

An Analysis Of Legal Inconsistencies In The Implementation Of The Virtual Fiscal Management System (Vfms) In Zanzibar's Tax Regime

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Abstract : *The Revolutionary Government of Zanzibar has been struggling to enhance revenue collection using various means and mechanisms. Different measures have been taken to realize that dream. One among them was to collect taxes through electronic means. The government through Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 introduced Virtual Fiscal Management System where tax collection is to be affected through VFD. Through this system, taxpayers must pay their required taxes electronically using Virtual Fiscal Devices. This paper assess whether there are any legal challenges associated with the introduction of VFMS in Zanzibar. The paper employed doctrinal legal research to analyse the law of VFMS. The paper reveals that, the introduction of this law has brought some of legal challenges including silence of the law on threshold for those who are required to use VFMS, law is silent on classification of taxpayers who required to use VFMS, the law gives power to the Commissioner without liability and the use of English language in the VFMS regulation which is not common language for some of taxpayers. The paper recommends enacting a regulation to determine tax threshold for VFMS users, imposing obligations on the ZRA to repair VFD machines within a specific time and translate VFMS regulations into Swahili.*

Keyword: Law, Tax, VFD, VFMS, ZRA,

1.0 Introduction

Taxation is a crucial element of any functional government system, serving as a primary source of revenue to fund public services and infrastructure (Jeremy et al, 2022). At its core, tax can be defined as a compulsory financial contribution imposed by the government on individuals, businesses, or other entities to support public expenditures (Joshua and Leigh, 2017). The imposition of taxes involves a structured system through which individuals and entities contribute a predetermined portion of their income, profits, or goods to the government. This process is executed through various tax mechanisms, including income taxes, value-added taxes (VAT), excise taxes, and others, each tailored to different aspects of economic activity (Kessy, 2019). In Zanzibar, taxes are mandated to be imposed in accordance with the law, influenced by its union with the United Republic of Tanzania. The laws empower both governments to impose taxes, designating specific taxes such as income tax, corporation tax, customs, and excise to the union government, while others fall under the Revolutionary Government of Zanzibar (Saiteu, 2018). Taxes are collected by two authorities, Tanzania Revenue Authority (TRA) and Zanzibar Revenue Authority (ZRA). The TRA manages both direct and indirect taxes in Zanzibar, remitting collected revenues to the Zanzibar government to fund local affairs. Taxation in Zanzibar is overseen by the Zanzibar Revenue Authority (ZRA), established under the Zanzibar Revenue Board Act formerly the Zanzibar Revenue Board (ZRB). The ZRA holds crucial functions, including tax assessment, collection, taxpayer education, and dispute resolution, all aimed at ensuring efficient revenue management for the Zanzibar government. To execute these functions, the ZRA employs various systems in collecting taxes. Recently, ZRA introduced Virtual Fiscal Management System (VFMS) through Regulation 3 of Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 as a means to address weak tax administration and reduce tax evasion and avoidance by closing loopholes used by dishonest traders to evade taxes. The VFMS, requiring all taxpayers to use VFD. VFMS is an electronic platform where people can file their tax returns, pay their taxes, and get information about taxes. It is a modern way to handle taxes that uses automation and streamlining to make tax processes more efficient, clear, and responsible. VFMS is meant to replace the old human tax collection system, which takes a lot of time, costs a lot of money, and is prone to mistakes. VFMS is an important tool for tax authorities to use to keep track of the money they get from customers. It gives taxpayers a central place to find their tax details, such as their tax history, tax obligations, and tax assessments (Haji, 2022). Taxpayers can pay with VFMS by using credit/debit cards, mobile money, and bank transfers, among other choices. Also, taxpayers can file their tax returns online, so they do not have to send in paper copies. One of the best things about VFMS is that it helps people pay their taxes. By making it easy for taxpayers to get information about taxes and by making tax processes easier, VFMS encourages taxpayers to meet their tax responsibilities. It also makes it less likely that mistakes will be made when taxes are filed and paid, which improves the accuracy of tax estimates. Thus, it can be argued that, the introduction of VFMS aims to increase revenue collection since it has become mandatory for all companies registered in Zanzibar to issue invoice and receipt through Virtual Fiscal Management System. The qualification of using the system was left to the minister responsible for finance to determine the threshold.

