

THE BURDEN OF PROOF IN TAX AUDITS: CHALLENGES FOR TANZANIAN SMES IN INCOME RETURN VERIFICATION

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ABSTRACT: The study examined the impact of tax audits on the burden of proof on examined returns of income among SMEs in Dar es Salaam City in Tanzania. Specifically, the study intended to examine how the issued notice of deficiencies affects the burden of proof on taxpayers on the production of evidence and persuasiveness to the tax authority. The study applied a cross-sectional design and quantitative and qualitative approach, where, data were collected from targeted respondents and analysed quantitatively to establish the relationships between variables. Data were analysed through a descriptive statistical method and presented in frequency tables. Primary and secondary data were collected through a combination of methods including key informant interviews, structured questionnaires, and focus group discussions. The study revealed that education level has a greater impact on tax audit notice of deficiencies and taxpayers' burden of proof from the examined return of income point of view. The education level of the respondents indicates that 41 (60%) out of 68 of the respondents had a primary education level. The study concluded that understanding the impact of a tax audit with respect to notice of deficiencies, the burden of proof, and audited taxpayers' perception from the examined returns of income can influence tax compliance once taxpayers have basic tax laws education. Specifically, by understanding better why taxpayers usually bear the burden of proof, the tax authority will be in a position to use appropriate measures that will bring in balance the burden born by taxpayers on the production of evidence and persuasiveness to tax officers. The study recommends that tax authorities with other stakeholders such as tax consultants, accountants, and auditors should ensure taxpayers are equipped with basic tax laws education from their childhood, at primary schools, and post-primary schools.

Key Words: Notice of deficiencies, the burden of proof, audited taxpayers' perception

1.0 INTRODUCTION

Tax revenues for many countries are a major source of funding, however, efforts to collect tax revenues have a major obstacle, namely tax compliance issues (Irawan & Utama, 2021). This has raised misunderstandings between taxpayers and tax authorities on the burden of proof and persuasion on examined returns of income of the year under review, as the result, the tax authorities seem to be an enemy to their taxpayers.

Tax audits are a fundamental enforcement tool for promoting tax compliance among taxpayers. A tax audit can play a major role in improving tax administration and overall taxpayer compliance by impacting on taxpayer behaviour (Mebratu, 2016). However, due to non-compliance behaviour among taxpayers, therefore enforcement tools alone cannot be guaranteed to achieve higher tax compliance. A tax is a compulsory payment imposed by the government on the income, profit, or wealth of an individual, family, community, corporate or unincorporated bodies, etc. for purposes of financing public expenditures.

Worldwide, the main issue faced by all tax authorities is that it has never been easy to persuade all taxpayers to comply with the regulations of a tax system (Alemu, 2020). Though, across the globe, revenue administrators and business taxpayers have been working together to promote tax compliance which can be region-specific (Tin, 2017). A tax audit involves an independent test of the returns handed over by taxpayers to the tax office to represent the tax compliance (Zandi., Sultan & Elwahi 2016; Kircher (2008) cited in (Mebratu, 2016).

However, return (i.e audited financial statements) may contain a number of deficiencies based on prescribed tax rates, support documents, and the correct amount of taxes liable. Tax audit has endured through time as the best tool for achieving better compliance by concentrating on the audit frequency, levels of auditing, and penalties for those caught not complying with requirements of the laws and regulations of the Act or for evading taxes (Tin, 2017). However, the issue of low tax compliance is as old as the world itself; tax audit has been known since the biblical era. Yet, many are never comfortable discussing taxation, worse still tax audit practice (Amah & Nwaiwu, 2018).

Worldwide there is no universally accepted definition of Small and Medium Enterprise (SME), different countries use various measures of size depending on their level of development (URT, 2003). The commonly used yardsticks are the total number of employees, total investment, and sales turnover (URT, 2003).

