

Tax Refund Administrative Practices and Value Added Tax Claims in Tanzania**Baraka Saiteu**

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Abstract

Generally, the refund of value added tax claims to taxpayers is vital for the purpose of ensuring that businesses are not affected since businesses are just agents of the tax authority in collection of the value added tax. It is an established principle that refunds entails money paid back to the trader or a taxable person where in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns for prescribed accounting periods regularly result in excess credits. The refund once is processed is paid to the taxpayer through Interbank Settlement System (TISS). Registered taxpayers may not pay the correct amount of VAT for a number of reasons including error, deliberately understating their VAT liabilities, or through systematic attacks on the VAT refund system. Tanzania to a large extent has failed to establish the scale of losses of VAT because of the systematic ways used by taxpayers to manipulate the tax system. Fraud and evasion come in many forms, ranging from traders omitting the occasional sale from their accounting records to systematic suppression of sales and falsification of invoices. The methods to detect, investigate, and prevent VAT abuse are big challenges in most countries including Tanzania. In finding answers to the existing legal problems under the study doctrinal research methodology was employed. Conclusively, the value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent value added tax abuse in VAT refund claims which causes loss of Government revenue. Besides, there is delay in verification of refund claims which affect timely payment of refund within the prescribed period. Delaying in payment of value added tax refund in respective taxpayer's business affect the operations of the business which indirectly affect the collection of revenue by Tanzania Revenue Authority (TRA) since payment of different type of taxes depend on performance of the business. The money tied up with Tanzania Revenue Authority (TRA) could have been used to invest and expand the business portfolio for the growth of the economy and payment of the taxes required by different revenue laws.

Keywords: *Value Added Tax (VAT) Claims, VAT Refund Claims Administration, VAT practice, Tanzania Revenue Authority, Taxpayer*

1.0 Introduction

Refunds refers to money paid back to the trader/person or a taxable person where in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns, for prescribed accounting periods regularly result in excess credits. The refund once is processed is paid to the taxpayer through Interbank Settlement System (TISS) or through his or her bank account. The refund in most cases is paid where the input tax exceeds the output tax, however, there are circumstances where refund is allowed by the law.

1.1 Statement of Problem

VAT refund is an established principle that refunds entails money paid back to the trader or a taxable person where in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns for prescribed accounting periods regularly result in excess credits. The refund once is processed is paid to the taxpayer through Interbank Settlement System (TISS). Registered taxpayers may not pay the correct amount of VAT for a number of reasons including error, deliberately understating their VAT liabilities, or through systematic attacks on the VAT refund system. Tanzania to a large extent has failed to establish the scale of losses of VAT because of the systematic ways used by taxpayers to manipulate the tax system. Fraud and evasion come in many forms, ranging from traders omitting the occasional sale from their accounting records to systematic suppression of sales and falsification of invoices. The methods to detect, investigate, and prevent VAT abuse are big challenges in most countries including Tanzania. The value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent value added tax abuse in VAT refund claims which causes loss of Government revenue. The proper mechanism to prevent value added tax abuse in VAT refund claim worthy of an exploration in Tanzania. Another issue is the delay in verification of refund claims which affect timely payment of refund within the prescribed period. Delaying in payment of value added tax refund in respective taxpayer's business affect the operations of their business which indirectly affect the collection of revenue by TRA since payment of different type of taxes depend on performance of the business. The extent to which all identified issue can be curb through effective administration of value added tax refund and claims practice form the aim of this study.

2. Literature Review

2.1 Concept of Refund of Value Added Tax Claims and Categories

The refund of value added tax claims to taxpayers is vital for the purpose of ensuring that businesses are not affected since businesses are just agents of the tax authority in collection of the value added tax. The refund in most cases is paid where the input tax exceeds the output tax,

however, there are circumstances where refund is allowed by the law. The following are types/categories of refund and procedures thereto provided by the law in claiming for refunds:-

2.1.1 Refunds to a Taxable Person for Overpayment

This is the type of refund paid to a taxable person who paid more than the net amount shown on the person's value added tax return for a given tax period as provided by section 83 of the Value Added Tax, Cap 148 R.E 2019. The law allows a taxable person to apply for a refund where the person has overpaid the net amount payable for a tax period. The overpayment must arise when calculating the net amount payable for a tax period which may include an amount of output tax, or an increasing adjustment, which exceeded the amount that should have been included in those calculations or an amount of input tax, or a decreasing adjustment, which is less than the amount that should have been included in those calculations.