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Further, for a user who fails to issue and provide a fiscal receipt, the law sets a fine of two million or fifty percent of the value of the tax which supposed to be paid or serving two weeks in imprisonment. On the other hand, rule 22 of Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 impose a fine of TZS 30,000 for a customer who fails to demand and retain a fiscal receipt.

Thus, this study analyses the legal provisions govern the application of VFMS in Zanzibar to find out if there is any lacunae and come up with some recommendations for improvement.

2.0 Legal and Institutional Framework Governing the Operation of the VFMS in Zanzibar

The part provides an overview of the legal and institutional framework that guide the operation of the VFMS in Zanzibar, as well as the various stakeholders involved in the implementation and enforcement of the system and their implications for taxpayers and tax authorities in Zanzibar.

2.1 Legal Framework

The legal framework which governing the operation of VFMS in Zanzibar comprises various pieces of legal instruments starts with the Constitutions and other legislation. The discussion will focus on Constitution of the United Republic of Tanzania, 1977, the Constitution of Zanzibar, 1984, the Value Added Tax Act, No. 4 of 1998, the Tax Administration and Procedure Act, No. 7 of 2009, the Stamp Duty Act, No. 7 of 2017 and the Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021.

2.1.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of the United Republic of Tanzania is a supreme law in Tanzania from which all other pieces of legislation owe their origin. It governs all matters pertaining to laws in Tanzania. Article 138 of the Constitution of the United Republic of Tanzania outlines the taxation framework in Tanzania. No tax of any kind may be imposed except in accordance with a law enacted by Parliament or in accordance with a procedure lawfully prescribed and having the force of law by virtue of a law enacted by Parliament. This means that all taxes in Tanzania must be imposed in accordance with a law enacted by Parliament, ensuring that the process is open and transparent. The article also permits the House of Representatives of Zanzibar to exercise its authority to levy any type of tax in accordance with its authority. Consequently, while the central government of Tanzania has the authority to levy taxes, the House of Representatives of Zanzibar has the authority to levy taxes within its jurisdiction. This constitutional provision ensures that taxes are imposed in a legally solid and transparent manner, and that the rights and powers of both the central government and regional governments are respected. Further, the Constitution under article 64(5) provides legality test to all law which are used by the tax authority, the article provides that any law that contravenes the provisions of the constitution is void. However, this article of the Constitution does not affect the mandate of the Revolutionary Government of Zanzibar to execute its powers as provided for in the Constitution of Zanzibar.

2.1.2 The Constitution of Zanzibar, 1984

The Constitution of Zanzibar is the Constitution which governs matters affecting Zanzibar. It governs all matters which are not union matters. Section 133(1) of the Constitution of Zanzibar outlines the legal framework regulating the imposition of taxes in the country. No tax of any kind may be imposed except in accordance with a law enacted by the House of Representatives or in accordance with a procedure lawfully prescribed and having the force of law by virtue of a law enacted by the House of Representatives. This provision is analogous to Article 138(1) of the Constitution of the United Republic of Tanzania, which regulates the imposition of taxes in Tanzanian Mainland. The provision stipulates that all taxes in Zanzibar must be levied in accordance with a law passed by the House of Representatives or a legal procedure. This ensures that the taxation process is transparent and accountable, and that the rights and responsibilities of the central government and regional government are respected. In addition, the provision ensures that the House of Representatives has the authority to impose taxes within its jurisdiction, which is crucial for the autonomy of Zanzibar as a semi-autonomous region of Tanzania.

