

**CAUSES AND CONSEQUENCES OF FAILURE TO FILE THE
ANNUAL RETURN BY THE TAX PAYER; A CASE STUDY OF
SHINYANGA MUNICIPALITY**

By

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**A Dissertation Submitted in Partial Fulfilment of the Requirement for the
Award of Master of Laws in Commercial Law of the University of Mzumbe.**

2013

CERTIFICATION

We, the undersigned, certify that we have read and hereby recommend for acceptance by the Mzumbe University, a dissertation titled **“CAUSES AND CONSEQUENCES OF FAILURE TO FILE THE ANNUAL RETURN BY THE TAX PAYER”**, in partial fulfilment of the requirements for award of the degree of Master of Law (LLM) of Mzumbe University.

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DECLARATION

I, Frank Samwel, declare that this dissertation is my own original work and that it has not been presented and will not be presented to any other university for a similar or any other degree award.

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Being the author of this work, apart from the contributions from the above people acknowledged, I hereby declare that, I am solely responsible for any error or shortcoming of this work.

DEDICATION

This work is dedicated to my daughter.

Lightness Kemilembe Frank.

To her I say

“Success is not about enriching yourself but how you use your wealth (both tangible and intangible) to improve others’ lives”

LIST OF ABBREVIATIONS

1. GDP = Gross Domestic Product,
2. MOF = Ministry of Finance,
3. SBE = Small Business Enterprises,
4. SPSS = Statistical Package for the Social Sciences,
5. TRA = Tanzania Revenue Authority,
6. VAT = Value Added Tax.

DEFINITION OF THE KEY TERMS

1. Income Tax Act = Income Tax Act, 2004 [Cap.332R.E.2006]

2. Presumptive tax = This is the tax which is imposed by the Commissioner as a result of the application of the best of the judgement in assessing the payable tax of the tax payer.

3. SPSS for Windows = This is a program that provides a powerful statistical-analysis and data-management system in a graphical environment, using descriptive menus and simple dialog boxes to do most of the work for the researcher. With SPSS, most of the tasks can be accomplished simply by pointing and clicking the mouse.

4. “The best of his Judgement” = This is the mechanism the Commissioner applies in determining the income of the tax payer who has either not filled his annual returns or has filed the annual returns but the commissioner has become suspicious of the return’s truthfulness.

ABSTRACT

Most of the tax payers in Tanzania do pay tax without filing the annual returns and they always complain about paying more tax than what they think they are supposed to pay. This research focuses on the cause and effects of the taxpayers' failure to file the annual returns during tax assessment for tax liability.

This research was done through interviews, questionnaire and schedules on the sample size of 120 respondents selected specifically from businessmen and women, noon business persons, people who were formally business people, tax consultants and TRA officials, but picked randomly within the group.

From the research, it was found that, failure to file the annual return by the tax payer is caused by the two things; tax payers lack of knowledge on the law and procedure to be followed during their tax liability assessment and lack of enough fund to bear the costs for preparing the necessary documents necessary for the annual returns. Also, failure to file the annual returns has the effect to high tax being imposed on the tax payer

At the end, the researcher recommends that the law should change in order to simplify the requirements for filing the annual returns to enable even the normal businessperson to file them. Secondly, the tax payers should be educated on the procedure required for them to follow during the period of tax assessment in order for them to have fair tax assessment. Thirdly, TRA to diversify its sources of collections on tax in order not to shift the whole burden to the business people. Fourth, TRA tax assessors should not unreasonably impose higher tax on the tax payers. Lastly, tax assessors should visit the tax payers before imposing tax liability on the tax payer.

If these recommendations are followed, enough revenue will be collected for the government, business and investment will not be hindered as per Tanzania's tax policy.

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CHAPTER I

GENERAL INTRODUCTION

1.0 Introduction

Most of businessmen and women do not file their annual returns. As a result, they fail to anticipate the amount of tax that will be imposed on them. This study seeks to find out the causes for taxpayers' failure to file the annual returns during the period their tax liability is to be assessed. This chapter presents the historical background of the problem, statement of the problem, objective of the study, research hypotheses and research questions, conceptual framework, scope of the study, limitation of the research and significance/justification/utility of the study.

1.1 Background to the Study

Business men and women have been complaining about tax payment. . In fact, most people do hate paying tax and look at the tax collectors as very bad people when they approach a tax payer.¹ This has been a problem since a very long time ago. Jesus, one day when he was teaching his disciples, he gave them a parable of a Pharisee's prayer in which the Pharisee prayed "...God, I thank thee, as I am not as other men are; extortionist, unjust, adulterers, or as this tax collector....".² Jesus taught his disciples this parable with an intention of educating them on how they should be praying. He was showing them the way most of those who pretended to be good prayers, the way they were praying wrongly believing that they were praying properly while not.

What we are interested here is not what Jesus wanted to teach but the implications of the prayer of the Pharisee he used. When you glance at the prayer keenly, you will find out that, to the Pharisee, a tax collector was regarded the same as

¹ Mponguliana, R. G. (2000) *The Theory and Practice of Taxation in Tanzania* (p. 1) is of the view that, tax administration all over the world generally is experiencing the same or similar difficulties in their efforts to reach taxpayers. He was of the view that, voluntary tax compliance is the best system over the use of legal and administrative powers in tax collection. He is of the view that, voluntary tax compliance is not only beneficial to the tax payers themselves but also saves the Government cost of revenue collection.

² *The Holy Bible* Luke Chapter 18 paragraph 11

extortionist, unjust and even the adulterers. To them, a tax collector was regarded as a very bad person.

That image above is what is seen to exist in the current society. Most of the tax payers are not always friendly with the tax collectors. They always complain about tax; most of them saying that the tax they are paying is incredibly very high. On asking them why they think that they are paying much tax than what would be required, they normally say that what they pay is according to the amount the tax collector orders them to pay and they have no way out unless they close down their business. However, when these business men are asked as to whether they filed the annual returns, you find that, most of them do not file the annual returns; leave alone those businessmen and women who do not know what annual returns are.

Admittedly, however, there is a problem facing the business men and women both; those whose business are not big i.e. small scale business and the other group of medium and large scale businessmen. The problem in question is failure to file the annual returns by the taxpayer. As long as this group of business men is consisting of a large number of business men and women, it is very important to find out what makes many business men and women not to file their annual returns and the impact/effects of failure to file the annual returns by the tax payer.

1.2 Statement of the Research Problem

Failure to file the annual returns by the tax payer has resulted into a lot of complains from the tax payers. (There is a problem of logic here). I think tax payers fail to file the annual returns. The reasons given by these tax payers is that the tax imposed to them is too high for them to bear. Mainly the problem faced by them is the high tax imposed on them which most of them do not know the way out.

One day when the researcher was passing through one street he heard a whistle blown by an unknown person. All shops were closed in that street within a few minutes! On asking one of the shop owner as to what happened, the shop owner replied that, the whistle blown was a special one. It narrated the shop owners, those who had not paid up their tax, to close down their shops as the TRA were around. The shop owner complained of high tax which is always imposed by TRA on the tax

payers which increases continuously to threaten their business. According to him, that is the method they have designed in order to avoid paying tax.

The determination of the individual's tax is effected through assessment procedures which begin with the submission of returns of the Tax payer's annual returns for the year of income to the commissioner not later than three months after the end of each year.³

The annual returns, among other requirements, must also include a declaration that the return is complete and accurate and furthermore, the annual report must be signed by -

(i) the person ; and

(ii) a certified public accountant in public practice.⁴

The individual who has not filed a return for any year of income, the Commissioner is empowered to, according to the best of his judgement, determine the amount of income of that person and proceed to assess the payable tax accordingly.⁵

So, one may be tempted to hurriedly come up with the views that, it is not possible for the tax payers to prefer "not to file the annual returns" instead of the actual tax which would be derived from the annual returns. There must be a certain driving force for the same, which, apart from resulting into the application of "the best of the judgement of the commissioner", it has not solved the people's complains and hatefulness of the tax collector to the tax payers.

Generally, most of tax payers do not file the annual returns as per the directives provided in the Income Tax Act and they always complain about high tax liability imposed on them by the TRA. Tax imposed on these tax payers who lack annual returns is presumed by the TRA and therefore may be higher or lower than the actual tax. The researcher has realised that the source of all these complains is the

³ S. 91(1) of the Income Tax Act, 2004; [Cap. 332 RE 2008].

⁴ S. 91(1) *ibid*

⁵ S .94(4) and (5) *ibid*

tax payers' failure to file the annual returns. This research is expected to find the causes and effect of this source of problem.

1.3 Objectives of the Study

1.3.1 General Objective

The main objective is to find out the efficiency of the tax assessment mechanism;

1.3.2 Specific Objectives

The specific objectives of the study are: -

1. To find out the causes for the tax payer's failure to file the annual returns.
2. To find out the effects of assessing the payable tax basing on the best of the judgement of the commissioner to both, the Government and the tax payer.

1.4 Research Hypotheses

The research Hypotheses used in this research are as follows:-

1.4.1 Research Hypotheses

- Failure to file the annual returns is due to the taxpayers intending to evade tax
- The failure of the tax payer to file the annual returns is caused by his lack of awareness and knowledge about tax law and procedure.
- Filing the annual returns involves expenses which cannot be afforded by many low income tax payers.
- Presumption tax assessment which is the result of failure to file the annual returns leads in the unnecessary heavy burden on the tax payer.

1.5 Scope of the Study

This study focuses on the causes and consequences of the failure of the tax payers to file their annual returns something which results into the tax payer being assessed according to the commissioners best of his judgements and effects thereof to both Government and the tax payer.

The study is conducted in Shinyanga Municipality which is in Shinyanga District, in Shinyanga Region. The reason for choosing Shinyanga Municipal is due to the fact that, the TRA Regional office is situated in Shinyanga Municipality and furthermore all respondents the research aimed are available within the municipality.

1.6 Limitations of the Study.

During this research, the researcher faced certain limitations on the information supplied by businessmen, tax consultants and TRA officials, which was however solved as explained hereunder:-

a) Businessmen (taxpayers)

The intention of the businessmen (tax payers) is always to maximize the profit by not disclosing the secret of business to their rivals. Most of the businessmen and women taxpayers are always fearing to disclose the way they are doing business. There are several reasons for that secrecy; one being the fear of other people knowing the way the individual business man is doing business as this may raise more competitors and therefore make them lose in their business (protecting trade secrets in order to avoid rivals). In deed this is the most fear of most of the business men as they always fear to lose their business. During research at the beginning of the interview, most of the businessmen were not friendly. Some of them thought that, the researcher was the TRA official investigating on the way the businessmen/women are doing in order to increase their tax liability.

The researcher made the proper, detailed and elaborated self introduction on who the research was and the purpose of the r research. The researcher made it clear that, the research is for academic purpose only. The researcher assured the tax payer that all data which were collected would not be exposed to TRA. The researcher assured the respondents about the confidentiality of the data obtained from the study.

b) TRA

Different from what the researcher thought, the TRA officials are very cooperative, however as they are supposed to operate with businessmen under a very confidential way so that they don't expose the wealth of the businessmen as they

are aware that, also business men do not wish to have their fellow businessmen know the how about their doing business Sometimes the TRA officials asked the researcher to write an application in order to get certain data. Since at TRA, not everyone is allowed to provide data. This resulted into spending much time looking for the officials permitted to provide the information needed for the research .However, the researcher had to spend more time in the field so as to obtain all the relevant data.

This is overcome by making the case study in Shinyanga, the Region where the researcher is well known such that, even most of the TRA officials know to the researcher well and therefore they trusted me that the researcher would not expose what the researcher is shown to anybody else other than for this research which is for academic purpose only.

c) Tax Consultants

Like TRA officials, tax consultants worried about their confidentiality of the information they were supposed to provide.. They feared that the data the researcher is looking for would be exposing the secrets of their clients. The researcher provided a very clear self introduction to assure the tax consultant has cleared the doubt of confidentiality.

1.7 Significance of the Study

This research is not only beneficial but also very important for both the Government and the tax payers themselves as well. For the case of the Government, there is no government if no tax; as one of the objective of tax is actually needed for the revenue for the government.⁶ Apart from the fact that, there are other sources of revenue (non-tax sources) but tax remains the main source and reliable. From the above explanation, tax is a very important, major and reliable source of Government revenue and hence there should be a good system of taxation. According to Adam

⁶ Makinyika, L., F.,D.,A., (2007) A sourcebook of Income Tax Law in Tanzania p. 7.

Smith in his book titled *the Wealth of Nations*, good tax system must adhere to the following canons:-⁷

1. Equity
2. Certainty
3. Convenience
4. Economy.

However, the state should pursue mainly the following principles in structuring its tax system :-

1. The primary aim of the tax should be to raise revenue for public services.
2. People should be asked to pay taxes according to their ability to pay and assessment of their taxable capacity should be made primarily on the basis of income and property.
3. Tax should not be discriminatory in any aspect between individuals and also between various groups.⁸

Assessing tax on a person who has not filed the annual returns is likely to go against the above canons of taxation. So, if this problem is solved; taxpayers will be paying their tax according to their ability(equity), taxes will be certain, taxpayers will be happy and consequently they will find the time for paying tax is convenient and finally, as most of the taxpayers will be happy, most of them will pay tax(there will be very few ,if any, tax evaders) and therefore Government will get a lot of money of which it will be able to spend less than what is collected (economy). When this happens, both taxpayers as well as tax collectors will become friends not like now where the tax payers look at the tax collectors as very highly sinful people in the society.

The findings contained herein are significant for practical pursuits. The findings are significant as they will assist the TRA due to the increase in tax compliance by the tax payer. Also, it will assist the TRA to form the base of advising the law makers to make changes in the law according to the findings of this research.

⁷ Vols. 1-3, London: Methuen, 1961 as cited by Makinyika, L., F.,D.,A. *op cit supra* pp. 14 - 15.

⁸ <http://kalyan-city.blogspot.com/2010/12/what-is-tax-definition-adam-smith.html> last visited on the 14th August 2013 . This was the same stand by Auten, G.,E., & Clotfelter, C.,T., (1982) Permanent Versus Transitory Tax Effects and the Realization of Capital Gains *the quarterly journal of economics* PP 620-624

1.8 Literature Review

This section deals with a review of related literature with the aim of finding the literature gap. Under this part, various literatures by various writers have been reviewed here. At the end the conclusion is made by showing that the problem has not been solved and therefore the need for this research as among the researchers whose literature is summarised here under, no one has specifically dealt with the cause and effects of the failure to file the annual returns by the tax payer as per the requirement of the Income Tax Act.

Morse, Geoffrey, and Williams, W. David (2004)⁹ elaborated the tax assessing procedure in England that the primary purpose of taxation is to raise the Government revenue for the Government expenditure. There are other means through which the Government can raise revenue such as:- by borrowing, by printing money, and by selling precious things, but, in practice, it is unavoidable that taxation should raise most of the Government's fiscal requirements. In most of the countries, tax payable assessment begins with the filing of the returns (normally the annual returns).

In England, when a tax payer fails to file a return (and self-assessment) by January 31st, it looks like the position becomes like that of Tanzania. The authors provide that when such a situation happens, a revenue officer may make a determination of the tax due "to the best of his information and belief". This determination is then treated as the tax payer's self assessment for the relevant year until such time as the taxpayer actually files returns (and self-assessment).¹⁰

According to the author of this book, the law in England is similar to that one of Tanzania to the extent that, whenever a tax payer has failed to fail the annual returns accordingly, then his payable income tax will be determined through "the best of

⁹ Geoffrey, M., & David, W.,W., (2004) *Principals of Tax Law* P. 4

¹⁰ *Ibid* (2004) P. 59 also Olivier B., O., & Perotti, R., (November 2002) Quarterly Journal of Economics *An emerial Characterization of the Dynamics Effects of Changes in Government Spending and Taxes on output*. PP 1343-1346

his(taxing officer's) information and belief" which is analogies to 'the best of his(tax commissioner's) judgement'" of our law.¹¹

This author, however, doesn't tell anything about the cause of failure of the tax payer to file the said annual returns, something which just leads to the application of the principal of the best of the judgement of the tax commissioner or the taxing officer for Tanzania and England respectively nor does he tell about the consequences thereof. All in all, the author needs an appreciation for highlighting us on the practice of law on the circumstance where the taxpayer has not filed the annual returns.

Sugandha, S.(Dr.) , Soundararajan, S. and Sundharabahu, S. (2000)¹² jointly explained that in India, the best of the Judgement of the assessing officer is not mandatory under normal circumstances. It becomes mandatory and the only way available where an assessee does not comply with directives or notices served upon him by the tax authority (assessing officer).

The author, narrated that the assessing officer cannot proceed and determine the payable tax according to his whim and fancy. The assessing officer is obliged to take note of every and all information available to him, which is determined in the case under his hand. The assessing officer is supposed to serve a notice on the assessee calling him to show cause, on a date and time to be specified in the notice why the assessment should not be completed to the best of his judgement.

This opportunity of explaining his position is given to the assessee to make the proceeding of assessment comply with the natural justice i.e. no one should be put to subject of any judgement unless he is given a final opportunity for representation or is made aware of what is proceeded with. It is incumbent upon the assessing officer to consider, weight the representations and come to conclusion. The assessing

¹¹ S. 94(4) and (5) of the Income Tax Act, *op cit supra*

¹² Sugandha, S.(Dr.) , Soundararajan, S. and Sundharabahu, S. (2000) Income Tax Law Theory and Practice PP. 665-666

officer while passing judgement should also make use of information he is supplied with in any representation to him by the assessee.

This author, apart from writing on the procedure followed by the assessing officer in coming to assessing basing on the best of his judgement, the author doesn't tell anything concerning the cause of the failure of the tax payer to file the annual returns and consequences assessing the payable tax basing on "the best of the assessing officer's judgement"

Katebera, John L., (1996)¹³ conducted a study on causes of tax evasion in Tanzania, which was basically aiming at finding out the administrative factors in the Income Tax Department which create room for tax evasion in Tanzania. The author, revealed several causes of Tax evasion and this work is discussing some of them with reference to this research.