2.1.2 Refund to a Taxable Person for Carry forward of negative Net Amount

This is a type of refund where a taxable person is allowed a decreasing adjustment for negative net amounts carried forward from earlier tax periods. This means that the refund was not allowed and carried forward. The calculation of the refund under this part is calculated by first invoking section 67 of the Value Added Tax Act without taking into account any decreasing adjustments allowed under section 81 of the Value Added Tax Act.

Section 67 of the Value Added Tax Act provides that the net amount of value added tax payable by a taxable person in relation to a tax period shall be calculated by adding all output tax that becomes payable by the person in that tax period subtracting all input tax credits allowed in that tax period. This is followed by adjusting the resulting amount by adding all increasing adjustments required to be made in that tax period and subtracting all decreasing adjustments allowed in that tax period. The principle is that where the amount of output tax payable in a tax period is nil, it shall not prevent the subtraction of input tax credits or the addition and subtraction of adjustments. Besides, where the net amount for a tax period is a positive amount it shall be accounted for and paid by the taxable person at the time when the value added tax return is due to be filed and the liability to pay the net amount shall arise by operation of section 67 of the Value Added Tax Act and shall not depend on the making of an assessment of the amount due by the Commissioner General. Besides, where the net amount for a tax period is a negative amount, it shall be carried forward into one or more subsequent tax periods in accordance with section 81 of the Value Added Tax Act unless an immediate refund is allowable under section 82 of the Value Added Tax Act. Generally, the law provides that if the result is a positive amount the person shall be allowed a decreasing adjustment for such part of one or more negative net amounts carried forward from an earlier tax period as would reduce the net amount for the current period to a positive amount or to

nil and negative net amounts from earlier tax periods shall be taken into account in chronological order, with the oldest being taken into account first and the most recent being taken into account last.

The law gives restriction or conditions in respect of decreasing adjustment to the effect that any part of a negative net amount for which a decreasing adjustment cannot be made shall be carried forward and applied in accordance with section 81 (b) of the Value Added Tax Act until it has been reduced to nil or it has been carried forward for six consecutive tax periods without being reduced to less than minimum amount prescribed in the regulations.

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

Generally, the person shall continue to carry forward the unadjusted amount under section 81(1) until the amount has been reduced to nil or an entitlement to a refund arises because of 81(2) (a)(ii) of the Value Added Tax Act, whichever occurs first. To reduce the number of refunds and opportunities for abuse particularly no exporters, to carry forward their excess value added tax credits for a specified period (Harrison, 2005) A refund is paid only if an amount of excess credit remains to be recovered by the taxpayer at the end of the carry-forward period. The rationale of the carry-forward scheme is that, for a non-exporting business, an excess VAT credit in one tax period should normally be followed by periods where net value added tax liabilities are sufficient to absorb the credit brought forward. As a general rule, carry-forward measures are not applied to regular exporters, given that a business that exports most of its products will consistently have excess VAT credits that are unlikely to be absorbed by value added tax liabilities in subsequent tax periods.

2.1.3 Refunds to a Taxable Person without Carry Forward

This is a type of refund whereby a taxable person shall be entitled to a refund of a negative net amount if fifty percent or more of the person's turnover is or will be from supplies that are zero-rated or fifty percent or more of the person's input tax is incurred on acquisitions or imports that relate to making supplies that are or will be zero-rated as provided by section 82 of the Value Added Tax Act, Cap 148 R.E 2019. The law allows also refund in other situations where the Commissioner General of TRA is satisfied that the nature of the person's business regularly results in negative net amounts.

Generally a taxable person who is entitled for refund without carry forward, a refund of a negative net amount may have two options, one is to apply for a refund of the amount or to choose to carry the amount forward under section 81 of the Value Added Tax Act until such time as the person applies for a refund of the amount in section 82(2) (a) of the Value Added Tax Act.

2.1.4 Refunds to Diplomats and International Bodies

Refund to Diplomats and International Bodies is provided under section 85 of the Value Added Tax Act as read together with Rule 30 of the Value Added Tax (General) Regulations 2015.

The law allows the Commissioner General to refund part or all of the input tax incurred on an acquisition or import to the following:-

First, refund to a public international organization, a foreign government, or other person prescribed by regulations, to the extent that the person is entitled to exemption from value added tax under an international assistance agreement. Section .2 of the Value Added Tax Act define international assistance agreement as an agreement between the Government of the United Republic and a foreign government or a public international organization for the provision of financial, technical, humanitarian, or administrative assistance to the United Republic

Second, a person to the extent that such person is entitled to exemption for value added tax under the Vienna Convention on Diplomatic Relations or under any other international treaty or convention having force of law in United Republic, or under recognized principles of international law.