Despite various government efforts on increasing tax compliance through various strategies such as enforcement through tax audits, building trust, services, revised tax laws, and regulations, a tax audit is still a monkey puzzle tree, especially for Small and Medium Enterprises (SMEs) on the production of quality and relevant evidence to reduce the burden of proof from the taxpayers' examined returns of income and still frequencies of tax audit notices of deficiencies are reported to persist in Tanzania. The extent of the impact of tax audit on tax compliance is not well understood in Tanzania, and the issue of tax compliance has caused many governments to review their tax laws and tax policies over time (Eiya et al 2016). Since little or no studies have been made to examine taxpayers' impact of tax audits on the burden of proof is becoming a practical problem among taxpayers in complying with tax laws in the country not only to non-tax experts but also to tax experts in Dar es Salaam city, Tanzania. Currently, few researchers have been done in this area, of which most of them are not based in Tanzania, their main concern being on the determinants of tax audit effectiveness (Chalu & Mzee, 2017; Rahmayanti, et al, 2020; Saw, 2019, Olatunji & Temitope, 2018).

Studying what factors determine the burden of proof from returns of income among SMEs in Tanzania is not only of academic interest; it is also important from a policy, taxpayers, tax consultants, and tax law perspective. The study by Gladney & Wakefield (2016) contrary to its implication, the singular phrase "burden of proof" does not have a singular meaning. Rather, it incorporates two distinct but related concepts: the "burden of production" and the "burden of persuasion." An understanding of the burden of proof is essential because it instructs the taxpayers on the quantity and relevance of evidence that must be produced to obtain a favourable judgment, but many taxpayers and some lawyers consider the burden of proof an afterthought, or simply don't consider it at all (Gladney & Wakefield, (2016).

The government of Tanzania for many years has continued reviewing its tax laws and regulations to ensure highly tax compliance among SMEs is improved. For instance, tax administration Act (TAA), 2019 (CAP. 438 R.E 2019) from section 45, the Commissioner-General may use powers conferred on him under this Act, to audit or investigate a person's tax affairs. Furthermore, the audit or investigation may be conducted for the purpose of more than one tax law such as; Income Tax Act, 2019 (CAP. 332

R. E 2019), Value Added Tax, 2019 (CAP.148 R.E. 2019), the stamp duty Act, 2019 (CAP 189(R.E. 2019) and Vocational Education Training Act, 2019 (CAP. 82 R.E. 2019).

In most cases, the burden of proof is allocated to the taxpayer from the moment the notice of deficiency is issued (Gladney & Wakefield (2016). The primary purpose of tax audit is to ascertain the extent to which taxpayers may have complied with the relevant statutory provisions of the tax Act concerning their audited financial statements and other tax-related returns (Modugu & Anyaduba, 2014).

However, the Income-tax Act, 2019 (URT, 2019) from its section 11 “General principles of deductions” Subject to this Act, for purposes of calculating a person’s income for a year of income from any business or investment, there shall be deducted all expenditure incurred during the year of income, by the person wholly and exclusively in the production of income from the business or investment. The study by Mukiyidin, Iskandar, & Azizul, (2021) in their study found that the tax audit has a positive and significant effect on strengthening the relationship between tax authority service and compliance of the corporate taxpayer.

The study is conducted to determine: (i) to provide empirical evidence on the impact of the burden of proof among taxpayers; (ii) to discuss the finding as results of the impact of tax audit on notice of deficiencies, the burden of proof, audited taxpayers’ perception; and (iii) the significance of the research findings to taxpayers, tax experts, policymakers and tax authority for improving revenue collection and compliance behaviour. The study was guided by the theory of economic regulation; the central tasks of the theory of economic regulation are to explain who will receive the benefits or burdens of regulation, what form regulation will take, and the effects of regulation upon the allocation of resources. The state-the machinery and power of the state is a potential resource or threat to every industry in the society. With its power to prohibit or compel, to take or give money, the state can and does selectively help or hurt a vast number of industries. What makes the starting point for a good tax audit on improving tax compliance and which ways are used to decrease SMEs burden of proof of tax returns are the most important for this paper? The main objective of the study was to determine the impact of tax audit measures against the burden of proof among SMEs in Dar Es Salaam City, Tanzania. Impact of tax audit toward the burden of proof on examined returns of income