The researcher pointed out that, the ability of the Tax Office to identify the Tax payers was among the causes of tax evasion. Under this, the researcher found out that, only 0.8% of the tax payers do pay tax voluntarily while there is a large number of tax payers, 99.2% of the tax payers, who are not paying tax and still the income tax department is not aware of their whereabouts. The author realised that, there is a large contribution of tax from employee (25.6% of the total tax collected in 1994/95) as compared to the individual persons (3.9% of the total collected tax). According to the author, this is caused by the lack of the proper list of the individual taxpayers and consequently therefore, failure of the income tax department to make the follow up on them accordingly.

The author also pointed out the effect of the large number of taxes in Tanzania. the author is pointing out that, there are 40 kinds of payable taxes, levies and tax associated charges in the country. According to him, most of people fail to pay the said taxes due to either ignorance of their existence or lack of ability, financially, to pay the said taxes. According to the writer, this is another source of tax evasion. It was the concern of the writer that, the amount of tax, for most of taxes, is very high

¹³ Katebera, J., L., (1996) *Causes of Tax Evasion in Tanzania*: P. 51. It was the same statement by Ravallion, J., J., M., (1999) Policy Research Working Paper *Income Gains to the Poor from Workfare*. P 5

and that most of the interviewee were not happy with it. This author is of the view that, the presence of this scenario of the existence of many kinds/types of taxes could also be the source of tax evasion.

The author concludes, at last, that, all of the causes of tax evasion identified by him, including the above mentioned causes, could be easily cured by just strengthening the TRA. The researcher also is suggesting that it is better for the number of taxes to be reduced leading into remaining with just few of them but which can be easily payable by the tax payers and which can also be easily implemented by the TRA. The reduction of the number of taxes had to go hand in hand with the reduction of the amount of tax payable so that the tax payers are happy with the amount of the taxes they are paying and therefore they are not tempted to evade tax.¹⁴

The author, apart from discussing the administrative causes of tax evasion, he didn't touch even a pinch of the causes of the failure of the tax payers to file the annual returns something which leads them into being assessed by the commissioner basing on the commissioner's best of his judgement nor did he talk about the impact thereof. He never shows whether the failure of the tax payer to file the annual return may be associated with tax evasion or not from the point of view of definition of tax avoidance.

Tax avoidance can simply be defined as the wilful attempt by the taxpayer to suppress or not to disclose income and, hence, not to pay tax thereon, where the law clearly stipulates the obligation to report the income and pay tax.¹⁵ The researcher doesn't go as far as to the extent of looking into the failure of the tax payer to file his annual returns nor is he relating tax evasion with the failure to file the annual returns in question.

Makinyika, Luoga F.D.A (2000)¹⁶, is pointing out the instances on which the Commissioner applies "the best of his judgement to assessment" on the payable tax of the tax payer. This author is pointing out two instances, namely:-

¹⁴ Katebera, J., L., *op cit supra*: (1996) pp 52-58

¹⁵ Makinyika, L., F., D., A., *op cit supra* p. 35

¹⁶ *ibid* pp 176-188

1. When the commissioner has reasonable cause to believe that such return is not true and correct and
2. Where the tax payer has failed to file the returns after the notice to submit has been served and the period for its submission has expired.

In both instances the commissioner is empowered to assess such taxpayer to “the best of his judgement.” According to the author, the phrase “best of his judgement” carries no statutory definition but it has been judiciary defined in several times. At one time “the best of his judgement” was taken to mean that the commissioner must have material on which to base his assessment, that the assessment must not be capricious. The commissioner is not supposed to make a guess without evidence in that; he must himself take steps to procure material for the purpose if it is not already in his possession. The commissioner in this regard has a power to call witnesses and can make his own enquiries.¹⁷

In one case, the defendant having failed to submit a return was assessed to tax on estimated income. Notice of assessment was served on him by post. No objection was made against the assessment. Neither was any appeal lodged. When the demand notice for the tax was served the taxpayer disputed it. It was held that the tax payer was liable on the tax assessed on estimated income.¹⁸

In another case, the defendant neglected to submit a return of income. The commissioner assessed him to income tax on estimated income. He didn't object nor did he appeal against the assessment. Having failed to pay the tax due after the demand notice was served, the commissioner sued him for the tax and penalties. The defendant claimed that the assessment was excessive.

The court held:-

1. Assessments are final and conclusive unless they are invalidated on objection or appeal;

¹⁷Gunda Shubbayya V CIT (1939) 7 ITR 21 ; as cited Makinyika, Luoga F.D.A. *A Sourcebook of Income Tax Law in Tanzania.* (2000) p. 183

¹⁸ CIT V AA as cited *ibid* p. 184

2. The obligation to deliver the return is on the tax payer and
3. The commissioner may raise an estimated assessment in the absence of a return even though non-delivery of the return is due to circumstances such as being lost in the past.¹⁹

Together with the above explanation, this type of assessment is invalid if the taxpayer was not given a chance to file the annual returns and failed to do so or he is given a chance but before the time given expires the commissioner makes an estimated assessment; such an assessment is void. Before the commissioner makes such estimated assessment, the time required for the submission of the returns must have elapsed. Otherwise the estimated assessment will be invalid.²⁰

The courts have also been elaborating on the notice to file the returns that in order for it to be valid it must provide for the tax payer the minimum statutory time in which he has to submit his returns.²¹

Frankly speaking, the author's contribution to this topic is highly appreciated as he went to the extent of elaborating the situation when the taxpayer may be subjected to estimated assessment, requirements and conditions which will validate such assessment, lack of which will lead into the invalidation of the estimated assessment. To that extent, the author contributed much on the topic but he didn't write on the causes of failure to file the annual returns by the tax payer, something which leads into the estimated assessment nor did he talk about the effects of estimated assessment, neither to the taxpayer nor to the government. In the other words he didn't touch the topic under research.

Rhoda Njau (2010),²² while doing her research on Impact of Performance of Small Enterprises in Ilala (in Dar es salaam), her findings *inter alia* were to the effect that, there are certain types of taxes which worry tax payers and according to the author, they are income tax and VAT. According to her findings, most of the respondents

¹⁹ CIT V Gian Singh 3 EATC 24 as cited Makinyika, Luoga F.D.A. *op cit supra* pp. 184

²⁰ Mandavia v CIT 2 EATC 426 as cited *ibid* p 184-185

²¹ AT V CIT 2EATC 370 as cited *ibid* p 185

²² Njau, R., : *Impact of Taxation on performance of Small Enterprises in Ilala: the case study of catering business* (2010) pp 55-70

were complaining that the income tax, charged on the income they get, used to be too high for their business and that was their reason for their worries.

The author is saying that there is a lack of preparation and maintenance of documents which would be used to calculate the tax payable. Lack of the proper records made them fail to pay the accurate taxes which lead to penalty and interest when TRA conduct audit in their business. It is the view of the author that, if the tax payers will keep records, pay tax timely and seek tax consultancy, they will pay the reasonable tax (not high) which is affordable according to the business they are doing. The author went on stipulating that, the failure to keep records by the small businessmen is due to the lack of competent staffs to handle their accounting and bookkeeping duties appropriately. In the recommendations of this author, she has suggested the presumptive tax to be used for the small businessmen.²³

Apart from all complains the author has made against the effects of assessing tax without records, she still recommended for presumptive mode of assessing the amount of payable tax. May be this might have been caused by failing to get the solution of the alternative for it apart from seeing its effects, especially when it comes to the position of a tax payer having no even a single record of his business.

Finally, the researcher having in mind that there are other areas surrounding the research she did not research on, the researcher suggested research in the certain areas including “the techniques used by TRA administrators in estimating or qualifying taxes for poor record keeping small businesses.”²⁴ It is thought that this might be due to the complexity and fairly practicability of applying the best of the Judgement of the commissioner in assessing the payable tax as this may be misused by the commissioner if he is not diligent.

The author is to be congratulated for her concern and fear of the proper application of the best of the judgement of the commissioner, something which indirectly is the cornerstone of this research. However, the researcher didn't show the cause of the failure of the tax payers to file their annual returns and effects of that failure.

²³ Njau, R., *op cit supra* (2010) pp 60 - 64

²⁴ *ibid* p. 65

Mwankenja, Gerion (2010);²⁵ in his research titled “Designing Tax System that Enhances Growth of Small Business In Tanzania”, the author observed that the current Tanzania tax system does not provide a good business environment to small businesses, making them unable to grow economically.

This researcher was aiming at finding the reasons for the small business not enrolling into the tax net and devising a kind of tax system that would suitably fit small firms by attracting them to formalize their operations and at the same time help the small business enterprise to grow.

The researcher is saying that among the challenges of collecting the Taxes from Small Business Enterprise, was that, many SBE do not keep proper records of their business affairs, causing underreporting of sales revenue.

During conclusion, the researcher is talking about presumptive tax. He is saying that presumptive taxation is associated with small business taxation. However, presumptive taxation could be the core element of a small business taxation system; reform should not be limited to presumptive taxation. A presumptive taxation is not necessarily the best option to improve small business taxation.

The need to move beyond simplifications in compliance with standard direct taxation depends on tax administration capacity and the ability of tax payers to comply with simplified income tax filing and self-assessment requirements. A presumptive system should include incentives to promote the maintaining of simplified books and records (in particular a cash book). Such incentives could be in the form of a rate reduction, more flexible payment options and loss carry forward opportunity.

This researcher has a good contribution on this research. Like the past researcher, this researcher has once again brought in the idea of presumption taxation as a means of assisting the SBE. However, it was like he was anticipating this research to

²⁵ Mwankenja, G., (2010) : *Designing a Tax System that enhances growth of small Business in Tanzania*; pp 62-70

be conducted as he proposed that the said presumption taxation should be improved to such an extent that all tax payers are able to pay according to the [direct](#) standards.

The researcher is leaving a room to investigate the way forward after realising the presence of presumption taxation. It is like, the researcher went a step further by suggesting the way forward without realising the causes and effect of what is resulting into presumptive taxation which is the failure of the tax payer to file their annual returns.

Jilala, James (2010);²⁶ in his research titled “The Empirical Analysis on the Presumptive Taxation in Tanzania”; his findings are that most business men in Dar es Salaam do not have permanent premises for their operations. Moreover, other businesses are operated in open space/in streets and footpath. The researcher also finds that, the doing of business there in has made difficulties in administration of presumption income taxation scheme and/or help firms graduate to the standard tax regime.

The author, finally, recommended, among others, that, sensitization programs to support the establishment of a bookkeeping culture. He also recommended that presumptive income taxation policies especially on the rates/bands and to design the way that could easier bring these untaxed groups to tax. The researcher had, during conducting his research, found out that in the presumption scheme, there are bands and within one band there are two rates; the lower rate is for record keepers and the higher one is for the non-record keepers. Secondly, the tax rate is progressive between bands to encourage those in the upper bands to graduate into formality from informality.

The author is saying that no proper rule for a person to move from one band to another. According to this researcher, 94% of the interviewees had stayed in one band from 1 to 3 years while 6% of the interviewees had stayed in one band for more than 3 years. The researcher has really contributed much to my area of research. He has indicated the problems there within the presumption taxation. The

²⁶ Jilala, J. (2010) The Empirical Analysis on the Presumptive Taxation in Tanzania pp 54 - 61

problems are the existence of bands which are further having lower and higher charges for record keeper and non-record keeper tax payers..

The research has also indicated that the charges in presumption taxations are in the form of progressive mode in order to encourage the movement of a tax payer from informal to formal. What the researcher is suggesting, impliedly, is the effectiveness and the practicability of the bands variations in the presumptive mode of taxation. . However, the truth is there to remain that, this researcher neither explained the reasons of failure of the tax payer to file their annual returns nor did he provide for the effects of the failure in question especially when the failure leads into presumptive taxation.

Generally, having gone through literature for the above seven different authors from various jurisdictions as well as disciplines, there is no doubt that this area of tax law is still virgin (in need of researchers to do the needful in order to unveil what is hidden therein) as most of the tax law researchers and book writers, no one has dared to researched nor write on the subject matter i.e. the cause and effects of failure of the tax payer to file his annual returns nor did he talk about it.

1.9 Research Methodology

This section is comprised of research design , population sample used(studied), data collection strategy and instruments used, procedure involved, type of the study concerned, the way data were analysed and data analysis procedures .

1.9.1 Research Design

This research was designed to be done through survey by visiting various people of different kind; including businessmen of various levels; (including those who are currently doing business and those who are no longer in business) and non businessmen. TRA Shinyanga Regional Office in Shinyanga Municipality are visited where the tax administrator are interviewed.

The sample is picked within the specified group, but randomly. Due to the nature of research as well as the sample involved, Interview questions were preferred over questionnaire for simplicity. However, questionnaires also were issued where

interview was found inconvenient over questionnaires. Moreover, schedule method was also involved. However, in all cases the same questions are asked, though with certain modifications depending on the occupation of a person as specified above and the method of evaluation was similar.

1.9.2. Population and Sample:

1.9.2.1 Study Population (Units of Inquiry)

The research used the following population:

1. Businessmen with low business enterprises. In here, it means those businessmen (retail shop type of investment).
2. Medium size businessmen (wholesale shops are grouped here).
3. Major businessmen. (these included owners of ginneries and other factories).
4. Former businessmen. This group included those people who were formally in business but now are no longer doing business instead they are doing agricultural activities or something else.
5. Those people who have never done business but they are aware of tax payments. The last two groups were TRA officials from Region stationed within Shinyanga municipal and Tax Consultants.

1.9.2.2 Sample and Sampling techniques

The sampling technique used in this research was simple random sampling from the specified groups of people named above. The study collected information from respondents on their attitudes and opinions about causes and effects of failure by the tax payers to file the annual returns.. The study involved the following sample.:-

1. 35 businessmen with low business enterprises. In here, it means those businessmen (retail shop type of investment).
2. 20 medium size businessmen (wholesale shops are grouped here).
3. 10 big businessmen. (these included owners of ginneries and other factories)

4. 15 former businessmen. This group included those people who were formally in business but now are no longer doing business instead they are doing agricultural activities or something else.
5. 10 This group included those people who have never done business but they are aware of tax payments.
6. 15 TRA officials from Shinyanga municipality.
7. 15 Tax Consultants.

1.9.3. Data Collection methods and Instruments

The study used both primary and secondary data collection methods. The primary data were collected through questionnaires, interviews and personal observation; whereas secondary data were obtained from various documents such as books, journals and other written reports which were available in the libraries.

1.9.3.1 Primary Sources of data.

This method of data collection helped the researcher to avoid chances of making assumptions and relying on hearsay from unreliable sources concerning the causes and effects of failure to file the annual returns by the tax payer observation, interviews, questionnaires and schedules. Data obtained in this form are called primary data.

Primary data is a type of information that is obtained directly from first-hand sources by means of surveys, observation or experimentation. It is data that has not been previously published and is derived from a new or original research study and collected at the source such as in marketing²⁷. Also Primary data is defined as the raw information before the processing is done.²⁸ It mainly consists of numerical collections of raw information to be analyzed and evaluated. The term primary data may sometimes be used to refer to first hand information.

²⁷ <http://www.ask.com/question/what-is-the-definition-for-primary-data> last visited on the 14th October 2013

²⁸ <http://www.wisegeek.com/what-is-primary-data.htm> last visited on the 14th October 2013

The field research for collecting primary data was conducted through the following ways:-

1.9.3.1.1 Interviews

This is a face to face interaction in which the researcher obtained information from the interviewee. The researcher used both structured and unstructured interviews in order to exhaust the data collected. Interview helped the researcher to obtain important data which could not be accessible through observation. Through interview, the researcher was able to obtain the data from the experience and views of the interviewee. This method was complemented by the use of questionnaires.

The information obtained under this method was recorded by means of a note book and where recording by note book was not possible, a tap recorder was used.

.9.3.1.2 Questionnaires

The researcher prepared questions to be answered by a selected group of research respondents. Questionnaire has been termed to be a good means of data collection as it provides a chance to the respondents to think thoroughly before responding. Questionnaires were used to the respondents whom the researcher could not meet physically. The researcher supplied questionnaires to the relevant personnel from the aforementioned sample. The questionnaires contained both; structured and unstructured questions; with both; open and close ended questions in order to obtain all the information relevant to the study..

1.9.3.2 Secondary Data

Secondary is the data that was collected by someone else for some other purpose i.e. the data which was not collected to answer the researcher's specific research questions and was instead collected for another purpose.²⁹ Secondary data is economical; the researcher saves money, time, energy, and other resources. A major disadvantage of using secondary data is that it may not answer the researcher's

²⁹ <http://sociology.about.com/od/Research-Methods/a/Secondary-Data-Analysis.htm> last visited on the 14th October 2013

specific research questions or contain specific information that the researcher would like to have.

This involved documentary review and electronic sources as explained hereunder.

1.9.3.2.1 Documentary Review

During the research, the researcher visited Mzumbe University library, the Open University library at Shinyanga Regional Centre and Tanganyika Library at Dar es Salaam in order to collect the information relevant to . Information was obtained through the analysis of statutes, cases, textbooks, journal articles and reports on the related study.

1.9.3.2.2 Electronic Sources

The researcher also visited relevant websites; surfing online journals, reports and other useful materials relevant to the research problem. The internet source supplemented the Library sources. It enabled the researcher to obtain the material which could not be available in libraries, physically.

1.9.4 Method of data analysis

The data collected were scrutinized and examined in detail in order to assist the researcher to determine whether the data collected were accordance with the objectives of the research. The researcher, first applied qualitative data analysis to describe and analyze the data collected. In here the researcher broke down data into smaller units, determining their importance and relevance to the research problem. This was followed by breaking down through the process of classifying or coding hence categorizing the pieces of data. Then the data were analysed quantitatively by relating the hypotheses to the data collected through SPSS program. Mixed methods research design is aiming at building strength that exists between quantitative and qualitative research methods to understand a phenomenon fully than it would be using either quantitative or qualitative methods only. This enabled the researcher to translate data into symbols which could be counted.