Lastly, a diplomatic or consular mission of a foreign country established in Mainland Tanzania, relating to transactions concluded for the official purposes of such mission.

Generally, a claim for a refund shall be made as provided by Rule 30 of the Value Added Tax (General) Regulations 2015. Application shall be made using form ITX262.02. The form is for the purpose of justifying diplomatic status or status of an international body. The form should be endorsed by the Ministry responsible for foreign affairs and international cooperation. Every form shall be accompanied by tax invoice related to the taxable supplies on which refunds claim is made. Section 2 of the Value Added Tax Act define tax invoice to mean a document issued in accordance with section 86 of the Value Added Tax and regulations made under the Value Added Tax Act.

The law requires the Commissioner General within ninety days of its receipt of a refund application to make a decision on the application and inform the applicant of the decision by notice in writing stating the amount refundable and any difference between that amount and the amount for which a refund is requested and pay the amount refundable to the applicant. This is according to section 84(3)(b) of the Value Added Tax Act, Cap 148 R.E 2019.

2.2 Application and Conditions for Refund

The refund process under sections, 81, 82 and 83 of the Value Added Tax Act is governed by section 84 and Rule 29 of the Value Added Tax (General) Regulations 2015. Rule 29(3) provides that the procedures for handling overpaid tax referred under section 83 of the Value Added Tax Act shall be dealt in a manner prescribed under section 71 of the Tax Administration Act, Cap 438 R.E 2019. Section 71 of the Act provides that a person may apply to the Commissioner General for refund of tax paid in excess. The application for refund shall be in writing, indicating the correct tax calculation and be supported by the documentary evidence to support the claim. An application under this section shall, except where a tax law provides otherwise, be made within a period not exceeding three years from the date of payment of tax in excess.

The conditions governing refund process are as follows:-

First, the application for the refund shall be made in a manner prescribed in the regulations and shall be accompanied by supporting information as the regulation may require. Rule 29 of the Value Added Tax (General) Regulations 2015 provides that application for refund under section 81 and 82 of the Value Added Tax Act shall be made using form ITX260.02.E accompanied by certificate of genuineness, computation of refund amount, checklist for the applicants' value added tax repayment and other information as the Commissioner General may require. The certificate of genuineness shall be issued by an auditor who has been registered by National Boards of Accountants and Auditors and who is registered as a tax consultant by Tanzania Revenue Authority as provided by Rule 3 to 12 of the Tax Administration (General) Regulations 2016.

Second, the application for the refund shall not be made in case the application is made under section 81 or 82 of the Value Added Tax Act more than three years after the end of the tax period to which the negative net amount relates or not be made in case the application is made under section 83, more than three years after the overpayment was made.

Third, the Commissioner General may, subject to the proof of credibility of the taxpayer, make a decision on the application on the basis of the information provided without undertaking an audit or investigation of the applicant's tax affairs.

Fourth, the Commissioner General shall, within ninety days of its receipt, make a decision on the application and inform the applicant of the decision by notice in writing stating the amount of the refund allowed and the period during which the refund shall be made.

Fifth, where the Commissioner General is not satisfied that the refund should be allowed, or is satisfied that the amount refundable is less than the amount requested he shall give the reasons for the decision; the applicant's rights to objection and appeal against the decision and the time, place, and manner of filing a notice of objection.

Sixth, the Commissioner General shall refund if he is satisfied that the person is entitled to a refund of the amount requested or a lower amount represents the person's actual entitlement to a refund. Besides, the Commissioner General shall not refund the person if he is satisfied that such person is not entitled to a refund.

Seventh, where the Commissioner General allows a refund, the refund shall not be paid unless the applicant has filed all value added tax returns which the applicant is required to file and the Commissioner General may apply the refund first in reduction of any outstanding liability of the person for taxes payable under the Value Added Tax Act or under another tax law, including any interest, penalties, or fines payable under the Value Added Tax Act or under that tax law.

Lastly, where the amount remaining after applying section 84(7)(b) of the Value Added Tax Act does not exceed the minimum amount prescribed in the regulations, the Commissioner General may refund the amount or require the taxable person to take the refund as a decreasing adjustment in a tax period prescribed by the Commissioner General. Besides, where the Commissioner General allows a refund, the taxable person may, with the agreement of the Commissioner General, take the refund as a decreasing adjustment in a tax period agreed with the Commissioner General. Besides, section 69 of the Value Added Tax Act provides for the timing of the input tax credits. The principle is that where a taxable person is allowed an input tax credit, the tax period in which the credit may be included in the calculations pursuant to section 70 of the Value Added Tax Act shall be the latter of the tax period in which the value added tax became payable under the Value added Tax Act on the supply or import to which the input tax relates or if the person did not claim the input tax credit in that period, any one of the six succeeding tax periods. The input tax shall not be deducted or credited after a period of six months from the date of tax invoice, fiscal receipt or other evidence referred under section 70(3) of the Value Added Tax Act. A taxable person is entitled to a refund of value added tax when in a particular prescribed accounting period his tax liabilities are not exhausted by allowable deductions or where its returns for prescribed accounting periods regularly result in excess credits. A taxable person may apply for a refund where a person has over paid a net amount payable for a tax period.