2.1.3 The Value Added Tax Act

The Value Added Tax Act (VAT Act) is a crucial piece of legislation in Zanzibar, as it governs the administration and collection of value-added tax (VAT). The Act specifies the requirements for VAT registration, return filing, tax payment, and compliance enforcement. A taxable person is subject to VAT on the supply of commodities and services made or provided in Zanzibar for business purposes, subject to certain exemptions and zero-ratings. The Act also specifies the method for calculating value-added tax, which is based on the difference between output tax (sales tax) and input tax (purchase tax). Section 17 of the VAT Act stipulates that a person who has paid to the Commissioner VAT in error or in excess of the amount owed may submit a written request for a refund to the Commissioner. The written application must be submitted within three years of the date the excess VAT was paid. The Commissioner is required to refund the excess payment within thirty days of receiving the written refund request. If the Commissioner fails to refund the excess payment within 30 days, the taxpayer is entitled to interest at a rate determined by the

Minister of Finance. This section is essential because it provides relief to taxpayers who may have paid more VAT than they should have. It also imposes on the Commissioner the responsibility of processing refund requests within a reasonable time frame, so as to avoid unwarranted delays and financial burdens on taxpayers.

2.1.4 The Tax Administration and Procedure Act

The Tax Administration and Procedure Act is an important piece of legislation that governs the administration and collection of taxation in Zanzibar. The Act establishes the Zanzibar Revenue Board which now known as Zanzibar Revenue Authority as the principal tax collection agency in Zanzibar, charged with the administration and enforcement of tax laws. The Act specifies the legal obligations of taxpayers, including registration, the submission of returns, the payment of taxes, and the maintenance of records. Under this law, taxpayers are required to retain records and accounting books for five years following the date of the last entry. Failure to maintain proper records is a violation of the Act, punishable by fines or imprisonment. Section 23(2) of the Tax Administration and Procedure Act, mandates that the Minister to issue a regulation or order establishing the threshold for taxpayers to be eligible to use the electronic fiscal system. This indicates that taxpayers who fell below the threshold may be exempt from using the VFMS, thereby reducing the burden on smaller businesses.

2.1.5 Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021

In order to provide a legal framework for the implementation and operation of the Virtual Fiscal Management System (VFMS) in the country, the Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 (the Regulations) was introduced in Zanzibar. The regulations provide guidelines for the use of electronic fiscal devices, registration and use requirements for the VFMS, and penalties for non-compliance. Regulation 8(5) of the Regulations, requires the taxpayers to notify the Commissioner within twenty-four hours of any malfunction of their electronic fiscal device. This requirement is essential for ensuring that taxpayers comply with the requirements of the electronic fiscal system and preventing revenue losses due to malfunctioning devices. The provision requires citizens to ensure that their electronic fiscal devices are always in proper working condition. Failure to comply with this requirement could result in fines or even the cessation of operations. The obligation to report also ensures that the Commissioner is aware of any problems with electronic fiscal devices and can take prompt action to resolve them. Regulation 11 grants the Commissioner of the Zanzibar Revenue Authority (ZRA) the authority to appoint a supplier who can provide VFMS devices that meet the ZRA's requirements. The criteria may consist of technical specifications, performance standards, and cost. The purpose of this regulation is to ensure that taxpayers have access to VFMS devices that comply with all applicable standards and specifications. Regulation 13 states that, subject to the Commissioner's approval, a taxpayer may be provisionally permitted to use manual receipts or tax invoices. This provision seeks to provide a temporary solution for taxpayers whose systems are undergoing maintenance or are experiencing technical difficulties with the VFMS. The requirement for Commissioner's approval is an essential aspect of this provision, as it prevents the abuse or evasion of tax obligations through the use of manual receipts or tax invoices. To ensure compliance with tax laws and regulations, the Commissioner may impose limitations or conditions on the use of manual receipts or tax invoices.