The collected data were analysed through descriptive analysis which is also known as causal Analysis. The application of this form of analysis is due to the fact that the

research problem had more than one variable affecting the single variable. The independent variables were education, tax evasion and low income; all affecting the filing of the annual returns by the tax payer and in the cause of analysis Multi-variety Analysis is employed i.e the analysis of simultaneously more than two variables or attributes in multi-way classification.

The mode of analysis is through statistical method whereby the measures of central tendency which includes mean, mode and median; though mode was highly used.

1.9.5 Data Quality Control

The researcher made sure that the data collected were authentic and reliable. They were collected from the reliable source and from the proper respondents and the analysis process was done properly to ensure proper results. Irrelevant data were discarded during the process of analysis in order to control the quality of data. Also, more than one method of data collection was used to make sure that the data are valid and reliable.

1.10 Conclusion

Failure to file the annual returns by the tax payer has been a problem that has persisted for a long time. There is no a single research that has attempted to find out the causes and effects thereof. This warrants the researcher to proceed with researching on the subject matter.

CHAPTER II

CONCEPTUAL FRAMEWORK

2.0 Introduction

This chapter presents: definitions of important concepts the relationship between variables and the research concepts. At this juncture, the reader will see the theoretical assumptions, principles and rules that hold together the idea of the causes and effects of the tax payers' failure to file the annual returns. In this chapter, various concepts used in the research have been defined to make this work simple to understand by the leader.

2.1 Tax

The word Tax originated from the Latin word *tax* ; "rate". It is a financial charge or other levy imposed upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state such that failure to pay is punishable by law. Taxes are also imposed by many administrative divisions. Taxes are either direct or indirect and may be paid in money or as its labour equivalent. A tax can be explained as a "pecuniary burden laid upon individuals or property owners to support the government; a payment exacted by legislative authority." It "is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority" and is "any contribution imposed by government; whether under the name of toll, tribute, impost, duty, custom, excise, subsidy, aid, supply, or other name."³⁰

Tax, also may be defined as a compulsory contribution to the support of the Government levied on persons, property, income, comedies, transactions etc, now at a fixed rate mostly proportionate to the amount on which the contribution is levied.³¹

Tax is also defined as a compulsory levy or charge by the state on her citizens and non-citizens alike that is usually payable in monetary form for which the

³⁰ Black's Law Dictionary, (5th ed. 1979) p. 1307

³¹ Makinyika, L.,F.,D.,A., *op cit supra* p. 1

Government need not offer equivalent direct compensatory services or render an individual account on how it utilised the revenue.³²

From the above definitions, the definition of tax has the following four main points;

- The levy is compulsory,
- Imposition of tax is done by the Government on its citizens,
- Tax is payable in the monetary currency of the state levying the tax unless other currencies are otherwise permitted.
- The Government is not bound to account for the expenditure to individually or to groups of people i.e. *no quid pro quo*.

Every tax payer has an obligation to pay the tax assessed and due in respect of any year of income. Determination of the tax to be paid is effected through assessment procedure which begins with the submission of returns of income to the commissioner. That means, failure to file the annual returns has a serious impact on the tax to be collected as the annual returns are always the gauge used during the measuring of the payable tax of the individual tax payer. When an individual has not filed the annual returns or the annual returns have been filed, but the Commissioner has reasonable cause to believe that such return is not true and correct, the commissioner will determine, according to the best of his Judgments, the amount of the income of that individual and assess the tax accordingly.³³

Tax is a very important concept in this study and has been used widely in this work. It is tax which is affected by filing the annual returns or non filing of the annual returns which is the subject matter of this research.

2.2 Tax payer

Is a person or organization (such as a company) that pays tax. Taxpayers have an Identification Number and a reference number issued by a government to its

³² Mponguliana, R.,G.. *op cit supra* p.9

³³ S. 94(4)b and (5) of the Income Tax Act *op cit supra*

citizens.³⁴ This research is dealing with individual persons tax payers not organizations.

This concept of Tax payer is important to be clear to the reader of this work because the Tax payers are responsible for filling the annual returns. Failure to file the annual returns is having much effects on the tax payers as it results into the lack of the base during the determination of the tax liability of an individual tax payer. Under normal circumstance, a tax payer has the responsibility of filing the annual returns before tax assessment.

2.3 Annual Returns

Annual returns are statements which give essential information about a firm's composition, activities, and financial position, and which must be filed by every active incorporated or registered firm with an appropriate authority³⁵.

Annual returns, also known as annual tax payers' declaration, are necessary documents in order to determine the correct income for income tax purpose, hence the computation of the tax thereon. Because the tax payer is the primary source of information, the quality or reliability of the information contained in the returns is directly dependent on the individual tax payer's honesty and general standard of education on tax law theory and practice, book keeping and sound business management.³⁶

The Income Tax Act *op cit supra* doesn't provide a proper and clear definition of what annual returns are, but the law provides for what should be the contents of the annual returns.³⁷ The annual returns are important documents, as we have seen above, which set into motion the process of assessment of the payable tax of an individual tax payer. A tax payer is obliged by the law to file these annual returns within three months after the end of the financial year. Failure to file the annual returns attracts presumptive tax which may subject the tax payer to high tax or low

³⁴ <http://en.wikipedia.org/wiki/Taxpayer>, accessed on 14 November 2013

³⁵ <http://www.businessdictionary.com/definition/annual-return.html#ixzz2keC02veJ> accessed on 14 November 2013

³⁶ Mponguliana, R.,G., *op cit supra* p. 271

³⁷ S. 91(2) of the Income Tax Act *op cit supra*

tax depending on the situation. Both low tax and high tax imposition on the tax payer are disadvantageous to the Government while high tax imposition has a disadvantage to the tax payer.

2.3.1 Types of returns³⁸

There are three types of returns of income, namely normal returns, provisional returns and occasional returns.

➤ Normal returns

These are the returns furnished after a notice has been issued. Normal returns have to be completed by the tax payers and filed with the Commissioner within a reasonable time,

➤ Provisional returns

These are returns submitted by individuals, firms or companies deriving their income from business. A provisional return is a kind of self assessment by the tax payer. Unlike the normal return, in a provisional return, the taxpayer estimates his income chargeable to tax, the tax chargeable on such income and must make a declaration that such returns contain full and true estimate of his income and tax to the best of his knowledge and belief.

A provisional return can be amended by an individual tax payer by filing an amended provisional return if during the year of the income he discovers that the provisional return furnished is likely to be substantially incorrect because of changed circumstances or where he/she is dissatisfied with an estimated provisional assessment raised by the Commissioner.

➤ Occasional returns

These are returns filed by certain persons which provide the tax authorities with information to enable the authorities to trace potential tax payers and prevent tax evasion. Such returns are filed within the reasonable time specified by the commissioner in the notice.

³⁸ Makinyika, L., F.,D.,A., *op cit supra* pp 177-179

2.3.2 The legal requirement of the tax payer to file the annual returns.

The law requires that, in order for a person to have his income tax assessed, he must file his annual returns which forms the base of the assessing the payable tax of an individual.³⁹ However, most of the tax payers especially those with small business and even some with medium business and large ones do not file their annual returns. Once the commissioner is satisfied with the facts that the tax payer has the income which is chargeable to tax and it is proved that, the tax payer has defaulted in submitting his returns of income for that year, the commissioner has a right to estimate his income to the best of his judgment and make an assessment on tax liability accordingly.⁴⁰

2.3. 3 Form of the annual returns

The annual returns have the form of which they are supposed to appear in. The Income Tax Act provides that, the annual returns are supposed to be in the manner and form prescribed as follows:-

- (i) the person's chargeable income for the year of income from each employment, business and investment and the source of that income;
- (ii) the person's total income for the year of income and the income tax payable with respect to that income;
- (iv) any income tax paid by the person for the year of income by withholding, installment or assessment for which a tax credit is available.
- (v) the amount of income tax still to be paid for the year of income calculated as the sum of the tax referred to in subparagraphs (ii) and (iii) less the tax already paid referred to in subparagraph (iv);and
- (vi) any other information that the Commissioner may prescribe;

³⁹ Makinyika, L.,F.,D.,A., *op cit supra* p. 176

⁴⁰ Mponguliana, R.,G., *op cit supra* p. 294

(b) in the case of a corporation, be prepared or certified by a certified public accountant in public practice;

(c) include a declaration that the return is complete and accurate;

(d) be signed by -

(i) the person ; and

(ii) a certified public accountant in public practice.

The term annual returns is a very important concept to be clearly understood by the reader of this work because this is aiming at the businessmen and women's failure to file their annual returns from their business only. The research is observing the causes thereof and the effect it has on the tax payer and the Government. As the reader will realize, the concept of annual returns has been widely used. It's the annual returns filing which affects tax assessment. When annual returns are filed the tax assessment bases on them while failure to file the annual returns attracts presumptive tax. The clear understanding of this concept will enlighten the leader of this work and make him understand this work better.

2.4 Failure of the tax payer to file the annual returns.

This concept is very much related to annual return. Failure to file the annual returns by the tax payer is the situation whereby the tax payer, knowingly (intentionally) or unknowingly (unintentional), doesn't file the annual returns as per the requirements of the law.

Generally, failure to file the annual returns by the tax payer happens because the tax payer has not filed the important documents necessary for tax liability assessment.

2.4.1 Unintentional failure to file the annual returns by the tax payer.

When it is done accidentally, it may be due to the lack of knowledge on the tax payer; on tax law and procedure to be followed by him during tax payments as it is always for other laws. Most Tanzanians are ignorant of the laws. One of the most cardinal principles of the common law criminal system is constituted in the maxim

ignorantia ;juris non excusat (ignorance of the law is no excuse). But this is merely a general presumption, and only so in relative terms. The larger part of the criminal law, especially its specific elements and procedure, remains unknown. In civil law, the law is even less known. In reality, therefore, the general populace remains mostly ignorant of the law. Consequently, the claim that everybody is presumed to know the law amounts to nothing but a fallacy.⁴¹

Another probable cause of the failure to file the annual returns, which is also not intentional may be due to inability of the tax payer to prepare the prerequisite documents to be filed with TRA.⁴² Preparation of the documents required for filing the annual returns needs expatriates. Though the law is silent as to who has to prepare the documents, but the wordings of the provision of the law says so when it requires the annual returns to have a specific form and format as well as to be signed by a certified public Accountant in practice.

2.4.2 Intentional failure to file the annual returns by the tax payer

When the failure to file the annual returns is done intentionally, it may be due to the aim of evading tax;⁴³ that is, a person knows clearly and maybe he already knows that, the disclosure of the income he is getting will make him pay more Tax. So this person decides not to submit the annual returns pretending that he cannot prepare the prerequisite documents.⁴⁴ So what is done here generally is the hiding or deciding not to expose some of his income so that that income is not taxed. The concept of failure to file the annual returns by the tax payer is very important to be

⁴¹Wanitzek, U and Twaib, F.,(1996); *The presentation of claims in matrimonial proceedings in Tanzania: A problem of language and Legal culture*. Retrieved on the 10th November 2013 from the World Wide Web www.qucosa.de/fileadmin/data/qucosa/documents/.../3_08_Twaib.pdf

⁴² Under section 91 of The Income Tax Act, 2004;[Cap. 332 RE 2006], every person must file with the Commissioner not later than three months after the end of each year of income a return of income for the year of income, inter alia, a return of income of a person for a year of income must, subject to any instructions by the Commissioner to the contrary, be signed by the person ; and a certified public accountant in public practice.

⁴³ Makinyika F.D.A. *op. Cit. supra* pp 35-36 was of the view that Tax evasion is the wilful attempt by the tax payer suppress or not to disclose income and hence not pay tax thereon and includes not to file an income return at all among others.

⁴⁴ Mponguliana, R.G *op cit supra*, at page 401, while discussing the causes of Tax evasion was of the view that, one of the factors which caused tax evasion could be high marginal tax rate. According to him, when the effective tax rates are fairly high, it is a major cause of tax evasion because tax payers may consider the distribution of their incomes unfair and may attempt to make a unilateral adjustment for equity by non compliance through tax evasion.

well elaborated in order to give light to the reader of this work a good understanding of this work. This concept of failure to file the annual returns has been widely used almost all over the work. It is the concept which carries the whole work (research).

2.5 Tax assessment

The term assessment is defined under the Income Tax Act, *op cit supra*, to mean an assessment under section 94, 95, 96 or 103.⁴⁵ This definition lacks clarity. Assessment refers to all procedures involved in the determination of tax liability.⁴⁶ The term assessment is has several interpretations. Sometimes, it means the computation of income of the tax payer or sometimes it means the determination of the amount of income tax to be paid; and sometimes it means even the entire procedure for imposing liability on the taxpayer as laid down in the law. But generally, the term assessment is used with reference to the computation of income of a tax payer.

When the term assessment is used in its widest sense of covering the entire procedure for imposing liability on the tax payer, it implies that three steps are required to be completed. The first step is to compute the income assessable i.e. taxable income of the tax payer. The second step is to compute the income tax payable by him on the base of computation of income. The third step is to issue a notice of assessment intimating the fact of assessment made on him.⁴⁷

2.5.1 Types of tax assessment⁴⁸

The are six types of assessments which can be made. These are, the normal assessment, estimated (or sometimes referred to as presumptive) assessment, provisional assessment, estimated provisional assessment, jeopardy assessment and additional assessment.

⁴⁵ S. 3

⁴⁶ Makinyika, L.,F.,D.,A., *op cit supra* p. 182

⁴⁷ Mponguliana, R.,G., *op cit supra* p. 291

⁴⁸ Makinyika, L.,F.,D.,A., *op cit supra* pp 183-187

Normal assessment⁴⁹

This is an assessment made after due submission of normal return by the tax payer. such assessment is made after such return has been subjected to audit involving the examination of accounts and other documents to determine the return's reliability, for example, counter-checking such accounts and documents against previous records submitted to the commissioner, visiting taxpayer's premises where it is considered necessary and such other things as may be necessary to verify the truthfulness of the statements contained therein.

Estimated assessment⁵⁰

There are two instances where the commissioner can raise estimated assessment. One is when the returns submitted are found to be unreliable. Secondly, it is when no returns have been submitted after the notice to submit has been served and the period for its submission has expired. In both instances, the Commissioner is empowered to assess such tax payers to the best of his judgment.

Provisional assessment⁵¹

This is the assessment whereby the tax payer provisionally assesses his own tax liability after he has furnished a provisional returns.

Estimated Provisional Assessment

This is the type of assessment by the Commissioner on the tax payer, who is required to submit a provisional return but has failed to do so, basing on the best of his judgment.

Jeopardy assessment⁵²

This is an assessment on the tax payer's tax liability where the Commissioner has a reasonable cause to believe that, any person is about to leave Tanzania, or has left Tanzania and his absence is likely to be permanent and such person has not been assessed to tax. The commissioner may under such circumstances determine the

⁴⁹ S. 94(3) of the Income tax Act *op cit supra*

⁵⁰ S. 94(5) *ibid*

⁵¹ S. 91(1) *ibid*

⁵² S. 95 *ibid*

amount of income of such a person according to the best of his judgment and assess him accordingly.

Additional assessment⁵³

In the process of assessment, certain income of the taxpayer may escape assessment or be under assessed. When this happens, the Commissioner is empowered to raise an additional assessment. Such assessment is called additional assessment.

The failure to file the annual returns by the tax payer makes the commissioner, exercise his power vested in him under the law⁵⁴ i.e. to determine, according to the best of his judgement, the amount of the income of that individual and assess the tax accordingly.

This tax assessed by the commissioner is completely not justifiable as he just assesses the said tax without base (though pretending to base on the best of his judgment). Such tax is likely to be higher than the amount of tax which would be payable under the situation had the returns been filed by the tax payer. The vice versa is also true, meaning that, a tax payer under this presumptive tax may be charged less tax than actual.

The concept of assessment is very important to be well elaborated because this concept is revolving around the whole work. The reason behind is that, the concept of assessment is very much affected by the failure to file the annual returns by the tax payer. When the annual returns have been properly filed, assessment is based on the filed annual returns. But when the annual returns are not filed, then the assessment is done basing on the best of the judgment of the commissioner.

When the tax payer has not filled the annual returns, one of the possible result is the imposition of lower tax than actual tax had this tax payer filled the annual returns. When less tax will be imposed, the tax payer will be enjoying paying less tax but on the other hand, the Government will be collecting less money and therefore losing its money and hence the primary role of tax which is financing the Government

⁵³ S. 96(3) b of the Income tax Act *op cit supra*

⁵⁴ S. 94(5) *ibid*

won't be met.⁵⁵ For that case, the imposition of low tax as a result of the failure to file the annual returns by the tax payer is bad to the government.

Also, there is a possibility that the amount of tax imposed on the tax payer is more than the actual amount the tax payer was supposed to pay. The first effect to be easily observed by anyone is the pains inflicted onto the tax payer. The tolerant tax payer will strive to pay the tax even if by using a part of his capital. When a part of capital of the tax payer is used for paying tax, the capital of the tax payer will logically be reduced. This is likely to discourage the tax payer from paying the tax. This may ultimately encourage Tax evasion and/or avoidance. Also it may lead into impoverishing the tax payer by making him pay more tax than what he was supposed to pay leading him into using even the capital to pay the imposed tax, something which will automatically finish up the capital making this businessman poor due to business. When this person becomes poor and even insolvent, this person will not be able even to pay tax instead he will close down his business. The tax payer's closure of his business will cause the Government not to get funds from tax.

2.6. Tax evasion and Tax avoidance⁵⁶

The terms tax evasion and tax avoidance are always confused by people because of both being the means of the reduction or elimination of tax liability by the tax payer. The main distinction of the two terms is illustrated by the different consequences imposed on a tax payer in event of an unsuccessful attempt. In the case of evasion the consequences are criminal in nature and lead into the imposition of a fine or incarceration or both. While tax avoidance involves no criminal penalty, only payment of the tax plus interest since the tax avoided is considered as a debt due from the tax payer to the Government

⁵⁵ Makinyika, Luoga F.D.A. *op cit supra*, pp 7-8. The writer stated two sources of the Government's source of revenue as Tax sources and non Tax sources. The writer's view was that, among the two sources of the Government's revenue, the tax source is the best as compared to no-tax sources like printing of money, borrowing and Government sponsored gambling. Therefore among the main objectives of tax imposition.

