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FAIRNESS PERCEPTIONS OF THE INCOME TAX RATE STRUCTURE AMONG MICRO, SMALL, AND MEDIUM ENTERPRISES IN GHANA: A PROPOSAL FOR AN AFRICAN CONCEPT OF DISTRIBUTIVE FAIRNESS

SUBMITTED BY

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DECLARATION

I, Clara Kowlaga Kasser-Tee, do hereby declare unequivocally that this thesis is my original work that I produced under the supervision of the undersigned, and that references to the works of others have been duly acknowledged in the references and in quotations.

I further hereby confirm that this work has not been submitted whether in part or in whole to any institution for the award of a degree or other certificate.

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ABSTRACT

This study examines the normative fairness or otherwise of the Ghanaian income tax rate structure in the context of the experiences of Micro, Small and Medium Enterprise, (MSME) taxpayers, and the principles of fair taxation. The study finds that MSME taxpayers perceive the Ghanaian income tax system as unfair, as the income taxes that they pay are too high and the way the taxes are collected is problematic. The study finds further that the factors underpinning the perceptions of unfairness are rate complexity, distributive unfairness, and procedural injustice. The study argues that the Ghanaian income tax rate structure is normatively unfair, its rate structure complexity is beyond the capacity of MSMEs to determine correctly, and the procedural requirement for disputing a tax assessment is also unfair to MSME taxpayers. The study makes recommendations for the harmonisation of the various definitions of MSMEs in the Ghanaian legal system, a practical progressive income tax rate structure founded in an African concept of distributive fairness, and a collaboration between the Ghana Revenue Authority and the Ghana Enterprises Agency for a holistic and comprehensive preferential tax regime that addresses the factors underpinning MSMEs perceptions of unfairness and builds the capacities of MSMEs to support them to thrive in the Ghanaian economy.

DEDICATION

I dedicate this work to Dr Daniel Kasser Tee, my husband, and Clement Tibontaaba Kasser-Tee, Danielle Yinpang Kasser-Tee and David Nyehimeng Tee, my children. I am grateful to them for their understanding of my unavailability sometimes, and their support during this study. They are my world.

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LIST OF ABBREVIATIONS

Acronym	Full Meaning
CDD Ghana	Centre for Democratic Development, Ghana.
CIT	Corporate Income Tax
CSO	Civil Society Organization
FGD	Focus Group Discussion
GDP	Gross Domestic Product
GIPC	Ghana Investment Promotion Centre
GRA	Ghana Revenue Authority
KRA	Kenya Revenue Authority
ORC	Office of the Registrar of Companies
MSME	Micro, Small and Medium Enterprise
RGD	Registrar General's Department
R & D	Research and Development
SBTR	Small Business Tax Rate
VAT	Value Added Tax

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE STUDY

The Republic of Ghana is one of the most secure democracies in West Africa. She operates a constitutional democracy and has enjoyed continuous democratic rule since 1993. During this period, Ghana has experienced a change of governments both through successful free and fair elections and upon the unexpected death of a sitting President. She, (Ghana) is therefore considered one of the thriving democracies in Africa. Ghana practices a dual system of law comprising local legislation, received English law and Ghanaian customary law.[1]

Ghana is a lower middle-income country with a population of 34.1 million as of 2023.[2] The source of the government of Ghana's revenue may broadly be categorised into two: tax revenues and non-tax revenues. Ghana's highest reported tax-to-GDP ratio since 2000 was 14.1% in 2021, which was lower than the average of the 33 African countries in 2023 (15.6%) by 1.4 percentage points.[3] Despite increasing steadily from around 8% in 2000 to approximately 14.1% today, Ghana's tax take remains lower than the government's target of 20 percent of GDP by 2024. Ghana's tax revenue is therefore relatively lower than income levels of similar countries across the world, including that of other sub–Saharan African countries.[4]

[1] Bernice Owusu and Benjamin Damoah, Ghana's Democracy Under the Fourth Republic: A Case For Political and Economic Liberalization in Africa (2023) 9 AUCJCM 6.
[2] Cudjoe, (n3).
[3] Prince Cudjoe, 'The Ghana Beyond Aid, Exploring its Efficacy as a Plan for National Development' (Master Thesis, University of Iceland 2024).
[4] ibid.

According to the Government of Ghana's official data, only 8.2% of the Ghanaian population pay taxes as of 2022.[5] So out of a population of over 30 million people, and 17 million registered voters, only 1.3 million pay taxes.[6] The obvious challenge to Ghana's tax revenue mobilization therefore is that too few people pay taxes in Ghana.[7]

An increasing concern in many emerging economies in recent times is the amount of "tax gap", that is, the difference between the taxes actually paid and the taxes that would have been paid if all taxpayers filed complete and correct tax returns at the right time, and, paid all the correct amount of taxes due from these returns at the right time.[8] The World Bank estimates that the corporate income tax gap for Ghana ranges between 81.6 percent and 85.6 percent. This amount represented the equivalent of 12.7 percent of Ghana's GDP in 2016.[9] The estimated VAT gap in Ghana on the other hand ranged between 18.2 percent and 39.3 percent.[10] That for import tax gap was estimated at 32.5 percent.[11] The estimated income tax gap from businesses that operated as sole proprietors alone was GH¢19.5 billion. This amount is the equivalent of 12.6 percent of Ghana's GDP.[12] Considering that sole proprietors constituted about 83 percent of all establishments in Ghana, and that a substantial number of them, that is, sole proprietors, operate in the informal sector, the World Bank recommended that formalising the activities of the informal sector may be fundamental to improving revenue mobilisation as this would ensure tax payments

[5] Ministry of Finance, *The Budget Statement and Economic Policy of the Government of Ghana for the 2022 Financial Year*, (MoF 2022) p78.
[6] Ibid.
[7] Ibid.
[8] J. Strader and C. E. Fogliasso, 'An Investigation of Some Factors Affecting Taxpayer Non-compliance,' (1989) 77 Account'ng and Business Research 20, 39.
[9] Kwadwo Opoku and Others 'Ghana Tax Gap Analysis' (World Bank Group 2020), Report No: AUS0001887.
[10] Kwadwo (n 9).
[11] Ibid.
[12] Kwadwo (n 9).

from them.[13] Other experts such as F. Y. Sebele-Mpofu, Pimhidzai and Fox have disagreed with this recommendation, and have raised questions on whether any significant amount of revenue can be collected from the informal sector in the first place.[14] They have also cautioned that revenue administrations of emerging economies must not in their quest for more revenues, formalise the informal sector and that doing so may result in a the suffocation of these MSMEs and the loss of livelihoods.[15] The argument on whether formalisation of the informal sector holds the key to raising more revenue from that sector is therefore far from settled.

A less contentious finding with respect to revenue mobilisation is that voluntary compliance with tax laws is the bedrock of efficient tax administration and an increase in tax revenue mobilisation.[16] To achieve efficient tax administration therefore, the tax administrator must ultimately adopt strategies that not only enable but that also inspire voluntary tax compliance.[17]

There are sufficient research findings that link voluntary tax compliance and taxpayer honesty with taxpayers' perceptions of the fairness and decency of the tax system.[18] Voluntary tax compliance has therefore been found to be higher where taxpayers perceive that the taxes that they pay are fair and that the generality of the tax system is fair to them, and lowest where taxpayers believe that the tax system is unfair to them.[19] It follows that formalisation of sole proprietors and other

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[13] Ibid.

[14] Favourate Y. Sebele Mpofu, 'Informal Sector Taxation and Enforcement in African Countries: How Plausible and Achievable are the Motives Behind? A Critical Literature Review' (2021) 4(1) Open Economics 72.

[15] Ibid.

[16] Benjamin Kunbuor et al., *The Law of Taxation in Ghana* (5th edn, Type 2022).

[17] Ibid.

[18] J. Li, 'Taxpayers' rights in Canada' (1997) 7 Revenue Law Journal, 65; and Carika Fritz, 'An Appraisal of Selected Tax-Enforcement Powers of the South African Revenue Service in the South African Constitutional Context' (Doctoral dissertation, University of Pretoria 2017)

[19] Marius-Răzvan Surugiu, et al. 'Tax Compliance Pattern Analysis: A Survey-Based Approach' (2025) 13 International Journal of Financial Studies,14.

businesses that operate in the informal or unregulated sectors of the economy is unlikely to increase tax compliance nor increase tax revenues where taxpayers perceive the tax system as unfair, as such a system is unlikely to elicit voluntary compliance.[20] Is the Ghanaian income tax system fair to MSMEs?

While the potential of the informal sector to raise more tax revenue has been the subject of extensive discussion, a legal examination of the normative fairness of the Ghanaian income tax rate structure to MSMEs has not. In addition, there is little if any study that examines MSMEs perception of the fairness of the Ghanaian income tax rate structure and the factors underpinning these perceptions.

This study examines MSME taxpayers' perception of the fairness of Ghanaian income tax rates and the factors underpinning these perceptions, that is, the normative fairness of the income tax rate structure, (distributive justice) and the way that the taxes are collected, (procedural justice). The study analysed four sources of data on MSME taxpayers' perceptions of the fairness of Ghanaian income tax rates and the way that the taxes are collected. The four sources of data analysed in this study are: the CDD Ghana, a non-governmental and not-for- profit research think thank; the Ghana Enterprises Agency, the state regulator for MSME businesses; Afrobarometer, also a non-profit research organisation; and Private Enterprises Federation, also a non-governmental and not-for-profit federation of private sector businesses and trade associations operating in the Ghanaian economy, whether they are in the formal, regulated, informal or unregulated sectors of the economy. Furthermore, the study undertook limited primary data collection from private businesses, the GRA and the Ministry of Finance on tax policy and

[20] Surugiu, et al (n 19).

implementation, discretionary powers of the tax administrator, and rights and responsibilities of taxpayers. In addition, the study reviewed relevant laws, regulations, reports and studies from Ghana and other jurisdictions on tax fairness, specifically distributive justice and procedural fairness.

The study argues that the Ghanaian income tax rate structure is normatively unfair, its rate structure complexity is beyond the capacity of MSMEs to determine correctly, and the procedural requirement for disputing a tax assessment is also unfair. Furthermore, the study suggests that theoretical principles of fairness underpinning an income tax rate structure must be rooted in a people's values, history and principles of fairness if it is to be considered fair. Therefore, the theoretical principles underpinning the fairness of the Ghanaian income tax rate structure must be rooted in African culture, values, and principles of fairness if it is to be perceived as fair. Such an African theoretical basis would be the foundation for a holistic approach and relevant trade-offs between economic growth and other principles of tax administration in fair taxation. Meanwhile, there is no comprehensive study or analysis of an African ideal or concept of fairness in distributive justice for the sharing of the tax burden or a tax rate structure.

1.1 Problem Statement and Research Question

Taxpayers in Ghana largely perceive the Ghanaian income tax system as unfair.[21] For example, the Afrobarometer survey Round 5, (carried out in thirty-five countries including Ghana, found a 101 percent increase in perceptions among the Ghanaian population that the tax system is unfair, even though tax reforms had been carried out.[22] The reasons for the perceptions of unfairness however

[21] Isaac Ahinsah-Wobil, 'Expanding the Tax Net in Ghana to Ensure Fairness Without Overburdening Existing Payers' (2023); and D. Armah-Attoh and M. Awal, 'Tax Administration in Ghana: Perceived Institutional Challenges', (2013). Accessed on May 15, 2025.

[22] Ibid.

differ among the taxpayer types. Taxpayers in the formal sector, (comprising large taxpayers and their employees, corporate taxpayers and their employees, and employees in the public sector) attribute the unfairness to insufficient tax compliance by the informal sector, (which comprises MSMEs and their employees).[23] They, (taxpayers in the formal sector) argue that the insufficient tax compliance by the informal sector has resulted in low collection of tax revenues with the effect that the formal sector is overburdened by high taxes in the government's bid to increase tax revenues for needed development.[24]

Meanwhile, MSME taxpayers argue that the income taxes that they pay are too high and the way that they are collected is problematic.[25] MSME taxpayers are therefore unwilling to formalise their operations over concerns that the tax system would collapse or suffocate their businesses if they do.[26]

While the potential of the informal sector to raise more tax revenue has been the subject of extensive discussion, an interrogation of the normative fairness of the Ghanaian income tax rate structure to MSMEs has not. Neither is there a legal study in Ghana that examines the factors underpinning MSMEs' perception of fairness, such as distributive justice and procedural fairness.[27] Following from the above, the research questions investigated in this study are:

1. What are the factors underpinning MSMEs' perceptions of the unfairness of Ghanaian income taxes?

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[23] Paul Adjei Kwakwa, 'Taxation and Corporate finance in Ghana: How do they Affect Environmental Quality' (2024) 11 Cogent Business & Management, 1.
[24] Ahinsah-Wobil, (n 21)
[25] Kwakwa (n 23)
[26] Ibid.
[27] Richard Amo-Hene vrs the Ghana Revenue Authority and Two Others [2022 GHASC 103] per Pwamang JSC, 13-39.