2.3 Review of Value Added Tax Claims

Generally, refund of value added tax claims requires a well-established and organized refund process which assists to make sure that only genuine claims are paid to the claimants. In most cases taxable persons submit fraudulent claims to the tax authority and cause delay in verification of claims through auditing and also payment of refund within the prescribed period.

Consequently, a large amount of value added tax revenue is lost as a result of value added tax refund abuse. Registered taxpayers may not pay the correct amount of VAT for a number of reasons including error, deliberately understating their VAT liabilities, or through systematic

attacks on the VAT refund system. While countries have generally found it difficult to estimate the size of the revenue leakage, it is thought to be substantial. Some countries have made progress in recent years in estimating the scale of losses on VAT however most developing countries including Tanzania to a large extent has failed to establish the scale of losses of VAT because of the systematic ways used by taxpayers to manipulate the tax system. Fraud and evasion come in many forms, ranging from traders omitting the occasional sale from their accounting records to systematic suppression of sales and falsification of invoices. Other fraudsters have little or no legitimate business activity and register for the sole purpose of stealing VAT through the refund system (Harrison, 2005).

Not only that but also the methods to detect, investigate, and prevent VAT abuse are big challenges in most countries including Tanzania. The value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent VAT abuse refund process which causes loss of Government revenue. The types of value added tax fraud and tax evasion includes inflated refund claims. This is the method to create fake invoices for purchases never made. Indeed, organized crime networks have been known to establish businesses solely to fabricate invoices for sale to those wishing to defraud the revenue. Another form is underreported sales. This is the most usual way of evading VAT whereby by small operators particularly in retail services where taxable inputs are small relative to taxable sales. By concealing sales to the domestic market, traders may not only evade their own obligation to charge VAT on their output, but, also, generate excess credits to be refunded. There are also fictitious traders. This involves creation of short-lived sham enterprises that register for VAT and create the illusion of trading in goods and services. A common ploy is to invent fake export invoices on non-existent goods and claim VAT refunds. Besides there is also domestic sales disguised as exports. Under this scheme, traders sell goods on the domestic market but claim a refund using a fake export invoice (Harrison, 2005).

Apart from that there are cases or circumstances which raise questions in respect of TRA ability to detect and investigate fraud and tax evasion which in turn affect refund claims and the whole process of refund for example Reli Assets Holding Company Limited (RAHCO) had a balance of input tax amounting to TZS 31.09 billion as at 30th June, 2018 relating to period between June 2016 and June 2018. In another case, RAHCO made advance payment to YAPI MARKERZ a payment which attracted input VAT of TZS 53.3 billion and this input VAT was not recorded in RAHCO's books of account. There were also no tax returns filled to TRA in this regard. Considering the above two cases, RAHCO has input VAT credit of TZS 84.39 billion. However, RAHCO had not lodged refund claims to TRA. Further, RAHCO had output VAT of TZS 3.11 billion during the year. However, the company had not filed returns in regard on this output VAT as required by Value Added Tax Act. Failure to records input in books of account and also lodging tax returns as well as output VAT of TZS 3.11 billion with TRA is an offence which attracts fine and penalties. If TRA could have a well established detective measures and investigation process could have identified this situation by RAHCO since 2016 instead of waiting the audit by CAG which was conducted in 2018. This situation affects the refund process and could have caused loss

of revenue to the Government if the same could not have been identified by CAG (Tanzania, Controller and Auditor General Report for the Financial Year Ended 30 June 2018).