⁵⁶ *ibid* pp 36-38

2.6.1 Tax evasion

Tax evasion can simply be defined as the wilful attempt by the taxpayer to suppress or not to disclose income and hence not to pay tax thereon, where the law clearly stipulates the obligation to report the income and pay the tax. Ordinarily tax evasion involves:-

1. Not filing an income return at all when required to do so under the law.
2. Filing an income tax return but wilfully omitting there income earned by the taxpayer during the relevant year of income,
3. Filing an income tax return containing a wilful misrepresentation of the nature or amount of income earned.
4. Arranging for the receipt of income in a jurisdiction or form whereby that income will not come to the attention of the tax authority.

When a tax payer is obliged to file the annual returns but he doesn't do so, this becomes tax evasion. In other words, failure to file the annual returns may amount to tax evasion when it is done intentionally as we have seen above. This research is focuses on the failure to file the annual returns which is not intentional.

2.6.2 Tax avoidance

Tax avoidance is generally taken to refer to those attempts by the taxpayer to eliminate or to minimize their tax obligations either through openly arranging their income – earning affairs in a manner which takes advantage of the most beneficial provisions of the tax legislation, or to rely on reasonable differences in interpretation of provisions of that legislation.

Failure to file the annual returns by the tax payer may also be with an intention of tax avoidance. Tax avoidance is the practice and technique whereby one so arranges his business affairs such that he pays little or no tax at all but without contravention of the tax laws. Tax avoidance takes the advantage of any loophole and weaknesses deficiencies and loose or vague clauses in the tax legislation to minimize or

eliminate tax liability altogether.⁵⁷ The law provides for an option of a tax payer not to file the annual returns and still not liable for tax evasion as it provides the mechanism of assessing tax liability for the tax payer who has not filed his annual returns.⁵⁸

2.7 Best of his judgment

The best of the judgment is the term applied when the Commissioner determines the amount of income of a person and assesses the tax liability of the tax payer without basing on the annual returns. This is normally applied when the tax payer has not filed the annual returns or the tax payer has filed the annual returns but the commissioner reasonably finds that the annual returns filed are not true and correct.⁵⁹ Therefore, the best of the judgment can be made with or without a return of income. The best of the judgment is necessitated due to the omission on the part of the taxpayer in submitting the return of income or due to the return being not true and correct. What is true and correct return is a question of fact. A return may not be true and correct if the taxpayer has not maintained any books of accounts at all, or even if he has maintained them, they are not reliable or acceptable to the Commissioner.⁶⁰

The best of the judgment of the commissioner is an important concept for the leader of this work as it has been widely used. Sometimes, when the reader is not careful, he may think that, the best of the judgment is the same as failure to file the annual returns but the truth is that, these are two different things except that one results from the other. One of the reasons of applying the best of judgment by the Commissioner is the Failure to file the annual returns by the tax payer. So, one cannot avoid talking about the best of the judgment of the commissioner while talking about failure to file the annual returns by the tax payer.

⁵⁷ Mponguliana R.,G., *op cit supra* p.395

⁵⁸ S. 94(5) of the Income Tax Act *op cit supra*; provides that Where an individual has not filed a return for any year of income, whether or not he has been required by the Commissioner so to do, and the Commissioner considers that, that individual has income chargeable tax for such year, the Commissioner may determine, according to the best of his judgment, the amount of the income of that individual and assess the tax accordingly.

⁵⁹ S. 94(4)b and (5) of the Income Tax Act *op cit supra*

⁶⁰ Mponguliana, R.,G., *op cit supra* pp 291-293

2.8 Presumptive tax

Presumptive Taxation is a concept of taxation according to which income tax is based on "average" income instead of actual income.

Presumptive taxation involves the use of indirect means to ascertain tax liability, which differs from the usual rules based on the taxpayer's accounts. The term "presumptive" is used to indicate that there is a legal presumption that the taxpayer's income is no less than the amount resulting from application of the indirect method.⁶¹

Presumptive tax in Tanzania is applicable to the individual tax payer whose income for a year of income consists exclusively of income from a business having a source in the United Republic of Tanzania, the turnover of the business does not exceed the threshold of Tshs: 20,000,000/= (which is the maximum band in the presumptive tax); and that the individual does not elect to not to apply this provision for the year of income⁶² The presumptive tax is imposed basing on the tax payer through the application of the best of the judgment of the commissioner. As we saw previously, there are two circumstances under which the best of the judgment is applicable, namely when the tax payer has not filed the annual returns and when the tax payer has filed the annual returns but the returns are not accepted by the Commissioner.

This concept of presumptive tax is very important because one of the causes of presumptive tax is the failure to file the annual returns by the tax payer. In other words, while talking about failure to file the annual returns by the tax payer one cannot avoid talking about presumptive tax. The understanding of this concept will simplify the understanding of this work by any reader.

2.9 Ignorance of law

the term ignorance of law is a compound word formed by two words: ignorance and law.

⁶¹ <http://definitions.uslegal.com/p/presumptive-taxation> last retrieved on the 14th October 2013

⁶² Paragraph 2 of the First Schedule of the Income tax Act *op cit supra*

Ignorance is a state of being uninformed (lack of knowledge). The word *ignorant* is an adjective describing a person in the state of being unaware and is often used as an insult to describe individuals who deliberately ignore or disregard important information or facts.⁶³

Ignorance of law means want of knowledge of those laws which a person has a duty to know and which everyman is presumed to know. Ignorance can be voluntary or involuntary. It is voluntary when a person might by taking reasonable pains could have acquired the necessary knowledge. For example every man can acquire knowledge of the laws which have been promulgated. Therefore neglect to become acquainted with them is voluntary ignorance. On the other hand it is involuntary when the ignorance is not of choice and it cannot be overcome by the use of any means of knowledge known to him and within his power. For example ignorance of a law which has not yet been promulgated.

Ignorance of law is the lack of knowledge of legal requirements, no knowledge of legal constraints, not schooled in the law, obtuseness, unawareness of rules, unawareness of rules of conduct, unawareness of standards which are imposed, unawareness of statutory requirements, unfamiliarity, unfamiliarity with established rule of law, unfamiliarity with laws, unfamiliarity with legal requirements, vagueness on the specifics in the law⁶⁴.

For the case of this study, ignorance of the law is implying the lack of knowledge by the tax payer on the tax law and procedure to be followed during tax liability assessment which includes the requirement of filing the annual returns.

Ignorance of law is a very important concept which the tax payer must understand first it's general meaning and secondly it's application in relation with the study. Ignorance of tax law in this study has been presumed to affect the filing the annual returns. The study assumes that, when a person has little knowledge on tax law and procedure, he will not file the annual returns. The opposite is also true, the study

⁶³ http://wiki.answers.com/Q/What_is_ignorance last retrieved on the 14th October 2013

⁶⁴ <http://legal-dictionary.thefreedictionary.com/ignorance+of+law> last retrieved on the 14th October 2013

presumes that, when a person knowledgeable on tax laws and procedure, he will file the annual returns.

2.10 Low income

This word is composed of two words; “low” and “income”

The word “low” means below average in amount, extent, or intensity.⁶⁵

The word income means the amount of money or its equivalent received during a period of time in exchange for labor or services, from the sale of goods or property, or as profit from financial investments.⁶⁶

Therefore the word low income means the income which is below the average income of a person in a particular society. In this research, low income has been used to mean people who are doing business but what they earn is not enough for them to afford paying for their necessities as well as preparation of the annual returns.

This term is an important term to be understood by the leader as in this work, low income has been used as one of the variables which are affecting the failure to file the annual returns by the tax payer

2.11 High tax

This term is composed of two important words; “high” and “tax”.

The word “high” means great, or greater than normal, in quantity, size, or intensity.⁶⁷

The word “tax” has already been defined in 2.1

⁶⁵ <http://www.oxforddictionaries.com/definition/english/low> Last retrieved on the 30th May 2013

⁶⁶ <http://www.thefreedictionary.com/income> Last retrieved on the 30th May 2013

⁶⁷ <http://www.oxforddictionaries.com/definition/english/high> Last retrieved on the 30th May 2013

Therefore the word high tax as it has been used in this work means the tax imposed on the tax payer which is greater than the amount of tax which is proportional with the business of an individual.

The term high tax has a great connection with the failure to file the annual returns and has been widely used throughout the research because; first the tax payers do complain that the tax they are paying is higher as compared to the income they are earning from their business. Therefore the understanding of this term and the way it has been used in this research will help the reader to understand better this work

2.12 Low tax

This word is composed of two words whose definition have already been provided under paragraph 2.1 and 2.11. This term here has been used to mean the amount of tax imposed on the tax payer which is below the actual tax he was supposed to pay proportionately with the income from his business.

This concept has been widely used in this report as it is thought to be one of the effect of the failure to file the annual returns by the tax payer. The understanding of this concept by the reader of this work is very important as it will help him to understand better the work.

2.13 Conclusion

There are several concepts discussed in this chapter which are related with the subject of this study which is failure to file the annual returns by the tax payer. The concepts discussed in this chapter includes, Tax, Tax payer, Annual Returns, Types of returns (Normal returns, Provisional returns and Occasional returns) The legal requirement of the tax payer to file the annual returns, Form of the annual returns, Failure of the tax payer to file the annual returns, Unintentional failure to file the annual returns by the tax payer, Intentional failure to file the annual returns by the tax payer, Tax assessment, Types of tax assessment(Normal assessment, Provisional assessment, Estimated Provisional Assessment, Jeopardy assessment and Additional assessment), Tax evasion, Tax avoidance, low income, high tax, low

tax and ignorance of law. Also the relationship between the above concepts have been shown. It is the expectation of the researcher that this chapter will be of the great importance for easy understanding of the leader of this work.

CHAPTER III
LEGAL AND INSTITUTIONAL FRAMEWORK OF INCOME TAX ON
FAILURE TO FILE THE ANNUAL RETURNS

3.0 Introduction

This chapter is concerned with the ascertaining and analyzing the laws and regulations which govern the tax assessment, payments and the regulatory bodies there under. The following legislations will be analyzed subject to the problem of failure to file the annual returns by the tax payer, these are, the Income Tax Act, 2004 [Cap. 332 RE 2008] and the Tanzania Revenue Authority Act, 1995 [Cap. 399 RE 2006], The Tax Revenue Appeals Act, 2000 [Cap. 408 RE 2006] and the Income Tax Regulations, 2004. GN No. 464 Published on 5/11/2004

3.1 The laws on income tax in Tanzania on tax liability and assessment.

3:1:1 The Tanzania Revenue Authority Act 1995, [Cap. 399 RE 2006]

This law is made to establish the Tanzania Revenue Authority as a central body for the assessment and collection of specified revenue, to administer and enforce the laws relating to such revenue and to provide for related matters.⁶⁸ Therefore, to a greater extent the TRA is the body which was supposed to deal effectively with this problem as it is the one which experiences this behavior of the most of the tax payers not to file the annual returns at the end of the financial year.

TRA, also called “the Authority” in the Tanzania Revenue Act *op cit supra*, is a body corporate with perpetual succession and a common seal and, capable of suing and being sued in its corporate name; borrow money, acquire and dispose of property; and may do all other things which a body corporate may lawfully do.

The Authority is an agency of the Government and is under the general supervision of the Minister for the time being responsible for finance.⁶⁹

The functions of TRA includes, but not limited to, promotion of voluntary tax compliance to the highest degree Possible and to study revenue laws and identify amendments or alterations which may be made to any law for the purposes of

⁶⁸ This is provided in the preamble of the Tanzania Revenue Authority [Cap. 399 RE 2006]

⁶⁹ S. 4(2) and (3) *ibid*

improving the administration of and compliance with revenue laws;⁷⁰ having the duty of promotion of voluntary tax compliance to the highest degree and again being the implementer of all tax laws, this agency of Government was duty bound to find out how to eliminate failure to file the annual returns but things are vice versa. It looks like the TRA are not caring for the same.

According to TRA, individual tax payers are categorized in two groups, small individual traders who are not required to maintain audited accounts and the medium individual traders who are required to maintain audited accounts. Small traders are taxed by presumptive tax system, whereas medium tax payers are taxed based on the annual profit determined from the audited accounts.

The TRA defines Presumptive tax system as a tax system where individuals are taxed based on their annual turnover. The Taxpayers under this system are not obligated to prepare and submit audited accounts to the TRA. However, they may opt not to apply the system and prepare audited accounts and pay tax based on profits.

The TRA states the Conditions which qualify to be in Presumptive tax system i.e. to warrant a person not obliged to prepare and file the annual returns that:-

- the Taxpayer must be a resident individual
- the annual turnover of the business does not exceed the threshold of TSHS 20 million.
- he must conduct business only for the year of income, hence not be engaged in any other activities such as employment or investments. Under the presumptive tax system, individual's income must be derived solely from business sources. If income is derived from other sources such as employment and/or investment the presumptive scheme cannot be used.

⁷⁰ S. 5(1) e and (2) a of the Tanzania Revenue Authority *op cit supra*

- the individual's income for any year must consist exclusively of income from business with sources in the United Republic of Tanzania.

The TRA has gone further to provide the Rates of tax under presumptive taxation that when a person has not filed the annual returns. According to TRA, tax payable is normally established depending on the level of record keeping of the taxpayer. Failure to keep complete records necessitates establishment of tax payable by estimation settled between the TRA officers and taxpayers. Their turnover bands and their tax rates are as stipulated below:

Annual Turnover	Tax Payable when records are incomplete.	Tax Payable when records are complete.
Where turnover does not exceed TSHS. 4,000,000	Nil	Nil
Where turnover exceeds TSHS. 4,000,000 but does not exceed TSHS. 7,500,000	TSHS. 100,000/=	2% of the turnover in excess of TSHS. 4,000,000
Where turnover exceeds TSHS 7,500,000 but does not exceed TSHS. 11,500,000	TSHS. 212,000/=	70,000+2.5% of the turnover in excess of TSHS. 7,500,000
Where turnover exceeds TSHS 11,500,000 but does not exceed TSHS. 16,000,000	TSHS. 364,000/=	170,000+3.0% in excess of TSHS. 11,500,000
Where turnover exceeds TSHS 16,000,000 but does not exceed TSHS. 20,000,000	TSHS. 575,000/=	305,000+3.5% in excess of TSHS. 16,000,000

According to TRA, the individuals who prepare audited accounts are taxpayers whose annual turnover is above TSHS 20,000,000 and are required to prepare

audited accounts/financial statements in respect of their business. Taxpayers under this group are taxed basing on their profits.⁷¹

From the explanation above, obtained from the TRA website, there are following questions which are not answered.

1. When the turnover of the person reaches 20 million, this tax payer moves out of the presumptive tax payer and moves into the category of the tax payers who are supposed to file the annual returns. The question is; how is the turnover of a tax payer who doesn't keep records assessed?

During this research, Ramadhani Masele stated that, normally what leads the tax assessor to raise the payable tax of the tax payer is not the assurance that the taxpayers' turnover is more than 20 million, but the time a taxpayer has done business. According to him, the TRA assessor will always raise the tax rate from one bundle to another yearly and therefore after 4 years, the business person will be asked to prepare the annual returns assuming that the turnover is now more than 20 million.

2. Another question is the base of presumptive tax. What is the base of the tax imposed on the tax payer who has not filed his annual returns?

During this research, the respondents stated that, normally during assessment, when a tax payer has not filed the annual returns, the tax payer has no contribution in imposing the payable tax during tax assessment.

From the above, the problem of failure to file the annual returns by the tax payer has not been solved. It might be due to the advantages the TRA is getting from the failure to file the annual returns by the tax payer as it makes the TRA to reach the amount assigned for it to collect in a particular year. The second reason for the TRA not bothering for the elimination of the failure to file the annual returns by the tax payer, according to the respondents in the category of the businessmen, during assessment of the payable tax on the tax payer who has not filled the annual

⁷¹ <http://www.tra.go.tz/index.php/income-tax-for-individual> last retrieved on the 4th November, 2013

returns, corruption arises. According to the interviewee, once the tax assessor has imposed a higher tax on the tax payer, the tax payer will approach that tax assessor to bribe him and this will drive the tax assessor to assess him a lower tax.

3.1.2 The Income Tax Act, 2004 [Cap. 332 RE 2008]

This Act to make provision for the charge, assessment and collection of Income Tax, for the ascertainment of the income to be charged and for matters incidental thereto.⁷² The Income Tax Act, 2004, came into effect in July 2004. This Act restructured the income tax system in line with modern requirements and repealed the previous Income Tax Act, 1973. Tax is levied on income from employment, income from business and income from investment.

Taxable persons include entities and individuals. An entity can be a corporation or a trust, and a corporation is loosely defined to mean any incorporated or unincorporated body of persons or association. For partnerships, the individuals within the partnership are taxed on their share of the income. Taxation is on worldwide income for residents (or for individuals, of residents of more than two years) while taxation of non-residents is on Tanzanian source income only.

The corporate tax rate is 30%. The individual tax threshold is Tsh 1,620,000 per annum, and the rates are from 14% to a top rate of 30%. Various provisional and final withholding taxes are applied to ease the collection of tax.⁷³

The determination of the individual's tax payable is effected through assessment procedures which begin with the submission of returns of the Tax payer's annual returns for the year of income to the commissioner not later than three months after the end of each year.⁷⁴ The law provides for the contents of the said annual returns which includes the following:-

(i) the person's chargeable income for the year of income from each employment, business and investment and the source of that income;

⁷² Refer to the preamble of The Income Tax Act, 2004 *op cit supra*.

⁷³ http://en.wikipedia.org/wiki/Taxation_in_Tanzania Last retrieved on the 30th May 2002

⁷⁴ S. 91(1) of the Income Tax Act, 2004; *op cit supra*.

