and stated that the danger with this system is that the uncertainty which is thereby created for employees, may result in increased corruption as collectors will try to enrich themselves while they are stationed in the most lucrative post. The rotation system he said may also give corrupt superiors undue power, for instance they might 'sell' assignment to attractive positions or reassign officials to remote stations as a punishment for honesty. The scarcity of qualified personnel like auditors and accountants further reduces the potential of rotation system in poor countries. Odd-Helge Fjeldstad's research analyzed in depth the issue of corruption in Uganda Revenue Authority (U.R.A). The present research will thus analyze whether some of

\textsuperscript{11} Small business especially in the informal sector
\textsuperscript{12} Mugenyi Moses, the weekly observer business 2007/5/1, wp 2005CHR MICHELSEN INSTITUTE Bergen Norway. www.cmi.no.pdf.file
\textsuperscript{13} 18\textsuperscript{th} oct 2010
the recommendations forwarded by the author have been implemented, and whether
corruption is still to be blamed in U.R.A.

Ayoki Milton, Obwoni Marios, Ogwupus Moses. *Tax reforms and domestic revenue
mobilization in Uganda* (Jan 21, 2005). The paper tackled tax evasion with clear
elaboration; however the findings of this paper were restricted to the reforms that were
done up to 2004. It is a good reference material in this subject, but does not reflect as to
the current level of evasion thus this research is geared towards closing the gap created
between 2004 and present, analyzing what has been done and its response in tax
compliance. The paper suggested that improving revenue performance will require a
major improvement in tax administration, increase in the level of employment and
reduction in tax exemption and corruption. The authors further stated that further
adjustments in tax rates except tax threshold and some excisable goods were not possible
at that moment, and that efforts should be directed to improving tax collection and
reducing corruption, improving welfare through employment generation and other
poverty reduction strategies. Measures that could be undertaken to reduce corruption
include winning public confidence through improved service delivery and government
payment for goods and services.

Ole Therkilsden. *The rise and fall of mass taxation in Uganda* (1900-2005) DII working
paper no-2006/25. Taxation compliance and governance. The paper stated that to collect tax
in a reliable and efficient manner requires quasi-voluntary compliance. Taxpayers must be
encouraged to 'volunteer' to pay while non-compliant must be coerced to pay if they are
cought and that un-Iss constituents are coerced, induced or motivated to pay tax, they will
minimize payment or if the situation permits not pay at all. Ole Therkilsden argues that quasi-
voluntary compliance depends on many factors; perception of the fairness of the tax
(compliance by other taxpayers), perception about the benefits (services in the broad sense)
that the tax authorities provide in exchange for tax revenues and perception of the legitimacy
of rulers based not only on the material benefits of the tax payments but also on the norms
and beliefs. The writer further states that in western Europe quasi-voluntary compliance
emerged through a bargaining process, this brought rulers and potential taxpayers to negotiate
about who was to be taxed, the basis for assessing taxes, how taxes should be collected and

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14 www.ugrevenue.com
15 DII working paper no 2006/25, Danish Institute For International Studies
the purpose for revenue use. I do concur with the author on use of quasi voluntary methods for nurturing compliance. My research has analyzed the effectiveness of the penalties for evasion under the tax legislations.

Kangave Jalia. *Improving Tax Administration: A case study of the Uganda Revenue Authority*16. The author in her Paper presented to the Cambridge University states that it is one thing to know that taxes can help finance government expenditure and quite another to have a system that actually collects and manages tax revenue effectively. She adds that a good tax system depends largely on two things; a good tax policy and a good tax administration to implement this policy. She further stated that improving administration will significantly improve revenue performance since the weaknesses in Uganda's tax administration explains at least to some extent Uganda's poor tax revenues.

The author criticizes the nature of autonomy that Uganda Revenue Authority enjoys noting that the autonomy has been undermined partly by the fact that the Ministry of Finance still influences the recruitment of some revenue officials, sets unrealistic revenue targets that it uses to assess U.R.A's performance and controls its operational cost by requiring U.R.A to prepare a budget for the Ministry's approval.

Kangave Jalia blames corruption in U.R.A on constant interaction between the taxpayers and officials since taxpayers have to file returns physically thus the interaction may encourage the two parties to negotiate tax liability. She further adds that U.R.A employees' salaries are not competitive compared to private sector wages and this may force officials to engage in corrupt practices. On this I do disagree with the author having read from Odd Helge Fjeldstad17 article on Corruption in tax Administration Lessons from institutional reforms in Uganda, who stated that increased wages can act like extra bonuses in addition to the money that the employees get from corrupt practices in an environment where corruption is preferred, a clear description of the corrupt environment in Uganda.

Kangave Jalia states that tax evasion occurs due to lack of intensive audits and absence of pre-determined audit criteria and the low level of computerization in the U.R.A. This she bases on the fact that U.R.A has incomplete accounting modules for Value Added Tax and

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16 Wp 2005;10 CHR MICHELSNE INSTITUTE Bergan ,Norway.
17 Journal of African Law, 49, 2(2005), 145-176(c) School of Oriental and African Studies. Cambridge University, United Kingdom
Income Tax, meaning; that some tax procedures has to be conducted manually making it harderto detect evasion, She also blames administration inefficiency on arrogance of U.R.A employees towards taxpayers. This she notes develops from lack of employee incentives which reduces employee morale and may translate into a disregard for customer service.

She proposed for introduction of electronic filing of returns or mailing them instead of taxpayers taking them physically to the tax office. She also criticized the Income Tax Act for not expressly mentioning tax evasion as an offence and states that under Section 136, a person who does not pay tax is liable to pay interest on the tax due or any penalty thereon, Section 137 provides for the failure to furnish a return while Section 142 provides for making false or misleading statements. However nowhere in the whole Income Tax Act is tax evasion explicitly mentioned as an offence. I do find Kangave J alia's Paper so helpful in that it has outlined administrative inefficiencies that directly causes evasion. Kangave's work is so elaborate on the procedures for filing returns, type of audits by U.R.A and explains in detail the organizational structure of U.R.A. I thus find the whole so helpful in writing my research paper.

1.9 Chapterization
The chapters of this research have been formulated in such a way that they supplement on each other.

Chapter one gives an introduction to the subject of discussion giving a background to the study.

Chapter two defines major terms, and gives an analysis of the methods employed in tax evasion in Uganda.

Chapter three gives the clear interpretation and explanation of the effects of tax evasion which is the law prescribe under the income tax act cap 340

Chapter four gives the general conclusion of the research and proposes for reform policy measures to curb on tax evasion in Uganda

CHAPTER TWO
DEFINITION OF TAXATION, TAX, TAX EVASION AND THE METHODS USED IN TAX EVASION

2.1 Definition of Taxation
Taxation is defined as "... the imposition of duties for the raising of revenue"\(^{19}\). It therefore, encompasses every charge or burden imposed by a sovereign upon a person's property right for use and support of the government.
The Oxford Dictionary\(^{20}\) defines "tax" to mean -
"A compulsory contribution to the support of government levied on persons, property, income, commodities, transactions etc, now at a fixed rate mostly proportionate to the amount on which contribution is levied\(^{21}\).
Bakibinga DJ notes that taxation is a device valuable from people and organizations by the use of law\(^{22}\). He further notes that taxation encompasses every charge or burden imposed rights for the use and support of government, and activities. Article 17(1)(g) of the 1995 Uganda Constitution obliges every citizen to pay tax.

2.2 Origin of Taxation
The evolution of taxation is attributed to the development of the modern state, which led to increased expenditure for infrastructure and public services. Origin of Taxation Tax is the price we pay for civilization, which goes hand in hand with organized society. For society to be organized, it needs a well-financed administrative structure. Therefore, taxation in its different forms has existed as long as society had the minimum elements of government. Tax as defined a monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue. Where payment is not monetary, a more wide embracing definition has been adopted as: Taxes are the enforced proportional contributions from persons and property levied by the State by virtue of its sovereignty for the support of government and for all public needs (Thomas M. Cooley: *The Law of Taxation*). One of the main characteristics of a tax is that the payer does not demand something equivalent in return from the government for the payment. It is expected that when taxes are collected, they are used by government for public good and not just for those who make the payment.

\(^{19}\) DJ Bakibinga *Revenue law in Uganda* 8th professional books publishers
\(^{20}\) 8th edition.
\(^{21}\) AS Homby Oxford advanced learners Dictionary special price edition 2001
\(^{22}\) Dj Bakibinga 2003
2.3 History of Taxation in East Africa

Taxation as understood today was introduced in East Africa by the early British colonial administrators through the system of compulsory public works such as road construction, building of administrative headquarters and schools, as well as forest clearance and other similar works. The first formal tax, the hut tax, was introduced in 1900. This is when the first common tariff arrangements were established between Kenya and Uganda. Through this, Ugandans started paying customs duty as an indirect tax, which involved imposition of an ad valorem import duty at a rate of 5% on all goods entering East Africa, through the port of Mombasa and destined for Uganda. A similar arrangement was subsequently made with German East Africa (Tanganyika) for goods destined for Uganda that entered East Africa through Dar-es-Salaam and Tanga ports. This gave rise to revenue which was remitted to Uganda. The Protectorate government heavily relied on customs duties to fund its programs, yet the indigenous Africans were not engaging in activities that would propel the growth of the monetary economy. Accordingly, government introduced a flat rate poll tax that was imposed on all male adults. The requirement to pay tax forced the indigenous Ugandans to enter the market sector of the economy through either selling their agricultural produce or hiring out their services. The tax burden was later increased by the introduction of graduated personal tax.

2.4 The Legality of Taxes collected by the Central Government

Articles 152 (i) of the Uganda Constitution provides that “No tax shall be imposed except under the authority of an Act of Parliament”. Therefore, the Uganda Revenue Authority Act Cap 196 was put in place to provide the administrative framework in which taxes under various Acts are collected. The Uganda Revenue Authority administers the tax laws (Acts) on behalf of the Ministry of Finance, Planning and Economic Development under the following legislation regulating taxes: (i) Customs Tariff Act. Cap 337. (ii) East African Customs Management Act (iii) Excise Tariff Act Cap 338. (iv) Income Tax Act Cap 340, (v) Stamps Act Cap 342 (vi) Traffic and Road Safety Act Cap 361 (vii) Value Added Tax Act Cap 349 (viii) The Finance Acts, an additional tax to finance local governments. This culminated into the first tax legislation in 1919 under the Local Authorities’ Ordinance. In 1953, following recommendations by a committee headed by Mr.C.A.G Wallis, graduated personal tax was introduced to finance local governments. Income tax was introduced in Uganda in 1940 by a

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23 URA , taxation Handbook a guide to taxation in Uganda 2011
24 The constitution of the Republic of Uganda 1995
Protectorate ordinance. It was mainly payable by the Europeans and Asians but was later on extended to Africans. In 1952, the ordinances were replaced by the East African Income Tax Management Act, which laid down the basic legal provisions found in the current income tax law. The East African Income Tax Management Act of 1952 was repealed and replaced by the East African Income Tax Management Act of 1958. The administration of both income tax and customs duty was done by departments of the East African Community (EAC) until its collapse. Under the EAC dispensation, there were regional taxing statutes and uniform administration but the national governments (or partner states, as they were called) retained the right to define tax rates. After the breakup of the EAC, the tax departments were transferred to the Ministry of Finance with the transfer of the Income Tax Department in 1974; followed by the Customs Department in 1977. In 1991, the function of administering Central government taxes was shifted from the Ministry of Finance to the Uganda Revenue Authority, a body corporate established by an Act of Parliament. The EAC was re-established in 1999 by Tanzania, Kenya and Uganda. Rwanda and Burundi joined the EAC in 2007. The EAC in December 2004 enacted the East African Community Customs Management Act (EAC-CMA). This Act governs the administration of the EA Customs union, including the legal, administrative and operations.

2.5 Principles of Taxation

Principles of taxation are concepts that provide guidelines towards a good tax system. Since many view taxation as a necessary evil, it should be administered in such a way as to create minimum pain to the payer, just like the honey bee which collects nectar from the flower without hurting the flower. Economists over time have laid down the principles that policy makers should take into account in making tax laws; these are referred to as canons of taxation. The following are the common canons of taxation:

- **Equity/Fairness**: Tax should be levied fairly so that the same amount is paid by persons or entities that are equal in earnings or wealth (horizontal equity).

**Illustration 1**

If B is a shopkeeper and makes a profit of Shs 10,000,000 in a year and is taxed at 10%, which is equal to Shs 1,000,000, and C who is a cattle trader makes a profit of Shs 10,000,000 in a year, he should also be taxed at 10%. Likewise any other person who earns

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an income of Shs 10,000,000, should pay the same tax. The contribution in tax should increase as the taxable income increases (vertical equity). The principle behind vertical equity, which is most applicable in income taxes, is that the burden among taxpayers should be distributed fairly, taking into account individual income and personal circumstances. Vertical equity is to be taxed proportionate to the income one earns. The strongest shoulders should carry the heaviest burden.

Illustration 2

Whereas B and C in illustration 1 were taxed at 10% because both earned 10,000,000; if D earned Shs 15,000,000 this person may be taxed at 15%. Convenience Under normal circumstances, a taxpayer should not undergo undue difficulty to pay tax. Therefore, the place, medium, mode, manner and time of payment should not be an extra burden to the taxpayer. A person doing business in Tororo should not be inconvenienced to travel to Kampala to pay his/her taxes. An office should be created nearby to ease the process. Certainty A good tax system is one where the taxes are well understood by the payers and collectors. The time and reason of payment as well as the amount to be paid by an individual should be well documented and certain or known. The tax should be based on laws passed by parliament. Economical The administrative cost of collecting taxes should be kept as low as possible to both the collecting agent and the taxpayer. The general principle is that the cost of collection and administration of taxes to the collecting agent should not exceed 5% of the tax revenue. Likewise, the cost of compliance to the taxpayer should be as low as possible and must not be seen to hinder voluntary compliance. Simplicity The type of tax and the method of assessment and collection must be simple enough to be understood by both the taxpayers and the collectors. Complicated taxes lead to disputes, delays, corruption, avoidance and high costs of collection in terms of time and resources. Ability to Pay The tax should not take away so much of the income being taxed as to discourage the performance or participation in the tax base.

2.6 Characteristics of Taxes

In complying with the canons of taxation, taxes may be characterized as proportional, progressive or regressive. Progressive tax is structured in such a way that the tax rate increases as the income increases. Most income taxes are progressive so that higher incomes

26 URA, taxation Handbook a guide to taxation In Uganda 2011
are taxed at a higher rate. A progressive tax is based on the principle of vertical equity. Regressive Tax is a tax not based on the ability to pay. A regressive tax is structured that the effective tax decreases as the income increases. Proportional Tax is a tax whose rate remains fixed regardless of the amount of the tax base. A proportional tax may be considered regressive despite its constant rate when it is more burdensome for low income payers than to high income payers.

2.7 Classification of Taxes
Taxes are classified as either director indirect. Direct Taxes are imposed on income arising from business, employment, property and the burden of the tax is borne by the individual or business entity. Examples of direct taxes include Corporation tax, Individual Income Tax, e.g. Pay As You Earn, capital gains tax and rental tax. Indirect Taxes are taxes levied on consumption of goods and services collected by an Agent (Taxpayer). Notable indirect taxes include Value Added Taxes (VAT)\textsuperscript{27}, excise duty, import duty. Shopkeeper B sells bread to K for Shs 2,000, on which VAT has been charged. The VAT on the bread is Shs 305 and is paid to the Government. Although K has paid the Shs 305 on bread that was priced at Shs 1,695, the tax is accounted to URA by B and K need not follow up the transaction with URA.