Further, verification of value added tax claims by TRA from different taxpayers seems to take long and this also raises concern regarding the capacity of TRA to detect and investigate genuineness of refund claims so as to avoid the loss of revenue to the Government for example according to Confederation of Tanzania Industries (CTI) study of 2018 regarding tax refunds, this study finds that most of the businesses including manufacturers have not received any tax refunds for the past 2-3 years. Sectors leading in huge outstanding tax refunds include construction, mining, trade in goods and services, industrial (exporters and importers) and agriculture. Data taken from TRA website indicates that tax refunds done for the past 4 financial year's amounts to only 1.52 trillion while the figure for outstanding refunds amounts to TZS 2.3 trillion. This implies that a huge some of funds remain un-refunded and such outstanding tax refunds was not budgeted for in a 2018/19 financial year, meaning that the problem will still exist in future financial years. Again, the study finds a declining trend in both tax refunds payments and amount of funds set aside for refunds by TRA during the past 3 years. This trend partly explains the reason for the increase in outstanding tax refunds claims which is now approximated at 7.2% of the total budget for the Financial Year 2018/19. The study finds that the length of time taken for tax refund claims differ by sectors while in some sectors the average time for refund is one year; others it ranges between two to three (3) years. The findings by CTI regarding delay in payment of refund seems to have been contributed by the challenges facing TRA in verifying the refund claims submitted by taxpayers and payment of the same within the prescribed period by the law(<https://www.cti.co.tz> (Accessed on 9/05/2020)).

Absence of a well-established mechanism to detect fraud and tax evasion as well as investigation in a refund process result into loss of revenue to the Government. Besides, delaying in payment of value added tax refund in respective taxpayer's business affect the operations of the business which indirectly affect the collection of revenue by TRA since payment of different type of taxes depend on performance of the business. The money tied up with TRA could have been used to invest and expand the business portfolio for the growth of the economy and payment of the taxes required by different revenue laws (<https://www.cti.co.tz> (Accessed on 9/05/2020)).

3. Methodology

This study mainly used doctrinal research methodology. Doctrinal research methodology mainly focuses on what the law is on a particular issue or matter. It analyses the legal doctrine and the way how it has been developed and applied in different circumstances as provided by the law. The researcher's main goal under this methodology is to locate, collect the law (legislation or case law) and apply it to specific set of material facts in view of solving legal problem (McGrath,2000). The theory of doctrinal research is that the character of legal scholarship is derived from law itself and consequently there is a need to locate the law and apply the specific rules or principles in resolving

a particular quandary (Chui, 2010). Also, historical, analytical and applied perspective approach was employed through consideration of historical background and situations necessitated for the enactment of particular provisions of the law with main focus on mischief of a particular law. The data analysis approaches were deductive reasoning, inductive reasoning and also use of canons of statutory interpretation which are golden rule, literal rule and mischief rule. The data has been analyzed by using qualitative data analysis techniques. The idea was to examine the meaningful and symbolic content of qualitative data. Generally, the analysis of data collected was by way of explanation, or interpretation of the qualitative data in addressing the problem identified for the purpose of providing credible answers.

4. Discussion of Findings

Findings from Analysis revealed the value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent value added tax abuse in refund claims which causes loss of Government revenue. Second, there is delay in verification of refund claims which affect timely payment of refund within the prescribed period. The delay in payment of refund is a reflection that the refund system is not effectively working as required. Delaying in payment of value added tax refund in respective taxpayer's business affect the operations of the business which indirectly affect the collection of revenue by Tanzania Revenue Authority (TRA) since payment of different type of taxes depend on performance of the business. The money tied up with TRA could have been used to invest and expand the business portfolio for the growth of the economy and payment of the taxes required by different revenue laws. Lastly, the delay in payment of refund has been caused by lack of a provision in the law which will make sure that funds needed for refund are always kept in a designated Special Fund in terms of Article 135 of the Constitution of the United Republic of Tanzania of 1977 as amended and Section 12 of the Public Finance Act. Practically money for tax refunds must be approved through a Government budget in which it is impossible to get the real figure needed as budget depends on revenue forecast, and the account currently used is just a normal Account whereby its funds are returned in a Consolidated Fund after the end of a financial year. The outcome of this study support the opined Harrison, 2005 on effective VAT compliance strategy.

5. Conclusion and Recommendation

Based on finding the study concluded that value added tax law in Tanzania has not well articulated the methods to detect, investigate, and prevent value added tax abuse in refund claims which causes loss of Government revenue and total elimination of losses from refund abuse, VAT fraud and evasion causes challenges because of the costs involved both for the tax administration and the business community. The study however recommended that tax administrations in Tanzania

should strike a balance between applying effective controls to protect revenue, while ensuring that compliant taxpayers are not overburdened with compliance costs.

The implication of the Study

- i. It is expected to form a basis for policy formation a comprehensive VAT compliance strategy and program that applies risk-management principles, and encompasses critical taxpayer service and enforcement (audit, investigations, and sanctions) components.
- ii. It will also serve as a guide and provide insight for future research work on the related field for academics and other player in the area of tax administration.

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