2. Is the Ghanaian income tax rate structure fair to MSMEs?
3. Are the processes and procedures for the collection of income taxes in Ghana fair to MSMEs?
4. What policy recommendations are required to make the Ghanaian income tax rate structure and collection processes and procedures fairer to MSMEs?

1.2 Aims of the Study

1.2.1 General Aim

The general aim of this study is to examine the normative fairness or otherwise of the Ghanaian income tax rate structure in the context of the experiences of MSMEs taxpayers and the principles of fair taxation.

1.2.2 Specific Aims

The specific aims are:

(a) To evaluate MSMEs taxpayers' perception of the Ghanaian income tax rates.

(b) Examine the normative fairness of the Ghanaian income tax rate structure to MSMEs.

(c) Examine the procedural fairness of the Ghanaian income tax compliance procedures for MSMEs.

1.3 Justification of Research

The literature survey discussed in chapter two below shows that there is no comprehensive legal study yet on the normative fairness of the Ghanaian income tax rate structure to MSMEs in the light of the principles of fair taxation. None of the comprehensive works discussed in chapter two, (literature review) has also proposed an African conception of fairness in distributive justice as a theoretical foundation for assessment of the normative fairness of an income tax rate structure. This study is therefore an important research endeavour, that not only makes a significant contribution to the proper understanding of the general legal and constitutional implications of the subject matter of the study, or provides insights on the factors underpinning MSMEs taxpayers' perceptions of the income tax rate structure and compliance regime, but it also proposes an African concept of fairness in distributive justice as a theoretical foundation for assessment of the normative fairness of an income tax rate structure. Consequently, the product of this study serves as a useful source of reference for policy makers, law makers, academics, students, researchers, tax and legal practitioners, taxpayers, and courts of law when they grapple with issues related to the research problem indicated above. In addition, it will assist officials of the GRA in making tax policy recommendations to the Government of Ghana.

1.4 Summary of Chapters

The study is made up of six chapters, following the introductory chapter, which is Chapter One.

Chapter Two of this study critically examines literary works related to the focus of this study. The literature discussed in this chapter cover global, regional, and local narratives published in recognised peer review journals and/or reputable research databases or other published works such as highly reputed books and reports. The comprehensive literature review demonstrates that although there have been extensive studies on the causes of MSMEs low tax compliance, and numerous publications on tax fairness and the link between taxpayer's perception of fairness and voluntary tax compliance, there is little if any legal study that examines the factors underpinning MSMEs taxpayers' perception of fairness of income taxes applicable to them in Ghana such as the normative fairness of the income tax rate structure and the way that the taxes are collected. Furthermore, although the concept of fairness has been the subject of extensive study dating back to the days of Plato and Aristotle, there is little if any theoretical discussion of an African ideal of fairness in distributive justice in the context of an income tax rate structure.

Chapter Two is in three sections. The first section discusses the legal definition or classification of MSMEs. The second section is a theoretical review of the principles applicable in this study, and the third and final section presents an empirical review of the issues in this study. Organising the literature review in this order enables the researcher to present global, regional and local narratives on the issues relevant to the purpose of this study, how they explain or fail to address issues in this study, and the aspects of the literature or concepts that this study builds on.

Chapter Three presents the conceptual framework for this study. This chapter seeks to clarify the conceptual issues in this study such as the meaning of a tax, the concept of Law, whether the concept of taxation falls exclusively within the positivist conception of law, whether tax law is public law, etc

Chapter Four discusses the methodological framework employed in this study. The study employed a mixed methods approach that combines elements of doctrinal legal research in certain respects and non-doctrinal research approaches in other respects. The methodological framework thus uses qualitative and quantitative viewpoints for the purposes of breadth, depth of understanding and the corroboration (or otherwise) of findings.[28] The research design of the study consisted of:

(a) a review and analysis of laws and regulations from Ghana and other jurisdictions;

(b) a review and analysis of previous research data publicly available; and

(c) the administration of survey questionnaires in the sixteen regions in Ghana.

The triangulation of data ensures that findings are adequately corroborated or contested.

[28] Richard Amo-Hene v. the Ghana Revenue Authority and Two Others [2022 GHASC 103] per Pwamang JSC, 13-39.

Chapter Five provides analysis of the various sources of data evaluated in chapter three and discusses the findings thereof.

Chapter Six, which is the final chapter, presents a summary of the study's findings, a discussion of these findings, the conclusions arising from the discussions, the study's recommendations and the researcher's suggestions for future research.

1.5 Scope of Study

Owing to limits on the length of a doctoral dissertation, I am constrained to restrict my analysis and discussion of the research problem outlined above to a critical examination within the parameters of the research questions listed in chapter 1.4 above. This Study is therefore limited to dealing with the administration of taxes expressly covered by tax laws such as the 1992 Constitution, the Revenue Administration Act of 2016 (Act 915) as amended, the Income Tax Act of 2015 (Act 896) as amended, the Value Added Tax of 2013 (Act 870) as amended and the Stamp Duty Act of 2005 (Act 689). The study therefore does not include taxes such as property tax and other local government taxes, rates or levies as there are different laws governing those.

Furthermore, the discretionary powers of the Commissioner-General that will be considered in this study include the powers relevant for enforcement of tax laws, and do not include his administrative powers with respect to the direction and supervision of the staff of the Ghana Revenue Authority. While this legal inquiry will therefore include the Commissioner-General's discretionary powers with respect to the assessment of taxes that are due and payable, the collection of taxes and enforcement of tax obligations, that is, tax administrative powers, it will not include those aspects of his administrative powers which relate to the direction or supervision of the staff of the GRA, that is, internal public service administrative powers over employees of the GRA.

Finally, this study limited its examinations and analyses to the areas within the scope of this study and did not analyse nor discuss matters outside the scope of the study, although such matters have arisen during the data collection and in the secondary data evaluated.

1.6 Limitation of Study

The study was limited to MSMEs, civil society, MSMEs regulators, tax administrators and policy makers. It therefore did not include other sectors which contribute to tax collection in the country, such as large taxpayers and individual taxpayers.

In addition, although the responses to the questionnaires administered also raised issues that related to unfair labour practices within the internal administrative set up of the GRA that affect staff morale, political interference in the internal workings of the GRA that inhibit fair tax administrative processes and perceptions of corruption, these other issues have not been discussed in this study, as they are outside of the scope of the study. The recommendation that this study makes for the promulgation of Rules to govern the exercise of discretionary powers and the setting up of a Small Taxpayers Court will however indirectly contribute to addressing the perceptions of corruption. The issues of unfair labour practices within the internal administrative set up of the GRA, political interference in the internal workings of the GRA and issues of corruption on the other hand must properly be pursued in future studies.

CHAPTER TWO

LITERATURE REVIEW

2.0 INTRODUCTION

This chapter analytically examines literary works related to the purpose of this study. The literature discussed in this chapter covers global, regional, and local narratives published in recognised peer-reviewed journals and reputable research databases or other published works such as highly reputed books and reports. The comprehensive literature review demonstrates that although there has been considerable work on the causes of MSMEs low tax compliance, and numerous studies on tax fairness and the link between taxpayer's perception of fairness and voluntary tax compliance, there is little if any legal study that examines the factors underpinning MSMEs taxpayers' perception of fairness of income taxes applicable to them in Ghana such as the normative fairness of the income tax rate structure and the way that the taxes are collected. Furthermore, although the concept of fairness has been the subject of extensive, consistent and sustained study since the days of philosophers like Plato and Aristotle, there is little if any theoretical discussion of an African ideal of fairness in distributive justice in the context of an income tax rate structure.

This chapter has three sections. The first section discusses the legal definition or classification of MSMEs. The second section is a theoretical review of the principles applicable in this study, and the third and final section presents an empirical review of the issues in this study. Organising the literature review in this order enables the researcher to present global, regional and local narratives on the issues relevant to the purpose of this study, how they explain or fail to address issues in this study, and the aspects of the literature or concepts that this study builds on.

2.1 Definition and Classification of MSMEs

MSMEs are classified based on various factors, such as annual revenue or turnover, the number of employees and total assets.[29] These factors can vary depending on the country or region, but generally, micro enterprises have less than 10 employees, small enterprises have 10 to 49 employees[30] and medium enterprises typically have between 50 and 249 employees.[31]

Under Ghanaian law, an enterprise is defined as "Micro" if that enterprise has between one and five permanent employees and (a) a turnover less than or equal to one hundred and fifty thousand Ghana Cedis; or (b) a fixed asset value of an equivalent amount, that is an amount up to one hundred and fifty thousand Ghana Cedis. An enterprise is defined as "Small" if that enterprise has permanent employees of between six and thirty persons and (a) a turnover of between one hundred and fifty thousand Ghana Cedis and six million Ghana Cedis; or (b) a fixed asset value of between one hundred and fifty thousand Ghana Cedis and six million Ghana Cedis, and an enterprise is defined as "Medium" if that enterprise has between thirty-one and one hundred permanent employees and (a) a turnover of between six million Ghana Cedis and eighteen million Ghana Cedis; or (b) a fixed asset value of between six million Ghana Cedis and eighteen million Ghana Cedis.[32] Any enterprise whose employment size, turnover or fixed asset value exceeds the classifications for a medium enterprise is a Large enterprise.[33] Classifications of MSMEs are

[29] Ramon Hurdawaty and Martinus Tukiran, 'Strategies to Increase the Competitiveness of Micro, Small and Medium Enterprises (MSMES): A narrative literature review' (2024) 21(1) South Asian Journal of Social Studies and Economics 112.
[30] Hurdawaty and Tukiran (n 246).
[31] Ibid.
[32] G. Widjaja, 'Comparison of Tax Laws for Mcro, Small, and Medium Enterprises in Developing Countries,' (2024) 3(3) JoE, 632
[33] The Ghana Enterprises Agency (Classification of Micro, Small and Medium Enterprises) Regulations, 2023 (L.I. 2470, reg. 3.

important because they help to inform the choice of policies and/or facilitations that the government may employ to support the growth of MSMEs.[34]

A review of the various literature sources on the definition or categorisation of MSMEs in the Ghana legal system reveal variations in the classifications by the key state institutions like the Ghana Enterprises Agency, the Ghana Statistical Service (GSS) and the GRA. While the Ghana Enterprises Agency's L.I. 2470 discussed above classifies MSMEs based on three criteria, that is, number of employees, annual turnover and fixed assets, the GSS classifies MSMEs based on only one criterion, that is, number of employees. The GSS data's sampling frame for large, medium, small and micro establishments categorises MSMEs as follows: micro establishments (establishments that engage up to five persons); small establishments (establishments that engage between six and thirty persons); medium establishments (establishments that have engaged between thirty-one and one hundred persons) and large establishments are those that engage more than one hundred persons.[35] Although the GSS and the Ghana Enterprises Agency criteria for classifications of MSMEs differ, (as the scope of the GSS definition is narrower), their factor on number of employees is the same. There is therefore some consistency between those two definitions, albeit to a limited extent. This is however not the case with the GRA classification, which is markedly different.

Under GRA classification of taxpayers, Large Taxpayers[36] comprise:

i. taxpayers with an annual turnover of GH¢5 million,

[34] Gunawan. (n 249).
[35]Ibid.
[36] Kunbuor Benjamin et al., *The Law of Taxation in Ghana* (5th edn, Type 2022).

ii. all mining, petroleum, and financial institutions,

iii. subsidiary companies of companies in the above-mentioned categories,

iv. other taxpayers identified by the Commissioner-General of the GRA, and

v. Taxpayers with complex tax issues that need expertise.[37]

Large Taxpayers are placed under the Large Taxpayer Office.[38]

Medium Taxpayers are taxpayers with an annual turnover above ninety thousand Ghana cedis but below five million Ghana cedis. Medium Taxpayers are under the Medium Taxpayer Office. Small Taxpayers comprise taxpayers with turnover below ninety thousand Ghana cedis, and they are under Small Taxpayer Office.[39]

The effect of the differences in definitions is that an enterprise that is defined as a Small enterprise under L.I. 2470 may be defined as a Large enterprise by the GRA. In fact, all enterprises defined as Medium enterprises under L.I. 2470 are defined as Large taxpayers under the GRA definition. The conflict in the definitions does not lend itself easily to synergy and policy coherence in respect of MSMEs. It will also pose challenges to collaboration and harmonisation between the two state entities, that is, the GRA and the Ghana Enterprises Agency in matters relevant to MSMEs. A harmonisation of the definitions will therefore be more beneficial for efficient tax administration, synergy, policy coherence and institutional collaboration in matters relevant to MSMEs.