among small and medium enterprises in Dar es salaam city, Tanzania

2.0 Methodology

This study employed a cross-sectional design in order to provide a description and explanation of the phenomenon with respect to tax audits at one point in time. Data and information under this study were collected from both primary and secondary data, which was collected from an interview by the researcher and the review documentary evidence such as examined returns of income by the tax authority. Respondents comprised of audited taxpayers and tax experts only. Sixty-eight (68) were randomly interviewed to capture their views with respect to notice of deficiencies, the burden of proof, general knowledge, and audited taxpayers’ perception. The study used both openended and closed questions, and together with that, the respondents gave their in-depth views about the study. Beyond a point, sample sizes will be too small to be credible for quantitative analysis, 30 people is often considered the minimum sample size for representative data (Organisation for Economic Cooperation and Development (OECD),2021).

Data were collected from respondents using a structured questionnaire containing both open-ended and closed questions to suit the study context The study was guided by a pragmatism philosophy in approach. Both qualitative and quantitative methods of research were applied in both case studies and

archival research strategies were used in this study. Sampling techniques to be used for this study used both probability (simple random) and non-probability (purposive) sampling in order to increase data reliability and validity based on the study objectives. Purposive sampling is commonly used in qualitative research which involves the selection of the research participants according to the need of the study. The frequency table was used to analyse presented in the tables and figures, which were performed using Statistical Package for the Social Sciences (SPSS).

3.0 Findings and Discussion

2.1 Demographic Characteristics

The age characteristics of the targeted sample size of 68 respondents formed part of this study, where, data on gender, age, and education level were considered for descriptive analysis. The results reveal that 62 (91%) were male, while 6 (9%) were female out of 68 respondents respectively, this finding implies that most SMEs is owned by male than female. The result is in agreement with the rate of female to male labour force participation rate of 91% (International Labour Organization -ILO Report, 2021) Modelled estimate - Tanzania). This indicates that a large proportion of males are more active in the labour market than women.

In terms of age, the finding shows that the age distribution of 22 (32%) respondents which were between above 36 – 40 years were a greater number of people among SMEs in the study area, followed by 18, (26%) of respondents between the years of 26 - 35, also 12, 18% of respondents were above 46 years and lastly the low number is found in the age of between 41-45 and in 18 – 25 years all out of 68 respondents respectively. This implies that the majority of respondents were in the age of fewer than 40 years. The results are in agreement with the study by Muzanila and Jaffu (2021) found that the dominant age group was 20- 30 years (33.7%) followed by 31- 40 years (32.7%). These age groups form the most active segment of the population in many parts of the world (Kunze et al., 2011 cited in Muzanila and Jaffu (2021).

The education level of the respondents, indicates that 41 (60%) of the respondents had a primary education level, 18 (26%) had a secondary education level, and 9 (13%) had a diploma/bachelor's degree educational level respectively. The findings imply that the majority of respondents were holders of primary education level in the study area, as this will have an influence on notice of deficiencies and burden of proof. According to Lackéus, (2015) People need entrepreneurial skills and abilities to thrive in an everchanging world. The result is also consistent with Frehiywot & Lemma (2018) the finding suggested that educated taxpayers tend to comply with tax laws compared with no educated taxpayers.

