



Legal Brief

Dar es Salaam: 28.02.2025

From our Tax Desk

Court of Appeal slams TRAs apartheid in issuing Adjusted Assessments beyond the statutory period for retention of business records, documents and other information by Taxpayers!

The storm has calmed, and the dust has been put to an end in favour of Taxpayers. TRA demands for documentary evidence followed by Assessments if the documentary evidence is not provided would only survive if the taxpayer records are demanded within the statutory period of retention in accordance with tax laws.

This follows the Court of Appeal of Tanzania decision of 27.02.2025, in Civil Appeal No. 120 of 2022 between **SAPNA Electronics and Commissioner General, TRA** where Court ruled that:

- ❖ The Commissioner General TRA powers to issue assessments for tax due under section 43(1) of the VATA, 1997 is subject to the statutory limitation period within which the Taxpayer must retain business records under section 25 of the VATA, 1997. This rhymes with the canon of interpretation of tax statutes of 'wholesomeness' i.e. provisions in tax statutes have to be interpreted as a whole and not in piecemeal.
- ❖ Section 25 of the VATA, 1997 is for all intents and purposes akin to a statute of limitation and cannot be infringed by the Commissioner General powers under section 43 of the VATA, 1997.

Background and Key Arguments

In 2017, TRA assessed SAPNA (the Appellant') to pay VAT for the years 2009 to 2016 on underdeclared sales. The VAT liabilities came after TRA's review of information and financial statements of Vodacom, the appellants' business counterpart. Subsequently, TRA requested the Taxpayer to provide documentary evidence including purchase records or invoices, sales invoices and stock records or stock movement register to reconcile with TRA findings on under declaration of sales. However, the Taxpayer had no records, books of accounts or documents in her possession for the period between 2009 to 2013. These documents were destroyed pursuant to the Appellant's internal policies, since she had no legal obligation to retain the documents 5 years from the end of the year in question. This was the statutory period within which Taxpayer had to retain business records for VAT purposes under the law.

Before the Court, the Appellant argued that she was not under legal obligation to retain the documents beyond the statutory period of 5 years [or a further period as may be requested in writing by TRA]. As such TRA cannot justifiably issue Assessments on reasons that the Taxpayer failed to provide documentary evidence- which she was not legally obliged to keep and produce under section 25 of the VATA, 1997.

On its part TRA argued that the Commissioner had wide and sweeping power under section 43 of the VATA, 1997 to issue Assessments for unpaid tax for reasons such as failure to keep proper business records without regard to the 5-years period limit. Further, the Taxpayer had several alternatives even after expiry 5 years within which she could retrieve some relevant records, including bank statements.

The Court's Reasoning and Decision

The Court in its decision reasoned as follows:

- ❖ The Taxpayer has an obligation to retain business records for a period of five years. Under section 25 of the VATA, 1997, this period may be extended if the Commissioner requests the Taxpayer in writing to keep the records for a further period of time. After the expiry of this period, the Taxpayer is at liberty to keep or destroy the records [in accordance with her own internal policies]. There was no evidence on record that TRA had requested the Taxpayer to retain the records after the expiration of 5 years. Consequently, the Commissioner could not invoke section 43 of the VATA, 1997 to impose tax in disregard of the limitation imposed under section 25 of the VATA, 1997. The Taxpayer had nothing to rely on [by virtue of section 25] to discharge her burden of proof under section 18(2) of the Tax Revenue Appeals Act.
- ❖ Requiring the Taxpayer to produce alternative records or to use alternative options such as banks would stretch the Taxpayer duty beyond the spirit of section 25 of the VATA, 1997. It would be condoning the apartheid conducts of TRA who choose to dawdle along only to surface when the 'vessel had left the port'.

Our assessment of the Court's Decision

The contentions between TRA and Taxpayers had [and continues to be] on the 'blank misuse' of the doctrine of burden of proof- which places the onus on Taxpayers to prove correctness or otherwise of Assessments by submission of documentary evidence under section 18(2) of the Tax Revenue Appeals Act. The Board and Tribunal had relied on this notorious provision to dismiss the Appeals- despite finding that the Appellant was not legally bound to retain business records after expiry of 5years [and in absence of request in writing by TRA to keep business records after expiry of this period].

The Court of Appeal decision is welcomed as it limits TRA apartheidic conducts and excessive exercise of discretion beyond the provisions of the law. To Taxpayer, the decision considers the legal obligation to keep business records and other relevant documentary evidence within the statutory limits [as may be lawfully extended] and to also deal with its business records thereafter in accordance with internal policies.

VATA 1997 is repealed by VATA 2014, however this being a tax administration issue is currently provided under the Tax Administration Act (TAA'). Section 35 of the TAA obliges a taxable or liable person to retain documents relating to his tax affairs in a physical or electronic form for a period of 5 years from the end of the prescribed accounting period in which the document is relevant [in case of VAT]. This period may be extended by TRA on notice. The provision further obliges Taxpayers to retain documents relevant to Objections, Appeal, Applications, Refunds, Investigations until final determination, execution or final conclusion of these matters.

Disclaimer! This brief is issued for general information purposes and does not in any way constitute a legal opinion by LAWHILL. LAWHILL shall not be liable for any injury and/or loss arising from relying on this brief. Should you have an issue relating to the brief or any other issue, please kindly contact our office for an opinion that suits your particular needs.

For inquiries on this or any other legal issue contact us through our contact details below or visit www.lawhill.co.tz