2.8 Role of Taxation
To finance Government re-current and development expenditure, i.e. paying salaries for civil servants and funding long term projects such as construction of schools, hospitals and roads. It can be used to regulate demand and supply in the economy in times of inflation; it encourages development of local industries and protects them against foreign competition with a view to providing employment and saving foreign exchange, by imposing high duties on competing imports. It encourages export of goods and services by reducing or removing tax on the export in order to make them more competitive in the world market. It protects society from undesirable or harmful products and industries by imposing high taxes on them, for instance excise duty on cigarettes and beer as well as environmental levy on used vehicles. To achieve greater equality in the distribution of wealth and income, the government may impose a progressive tax on the incomes and wealth of the rich. The revenue raised is then used to provide social services for the benefit of the society.

\textsuperscript{27} Chapter 349 laws of Uganda 2000
2.9 The Structure of the Ugandan Tax System

2.9.1 URA Board Administration

- Administers and gives effect to the laws set out in the First Schedule of the URA Act Cap 196. Advises the Minister on revenue implications, tax administration and aspects of policy changes relating to all the taxes. Performs such other functions in relation to revenue as the Minister may direct.

2.9.2 Ministry of Finance, Planning and Economic Development

- Represents the executive arm in the tax administration. Oversees the operations of the URA. Drafts government tax policies. Funds the operations of URA. Ensures proper national budgeting, utilization and accountability.

2.9.3 Executive


2.10 Tax Evasion

Definition of tax evasion depends on the methods used to evade. One common characteristic with all methods employed is that it aims at depriving the authorities of the respective amounts, thus tax evasion has been defined as the deliberate failure to disclose all or part of one's income to the tax authority. Tax evasion is also the deliberate failure to disclose all or part of one's income on time to the tax authority or to delay payments associated with taxation. Black's Law Dictionary, defines tax evasion as, "illegally paying less in taxes than the law permits, committing fraud in filing or paying taxes. An example includes reporting less income than actually received or deducting fictitious expenses. Such act is a crime." In the case of Regina -vs- Branch it was stated that, "... in my opinion the word evasion implies something of an underhanded or deceitful nature ... A deliberate attempt to escape the requirement of paying tax on income that had been earned. This intention can be inferred from acts of omission or commission." Ordinarily tax evasion involves, inter alia;

a) Not filling an income return at all;

29 8th edition by Bryan A Garner Editor in chief
30 (1976)CTC 193
b) Filling an income tax return but willfully omitting there from income earned by tax payer during the relevant year of income;

c) Filling an income tax return containing a wilful misrepresentation of the nature or amount of Income earned;

d) Arranging receipt of income in a jurisdiction or form whereby that income will not come to the attention of the tax authorities. In other words, tax evasion involves the tax payer failing to do what is required by law. According to Black's Law Dictionary\textsuperscript{31}, tax avoidance may be contrasted with tax evasion which entails the reduction of tax liability by using illegal means. Tax evasion is subject to criminal sanctions being imposed if a party is found guilty.

Tax avoidance may be said to be the art of dodging tax without actually breaking the law. In IRC -vs- Duke Westminster\textsuperscript{32} where Lord Tomlin observed that, "Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity he cannot be called to pay increased tax." Further in IRC -vs- Brebner\textsuperscript{34} where it was stated; "where there are two ways of carrying out a genuine transaction by one which the maximum amount of tax would be payable and by other of which no tax or much less tax would be payable, it is wrong to draw as necessary consequence the inference that, in adopting the latter course, one of the main objects is enabling tax advantages to be obtained."

Tax evasion is the illegal evasion of taxes by individuals, corporations and trusts. Tax evasion often entails taxpayers deliberately misrepresenting the true state of their affairs to the tax authorities to reduce their tax liability and includes dishonest tax reporting, such as declaring less income, profits or gains than the amounts actually earned, or overstating deductions. Tax evasion is an activity commonly associated with the informal economy. One measure of the extent of tax evasion (the "tax gap") is the amount of unreported income, which is the difference between the amount of income that should be reported to the tax authorities and the actual amount reported. In contrast, tax avoidance is the legal use of tax laws to reduce one's tax burden. Both tax evasion and avoidance can be viewed as forms of tax evasion.

\textsuperscript{31} 6\textsuperscript{th} edition
\textsuperscript{32} (1936) AC 1
\textsuperscript{34} (1987) CTC
noncompliance, as they describe a range of activities that intend to subvert a state's tax system, although such classification of tax avoidance is not indisputable, given that avoidance is lawful, within self-creating systems. Robin Wentzel\textsuperscript{35} had this to say about tax evasion and distinguished from avoidance so as to clear the confusion. Tax evasion refers to such deliberate criminal non-fulfillment of tax liabilities. In contrast, tax avoidance refers to deliberate acts of reducing one's taxes by legal means. However, the distinction is not always clear because tax laws are not always precise. Moreover, when taxpayers try to find loopholes with the intention to pay less tax, even if technically legal, their actions may be against the spirit of the law and in this sense considered noncompliant. (Wenzel 2002) Tax evasion and fiscal corruption have been universal and persistent problems throughout history with manifold economic consequences. Two thousand five hundred years ago, Plato was writing about tax evasion, and the Ducal Palace of Venice has and avoidance practices committed by selected.

2.11 The Modes Used in Tax Evasion.
In 1968, Nobel laureate economist Gary Becker first theorized the economics of crime, on the basis of which authors M.G. Allingham and A. Sandmo produced, in 1972, an economic model of tax evasion. This model deals with the evasion of income tax, the main source of tax revenue in developed countries. According to the authors, the level of evasion of income tax depends on the level of punishment provided by law. The literature's theoretical models are elegant in their effort to identify the variables likely to affect non-compliance. Alternative specifications, however, yield conflicting results concerning both the signs and magnitudes of variables believed to affect tax evasion. Empirical work is required to resolve the theoretical ambiguities. Income tax evasion appears to be positively influenced by the tax rate, the unemployment rate, the level of income and dissatisfaction with government. The methods vary and are difficult to detect since taxpayers try to conceal them from the tax authorities at

\textsuperscript{35} Born and raised in Columbus, Ohio, Robin arrived in Hawaii in 1987 as a U.S. Navy sailor aboard the USS Ingersoll DD-990 at Pearl Harbor. Upon receiving an Honorable Discharge in 1989, he enrolled in the University of Hawaii at Manoa and received his Bachelors of Business Administration in Accounting in 1994. He has taken advanced graduate courses in business and accounting. Robin is also an Enrolled Agent (EA). EA's are considered America's Tax Experts. They are the only federally licensed tax practitioners who specialize in taxation and have unlimited rights to represent taxpayers before the Internal Revenue Service. In 1997, Robin purchased the Kailua based accounting and tax practice of John McCandless (Founded in 1983). The practice eventually evolved into the Honolulu based firm, Pacific Outsourcing. Seeking to emphasize the personal nature of the services the firm offers, Robin has repositioned the firm's name to reflect his commitment to small business and an amazing client experience.
whatever cost. Interviews relating to such proved unfruitful however some of the methods frequently used discovered in this research has been outlined below.

2.11.1 Tax Evasion in Business Firms

In 1968, Nobel laureate economist Gary Becker first theorized the *economics of crime*, on the basis of which authors M.G. Allingham and A. Sandmo produced, in 1972, an economic model of tax evasion. This model deals with the evasion of income tax, the main source of tax revenue in developed countries. According to the authors, the level of evasion of income tax depends on the level of punishment provided by law. The literature's theoretical models are elegant in their effort to identify the variables likely to affect non-compliance. Alternative specifications, however, yield conflicting results concerning both the signs and magnitudes of variables believed to affect tax evasion. Empirical work is required to resolve the theoretical ambiguities. Income tax evasion appears to be positively influenced by the tax rate, the unemployment rate, the level of income and dissatisfaction with government. The analysis of tax evasion by firms differs since different firms may evade taxes by underreporting of venue/sales or over reporting of costs, untimely filing of the tax return or payment of amounts due. Another way that firms use in evading tax is non-declaration of income. A report by the World Bank on an interview of business firms in Kampala in April 2000 revealed that in most business firms' tax evasion was favored as a means of business tax exemptions, tax assessment and tax audits encourage the firms to evade. Corruption is also to blame in fostering evasion in mess firms. One in four of the audited firms reported incurring additional costs such as bribes. Firms whose own tax assessment differed by 100% or more from that of the revenue authority reported that they always had to pay bribes to tax officers, however on average surveys other firms reported that they were required to pay bribes only seldom. This trend has not achieved much change in that business firms still

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36 Wikipedia, Gary Stanley Becker (December 2, 1930 – May 3, 2014) was an American economist. He was professor of economics and sociology at the University of Chicago and at the Booth School of Business. He made important contributions to the family economics branch of economics. Neo-classical analysis of family within the family economics is also called new home economics. He was awarded the Nobel Memorial Prize in Economic Sciences in 1992 and received the United States Presidential Medal of Freedom in 2007. He was a Rose-Marie and Jack R. Anderson senior fellow at the conservative HOVER INSTITUTION, located at Stanford University.

37 The Income Tax Amendment bill 2006 proposes an extension of the period within which the self assessment returns is to be filed from 4 months to 6 months after the end of the taxpayers accounting period. A harmonization of the filing period with that of Kenya and Tanzania. In addition to the Six months the taxpayer can apply for filing extension of up to 3 months resulting in the filing of tax returns nine months after the end of the accounting period.

38 The world Bank P.R.E 2000
engage in evasion as means of competition being encouraged by corrupt tax officers who are prone to taking bribes.

2.11.2 Tax Evasion in the Customs Department

The Customs Department of the Uganda Revenue Authority is charged with administering the East African Community Customs Management Act 2004 (EAC-CMA) which provides the legal framework for customs operations. The major roles of the Customs Department are:

(i) Assessing and collecting revenues from imports, exports and all other dues, in accordance with EAC-CMA.
(ii) Supervising and controlling the entrance and clearance of vehicles, vessels and aircraft engaged in international trade, and the movement of goods and people across the Ugandan borders.
(iii) Promoting exports through facilitation and administration of duty drawback schemes and other incentives.
(iv) Detecting and preventing smuggling and fraud in the Customs administration.
(v) Supervising and controlling all import and export cargo, landed or stored at the various terminals, including Internal Container Depots (ICDs).
(vi) Implementing Government objectives and commitments relating to International and Regional treaties on trade and other related arrangements.
(vii) Generating and providing timely and quality statistics to facilitate both organisational and national planning. Customs duties are an important source of revenue in developing countries. Importers purport to evade customs duty by (a) under-invoicing and (b) misdeclaration of quantity and product-description. When there is ad valorem import duty, the tax base can be reduced through under-invoicing. Misdeclaration of quantity is more relevant for products with specific duty. Production description is changed to match a H. S. Code commensurate with a lower rate of duty.

Smuggling is importation or exportation of foreign products by illegal means. Smuggling is resorted to for total evasion of customs duties, as well as for the importation of contraband. A smuggler does not have to pay any customs duty since smuggled products are not routed through customs-tax compliant customs ports, and are therefore not subjected to declaration and, by extension, to the payment of duties and taxes. The major cause of evasion occurring in the Custom Department is largely blamed on corruption on the part of tax administration.

39 Ayoki Milton, Obwoni Marios, Ogwapos Moses, Tax reforms and Domestic revenue Mobilisation in Uganda 18
Examples of corrupt practices undertaken by tax administration officials in return for bribes include:

1. Deletion or removal of a taxpayer's records from the tax administration's registration, filing and accounting systems
2. Closure of a tax audit without any adjustment being made or penalties being imposed for an evaded liability.
3. Manipulation of audit selection

Examples of corrupt practices undertaken by customs administration officials in return for bribes include:

1. Facilitating the smuggling of goods across the border to avoid tax and duty payments. Uganda Revenue Authority claims that it has effectively reduced smuggling by road thus smugglers have resorted to water transport thus security will be strengthened on Lake Victoria to curb this vice. Among the frequently smuggled goods are Supermatch cigarettes, polythene bags, textiles and electronics

2. Facilitating the avoidance or understatement of a tax or duty liability through acceptance of an undervaluation or misclassification of goods in the processing of a customs entry.

2.11.3 Under declaration of goods

This occurs where the importer declares less quantity on importation document than the actual goods being imported, this deliberate evasion is largely blamed on the importer.

2.11.4 Undervaluation of goods

This occurs where goods are given a lower value than they actually have. Undervaluation often happens out of ignorance, negligence or connivance at the customs control by both the importers and custom agents thus aiding smuggling indirectly. All the goods that are imported into the country have different international codes, the last figure of the code usually identifies the goods and customs officers use these to value goods. In case the goods have no specific code then they can be valued according to the code of the goods similar to those in question. "But what happens is that customs officials usually use codes of goods with

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40 Itô Tanzi 8th International anti corruption conference. www.transparency.org/istar/papers/vtanzi.html. VISITED on 15th Oct 2010 at 2:00p.m
41 Enoch Walugembe of URA on an interview by peter Kaujji. The New Vision Tuseaday March 13,2009 PP23-
very low value, which attracts lower tariffs and ask traders to pay less, “said a source who spoke on condition of anonymity” 42.

**2.11.5 Misclassification of goods.**
This occurs where goods are declared under a different class of imports particularly to attract lower rates with intent to reduce the tax liability. This again may happen out of ignorance, negligence or deliberately and aids smuggling 43.

**2.11.6 Falsification of Documents.**
Documents pertaining to certain goods are tampered with in their particulars with intent to benefit the taxpayer by a reduction in tax.

**2.11.7 Misdeclaration of country of origin.**
This is very common with COMESA 44 and NON- COMESA states because of the lower tariffs rates for goods originating from COMESA member states.

**2.11.8 Shot landing transit and/or re-export goods.**
Transit goods are those goods which are destined to other countries through Uganda for example goods from abroad through Uganda to Rwanda or D.R.C. Re-export are goods which come into the country but subsequently exited. In both these cases smuggling occurs when the goods finally end up on the Uganda market leading to total evasion of taxes. In January, 2007 a truck was found loaded with candles on transit to DR Congo being offloaded illegally in Kampala 45 Declaring imported goods (finished products) as raw materials. An example of this involved an agro company in Kampala that had imported 4,400 tons of Tiger Head Batteries worth US$ 87,296 (in February 2004). The goods were declared as hoes and pangas (agricultural implements are allowed deduction under the Act 46) The goods were detected at the railways goods shade in Kampala and the tax revenue of USh 54,249,344 (about US$ 30,138) recovered, plus a fine of Ushs 52,381,004 47.

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42 Dorothy Nakaweesi and Esther Nakkazi Tax Evasion; URA blames politicians, monitor July 31 2008.
43 Publication of the Uganda Revenue Authority Edition 2006 on smuggling and its effects
44 Common Market for East and Southern Africa
payment of tax or - duty, For example in October 2004 imported polythene bags and petroleum worth US$42,248.5 was removed from customs control using documents of prior consignment. This seems to have been facilitated by some customs official. Fortunately this was discovered and the importer made to pay a fine of Ushs.21, 81,668 in addition to the tax of Ushs. 36,251,857 48. 4. Facilitating false tax and duty refund claims through certification of the export of goods that have been consumed in the domestic market or that have not been produced at all.

2.11.9 Tax Evasion on Market dues.
This occurs by mainly dodging tactics of the vendors especially in markets which are semi-closed. Revenue in such markets is collected through issuance of receipts on a daily basis from every stall, thus vendors in most cases station themselves strategically outside the market and sell their goods without paying revenue, others connive with receipt issuers who in return collect less amounts later in the day from such traders and keep it to themselves. Hawking also plays a major role in eroding this type of taxes, thus traders will roam with their goods around town carefully being on the lookout for city council revenue enforcement officials and thus evading taxes which are levied from selling in specified locations.