2.2 Taxpayers' perception of the tax audit department

The study results were based on four basic variables; cooperation, once the notice of deficiencies was served to the taxpayer, findings, show that 32 (47%) of the respondents said that they do not receive much cooperation from tax officers during a discussion about deficiencies raised from examination of return of income, but only if they are accompanied by tax experts, this is because they all aware of tax laws and regulations. While 12 (18%) of respondents were neutral, also 24 (35%) of the respondents said they don't cooperate well. The general finding indicates that taxpayers might use the services of tax consultants due to the fact that, their education profile is low, so they cannot understand the technical language of tax laws and regulations.

Table 3.1 gives summaries.

Based on the findings on the competency of tax officers in handling tax issues, 14 (21%) of respondents agreed that tax officials are competent in their carrier in handling tax issues, as this will increase the

level of taxpayers' confidence in fair treatment of a tax audit. However, 33 (49%) of the respondents were neutral about the competency of tax officers in carrying out their tax audit duties, while, 21 (31%) of respondents were in disagreement with the statement presented. however, these results can raise many interpretations. Because most taxpayers are unable to read and interpret the tax laws and regulations. Table 3.1 gives summaries. Frehiywot & Lemma (2018) when the strength of the tax authority increased, the probability of tax compliance behaviour of the individual increased by 3.3 %, other factors being constant. In this case, the competency of tax officials is of vital importance in influencing the effectiveness of tax audit works and increasing trust in taxpayers and tax practitioners. Attitude is an important factor trying with satisfaction that will lead to taxpayers' compliance behaviour, therefore, taxpayers' attitude towards tax was expected to have either positive or negative effect on tax compliance (Frehiywot & Lemma, 2018).

The study finding indicates that 9(13%) of the respondents have some basic tax knowledge and awareness, while 10 1(5%) of respondents were neutral. Also, 49 (72%) of respondents were in disagreement with the statement. This means that a significant number of respondents have no knowledge and awareness of how to approach the served tax audit notice of deficiencies. Taxpayers' tax knowledge has a greater influence on the effectiveness of tax audit and hence improve tax compliance, which implies that pay on time and pay the correct amount. Table 3.1 gives summaries.

The general conclusion of the findings is that most respondents do not know exactly what criteria tax auditors use to audit financial statements and what evidence was needed to resolve the notice of deficiencies raised in tax audits report. In this case, education is part and parcel of reducing the level of noncompliance and increasing tax accountability. The taxpayers were of the opinion that, an increase in tax education will reduce tax non-compliance.

The finding indicates that 38 (56%) of the respondents disagreed that they don't use the services of tax consultants, while 17 (25%) of respondents agree, meaning that they hire tax experts to resolve their tax issues. Table 3.1 gives summaries. The use of tax practitioners has a greater influence on tax compliance than on taxpayers themselves to resolve the matter which was explained as it involves attracting corruption among tax officers and taxpayers. Taxpayer's awareness has a negative and insignificant impact on compliance of the corporate taxpayer, as per the findings, when the taxpayer's awareness increases, it will be followed by decreasing corporate taxpayer's compliance, but the effect is insignificant (Mukiyidin, et al, 2021).

Table 1: Taxpayers' perception

(SA=Strong Agree, A=Agree, N=Neutral, D=Disagree, SD=Strong agree)

Variables	SA	A	N	D	SD
I usually cooperate / assisted well during the period of tax audit	10, 15%	22, 32%	12, 18%	9, 13%	15, 22%
The tax officers who audit my returns are competent	-	14, 21%	33, 49%	21, 31%	-
I have knowledge and awareness about notice of deficiencies raised during tax audit	-	9, 13%	10, 15%	49, 72%	-
I use the services of a tax consultant in order to answer my tax audit notice of deficiencies	-	17, 25%	13, 19%	38, 56%	-

2.3 Tax audit notice of deficiencies and Taxpayer's burden of Proof

The respondents when answering the question on whether sales as per accounts against EFDMS affect notice of deficiencies notice of examination found any sales discrepancies for three years consecutively from 2018 to 2020 when compared between sales as per accounts against EFDMS.