2.1.6 The Stamp Duty Act

The Stamp Duty Act is a piece of legislation in Zanzibar that governs the payment of stamp duty on various legal and financial transactions. It outlines the rates and procedures for stamp duty payments and provides for the collection and enforcement of stamp duty laws. The Act outlines the imposition of stamp duty and its administration. The stamp duty is applied to various transactions, including the supply of goods and services in Zanzibar by taxable persons engaged in business, as well as on goods and services exempted under the Second Schedule of the Value Added Tax Act. Additionally, stamp duty is levied on specified instruments listed in the First Schedule, unless exempted, and on specific items for small taxable persons outlined in the Second and Third Schedules. The rates of stamp duty are determined based on taxable value, with specific rates for different categories, as indicated in the Schedules. The Act delineates charging rates for taxable supplies in the stamp duty on business operations. Two schemes are introduced: the lump sum scheme and the turnover scheme. The lump sum scheme involves quarterly charges for taxable supplies, with specific amounts detailed in the Second Schedule. Alternatively, the turnover scheme applies a two percent ad valorem charge on the value of taxable supplies of goods or services, as specified in the Fourth Schedule. These schemes establish a structured framework for stamp duty charges, providing taxable persons with flexibility to select the most fitting scheme for their operational needs. Furthermore, to enhance efficiency and streamline the collection process, all stamp duty charges outlined under this Act are systematically collected through the use of VFM machines.

2.2 Institutional Framework

Tax collection in Zanzibar is administer with two institutions; Tanzania Revenue Authority and Zanzibar Revenue Authority. Each of these institutions has its own mandate and power to collect taxes different from other institution as we can see here below.

2.2.1 The Tanzania Revenue Authority

The Tanzania Revenue Authority (TRA) is the government agency responsible for tax collection and administration of the Union taxes and those taxes which are for Tanganyika. It was established in 1995 under the Tanzania Revenue Authority Act, Cap. 399 R.E. 2019 and its primary function is to collect and administer taxes on behalf of the government, including income tax, value-added tax (VAT), customs duty, and excise duty. TRA is also responsible for promoting voluntary compliance with tax laws and educating taxpayers.

2.2.2 Zanzibar Revenue Authority

In the early 1990s, the Department of Revenue Collection under the Ministry of Finance had difficulty in collecting taxes for the government of Zanzibar. The department's poor performance in collecting taxes resulted in revenue losses and budget deficits. To address this issue, the government created an independent board to administer and collect Zanzibar's taxes. The ZRB was created in 1996 by Zanzibar Revenue Board Act No. 2 of 1996 with the authority to administer and collect all non-union taxes in Zanzibar. Later on in 2019 it was changed to authority and known as Zanzibar Revenue Authority (ZRA) by Act No. 7 of 2019. ZRA is the primary tax administration body in charge of collecting and administering non-union taxation in Zanzibar. The primary responsibility of the ZRA is to collect various taxes, such as value-added tax, income tax, withholding tax, excise duty, and stamp duty. In addition, the authority plays an important role in revenue forecasting, tax administration, policy and law formulation, and tax education and awareness campaigns. The Zanzibar Revenue Authority operates under the direction of the Ministry of Finance and Planning and reports to the President of Zanzibar. The authority has implemented numerous measures to improve tax compliance, such as the use of technology to facilitate tax collection and a tax dispute resolution mechanism to manage tax-related disputes and complaints.

3.0 The Legal Inconsistencies in the Implementation of the Virtual Fiscal Management System (VFMS) in Zanzibar's Tax Regime

There is no doubt that the introduction of VFMS in Zanzibar has increased tax collection, this can be prove by statistics data provided by ZRA which show how much they use to collect and the current situation. For instance in financial year 2022/2023 ZRA collected TZS 565.890 Billion (ZRA, 2004) while 2024/2025 collected 861.882 Billion (ZRA, 2025). Hence, there is no question that this wonderful work was contributed by different measures including introduction of VFMS. However, this successful story has some legal challenges which need to be articulated. These include absence of thresholds, non-classification of taxpayers, legislative silence on device failures and legal language barrier.