2.11.10 Tax Evasion and the Informal Sector
The starting point here must be to define precisely the informal sector and its participants. Are these individuals who mainly operate in small and medium size enterprises? Are they mainly self employed professionals? Or individual proprietors and farmers? There is no single definition that is universally accepted; indeed all taxpayers are hard to tax in one way or another. However, there is a group of taxpayers that are considerably difficult to tax than the rest but a problem usually arises in identifying them. Terkper and She (2003) define the participants in the informal sector as taxpayers who fail to register voluntarily and even when they do register they generally fail to keep appropriate records of their earnings and costs, they often do not file their tax returns and they frequently tend to be tax delinquent. Das Gupta and Amdan (1994) also include professionals in this category; they state that while salaried employees derive income from a single transaction with their employers and

48 Ayoki Milton, Obwomi Marios, Ogwopus Moses PP39
find it hard to hide their income, professionals derive their income from multiple transactions with clients and find it easier to hide their income.

Independently of the right definition or model, there is considerable consensus regarding the identity of those in the informal sector. Both Terkper and Seth (2003)\textsuperscript{49} and Das Gupta and Amdan (1994)\textsuperscript{50} identify these agents, with small and medium sized firms, professionals and, farmers. Schneider and Enste state that the general characteristics of those in the informal sector is that they are always unwilling to provide the tax authorities with relevant information that the tax authorities have a hard time extracting from them\textsuperscript{51}.

2.11.11 Conclusion

In conclusion therefore the shadow economy includes all unreported income from the production of legal goods and services either from monetary or barter transactions and so includes all economic activities that could generally be taxable were they reported to the state (tax) authorities. A more precise general definition seems quite difficult if not impossible as the shadow economy evolves over time adjusting to taxes, enforcement changes and general societal attitudes. Foster V and Yepes T, States that the Informal businesses account for around 50% of economic activity in Uganda. They argue that this presents a significant obstacle to tax collection as unregistered businesses do not pay taxes. They further state that the tax base broadens whenever informal businesses becomes formalized. Even though U.R.A implemented the presumptive taxation to tax the small businesses, difficulties of identification and unwillingness to maintain records mainly makes it very hard to tax them thus evasion in this area becomes greater.

\textsuperscript{49} Managing small and medium size taxpayers in developing economies, Tax notes international 13th Jan 2003 pgs.211-234.


\textsuperscript{51} Schneider and Enste (2000) shadow economy size causes and consequences, The journal of economic literature 38 (1) 77-114.
CHAPTER THREE
THE LEGAL EFFECTS OF TAX EVASION

3.1 The Legal Effects

Sec.136 Interest on Unpaid Tax

A person who fails to pay any tax, including provisional tax, penal tax or to pay to the Commissioner any tax withheld or required to be withheld by the person from a payment to another person, on or before the due date for payment is liable for interest at a rate equal to two per cent per month on the amount unpaid calculated from the date on which the payment was due until the date on which payment is made. However, the law provides that interest paid by a person is the manner above shall be refunded to the person to the extent that the tax to which the interest relates is found not to have been due and payable. The simple explanation to this is that where you are found to be tax due the interest charged shall not be refunded in any case. A taxpayer can only escape being charged with interest for taxes due only where good cause is shown, in writing, by the person liable for payment of interest, the Minister may, on the advice of the Commissioner, remit, in whole or in part, any interest charged in respect of a failure to comply with tax withheld is borne personally by the withholding agent and no part of it is recoverable from the person who received the payment from which tax was or should have been withheld under VIII (persons assessable under the income tax Act) which deals with withholding of tax such an interest charged shall be simple interest, collection and recovery of any interest on tax shall be subject to the law applicable to collection and recovery of tax as if it were tax due under the Act shall apply.

Sec.137. Failure to Furnish a Return

A return of income is a declaration made on a prescribed form to the Commissioner on which income earned or a loss made during the year is declared. It is a legal document which must be signed and dated by the taxpayer or by the taxpayer's appointed agent and includes a declaration that the return is complete and accurate. Who is Eligible to File a Return of Income? Every taxpayer who has chargeable income, other than a resident individual whose chargeable income is below the threshold In the case of a resident company, a return should be filed for all global income. The threshold does not apply in this case a partnership is also

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52 The Income tax Act chAPter 340 laws of Uganda 2000
required to file return of income in its own right as if it pays tax a non-resident person whose income is derived from sources in Uganda and is subjected to withholding tax as a final tax. Such income comprises international payments or payments to non-resident public entertainers, sports persons, contractors or professionals a resident individual whose gross income consists exclusively of employment income derived from a single employer and from which tax has been withheld under the PAYE system a resident individual whose total chargeable income for the year of income is below the threshold, Provisional Return a provisional return is a form prescribed by the Commissioner on which estimated tax (provisional tax) is declared. Estimated tax is payable by a person Who derives or expects to derive any income during the year of income, other than exempt income and which will not be subjected to withholding tax at the source as a final tax. Estimated tax by a company is paid in two installments on or before the last day of the sixth and twelfth months of the year of income Estimated tax for an individual is payable in four installments on or before the last day of the third, sixth, ninth and twelveth month a provisional taxpayer is required to file a provisional return. A provisional return by an individual should be filed within three months after commencement of the year of income. In the case of non-individuals (companies), a provisional return should be filed within six months after commencement of the taxpayer's year of income. Return of Income, i.e. final. The return of income for both individuals and non-individuals including rental income tax, should be filed within six months after the taxpayer’s year of income.

Note: It should be remembered that a return of income by individuals and non-individuals is a self assessment return i.e. the return filed is deemed to be an assessment of chargeable income issued by the Commissioner on the date the return is filed. Information to be Included in a Return of Income A person in business is required to include in the return a statement of income and expenditure, assets and liabilities, and any information that comprises a complete set of financial statements for a given year of income. A tax computation showing how the chargeable income and the tax payable was arrived at should also be attached. Where a person (other than the taxpayer's employee) is engaged to assist in making a return, he/she must make a declaration that the financial statements included in the return are prepared on the basis of books of accounts and business records properly maintained, and that they reflect all the transactions, Cases of Death, Bankruptcy, Cessation, Liquidation, etc. During any year of income, where a taxpayer has died, is bankrupt, wound

53 This refer to tax of employees which in the Income tax Act CAP 340, is called Pay As You Earn.
up, gone into liquidation, is about to leave Uganda indefinitely or the Commissioner considers is appropriate, such a taxpayer may be required to file a return by a specified date.

Failure to File a Return

If a liable person fails to furnish a return as required the Commissioner may, in writing, appoint a person to prepare and file the return. This return will be treated as if it were made by the person who should have filed it. Sec.137 a person who fails to furnish a return or any other document within fifteen days of being so required under the Act commits an offence and is liable on conviction to a fine not exceeding fifteen currency points. The sixth schedule of the income tax Act provides that one currency point is equivalent to twenty thousand Uganda shillings there a tax payer will be liable to a sum fifteen times bigger than that which will total to three hundred thousand shillings. Where a person convicted of an offence in the above description fails to furnish the return or document to which the offence relates within the period specified by the Court, that person commits an offence and is liable on conviction to a fine not exceeding twenty currency points a total of four hundred Uganda shillings.

Failure to File Provisional Returns. The Commissioner has powers to estimate a taxpayer's gross turnover or chargeable income for a year of income for which the taxpayer has failed to file a provisional return. The estimate is based on the Commissioner's best of judgment.

Sec.138. Failure to comply with Recovery Provision

Any person who fails to comply with any notice issued for recovery of from person owing to the taxpayer or the requirements of the duties of a receiver, ie Notifying the commissioner within fourteen days of being appointed in writing, not parting with any assets in Uganda which is held by him in the capacity of a receiver and so on under Section 109 of the income tax Act, commits an offence and is liable on conviction to a fine not exceeding twenty five currency points. Where a person is convicted of an offence failure to comply with a notice of recovery of tax from person owing money to the taxpayer, the Court shall in addition to imposing a penalty, order the convicted person to pay to the Commissioner the amount to which the failure relates. A person who notifies the Commissioner in writing where the person served with a notice to pay tax is unable to comply with the notice by reason of lack of moneys owing to or held for the taxpayer the person shall as soon as is practicable and in any event before the payment date specified in the notice notify the commissioner accordingly in writing setting out the reason for his inability to comply, he will be considered to be in compliance with any notice served on the person for recovery of tax from that person.
owing money to the tax payer until the Commissioner serves the person with a notice of acceptance of the notification of which he may cancel or amend it, amending the notice served for recovery of from that person owing money to the taxpayer or rejecting the person's notice for inability to pay.

Sec.139. Failure to maintain Proper Records
Record keeping Companies, just like all the other taxpayers, are required to keep records pertaining to their business transactions for five years after the end of the year of income to which the record or evidence relates. A person who fails to maintain proper records under the income tax Act commits an offence and is liable on conviction where the failure was deliberate to a fine of not less than fifteen currencies points which is a total of three hundred Uganda shillings or to imprisonment for a term not exceeding one year or in any other case, a fine not exceeding twenty five currency points which is a total of five hundred Uganda shillings.

Sec.140. Failure to comply with obligations under the income tax Act
A person who without good cause fails to notify the Commissioner as required under section 121(1) which is in relation to none resident service contracts, this section puts a duty to any person who enters in an agreement with a none resident to notify the commissioner in writing of the nature of the agreement the likely duration, name and postal address of the none resident person the total amount estimated to be payable to the none resident person, failure to comply with a notice under section 132, which is a notice by the commissioner to any tax payer liable to pay tax, commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points. Withholding Tax on Payments to Wnon-resident Contractors or Professionals. This tax is imposed on every non-resident person deriving income under a Ugandan source service contract. A Ugandan source service contract is a contract under which the principle purpose is the performance of services which gives rise to income sourced in Uganda, and any goods supplied under the contract are only incidental to the purpose. A Ugandan-sourced service contract excludes an employment contract. The tax is the gross amount of payment and the person making the payment should withhold the relevant tax before effecting payment. Non-resident service Contracts Any person who enters into any service contract with a non-resident is required to notify the Commissioner of the

54 This refers to the commissioner general appointed under the Uganda Revenue Authority act as provided for under section 2(c) of the income tax Act.
nature and duration of the service contract, and disclose the particulars of the non-resident to whom the payment is to be made, as well as the full contract value. Basing on this information, the Commissioner may require the payer to withhold tax at a rate specified by the Commissioner.

Withholding Tax on Interest
A resident person who pays interest to another resident person is required to withhold tax at 15% of the gross amount of the interest paid. Withholding tax is, however, not applicable where interest is: Paid by a natural person (individual). Paid to a financial institution. Paid by a company to an associated company. Exempt from tax in the hands of the recipient. Where tax is withheld on payment of interest by a financial institution to an individual, the tax withheld is a final tax on the income.

Withholding Tax on Dividend
A resident company which pays a dividend to a resident shareholder is required to withhold tax at 15% of the gross amount of the dividend paid, except where the dividend income is exempt from tax in the hands of the shareholder. Where the shareholder is a natural person (resident individual), the tax withheld on such dividend income is final and not refundable. However, where the dividend is paid by a company listed on the stock exchange to a resident shareholder, the rate is 10% on the gross amount.

Withholding Tax on Goods and Services
Where the Government of Uganda, a government institution, a local authority, a company in which government has interest in or any person designated in a notice issued by the Minister of Finance pays amounts in aggregate exceeding Shs 1,000,000 to any person in Uganda for the supply of goods, materials of any kind or services, the payer is required to withhold 6% of the gross amount. The threshold of Shs 1,000,000 is in respect of the total contract value, implying that separate supplies which constitute one contract are subject to the 6% withholding tax regardless of the fact that the amount paid per a single supply or transaction is less than the threshold value. This provision does not apply to sales by insurance Brokers/Agents i.e. on payment of insurance premiums. The Income Tax (Designation of Payers) Notices 2006 and 2007, designates payers who are required to withhold 6% tax on payment for goods and services, effective 1st day of July, 2006. Note: It is important to remember that not everyone can withhold tax on payment for goods and services. Withholding Tax on Professional Fees With effect from 01 July 2001, a resident person who pays management or professional fees to a resident professional is required to withhold tax at
6% of the gross amount of payment. Excluded from this provision are professionals whom the Commissioner is satisfied have regularly complied with the obligations imposed by the Income Tax Act, and those professionals ordinarily engaged as payroll employees.

Withholding Tax on Imports Every person who imports goods into Uganda is liable to pay withholding tax at 6% based on Customs Value in Uganda, at the time of importation. This provision, however, does not apply to the following categories of imports/persons: Petroleum or petroleum products including furnace oil other than Lubricants, cosmetics and fabrics or yarn manufactured out of petroleum products. Plant and machinery, Human and animal drugs, Scholastic materials, Imports of exempt organizations/persons, Raw materials imported by a manufacturer, solely for generating finished products, A supplier or importer who is exempted from tax, A supplier or importer who the Commissioner is, satisfied has regularly complied with the Income tax obligations.

Sec.141. Improper use of Taxpayer Identification Number
A person who knowingly or recklessly uses a false taxpayer identification number, including the taxpayer identification number of another person, on a return or document prescribed or used for purposes of this Act, commits an offence and is liable on conviction to a fine of not less than twenty-five currency points or to imprisonment for a term not exceeding one year, or to both.

Sec.142. Making False or Misleading Statements
A person who makes a statement to an officer of the Uganda Revenue Authority that is false or misleading in a material particular or omits from a statement made to an officer of the Uganda Revenue Authority any matter or thing without which the statement is misleading in a material particular; commits an offence and is liable on conviction to where the statement or omission was made knowingly or recklessly, a fine of not less than twenty five currency points or to imprisonment for a term not exceeding one year, or to both or In any other case, a fine not exceeding twenty five currency points. It is a defence for the accused person to prove that he or she did not know and could not reasonably be expected to have known that the statement to which the prosecution relates was false or misleading. A reference in this Section to a statement made to an officer of the Uganda Revenue Authority is a reference to a statement made in writing to that officer acting in the performance of his or her duties under this Act, and includes a statement made in an application, certificate, declaration, notification, return, objection, or other document made, prepared given, filled, or furnished,
any information required to be furnished under this Act in a document furnished to an officer of the Uganda Revenue Authority otherwise than pursuant to this Act; In answer to a question asked of a person by an officer of the Uganda Revenue Authority; or to another person with the knowledge or reasonable expectation that the statement would be conveyed to an officer of the Uganda Revenue Authority.

Sec. 143. Obstructing an Officer of the Authority
A person who obstructs an officer of the Uganda Revenue Authority in the performance of duties under this Act commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points.

Sec. 144. Aiding and Abetting
Any person who aids and abets another person to commit an offence, under this Act, or counsels or induces another person to commit such an offence, commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding one year, or to both.

Sec. 145. Offences by and relating to Officers and persons employed to carry out the Act and Penalties
Any officer of the Uganda Revenue Authority or any person employed in carrying out the provisions of this Act who directly or indirectly asks for, or takes in connection with any of the officer's duties, any payment or reward whatsoever, whether pecuniary or otherwise, or promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or enters into or acquiesces in any agreement to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby the tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the proper execution of the officer's duty, commits an offence and is liable on conviction to a fine not less than twenty-five currency points or to imprisonment for a term of not less than three months; any person who directly or indirectly offers or gives to any officer payment or reward whatsoever, whether pecuniary or otherwise, or any promise or security for any such payment or reward, not being a payment or reward which the officer was lawfully entitled to receive; or proposes or enters into any agreement with any officer in order to induce the officer to do or to abstain from doing, permit, conceal, or connive at any act or thing whereby tax revenue is or may be defrauded or which is contrary to the provisions of this Act or to the
proper execution of the officer's duty, commits an offence and is liable on conviction to a tine of not less than twenty five currency points or to Imprisonment for a term of not less than three months.