The results as shown in table 3.3 revealed that 56 (82%) of the respondents agreed that neither under nor overstated sales do not affect notice of deficiencies, as this is due to the use of the Electronic Fiscal Device Management System (EFDMS) machine for capturing daily sales. 12 (18%) of the respondents felt that their level of burden of proof was affected to less extent by over or understated sales figures that disagree with annual sales as per accounts against EFDMS, bank statement was requested to prove the matter. This was followed by 0% who felt it was to some extent, 0% to a great extent, and 0% very great extent. Based on this finding, it is therefore clear that for the majority of SMEs in Dar es salaam city, the burden of proof on sales information is very little meaning most comparison between sales as per accounts and that of EFDMS does not go against. This implies that SMEs use fewer efforts to produce required sales evidence to prove beyond a reasonable doubt to the tax authority.

Table 2: Taxpayers' opinion about notice of deficiencies

Opinion	Frequency	Percentage
Not at all	56	82
Less extent	12	18
Some extent	-	-
Great extend	-	-
Very Great extent	-	-
Total	68	100

2.3.1 Whether sales as per accounts against VAT return affect notice of deficiencies

The results as shown in table 3.4 revealed that 6 (9%) of the respondents said that not at all the sales as per Electronic Fiscal Device Management System (EFDMS) and that of Value Added Tax (VAT) return is on the higher side, neither under nor overstated sales that affect notice of deficiencies. While 12 (18%) of the respondents felt that their level of burden of proof was affected to less extent by over or understated sales figures as per accounts disagree with annual VAT returns. Also, 39 (56%) of the respondents said that to some extent their notice of deficiencies contained discrepancies showing that sales as per EFDMS were on the higher side than VAT return account or vice versa. 12 (18%) of the respondents felt that their level of burden of proof was affected to great extent by over or understated sales figures as per EFDMS disagree with annual VAT returns. The affected taxpayers were requested to produce quality and quantity of evidence of VAT account verification to prove beyond a reasonable doubt. This was followed by 0% who felt it was to some extent 0% very great extent.

Table 3: Effects of sales as per accounts and VAT returns

Opinion	Frequency	Percentage
Not at all	6	9
Less extent	12	18
Some extent	38	56
Great extend	12	18
Very Great extent	-	-
Total	68	100

2.3.2 Purchases expenditure as per section 11 of the Income Tax Act, Cap 332 R.E 2019

The burden of proof by taxpayers, the results as shown in table 3.5 revealed that 33 (49%) of the respondent's purchases invoices were rejected before the tax auditor, whereby during physical verification rejected about 25% of presented documents which found to lack the required quality and characteristics of tax invoices such as Tax identification number (TIN), purchaser name to prove beyond a reasonable doubt. Also, 22 (32%) of the respondents said that 50% of their purchase invoices were not qualify as evidence before the tax auditor, furthermore, 8 (12%) said that their purchase invoices were rejected by 75%. On the other hand, only 5 (7%) of the respondents confirmed that their purchase invoices were accepted by 100% in all respects.

Rejection of purchases invoices or acceptance of purchases invoices were guided by section 11 of the Income-tax Act, 2019 (2) "Subject to this Act, for purposes of calculating a person's income for a year of income from any business or investment, there shall be deducted all expenditure incurred during the year of income, by the person wholly and exclusively in the production of income from the business or investment". This finding implies that most purchases invoice of SMEs in Dar Es Salaam city were rejected because they were not qualified for claiming purposes as purchase invoices, some were lacking the buyer's name or TIN. Hence, were termed as under-declared purchases as undisclosed sales. Therefore, results in unreported sales which brings a burden on VAT adjustment account and stock analysis. According to Mukiyidin, Iskandar, & Azizul, (2021) one way to encourage compliance is to keep the rules as clear and simple as possible, to ensure tax compliance, tax professionals must follow the process of tax administration, which includes calculating the amount clients owe according to current tax rates (Mukiyidin, et al 2021).