- (ii) the person's total income for the year of income and the income tax payable with respect to that income.
- (iii) in the case of a domestic permanent establishment of a non-resident person, the permanent establishment's repatriated income for the year of income and the income tax payable with respect to that income.
- (iv) any income tax paid by the person for the year of income by withholding, instalment or assessment for which a tax credit is available.
- (v) the amount of income tax still to be paid for the year of income calculated as the sum of the tax referred to in subparagraphs (ii) and (iii) less the tax already paid referred to in subparagraph (iv); and
- (vi) any other information that the Commissioner may prescribe.

The annual returns must also include a declaration that the return is complete and accurate and furthermore, the annual report must be signed by -

- (i) the person ; and
- (ii) a certified public accountant in public practice.⁷⁵

After an individual has filed a return of income, the Commissioner may accept such return and make assessment on the basis of the return. However, if the Commissioner has reasonable cause to believe that such return is not true and correct, he is required to determine, *according to the best of his judgement*, the amount of the income of the individual and assess the tax accordingly. The same is applied to an individual who has not filed a return for any year of income and the Commissioner considers that, that individual has income chargeable to tax for such year, the Commissioner is empowered to, according to the best of his judgement, determine the amount of income of that person and proceed to assess the payable tax accordingly.⁷⁶

It is worth noting, consequently, that, there are two circumstances in which the Commissioner basing on “the best of his judgement” assesses the tax payable by the

⁷⁵ S. 91(1) of the Income Tax Act, 2004; *op cit supra*

⁷⁶ S. 94(4) and (5) *ibid*

taxpayer, namely when the commissioner doubts about the returns filed by the taxpayer and when the taxpayer has failed to file the annual returns. So, one may be tempted to hurriedly come up with the views that, it is not possible for the tax payers to prefer “the best of the judgement of the commissioner” instead of the actual tax which would be derived from the annual returns. There must be a certain driving force for the same, which, apart from resulting into the application of “the best of the judgement of the commissioner”, it has not solved the people’s complains and hatefulness of the tax collector to the tax payers.

The canons of taxation, as promulgated by Adam Smith in the *Wealth of Nations*,⁷⁷ are to the extent that; first, taxation system must consider equity. This means that, what an individual should pay as tax must be proportional to his ability. This means that, people with equal ability should be treated equally (Horizontal equity) and people with different abilities should be treated differently (Vertical equity). It is doubtful as to whether the failure to file the annual returns by the tax payer may meet that cannon properly.

Secondly, the amount which each tax payer is bound to pay, ought to be certain and not arbitrary. This includes too, the time of payment and the manner of payment. These need to be clear and plain to the tax payer and to every other person. Failure to file the annual return which leads into the application of the best of judgment of the Commissioner is doubtful as to whether it may meet this cannon which is certainty.

Thirdly, it is doubtful as to whether failure to file the annual returns by the tax payer may make the tax to be paid conveniently. This will happen if the amount approximated by the commissioner is reasonably higher than the amount which actually was supposed to be taxed on the tax payer.

Fourthly, it is doubtful as to whether failure to file the annual returns by the tax payer is economical. This principle states that there should be economy in tax

⁷⁷ Vols. 1-3, London: Methuen, 1961 as cited by Makinyika, Luoga F.D.A. *A sourcebook of Income Tax Law in Tanzania*(2007) pp 14-16 . Also, Patrick Conway (1994) Policy Research Working Paper *The Economics of cash Shortage* P.8

administration. The cost of tax collection should be lower than the amount of tax collected. It may not serve any purpose, if the taxes imposed are widespread but are difficult to administer. Therefore, it would make no sense to impose certain taxes, if it is difficult to administer. Presumptive tax makes taxpayers fear to pay tax voluntarily and therefore leads into the government spending more money looking for the collection of the said tax.

Due to the weakness and disadvantages of the use of presumptive tax due to the failure of the tax payers to file annual returns, it becomes mandatory to find out the cause and effects of the failure by the tax payer to file the annual returns and consequences thereof (i.e. effects).⁷⁸

3.2 Regulatory bodies on the income tax assessment.

3.2.1 The Regulatory Bodies under The Tax Revenue Appeals Act 1995, [Cap. 408 RE 2006]

This Act provides for the establishment of the Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal and for related matters.⁷⁹

3.2.1.1 The Tax Revenue Appeals Board

This board is established under The Tax Revenue Appeals Act, [Cap. 408 RE 2006] and it consists of the following members:-

- (a) a Chairman who must be appointed by the Minister responsible for finance;
- (b) two Vice-Chairmen who must be appointed by the Minister responsible for finance, one of whom shall be from Tanzania Zanzibar,
- (c) four other members who must be appointed by the Minister responsible for finance from each region who shall sit in the Board for the purposes of hearing and determining any appeal originating in the region from which they are appointed.

⁷⁸ Mponguliana, R. G. (2000) *op cit supra* (pp 4 &5) . This writer was of the view that filling the annual returns and documents on or by the statutory due date is one indications of tax compliance. However, this writer warned that it is not adequate that the returns are filled on time but the filed returns must report the correct income or tax due to the Government; understatement of income or overstating the expenses is as bad as non-filling the annual returns, from this, not only that a tax payer is obliged to file the annual returns bur the filled annual returns must report the correct income or tax due to the Government.

⁷⁹ Refer to the preamble of The Tax Revenue Appeals Act *op cit supra*.

A person may be appointed to be: –

- (a) Chairman if he is a principal legal officer or a person having adequate knowledge of taxation;
- (b) Member of the Board if he has knowledge of, and experience in, taxation, commercial or financial matters.⁸⁰

The Board has the sole original jurisdiction in all proceedings of a civil nature in respect of disputes arising from revenue laws administered by the Tanzania Revenue Authority.⁸¹

3.2.1.2 The Tax Revenue Appeals Tribunal

This tribunal is also established under The Tax Revenue Appeals Act 2000 [Cap. 408 RE 2006] and it consists of :-

- (a) a Chairman who must be appointed by the President after consultation with the Chief Justice;
- (b) two Vice-Chairmen who must be appointed by the President, one of whom shall be from Tanzania, Zanzibar;
- (c) four other members who shall be appointed by the Minister;

A person may be appointed to be –

- (a) Chairman if he is a judge of the High Court;
- (b) member of the Tribunal if he has knowledge of, and experience in, taxation, commercial or financial matters.⁸²

For the case of jurisdiction, the tribunal's has the sole jurisdiction in all appeals arising from decision of the Board on disputes on which original jurisdiction is conferred on the Board.

Secondly, the Tribunal exercises general powers of supervision over the Board in the exercise of its powers under this Act and may, in that respect, call for and

⁸⁰ S. 4 The Tax Revenue Appeals Act *op cit supra*

⁸¹ S. 7 *Ibid*

⁸² S. 8 *Ibid*

inspect the records of any proceedings before the Board and may revise any decision thereof.⁸³ This implies that, the Tribunal is having the appellate jurisdiction as well as supervisory powers (it can do revision) over the decision of the Tanzania Revenue Appeal Board

3.3 Objection to tax assessment under The Tax Revenue Appeals Act 2000, [Cap. 408 RE 2006]

Any person who disputes an assessment made upon him may, by notice in writing to the Commissioner General, object to the assessment. A notice of objection shall contain a statement in precise form, of grounds in respect of which the objection to an assessment is made, and shall be filed with the Commissioner General within thirty days from the date of service of the notice of the assessment. Where a notice of objection to an assessment is given, the person objecting shall, pending the final determination of the objection to an assessment by the Commissioner General in accordance with section 13, pay the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater. The Commissioner General may, upon being satisfied that there exist good reasons warranting reduction or waiver of tax payable, direct that a lesser amount be paid or waive the required tax deposit.

On receipt of the notice of objection, the Commissioner General may admit the notice of objection to assessment of tax; or refuse to admit the notice of objection to assessment of tax.⁸⁴

The Commissioner-General shall, upon admission of an Objection, determine the objection as filed, or call for any evidence as may appear to be necessary for the determination of the objection, and may, in that respect –

- (a) amend the assessment in accordance with the objection;
- (b) amend the assessment in the light of any further evidence that has been received; or

⁸³ S. 11 The Tax Revenue Appeals Act *op cit supra*

⁸⁴ S.12 (1), (2), (3), (4) and (5) *Ibid*

(a) refuse to amend the assessment.⁸⁵

Any person who is aggrieved by the final determination of the assessment of tax by Commissioner General may appeal to the Board.⁸⁶

The Board shall not entertain an appeal pursuant to this section unless -

(a) a notice of appeal is served upon the Commissioner General within thirty days following the date on which a notice of final determination of assessment of tax is served on the appellant; and

(b) the appeal is lodged with the Board within forty-five days following the date on which the notice of final determination of assessment of tax is served on the appellant.⁸⁷

A party who is aggrieved by the decision of the Board may appeal against the decision to the Tribunal within thirty days from the date of the decision, and shall serve notice to the opposite party within fifteen days following the date on which the notice of appeal was filed to the Tribunal.⁸⁸

Any person who is aggrieved by the decision of the Tribunal may prefer an appeal to the Court of Appeal in which the provisions of the Appellate Jurisdiction Act and the rules made there under shall apply *mutatis mutandis* to appeals from the decision of the Tribunal.⁸⁹

As one will realize, the above two regulatory bodies which in fact functions as appellate bodies after someone has appealed against the tax liability assessment, cannot solve the problem which is the failure to file the annual returns by the tax payer on the following grounds:-

1. The tax payer who has not filed annual returns has no document to rely on.

⁸⁵ S. 13(1) a, b and c of The Tax Revenue Appeals Act *op cit supra*

⁸⁶S. 16 (1) *Ibid*

⁸⁷S 16 (3) *Ibid*

⁸⁸S. 16 (4) *Ibid*

⁸⁹ S. 25 (1) and (2) *ibid*

It is doubtful as to whether the person who has not filed his annual returns may successfully object the assessed tax without documents to rely on. These regulatory bodies aim at assisting those tax payers who have filed the annual returns though not stated

2. Most of tax payers who do not file the annual returns are ignorant of the tax law and procedure

During the research 45% of the respondents responded that, most of the tax payers are ignorant of tax law and procedure while the Proceedings of the Board and Tribunal are of judicial nature and must be conducted on such occasions and at the places as the Chairman may direct⁹⁰ and that the provisions of the Civil Procedure Code, relating to summoning of witnesses, the taking of testimony on oath, and noncompliance with a witness summons shall apply in relation to an appeal before the Board but the Tribunal may not admit any fresh evidence save in the circumstance in which the High Court may admit fresh evidence on a first appeal in a civil case.⁹¹ With these legal procedure for a person ignorant of tax law and procedure, no access is provided for him, though technically provided

The Tax Revenue Appeals Act *op cit supra* provides that, the onus of proving that the assessment or decision in respect of which an appeal is preferred is excessive or erroneous is on the appellant;⁹²

To put the last nail on the coffin of accessing the Board and the Tribunal showing that, they are functioning judicially, any decree or order of the Board or the Tribunal given in the exercise of its jurisdiction under The Tax Revenue Appeals Act *op cit supra* must be enforceable and executed as if it were a decree or order issued by a court of law.

⁹⁰ S. 18(1) of The Tax Revenue Appeals Act *op cit supra*

⁹¹ S. 17(2) *Ibid*

⁹² S. 18(2) b *Ibid*

**3.4 Regulatory body under the Income Tax Regulations, 2004; GN No. 464
Published on 5/11/2004.**

3.4.1 The District Tax Advisory Committee.

This committee is established under the Income Tax Regulations, 2004; GN No. 464
Published on 5/11/2004 and it is composed of:-

- a) The District Commissioner who is the Chairman.
- b) District Revenue Officer who is the secretary of the tribunal.
- c) Mayor of each town, municipality or city situated in the District.
- d) Members of the parliament or house of representatives in the District.
- e) District executive Director of the District.
- f) The town, municipal or city director of each town, municipal or city situated in the district.
- g) District co-operative officer of the district.
- h) The officer commanding district of the district.
- i) The District Trade officer of the District
- j) Up to two members nominated by the district commissioner representing the business community
- k) The maximum of two persons co-opted to attend the session of the committee as in the opinion of the Chairman and the secretary, are fit to facilitate the work of the committee.⁹³

The functions of the District Tax Advisory Committee *inter alia* includes

1. To advise and provide necessary information to the Commissioner that may be taken into account when assessing the tax liability of a resident of the District,⁹⁴

⁹³ R. 41(1),(2) and (3) of The Income Tax Regulations, 2004

⁹⁴ R. 42(2) e *ibid*

2. To deal with tax payer's general complaints where they are directed to the committee's attention and provide non-binding recommendations with respect thereto, but shall not be involved in assessing tax or adjudicating tax disputes.⁹⁵

3.4.1.1 The weakness of the committee in relation to the causes and effects of the tax payer's failure to file the annual returns.

The District Tax Advisory Committee has no means of solving the effects of the failure of the taxpayer to file the annual returns nor can it assist to find out the causes thereof. The reason is that, the District Tax Advisory Committee, as some one will learn from its name it is meant for advising the TRA in order to have the smooth running of their day today functioning. As we have seen under regulation 42, the body may receive the taxpayers general complaints but, at the end, the Committee will provide non-binding recommendations. So, the District Tax Advisory Committee cannot solve the problem. Furthermore, during the interview with the TRA – Shinyanga, the researcher realized that, the District Advisory Committee sits only twice in a year.

3.5 Conclusion

The bodies created under The Tax Revenue Appeals Act [Cap. 408 RE 2006] ; Tax Revenue Appeals Board and the Tax Revenue Appeals Tribunal and Income Tax Regulations, 2004 GN No. 464 Published on 5/11/2004; the District Advisory Committee; have been seen not to accommodate the problem of causes and consequences of failure to file the annual return by the tax payer. The Income Tax Act, 2004 [Cap. 332 RE 2008] has also not done anything concern with the solution of the causes and consequences of failure to file the annual returns by the tax payer.

⁹⁵ R. 42(2) g of The Income Tax Regulations *op cit supra*

CHAPTER IV
DATA PRESENTATION, ANALYSIS AND INTERPRETATION OF
FINDINGS.

4.0 Introduction

This chapter deals with data presentation and analysis. The presentation is made in both, tabular form and by using a pie chart by means of SPSS window program. The two modes of presenting the data have been purposely made on the area where the researcher thought that it was important to make it simple for the reader of this work to understand. Thereafter, the presented data are analyzed in relation to the law and the problem under research. .

4.1 Presentation of the collected data and analysis.

As the researcher introduced in chapter one of this work, this research involved 120 respondents from the following categories from whom the data were collected;

65 Businessmen and women, 10 men and women not in business, 15 people who were in business in the previous time but are no longer in business now, 15 TRA officials and 15 tax consultants.

The interview and questionnaires scheduled were done intending to find out the following:-

1. Mode on which most of the taxpayers, whose tax liability, are assessed. In here, the researcher wanted to know whether or not most of the tax payers are assessed basing on filing the annual returns or without filing the annual returns.
2. Knowledge of the tax payers on tax law and procedure to be followed for tax assessment in reaching to the payable tax. In here, the questions asked aimed at discovering the knowledge the tax payers have and, therefore, find out whether the failure to file the annual returns by the tax payers was always done intentionally or not
3. Knowledge of the tax payers on the advantage of filing the annual returns as a base of payable tax. This question aimed at finding out as to whether or not the tax

payers are aware of the advantages of filing the annual returns as compared to non-filing the annual returns by a tax payer during tax assessment.

4. Causes for the tax payers not to file their annual returns. At this juncture, the researcher aimed directly to find out the reasons for the tax payers failure to file the annual returns.

5. Effects of failure to file the annual returns on the tax payer. The question on this aimed at finding out the feelings, experience and thoughts the respondents had on the consequences of the failure to file the annual returns by the tax payer.

4.2 The Responses of the interviewees.

4.2.1 Response on mode of assessment.

At this juncture, the questions asked aimed at finding out the mode of assessment which is being preferred by most of the tax payers. For the TRA officials, it aimed at getting their experience on the people who go to TRA in order to have their tax liability assessed. For the tax consultants, according to their experience, the questions aimed at finding the mode of assessment they think that it is preferred and mostly used by the tax payers. To the rest of the groups, the questions based on the mode of tax assessment of their preference. The following are the findings-

Table 4.1 Response on mode of assessment.

Category of respondents			Frequency	Percent	Valid Percent	Cumulative Percent
TRA	Valid	By filing annual returns	3	20.0	20.0	20.0
		By asking the tax assessor to approximate the tax	9	60.0	60.0	80.0
		Both	1	6.7	6.7	86.7
		I don't know	2	13.3	13.3	100.0
		Total	15	100.0	100.0	
Businessperson	Valid	By filing annual returns	8	12.3	12.3	12.3
		By asking the tax assessor to approximate the tax	44	67.7	67.7	80.0
		Both	10	15.4	15.4	95.4
		never pay tax	2	3.1	3.1	98.5
		I don't know	1	1.5	1.5	100.0
		Total	65	100.0	100.0	
Tax consultants	Valid	By filing annual returns	1	6.7	6.7	6.7
		By asking the tax assessor to approximate the tax	7	46.7	46.7	53.3
		Both	6	40.0	40.0	93.3
		never pay tax	1	6.7	6.7	100.0
		Total	15	100.0	100.0	
Non business person	Valid	By asking the tax assessor to approximate the tax	5	50.0	50.0	50.0
		Both	2	20.0	20.0	70.0
		never pay tax	3	30.0	30.0	100.0
		Total	10	100.0	100.0	
Former business persons	Valid	By filing annual returns	1	6.7	6.7	6.7
		By asking the tax assessor to approximate the tax	9	60.0	60.0	66.7
		Both	1	6.7	6.7	73.3
		I don't know	4	26.7	26.7	100.0
		Total	15	100.0	100.0	

Responses from TRA

The findings indicate that, according to the experience by the TRA officials, most of the tax payers do prefer to have their tax assessed without filing the annual returns i.e. basing on the best of the judgment of the commissioner. According to TRA official's research interview result, the percentage of taxpayers who preferred to not to file the annual returns is 60% of all tax payers.