Notwithstanding the above, an officer or person employed in carrying out the provisions of this Act who commits an act specified in the above circumstances and who volunteers information to the Commissioner relating to that act shall be exonerated from prosecution; and receive 20% of the fine that would be imposed on a person convicted of an offence under the above circumstances a person who commits an act specified above and who volunteers Information to the Commissioner relating to that act shall be exonerated from prosecution; and be liable to tax only to the extent agreed upon with the officer to whom the offence relates. An officer convicted of an offence specified above, in addition to any penalty imposed under that Section, liable to pay the difference in tax between the tax due and the tax payable by a person commits an offence specified above the amount due under this Section shall be deemed to be tax due from the officer under

Sec.146. Offences by Companies
Where an offence is committed by a company, every person who, at the time the offence was committed was a nominated officer, director, general manager, secretary, or other similar officer of the company; or was acting or purporting to act in that capacity, is, without prejudice to the liability of the company, deemed to have committed the offence. Where the offence was committed without that person's consent or knowledge; and the person has exercised all diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the person's functions and all the circumstances.

sec147. Officer may appear on Behalf of the Commissioner
Notwithstanding anything contained in any written law, any officer duly authorized in writing by the Commissioner may appear in any court on behalf of the Commissioner in any proceedings in which the Commissioner is a party and, subject to the directions of the Attorney-General, that officer may conduct any prosecution for an offence under this Act and, for that purpose, shall have all the, powers of a, public prosecutor appointed under the Magistrates Courts Act.

55 Provided for under part XV of the income tax Act 340
sec148. Compounding Offences

Where any person commits an offence under this Act other than an offence under Section 145, the Commissioner may, at any time prior to the commencement of court proceedings, compound the offence and order the person to pay a sum of money specified by the Commissioner, not exceeding the amount of the fine prescribed for the offence. The Commissioner shall only compound an offence under this Section if the person concerned admits in writing that the person has committed the offence. Where the Commissioner compounds an offence under this Section, the order referred to in subsection (1) shall be in writing and specify the offence committed, the sum of money to be paid, and the due date for payment, and shall have attached to it the written admission referred to in subsection (2) shall be served on the person who committed the offence; shall be final and not subject to any appeal; and may be enforced in the same manner as a decree of any court for the payment of the amount stated in the order. Where the Commissioner compounds an offence under this Section, the person concerned shall not be liable for prosecution in respect of that offence or for penal tax.

sec149. Place of Trial

Any person charged with committing an offence under this Act may be proceeded against, tried and punished in any place in Uganda in which the person may be in custody for the offence as if the offence had been committed in that place, and the offence shall, for all purposes incidental to or consequential upon the prosecution, trial, or punishment of the offence, be deemed to have been committed in that place. Nothing in subsection (1) shall preclude the prosecution, trial and punishment of a person in any place in which, but for this Section, the person might have been prosecuted, tried, and punished.

sec150. Tax charged to be paid notwithstanding Prosecution

The amount or any tax or interest due and payable under this Act shall not be abated by reason only of the conviction or punishment of the person liable for payment thereof for an offence under this Act or for the compounding of such offence under Section 148.

sec151. Penal Tax for Failure to Furnish a Return of Income

A person who fails to furnish a return of income for a year of income within the time required under this Act is liable to pay a penal tax equal to two per cent of the tax payable for that year.
before subtracting any credit allowed to the taxpayer on his or her chargeable income or ten
currency points per month, whichever is the greater, for the period the return is outstanding.

sec152. Penal Tax in relation to Records
A person who deliberately falls to maintain proper records for a year in accordance with the
requirements of this Act is liable to pay a penal tax equal to double the amount of tax payable
by the person for the year.

sec153. Penal Tax in relation to False or Misleading State
Where a person knowingly or recklessly makes a statement to an officer of the Uganda
Authority that is false or misleading in a particular; or omits from a statement made to an
officer of the Uganda Revenue Authority any matter or thing without which the statement is
misleading in a material particular, and the tax properly payable by the person exceeds the tax
that was assessed as payable based on the false or misleading statement or omission, that
person is liable to pay a penal tax equal to double the amount of the excess, Section 142(3)
applies in determining whether a person has made a statement to an officer of the Uganda
Revenue Authority.

sec154. Penal Tax for understating Provisional Tax Estimates
A provisional taxpayer whose estimate or revised estimate of, chargeable Income for a year
of Income under Section 112 (estimated tax payable) is less than ninety per cent of the
taxpayer's actual chargeable Income assessed for that year, is liable for penal tax equal to
twenty per cent of the difference between the tax calculated in respect of the taxpayer's estimate,
as revised, of chargeable Income and the tax calculated in respect of ninety per cent of the
taxpayer's actual chargeable Income for the year of Income. A provisional taxpayer whose
estimate or revised estimate of gross turnover for a year of Income under Section 112 is less
than ninety per cent of the taxpayer's actual gross turnover for that year is liable for penal tax
equal to twenty per cent of the difference between the tax calculated in respect of the
taxpayer's estimate, as revised, of gross turnover and the tax calculated in respect of ninety
per cent of the taxpayer's actual gross turnover for the year of Income. This Section does not
apply to a taxpayer who is in the business of agricultural, plantation or horticultural farming.
sec155. Recovery of Penal Tax
Liability for penal tax is calculated separately with respect to each Section dealing with penal tax. Subject to subsection(3), the imposition of penal taxes in addition to any interest imposed under Section 136 (interest paid on unpaid tax) and any penalty imposed as a result of conviction or an offence. No penal tax is imposed on a person under Section 152 (penal tax in relation to records) or 153 (penal tax in relation to false or misleading statements) where the person has been convicted of an offence under section 139 (failure to maintain proper records) or 142 (making false or misleading records) respectively for the same act or omission. If penal tax under Section 152 or 153 has been paid and the Commissioner institutes a prosecution proceeding under Section 139 or 142 respectively in respect of the same act or omission, the Commissioner shall refund the amount of penal tax paid; and that penal tax is not payable unless the prosecution is withdrawn. Penal tax as assessed by the Commissioner under Sections 151, 152, 153, and 154 shall be treated for all purposes as an assessment under this Act. Where good cause is shown, in writing, by the person liable to pay penal tax, the Minister may, on the advice of Commissioner, remit, in whole or in part, any penal tax payable.

sec156. Delegation
The Commissioner may delegate to any officer of the Uganda Revenue Authority any duty, power, or function conferred or imposed on the Commissioner under this Act, other than the power to compound offences under Section 148 and the power to delegate conferred by this Section.

sec157. Official Secrecy
Every person appointed under, or employed in carrying out the provisions of this Act shall regard and deal with all documents and information which may come to the person's possession or knowledge in connection with the performance of duties under this Act as secret and shall not disclose any information or document except in accordance with the provisions of this Act. No person appointed under, or employed in carrying out the provisions of this Act, shall be required to produce any document or communicate any Information in a tribunal referred to in Section 100(1)(b) (apply for review of the decision to any tax tribunal established by parliament by law for that purpose of settling tax disputes in accordance with article 152(3) of the constitution of Uganda 1995) or any court which has come into the person's possession or knowledge in connection with the performance of duties under this Act.
except as may be necessary for the purpose of carrying the provisions of this Act into effect. Nothing in this Section shall prevent the disclosure of information or documents to the Minister or any other person where disclosure is necessary for the purposes of this Act or any other fiscal law. Any person in the service of the Movement in a revenue or statistical department where such disclosure is necessary for the performance of the person's official duties the Auditor-General or any person authorized by the Auditor-General where such disclosure is necessary for the performance of official duties the competent authority of the government of another country with which Uganda has entered into an agreement for the avoidance of double taxation or for the exchange of information, to the extent permitted under that agreement; or the Minister responsible for petroleum exploration development and production or any person authorized by that Minister to the extent necessary, to ensure that. Amounts taken into account by a contractor for the purposes of this Act are consistent with amounts taken into account for the purposes of a petroleum agreement. Any person receiving documents and information under subsection (2) or (3) is required to keep them secret under the provisions of this Section, except to the minimum extent necessary to achieve the purpose for which the disclosure is necessary. Documents and information obtained by the Commissioner in the performance of the Commissioner's duties and powers under this Act may be used by the Commissioner for the purposes of any of administered by the Commissioner. Any person who contravenes this Section commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points or to imprisonment for a term not exceeding one year, or to both.

See 158. Forms and Notices; Authentication of Documents

Forms, notices, returns, statements, tables, and other documents required under this Act may be in such form as the Commissioner may determine for the efficient administration of this Act and publication of such documents in the Gazette shall not be required. The Commissioner shall make the documents referred to in subsection (1) available to the public at the Uganda Revenue Authority and at such other locations, or by mail, as the Commissioner may determine. A notice or other document issued, served, or given by the Commissioner under this Act is sufficiently authenticated if the name or title of the Commissioner, or authorized officer, is printed, stamped, or written on the notice or document.
sec158A. Use of Information Technology
Subject to such conditions as the Commissioner General shall prescribe, tax formalities or procedures may be carried out by use of information technology. A person who wishes to be registered as a user computerized system may apply in writing to the Com General who may grant the application subject to such conditions as he or she may impose; or reject the application. A person shall not access, transmit to or receive information from any tax computerized system unless that person is a registered user of the system.

sec158B. Cancellation of Registration
The Commissioner General may at any time cancel the registration of the user where he or she is satisfied that a person who is a user of a tax computerized system has failed to comply with a condition of registration imposed by the Commissioner General under Section 158A (I) has failed to comply with or has acted in contravention of any condition under the regulations; or has been convicted improper access to system.

sec158C. Offences
A person commits an offence where he or she knowingly and without lawful authority, by any means gains access to or attempts to gain access to any tax computerized system having lawful access to any tax computerized system, knowingly uses or discloses information obtained from a computer system for a purpose that is not authorized; or Knowing that he or she is not authorized to do so, receives information obtained from any tax computerized system and uses, discloses, publishes or otherwise disseminates such Information. A person who commits an offence under subsection (I) is liable on conviction in the case of an Individual, to imprisonment not exceeding two years or a fine not exceeding five hundred thousand shillings or both: or in the case of a body corporate, to a fine not exceeding two million five hundred thousand shillings or both. A person commits an offence where he or she knowingly falsifies any record or information stored in any tax computerized system damages or Impairs any tax computerized system or damages, Impairs any duplicate tape or disc or other medium on which any Information obtained from the tax computerized system is held or stored otherwise than with the permission of the Commissioner General, and is liable on conviction to imprisonment not exceeding three years or a fine not exceeding one million shillings or both.
sec159. Service of Notices and other Documents
Unless otherwise provided in this Act, a notice or other document required or authorized by this Act to be served on a person being a resident individual other than in a representative capacity is considered sufficiently served if personally served on that person left at the person's usual or last known place of abode, office, or place of business in Uganda and the service witnessed by a member of the executive committee of the local councilor sent by post to such place of abode, office, or place of business, or to the person's usual or last known address in Uganda or on any other person, is considered sufficiently served if personally served on the nominated officer of the person left at the registered office of the person or the person's address for service of notices under this Act, or left at or sent by post to any office or place of business of the person in Uganda.

sec160. Practice Notes
To achieve consistency in the administration of this Act and to provide guidance to taxpayers and officers of the Uganda Revenue Authority, the Commissioner may issue Practice Notes setting out the Commissioner's interpretation of this Act. A Practice Note is binding on the Commissioner until revoked. A Practice Note is not binding on a taxpayer.

sec161. Private Rulings
The Commissioner may, upon application in writing by a taxpayer, issue to the taxpayer a private ruling setting out the Commissioner's position regarding the application of this Act to a transaction proposed or entered into by the taxpayer. Where the taxpayer has made a full and true disclosure of the nature of all aspects of the transaction relevant to the ruling and the transaction has proceeded in all material respects as described in the taxpayer's application for the ruling, the ruling shall be binding on the Commissioner with respect to the application to the transaction of the law as it stood at the time the ruling was issued. Where there is any inconsistency between a Practice Note and a private ruling, priority is given to the terms of the private ruling.

Sec.162. Remission of Tax
Where the Commissioner is of an opinion that the whole or any part of the tax due under this Act by a taxpayer cannot be effectively recovered by reason of considerations of hardship, or impossibility, undue difficulty, or the excessive cost of recovery the Commissioner may refer the taxpayer's case to the Minister. Where a taxpayer's case has been referred to the
Minister under subsection (1) and the Minister is satisfied that the tax due cannot be effectively recovered, the Minister may remit in whole or in part the tax due by the taxpayer.

sec164. Regulations
The Minister may, by statutory Instrument, make regulations for better carrying into effect the purposes of this Act without prejudice to the general effect of subsection (1), regulations made under that subsection may contain provisions of a saving or transitional nature consequent on the making of this Act or prescribe penalties for the contravention of the regulations not exceeding a fine of twenty five currency points, Or Imprisonment not exceeding six months or both and may prescribe, In the case of continuing offences, an additional fine not exceeding five currency points In respect of each day which the offence continues.

3.2 Revenue performance (in billions) and an analysis of tax reform measures and response of the reforms in reducing tax evasion
of 12.33% compared to the UGX 7,149.48 Billion collected in FY 2012/13. This represents a performance of 94.1% of the target. The revenue collected for FY 2013/14 was able to finance 71.5% of the Uganda's nation

Table 1:  

<table>
<thead>
<tr>
<th>Revenue Performance (UGX Bn)</th>
<th>Actual FY 2012/13</th>
<th>Actual Growth over FY 2012/13</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net URA collections</td>
<td>7,149.48</td>
<td>8,031.03</td>
</tr>
<tr>
<td>Taxes on international trade</td>
<td>3,070.51</td>
<td>3,548.00</td>
</tr>
<tr>
<td>Domestic taxes</td>
<td>4,274.73</td>
<td>4,671.21</td>
</tr>
<tr>
<td>Direct domestic taxes</td>
<td>1,730.97</td>
<td>2,624.45</td>
</tr>
<tr>
<td>Indirect domestic taxes</td>
<td>110.26</td>
<td>1,900.20</td>
</tr>
</tbody>
</table>

56 URA, performances brief of FY 2004/5-2013/14
3.2.1 Major tax reforms in Uganda
The goals of tax reforms in Uganda have been four-fold: broaden tax base; increase efficiency of collection; create incentives for the private sector; and ensure equity of taxation. The major reform measures started as early as 1991, it included: reforming tax administration, introduction of VAT to broaden the tax base, broadening the bases for personal and corporate income taxes, reduction of import duties, and simplification of the rate structure and abolition of export-related taxes. The tax laws were therefore amended and some repealed with the view to aligning them with the best practice\textsuperscript{57} Reforms were directed at improving administrative efficiency and to ensure better taxpayer compliance. It aimed at rationalizing the tax structure and rates, reducing exemptions and simplifying tax procedures. High and differentiated taxes and tariff rate, burdensome bureaucratic requirements, discretionary exemptions and tax incentives were considered to be a source of inefficiency in the tax system\textsuperscript{58}

3.2.2 Administrative Reforms
The Uganda Revenue Authority (U.R.A) was set up in September 1991 as an autonomous agency to collect taxes. Prior to this, three separate departments in the Ministry of Finance Customs and Excise Department, Inland Revenue and the Income Tax Departments, collected taxes for the government. U.R.A was expected to improve revenue collection through enhanced autonomy, acquisition of skilled staff, increased integrity and effective use of automated system. The authority was expected to adopt private sector-style management practices in its administration, with competitive staff remuneration, high caliber staff and adopt a code of conduct to guard against corruption. All these measures were expected to result in sustainable increase in revenue collection and to achieve a tax to Growth Domestic Product (G.D.P) ratio comparable to countries such as Kenya, Mauritius, Zambia and Singapore\textsuperscript{59} U.R.A introduced measures aimed at increasing taxpayer compliance. These included taxpayer education and tax advice facilities, and the Tax Identification Number (T.I.N) to reduce the time taxpayers spend fulfilling their tax obligations. The Large Taxpayers Department (L.T.D) was set up in 1998 to offer corporate service on all domestic taxes to the top 100 tax payers and their subsidiaries.