[37] Kunbuor (n7).
[38] Ibid.
[39] Ibid.

2.2 Theoretical Foundations

2.2.1 Theoretical Foundations of Income Tax Rate Structure and Tax Fairness

A system of taxation has at least three layers: tax policy, tax laws and tax administration.[40] Each country's tax system must be founded on certain basic principles and so must its tax rate structure.[41] Discussions and literature on what constitutes a good tax system are generally traced to the cannons of taxation propounded by Adams Smith in his celebrated book *The Wealth of Nations* in 1776.[42] These cannons may be summarised as follows:

(1) Equity:

The equity canon deals with the citizens' obligation to contribute towards supporting the government in its obligation to deliver public goods to the people. This canon attempts to answer the question, "how much must the taxpayer contribute to support the government, and the proposed answer to this question is in two parts as follows: first, each person's contribution must be as nearly as possible, in proportion to their respective abilities, and second, each contribution must also be as nearly as possible, in proportion to the state's protection of the revenue that they respectively enjoy. [43]

(2) Certainty of imposition:

This canon borders on the nature and manner of the imposition of a tax. It requires that the tax that each person is bound to pay must be certain, and not arbitrary. Certainty in this context encompasses clarity in the time of payment, the form of payment and the manner of payment.

[40] Soyode Olalekan and Godwin Emanuel Oyedokun, 'Relevance of Adam Smith Canons of Taxation to the Modern Tax System' (2019) 18(2) Journal of Taxation and Economic Development 12.
[41] Joaquim Miranda Sarmento, 'Taxation Principles and Concepts' in Springer Cham, *Taxation in Finance and Accounting: An Introduction to Theory and Practice* (Springer Cham 2023) 9-3.
[42] Adam Smith, *The wealth of nations [1776]*, Vol. 11937, (NA, 1937).
[43] Ibid.

The quantity that must be paid, must therefore be clear and obvious to the taxpayer, and to every other person in the tax system. There must be no ambiguity in any of the terms. [44]

(3) Convenience of payment:

This canon relates to two key issues: the processes that taxpayers must employ to ensure that they pay the right taxes at the right time, and whether such process is convenient to the taxpayer. It, that is, the convenience of payment cannon demands that every tax must be levied at the time or in such a manner that it is not problematic for the taxpayer to pay it.[45]

(4) Economy in collection:

This canon relates to the costs of collecting a tax and requires that all taxes must be so designed in such a manner that the cost of collecting the tax does not exceed the tax itself. [46]

The various objectives of the above cannons are not necessarily in agreement all the time, so where they conflict, trade-offs between them are made.[47]

Adam Smith's cannons have been expanded on and woven into modern principles of taxation,[48] such as the globally accepted principles that:

(i) although taxation is a creation of law, it must be subject to specified limits of application so as to avoid the erosion of capital, which will have the undesired effect of reducing future income;

(ii) taxes must not exceed the needs of the required public funding; and

[44] Sarmento (n 42).
[45] Ibid.
[46] Ibid.
[47] Kunbour et al (n 37).
[48] Ibid.

(iii) the cost of collecting a tax must not exceed the revenues that are associated with the tax.[49]

One of the most widely accepted canons that continues to permeate all modern tax systems and enjoy extensive discussion globally is the Equity canon.[50] It is more frequently referred to as 'fairness' in various literature in various fields like economics, political science, sociology, philosophy and psychology.[51] This canon is also arguably the most controversial because fairness is a normative concept which traces its theoretical roots to philosophical concepts of fairness, equity and justice, concepts which are by themselves not free from controversy.[52]

When it comes to fairness in taxation, everyone agrees that taxation must be fair and that each person must pay his or her fair share of taxes. On this, there is little if any dispute. However, when required to answer the question, "what constitutes fairness" or "what is fair share," the views are very widely varied.[53]

Although the concept of fairness has engaged philosophers since time immemorial and has been explored in different context such as law, philosophy, psychology, sociology, economics, and political science, its meaning in law and for that matter the law of taxation is rooted in the

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[49] Sarmento (n 42).
[50] Schoen Wolfgang, 'Value Creation, the Benefit Principle and Efficiency-Related Allocation of Taxing Rights' in W. Haslehner and M. Lamensch (eds), *EATLP Congress Report (EATLP International Tax Series* 2020 Working Paper of the Max Planck Institute for Tax Law and Public Finance No. 2021-06 (IBFD 2021).
[51] John G. Head, 'Tax Fairness Principles: a Conceptual, Historical and Practical Review' (1992) 9 Austl. Tax F. 65. See also Johan Calltorp and Meri Larivaara, 'Changing Perceptions of Equity and Fairness' (2009) Nordic health care systems 214.
[52] Ibid.
[53] Calltorp and Larivaara (n 53).

conception of justice and has differed through the times – from the days of Plato, Confucius, Aristotle, Kant, Rawls, Amartya Sen, etc.[54]

While the traditional concept of justice focused on individual virtue or the just man, the modern conception of the term, particularly in the field of law and economics focuses on a just society in terms of the allocation of public resources.[55] The modern conception of justice in law and economics is thus primarily distributive and considered from a political perspective rather than a metaphysical angle as it concerns who gets what, how and why.[56] The principles of fair tax are to be seen in this context, that is, distributive justice.[57]

One of the major theories in distributive justice is that of Professor John Rawls[58], specifically, his concept of Justice as Fairness.[59] He is one of the most distinguished and acknowledged modern political philosophers who has significantly influenced the modern concept of justice as fairness. [60] John Rawls' most widely discussed work in distributive justice is his conception of a just liberal society, which he intitled *justice as fairness*. Professor Rawls first set out his concept of justice as fairness in methodical detail in his 1971 book, *A Theory of Justice*.[61] He continued to develop this

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[54] Ramesh Chandra and Amartya Sen, *Reflections on the Future of Capitalism: from Karl Marx to Amartya Sen,* (Springer, 2024).
[55] Chandra and Sen (n 271).
[56] Ibid.
[57] Chandra and Sen (n 271).
[58] John Rawls was an American academic and a political philosopher in the liberal tradition. He lived in the period of 1921 to 2002.
[59] Andreas Follesdal, 'John Rawls' Theory of Justice as Fairness' Philosophy of Justice, (Springer Netherlands 2014
[60] Edor John Edor, 'John Rawls' Concept of Justice as Fairness' (2020) 4(1) PINISI DR, 179.
[61] John Rawls, "An Egalitarian Theory of Justice" *in Philosophical Ethics: An Introduction to Moral Philosophy* (London: MacMillan, 1971).

theory throughout his career. He restated it in 1993 in *Political Liberalism*[62], restated it again in *The Law of Peoples* in1999, and finally restated it in 2001 in *Justice as Fairness*.[63]

According to Rawls' 'justice as fairness' in *A Theory of Justice*,[64] the most reasonable principles of justice are those that would be the object of mutual agreement by people under fair conditions. By fair conditions, Rawls is referring to, a society of free citizens holding equal basic rights and cooperating within an egalitarian economic system. In Rawls' egalitarian system, citizens relate to each other as equals within a social order defined by reciprocity, instead of within unjust status hierarchies.[65]

The objective of Rawls Justice as fairness is to describe a just arrangement of the major political and social institutions of a liberal society, such as the family, the political constitution, the economy, the legal system, and so on. He, (Rawls), calls the arrangement of these institutions 'a society's *basic structure'*.[66] In Rawl's concept, a society's basic structure is the location of justice. This is because it is the institutions in this basic structure that must distribute the main benefits and burdens of social life, such as who will have opportunities to get what kind of work, who will receive social recognition and for what, who will have which basic rights, what the allocation of benefits and burdens will be, and so on.[67]

[62] John Rawls, "Political liberalism: Reply to Habermas" (1995), *92(3) JP*, 132.
[63] Leif Wenar, 'John Rawls' in Edward N. Zalta (ed.) *SEP* (Standford University, 2021).
[64] John Rawls, *A Theory ofJjustice* (Routledge, 2017).
[65] LWenar, (n 63).
[66] Ibid.
[67] Wenar (n 64).

In his conception of justice as fairness, Rawls uses two principles for the purposes of guiding the distribution of benefits and burdens, which he restated[68] as follows:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle).[69]

In Rawl's concept of justice as fairness, the first principle of equal basic liberties is to be expressly guaranteed in the political constitution, while the second principle applies primarily to the laws that govern the economic institutions in the society.[70] It (the first principle) affirms the equality of all citizens, that is, that all persons must have equal basic rights and liberties. These basic rights, which include rights such as liberty of the person, the right to life, the right to property, freedom of conscience, freedom of thought, freedom of speech, freedom of association, the right to work and so on.[71] Rawl's first principle accords the above-mentioned rights and liberties to all citizens equally and without any discrimination whatsoever, whether on the basis of nationality, race, ethnicity, gender, status, religion, etc.[72] Justice requires that all persons must have equal rights in these circumstances. This is because unequal rights would be detrimental to the persons who get

[68] Rawls' initial conception of the two principles was criticized. So, in response to these criticisms, he, (Rawls) subsequently restated the principles.
[69] John Rawls, 'Justice as Fairness.' (1958) 67(2) the Philosophical Review 164.
[70] Ibid.
[71] I Rawls (n 69).
[72] Wenar (n 64).

a lesser share of the rights and therefore unfair.[73] Chapter 5 of Ghana's 1992 Constitution can be said to fulfil this first principle as it spells out a bill of rights for everyone in Ghana, regardless of race, nationality, ethnicity, gender, disability, etc.[74]

The second principle of justice is in two parts: the 'fair equality of opportunity' principle and the 'difference principle'. The first part of the second principle, that is the 'fair equality of opportunity' principle, requires that all persons who have the same talents and readiness to use them must be given the same educational and economic opportunities regardless of their status or background and irrespective of whether they were born rich or poor.[75] The second part of the second principle, referred in his book as the 'difference principle' seeks to regulate the distribution of wealth and income.[76] It, that is, the difference principle, requires that economic and social inequalities are permitted in the society only to the extent that they are arranged in such a manner that they result in the greatest benefit to the least advantaged.[77] This second part therefore permits inequalities of wealth and income, only where such is not only to everyone's advantage, but especially same benefits the ones who will be worst off in the society. Justice as fairness thus develops a theory of justice from the idea of a social contract.[78] The principles it articulates affirm a broadly liberal conception of basic rights and liberties and only permit inequalities in wealth and income that would be to the advantage of the least well off.[79]

In the design of a just tax system, Rawls' concept of justice as fairness offers an ideal that requires that the basic structure must continuously be reworked to ensure that there must be equality of

[73] Wenar (n 64).
[74] Ibid.
[75] Rawls (n 68).
[76] Ibid.
[77] Rawls (n 68).
[78] Jorgen J. Pedersen, *Distributive Justice and Taxation* (Routledge 2020).
[79] Ibid

opportunity for everyone in the society, and that the distribution of the tax burden must be to the advantage of the least well off.[80] This study translates this to mean that the design of a tax system departs from Rawls' concept of distributive justice if it is blind to inequalities of wealth and abilities in such a manner that denies the least well off the opportunities, (in this case the business opportunities) that are available in the society. Such a design offends the difference principle because it is not to the advantage of the least well off.[81] It therefore becomes a structural injustice.[82]A corrective measure for structural injustice in this context would be a tax rate structure design that not only has an upper and lower limit, but also a compliance framework that benefits the least well off.