Responses from Businesspersons

According to the research, most of the businessmen/women, i.e. 67.7% of the interviewee indicated to prefer to have their tax assessed without filing the annual returns i.e. basing on the best of the judgment of the commissioner.

Responses by Tax consultants

The tax consultants showed to know that the largest number of the tax payers i.e. 46.7% do prefer to have their tax assessed without filing the annual returns i.e. basing on the best of judgment of the commissioner. During interview, the Tax consultants said that, there is a large number of tax payers who come for consultation but those who engage them to prepare the annual returns are very few.

Responses by Non business People

This group being composed of the people have no experience in business, their response was based on what they thought after having been explained on the whole scenario of tax assessment. 50% of the non business persons, who were interviewed, responded to prefer to have their tax assessed basing on the best of the judgment of the commissioner. This was the largest number of respondents for non business men and women. From this pie chart it goes without saying that, most of the non businessmen and women prefer non filing of the annual returns.

Responses by the former Business People

This category of respondents, was composed of people who are but currently doing business now. But, different from the non business people, these have the experience in business. They stopped doing business due to various reasons. So, their response was derived from their former experience in doing business. This

category of interviewee showed that, most of the tax payers would like to have their tax liability assessed basing on the best of the commissioner. The result of the interview indicated that 60% of interviewees of this group prefer the best of the judgment of the commissioner.

SUMMARY ON

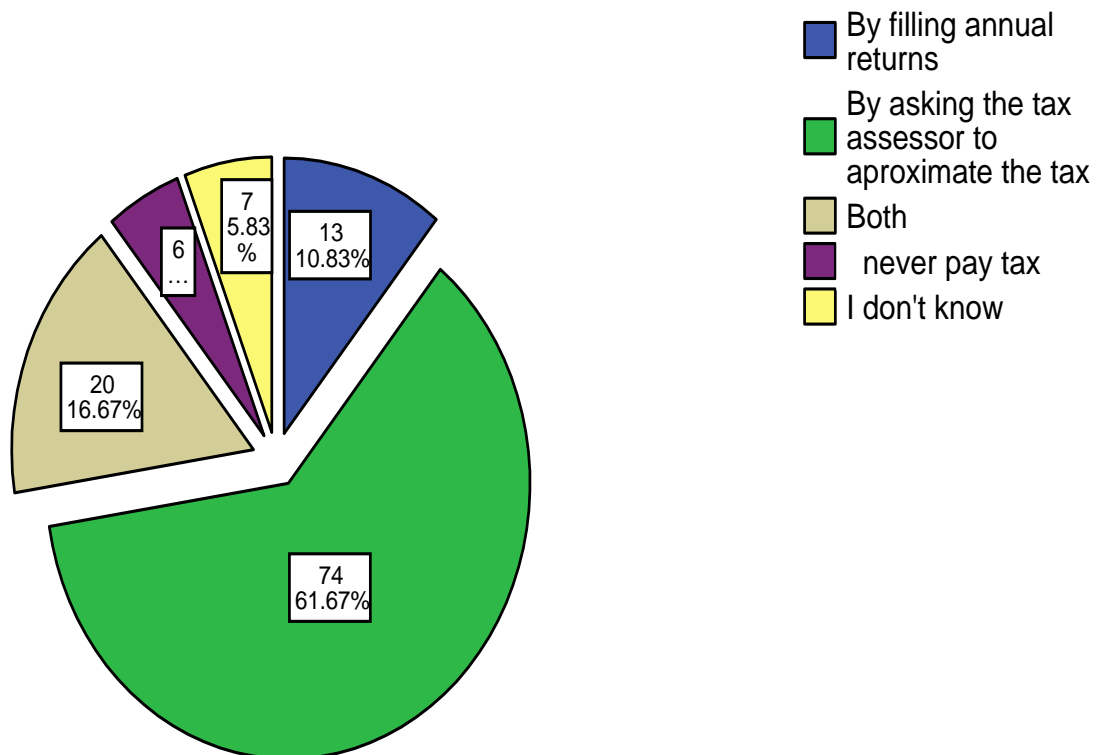
Mode of assessment

The following is the summary that shows the total response of interviewees on the mode of assessment

Table 4.2 Summary of responses on mode of assessment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	By filing annual returns	13	10.8	10.8	10.8
	By asking the tax assessor to approximate the tax	74	61.7	61.7	72.5
	Both	20	16.7	16.7	89.2
	never pay tax	6	5.0	5.0	94.2
	I don't know	7	5.8	5.8	100.0
	Total	120	100.0	100.0	

Figure 4.1 Summary of the mode of assessment for all respondents



From the above data representation, most of the respondents indicated that, most of the taxpayers do get their tax assessed without filing the annual returns i.e. through presumptive tax. The research showed that, out of 120 interviewees, 74 admitted so; this is 61.7% of all interviewee who were interviewed on this question. On the other side, only 13 people out of 120 interviewee responded on the procedure of tax assessment basing on annual returns filled. As it can be seen from the pie chart as well as the table above, this is only 10.8% of all respondents. In brief the results above is tantamount to saying that, most of the tax payers do pay their taxes without filing their annual returns.

4.2.2 Knowledge of The Tax Payer on tax laws and Procedure

The next test was on the knowledge of tax laws and procedure required to be followed by a tax payer during the assessment for the tax liability. The findings were done on all five groups of respondents with different aims. For the TRA officials, the interview aimed at finding out, from their experience, how far the tax payers are knowledgeable about tax law and the procedure required for the tax payer during Tax liability assessment. The same for the tax consultants, the research aimed at finding out the way they find the tax payers' knowledge on the procedure to be followed during tax assessment as well as the tax law. To the rest of the groups, the question asked aimed at finding out their knowledge on the tax laws and assessment procedure. The results were as follows:-

Table 4.3 Responses on Knowledge of The Tax Payer on tax laws and Procedure

Category of respondents			Frequency	Percent	Valid Percent	Cumulative Percent
TRA	Valid	Yes	8	53.3	53.3	53.3
		A little	4	26.7	26.7	80.0
		no	1	6.7	6.7	86.7
		I don't know	2	13.3	13.3	100.0
		Total	15	100.0	100.0	
Businessperson	Valid	Yes	10	15.4	15.4	15.4
		Somehow	9	13.8	13.8	29.2
		A little	38	58.5	58.5	87.7
		no	3	4.6	4.6	92.3
		I don't know	5	7.7	7.7	100.0
Total	65	100.0	100.0			
Tax consultants	Valid	Yes	12	80.0	80.0	80.0
		A little	3	20.0	20.0	100.0
		Total	15	100.0	100.0	
Non business person	Valid	Somehow	4	40.0	40.0	40.0
		A little	6	60.0	60.0	100.0
		Total	10	100.0	100.0	
Former business persons	Valid	Yes	8	53.3	53.3	53.3
		Somehow	1	6.7	6.7	60.0
		A little	3	20.0	20.0	80.0
		I don't know	3	20.0	20.0	100.0
		Total	15	100.0	100.0	

Responses by the TRA

The research found that, according to the TRA officials, tax payers are aware of the procedure required during the assessment for the payable tax. This was indicated by 53.3% of the interviewees from the group of TRA officials who indicated that, tax payers are aware of tax laws and procedures to be followed during tax assessment.

Responses by Businesspersons

This being the group of the respondents who are in business, their interview was very specific aiming at finding the knowledge of tax law and procedure among themselves. The response from this group was to the effect that, tax payers know little on tax law and the procedure to be followed by the tax payers during tax assessment .About 58.5% of the respondents responded so.

Responses by the Tax Consultants

Tax consultants joined the TRA officials in their response. According to them, tax payers know very much about the procedure to be followed by the tax payer during tax assessment. I think, their views were similar because of the nature of their works. About 80% of the interviewees of this category were of the view that tax payers know the procedures to be followed by them during tax assessment.

Responses by the Non business Persons

The non businessmen/women were of the view that tax laws and the knowledge of the procedure to be followed by the tax payer during tax assessment is not well known. 60% of the interviewees responded that, the knowledge on the procedure to be followed by the tax payers during tax assessment is somehow known to the tax payer.

SUMMARY ON

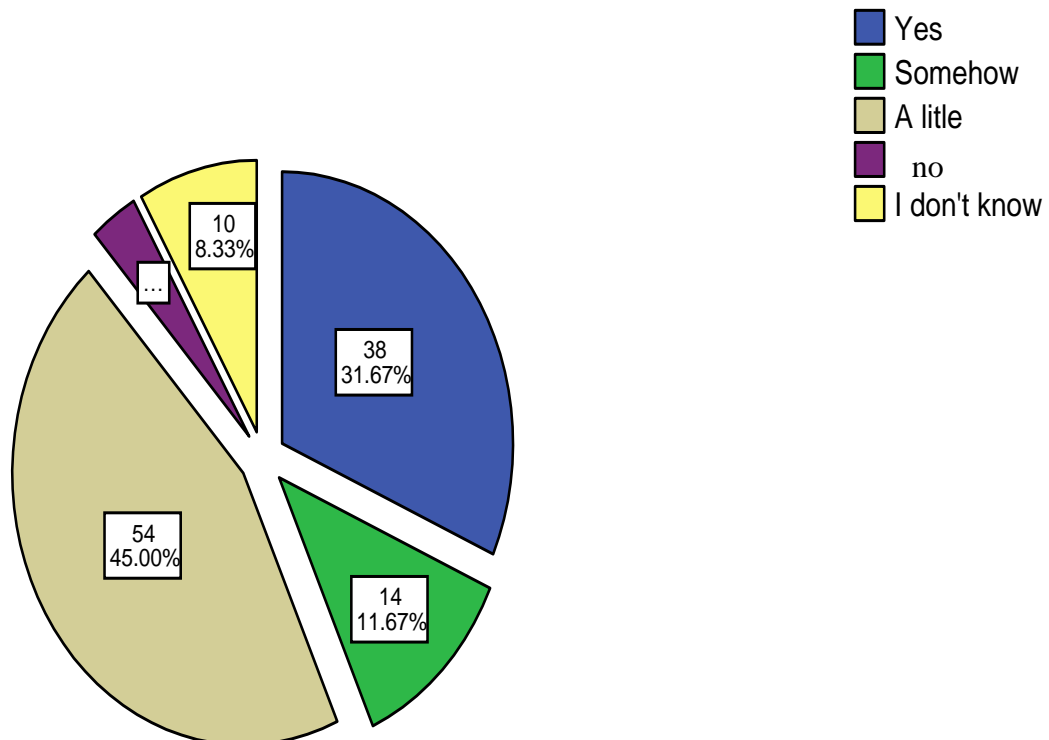
Knowledge of the tax payer on procedure

The following is the summary that shows the total responses of interviewee on Knowledge of the tax payer on procedure

Table 4.4 Summary on Knowledge of the tax payer on procedure

	Frequency	Percent	Valid Percent	Cumulative Percent
Valid Yes	38	31.7	31.7	31.7
Somehow	14	11.7	11.7	43.3
A little	54	45.0	45.0	88.3
no	4	3.3	3.3	91.7
I don't know	10	8.3	8.3	100.0
Total	120	100.0	100.0	

Figure 4.2 Summary on Knowledge of the Tax Payers on Procedure



The summary of all collected data indicated that, tax payers knowledge of the tax laws and procedure required by the tax payer to be followed during tax assessment is very low. This implies that, tax payers have little knowledge on tax law and procedure. The research on this question was to the effect that, 54 respondents out of 120 which is the same as 45% of all interviewees responded that most of the tax payers have little knowledge on tax law and procedure required to be followed by the tax payer during tax assessment.

4.2.3 Knowledge of the Tax Payer on The Advantages of Filing the Annual Returns

During field work, the respondents were interviewed on whether or not they are aware of the advantage of filing the annual returns during tax liability assessment. Again here, the TRA officials and Tax consultants were interviewed on the way they see the tax payers with reference to the advantage of filing the annual returns by the tax payers. The rest of the groups were interviewed on their own knowledge as to what they know and believe on the advantage of filing the annual returns during tax liability assessment.

The following is the tabular presentation of the collected data from the 5 categories of the respondents on the question on advantages of filing the annual returns over non filing the annual returns during tax assessment.

Table 4.5 Responses on Knowledge of the Tax Payer on The Advantages of Filling the Annual Returns

Category of respondents			Frequency	Percent	Valid Percent	Cumulative Percent
TRA	Valid	Yes	9	60.0	60.0	60.0
		Somehow	1	6.7	6.7	66.7
		A little	2	13.3	13.3	80.0
		I don't know	3	20.0	20.0	100.0
		Total	15	100.0	100.0	
Businessperson	Valid	Yes	14	21.5	21.5	21.5
		Somehow	6	9.2	9.2	30.8
		A little	33	50.8	50.8	81.5
		No	3	4.6	4.6	86.2
		I don't know	9	13.8	13.8	100.0
		Total	65	100.0	100.0	
Tax consultants	Valid	Yes	14	93.3	93.3	93.3
		A little	1	6.7	6.7	100.0
		Total	15	100.0	100.0	
Non business person	Valid	Yes	1	10.0	10.0	10.0
		Somehow	3	30.0	30.0	40.0
		A little	4	40.0	40.0	80.0
		No	1	10.0	10.0	90.0
		I don't know	1	10.0	10.0	100.0
		Total	10	100.0	100.0	
Former business persons	Valid	Yes	6	40.0	40.0	40.0
		Somehow	1	6.7	6.7	46.7
		A little	2	13.3	13.3	60.0
		I don't know	6	40.0	40.0	100.0
		Total	15	100.0	100.0	

Responses by the TRA officials

The respondents from this category are the ones who are experienced with the tax payers' behaviour and awareness on the whole process of tax assessment. According to the TRA officials, the tax payers are aware of the advantages of filing the annual returns. According to the results of the interview, 60% of the respondents in this category responded to the effect that the tax payers are aware of the advantage of filing the annual returns during tax liability assessment.

Responses by the Businesspersons

The respondents from the group of businessmen/women clearly showed that business persons don't clearly understand the importance and advantage of filing the annual returns during tax liability assessment. During the research, 50.7% of the interviewee responded to have known the advantage of filing the annual returns just a little. Therefore, the advantage of filing the annual returns over non filing the annual returns is not well known to them.

Responses by the Tax Consultants

Once again, the tax consultants joined a hand with the TRA officials to the effect that tax payers are aware of the importance of filing the annual returns. This was indicated by the results of the interview with most of the respondents in this category. According to the response of this category of interviewee, 93.33% indicated that tax payers are aware of the advantages of filing the annual returns during tax liability assessment by TRA.

Responses by the Non business persons.

These respondents had different views on the knowledge of the advantages of filing the annual returns over non filing the annual returns by the tax payers. However, 40% of the respondents in this category of interviewees responded that, tax payers know little about the advantages of filing the annual returns during the assessment of the tax liability. This number of respondents in this group was the highest one.

Responses from the former businessmen/women

This category which applied their long experience on their former activity, were of the view that, most of the business persons do not know the advantages of filing the annual returns over non filling the annual returns during tax assessment. 40% of the respondents from this group were to the effect that tax payers do not know the advantages of filling the annual returns during tax assessment.

SUMMARY ON

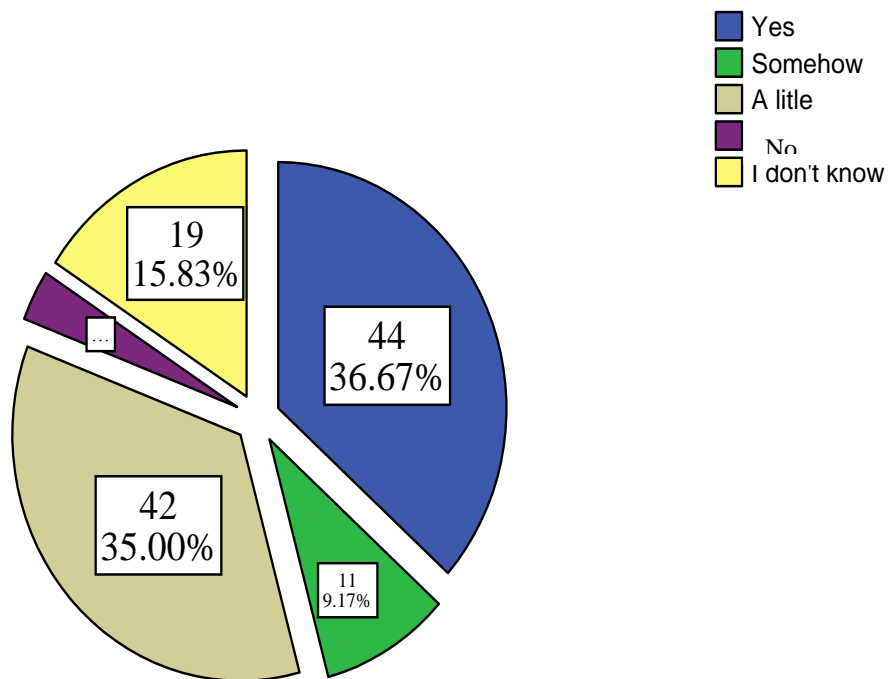
Knowledge of the tax payer on the advantages of filing the annual returns

The following is the summary that shows the responses of interviewees on Knowledge of the tax payer on the advantages of filing the annual returns.

Table 4.6 Summary on Knowledge of the tax payer on the advantages of filling the annual returns.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	44	36.7	36.7	36.7
	Somehow	11	9.2	9.2	45.8
	A little	42	35.0	35.0	80.8
	No	4	3.3	3.3	84.2
	I don't know	19	15.8	15.8	100.0
	Total	120	100.0	100.0	

Figure 4.3 Summary on Knowledge of the Tax Payers on the Advantages of Filling The Annual Returns . All respondents.