\textsuperscript{57} Repealing of the 1974 Decree and replacing it with Income Tax Act 1997
\textsuperscript{59} Ayoki Milton, Obwoni Marios, Ogwapus Moses. Tax reforms and domestic revenue mobilization in Uganda (Jan, 21, 2005).
The Tax Appeals Tribunal (TAT) was also introduced in August 1998 to provide an independent mechanism to which taxpayers who are aggrieved by U.R.A decisions can go for redress. Other measures included computerization of the income Tax Department in 1994, automation of U.R.A operation using ASYCUDA++ system in Customs and the VENUS system in the V.A.T department (1996) for recording revenues and tracking receipts; merging the department of V.A.T and Internal Revenue in April 2000 to create a one stop centre of internal revenue for the medium and small taxpayers. In addition U.R.A instituted tax investigation mechanisms to ensure greater accountability on the part of revenue collectors and to strengthen the procedures for investigating allegations of corruption. In 2004, the administrative reforms started with an organizational restructuring that reduced the number of administrative layers from seventeen to seven. This greatly reduced bureaucracies, improved communication and decision making turnaround time. Thereafter, Uganda Revenue Authority undertook the modernization reform strategy to transform it into an efficient and effective agency that is client focused. The notable successes include:

1. Introduction of 24/7 online services (Web Portal) and 24/7 services at some border stations (Malaba, Busia, Katuna).
2. Re-engineered business processes
3. Automation of the processes, for instance introduction of e Tax, ASYCUDA World, E-Procurement, Electronic Cargo Tracking System (ECTS) among others.
4. Implementation of staff competency enhancement programmes
5. Improvement of the physical working environment
6. Establishment of One Stop Border Posts
7. Implementation of staff integrity enhancement programs

The L.T.D was meant to be a one stop facility for large taxpayers, handling both V.A.T and income tax Assessments. The L.T.D provided for self assessment and filing of tax returns directly to the bank with tax. cited in Ayoki, Obwoni and Ogwupus's work pp43

Measures of automation taken to reduce physical contacts between the taxpayers and collectors. Payments. This system was supposed to be extended to the medium and small taxpayers. However, in 2002. U.R.A restructured some departments and abolished L.T.D there was a section of the taxpayers who perceived that U.R.A was using L.T.D to extort revenue from a few taxpayers. The T.A.T. was particularly intended to speedily adjudicate tax disputes in an environment less intimidating than the courts of law. Although tax appeals revenue has contributed to making the tax regime in Uganda a fair one since the taxpayers have a place independent of U.R.A to appeal to, it is still characterized by bureaucratic delays in handling cases. Cases, on average, take between 7 and 10 months from the date of filing until the date of decision. Cited in Ayoki, Obwoni and Ogwupus Work pp 43.
3.2.3 Value Added Tax (VAT)

Another major reform was the introduction of VAT in 1996 (at 17% for most goods, currently the rate is 18%) to replace Sales Tax (which was charged at 12% - 30%) and taxes on services called Commercial Transaction Levy (C.T.L). V.A.T was introduced on the ground that it had a higher revenue potential compared to the sales tax. It was also considered to be a fairer tax than sales tax because it can reduce or eliminate the cascading effect (paying tax upon tax) of sales tax. The other strength of V.A.T over sales tax is the existence of an audit trail that could be used to verify V.A.T amounts declared under the V.A.T system.

Prior to the introduction of V.A.T, most of the changes to the tax system in the 1990s seem to have been concerned more with raising revenue than equity, and relied greatly on ministerial discretion. Examples of these are the introduction of sales tax on all zero rated and exempt products in 1989/90 and the removal in 1993/94 of all exemptions from tax except those under bilateral agreements with foreign countries and accredited international institutions (those granted to investors under the Investment Code except for construction materials were retained). Over the years, Uganda has witnessed a distinct move away from ministerial discretion in tax policy (exemptions). The VAT Act of 1996 prohibited the granting of exemptions (discretionary exemptions have reduced).

Under the present VAT Act, supply of most basic goods and services which accounts for disproportionately high percentage of low-income household spending is exempted or zero-rated for example basic foodstuffs. In addition to equity concerns, certain sales are exempt or zero-rated for general development reasons for example educational and health services and passenger transport services. Generally a number of V.A.T exemptions appear pro-poor. Exemption of public passenger transport is progressive because public transport is usually the mode of transport for the poor, the same with food as it has been known since the time Engel coined his famous law (Engel's Law), the poor tend to spend more of their budget on food than do the rich. It can also be argued that the exemption gives a greater tax relief to the better off than the poor because the actual amount spent

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62 The following types of audit are generally implemented in connection with V.A.T (and income tax) systems: desk verifications, registration checks, V.A.T refund audits, issue oriented audits, comprehensive audits, and tax refund investigations.

63 Cap 349 Laws of Uganda


by the rich on food is more than the amount spent by the poor. Rich people tend to buy more expensive varieties of food and may throw food away more easily. To ensure equity in the tax system preferential treatment had to be given to drugs, medicine and medical services so as to be affordable to the majority poor population, however there is no convincing evidence that the poor populations are using the services provided, instead the main beneficiaries of the tax relief are the better off who spend more on medicine and medical services and who can afford to pay for services at private health facilities. Ayoki, Obwoni and Ogwapus however argue that the list of V.A.T exemptions needs to be reassessed and kept to a minimum to broaden the tax base and to facilitate compliance by taxpayers and control by tax administration. They say the zero rates should be applied exclusively to exports (and items required by international convention) since extending zero rates to many sectors result in more difficult control systems and an increased number of refund claims which sometimes cannot be managed by the tax administration.

3.2.4 Income Tax

With respect to direct taxes, reforms aimed at reducing overall complexity of the tax structure by ensuring that each of the sources of personal incomes are similarly taxed and that those in the less formal sector are brought into the tax net by use of a presumptive tax to ensure equity payment between all sources of income. The Income Tax Decree of 1974 allowed considerable discretion to the minister to declare any class of income to be exempt from tax. This loophole was eliminated by the new Income Tax Act of 1997. The new Income Tax Act aimed at broadening the definition of taxable income and abolished discretionary exemptions, tax holidays, and reduced the personal income tax rates to four main bands (0%, 10%, 20% and 30%), setting an annual threshold income subject to income tax at Ushs. 1,560,000 (approx. US$ 900 or over 3 times per capita income), the poor are by definition ‘exempted’ from personal income tax. Otherwise the main exemptions include pensions; salaries (official employment income) of employee of the Armed Forces (of Uganda), the Police Force, and the Prison Service other than a person employed in the civil capacity bequests and gifts not arising from a business.

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68 Ibid at pp 15.
69 Section 15 of the I.T.A defines chargeable income (business y+employment y+Property y-exempt income (section 17) of person for a year less total deductions allowable under the Act.
70 Third Schedule part 1 (rates for individuals) the I.T.A 1997.
71 Section 21 (1) q
relationship; charitable donations are allowed as deductions\textsuperscript{72}; non-business capital gains; and income exempt under normal international convention. Exemptions of pensions

Comparative analysis of Tax to GDP ratio within EAC region and South Africa. A comparative analysis of the average tax to GDP ratio across selected Sub-Saharan countries pitched Uganda’s ratio at 12.63\% with Kenya at 21.9\%, Tanzania at 16\% and Rwanda at 14.2\% while South Africa at 25\%. A study was conducted by URA and Ministry of Finance to compare Uganda’s Tax to GDP Ratio with other EAC member states and established the following; Differences in computations: While computing tax to GDP ratio, countries like Kenya, Tanzania and South Africa include government taxes in total revenue while Uganda does not. This has affected growth of tax to GDP ratio in comparison to other countries in the region Exceptional tax handles: Some countries have exceptional tax handles which generate additional percentage points to tax to GDP ratios. Some of the exceptional tax handles include pay roll taxes, taxes on bank charges and commissions, property taxes, air departure taxes, skills development levies and others. Uganda has started closing the gaps by introducing some tax handles which can fit well in our tax environment. Broader Tax exemptions: Uganda has been providing tax incentives which were meant to mainly attract investments and support productive sectors to take off. The major exemptions have been residing in the VAT and income tax regimes to support construction, agriculture, health and education sectors. Recent studies have concluded that tax exemptions are no longer the major incentives for investments. It is security, markets, infrastructural development, energy and skilled labor that are very important for investment attraction. Starting FY2014/15, most of the exemptions have been terminated and this is expected to improve our tax to GDP ratio in comparison with other countries in the region. Differences in the size of the informal Sector: Countries with large informal sectors like Rwanda (46\%), Tanzania (48\%) and Uganda (43\%) have lower tax to GDP ratios. While countries with smaller informal sectors like South Africa (11\%) have high Tax to GDP ratio charitable donations, bequests and gifts, and items required under international convention are normal and support equity.

\textsuperscript{72} Section 34. I.T.A
3.2.5 Import Duty

The current tariffs in Uganda are based on the Harmonized Code (HC)\(^{73}\) - having changed it from the Standard International Trade Classification (S.I.T.C) system\(^{74}\) in 1995/96. Customs tariff reform have evolved including reduction in tariff rates, simplification of the structure, reduction of exemptions and phasing out import bans, import license requirements and pre-shipment inspection. The tax rates charged on international trade (imports) have been reduced to three standard rates: 0%, 7% and 15%. Plant and machinery is zero-rated, while raw materials and final goods from non COMESA countries are subject to a 7 percent and a 15 percent duty, respectively. Rates for similar goods originating from COMESA countries are 0%, 4%, and 6%. To compensate for the reduction in tariff, government introduced excises of 10% on the imports. The excise was meant to protect domestic producers against imports from COMESA countries\(^{75}\). Meanwhile, import bans on cigarettes, beer, sodas, and car batteries were removed in 1998/99, and replaced by temporary import surcharge. In 1995/96, Government amended Section 22 of the 1991 Investment Code to abolish the granting of discretionary exemptions on import duties (and all other taxes) payable on imported plant and machinery for investors licensed by Uganda Investment Authority. Consequently, the tax system became more transparent, easier to administer and has contributed to an increase in the revenue yield\(^{76}\).

3.2.6 Outcome of the Reforms

The reforms had a bigger impact on direct taxes than on indirect taxes, suggesting that tax evasion is still a major problem for indirect taxes especially import duties. Improved performance of direct taxes can be explained by the contribution of the Income Tax Act 1997, which improved the administration of income taxes, reduced discretionary exemption and made the tax procedure simpler for taxpayers and revenue administrators. There is room for

\(^{73}\) This refers to the harmonized commodity description system generally referred to as the harmonized system or simply H.S, it is a multipurpose international product nomenclature developed by the world customs organization, it comprises about 5,000 commodity groups each identified by a six digit code arranged in a legal and logical structure and is supported by well defined rules. The H.S system is used for custom tariff for collection of international trade statistics. www.wcomd.org

\(^{74}\) This is a statistical classification of commodities initially designed by the United Nation, it was designed to provide the commodity aggregations for purposes of economic analysis and to facilitate the international comparison of trade by commodity. www.census.gov/foreign-trade/reference.html


\(^{76}\) Ibid pp 11.
further improvement in collection of direct taxes by strengthening the capacity of U.R.A to register more eligible taxpayers into the tax net\textsuperscript{77}.

3.2.7 More Recent reforms.

U.R.A implemented a restructuring programme that was initiated in 2004 and runs till present. It had been realized that fresh initiatives were needed to transform the way in which U.R.A does business if the objective of turning the organization into a client focused organization was to be achieved and tax payers compliance improved. It implemented goals which are to be achieved by;

(a) Putting the client at the center of goals and objective settings so that the services rendered remains relevant to clients needs.

(b) Staff empowerment, training and support in plan implementation.

(c) Opening to public scrutiny in all areas of its operation.

(d) Development of systems by linking process, people and automation in an efficient way. The modernization Programme\textsuperscript{78} set for three years ended June 2009 were to apply in the following areas;

(i) Customs.

(ii) Domestic tax.

(iii) Non-tax revenues.

(iv) Corporate services for instance in human resource management.

(v) Integrity enhancement, quality services and Public and taxpayers education\textsuperscript{79}

In January 2010, the U.R.A introduced the e-filling and e-payment system for large and medium taxpayers for PAYE, withholding tax, VAT, local excise duty and gaming and pool betting.

3.2.8 Revenue performance (2004/05 - 2013/14)

In the FY 2004/05, URA collections amounted to UGX 1,923.52.3\textsuperscript{80} Billion while in FY2013/14 revenue collected amounted to UGX 8,031.03 Billion. This translates into a growth rate of 317.5%. By the FY 2004/05, tax collections financed only 58 percent of the national budget but by FY2013/14, the contribution had increased to 71.5%. It is in the

\textsuperscript{77}Ayoki, Obwami and ogwapus.2005 pp14

\textsuperscript{78}The programme was introduced with the aim of turin URA to be a more client focused body than just collection of taxes, it aimed at improving the way URA conducts its activities.

\textsuperscript{79}Modernization Newsletter No.1 Jan 2007. A Uganda Revenue Authority Publication

\textsuperscript{80}URA performance brief of FY 2004/5-2013/14
interest of the country that we fully finance our National budget in the near future. All the policy and administrative changes we are implementing are intended to support this objective. Whereas Domestic tax collections contributed 51% to total revenue in FY 2004/05, its contribution to total collections improved to 57% in FY 2013/14. Customs collections that used to contribute 48% to total revenue in FY 2004/05 have reduced to 42% in FY 2013/14. Reliance on international trade taxes is now scaling down as we meet international obligations of reducing tariffs as global economies continue to integrate URA collected UGX 3,548.00 Billion as revenue from international trade taxes in FY 2013/14. This represents a growth of 270.49% compared to the UGX 957.64 Billion collected in FY 2004/05. URA collected UGX 4,671.21 Billion as revenue from domestic taxes in FY 2013/14. This represents a growth of 362.19% compared to the UGX 1,010.66 Billion collected in FY 2004/05.

3.2.9 Recent Reforms on Custom Department
In March 2007 the Kenya Revenue Authority (K.RA)81 and D.RA joined hands in exchanging information across the borders in order to curb custom and transit malpractices; they launched the Revenue: Authorities Digital Data Exchange (RA.D.D.E.x) which is aimed to facilitate this. It will also help to improve efficiency in U.RA's ASYCDDA++ and K.R.A's Simba82. Enoch Walugembe D.R.A's Assistant Commissioner for enforcement in an interview published in New Vision on 13th of March 2007 stated that "Data on exports, re-export and transit declaration to and through Uganda passed in Kenya's Simba 2005 system will be promptly and electronically submitted to ASYCUDA++, upon receipt of the submitted data ASYCUDA++ will send information to Simba"83. These systems aim at checking on malpractices like under/miss declaration of goods and smuggling because the authorities will be able to follow up on outstanding exports, re-export and transit transactions. Walugembe Enoch further stated that U.R A has also actively involved the public in revenue intelligence gathering by giving them confidence and assurance to react promptly and swiftly to information received and providing feedback, and that U.R.A has also implemented the reward system which pays 10% of taxes recovered to people who

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81 Kenyan Revenue Authority
82 ASYCUDA++ and Simba system 2005 are custom declaration system implemented as a measure to move the custom system from manual to automation hence reduce malpractices by human beings, for example, corruption.
report about smuggling. There has also been efficient co-ordination with agencies like the army, police and the local authorities. These have thus greatly improved the ability to control smuggling levels. Sanctions for smuggling has been kept high, criminal prosecution has been implemented since smuggling is criminal under the Penal Code. Fines/penalties have also been implemented under the East African Community Customs Management Act 2004. Smuggled goods are also seized and owners made to either pay taxes or fines or forfeit the goods to the state whichever is found punitive, cars used in smuggling are seized and forfeited to the state Of; the owners made to pay fines.