Table 4: Verification of purchase invoices in return for income from 2018 to 2020

Opinion	Frequency	Percentage
Purchases invoices were accepted by 100% by a tax auditor	5	7
Purchases invoices were rejected by 25% by a tax auditor	33	49
Purchases invoices were rejected by 50% by a tax auditor	22	32
Purchases invoices were rejected by 75% by a tax auditor	8	12
Purchases invoices were rejected by 100% by a tax auditor	-	-
Total	68	100

2.3.3 Over or understating of closing stock

The respondents were requested to compare and indicate what they felt formed the highest burden of proof in relation to maintaining the stock sheet for the year under study from 2018 to 2020. The findings are shown in table 3.6.

Table 3.6 shows that 49 (72%) of the total number of respondents failed to prove the stock sheet of their business when audited as this was noted to be the highest. 15 (22%) of the respondents said failure to provide a stock sheet was moderate, also 4 (6%) of the respondents reported that failure to maintain a stock sheet is low. The finding reflects the fact that most taxpayers were struggling to maintain the proper flow of their receiving and issuing of their purchase stocks. It also conforms those undisclosed sales and over or understated stocks were computer from undisclosed purchases and adjusted in the VAT returns and overstated stock been sold for at mark up as this increase tax burden to taxpayers.

Table 5: Taxpayer's failure to provide or maintain stock sheet

Opinion	Frequency	Percentage
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Low	4	6
Moderate	15	22
High	49	72
Total	68	100

3.0 Conclusion and Recommendations

This study was undertaken in examining the impact of tax audits on the burden of proof among SMEs in Dar Es Salaam City, Tanzania. For achieving what is intended, the primary data was collected using a Linkert scale questionnaire and analysed using descriptive and presented in tables. Potential variables were determined based on the taxpayer's burden of proof on examined returns of income under the following factors; (age, sex, educations level of taxpayers, and taxpayers' perception). The study concluded that the lack of appropriate tax laws and understanding of the impact of a tax audit with respect to notice of deficiencies, the burden of proof, and audited taxpayers' perception from the examined returns of income can influence tax non-compliance. The extent of impact of tax audit on tax compliance is not well understood in Tanzania, that the issue of tax compliance has caused many governments to review their tax laws and tax policies over time (Eiya et al 2016). Specifically, by understanding better why taxpayers usually bear the burden of proof, the tax authority will be in a position to use appropriate measures that will bring in balance the burden born by taxpayers on the production of evidence and persuasiveness to tax officers. Tax audit and investigation are critical to causing the taxpayer to be on their toes (. Also, the study found that there is a lot of rejection of the purchase invoices and discrepancies of failures to comply with tax laws contained within the notice of deficiencies issued to taxpayers as the results of examined returns of income under respective years of income. Furthermore, the major reasons for rejection on most of the invoices were some were lacking the buyer's name and Tax identification number (TIN), hence were declared purchases as undisclosed sales. Therefore, result in unreported sales which bring the burden of proof in VAT adjustment account and stock analysis, in this regards rejection of purchases of invoices causes pervasiveness of burden of proof in financial statements. Tax non-compliance arises as the liabilities are declared over or under the real value (Yayınev, Ekin 2019).

The study recommends that tax authorities with other stakeholders such as tax consultants, accountants, and auditors should ensure taxpayers are equipped with basic education with tax laws from their childhood, at primary schools, and post-primary schools. Specifically, tax authorities should design a mechanism in such a way taxpayers can download a list of all suppliers supplied to the taxpayers to prove the same under the year under review. As most tax legal receipts bear a shorter life span, some ranging from one week to three or four weeks of their life span. This gets harder for taxpayers to presents to prove for purchases. In the study by Olaoye et al (2018) in respect of the research findings, the study recommends that tax audit in the form of field, desk and back duty should be carried out on a routine basis to ensure that actual revenue is collected.

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