3.1 Lack of Determined Threshold

Zanzibar Revenue Authority (ZRA) empowered by section 22A (1) and (2) of the Tax Administration Procedure Act to introduce the fiscal system for collection of taxes. This legislation underwent an amendment through section 8 of the Finance (Public Revenue Management) Act, no. 5 of 2019 which introduced new provisions, granting the Commissioner the authority to establish and operate an electronic system for document filing. Additionally, the Minister for Finance, through a regulation issued on July 16, 2021, under Legal Supplement (Part II) Vol. CXXVI No. 6913, officially introduced the Virtual Fiscal Management System. From this discussion there is no doubt that, the introduction of VFMS in Zanzibar has legal mandate. However, its applicability has a notable discrepancy that highlighting a key concern. While section 23(2) of the Tax Administration Procedure Act mandates the minister to determine the threshold for issuing fiscal receipts, yet no such order had been issued. The lack of a determined threshold undermines the legality of imposing VFMS, as it contravenes the principles of taxation outlined in the Zanzibar Constitution. Article 133(1) of the Constitution stipulates that no tax should be imposed without the authority of the law. This was also stipulated in the case of *Bulyanhulu Gold Mine Ltd vs. Commissioner General TRA*, Appeal 89 of 2015 [2016] TZCA 571 when emphasizing that VFMS adoption without a defined threshold order from the minister violates constitutional provisions. This stands in contrast to the practices of other tax authorities in the region, such as Mainland Tanzania, where legislation clearly provides tax thresholds. In this context, for non-VAT registered entities, the tax threshold for using Electronic Fiscal Devices is set at fourteen million, while VAT-registered entities have a threshold of two hundred million. The lack of a threshold can impose an undue burden on small traders. The absence of thresholds contributes to a significant disparity in compliance between large and small enterprises. It will create a notion that, the larger businesses with their greater resources are better equipped to manage the technological demands of VFMS, while smaller traders are disproportionately affected. This imbalance has led to a perception that VFMS implementation is skewed towards the capabilities of larger firms, thereby risking reduced compliance and increased tax evasion among smaller traders. Thus, a more nuanced approach, including the establishment of clear thresholds, is necessary to align regulatory requirements with the operational realities of businesses of varying sizes, thereby enhancing the overall effectiveness of the VFMS in tax administration. So, it is suggested that, the minister should issue such regulation in order to distinguish which taxpayer qualifies to use VFMS and those who do not. By classifying them it will do away with those who have small businesses not to use the system, because most of them their annual turnover does not exceed five million. On the other hand, they can use manual receipt to pay taxes. So, they cannot escape paying taxes solely on the ground they cannot afford to buy VFD. By doing that, more taxes will be paid consequently government revenue will increase everlasting.

3.2 Non-Classification of Taxpayers

The lack of clarity in taxpayer classification under the Virtual Fiscal Management System (VFMS) is among a critical issue that leading to confusion among taxpayers. The law is silent on the classification of taxpayers who are supposed to pay taxes through

VFMS. This uncertainty has led to varying interpretations of the law, with many taxpayers unsure about whether their specific business activities or revenue thresholds necessitate compliance with VFMS requirements. For instance, small traders and informal sector operators, who often have limited access to legal or financial advice may inadvertently fail to meet compliance standards due to unclear classification criteria. The ambiguity surrounding taxpayer classification can foster an environment conducive to unfair practices. The lack of clarity creates opportunities for tax evasion and avoidance, as some businesses may exploit the uncertainties to bypass VFMS requirements. This scenario not only undermines the intended goals of the VFMS in improving tax compliance but also creates an uneven playing field where businesses of varying sizes and sectors are subject to inconsistent enforcement. The absence of precise classification criteria exacerbates the risk of non-compliance and erodes trust in the tax administration system, highlighting the urgent need for clear and detailed guidelines to ensure equitable and effective implementation of VFMS across all taxpayer segments. Therefore it is a high time now for the minister to make taxpayers classification in order to make it clear which one is obliged to use VFMS as per his classification.