3.2.10 Prosecution Policy
U.R.A also implemented the Prosecution policy operated under the legal service, which was approved by its Management Board on Feb 2006. Before they used to rely on the police and government core lawyers to follow up tax related crimes many of which ended in a stalemate. (U.R.A) now has 13 tax prosecutors and since May 2006 has registered and handled more than 60 cases, where they have obtained convictions and sentences.

URA wins landmark Oil case
The URA Legal team on 16 July 2014 gave the country a cause to smile after receiving judgment in favor of URA in the Tallow Oil case, which was filed in the Tax Appeals Tribunal.
This ruling was in respect to an application brought by Tullow Uganda Ltd and Tullow Operational Pty Ltd challenging initial assessments of income tax of US$ 472,748,128 by URA in respect to a transfer of their interests in Exploration Areas EA1, EA2 16 and EA3 to CNOOC and Total E&P for the consideration of US$ 2,933,330,400. URA eventually revised the said assessments to US$ 467,271,971 being capital gains tax. The applicants being aggrieved by the said assessments appealed to the Tribunal Basing on the above findings the Tribunal ordered that:
1. The applicants pay capital gains tax of US$ 407,095,366 basing on the evidence adduced before the Tribunal being the amount after the pre-investment relief. The total amount of capital gain tax before the pre-investment relief was US$ 542,793,821. (This means URA will collect over 1 Trillion shillings in taxes)

84 Its date of commencement was 16th December 2004
86 URA handbook guide to taxation in Uganda 2011.

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2. The applicants will deduct the statutory 30% paid from the US$ 407,095,366 and the balance outstanding shall attract an interest of 2% per month from 16 July 2014 until payment in full.

3. The applicants are entitled to a re-investment relief of US$ 135,698,455.

4. The applicants shall furnish URA with evidence of re-investment in an asset of a like kind to the tune of the above-mentioned amount in clause 3 within three months from the date of this ruling. The said re-investment in an asset of a like kind should have been made in the period between 21 February 2012 and 21 February 2013.

5. Under S.19(c) of the Tax Appeal Tribunal Act the portion in respect of the re-investment relief is remitted to URA to effect as stated herein above.

6. The Tribunal also ordered that the applicants pay two-thirds (2/3) of the costs of this application to URA

3.2.11 Conclusion.

In conclusion therefore some of these recent reforms are yet to be fully tested since they have just been introduced87 to analyze whether the reform measures have the capability of reducing on tax evasion and improving compliance.

87 The Revenue Authority Digital Data Exchange (R.A.D.D.E.x) that aims to facilitate exchange of information between the boarders thus reducing on under/miss declaration of goods and smuggling.
CHAPTER FOUR
WHY EVASION IS STILL PREVALENT DESPITE REFORM MEASURES IMPLEMENTED.

4.0 Corruption.
This affects almost all the types of taxes especially where remittance is based on physical contact between two human beings, and even in cases of automation, to a lesser extent corruption has crept in to deny the authority of the much needed revenue. Corruption occurs in tax field by the tax officials being collusive (colluding with non-payers) or abusive (that is by extorting money from the compliant taxpayers). Several indicators can be used to determine the existence of corruption in a state's tax administration.

4.1 Indicators Related to the Institutional Context
Institutional features, such as excessive taxes on income, red tape and inadequate enforcement of regulations are, if not indicative of corruption, definitely a factor that increases the likelihood of corruption in the tax system. In a highly corrupt environment, tax evasion is more likely to occur than in a regulated environment with generally functioning institutions. While tax evasion is by itself not necessarily linked to corrupt activities, it can nevertheless create the opportunity for illicit deals when it is detected. An assumption of a connection between perceived corruptibility of public officials and the underreporting of income by private persons can thus be made. Along the same lines, corruption (and certainly inefficiency) in tax administration can but does not have to be suspected if there is an unexplained discrepancy in the ratio between the estimated amount of cash in circulation and the actual tax revenue. The lack of effective access to information provisions (which would ensure taxpayers are aware of their rights and less exposed to discretionary treatment by corrupt officials) and the absence of credible review mechanisms increase the risk of corrupt dealings.

4.1.1 Staff-related Indicators
As is the case in any public sector environment, the evidence of public officials living beyond their means for instance living in a higher standard than their income would normally enable them to be is an indicator for the existence of corruption.

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88 www.u4.noanticorruption resourcecenter.
The absence of measures designed to maintain the integrity of staff such as the promotion and enforcement of ethical standards, merit based recruitment and promotion procedures and regular staff rotation schemes to prevent the building of networks, increases the likelihood of staff exploiting corrupt opportunities.

Low ethical standards among professions linked to the tax system such as accountants are an indicator for the existence of corruption among those in charge of protecting the system against abuse. Finally, the perception of corruption of tax officials among members of the public is certainly suggestive of corruption actually taking place. The perception of additional income to be made from illicit deals is highly likely to attract the wrong kind of people into tax administration.

4.1.2 Corruption in U.R.A

Ayoki, Obwoni and Ogwapus in their work on *tax reform and domestic revenue mobilization in Uganda* stated that Corruption in the tax system is very complex, seemingly well organized, and difficult to detect. It is thus a challenge to Uganda Revenue Authority because corrupt individuals operate in a network thus when a member of staff of U.R.A is dismissed and joins the private sector, the knowledge of the workings of the tax system and inside contacts in U.R.A only strengthens the corruption networks. In fact, many clearing firms and tax audit firms in Kampala and Entebbe are owned by former U.R.A employees. To defeat this corruption problem would require identifying and cracking down these corruption networks. Corruption is worsened by the past method of recruitment in U.R.A which appeared to be influenced by having good connections and less by professional qualifications. Moreover, the tax laws are unclear and administrative procedures, including the procedures for reporting tax revenues lack transparency and are poorly monitored within the tax administration itself and by the office of the Auditor General. Revenue officers are considered to have wide discretionary powers to 'interpret tax laws'. Government has tried several measures to end corruption. These included privatization of some of the customs operations, for example, verification of imports through pre-shipment inspection companies (was tried between 1996 and 1999, only to be abandoned in June 2000); and automation of

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89 Tax reforms and domestic revenue mobilization in Uganda. Jan 21, 2005
90 Ibid at pg 23.
91 They can allow or disallow expenses or charges, or exempt import duty on imported items. While evaluating imports, corrupt officials take advantage of the ignorance of the tax payer to have him/her to believe that his or her imports fall under the tariff codes for higher duty rates, when it is not the case. In the process, the importer will be compelled to pay bribes for the 'tax adjustment'. Ayoki, Obwoni and Ogwapus.
customs and V.A.T operations by introducing ASYCUDA++ and the VENUS system in the customs and the V.A.T department respectively (however use of forged receipts to release goods in customs has not stopped, even with ASYCUDA++ in place). Others measures included enforcement of tax compliance using a special military unit, the Anti-smuggling Protection Unit, and the Special Revenue Protection Service; recruiting "born again" Christians into U.R.A because they were perceived to be more trustworthy; and introducing a system of reward (in 1998) for instance a cash prize of 10% of the face value of tax revenue recovered to any person who volunteers information leading to recovery of tax revenue; as well as dedicating a telephone-hotline and email address for the public to report any tax-related malpractices. In addition, taxpayers' education program and anti-corruption efforts through the office of the Inspectorate of Government (IGG) have been used to reinforce other measures. Instead, corruption seems to be increasing. In 2002, because of public concern, the President appointed a commission of inquiry to investigate the alleged corruption in the U.R.A. Implementing the outcomes of the report however has not been done.

4.2 Political interferences causing evasion.

Usually accused of abating tax evasion, Uganda Revenue Authority says political interference is among the factors to blame for the high incidence of evasion. A Publication on taxation that appeared on the Daily monitor revealed that sources within the tax body told Business Week that certain taxpayers enjoy patronage from "political big shots" who helps them flout tax rules. "It is true that there is political interference. Even though the laws are in place, there is undue interference", We are human, we have failed because our hands are tied" said U.R.A.'s Assistant Commissioner for Tax Education Mr. Christopher Kiwanuka Kaweesa. He said in some cases the tax body tries its best to compel tax evaders to pay but some politicians whom he could not name interfere and fail the process. There was a comment by a trader in the Publication who said: "On many occasions government people have smuggled in goods and sold them at the open market. You heard about DANZE clearing firm which was involved in smuggling," said Mr. Mukasa Lukomwa, a trader on Luwum Street.

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92 Increase in corruption was emphasized by Odd-Helge Fjeldstad Corruption in Tax Administration, Lessons from Institutional Reforms in Uganda, Chr. Michelsen Institute, Bergen Norway 2005
93 Justice Julie Sebutinde led the commission that investigated into the alleged corruption in the U.R.A. on Monday, August 16th 2004, the High Court nullified the report of the commission. The ruling rendered it unusable as a public document. The government is appealing to restore the report so it can be implemented.
95 Ibid.
DANZE was alleged to have indulged in smuggling and in the process avoided paying billions of shillings in tax; The Company whose ownership was clouded in mystery was later linked to the National Resistance Movement secretariat. Recently Michael Mabikke was reported inciting vendors in his constituency not to pay taxes; this led to the vendors evading tax especially those operating on markets dues. However Kampala City Council (K.C.C) vowed to drag the Member of Parliament to court to make sure he pays for the evaded tax.

4.3 Inequity of the Tax system and the inconvenience of the payment period and amount to be paid, a case study of market vendors

Endaire J emphasizes that deterioration of the perception of fairness causes concerns in a tax system based on voluntary compliance since citizens tend to exchange tax for benefits thus if inequity is perceived in this exchange citizens become more inclined to correct the imbalance by cheating on taxes in the future. This largely explains the situation in Uganda where most taxpayers get reluctant because they don't feel the benefits that they expect to accrue from the tax that they pay. Market vendors complain that they still sell in their poor structures, they lack sanitary facilities yet they pay taxes on a daily basis. U.R.A on the other hand quickly defends itself saying it's task is only collecting taxes but not allocating resources as this is the sole function of the government, however true this could be the negative effect that such perception creates on the minds of the taxpayers become of importance at the end of the day thus the need to rectify the perceived inequity. Endaire J adds that in order for taxation to be effective it should be based on principles of economic, political and social factors. A good tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. Most market vendors are dissatisfied with the period of tax collection and thus they preferred that taxes should be paid either in the middle of the year or at the end of the year, this they say is attributed to the fact that most business took place in the middle of the year and it is at the same time beginning of the fiscal year, in cases of the appropriate month majority of the market vendors showed preference that they should pay tax at the end of the month Inconvenience of the time of paying leads many to evade since at such time many of them usually don't have that sum that is required from them for instance vendors who pay

96 Dorothy Nakawesi and Esther Nakkazi, Monitor July 31st 2003
97 Member of Parliament for Makindye East
99 Endaire J (1990). The Structure of Taxation in Uganda, an agenda for reforming the indirect tax system
100 Endaire J (1990).
licenses are made to pay at the beginning of the year when most businesses are not making profits which sometimes is due to too many occasions at the end of the year which leads to money scarcity.

4.4 Low Levels of Education and Insufficient Tax Education

Low levels of education have also been identified as being a major cause of reluctance for Ugandans in paying taxes. Basemera Bahiyyih\textsuperscript{101} notes that the highly educated persons are less likely to evade tax compared to the less educated. This could be due to the fact that the highly educated persons easily understand the tax regulations mainly the accounting and record keeping requirements, and they maintain proper records and do tax computations themselves thus reducing the compliance cost. Illiterate taxpayers do not do tax computation themselves thus increasing their compliance cost and could encourage tax evasion. Taxpayers' negative attitudes toward paying their taxes stems from insufficient tax education. Change of this behavior can be improved by putting more emphasis on tax education that points to the fact that tax evasion and cheating are serious crimes. On interview it was discovered that even some university students did not understand the benefits of paying taxes, however, on pointing to them some of the benefits they indirectly accrue from the taxes paid, they quickly had a change of mind an indication that emphasis on tax education can do a great work. Uganda Revenue Authority (U.R.A) argues that it has spent the last 10 years educating Ugandans on taxation\textsuperscript{102} however the widespread negative attitude even among the elites show that there is still more to be done thus insufficient tax education proves to be one of the reasons of reluctance in paying tax.

This could either be attributed to poor methods of teaching, reluctance of Ugandans to know or poor methods of reaching out to the taxpayers.

4.5 Perceived Dishonesty of other Taxpayers and Tax revenue 'Misuse' by the Government

This directly results from the taxpayers social norms which can be classified into two basic categories.

\textsuperscript{101} Basemera Bahiyyih Determinants of VAT non-compliance in Uganda MUK Institute of Economics 2005
(a) The first relates to how the taxpayer judges his or her own compliance behavior in light of the individual's own feeling about what is proper, acceptable or moral behavior what might be termed as "internal norms".

(h) The second relates to whether other taxpayers are perceived as paying their fair burden of taxes and to how the taxpayer feels he or she is treated by the government in such areas as the payment of taxes, the receipt of government services or the responsiveness of government decisions. Perceived dishonesty of other taxpayers has also been noted to be a major cause that leads to reluctance in payment of tax thus the more taxpayers perceive others as being dishonest the greater the non-compliance, this is best summed up in the statement, "Why should I pay all my taxes when other people are not paying?". This creates a negative attitude towards the taxpayers as they feel that paying taxes will be doing injustice to themselves. In Kenya for example Members of Parliament were until August 2010 before the promulgation of the new Constitution exempted from paying taxes causing outrage among the public, some of them threatening to evade taxes. On the other hand those who flout without being detected develop a system which eventually turns out to be a habit thus getting out of such a habit becomes more of impossibility. This can be blamed on the tax enforcement agents since their reluctance in detecting such people who flout payment of taxes goes hand in hand with the idea of perceived dishonesty of other taxpayers.

Revenue misuse falls more on the administration and the government at large; thus taxpayers in most instances will not comply with their obligation of paying taxes if they believe that the revenue collected is not well spent. However Bird Richards and Oldman argue that where there is fierce detection, enforcement and punitive measures the taxpayer will not be left with an option but to pay. They further argued that voluntary compliance depends on national attitudes towards the tax system and tax administration. Thus willingness of taxpayers largely depends on the fact that funds taken from them are put to some good use. This explains largely the current reluctance to pay tax in Uganda.

103 James Alm and Jorge Martinez-Varquez Tax Morale and Tax Evasion in Latin America International Studies program working paper 07-04 March 2007. Andrew Young School of policy Studies Georgia State University.

104 Bird Richards and Oldmann (1967), Readings on Taxation in Developing Countries.4th Edition, Baltimore John Hopkins Press,
The government has continuously been involved in what taxpayer's term as misuse of their money, this has not been a new phenomenon, tracing back from the incidence of purchase of the Junk Choppers and to the Recent allocation to Members of Parliament grants amounting to sixty million in installments each for purchase of Motor Vehicles, which apart from few all others approved, all this sums up to perception of misuse of taxpayers' money leading to reluctance to pay tax.

