



THE 30% TAX CONUNDRUM: SHOULD JUSTICE COME AT A FEE?

Imagine receiving a tax assessment from the Uganda Revenue Authority (URA) demanding for billions of shillings yet you are certain that the assessment is incorrect. Fortunately, the Ugandan legal tax framework grants taxpayers the right to challenge assessments through the objection process and, if dissatisfied, to appeal to the Tax Appeals Tribunal, the High Court, the Court of Appeal, and ultimately the Supreme Court.

However, there is a catch. Before the Tax Appeals Tribunal (TAT), the first independent adjudicative body in the tax dispute process can hear the appeal, Section 15(1) of the TAT Act requires a taxpayer to pay 30% of the tax assessed or the portion of tax not in dispute, whichever is greater.

This requirement was considered by the Constitutional Court in **Fuelex (U) Ltd v URA** which drew an important distinction between disputes concerning the quantum of tax assessed and disputes concerning liability to tax. While the Court upheld the constitutionality of Section 15 of the Tax Appeals Tribunal Act in relation to disputes over the amount assessed, it found the provision unconstitutional to the extent that it requires a taxpayer whose challenge does not concern the amount of tax payable to first pay 30% of the assessed tax. Nevertheless, Parliament has not repealed Section 15, and the provision remains part of Uganda's tax dispute resolution framework.

For many taxpayers, particularly businesses facing substantial assessments, this requirement is not merely an administrative formality. It is the difference between accessing justice and being locked out of the dispute resolution process.

The rationale behind the 30% rule is that the Government relies on tax revenue to finance public services and as such revenue collection should not be unduly delayed by litigation. The law reflects the principle “pay now, argue later” discussed in the case of **Metcash Trading Ltd v Commissioner**, South African Revenue Services under which tax assessments are presumed valid until successfully challenged.

Supporters of the 30% deposit requirement argue that it protects public revenue and discourages frivolous appeals while its critics contend that it creates a financial barrier that prevents genuine disputes from ever being heard on their merits.

This ongoing debate raises an important policy question: Is the mandatory 30% deposit still necessary, or can public revenue be adequately protected through less restrictive measures that preserve taxpayers' access to justice?

To answer that question, it is important to examine how other jurisdictions balance revenue protection against access to justice with greater efficiency than Uganda.



Comparative Approaches to Tax Deposit Requirements Before Appeals

Jurisdiction	Deposit requirement before appeal	Nature of Requirements	Degree of Flexibility	Tax to GDP ratio. [%]
Uganda	Payment of 30% of the assessed tax or the tax not in dispute, whichever is greater. (<i>Section 15 of the TAT Act</i>)	Mandatory statutory requirement under the Tax Appeals Tribunal Act	Low	13 - 14
Tanzania	Payment of one-third of the assessed tax or the undisputed amount (<i>Section 51 of the Tax Administration Act</i>)	Mandatory statutory requirement, subject to limited waiver	Low	13.3 – 14.9
Ghana	Payment of 30% of the disputed tax (<i>Section 42 of the Revenue Administration Act</i>)	Mandatory statutory requirement, with waiver mechanisms	Moderate	14.5
Kenya	Payment of the undisputed tax only (<i>Section 51 of the Tax Procedures Code Act</i>)	Procedural requirement for a valid objection	High	15.8 -16.8
South Africa	Tax assessed remains payable notwithstanding an appeal but is subject to administrative relief (<i>Section 164, Tax Administration Act</i>)	Pay now, Argue Later Principle is applied but the Revenue authority may suspend payment upon application by the taxpayer	Low	25.1
United Kingdom	No general statutory deposit requirement (<i>Taxes Management Act 1970 and Tribunal Procedure Rules</i>)	Payment obligations depend on the nature of the dispute; courts and tribunals retain discretion in appropriate cases	High	38
India	No fixed statutory percentage discretion (<i>Income Tax Act, 1961</i>).	Payment obligations depend on the nature of the dispute; courts and tribunals retain discretion in appropriate cases	High	19.6
Singapore	Tax assessed remains payable notwithstanding an appeal. (<i>Section 86, Income Tax Act (Singapore)</i>)	Assessed tax must notwithstanding an objection or appeal but this is subject to administrative relief	Low	11-13
Australia	No fixed statutory deposit requirement (<i>Taxation Administration Act 1953</i>)	Revenue authority and courts retain discretion regarding recovery and security arrangements	High	30.2

As reflected in the table above, Uganda, Tanzania, and Ghana adopt relatively restrictive approaches by requiring taxpayers to make an upfront payment before a tax dispute may proceed. By contrast, Kenya requires payment only of the undisputed tax, while jurisdictions such as the United Kingdom, India, and Australia rely on more flexible mechanisms, including payment suspensions, security arrangements, and administrative discretion. South Africa and Singapore generally require payment of the disputed tax but provide mechanisms for relief in appropriate circumstances.

Notably, the tax-to-GDP ratios do not suggest that stricter deposit requirements necessarily result in stronger revenue performance. Jurisdictions such as Australia and the United Kingdom maintain significantly higher tax-to-GDP ratios despite the absence of fixed statutory deposit requirements. While tax-to-GDP performance is influenced by numerous factors, the comparison demonstrates that effective tax administration and revenue protection can be achieved without rigid mandatory deposit requirements.

Reform Options for Uganda

Uganda can adopt a more balanced approach to the 30% requirement without compromising revenue protection. The objective should be to secure disputed taxes rather than to impose a rigid financial barrier to appeals. This can be achieved through alternative safeguards such as bank guarantees, security bonds, asset preservation measures and discretionary orders requiring security where circumstances warrant. Such an approach would protect public revenue while preserving taxpayers' access to justice and ensuring that disputes are determined on their merits.

Recent judicial developments point in this direction. In the matter of **Dr. Jaala Higenyi Alfred v Uganda Revenue Authority**, the High Court recognised that property already attached by URA may be credited towards the statutory 30% requirement, signalling a more practical approach focused on whether the Revenue authority is already adequately secured pending determination of the dispute.

A more flexible framework would ensure that tax disputes are determined on their merits rather than a taxpayer's ability to raise funds. It would also alleviate pressure on business cash flows while preserving URA's ability to recover taxes ultimately found to be due. The comparative experience demonstrates that modern tax systems can effectively protect revenue without imposing rigid preconditions that may impede access to dispute resolution.

Conclusion

Uganda remains one of the more stringent jurisdictions in relation to financial preconditions for tax appeals. While the 30% requirement under Section 15 of the Tax Appeals Tribunal Act serves the legitimate objective of protecting public revenue, comparative experience demonstrates that revenue can be effectively safeguarded through less restrictive mechanisms.

A framework that permits alternative forms of security, focuses on collection of undisputed taxes, and allows flexibility in appropriate cases would strike a fairer balance between revenue protection and access to justice, while promoting taxpayer confidence in Uganda's tax dispute resolution system.

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