3.3 Legislative Ambiguity

Tax law should always be certain and clear since it touches the life of citizens. The word of the law needs to be clear without any ambiguity whatsoever. The aim of this principle is to protect taxpayers from being taxed without understanding the actual rate that supposed to be paid (Saiteu, 2018). Tax law needs to contain a simple explanation without any ambiguity in order to assist the taxpayers in complying with applicable requirement (Joshua and Osofsky, 2017). Unfortunately, there is a kind of ambiguity in tax law in Zanzibar, this can be evidenced when the devices are broken down. Rule 8(5) of Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 requires the taxpayer to report the failure of electronic fiscal device to the Commissioner within twenty-four hours from the time of failure. However, the regulation is silent on how long should a taxpayer wait for response from the Commissioner. This is contrary to other laws and regulation which are applicable in Tanzania which give limitation of time for authority. On the other hand, rule 13 of Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 wants a taxpayer to be allowed to use a manual receipt or tax invoice temporarily subject to the approval of the Commissioner. Again, how long does he has to wait to get approval, the law should answer this question unfortunately it is silent. The repercussion of this silence is blocking the taxpayers from doing business during the waiting period since if he doing business without issuing a receipt it is a violation of the law. The law states clearly under section 25(6) of Tax Administration and Procedure Act that a person who fails to issue a fiscal receipt or fiscal invoice commits an offence. It also imposes a fine of two million Tanzanian shillings or fifty percent of the value of the tax which would have been paid for each transaction for which the fiscal receipt or fiscal invoice was not issued whichever is greater or imprisonment for a term of one year. Having regard this situation, no person would like to risk to do business without issuing a receipt. As consequences, the authority would not collect the taxes and the government will lose revenue. The ambiguity in tax law will not only cause low collection of taxes but also discourage investment in the country (Zangari et al, 2017). Thus, there is a need for the government to ensure it eradicates all ambiguities, since it has a big impact in tax collection. Therefore, the study proposes immediate amendment of the regulations 7(3), 8(5) and 13 of Tax Administration and Procedure (Virtual Fiscal Management System) Regulations, 2021 to require the Commissioner to issue approval within a specific time in order to encourage tax collection in the country.

3.4 Legal language

Legal language is very important aspect in taxation. People need to be informed of the law through appropriate language. Most of the legislation give power to the minister to publish such regulation in the government gazette. The aim is to ensure people become aware of the regulation which govern their life. This is a good condition to let people become aware of the law. Awareness of tax laws make taxpayers to understand the meaning, function and enhance tax payment (Lestari and Wicaksono, 2017). The sad fact about VFMS regulation in Zanzibar is that it is written in English which is not familiar language with some taxpayers. This is contrary with the practice of the most tax laws which are enacted in both English and Kiswahili. This, to some extent make taxpayers being unaware of the meaning and purpose of those regulations, hence making some of taxpayers are fail to comply with them. Tax regulations are very important since it provides rate payable, method of assessment and other matters which are not provided in the principal law (Mwankupili et al, 2021). Knowledge of the regulation is very important for taxpayers to pay taxes, if the taxpayers do not understand the regulation, it is possible for them not to comply with those regulations. The importance of having the law in Swahili was acknowledged by the government of Mainland Tanzania when they passed a law requiring all laws to be in Swahili through the Written Laws (Miscellaneous Amendments) Act No. 1 of 2021 which amended some laws including the Interpretation of Laws Act. Thus, there is a need for tax regulation also to be written in Swahili to ensure taxpayers understanding the language of the regulation.

4.0 Conclusion

The study concludes that, the introduction of VFMS for tax collection in Zanzibar has enhanced tax collection. However, this achievement should not blur the fact that there are legal challenges in implementing the system. The legal challenges include; silence of the law on threshold for those who are required to use VFMS, nonclassification of taxpayers who required to use VFMS, ambiguity of the law, use of english language in the regulation. Thus, it was recommended the Minister should provide the threshold and classification for those who supposed to use VFMS, providing time limit to the commissioner on the issue of malfunctioning of VFD and use of Swahili Language for Tax law and regulation.

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