4.6 Conclusion.

In conclusion therefore even though revenue collection has been gradually on an increase and evasion on income tax and V.A.T is low, in other areas revenue continues to grow especially where detection is difficult like in the informal sector, and customs department. Even though most tax officers from U.R.A argue that the level of corruption had been effectively trimmed, they on the other hand could not explain why there has been a continuous reported case of capture of goods whose tax has not been paid leaving the D.R.A warehouses, falsification of documents and misclassification of goods. It is true that U.R.A has done commendable work towards tax administration and fostering compliance, however, loopholes are still evident thus the need to advocate for the government to effectively assists them especially in formulating its policies and to make sure that the politics of the government do not antagonize between the taxpayers and the tax collectors.
CHAPTER FIVE
GENERAL CONCLUSION OF THE RESEARCH FINDINGS AND RECOMMENDATIONS

5.1 Introduction
The research findings show that evasion is limited on income tax and VAT, however evasion is still rampant in custom taxes and the informal sector, thus the major aim of the recommendations has been to emphasize on tax administration, tax policy vis-a-vis tax education among others.

5.2 General Recommendations
Tax administration should be viewed as a production process where inputs consist of men/women, materials and information and the outputs consist of revenue for the government and taxpayer's equity and taxpayer rights.

5.3 Administrative
Effective tax administration requires qualified tax officials. Tax authorities must provide for training and retraining of staff as needed. The tax authorities need to collect the information needed for effective administration from taxpayers, relevant stakeholders, and other government agencies. The information must be stored in an accessible manner and most importantly it must then be used to ensure that those who should be on the tax rolls are identified, that those who should file returns do actually file, that those who should pay do pay on time, and that those who do not comply are identified, prosecuted and punished accordingly. Countries such as Singapore are models of what can and should be done, and such models should be studied closely and once adapted as necessary, implemented.\(^\text{105}\) The first task of any tax administration is to facilitate compliance. To improve on tax administration and also encourage voluntary compliance, a simplified but comprehensive document on tax policies and administrative measures should be published by the government. This requires making sure that those who should be in the system are in the system and that they comply with the rules. Firstly, taxpayers must be found. If taxpayers are required to register, the registration process should be as easy as possible. Systems must be in

\(^{105}\) Bird Richard M. and Zolt Eric M. Administrative reforms (treating tax payers as a client) introduction to tax policy design and development. April 2003.
place to identify those who do not register voluntarily. The tax authorities should adopt an appropriate unique taxpayer identification system to facilitate compliance and enforcement.

Secondly, tax authorities need a process for determining tax liabilities. This may be done administratively (as with most property taxes) or by some self-assessment procedure (as with most income taxes and Value Added Tax).

Thirdly, the taxes due must be collected. In many countries, this is best done through the banking system. It is seldom appropriate for tax administration officials to handle money directly. Changes on tax legislation should be given sufficient publicity so that taxpayers understand how they might be affected and there should be a mechanism in place where by taxpayers and have their queries answered. Tax authorities should provide adequate taxpayer service in the form of information pamphlets, forms, advice agencies, payment facilities, telephone and electronic filing to make taxpayer compliance with the system as easy as possible. This approach rests on treating the taxpayer as a client (albeit not a willing one) to be served and not a thief to be caught. Unfortunately, the latter attitude seems to prevail in many developing countries.

The main areas of tax administration are taxpayer's registration, taxpayers audit and collections. Improvements in each of the following are feasible, for instance taxpayer's registration can be increased via better use of third party information like cross references between tax reporting, social security records and data from the financial systems. Audits can be made more effective via adoption of modern audit technology, including more systematic selection of returns for audits. This has been appreciated in Chile and Spain. An effective audit program should be able to identify individuals who do not file tax returns as well as those who underreport income or over claim deductions. Collection can be improved by applying non-harsh penalties often and consistently and relying more heavily on source withholding. In implementing reforms that will enable the administration to view the taxpayer more as a client, emphasis should be placed on;


(i) Promoting taxpayer education and developing taxpayer services to assist the taxpayer in every step of their filing returns and paying taxes.

(ii) Broadcasting advertisement that link taxes with government services.

(iii) Simplifying taxes and the payment of taxes.

(iv) Promoting voluntary compliance by lowering the cost for taxpayers associated with filing their taxes.

(v) Ensuring relative stability of the tax system.

(vi) Putting more emphasis on the exercise of the taxpayer-tax administrator code of

(vii) The rates should be made favorable to the taxpayer. This should he analyzed basing on government needs and the need to encourage development, since lower marginal rates encourages compliance.

5.4 Reforming the negative attitude towards tax compliance

The existence of the social norm which suggests that an individual will comply as long as he/she believes that compliance is the social norm needs reform since on the other hand when non-compliance becomes pervasive, then the social norm of compliance disappears. The negative attitude can be reformed by;

(A) Government policies

This should be implemented putting the citizen's interest more at the forefront; this is because one of the factors that encourage evasion is the perception that taxpayer's money is being misused by the government. Uganda must approach the tax system not just with its traditional focus on revenue raised, but must preconceive tax policy analysis to encompass assessment of the effects of taxation on efficiency, fairness, incentives, and competiveness as well as on compliance and administrative costs. Policy-making is the process by which governments translate their political visions into programs and actions to deliver desired changes in the real world, Good policy making is a fluid process that is forward and outward

A(i) Forward and outward looking

The policy analysis process ought to clearly define the outcomes that the policy is designed to achieve, and, where appropriate, to take a long-term view based on statistical data and

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informed predictions of social, political, economic, and cultural trends. The government of Uganda needs to make statements of intended outcomes of tax policy instruments that can then be used to evaluate the effectiveness of existing and new tax policies. At the same time, creative reference to the experiences of other countries, their similarities and differences, and factors influencing the national, regional, and international arena is crucial.

This process draws on experiences in other countries, and considers how policy will be communicated to the public. From the discussion in previous chapters of this thesis, it is evident that policy makers in Uganda have not yet addressed the impact the large growing informal sector on the tax reform process which is characterized with tax evasion and avoidance. This has resulted in unrealistic policies that are increasingly failing to raise sufficient revenue because Uganda's tax bases and tax-paying population are being eroded by these conditions. The government has to draw on the experiences of other countries and figure out the best to improve its tax policies. For example, the experience in Ghana, where the Ghana Private Road Transport Union has been collecting taxes from the informal sector on behalf of the government, this offers an example of administrative innovation which could be of wider interest in taxing informal sectors, and opening up discussions of how to bring government into closer and more positive contact with those in the unrecorded economy.

A(ii) Policy-Making should be Innovative, Flexible, and Creative

Policy-Making should be Innovative, Flexible, and Creative

Good policy-making involves a process that is flexible and innovative, questions established ways of dealing with issues, encourages new and creative ideas, and, where appropriate, fine-tunes established policies. To date, policy-makers in Uganda have followed heavily "western" ideas on the best ways to raise revenue, and have not even demonstrated as much creativity and flexibility as other African states such as Ghana. Nor has Uganda begun to examine how the tax and social existence systems can be integrated in order to develop trust amongst the taxpayer, the relevance of government to people's ordinary lives, or registration systems that give government benefits instead of penalties to those who come forward. Tax amnesties, tax holidays for Ugandans, and tax benefits designed to offer at least some support to the people of Uganda could build poor attitude towards paying taxes that can then support a more expansive role for government.
A(iii) Inclusive, Evidence-Based, and Interdisciplinary Policy Analysis

The advice and decisions of policy makers should be made based upon the best available evidence from a wide range of sources. All relevant evidence, including that from specialists in all pertinent areas of study, should be available in an accessible and meaningful form to policy makers. This element is clearly missing in Uganda’s tax policy process. One of the major limitations in writing this thesis was the lack of data on the different tax instruments in relation to prevailing social phenomena. The government needs to invest in the development of knowledge tools to provide a centre of expertise and advice in research and to ensure that government researchers are equipped to provide high quality research and analysis to support policy-making. As a minimum, the government should develop Uganda’s capacity to review existing evidence, commission new tax research through universities, and set up pilot initiatives and programs.

Development of pertinent data and analysis must be inclusive, should take account of the needs of all people directly or indirectly affected by policy, and must involve all stakeholders directly. Including the general public in the policy process would secure their confidence in the tax system and help overcome the culture of tax evasion in Uganda. This process should also be designed to take a holistic view, looking beyond institutional boundaries as well as working together with other departments to meet the government’s strategic objectives. Tax policy in Uganda lacks a holistic view, and this could be rectified by encouraging the Ministry of Finance, the government department that is responsible for tax policy, to consult with other agencies or departments working with vulnerable groups such as women and children, HIV/AIDS victims, and war victims on how best the tax system could be improved without having negative effects on these most vulnerable groups.

A(iv) Continuing Critical Policy Analysis

Good tax policy is grounded in the social, economic, and political realities of the society it affects. Because society continually changes, tax policy must be constantly reviewed to ensure that it is really dealing with problems it was designed to solve, and takes account of associated effects elsewhere. As a minimum, this would require putting an ongoing review program in place with a range of meaningful performance measures, and mechanisms to allow service deliveries/customers to provide feedback to policy makers. This would enable the government to evaluate the effectiveness of the tax system and identify problems. In addition, formal evaluation and assessment of tax policies and continued reference to the
experiences of other countries would institutionalize the expectation that policy makers will continually identify good practices that have potential for wider application in the design and implementation of policies. Several developing countries, including some African countries, have been very creative in their domestic tax policies, and Uganda would benefit from studying some of these success stories. For example, the case in Ghana where the informal sector is taxed through organized unions that are within the informal sector is a great relevance to conditions in Uganda.

B) The role of taxpayer’s involvement in decision making
Greater individual participation in the decision making process (especially on revising tax tariffs) will foster an increased level of compliance in part because participation implies some commitment to the institution and such commitment in turn requires behavior that is consistent with words and actions.

C) Increase in provision of public goods to the citizens.
It is believed that effective provisions of public goods and services by the government will increase compliance for instance taxpayers will develop the feeling that their tax payment is being well utilized, In order to enhance compliance of tax legislation and to prevent commission of tax offences, there is need to:-

Improve the access to information especially when U.R.A is conducting tax audits. U.R.A. heavily relies on the information provided by the tax payer, Revenue body should be empowered to seek information from third parties e.g. bankers, insurers, etc. The tax auditors should have access to the records of anyone who has financial dealings with taxpayers and who can provide relevant information on taxpayers' income and the accuracy of their tax declarations and books and records.

U.R.A should occasionally offer amnesty to tax payers to encourage voluntary disclosure. The basic idea of an amnesty is to encourage taxpayers to come forward and pay their long-past - due obligations and can be used to bring new taxpayers into the tax net. Tax amnesty when applied effectively can increase compliance. Voluntary Disclosure is defined by the Practice Note as "occurs when a taxpayer, on his/her own volition, comes forward willingly to disclose his/her tax liabilities, misstatements or omissions in his/her tax declarations in order to return a compliant status with respect to legal obligations."
There is a misconception that tax offences are not treated with the same seriousness as other offences of fraud or dishonesty, and that tax offences are somehow "victimless" crimes. Conviction for violation of tax law can carry the very distinct risk of imprisonment as well as position of heavy fines. U.R.A should be encouraged to adopt procedure name and shame of tax offenders. The threat of publication of tax offenders may create some amount of fear and induce offenders to pay their taxes. Tax offender’s cases should be given wide publicity. Publicity should not only be limited to prosecuted cases, and it should be extended to personal income of taxpayers. By keeping the system honest, publicity increases taxpayer confidence in the fairness of the system, which in turn has the salutary effects of increasing voluntary compliance and revenues.

5.5 Controlling corruption
Tax officials should be professionally trained, promoted by merit, and judged by their adherence to the strictest legal standards and morality. To remove temptation, payments should be kept out of the tax administration; emphasis should be placed such that officials have relatively little direct contact with taxpayers and even less discretion in deciding how to treat them. How they behave in such contacts must be monitored in some way for example creating an internal police.

5.6 Sanctions and Penalties
Penalties for evasion should be strengthened. Currently, the Income Tax Act 1997 (part XV) provides the legal basis for various penalties (fines, interest, imprisonment) for a number of tax offences. Unpaid taxes may result in fines or additional interest payment, but there is no provision for imprisonment except under Sections 139, 141, and 142 of the I.T.A. Fines can also be charged for failure to comply with tax recovery provisions, maintenance of proper records, and provision of requested information. Finally, fines apply if misleading or false information is given; taxpayer identification numbers (TIN) are misused; or tax officials are obstructed or bribed. In total, eight types of offences may result in fines or other monetary penalties. Five types of offences may, in addition, result in imprisonment: misuse of the TIN; knowingly making false or misleading statements; helping others to commit a tax offence; receiving bribes (tax officials) or giving bribes (other persons).

The three first mentioned offences carry imprisonment of up to one year, while the latter two offences may give not less than three months in jail.

Penalties and sanction should be increased with;
(1) The potential revenue loss due to the tax offence.
(2) The difficulty and cost of detecting the offence.
(3) The effect of the offence on other taxpayers;
(4) The offender's state of mind (a higher penalty should apply if the offence is deliberate and pre-planned); and

5.7 Recidivism109, in addition, penalties should depend on the similarity of the offence to actions which are punishable under other laws, given the cultural context. For example, penalties for non-compliance should be inversely related to the ease of compliance and the information about obligations which taxpayers may reasonably be expected to have, taking into account such things as the availability of forms, the aid provided to taxpayers in filing returns, and taxpayer education programs110.

5.8 Modernization/Computerization
Computerization should be increased, thanks to D.R.A's efforts of implementing the ASYCUDA ++ and the more recent R.A.D.D.E.X system. Special consideration should also be placed on the following departments.
(i) Systems related to taxpayers records and tax collections
(ii) Systems related to internal management and control over resources
(iii) Systems related to legal structure and procedure and systems that will help lower taxpayer's compliance cost. The positive effects of computerization have been felt in Singapore in developing a system of handling trade declarations electronically known as the TRADENET which allows filing of declarations by traders through their personal computers. However before implementing the new technologies there should be enough resources for training of staff on using them otherwise a complex system may engender resistance and problems.

5.9 Specific reform measures to include
Making the tax procedures very simple and transparent so that the taxpayers know what their obligations are towards revenue collection, as well as educating them (taxpayers) on tax laws and collection systems. These ought to be presented in the simplest possible way for an

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109 This means that penalties for non-compliance should be inversely related to the ease of compliance and information about obligations which taxpayers may reasonably be expected to have.
110 Bird Richard M. Asia pacific tax bulletin March 2004

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average taxpayer to understand (interpretation in major local languages could also help). Possibly, ignorance of the tax laws and procedures is partly responsible for generating the environment for corruption in the tax system.

In addition, effective use of automated systems (for example computerization of the clearing system), and improving information flow within and across departments and strengthening tax audit are needed to improve tax collection and monitoring system. It would also help in evaluating refund claims and in preventing possible frauds associated with these claims. Developing an effective mechanism that monitors documentation of goods from Mombasa to the final delivery point is also needed in order to cut down on falsification of documents by officials at various checkpoints, and to ensure continuous monitoring of the tax body. Consideration should also be given to strengthening tax administration including staff investigative machinery and human resource management system, particularly system of rewarding staff in order to attract skilled and high caliber employees. Employees must feel that they actually represent the most valuable asset of the organization and that top management is prepared to invest in their future. So the issues like career development need urgent attention. A well designated training program is necessary if capacity of staff is to improve.