2.2.2 Rate Structure

Two widely theorised principles of fair taxation in determining income tax rate structure are the Benefits principle and the Ability to Pay principle.[83] The Benefits principle proposes that what constitutes fair taxation is when contributions to tax are in line with benefits received from government programs.[84] It, therefore, holds that the amount of tax that people should pay must be in accordance with the benefits that they receive from government programs.[85] The principle dates back to the 17th Century and is based on the argument that public expenditures are financed by taxes, therefore, fairness requires that a heavier tax burden be placed on those who derive greater benefits from those programs.[86] In short, the Benefits principle calls for taxation to be seen as

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[80] Rawls (n 68).
[81] Ibid
[82] Rawls (n 68).
[83] Joseph M. Dodge, 'Theories of Tax Justice: Ruminations on the Benefit, Partnership, and Ability-to-Pay Principles' (2004) 58 Tax L. Rev 399.
[84] Stephen Utz, 'Ability to Pay' (2001) 23 Whittier L. Rev. 867.
[85] Ibid.
[86] Joseph J. Cordes, et al, (eds) *The Encyclopedia of Taxation and Tax Policy* (The Urban Institute, 2005).

similar to what consumers pay for private goods purchased in the market.[87] Your tax burden is thus higher or lower depending on how much of public services you consume.[88]

The Benefits principle faces fundamental theoretical challenges in more ways than one in the modern welfare society.[89] To begin with, it does not correspond with the general or modern characteristics of a tax, which is that a tax is a compulsory levy imposed by law for public purposes and is not related to a specific service or the provision of specific goods.[90] Second, the Benefits principle blurs the difference in law between fees for a public service and tax succinctly captured in the case of *Emerson College v City of Boston.*[91] In the case of *Emerson College v City of Boston*[92] the court sought to give three guidelines to distinguish between fees paid to governmental entities, and taxes properly so called, as follows: A payment to a governmental entity is a fee if it is:

a. charged in exchange for a specified governmental service for the benefit the party paying the fee in a manner not shared by other members of society;

b. not compulsory and thus paid by choice, so that the person paying the fee has the option not to utilise the governmental service and thereby avoiding the charge altogether; and

c. the charges are not collected for the purpose of raising revenue but rather as compensation to the governmental authority for the expenses that it, (the governmental authority may incur in providing the requested service.[93]

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[87] Cordes, et al (n 86).
[88] Ibid.
[89] Andy Lymer and Lynne Oats, *Taxation: Policy and Practice-2020-2021* (27th edn), (ISBN 9781906201562 2020).
[90] Ibid.
[91] 462 N.E 2d 1098 (Mass,1984).
[92] Ibid.
[93] Emerson College v City of Boston 462 N.E 2d 1098 (Mass,1984).

Third, while people have control over and or choice in deciding what private goods to consume, they do not necessarily have any such control or choice in determining what public goods to consume.[94] Furthermore, the principle completely ignores the redistributive role of tax in fair taxation.[95]

One of the objectives of taxation is the redistribution of wealth in a manner that reduces income inequalities.[96] The modern state therefore includes the welfare state, although the nature of the welfare state differs from one jurisdiction to the other.[97] To this end, fair distribution of the tax burden in the welfare state may call for redistributive measures that minimize inequalities in the distribution of resources and protect the least well off in the society.[98] Fair taxation in this context therefore also includes its redistributive role.[99] While the Benefits principle may thus work well in private purchases or private market, it hardly achieves the ends of tax justice especially in the context of income taxation and the determination of an income tax rate structure in many economies, including emerging economies.[100]

A more popular principle in the context of fair income taxation and determination of income tax rate structure is the Ability to pay principle.[101] It calls for people to contribute to tax in accordance with their ability to pay, that is, that tax liabilities must be assigned in such a manner that those with higher incomes pay more.[102] The object of this principle is to equalize tax burdens across

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94 Dodge (n 82).
95 Ibid.
96 Ibid.
97 Sonja Dusarduijn and Hans Gribnau, 'Balancing Conflicting Conceptions of Justice in Taxation', (2020) http://dx.doi.org/10.2139/ssrn.3749951 accessed 15 May 2025.
98 Ibid.
99 Dusarduijn and Gribnau, (n 97).
100 Cordes (n 85).
101 Kunbour (n 29).
102 Ibid.

taxpayers whose capacities differ.[103] The Ability to pay principle dates back to the days of Adam Smith and is more widely accepted as reflective of the ends of distributive justice in a liberal democracy, as it acknowledges that taxes are not just for purposes of raising revenue but must include the objective of reducing inequality.[104] The two sub-dimensions of this principle that guide rate structure in income taxation are the horizontal and vertical equities principles, and they seek to differentiate between persons with comparable attributes and those with unequal qualities or needs and to tax them accordingly.[105]

Horizontal equity requires that taxpayers with similar objective measures of financial capability must pay a similar amount of tax.[106] This is based on the belief that income earners within the same circumstances or income categories must pay taxes at the same tax rate.[107] It concerns the comparison of people's own cost benefit ratio with that of others within the same social group and requires similar or equal tax treatment of persons under similar circumstances.[108] Horizontal equity demands a level playing field for those who are equal.[109] It is achieved when taxpayers of similar economic positions pay the same amount of tax.[110] Vertical equity on the other hand entails varying tax treatment based on the varying conditions of the taxpayer.[111] It proposes that across the income spectrum, people who earn more should pay at least as much if not more than people that have less.[112] Vertical equity requires that relevant differences between taxpayers must justify differential

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[103] Kunbour (n 29).
[104] Ibid.
[105] Kunbour (n 29).
[106] Neni Susilawati and Ning Rahayu, 'A Systematic Literature Review for Distinguishing Tax Terms: Equality, Equity, Justice, and Fairness' (2022) 13(6) Journal of Economics and Behavioral Studies 19.
[107] Ibid.
[108] Susilawati (n 105).
[109] Ibid.
[110] Susilawati (n 105).
[111] Ibid.
[112] David Elkins David, 'Horizontal Equity as a Principle of Tax Theory' (2006) 24 Yale L. & Pol'y Rev 43.

tax burdens.[113] It deals with how equitably available resources must be distributed so as to reflect the relative income and welfare of the population.[114]

The income tax rate structures that reflect horizontal and vertical equities are progressive and proportional income tax rate structures.[115] A rate structure is progressive if the rate increases as the income increases, while a proportional rate structure stays constant whether income increases or decreases. In a progressive tax rate structure, High-income earners pay a higher tax rate than other taxpayers such as middle- income earners and low-income earners.[116] In a proportional income tax rate structure, all taxpayers, that is, low-, middle- and high-income earners, pay the same tax rate, for example, 25 percent for all income earners irrespective of the amount of income.[117]

A proportional rate structure has many advantages. First, it is simpler to understand and to compute. Secondly, it disturbs the economy as little as possible. This is because every person contributes as nearly as possible in proportion to their various abilities to pay. These advantages notwithstanding, a proportional rate structure is considered by many to be inequitable, for the reason that it favours the high-income groups but adversely affects low-income groups.[118] After all, $100 to a person whose income is $1,000 is a bigger sacrifice than $1,000 is to a person whose income is $10,000.[119] It is therefore considered inequitable, as it widens the inequality gap and is more burdensome on lower income groups than on higher income groups.[120]

[113] David, (n 112).
[114] Ibid.
[115] David, (n 112).
[116] Kunbuor et al (n 37).
[117] Kunbuor Benjamin, *A Survey of the Development of the Law of Taxation in Ghana* (Digibooks: 2021).
[118] Ibid.
[119] Kunbuor (n 116).
[120] Ibid.

In order to implement the ability to pay taxation, an index is needed by which to measure 'ability' in terms of income, so that equals pay equally, while unequals pay unequally.[121] How to judge whether two taxpayers are equally well off is however by no means an easy task.[122] As Galle Brian[123] noted, while one person may obtain money from an inheritance, another may come by that same amount of money from hard work.[124] Would the 'measure' in this example be equal? [125] Taxation in line with the ability to pay principle thus became taxation that seeks to equate the sacrifices and costs that the taxpayer incurred, and fairness was considered in light of an individual's tax burden in relation to others.[126] While horizontal equity requires a level playing field for those who are equal, vertical equity mandates a level playing field for those who are not equal.[127] And, progressive and proportional income tax rate structures came to represent the implementation of these equities in the tax system.[128] Progressive and proportional income tax rate structures are considered the most important determinants of tax morale globally.[129]

Of the various concepts of fairness in the distribution of the income tax burden, this study considers a progressive income rate structure (in income taxation) as more reflective of fair tax principles. This notwithstanding, this study asserts that progressive taxation will fail to attempt to distribute the tax burden fairly if the income tax bands do not realistically correspond with the contextual

[121] Kunbuor (n 116).
[122] Ibid. See also Galle Brian, 'Tax fairness' (2008) 65 Wash. & Lee L. Rev. 1323.
[123] Ibid.
[124] Kunbuor (n 116).
[125] Ibid.
[126] Afshan Saher and Danish A. Siddiqui, 'How Treatment from Tax Authority, Tax Literacy and Exchange and Vertical Equity Affect Tax Compliance: The Role of Fairness of Tax Assessment Process Complemented by Demographics and Collectivist Culture (2021), accessed 31 March 2025.
[127] Ibid.
[128] Castañeda Víctor Mauricio, 'Tax Equity and its Association with Fiscal Morale,' (2021) 24(5) International Public Management Journal 710.
[129] Ibid.

realities of taxpayers within the jurisdiction. In that case, progressive taxation becomes a mere formality rather than a reflective theoretical foundation. The Benefits Principle and the Ability to Pay principles are theories that trace their roots to Western philosophies. What would be considered an African concept of fairness in distributive justice as a foundation for a fair rate structure?

2.2.3 African Conception of Fairness in Distributive Justice

There is no comprehensive African conception of fairness in the distribution of the tax burden in the law of taxation. Nor does the word exist in the first place in my local language, Kasem (spoken among the Kasena people of the Upper East Region of Ghana), for example. Agbakoba and Nwauche made a similar observation with respect to the Igbo language of Eastern Nigeria, that is, that the word "fairness" does not exist in the Igbo language.[130] This, however, is not to say that the concept of fairness or justice is unknown to African cultures[131] - that would be inaccurate.

Some equivalent expressions and terminologies depict the concept of justice or fairness in African cultures.[132] Max Gluckman, a South African and British Anthropologist, presented this evidence in his essays,[133] showing that Africans not only always had some idea of natural justice, but they also had ideas of a rule of law that bound their kings, although they had not developed these indigenous conceptions in abstract terms.[134] One therefore had to seek an understanding of the

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[130] J. C. Agbakoba and E. S Nwauche, 'African Conceptions of Justice, Responsibility and Punishment' (2006) 37 Cambrian L. Rev. 73.
[131] Max Gluckman, 'Natural Justice in Africa' (1964) Nat. LF, 9, 25.
[132] William Idowu, 'To Each a Crumb of Right, to Neither the Whole Loaf': the Metaphor of the Bread and the Jurinomics of Justice in African Legal Thought' (2012) 37(1) Journal for Juridical Science 56.
[133] Gluckman (n 131).
[134] Ibid.

African conception of these abstract terms from African language, customs, proverbs, and practices.[135]

While there is considerable literature on an African conception of fairness in the context of dispute resolution, retributive justice, and participatory democracy,[136] the same cannot be said for distributive justice, particularly in the context of fair distribution of the tax burden. Nonetheless, like the concept of retributive justice, an analysis of African proverbs, culture, and practices reveals that Africans had a concept of burden sharing in the community, and this concept can be applied in the context of taxation.[137] Idowu for example argues that one such African proverb is the famous Yoruba proverb "*to each a crumb of right, to neither the whole loaf*".[138] According to Idowu, these words in the proverb are used in an economic sense, and they represent the net result of the aspirations and struggles inherent in the practice of the African culture of cohesion and reconciliation.[139]

Idowu observes that the words *each* and *neither* when they are taken together, demonstrate the divergence and convergence of individualism and community in African jurisprudence. While each person's welfare or interests must be protected, this must not be at the expense of the welfare of the community. The idea of the 'individual' is therefore subsumed under or linked to the concept of the community. The effect of this divergence and convergence is that while an individual's personhood is acknowledged and respected, his or her needs and rights are still considered in the

[135] Agbakoba and Nwauche (n 131).
[136] Ibid.
[137] Ibid.
[138] Idowu, (n 129).
[139] Ibid.

light of the welfare of the community as a whole. The result is that the society's cohesion is held as the paramount value and must be always held sacred.[140]

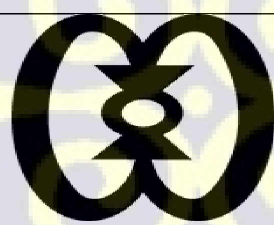
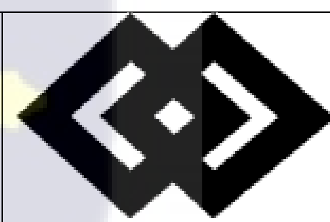
Idowu draws inferences from the words in this proverb to suggest that in African political philosophy, cohesion is the string pushing and pulling together societal values. Idowu terms this "jurinomics."[141] While Idowu's concept of "jurinomics" may be the closest to an African conception of distributive justice, it does not adequately address the concept of fairness in the context of an income tax rate structure, nor does it capture a theory of an African concept of distributive justice in burden sharing in the context of taxation.