The general overview on the advantages of filing the annual returns indicated two thoughts. One was that, tax payers know little on the advantages of filing the annual returns while the other was that the tax payers are well knowledgeable about the advantages of filing the annual returns. The two positions differ by 1.67% . However, according to the results from the findings of the field work; the highest respondents of the research showed that, filing the annual returns is advantageous to the businessperson as non filling the annual returns. According to the results, 44 respondents out of 120 i.e. 36.7% (the highest number) indicated that, it is advantageous for the tax payer to file the annual returns and that the tax payers know that.

4.2.4 Causes for the Tax Payers not Filing Annual Returns.

Having seen that filing annual returns by the tax payer is advantageous and tax payers are aware of it as per the summary above, the next step was to find out the causes for the taxpayers' failure to file the annual returns. This question was very important at this juncture in order to find out the reason behind the tax payer' failure to file their annual returns during their tax assessment

Table 4.7 responses on Causes for the Tax Payers not File Annual Returns.

Category of respondents			Frequency	Percent	Valid Percent	Cumulative Percent
TRA	Valid	Ignorance of the law	8	53.3	53.3	53.3
		Low income	5	33.3	33.3	86.7
		fear to pay more tax	2	13.3	13.3	100.0
		Total	15	100.0	100.0	
Businessperson	Valid	Ignorance of the law	21	32.3	32.3	32.3
		Low income	34	52.3	52.3	84.6
		fear to pay more tax	8	12.3	12.3	96.9
		I don't know the cause	2	3.1	3.1	100.0
		Total	65	100.0	100.0	
Tax consultants	Valid	Ignorance of the law	6	40.0	40.0	40.0
		Low income	6	40.0	40.0	80.0
		fear to pay more tax	3	20.0	20.0	100.0
		Total	15	100.0	100.0	
Non business person	Valid	Ignorance of the law	2	20.0	20.0	20.0
		Low income	7	70.0	70.0	90.0
		fear to pay more tax	1	10.0	10.0	100.0
		Total	10	100.0	100.0	
Former business persons	Valid	Ignorance of the law	4	26.7	26.7	26.7
		Low income	3	20.0	20.0	46.7
		fear to pay more tax	6	40.0	40.0	86.7
		I don't know the cause	2	13.3	13.3	100.0
		Total	15	100.0	100.0	

Respondents from TRA

Most of the TRA officials were to the effect that, what causes the tax payers fail to file the annual returns was due to the lack of knowledge on tax law and procedure. Some interviewees clarified that, the ignorance of the tax payers on the filing of the annual returns is on law and application of thereof during tax liability assessment. According to the TRA officials, some tax payers do think that, filing the annual returns will attract more tax, some thing, which is not always true according to you?. Consequently, 53.33% of the TRA respondents responded that the causes of failure to file the annual returns by the tax payers is ignorance i.e. lack of knowledge on tax law and procedure to be followed by a tax payer during tax liability assessment.

Respondents Businesspersons.

This category of interviewees, most of them, 52.31% responded that, failure of the tax payers to file the annual returns during tax liability assessment is due to the low income. According to the respondents in this group, in order to prepare the annual returns one needs to engage a tax consultant whose charge is always not less than Tsh: 200,000/= while at TRA under presumptive tax, one may be asked to pay 100,000/= on wards and since most of them are having low income, then they find that paying for the tax consultant (which is the important condition for filing the annual returns) is the wastage of money.

Respondents; Tax consultants.

Tax consultants' opinion on the cause of the tax payers' failure to file the annual returns was divided into two; while 40% of the interviewees in this category responded that, is due to the ignorance, another 40% responded that, the said failure is due to the low income. As long as two answers were given equal weight, one may, without hesitation say that, the tax consultants focus on the causes of the failure to file the annual returns to be:-

- 1) Ignorance and
- 2) Low income.

Respondents; former businesspersons

The interviewees who were formally businessmen/women were to the effect that 70% of their respondents were of the view that, failure of the tax payer to file the annual returns were due to the low income. According to them, low income makes the tax payer fail to prepare the prerequisites (documents to be filled) for filing the annual returns; as preparation thereof has financial implication which the tax payers are not able to meet.

Respondents; non Businesspersons.

Non businessmen/women were of the view that, failure to file the annual returns by the tax payer is due to the fear to pay more tax. According to the interview with

businessman/woman, increasing the profit is the first thing to be considered. According to most of the interviewees of this group, tax seems to be one of the causes of reducing the profit. So, always a tax payer will try his level best to make sure he is avoiding paying more tax and whenever there is any loophole, not paying tax at all.

A tax payer thinks that, filing the annual returns is exposing his wealthy to the tax assessor. According to this group, most of the businessmen/women do not file the annual returns deliberately aiming at hiding his wealthy so that he doesn't pay more tax. 40% of the interviewee in this group, which was the largest number of respondents of this group, responded that failure to file the annual returns by the tax payer is due to the fear to pay more tax.

SUMMARY ON

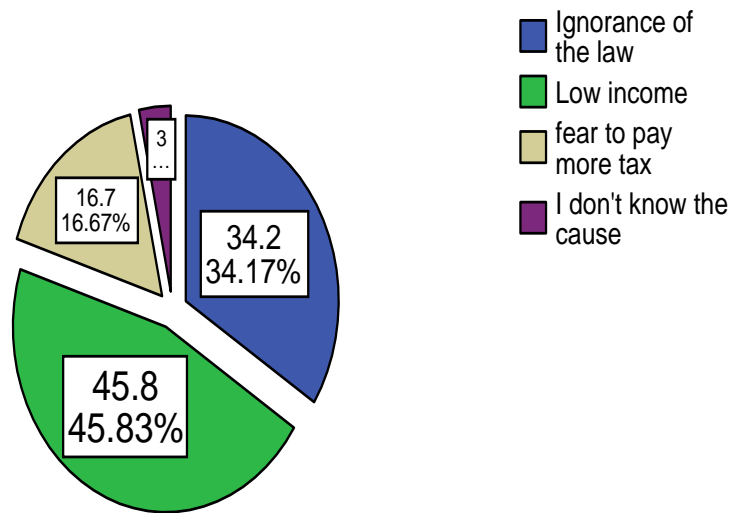
Causes for the tax payers not Filing Annual Returns

The following is the summary that shows the responses of interviewees on Knowledge of the tax payer on the Causes for the tax payers not File Annual Returns

Table 4.8 Summary on the Causes for the tax payers not File Annual Returns

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Ignorance of the law	41	34.2	34.2	34.2
	Low income	55	45.8	45.8	80.0
	fear to pay more tax	20	16.7	16.7	96.7
	I don't know the cause	4	3.3	3.3	100.0
	Total	120	100.0	100.0	

Figure 4.4 Summary on the Causes for the Tax Payers not to File Annual Returns.



From the collected data summarized above, 55 respondents out of 120; which is 45.8%; responded that, failure to file the annual returns is caused by low income on the tax payer which makes him fail to meet the costs for preparation of the required documents for filing the annual returns.

4.2.5 Effects of the failure to file the annual returns by the Tax payer

This interview here aimed at finding the effects of failure to file the annual returns which lead into the application of the best of the Judgment of the commissioner. The questions imposed on all groups of interviewee were similar. All questions aimed at finding out the effects basing on the interviewees' experience and thoughts.

Table 4.9 Responses on Effects of the failure to file the annual returns by the Tax payer

Category of respondents			Frequency	Percent	Valid Percent	Cumulative Percent
TRA	Valid	High tax for the tax payer	2	13.3	13.3	13.3
		Low tax on the tax payer	1	6.7	6.7	20.0
		Both 1 and 2	10	66.7	66.7	86.7
		No effect	2	13.3	13.3	100.0
		Total	15	100.0	100.0	
Businessperson	Valid	High tax for the tax payer	48	73.8	73.8	73.8
		Low tax on the tax payer	12	18.5	18.5	92.3
		Both 1 and 2	3	4.6	4.6	96.9
		No effect	2	3.1	3.1	100.0
		Total	65	100.0	100.0	
Tax consultants	Valid	High tax for the tax payer	12	80.0	80.0	80.0
		Low tax on the tax payer	1	6.7	6.7	86.7
		Both 1 and 2	1	6.7	6.7	93.3
		No effect	1	6.7	6.7	100.0
		Total	15	100.0	100.0	
Non business person	Valid	High tax for the tax payer	8	80.0	80.0	80.0
		Low tax on the tax payer	1	10.0	10.0	90.0
		Both 1 and 2	1	10.0	10.0	100.0
		Total	10	100.0	100.0	
Former business persons	Valid	High tax for the tax payer	15	100.0	100.0	100.0

Respondents; TRA.

TRA officials were of the view that, failure to file the annual returns have double impact;

1. It may lead into high tax being imposed on the tax payer or
2. It may lead into low tax imposed on the tax payer.

According to them, failure to file the annual returns by the tax payer makes the tax assessor fail to have the reality of the business of the tax payer, hence imposing the tax basing on the interview done on the tax payer which is always believed by the assessors as not realistic. Due to the belief above, the tax assessor will try to elevate the income of the tax payer to the level which he will think that is real. Then he will assess the payable tax. This may lead into either high tax or low tax imposed on the tax payer depending on the reality of the information supplied by the tax payer to

the assessor. According to the interview conducted with this category, 66.67% of the interviewees responded to that effect that, failure to file the annual returns by the tax payer will lead into either more tax or low tax imposed on the tax payer.

Respondents; Businessperson

The respondents in this category, giving practical (living) they said that, failure to file the annual returns by the tax payer has the impact of imposing High tax on the tax payer. According to them, most of the businessmen/women are paying higher tax than what they were supposed to pay. 73.85% of these interviewee in this category were to the effect that, failure to file the annual returns by the tax payer leads into high tax imposed on the tax payer. This group of the respondents stated that, always the tax imposed on them is very high and is not reasonable. They said, in order for a person to have his tax assessed on low tax, that person must bribe the tax payer. one interviewee clearly stated that, the failure to file the annual returns brings the lack of uniformity in tax liability assessment and payment. People with low income, who cannot bribe the tax assessor, are always assessed to pay more tax than those businessmen/women with more income, who can bribe the tax assessor.

Respondents; Non Businessperson

The response from this group of respondents based on what they thought could be the result of failure to file the annual returns. Most of them, 80% in the category of the non businessmen/women responded that, failure to file the annual returns which leads into presumptive tax leads into the imposition of higher tax on the tax payers than had they filed the annual returns. Most of them stated that, an annual return is the source the base for fair tax assessment on the tax liability of the tax payer.

Respondents; Tax consultant

Most of the interviewees in this group , 80% of them, were to the effect that failure to file the annual returns by the tax payer has an effect of high tax being imposed on the tax payers. According to this category's response, some of the tax payers, sometimes deliberately decide not to file the annual returns with the aim of getting their tax liability assessed basing on the best of judgment of the commissioner, however, normally they end up with high tax.

Respondents; former Businessperson

All interviewee in this category; 100% of the respondents; responded that, failure to file the annual returns by the tax payer has an effect of causing the tax payer to pay more tax than what he, actually, was supposed to pay. This is the group of the persons who were doing business in the former time hence having tasted the bitterness of failure to file the annual returns by the tax payer.

During the interview, most of these former businessmen/women blamed TRA as the source of dropping and finally stopping doing their business. According to them, TRA used to impose more tax on them something which made them use a part of their capital to pay tax; something which made them reduce their capital continuously till the capital diminished.

SUMMARY ON

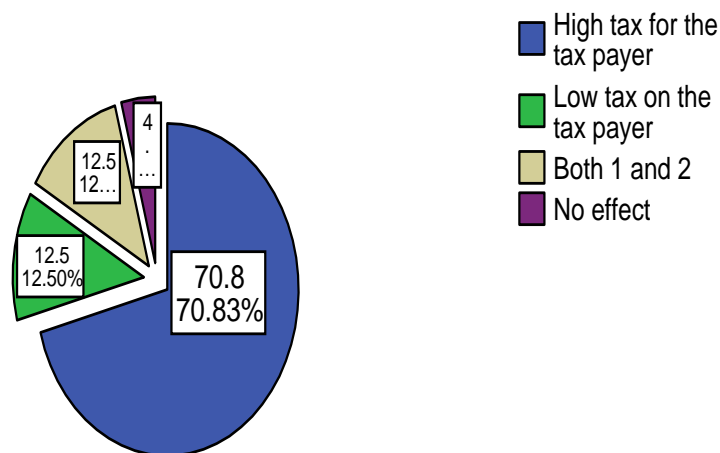
Effects of the failure to file the annual returns by the Tax payer

The following is the summary that shows interviewees responses on Knowledge of the tax payer on the Effects of the failure to file the annual returns by the Tax payer

Table 4.10 Summary on the effects of failure to file the annual returns by the tax payer.

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	High tax for the tax payer	85	70.8	70.8	70.8
	Low tax on the tax payer	15	12.5	12.5	83.3
	Both 1 and 2	15	12.5	12.5	95.8
	No effect	5	4.2	4.2	100.0
	Total	120	100.0	100.0	

Figure 4.5 Summary on Effects of failure to file the annual returns by tax payer.



According to the data collected during fieldwork, on the effects of presumptive tax on the taxpayers, 85 respondents out of 120, which is 70.8%, said that the effects of presumptive tax on the tax payers is high tax on them.

4.3 Interpretation of the findings

4.3.1 Causes of failure to file the annual returns by the tax payer and the law.

From the data collected as presented above, the researcher found out that, most of taxpayers do pay their tax without filing their annual returns. This was clearly demonstrated by the research outcome and specifically by the TRA tax payers report.⁹⁶ Out of 120 respondents who were interviewed on the question, 74 respondents admitted so. This is 61.7% of all interviewees. On the other side, only 13 people out of 120 interviewee responded on the procedure of tax assessment basing on annual returns filled. As it can be seen from the pie chart as well as the table above, this number of respondents forms only 10.8% of all respondent. The TRA – Shinyanga Region report on the tax payer for the years 2011 and 2012 supported the findings above.

⁹⁶ APENDIX - I

According to the data provided by TRA – Shinyanga Region, in the year 2011, the total of 7,633 persons paid tax. Out of above tax payers, 6,353 i.e 83.2% paid tax without filing the annual returns i.e. they paid presumptive tax while 1,280 tax payers, which is 16.8% of all tax payers, filed the annual returns for tax liability assessment. This indicates that, most of the tax payers do not file annual returns during their tax liability assessment as per this research and according to the TRA records. With this, it shows that, there should be the reason behind this.

Also, most of the tax payers were found to be less knowledgeable about tax laws and the procedure to be followed during tax assessment for tax payment i.e. tax payers have less knowledge on the tax assessment procedure. Knowledge on tax assessment procedure is important to enable the tax payer to file the annual returns. Filing the annual returns is a legal requirement for the tax payer before his tax liability is determined.⁹⁷ When a tax payer has failed to file the annual returns, it's when the commissioner will continue assessing the payable tax basing on the best of his judgment.⁹⁸ The law provides for the loophole for the tax payer to decide either to file the annual returns or not, in both cases the TRA has the means of assessing the payable tax. The main problem here is the provision of the law which, first, is not clear to the tax payers, secondly, it provides limitation in its practicability. While businesspersons are not all equal financially, the law assumes the tax payers to be equal financially to afford the costs of paying for the tax consultants. The condition of requiring the annual returns to be prepared by a public accountant in public practice was not supposed to be a compulsory requirement for the annual returns to be submitted by the tax payer. According to the data collected during this research, 54 interviewees out of 120 i.e. 45% of all interviewees responded that most of the tax payers have little knowledge on the procedure to be followed during tax assessment. This number was the largest number of interviewees. This means that, tax payers are less knowledgeable about the procedure to be followed in order for a person to have his tax liability assessed.

⁹⁷ S. 91(1)The Income Tax Act *op cit supra*,

⁹⁸ S. 94(5)s *ibid*

The data collected indicate that, most of tax payers are not aware of the requirements to present their annual returns to TRA in order to have their tax assessed according to the returns filled. According to the research, the tax payers know that, those people who are supposed to file the annual returns are those with very high return i.e. Tshs: 40,000,000/= (Forty million Tanzanian Shillings) only and not otherwise. However, this was opposed by the TRA officials who clearly stated, that all tax payers are obliged to file the annual returns. In other words, filing the annual returns is a mandatory requirement for the tax payer in order to have his tax assessed accordingly.

TRA officials' were of the view that, most of the tax payers do not file the annual returns. However, when the taxpayers were educated on the way annual returns work in relation to the tax assessment and payments; most of them appreciated that, real annual returns submission is very advantageous over non filing the annual returns. This shows that, if people would be having enough education on tax assessment procedure, most if not all, would file their annual returns. Apart from lack of knowledge on tax assessment procedure, having realised that, tax payers after they are educated on the application of the annual returns, they responded that tax assessment basing on the annual returns is advantageous over presumptive tax, the researcher has realised that, still most of the taxpayers do not file their annual returns as a result they depend on presumptive tax due to the lack of knowledge on tax laws and procedure.

From the above, it is clear that, apart from the provisions of the laws which are hard to be practised by a simple business person, the tax payers are lacking education on the tax payment procedure so that those who are able to bear the costs of preparing the annual returns, may do so in order to have their taxes assessed fairly based on the annual returns. According to the results, 44 respondents out of 120 interviewee i.e. 36.7% (the highest number of respondents on this question) indicated that, it is advantageous for the tax payer to file the annual returns. This shows that, most of the taxpayers are admitting that it is advantageous to have tax liability assessed basing on filed the annual returns over presumptive tax.

The findings show that, failure to file the annual returns is due to the low income. Low income here means the lack of funds for making the consultation with the tax consultant for preparing the annual returns for tax assessment. During field work 55 respondents out of 120 interviewees; which is 45.8%; the highest number of respondents; responded that, failure to file the annual returns is caused by low income. According to their explanation, a person whose capital is small, cannot afford to make and submit the annual returns. According to certain respondents who responded so, they regard filing the annual returns to be the exercise to be done by the businesspersons whose capital is very high. This explanation was provided by, not only the tax payers, but also the tax consultants; whom I expected to have great knowledge on the principles on tax law and procedures to be followed by the taxpayer during tax assessment.