The point here is that the URA administration must rely on a number of human resource management instruments not only remuneration to be effective and efficient. While salary rise may help, it won't stop revenue officials from taking bribes. Pay level is only one of several factors affecting the behavior of tax officers. In a situation in which the demand for corrupt services is extensive and monitoring ineffective, wage increases may end up serving as an extra bonus on top of the bribes taken by corrupt officers. Similarly, it is not enough to 'fire' corrupt officials without reforming aspects of the system that provide opportunities for stealing and ensuring that honest officials are being appointed in position of trust. Where personal contact is a problem, the introduction of elements of unpredictably as to which particular official may handle a matter or certain category of clients, and routine transfers may also help. Finally, anti-corruption effort in the tax system needs to be extended to embrace other efforts towards achieving good governance rather than being handled in isolation. For instance, how transparent is the government procurement system, the awarding

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Fjeldstad Oand Rakner L (2004) taxation and tax reforms in developing counties, illustration from sub-Saharan Africa; Bergen; Chr Michelson Institute.
of government tender, ministerial discretion of providing preferential treatment to some industries and companies. How is the policy environment? For instance, what has been done to correct the misalignment in policies which generates an environment for corruption such as cross-border differences in the tariffs regime? Some of the smuggling activities are reactions to misalignment in the policies of Uganda and her neighbors, and the policy that provides over protection to some industries

5.10 Improving Tax Administration

The best tax policies in the world are worth little if they cannot be implemented effectively. Therefore tax policy design must take into account the administrative dimension of taxation at every step of the process.\textsuperscript{112} Even though reform of tax policy and tax administration entails fiscal and political costs, there is no other way to develop a sustainable tax system.\textsuperscript{113} At the very least, Uganda needs to move to computerized tax processes not only to improve administrative functioning, but to reduce the contact between taxpayers and tax officials in order to counter corruption\textsuperscript{114}. However, new technology alone is not sufficient if the government does not recognize the need for skilled tax officials.\textsuperscript{115} Effective tax administration requires qualified tax officials with requisite skills to maintain these systems and operate them to their fullest potential.\textsuperscript{116} A computer-based revenue administration would have different skill needs than a system based on manual processes. Human resources as in the form computer professionals, researchers, tax lawyers, and auditors are necessary. Since the market value of these professionals is high, mechanisms to pay them competitive salaries need to be developed as well.\textsuperscript{117} The role of tax education on a large scale cannot be underestimated. Uganda has first-hand experience of the benefits of investing in public sensitization. The Ugandan government was able to reduce the prevalence of HIV/AIDS from 30% in the 1990s to 6.7% in 2005 by using public campaigns to educate the public about the disease\textsuperscript{118}.

\textsuperscript{114} Bird, 2003.
\textsuperscript{115} ibid.
\textsuperscript{116} Bird, 2003.
magazines, and billboards were used to educate the public and spread awareness\textsuperscript{119}. The school curriculum was also used to educate students who indirectly would educate their parents. All this information was disseminated in different languages. Government officials, cultural leaders, religious leaders, and entertainers were all involved in the campaign of spreading awareness of HIV/AIDS, and the results were tremendous. The government needs to take this same large-scale intensified approach to educating people about why the state needs taxes and how it helps them. The Uganda Revenue Authority should provide adequate taxpayer services in the form of information, pamphlets, and advice agencies to ensure taxpayers get a better understanding of tax matters. It is also important that the task of improving tax administration is periodically reviewed to ensure that best practices from other countries are adopted or integrated into Uganda’s tax administrative system.

5.11 Integrating Pro-Poor Policies into the Tax System

In spite of numerous economic reforms, Uganda, like most of the African countries, has continued to experience extremely low \textit{per capita} incomes and daunting levels of poverty\textsuperscript{120}. However, Uganda has not yet explored how the tax system can be used to implement pro-poor measures\textsuperscript{121}. "Pro-poor growth" refers to policy strategies that are designed to enable the poor to actively participate in and significantly benefit from economic activity\textsuperscript{122}. According to Kappel\textsuperscript{123}, there are two possible ways to achieve pro-poor growth: through direct methods, and with indirect methods. Direct methods are used to immediately raise incomes of the poor by ensuring that economic growth occurs in those sectors or regions in which the poor are employed, and focuses on using the factors of production they already possess\textsuperscript{124}. Indirect advantage of them, and are of no assistance to any of the many low-and no-income people in the informal economy. Only civil servants and any officials qualify for government pension payments, and the National Social Security Fund (NSSF) offers pensions, invalidity, and survivor’s benefits only to qualified private sector employees. Even though the NSSF is open to informal sector workers, the vast majority of members, if not all, are employed in the formal sector because the benefits of this fund are not worth the other costs of leaving the

\textsuperscript{120}  
\textsuperscript{121} Arne Bigsten and Augustin Kwasi Fusu, “Growth and Poverty in Africa: An Overview” (2004), 13 supplement 1 Journal of African Economics at 11-115 [hereafter referred to as ‘Bigsten and Fusu’].  
\textsuperscript{122} Bigsten and Fusu  
\textsuperscript{123} Ibid  
\textsuperscript{124} Ibid
informal economy. The main pro-poor assistance from the government is in the form of the provision of public services such as primary education and health care. But in practice, these services are severely limited by low quality, and end up not being beneficial.

The government of Uganda could encourage pro-poor growth by integrating direct assistance into some of PIT and VAT tax systems. Such assistance could include the extension of child tax benefits, earned income benefits, and VAT credits for poor and low-income individuals. These benefits would not only assist the poor, but would also create vehicles for bringing those individuals into the recorded economy. Examples of these types of benefits as used in Canada are outlined here: The Canadian child tax benefit aims at assisting poor families and children by making them eligible for a sum of money per child. This benefit would assist the elderly caregivers looking after HIV/AIDS orphans as well as families affected by civil war. It can be structured as a deemed income tax credit that is fully refundable to those who register for it. Earned income tax credits lower the amount of income taxes low-income taxpayers owe, and increases their tax refunds.

The importance of this credit is to encourage welfare recipients to engage in paid employment, which increases their skills and their revenue over time. The explanation for the limited access to health care is poverty, and the situation is worsened by the prevalence of HIV/AIDS whose treatment is very expensive. Hence, a health insurance benefit for the poor would increase access to health care while increasing the tax base when people have to register with the tax authorities to become eligible for the benefit. By encouraging pro-poor growth through taxation, the government can take steps that can reduce the levels of poverty, support growth in levels of income and the size of the recorded economy, and hence increase tax revenues. Methods redistribute income and capital to the poor through tax provisions and targeted government spending\(^{125}\). This spending can take the form of direct financial transfers, investment in the assets of the poor, or provision of basic social services\(^{126}\). Indirect pro-poor methods include heavy reliance on progressive taxes as well as direct spending on the poor by the government\(^{127}\). Financial transfers can immediately benefit the poor by increasing their disposable incomes, while public services increase the welfare of the

\(^{125}\) Ibid.

\(^{126}\) Ibid.

\(^{127}\) Ibid.
poor by improving their living conditions\textsuperscript{128}. Both types of measures can be considered to be investments in the assets of the poor, because they provide opportunities to increase their earning capacities, enhance health and knowledge, and change the distribution of incomes in the medium to long run\textsuperscript{129}. Between 1992 and 2002/03, the Ugandan population experienced important welfare gains as consumption increases were broad-based, inflation was reduced, trade liberalization was encouraged, and restructuring of public administration was enforced\textsuperscript{130}. However, after 2000, this growth slowed down, poverty began to increase again, and the situation has not since improved.

This setback seriously reduced Uganda's chances to achieve its goal of reaching a poverty level of 10\% or less by 2017. The tax system can be used to foster pro-poor growth in Uganda to encourage them to pay taxes than to evade them, as discussed below.

Pro-poor growth requires that taxes be designed to burden the rich more than the poor and alleviate the worst effects of poverty regardless of cause. In Uganda, the only assistance provided to the poor by the tax system consists of exemptions in the PIT. However, these exemptions really only help those who have enough income to take advantage of them, and are of no assistance to any of the many low-and no-income people in the informal economy.

5.12 Integrating Gender Issues into the Tax System

The widespread poverty in Uganda and the impact of HIV/AIDS, civil war, and under development affects men, women, and children in Uganda. However, there are gender differences in how each factor affects people depending on their gender, age, and other considerations. Women are particularly hard hit. For example, throughout the HIV/AIDS epidemic, women are still expected to care for the ill, orphaned children, and fractured families in their communities.

Over two decade ago, Uganda agreed to incorporate gender perspectives into budget processing, including tax policy, when it committed to the Beijing Platform for Action in 1995\textsuperscript{131}. The Platform for Action is an agenda for women's empowerment that aims at advancing goals of equality, development, and peace for all women everywhere in the

\textsuperscript{128} Bigsten and Fusu
\textsuperscript{129} Ibid.
\textsuperscript{130} Kappel
\textsuperscript{131} Uganda Revenue Authority, Report on Gender Budget Analysis of Taxation in Uganda, online: IDRC <www.idrc.ca/uploads/user-S/11279461961Gender_Analysis_of_Uganda's_Budget.doc> [hereafter referred to as 'Uganda Report on Gender and Taxation'].

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interest of all humanity. In an effort to achieve the objectives of equality for women, the Ugandan Government has included provisions for equality in the Constitution, other national laws, and policy processes to provide motivation for engendering tax policy. Despite these reforms, the inferior position of women in Ugandan society has not changed.

The vast majority of women (60% of all women) work in agricultural subsistence work, as compared with only 49% of all men. Women account for 80% of all unpaid workers. Worse still, in nonfarm production, men predominate in the formal economy, where they represent 61% of employees, while most women workers are self-employed or work as unpaid family workers. Women also face greater vulnerability to HIV/AIDS due to economic, social-cultural, and legal factors. They carry the burden of looking after the sick and fending for the families on little or no income. Gender inequality is a serious obstacle to sustainable poverty reduction, and hence affects the amounts of revenue collected from women as a group. A recent World Bank study suggests that Uganda could gain as much as 2% of GDP growth a year by eliminating gender inequality. The Ugandan government pledged long ago to implement a gender-based analysis in all policy processes, including the formulation of tax policies. It is high time for the government to rally support for gender sensitive taxation so that policy makers and politicians appreciate the need for gender-sensitive tax policy impact assessment and evaluation. This can be done by initiating research to projects to inform policy makers of the many links between gender inequality and tax policy.

5.13 General Conclusion of the Research Findings

Over the last two decades, the government of Uganda has made tremendous improvements in its tax system both policy and administratively, however, it is clear that more work has to be done if Uganda is to increase its tax revenues in which way to eliminate tax evasion. Due to the low levels of development in Uganda, it will take a number of years before a fully-fledged and operational tax system to curb tax evasion is set in place. Nevertheless, the

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133 Uganda Report on Gender and Taxation
134 Ibid
135 Ibid
136 Ibid
137 Amanda Ellis, Claire Manuel and C. Mark Blackden, Gender and Economic Growth in Uganda (Washington: World Bank, 2006) [hereafter referred to as 'Ellis and Blackden']
138 Ellis and Blackden
government has to continue adapting the tax system to meet the evolving needs of people and enterprises in Uganda.

Uganda's tax structure resemble the tax structures of most of the other African countries and conforms to the principles of good tax structure thus the main point on emphasis for reform is administration. Vito Tanzi\textsuperscript{139} noted that tax administration has a crucial role in determining the real effectiveness of a tax system. Professor Bird\textsuperscript{140} adds that the best tax policy in the world is worth little if it cannot be implemented effectively, thus he adds that Tax policy design must take into account the administrative dimensions of taxation. Hopefully with implementation of the reform measures tax compliance behavior will grow rapidly. The scope of administrative discretion should be reduced to a minimum, so that it is available only when required for strictly practical reasons. As a general rule particular consequences should follow particular acts or omissions in every case. In this way, everyone knows where they stand, and compliance is likely to be improved. If everyone is treated alike, grounds for complaint are minimized, provided always that the sanction is regarded as broadly fair Gradual improvement of tax legislation accompanied by elimination of systemic problems will also contribute to voluntary compliance by tax payers.

The enforcement mechanism that U.R.A normally uses or adapts should not only coerce the dishonest and neglectful, but to encourage the honest and conscientious. Enforcement powers should be precise, and logically formulated, and should so far as practicable be harmonized over the whole direct and indirect tax field. All enforcement procedures should be subject to ultimate judicial control both broadly and in matters of detail, and such control should be capable of being applied in a summary and expeditious way. This is only reliable and satisfactory means of securing that the tax payer is adequately safeguarded.

While various tax statutes provide for legislative mechanism to prevent, detect and deal with various tax offences, is humbly submitted that the most effective way is having a holistic approach starting with massive tax education to tax payers. Paying taxes has a long history, and so does the abuse of the way the tax money is spent. Taxpayers should be made aware

\textsuperscript{139} Tanzi and zec (2000), "Tax policy in emerging markets: developing countries" National Tax Journals. 53 (2) 299-322
\textsuperscript{140} James Alm and Jorge Martinez-Vazquez. Tax Morale and Tax Evasion in Latin America, international studies program working paper 07-04 March 2007. Andrew Young School of policy studies georgia state University
exactly what the taxes they pay do. In making the payment of tax more acceptable to citizens, this would improve voluntary compliance.

The Tax Payers Charter is one of the ways in making payment of tax more acceptable to citizens as it spells out obligations and the rights of tax payers. It is important that the government of Uganda realizes that tax policy making involves continuous learning and is not just a one-off initiative. The society in which taxes are to be implemented is constantly changing, and so should its tax system looking; innovative, flexible and creative; evidence-based, inclusive, and interdisciplinary; and continually self-critical.
BIBLIOGRAPHY BOOKS.


JOURNAL ARTICLES.


- Christoph Eichorn optimal policies in the presence of tax evasion -Ludwig Maximilians Universitat Munchen 26 July 2006.


• Jack Ranguma *issue note on combating Tax Evasion and Tax avoidance in Kenya*. Kenya Revenue Authority, Kenya


• Schneider and Enste (2000) *Shadow economy, causes and consequences*. The journal of economic literature 38(1)77-114.

• Tanzi and Zee (2000) "Tax Policy in emerging markets: developing countries" National Tax journals, 53(2) 299-322.


NEWSPAPER ARTICLES.


WEBSITE SOURCES.
<http://www.rotman.utoronto.ca/iib> [hereafter referred to as ‘Bird’].


Ernst Engel119572nd Edition 1 896. Faculty. washington.edu/Krummel/resources/Engel.html
Foster, V, and T. Yepes, 2006 magazine for development and co-operation.www.inweut.org


www. u4.no anti - corruption resource centre.
APPENDIX I: INTERVIEW QUESTIONNAIRE FOR RESEARCH PAPER ON THE LEGAL EFFECTS OF TAX EVASION AND CASE FOR REFORM IN UGANDA

DATE: 5/6/2015

Where do you study from: I am graduated from Makerere University.

What is your level of education: Master's degree.

Do you know what tax is? Yes.

Do you pay taxes? Yes, indirectly.

If not would you pay if your required by law to pay tax? No. I think the government should abolish taxes. If taxes help the government to operate, however, if there was an option of getting the government to do something else, I think the government should be abolished.

Do you think there is any benefit in paying tax? Very little, with the current tax, the roads, the lobbies of the huge banks, the utilities, the salaries... all these are the benefit.

Briefly comment on our tax system in Uganda: The tax system of Uganda is very good; it is collecting taxes and the VAT. Since we have the VAT, collecting the taxes and the VAT is the government.

Do you think the government should abolish taxes? Yes, the government should abolish taxes.

Signature: [Signature]

[End of interview]

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APPENDIX II: INTERVIEW QUESTIONNAIRE FOR RESEARCH PAPER ON THE LEGAL EFFECTS OF TAX EVASION AND CASE FOR REFORM IN UGANDA

Date: 30/5/2015

What is your profession? ________________________________

When do you pay taxes? ________________________________

Would you pay if it payment of taxes is optional? No

Which time would you be convenient for you to pay taxes

What is your is reason for that preferred time for payment of taxes

Briefly comment on the tax system of Uganda

Have you ever evaded payment of taxes or attempted to evade paying taxes

What do you think are the consequences of evading payment of taxes

Signature: ________________________________