Another source to seek an understanding of the African conception of abstract terms of justice and fairness is the Adinkra symbols.[142] The Adinkra symbols are unique representations of philosophies, proverbs and values of the Akans of Ghana.[143] The symbols capture the viewpoints and observations of the interactions between nature and humanity.[144] The exact date and origin of the symbols are unknown, but the evolution of the symbols is said to be traceable to the periods when human beings drew images on walls in caves for visual communication.[145] The Adinkra symbols are the most prominent traditional symbols in Ghanaian literature or literary works.[146]

The Adinkra symbol *MMARA KRADO* (depicted in Figure 1 below) for example literally means "the padlock of the law".[147] The symbolic meaning of *MMARA KRADO* represents statutes of the

[140] Idowu, (n 129).
[141] Ibid.
[142] Agbakoba and Nwauche, (131).
[143] A. J. Wilson, 'Adinkra Symbols and Proverbs as Tools for Elucidating Indigenous Asante Political Thought' in *The Asante world* (Routledge 2021).
[144] Ibid.
[145] J. E. T. Kuwornu-Adjaottor, et al., 'The Philosophy Behind some Adinkra Symbols and their Communicative Values in Akan (2016) 7(3) Philosophical Papers and Review 22.
[146] Ibid.
[147] Wilson (n 142).

nation/community.[148] Wilson observes that the background to this symbol is that every community is guided by laws and regulations that shape the conduct of its citizens and protects the rights of the citizens of that community to bring about order.[149] There are also the "*Epa*" (depicted in Figure 2 on below) an Adinkra symbol that represents Law and Justice[150] or slavery, law and justice,[151] and the *WO NSA DA MU A* (depicted in Figure 3 below), an Adinkra symbol which literally means "*If your hands are in the dish*".[152] The *WO NSA DA MU A* symbolises participatory government, democracy, and pluralism. It is taken from the aphorism, "Wo nsa da mu a, wonni nnya wo," to wit, "if your hands are in the dish, people do not eat everything and leave you nothing".[153] Although the Adinkra symbols provide an insight into the concept of justice, they, like Idowu's concept of 'jurinomics', do not comprehensively capture the concept of fairness in the distribution of the tax burden in terms of rate structure. This study therefore proposes a concept of fairness in the distribution of the tax burden intending to address this gap in the African concept of fairness. The proposed concept is discussed in chapter six.

 **Figure 1: Mmara Krado**	 **Figure 2: WO NSA DA MU A**	 **Figure 3: Epa**

[148] Wilson (n 142).
[149] Ibid.
[150] V. J. Verge, A'dinkra Symbols. *Hermeneutical Narratives in Art, Literature, and Communication*, (Bloosbury 2024).
[151] J. B. K. Aidoo and A. Agbeshie, 'Visual Nexus of Akan Adinkra Symbols: Some Selected Works of Three Contemporary Ghanaian Artists' (2022) 2 Journal of African Art Education 1.
[152] Wilson (n 142).
[153] Ibid.

Symbolizes justice, law and order. It invites people to act with consciousness and fairness.	If your hands are in the dish	symbol of law and justice, slavery and captivity.

Credit: **Kuwornu-Adjaottor, J. E. T., Appiah, G., & Nartey, M. (2016)**] [154].

One issue that comes up in the discussion of a concept presented as an African concept of fairness is whether it is possible to say a particular concept is 'African' since Africa is made up of different tribes and different peoples, who have different customs and practices.[155] This study takes the view that although Africans are made up of different tribes who have different customs and practices, there is more commonality among the various tribes of Africa than differences in these kinds of conceptions. As Idowu notes, one can recognise similarities in the reflective consciousness and recollections of the past in the various literature on African legal thought by the different writers who have studied Africa at first hand or comprehensively.[156] The similarities are therefore not mere coincidences but reveal fundamental similarities in conception and jurisprudence. So, although perspectives of various African jurists may differ, there are also some commonalities that underlie their presentation of the African concept of fairness.[157] The commonalities are evident, for example, in both Max Gluckman and Desmond Tutu's presentation of the concept of justice in traditional African public administration structures.[158] Both Gluckman and Tutu underscore that justice in traditional African societies emphasized little on the vindication

[154] Kuwornu-Adjaottor, J. E. T., Appiah, G., & Nartey, M. (2016). The philosophy behind some Adinkra symbols and their communicative values in Akan. *Philosophical Papers and Review, 7*(3), 22-33.

[155] Idowu, (n 129).
[156] Idowu, (n 129).
[157] Ibid.
[158] Idowu, (n 129).

of individual rights and punishment as retribution, but instead, focused generally on reconciliation, maintaining social relationships and social cohesion.[159]

In his discussion of the concept of justice, Gluckman for example observed, rightly that justice in the traditional African setting was not aimed only at determining who was right or wrong, but also ensuring that social relationships that may have been disturbed are realigned or saved.[160] He noted that in delivering justice, adjudicators had to give a judgment on the matter in dispute, but they had also, if possible, had to reconcile the parties, while maintaining the general principles of law.[161] Tutu's discussion of Ubuntu in African philosophy or conception of justice makes similar observations.[162] According to Tutu,

> God has given us a great gift, ubuntu ... Ubuntu says I am human only because you are human ... You must do what you can to maintain this great harmony, which is perpetually undermined by resentment, anger, desire for revenge. That is why African jurisprudence is restorative rather than retributive.[163]

Many other jurists who wrote on an African conception of fairness made very similar observations.[164] A concept can therefore be presented as African.[165] There is however a gap in the literature as there is, yet no discussed African concept of fairness in distributive justice. This Study, therefore, aims to contribute to bridging this gap, by proposing in chapter three below, what the

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[159] Ibid.
[160] Gluckman (n 130).
[161] Idowu, (n 129).
[162] Ibid.
[163] Idowu, (n 129).
[164] Ibid.
[165] Idowu, (n 129).

Researcher considers as an African ideal of justice based on African history, norms, language, customs, proverbs and symbols.

2.3 Empirical Framework

2.3.1 Role of MSMEs in Emerging Markets

MSMEs are recognised globally as essential drivers of economic growth, poverty reduction, and job creation.[166] They significantly contribute to national economies and the United Nations' Sustainable Development Goals (SDGs),[167] and help to reduce regional disparities and promote inclusive development.[168] They also contribute to the GDP and tax revenue, promote competition and market efficiency, can absorb about 97 percent of the existing labour force and can potentially raise up to 60.4 percent of all investments.[169] In Ghana, MSMEs constitute over 90 percent of all businesses according to World Bank Data.[170] MSMEs also employ over 89 percent of the workforce in Ghana and are responsible for about 81 percent of all new jobs in Ghana.[171] Like all emerging economies therefore, MSMEs play a vital role in Ghana's economy.[172]

[166] See also Anthony Krakah et al, *Integrated Business Establishment Survey Phase II: Summary Report, September 2017*, (Ghana Statistical Service 2017)
[167] Shabir Ahmad and Y. Alsuhaibany, 'Small Feet, Big Prints: the Contribution of Family-Owned MSMEs to Sustainable Development Goals (SDGs),' [2025] BEtE & RR, 10.
[168] See also Krakah et al (n 164).
[169] Krakah et al (n 164).
[170]World Bank Group, *Doing Business 2020: Comparing Business Regulation in 190 Economies* (International Bank for Reconstruction and Development/the World Bank, 2020).
[171] See Anthony Krakah et al (n 164).
[172] Kwame Adom et al. 'Understanding Relationship Marketing Strategy in Ghana's Informal Economy: A Case for Micro, Small and Medium Enterprises' (2023) 25(2) JRME, 253.

2.3.2 Challenges of Low Tax Revenue Mobilisation from MSMEs Taxpayers

Although MSMEs provide many opportunities for economic growth and sustainability, they also face challenges in these economies.[173] One of the challenges that MSMEs face is low tax compliance.[174] MSME tax non-compliance can be caused by various factors, ranging from administrative difficulties to a lack of understanding of the existing tax system.[175] According to Ernest et al, the level of tax compliance among MSMEs is often lower than that of large companies.[176]

Various tax compliance studies have shown that tax compliance is generally influenced by external indices such as tax policies, economic factors, sanctions, incentives, and taxpayers' perceptions of fairness.[177] Other studies also highlight the role of technology in improving tax compliance, such as the implementation of e-Filing and e-Tax systems that simplify the reporting process and reduce the possibility of administrative errors.[178]

Therefore, improving tax compliance requires a combination of strategies, including fair policies, utilization of technology, and increasing tax literacy for the community in order to create a more effective and sustainable tax system.[179] Ultimately, the most efficient tax policies are the combination of factors that promote voluntary tax compliance, and a critical ingredient in

[173] Widjaja, (n 32).
[174] Marius-Răzvan Surugiu, et al. 'Tax Compliance Pattern Analysis: A Survey-Based Approach' (2025) 13 IJFS 14.
[175] Koko Safitri, 'Tax Policy Innovations for Enhancing MSMEs Compliance and Economic Resilience' (2025) 4(2) IJBAE 769.
[176] Ernest Bruce-Twum et al, 'Determinants of Tax Compliance Costs of Small and Medium Enterprises in Emerging Economies: Evidence from Ghana' (2022) 6(1) Social Sciences & Humanities Open 100343.
[177] Safitri, (n 173).
[178] Safitri, (n 173).
[179] Gautama Sastra Waskita and Denny Rakhmad Widi Ashari, 'Taxation and SMEs in Emerging Markets: Case Study Approach to Compliance, Growth, and Sustainable Development', (2025) 1 ESPAS 1.

voluntary tax compliance is the perception of fairness or otherwise of the tax rates.[180] There is little, if any study in Ghana examining the normative fairness of the income tax rate structure for MSME taxpayers.

2.3.3 Taxpayer Perception of Fairness and Tax Compliance

Regardless of the form of taxation adopted, the perception of fairness determines, to a very large extent, compliance.[181] Although previous research has highlighted perceptions of fairness of the tax system (tax fairness) as a critical determinant of tax compliance and tax revenue mobilisation, the factors shaping perceptions of fairness have had limited exploration.[182] Various studies and surveys have suggested that taxpayers in Ghana largely perceive the Ghanaian income tax system as unfair.[183] For example, the Afrobarometer survey Round 5 (carried out in thirty-five countries including Ghana) found a 101 percent increase in perceptions among the Ghanaian population that the tax system is unfair, even though tax reforms had been carried out.[184] Nartey makes a similar observation in his work "Tax Compliance of Small and Medium-sized Enterprises in Ghana," that is, that taxpayers in Ghana perceive the tax system as unfair.[185] McGee's recent study on why people evade taxes, 'Summaries of 100 Surveys'[186] corroborates these findings, that is, that the strongest support for tax evasion in the case of Ghana occurred where the tax system was

[180] Thomas Appiah et al, 'Tax Knowledge, Trust in Government, and Voluntary Tax Compliance: Insights from an Emerging Economy' (2024), 14(2) Sage Open 21582440241234757. Accessed 15 May 2025.

[181] Brad C. Nathan et al, 'Paying Your Fair Share: Perceived Fairness and Tax Compliance' (2024) National Bureau of Economic Research, w32588.

[182] Bassey Edidiong Offiong and Emer Mulligan, 'Perception is Everything: Perspectives on Tax Fairness' (2025) Available at SSRN 5114343 Accessed 15 May 2025.

[183] Ibid. see also and Daniel Armah-Attoh and Mohammed Awal, 'Tax Administration in Ghana: Perceived Institutional Challenges' (2013) Accessed on May 15, 2025; and Ahinsah-Wobil (n 21).

[184] Offiong and Mulligan, (n 181).