One tax consultant(Sondole Bugema), the tax consultant who is working with MALTEK COMPANY, which is dealing with tax consultancy services, who, before joining the work of tax consultancy was the tax assessor, told the researcher that, tax payers whose turnover is less than 40 million, are not compelled to file the annual returns. According to him, any other businessperson whose turnover is above 40 million Tanzanian Shillings is liable for filing the annual returns not otherwise. This statement by the tax consultant, apart from being centrally with the provisions of the Income Tax Act,⁹⁹ is against the TRA official's statement.

Another tax consultant, one Amiri Hussein Omary of DAMODA & CO (1992), the lowest cost for preparing the annual returns is Tshs: 200,000/= (Two hundred thousand Tanzanian Shillings only). This tax consultant threw the burden of poor knowledge of the tax payers to the TRA. According to Mr Amiri, TRA officials do not tell the truth on the procedure for paying tax. This consultant added that, presumptive tax does not favor the tax payer as it is always misused by TRA officials to impose high tax than the ability of the tax payer in order to meet their goal.

⁹⁹ S. 91(1) *op. Cit supra* provides for the mandatory requirement of all tax payers to file their annual returns with the Commissioner not later than three months after the end of each year

Basing on the rates of presumptive tax due to the tax payer's failure to file the annual returns is always unfair. According to Mr Amiri, APENDIX – II, shows the returns of a tax payer and the amount of tax to be paid is always not followed. According to him no tax payer may have his tax assessed basing on the presumptive tax, he may be told not to pay tax due to his income (turn over) being less than Tshs:- 4,000,000/= (Four million Tanzanian) as per schedule to pay NIL i.e. not to pay any thing. Instead, this individual will be tasked to pay at least Tshs: 100,000/= which is the minimum amount to be paid by the tax payer per schedule.

In this case, the annual returns, as per section 92 of the Income Tax Act [Cap. 332 RE 2006]¹⁰⁰, are technical information which is needed to be prepared by the Certified Public Accountant. According to the research made, the tax consultants do prepare the annual returns for Tshs: 100,000/= up to Tshs: 200,000/=.

For the tax payer, who knows that, if he goes directly to the TRA without annual returns, he may be asked to pay Tshs: 100,000/=, he cannot accept the disturbance going to the tax consultant, pay Tshs:100,000/= as a fee before payments of tax,

¹⁰⁰ This section provides that “ (1)... every person shall file with the Commissioner not later than three months after the end of each year of income a return of income for the year of income.(2) A return of income of a person for a year of income shall subject to any instructions by the Commissioner to the contrary -

- (a) be in the manner and form prescribed specifying
- (i) the person's chargeable income for the year of income from each employment, business and investment and the source of that income;
- (ii) the person's total income for the year of income and the income tax payable with respect to that income under section 4(1)(a);
- (iii) in the case of a domestic permanent establishment of a non-resident person, the permanent establishment's repatriated income for the year of income and the income tax payable with respect to that income under section 4(1)(b);
- (iv) any income tax paid by the person for the year of income by withholding, instalment or assessment for which a tax credit is available under section 67, 88, 90 or 95;
- (v) the amount of income tax still to be paid for the year of income calculated as the sum of the tax referred to in subparagraphs (ii) and (iii) less the tax already paid referred to in subparagraph (iv); and
- (vi) any other information that the Commissioner may prescribe;

(b) in the case of a corporation, be prepared or certified by a certified public accountant in public practice;

(c) include a declaration that the return is complete and accurate;

(d) be signed by -

- (i) the person ; and
- (ii) a certified public accountant in public practice as may be required by section 135(1); and

.....

while he may go directly to the TRA , without the said annual returns under presumptive tax, and be asked to pay the same amount. In the other words, due to low income of the tax payers, most of them find it be more costly to go to the tax consultant as the fees required by the tax consultant for preparation of the annual returns are found to be a burden for the tax payer.

Simply said is that, for the tax payer to go to the tax consultant, who will charge him for his service, while knowing that he will pay tax, is tantamount to paying twice.

The problem here is the legal requirement of the annual returns to be prepared and signed by the professional who has to be paid by the tax payer under S.92 *Op.cit Supra*. Had it been that the annual returns are prepared by the tax payer without the conditional requirement of paying the fees for preparing the same (by the tax consultant), under a certain system devised by the TRA, I am of the view that, most of the tax payers would be willingly and ready to file the annual returns. However, this is completely impossible as the tax consultants are not government employees ie are private workers who depend on their works for getting their daily bread.

4.3.2 Effects of failure to file the annual returns by the tax payer

Turning to the effects of the tax payers preferring presumptive tax over annual returns tax assessment; While most of the tax payers think that failure to file the annual returns which results into presumptive tax is the simplest way of tax assessment, the research found this ideology is quite different from the real situation. The study found that, failure to file the annual returns by the tax payer has very big effects on the tax payer as well as on the Government. According to the data collected during fieldwork, on the effects of failure to file the annual returns by the taxpayers, 85 respondents out of 120, which is 70.8%, said that the effects of presumptive tax on the tax payers is high tax imposition on them. During field work, all businesspersons and some other respondents went further saying that, failure to file the annual returns may lead into the businessperson impoverished and close down the business.

One respondent (Ramadhani Masele) said that, what the TRA assessors do is just to increase the tax to be paid regardless the explanation one will give. Trying to justify his statement, this respondent showed the researcher one of his business which he has been forced to close down due to the high and unbearable tax assessed under presumptive tax. He said that, he has now closed one of his businesses out of the two. According to him, this is very bad to the tax payer as he becomes poor and to the government it is bad also as the government will no longer be getting even the small amount it used to get from the tax payer who has closed down his business..

Ramadhani Masele said that on beginning his retail shop; under presumptive tax; he was assessed to pay Tshs: 96,000/= (ninety six thousand only). He paid. During the s the followin year he was, basing on the best of the judgment of the commissioner as he didn't file the annual returns, he was assessed to pay Tshs: 196,000/= (one hundred ninety six thousand only) which he also paid. During the third year again he didn't file the annual returns and, therefore, he was assessed to pay Tshs: 674,000/= (six hundred seventy four thousand only). He also paid. On the fourth year, Mr. Ramadhani Masele, was forced to use VAT system. According to him, the machine for VAT is costing Tshs 4,000,000/= (Four million shillings Tanzanian Shillings only), his business worth only Tshs: 2,000,000/= (two million shillings Tanzanian Shillings only); he failed to buy the VAT Machine. This businessman who previously was owning one retail shop and one stationery bookshop, closed the retail shop due to high tax rate.

Accordingly, failure to file the annual returns which leads into presumptive tax does not tally with the canons of tax law. According to Adam Smith in his book titled *the Wealth of Nations*, good tax system must adhere to the canons of good taxation.

Since, according to the research, failure to file the annual returns leads into the tax payer paying very high tax, it makes a tax payer pay more than what he actually was supposed to pay. This makes tax lack equity i.e. it becomes difficult for the assessor to impose equal tax to the business men with equal business. Again the taxpayers cannot predict the tax to be paid in the next year. Since the tax payable cannot be predicted by the tax payer, the tax payer may not conveniently arrange to pay tax

due to its uncertainty. When a taxpayer pays more than what is required, as we have seen in the case of Mr. Ramadhan Masele above, the tax payers will be impoverished and no more tax will be paid. So even that little payments which the Government would be getting, won't be gathered by the Government. In this way, the Government is losing revenue as people won't be able to proceed with business due to High Tax rate imposition.

According to the research, failure to file the annual returns is attracting corruption during tax assessment. How? Since presumptive tax is baseless, the tax assessor is at liberty to impose any amount of tax to be paid by the tax payer basing on the best of his judgment. According to the tax payers explanation, in order for the tax payer to have his tax liability reduced, the tax payer has to bribe the tax assessor. According to the interview with the tax payers, presumptive tax has no justice and is the source of corruption in TRA.

4.4 Conclusion.

We have seen the analysis of the collected data which were presented in tabular form and by the pie chart and the law in relation to the failure to file the annual returns by the Tax payer. We have seen that, tax payers do prefer to have their tax liability assessed without filing the annual returns due to low income and lack of knowledge on the tax payers. We have also seen that, assessing tax without the tax payer filing the annual returns has the impact of subjecting the tax payer into unnecessary heavy burden of paying high tax. The knowledge obtained here is likely to have starting throwing the light on what could be the conclusion of this research and recommendations thereof.

CHAPTER V

SUMMARY, GENERAL CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter presents the summary of the whole work, the conclusion and finally the recommendations of the study. The researcher is expecting that, if the recommendations provided in this research will be acted upon by the proper authority, good results are expected in the tax collection by the TRA due to the maximum compliance by the tax payer which will be attained after obtaining the medicine for curing the long time disease of failure to file the annual returns by the tax payer.

5.1 Summary of the Findings

Among the two methods of tax assessment; basing on filing the annual returns and without basing on the annual returns; most of the tax payers' tax liability is assessed without basing on the annual returns and hence assessed their tax liability basing on the best of the judgment of the commissioner. However, according to the research done, the tax payers; after they are explained on the importance of filing the annual returns; do agree that filling the annual returns is advantageous over presumptive tax which results from failure to file the annual returns by the tax payer.

Most of the tax payers have less knowledge on the tax law (including but not limited to the procedure to be followed during tax assessment). Tax payers do agree that filing the annual returns is advantageous over presumptive tax.

Failure to file the annual returns is caused by several factors but is mostly caused by low income.

Failure to file the annual returns by the tax payer is leading into the heavy burden of the High tax rate imposition on the tax payer. Also presumptive tax, as it makes tax payer closedown their business, makes the Government lose revenue which would be collected. Also, due to presumptive tax encouraging corruption, it also leads into the Government receiving less revenue, because it is likely to lead into people bribing the tax collector so that they don't pay tax or they are assessed less tax. Under any case, whether a person is assessed to pay less than what he ought to have

been assessed to pay or he doesn't pay any tax at all to the Government, it is disadvantage to the government.

5.2 General Conclusion

Most of the tax payers in Tanzania do not file their annual returns at the end of the year. This makes it difficult for the tax assessor to have the base of taxing the tax payer and hence apply the best of the judgment of the commissioner during assessing of the taxable income.

Failure to file the annual returns is caused by the low income of the tax payers which makes them fail to pay for the fees for preparation of the annual returns to the tax consultant/ Certified Public Accountant while the same tax payer is required to pay tax; it makes the tax payer feel like he is paying twice, for the preparation and tax. However, this is felt so due to the fact that, for most of the tax payers when they begin the business, their capital is very small.

Due to the large number of business men's failure to file their annual returns, the tax assessors do assess these tax payers basing on the best of his judgment which leads into presumptive tax.

Presumptive tax makes the tax payers pay more than what was required to be paid had they filled their annual returns. Under presumptive tax, the tax payer is assumed to be always in progress i.e. there is no time the tax payer will fall in business, something which is not true. It is well known that, in business there is always ups and downs. At one time the business will go up and at another time business will go down. When business goes down, it becomes difficulty for the tax payer who doesn't file the annual returns to justify his failing without documentary evidence i.e. annual returns. This causes the conflict between the tax payer and the assessor (tax collector). While the assessor (Tax Collector) is thinking that, business is always growing, sometimes when the business goes down the presumptive tax payer is failing to justify his allegation that the business has gone bad through mere words.

This is the point where business men are forced to use a part of their capital in order to pay tax or decide to corrupt so that the tax assessor may give him a favour of

assessing him to pay less tax than he would assess him. If the tax payer is forced to pay tax from his capital and it is prolonged for a number of years, this presumptive tax payer will close down the business. Closing down the business is disadvantageous to the Government as it will fail to get any tax from this tax payer due to closing down the business. Also, it increases poverty among the citizen when they close down their business. Presumptive tax makes business not to grow, instead, makes them perish. This is against the Government policy of tax. The Government's tax policy is to increase domestic revenue collections at a faster rate than GDP growth in order to finance increased expenditure and reduce dependence on donor funding in the budget. The Government also is committed to taxation policy that does not hinder growth in business and investment, that is equitable and fair, that has low compliance and administrative costs, and that is as simple as possible.

The Gross Domestic Product (GDP) is one of the primary indicators used to gauge the health of a country's economy. It represents the total dollar value of all goods and services produced over a specific time period - you can think of it as the size of the economy. Usually, GDP is expressed as a comparison to the previous quarter or year. For example, if the year-to-year GDP is up 3%, this is thought to mean that the economy has grown by 3% over the last year.

Most of the business men have now devised the mechanism of combating presumptive tax. What they do, since at the beginning presumptive tax begins at a low level which is affordable which gradually increases with time, the smart presumptive tax payers do change the name of the owner when he finds that tax has risen to the point of unaffordability. If at the beginning the owner was a husband, as soon as the tax raises, the owner is changed into the wife and once again the tax begins at the low level. Another means of making sure that the tax payers are paying less is to corrupt the assessor so that during tax assessment the assessor doesn't raise the tax liability for this tax payer who hasn't filed the annual returns. In all of the above means, the government is losing its revenue.

5.3 Recommendations

1. The Law Should Change

The mandatory requirements; by the law; of the annual returns to be prepared and certified by the Certified Public Accountant should be abolished or made an option of the tax payer. Instead, it should be like a person who wants to institute a civil case, he may ask an advocate to prepare the plaint for him or prepare himself and in all cases the plaint will be accepted by the court. Tax payers should be educated on how to prepare the annual returns and left to opt to prepare themselves or engage the consultant. This must be the task of TRA.

2. Education to the Tax Payers is Required

Tax payers should be educated on the procedure to be followed by the tax payer during tax assessment. In this case, the tax payers should, among others, know the importance of filing the annual returns. This is because, during the research, it was found out that the TRA pretends to educate the tax payers externally. Meanwhile at TRA there is a person known as the Regional Education Officer (Afisa Elimu Mkoa) whose duty is to educate the tax payers, but this person's role is not known to most of the tax payer.

It would be of great use if it would be that, before the person goes for tax assessment he meets this education officer. At Shinyanga TRA's office, the office of the Regional Education Officer is in the last floor of the TRA building. This indicates that, TRA is not ready to educate the tax payers.

3. The Cannon of Diversity Should be Well Utilized by the TRA

As we saw during the cannons of good taxation system as propounded by Adam Smith, were later modified where by the cannon of diversity was included. This cannon must be well utilized by the TRA in order to meet their goal which is normally set by the MOF.

4. TRA not to Impose Higher Tax

TRA should realize that, in order to collect more tax from the tax payers, it is not necessary to impose high tax on the tax payer as it may make this tax payer terminate the business. Instead, TRA should educate the tax payer and advise the mechanism of making sure that, a tax payer is not paying more than what he ought to have paid. TRA should be close with the tax payers, and make friendship with each other in order to make the tax payer fill necessary to pay tax.

5. TRA has to visit the Tax Payer's Business Before Imposing Tax

Normally, TRA imposes tax without visiting and seeing physically the volume of the business run by the Tax Payers. This is a very serious case especially for the businessmen/women who cannot file the annual returns. According to the interviewee, the canon of equity, with TRA, is always not in practice.

Tax payers are not taxed proportionately to their business due to their failure to file the annual returns cemented by the Tax Assessors who do not visit the businessmen/women. This has always resulted in uproportional tax imposition on the tax payer which has the impact of discouraging the taxpayers and creating an enormity between the tax payers and the tax collector.

The time now has come for the tax collector to visit the area of business in order to see physically the volume of the tax payers who cannot file the annual returns in order to impose the proper tax to the tax payers.

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APPENDICES

Appendix - I



TANZANIA REVENUE AUTHORITY

Ref: TRA/RM/SH

27.02.2013

Frank Samwel
S.L.P 320
SHINYANGA

Ndg

YAH: OMBI LA KUPATIWA DATA KWA LENGU LA RESEARCH

Rejea mada tajwa hapo juu pamoja na barua yako ya tarehe 22.02.2013 tuliyoipoka hapa ofisini kwetu tarehe 22.02.2013

Nachukua nafasi hii kuwasilisha takwimu kama ulivyoomba kwenye barua yako. Takwimu hizi zimeambatanishwa kwenye jedwali pamoja na barua hii.

Tumeshindwa kuandaa taarifa za mwaka 2013 kwa sababu ndo sasa kipindi cha mwaka kinaanza na kuna uwezekano mkubwa wa taarifa kubadilika kadri miezi inavyosonga.

Itambulike kuwa matumizi ya takwimu ni kwa ajili ya shughuli ya kitaaluma tu kwa matiki ya barua yako.

Ofisi yetu itakupatia ushirikiano wa kutosha kama utahitaji kupatiwa takwimu kwa matumizi mengine kupitia njia ya maombi kama ulivyofanya.

Nakutakia heri katika utafiti wako.

M.J. Mgaya

Kny Meneja ya Mkoa

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MAMLAKA YA MAPATO TANZANIA
MKOA WA SHINYANGA
TAARIFA ZA WALIPA KODI

S/No	Mwaka	Presumptive Tax Payers	Annual Return Taxpayers
1	2011	6353	1280
2	2012	6731	1987

Appendix – II

Presumptive Tax Rates with effect from 1st July as per Finance Bill 2012 [PDF](#) [PRINT](#) [EMAIL](#)

Turnover (in Tshs.)	Tax Payable where Section 80 of the Income Tax Act is Not complied[1]	Tax Payable where Section 80 of the Income Tax Act is complied
Where turnover does not exceed Tshs 4 million	Nil	Nil
Where turnover exceeds Tshs 4 million but does not exceed Tshs 7.5 million	100,000	2% of the turnover in excess of Tshs 4 mill
Where turnover exceeds Tshs 7.5 million but does not exceed Tshs 11.5 million	212,000	70,000+2.5% of the turnover in excess of Tshs 7.5 million
Where turnover exceeds Tshs 11.5 million but does not exceed Tshs 16.0 million	364,000	170,000+3.0% in excess of Tshs 11.5 million
Where turnover exceeds Tshs 16.0 million but does not exceed Tshs 20.0 million	575,000	305,000+3.5% in excess of Tshs 16.0 million