[185] Edward Nartey, 'Tax Compliance of Small and Medium Sized Enterprises in Ghana' (2023) 43(11) International Journal of Sociology and Social Policy 1063.

[186] Robert W. McGee, *Why Do People Evade Taxes? Summaries of 100 Surveys* (ISBN5082810, 2025). Accessed 15 May 2025).

perceived as unfair, where a large portion of the money collected was wasted, and where the money collected winds up in the pockets of corrupt politicians.[187] The triangulation of data therefore demonstrates that taxpayers perceive the Ghanaian income tax system as unfair. There has however been no interrogation of the factors underpinning the perceptions of unfairness, such as whether the income tax rate structure is indeed unfair nor an examination of what would constitute a fair income tax rate structure for MSMEs in Ghana. This study aims to contribute to knowledge in addressing this gap.

2.3.4 Summary of Relevant Global, Regional and Local Narratives

Below this study summarises global, regional and local narratives on fair taxation of MSMEs and how they explain or fail to address issues in this Study, and the aspects of the literature or concepts that this study builds on.

2.4.1 Global Level

De Soto's seminal work on the informal economy, 'The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else',[188] explains why capitalism has succeeded in Western countries but failed in developing countries. In this work, De Soto underscores the fact that although most of the poor possess the necessary assets to produce capital, these resources are held in defective forms in terms of a lack of proper documentation, and so can only be traded in informal circles, making them susceptible to a myriad of risks from which they cannot gain legal protection. In his words,

[187] Ibid.

[188] Hernando De Soto and Harry P. Diaz, 'The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else' (2002) Canadian Journal of Latin American & Caribbean Studies 172.

> "Capital, like energy, is a dormant value. Bringing it to life requires us to go beyond looking at our assets as they are to actively thinking about them as they could be. It requires a process for fixing an asset's economic potential into a form that can be used to initiate additional production."[189]

Furthermore, De Soto 's work illustrates clearly that whether it was intended or merely accidental, the structure of the legal property system of Western nations became the staircase that eventually took them from the universe of assets in their natural state to the conceptual universe of capital where assets can be perceived in their full productive potential. His work, among other things, conveys the hope that fixing the legal, policy, and regulatory framework in a manner that is favourable to the informal sector can contribute to wealth creation across the different levels of the socio-economic demographic.[190]

The shortcoming of this work in the context of this study is that it is not an analysis of the Ghanaian income tax rate structure nor a proposition of an African conception of fairness in distributive justice. This current study, therefore, fills an unmet gap. Furthermore, this study responds to De Soto 's work by contributing suggestions to fix the legal, regulatory, and policy issues in the Ghanaian income tax system in a manner favourable to MSMEs to provide them opportunities for sustainable growth.

Waskita and Ashari examined the interplay between tax compliance, SME growth, and sustainable development, highlighting key barriers and opportunities in their work 'Taxation and SMEs in Emerging Markets-Case Study Approach to Compliance, Growth, and Sustainable

[189] Ibid.
[190] De Soto (186).

Development'.[191] The findings of their study highlighted the impact of regulatory complexity and perceived tax unfairness on SME compliance behaviour. Their study suggests that simplifying tax policies, promoting sustainability-driven fiscal incentives and enhancing digital tax administration can foster MSME growth and economic resilience.

The findings of Waskita and Ashari corroborates the view expressed in this Study that tax fairness impacts positively on tax compliance by MSMEs. However, their study neither interrogates nor examines the normative fairness of the rate structures of these economies nor the complexity of the compliance regime for MSMEs in Ghana. Their study also does not explore what would be perceived as "fair" nor the concept of fairness in an African democracy.

In their work on ethical dilemmas in tax planning for MSME taxpayers,[192] Diki and Fakhroni analysed the ethical dilemmas that MSMEs face in Samarinda, Indonesia. Their research contributes to fair taxation literature by emphasising the need for augmented support for MSMEs, fairer tax policies, and improved transparency in governmental processes to build trust and increase tax compliance. The shortcoming of their paper in the context of this study is that Diki and Fakhroni focus on the effect of a specific tax policy on MSMEs in Samarinda, Indonesia. While their findings support the argument in this study that fairer tax policies improve tax compliance, their analyses do not border on any of the critical questions in this Study.

William in her study 'Informality Revisited. World Development',[193] leverages on recent anthropological, economic and sociological evidence from Latin America to propose a view that the fact that the informal sector in developing countries is primarily an unregulated

[191] Waskita and (n 177).

[192] Suganda Diki and Z. Fakhroni, 'Ethical Dilemmas in Tax Planning for MSMEs Taxpayers in Facing Core Tax' (2025) Proceedings from International Conference on Accounting and Finance, 266.

[193] W. F. Maloney, 'Informality Revisited', (2004) 32(7) World development 1159.

microentrepreneurial sector does not mean that it should be viewed as a disadvantaged residual of segmented labour markets. Although this work discusses the informal sector, it does so within different parameters, context and focus, such as proposing alternative explanations for many of the characteristics of the informal sector that are customarily regarded as evidence of its inferiority. Moreover, the analysis made in William's paper is within the context of Latin America rather than Africa and for that matter Ghana. The paper also does not discuss the matters within the scope of this Study.

In his work "The Small-Case Procedure of the United States Tax Court: A Small Claims Court that Works,[194] William Whitford discussed the small-case procedure of the United States Tax Court. Whitford finds that this procedure, unlike most other small claims courts, provides a meaningful avenue of redress for taxpayers disputing small amounts and appearing without legal representation. Whitford's study attributes the successes of this procedure to the unique dispute "posture" of the petitioner and to the extensive resources that both the Tax Court and the chief counsel to the IRS assigned to the small-case procedure. While Whitford's work provides support to the recommendation for a Small Taxpayers Court that this Study makes, his work is neither situated in the Ghanaian legal system nor is an analysis of the Ghanaian income tax rate structure.

Pujiyono, et al in their paper on small claims court,[195] analysed the pertinent issues of increased legal caseloads with respect to defaults on loan agreements. They also examined the effectiveness and efficiency of a small claim court dedicated for the resolution of disputes regarding breaches of contract agreements, and the independence of a sole judge in the handling of cases using the

[194] W. C. Whitford, 'The Small-Case Procedure of the United States Tax Court: a Claims Court that Works', (1984) 9(4) ABFRJ, 797.

[195] Pujiyono Pujiyono, et al., 'Small Claim Court as the Alternative of Bad Credit Settlement for Legal Certainty of the Economic Actors' (2021) 3(2) Indonesian Journal of Advocacy and Legal Services 137.

small claim court mechanism. Among other things, they found that the small claim court offered a faster and more efficient dispute resolution regime and resulted in fairer outcomes for the disputants. It also provided opportunities for the parties to settle bad loans, reduced the case load on courts in Indonesia, and guaranteed better legal certainty to business actors. Like Whitford's work above, Pujiyono, et al.'s study provides support for the recommendation that this study makes in chapter six for a Small Taxpayer Court, especially because their research results confirmed an increase in the filing of small claims in the court by at least 1000 percent between 2015 to 2020. Furthermore, although parallels may be drawn from their work in the context of this study, such as the advantages of a small claims court to small businesses, their work neither relates to tax disputes nor taxpayers. The context of their study is also Indonesia rather than Ghana.

Pallavi and Khan in 'Digitizing taxation and premature formalisation in developing countries',[196] discussed the digitization of taxation systems in emerging economies and how this can facilitate inclusion. Pallavi and Khan found that larger firms had high social and political networks which they relied on to achieve or negotiate beneficial informal transactions with regulators that digitization cannot restrict. Therefore, although digitisation creates efficient tools for the enforcement of state regulations, it also created inequalities in formalisation. While Pallavi and Khan's argument that a more cautious and inclusive approach to formalisation of businesses is a more desirable protective measure for many low capability 'informal' firms in developing countries supports some of the arguments that this study makes in chapter five, the context of their study is completely different from the context of this study and does not relate to fair taxation.

[196]Pallavi Roy and M. H. Khan, 'Digitizing Taxation and Premature Formalisation in Developing Countries', (2021) 52(4) D&Change, 855.

Rather, their work focused on digitized taxation as a tool for formalisation, in the context of a specific law in India, that is, the Goods and Services Tax in India.

Chandan and Son, in their work 'Problems Faced by Indian Micro, Small and Medium Enterprise'[197] highlight the challenges that MSMEs face in India. These challenges include violations of rules that MSMEs do not have the requisite capacity to adhere to and so are compelled to make informal and unauthorised payments to enforcers to avoid being shut down. While this observation corroborates this current Study's finding in chapter five that MSMEs tax non-compliance borders on a lack of capacity rather than non-formalisation, Chandan and Son do not discuss the Ghanaian context nor MSMEs in Ghana. Their paper also relates to digitization of tax systems and inclusion, rather than the tax rate structure applicable to MSMEs per se.

2.4.2 Regional level

In 'Give a Man a Fish: Reflections on the New Politics of Distribution',[198] Ferguson examined the rise of social welfare programs in southern Africa in which states gave cash payments to their low-income citizens. In Furgerson's view, these programmes, that is, the social welfare programmes offered new opportunities for political mobilisation and inspired new ways to think about issues of markets, production, unemployment, distribution and labour. While Ferguson's work gives an insight into how the informal markets operate in South Africa, it does not interrogate any of the research questions of this study.

[197] Chandan Maheshkar and Neha Soni, 'Problems Faced by Indian Micro, Small and Medium Enterprises (MSMEs)' (2021) 48(2) SEDME, 142.
[198] J. Ferguson, *Give a Man a Fish: Reflections on the New Politics of Distribution,* (Duke University Press, 2020).

Moosa has considered the constitutionality of the Powers of the South African Revenue Authority in his work, 'The 1996 Constitution and the Tax Administration Act 28 of 2011: Balancing Efficient and Effective Tax Administration with Taxpayers' Rights.'[199] In this work, Moosa interrogated the ways in which tax administration might take place efficiently and effectively with the required respect for taxpayers' constitutional rights. Moosa establishes a link between taxation, human rights and the government's responsibilities to deliver its transformation objectives in this work. He also argues that the powers conferred on the South African Revenue Service by sections 45(1), (2), 63(1) and (4) of the South African Tax Administration Act 28 of 2011 to conduct warrantless inspections and searches, as the case may be, limit taxpayers' rights to, inter alia, privacy. He concludes that, whilst ss 63(1) and (4) of the TAA ought to pass muster, ss 45(1) and (2) of the TAA are susceptible to a declaration of invalidity under s 172(1) of the South African constitution. Moosa's work supports this current study's assertion that tax law must both pass constitutional muster and be fair and reasonable to elicit voluntary compliance. Furthermore, although Moosa's work is not related to tax non-compliance by MSMEs, nor the challenges that MSMEs have in complying with their tax obligations, its arguments support this Study's recommendation in chapter six that a legal framework and dispute resolution procedures and processes that are fair to MSMEs are desirable in a constitutional democracy. Moosa's work is however with respect to South Africa and the South African Constitution, rather than the Ghanaian income tax rate structure. Similar works are jurisdiction-specific and do not include Ghana. Moreover, these works do not discuss whether the Ghanaian income tax rate structure is fair to MSME taxpayers.

[199] F. Moosa, *The 1996 Constitution and the Tax Administration Act 28 of 2011: Balancing Efficient and Effective Tax Administration with Taxpayers' Rights,* (Doctoral Dissertation), (University of the Western Cape, 2016).

Sebele-Mpofu in his work 'Informal Sector Taxation and Enforcement in African Countries: How Plausible and Achievable are the Motives Behind? A Critical Literature Review',[200] discusses taxation as a fundamental tool for revenue generation, economy building and sustainability, reducing market externalities, regulating trade, stimulating representation and achieving tax justice as well as building state accountability and responsiveness. Sebele-Mpofu's work also discusses the informal sector in developing countries, and the varying motivations tabled by the various stakeholders (policymakers, scholars and tax administrators) in literature on the need to administer tax on this sector and to strengthen enforcement and to evaluate the plausibility of these motives critically. The work, however, is not a legal analysis of income tax rate structures, nor the impact of the Ghanaian tax system on MSMEs in Ghana.

Kouam and Asongu in 'Effects of Taxation on Social Innovation and Implications for Achieving Sustainable Development Goals in Developing Countries: A Literature Review,[201] provide an overview of research on the effects of taxation on social innovation and the corresponding implications for the achievement of Sustainable Development Goals in developing countries, taking three approaches: thematic, chronological, and methodological. Kouam and Asongu's study summarises knowledge about why developing countries should accelerate their march toward social innovation, and addresses the research question "what is the evidence in the literature on the effects of taxation on social innovation and its implications for achieving SDGs in developing countries?" It therefore does not address the research questions in this Study, nor what constitutes an African Ideal of fairness in distributive justice.

[200] Mpofu (n 14).

[201] Jean C. Kouam and S. A. Asongu, 'Effects of Taxation on Social Innovation and the Implications for Achieving Sustainable Development Goals in Developing Countries: A Literature Review' (2022) 6(4) IJIS, 259.

In her work, 'Demystifying the Key Taxation Concepts to Improve Compliance by Small and Medium Enterprises in Kenya',[202] Tanui discusses taxation of small and medium enterprises and tax reforms in Kenya. Her study found that SMEs in Kenya are in dire need of understanding the principal objective of taxation, taxation approaches, tax crimes, and audits. Tanui recommended increased taxation sensitisation by the main tax authority in Kenya (KRA) given the new reforms made, and access to knowledge on the factors that affect SMEs' tax compliance. Tanui's study neither interrogates the normative fairness or otherwise of the income tax rate structure to MSMEs nor explores any of the research questions in the current study.

In 'Taxation and the Growth of Small and Medium Enterprises in Voi Sub County, Kenya',[203] Wangeci and Kaplelach determine the influence of tax on SMEs sector growth in Voi sub-County, Kenya. Wangeci and Kaplelach established a significant correlation between taxation and the growth of the SMEs' sector. Wangeci and Kaplelach concluded that high tax rates have a significant effect on the growth of SMEs and recommended that more friendly tax policies be employed for startup businesses such as tax holidays or introducing a growth limit with a level that is sufficiently stable to sustain payment of taxes. While Wangeci and Kaplelach's finding that high tax rates have a significant effect on the growth of SMEs supports my arguments for a fairer taxation regime for MSMEs, their study neither interrogates the normative fairness or otherwise of income tax rate structure, nor any of the other research questions in this Study.

[202] Tanui Peninah Jepkogei, 'Demystifying the Key Taxation Concepts to Improve Compliance by SMEs in Kenya' (2016) 4(6) European Journal of Accounting, Auditing and Finance Research, 47.
[203] Wangeci Migwi Mercy and S. Kaplelach, 'Taxation and the Growth of Small and Medium Enterprises in Voi Sub County, Kenya' (2018) International Journal of Economics, Commerce and Management 6(5), 871.

In their work 'Determinants of Tax Compliance Behaviour and Sustainable Economic Growth among MSMEs in Nigeria,[204] Appah and Duoduo examined the effects of determinants of tax compliance behaviour on sustainable economic growth of MSMEs in South-South Nigeria. Their findings revealed tax determinants such as tax penalty, tax fairness, tax audit, tax system, and opportunity for evasion affect the level of sustainable economic growth among of MSMEs in South-South Nigeria. Appah and Duoduo recommended, amongst others, that government should expand the tax administration system in Nigeria and strengthen tax collection schemes and follow-up procedures on MSMEs. Although Appah and Duoduo's study borders on MSMEs, the parameters of their enquiry are different from this Study.

Abdulhamid et al. in their work 'Effect of Tax Incentives on MSMEs' Tax Compliance in Nigeria,'[205] investigated the effect of tax incentives, specifically, the Nigerian government tax exemption to MSMEs with income of a particular threshold and low-interest financing on the tax compliance of MSMEs in Nigeria. Abdulhamid et al. concluded that tax incentives have a significant effect on the tax compliance of MSMEs in Nigeria. While the parameters of the study by Abdulhamid et al. are different from those of this Study, their findings provide strong support to the recommendations that this Study makes for a fairer income tax rate structure for MSMEs in Ghana.

[204] Ebimobowei Appah and Godspower Duoduo, 'Determinants of Tax Compliance Behaviour and Sustainable Economic Growth Among MSMEs in Nigeria (2023) 11(3) International Journal of Development and Economic Sustainability 70.

[205] Ellawule Abdulhamid, et al. 'Effect of Tax Incentives on MSMEs' Tax Compliance in Nigeria' (2024) 14(2) Journal of Business Management and Accounting 339.

Folasade in 'Impact of Taxation on Small and Medium Enterprises (SMEs) in Akure South Local Government Area, Akure, Ondo',[206] explores top management's perception of the tax system on the profitability of their businesses. Folasade's study is based on a survey of ten (10) selected SMEs in the South Local Government Area of Akure, Ondo state. The findings of Folasade's study indicate that majority of the respondents perceive and agree with the less effective impact of existing tax policies as regards profitability, productivity, ease of tax administration and tax utilization, on the performance of SMEs and suggest for constructive review and reforming of the tax policies in the country at large. While the views from these surveys confirm some of the arguments that I make in chapters five and six of this Study, Folasade's work does not interrogate any of the questions in this Study.

2.4.3 Domestic level

The Law of Taxation in Ghana, 5th Edition by Kunbuor, et al.[207] is presently one of the few published books which deal pertinently with the Ghana tax law. However, the shortcoming of this book is that it does not discuss whether the Ghanaian income tax rate structure is fair to all categories of taxpayers. It also does not discuss the impact of the tax system on MSME taxpayers. Furthermore, it does not propose an African conception of fairness in taxation, nor does it deal comprehensively with the concept of tax fairness.

Another published book on Ghana tax law is Benjamin Kunbuor's 'Survey of the Development of the Law of Taxation in Ghana'.[208] This book discusses taxation and human rights, and the roles of

[206] Olayeye Folasade, 'Impact of Taxation on Small and Medium Enterprises (SMEs) in Akure South Local Government Area, Akure, Ondo' (2025) Studies Management and Finance Economics, accessed 31 March 2025.
[207] Kunbuor Benjamin et al., *The Law of Taxation in Ghana* (5th edn, Type 2022).
[208] Kunbuor Benjamin, *A Survey of the Development of the Law of Taxation in Ghana* (Digibooks 2021).

courts, tax authorities and Parliament in tax policy formulation among others. However, the book does not include an analysis of data or interviews on the practical effect of the Ghanaian income tax system on the various categories of taxpayers, nor does the book discuss whether the Ghanaian income tax rate structure is fair to MSMEs. This study will therefore contribute to initiating a discussion on the fairness of the Ghanaian income tax rate structure to MSMEs, and how to make the Ghanaian income tax rate structure fairer.

Income Tax Law in Ghana: Exposition and Critique by Kwame Adjei-Djan[209] also deals pertinently with Ghana tax law and makes policy recommendations. However, this book does not interrogate the normative fairness or otherwise of the Ghanaian income tax rate structure in the light of the reality and experiences of MSMEs. The book also does not focus on what role the court can play in inspiring voluntary compliance with tax laws in Ghana.

Kasser-Tee and Tawiah have also written on the jurisdiction to income tax in Ghana and citizenship-based taxation.[210] This work advocates for the broadening of the taxbase to include the citizenship jurisdiction to income tax. This work, however, does not address nor discuss any of the issues relevant to this study.

The researcher herein has elsewhere published on exploring mediation as a dispute resolution mechanism to foster trust between the taxpayer and the tax administrator in her paper, 'Tax Assessment, Tax Disputes and Mediation: Making it Easier for the Taxpayer and the

[209] Adjei-Djan Kwame, *Income Tax Law in Ghana: Exposition and Critique* (Black Mask Limited, 2020).
[210] Clara KB. Kasser-Tee and T. Akyea, 'Citizenship-based Taxation: Outrageous or Broadening the Tax Base - A Ghanaian Perspective', (2020) Issue 5 GIMPA Law Review, 79.

Commissioner General of the Ghana Revenue Authority.'[211] In this paper, the researcher examined the dispute resolution provisions of the repealed Internal Revenue Act, 2000 (Act 592), and recommended mediation to be considered as a dispute resolution mechanism during the Objection Decision stage in the resolution of tax disputes. Although this paper also asserts that the strict constructionist approach to interpretation of tax legislation may occasion dire legal consequences for both the GRA and taxpayers, like the above, this work has not interrogated the fairness of the Ghanaian income tax rate structure to MSMEs in the light of the principles of fair taxation. This work also does not examine the effect of the dispute resolution provisions on MSMEs.

McGee's work, 'Why Do People Evade Taxes? Summaries of 100 Surveys',[212] contributes to fill a gap in the tax evasion literature on the reasons for tax evasion. McGee's study summarises the results of 100 surveys that sought the views of many people in different countries on the defensibility of tax evasion. These countries include Ghana. In the case of Ghana, McGee finds that the strongest support for tax evasion occurred in cases where the tax system was perceived as unfair, where a large portion of the money collected was wasted, and where the money collected winds up in the pockets of corrupt politicians. The work however does not interrogate the Ghanaian income tax rate structure, nor an African ideal of fairness in distributive justice. The results of McGee's study, however, confirm some of the findings from the four data sources that this Study's analyses in chapter five, specifically that MSMEs may not always pay their taxes if they perceive the tax system as unfair.

[211] Clara Beeri Kasser-Tee, 'Tax Assessment, Tax Disputes and Mediation: Making it easier for the Taxpayer and the Commissioner General of the Ghana Revenue Authority' https://www.newsghana.com.gh/wp-content/uploads/2016/08/Mediation-and-Tax-Disputes-complete-art.pdf access 31 March 2025.
[212] McGee (n 400).

2.5 Conclusion

The comprehensive literature review in this chapter shows that although there are various literary works on the concept of fairness and on the taxation of MSMEs, there is no comprehensive legal study on the normative fairness of the Ghanaian income tax rate structure to MSMEs, nor is there a proposed African conception of fairness in distributive justice in allocation of the tax burden or the income tax rate structure. Yet, fairness is a normative concept underpinned by a people's values and perceptions.[213] This Study therefore fills a knowledge gap in tax policy and effective tax administration of MSMEs in Ghana and serves as a useful source of reference for policy makers, law makers, academics, students, researchers, tax and legal practitioners, taxpayers, and courts of law when they grapple with issues related to the research questions in this study.

Furthermore, a survey of the global, regional and local narratives confirms that high tax rates have a significant negative effect on the growth of SMEs, and that tax incentives and reduced or fairer tax rates have a significant positive effect on the tax compliance of sustainable growth of MSMEs.[214] The literature review above has also highlighted the need for constructive review and reform of the tax policies in emerging economies to increase tax compliance and with it create a conducive environment for the growth of MSME businesses.[215] The recommendations made in chapter six of this study respond to this call.

In the next chapter, I provide the conceptual framework for this study.

[213] Richard Fellows et al., 'What is Fair? Perceptions of Justice' (2011) 2(1) International Construction and Business Management Symposium, Kuala Lumpur 1.
[214] Wangeci (n 201).
[215] Olayeye (n 204).

CHAPTER THREE

CONCEPTUAL FRAMEWORK

3.0 INTRODUCTION

The concept of taxation appears straightforward until one starts to discuss in detail exactly what taxation is.[216] The discussion of the concept becomes a lot more nuanced if not complicated, depending on who discusses it and whether it is being discussed from an economic, accounting, a legal or even a political or social standpoint.[217] This chapter seeks to clarify the conceptual issues in this study, such as the meaning of a tax, the concept of Law, whether the concept of taxation falls exclusively within the positivist conception of law, whether tax law is public law, etc.

3.1 Tax: A Definition

Typical of definitions of most concepts, many scholars have defined tax differently. While some have critiqued the definitions proffered by others, some have rejected outright the proffered definitions for different reasons. There are, however, definitions of tax that are generally accepted among tax scholars as capturing the essential nature of a tax, even if not entirely. Three of such definitions are discussed below.[218]

One of the widely known and/or accepted definitions of taxation is that of Lymer et al., who defined tax as a *"compulsory levy made by public authorities for which nothing is received directly in return*".[219] While this definition provides an idea of what a tax is, it has been criticised for,

[216] Kunbuor Benjamin et al., *The Law of Taxation in Ghana* (5th edn, Type 2022).
[217] Ibid.
[218] Ibid.
[219] Lymer Andrew and John Hasseldine, 'Introduction to Taxation in an International Context' (2002) The International Taxation System 1. See also Ault, Hugh J., Brian J. Arnold, and Graeme S. Cooper. *Comparative Income Taxation: a Structural Analysis*, (Kluwer, 2025).

among others, its reliance on the word 'levy'.[220] Some scholars argue that "levies" are not to be considered as taxes.[221] These scholars attempt a distinction between a "levy" and a "tax" properly so called, arguing that while a levy is seen as temporary and collected by federal, state or local governments and used for a stated public purpose, a tax is usually a general contribution imposed on individuals, properties or businesses collected into the government's consolidated fund and allocated according to government budgets.[222] Considerable effort is therefore made to ensure that in the design of a tax system, the tax is not disguised as a levy or vice versa.[223] Another criticism of the definition is that it is too broad and includes not only levies that are not taxes properly so-called, but captures as well fines unrelated to tax offences.[224] For these reasons, the researcher in this study considers Lymer et al.'s definition of a tax as not a truly accurate definition of the thing.[225]

Another well-noted definition of a tax is that of Roosevelt's, that taxes are "*the dues that we pay for the privileges of membership in an organised society*".[226] This definition is even broader than that of Lymer et al.'s above, as it is bound to include club dues, although such dues are not taxes. This is because club dues are paid to entitle the members of the club to the privileges of membership.[227] Moreover, while club dues may not be compulsory stricto senso, for which reasons

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220 Pasquale Pistone, et al., *Fundamentals of Taxation: Introduction to Tax policy. Tax Law and Tax Administration* (Tax Law and Tax Administration 2019).

221 Ibid.

222 Taylor Madeline, 'Is it a Levy, or is it a Tax, or Both?' (2012) 22(1) Revenue Law Journal 188.

223 Pistone (n 31).

224 Kunbuor (n Supra n 29).

225 Ibid

226 See Bardopoulos Anne Michèle, 'eCommerce and the Effects of Technology on Taxation' (2015) Springer 1.

227 Scott Hodge et al., 'Ring Fencing Bad Tax Policy' (2025) Available at SSRN 5122931. Accessed May 15, 2025.

a person may decide to forgo payment of the dues and the corresponding benefit of same, this is not the case with taxes.[228] Taxes are not voluntary, and so a person cannot decide that they want to opt out of paying taxes and forgo whatever benefits there are for the payment of such taxes.[229] This study takes the view that Roosevelt's definition does not sufficiently define a tax from a legal standpoint as it ignores two key characteristics of a tax: that the payment must be for a public purpose rather than a direct benefit commensurate with the payment, and that the payment must be compulsory.[230]

The Ghanaian tax scholar, Ali-Nakyea, in his book "*Taxation in Ghana,*[231] sees tax as the 'levying of compulsory payments by the public authorities with the relevant tax jurisdiction for purposes of defraying the cost of their activities. This definition captures the key characteristics of a tax. For example, it is not all public authorities that have the power to impose a tax. This is particularly so in a constitutional democracy where the power to tax is often confined to only the legislative arm of government. Under Ghana's constitution, it is only Parliament that has the power to impose a tax or provide for the imposition of same. Therefore, not all public authorities can purport to impose a tax on any person or anything in Ghana, as a tax must necessarily be imposed by an Act of Parliament or at the very minimum, under an authority granted by an Act of Parliament.[232] To qualify as a tax therefore, the public authority must have tax jurisdiction; otherwise, such purported tax would be unconstitutional and unenforceable.[233]

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228 Hodge et al., (n 226).

229 Kunbuor (n 29).

230 Ibid.

231 Abdallah Ali-Nakyea, *Taxation in Ghana: Principles, Practice, and Planning* (Black Mask, 2014) 1.

232 The Constitution, 1992, art 174.

233 The Constitution, (n 230). See also Ali-Nakyea, (n 42).

Ali-Nakyea's definition, which states that the public authority must have "tax jurisdiction", acknowledges this key attribute of a tax.[234] This notwithstanding, his definition of a tax is too narrow as it focuses solely on taxes' obvious role of providing government funding.[235] The foundation for tax law is, however, broader than this as tax law also deals with the relationship between individuals or entities and government, and government and the society in ways that may not necessarily be intended for financial gains.[236] For example, like public law, tax law is sometimes used as a tool for influencing, modifying or controlling individual conduct to promote public welfare or preserve desirable societal values.[237] So taxes may be imposed on certain products to discourage their consumption (e.g. sin taxes), or tax incentives may be provided for engaging in tax activities for purposes of encouraging such activities or behaviours.[238] For example, under Ghana law, tax deductions are allowed to entities that contribute or make donations to worthwhile causes.[239] The essence of the law of taxation is thus not to be found entirely in its palpable role as a reliable method to raise governmental revenues for public financing.[240] It must also include the tax law's objective and ability to influence, modify or control individual behaviours or foster desirable individual or group practices for general or specific public virtues.[241] Ali-Nakyea's definition is thus not entirely accurate as it narrows the purpose of taxation to the provision of government funding only. [242]

[234] Ibid. see also Kunbour (n 29)
[235] Ibid.
[236] Ibid
[237] Ibid
[238] Ali-Nakyea, (n 42).
[239] The Income Tax Act, 2015 (Act 896), s. 100.
[240] Kunbour (n 29)
[241] Ibid
[242] Ali-Nakyea, (n 42)

All the definitions above make it clear that the conception of a tax is to be confined to those payments to general government that are compulsory and generally unrequited.[243] Taxes are said to be unrequited because the social benefits that government provides to contributors are not usually in proportion to the exact amount of tax the individual paid.[244] The critiques of the definitions discussed above are also, however, clear that not all "compulsory, unrequited payments to general government" qualify as taxes. Some of these payments may be non-tax revenues in relation to certain fees and charges also paid to governments, such as fines unrelated to tax offences and compulsory loans paid to the government.[245]

There are, therefore, borderline cases where compulsory, unrequited payments to the general government may not be a tax.[246] The above-discussed definitions, therefore, leave open another question: how do we differentiate a tax from other payments made to the government? What criteria can we use to decide which of such payments can be subsumed under the category of tax and which are excluded? [247] What kind of definition will exclude borderline compulsory, unrequited payments to the general government?[248] The question, "what, precisely, is a tax?" particularly to the student and scholar of the law of taxation, is therefore still open to some extent. To a court of law, a precise definition of a tax is imperative.[249] The court has the task, in a constitutional democracy to protect the individual's liberty and property.[250] Since taxation impinges on the right to property, a precise definition of the term is useful to a court in its quest to

[243] African Union Commission, *The OECD Classification of Taxes and Interpretative Guide* (2024) https://doi.org/10.1787/dcee7545-en accessed 31 March 2025.

[244] Ibid.
[245] Kunbour (n 29).
[246] African Union Commission, (n 43).
[247] Ibid.
[248] Ibid.
[249] African Union Commission (n 43).
[250] Emerson College v City of Boston 462 N.E 2d 1098 (Mass,1984).

ensure that a person is not denied of their property unlawfully. One of the foremost cases that has sought to distinguish the legal character of a tax from that of other payments made to government, such as administrative fees is the case of *Emerson College v City of Boston,*[251] discussed in chapter 2.2.2 above.

While the criteria in *Emerson College v City of Boston,*[252]clearly distinguish an administrative fee from a tax, it does not necessarily precisely define a tax, nor does it differentiate a tax from other compulsory unrequited fees to government, such as fines that are not related to tax offences nor compulsory loans made to government.[253] The criteria stipulated in *Emerson College v City of Boston*[254] however helps to show why the definition of tax by Morse and Williams as "a compulsory levy imposed by an organ of government for public purposes,"[255] is considered one of the most widely accepted definitions of a tax.[256] The Morse and Williams definition captures three crucial attributes of a tax: its legal character, political attribute and its public purpose.[257] The legal character of a tax is to be found in its compulsive nature – it is law that requires one to make the payment.[258] Indeed, under Ghana law for instance, tax must necessarily be imposed by the right legislation and from the right authority, that is, by Parliament under the authority of an Act of parliament.[259] Tax must therefore necessarily find expression in positive legislation. Law must demand that the payment be made, and, the source of such law must be Parliament, or pursuant to

[251] 462 N.E 2d 1098 (Mass,1984).
[252] Ibid.
[253] Ali-Nakyea, (n 42)
[254] Ibid.
[255] Morse Geoffrey and David Williams, *Davies: Principles of Tax Law, (*Swett and Maxwell, 2008).
[256] Ibid
[257] See Kunbuor (n 29)
[258] Ibid.
[259] The 1992 Constitution, art 174.

the authorisation of parliament.[260]

Taxes may be considered a direct violation of the right to property and other constitutional rights.[261] So not only must the procedure for governments to introduce a tax be subject to some form of special process, but also, the purpose for levying the tax must necessarily be for a public rather than a private purpose.[262] Such public purpose may include economic, social and policy considerations, such as provision of public or government funding, or discouraging a specific behaviour that is considered detrimental to social good or to protect societal values in other respects.[263] Therefore, there are social and political aspects of taxation.[264] The social and political essence lies in the specific public purposes for which the payments are made, for example, whether it is universal healthcare, universal education or to discourage the consumption of certain goods.[265] Public purpose in this context therefore includes economic, social and policy considerations.[266] The essence of the concept of tax is therefore not to be found only in its useful role as one method to provide government funding.[267]

Ghana's Revenue Administration Act, 2016 (Act 915) defines a tax as "*a duty, levy, charge, rate, fee, interest, penalty or any other amount imposed by a tax law or to be collected by, or paid to, the Commissioner-General under a tax law.*"[268] The Act thereafter defines a tax law as "*a law listed in the First Schedule to the Ghana Revenue Authority Act, 2009 (Act 791); and (b) an*

[260] The 1992 Constitution, art 174.
[261] Ackerman Bruce, 'Taxation and the Constitution' (1999) Colum. L. Rev, 1.
[262] Ackerman (n 73).
[263] Ibid.
[264] Morse (n 67).
[265] Ibid.
[266] Ackerman (n 73).
[267] Ibid.
[268] The Revenue Administration Act, 2016 (Act 915), s. 108.

international arrangement", to the extent that it is to be administered by the Ghana Revenue Authority.[269] Meanwhile, the first schedule of the said Ghana Revenue Authority Act lists only the laws that were in force prior to the year 2009, but excludes all 'tax laws' that came into force post 2009, such as the Excise Duty Act, 2014 (Act 878), Electronic Transfer Levy Act, 2022 (Act 1075), Excise Tax Stamp Act, 2014 (Act 873), Customs Act, 2015 (Act 891), the Exemptions Act, 2022 (Act 1083), etc. The issue thus becomes whether all these laws, that is, the 'tax laws' not listed in the Ghana Revenue Authority Act are excluded from the definition of "tax law" pursuant to section 108 of the Revenue Administration Act, 2016 (Act 915)?

In the view of the researcher in this study, the definition of a tax by Ghana's Revenue Administration Act, 2016 (Act 915) suffers at least three flaws: first, the definition excludes at least two types of taxes: (i) property rates[270] and (ii) income taxes of a specified category of persons, (e.g. Spare parts dealers, Chemical sellers, Tailors and dressmakers, Musical spinners, Radio and television repairers, Gold and silver smiths, Drinking bar operators, Professional photographers, Chop bar keepers and cooked food sellers, Butchers, Refrigeration and air-conditioning workshop owners, Hairdressers, Garage owners, Video operators, Cornmill owners, Co-operative distillers, Scrap dealers, Livestock breeders and traders, Traders Liquor sellers),[271] all of which are collected by the Local Government, (Municipal, Metropolitan and District Assemblies). This is because property rates are not payable to nor to be collected by the Commissioner-General of the Ghana Revenue Authority, as all local government laws in Ghana have assigned property taxes to be collected by the local governments.[272]

[269] The Revenue Administration Act, 2016 (Act 915), s. 108.
[270] The Local Government Act, 2016 (Act 936), ss. 150-152 and 168.
[271]Ibid, s. 142 and sch 12.
[272] Ibid.

Second, the definition proffered in Act 915 offers little if any understanding of the term. Finally, the definition implies that irrespective of what payment is to be made and by what name it is to be called, and irrespective of what it is to be used for, once it is imposed by a tax law, and is to be collected by or paid to the Commissioner-General of the Ghana Revenue Authority, it is a tax. This study submits that such a definition in some way, complicates the court's vanguard role as the protector of the citizen's liberty and property – when can a court say an imposition fails to meet the criteria of "tax" in accordance with law? In other words, is the legislature's ability to encroach on the citizen's property at large? Should a statute purport to define a tax?

To conclude on the meaning of a tax, this study observes that the precise definition of a tax has not been an easy one.[273] While all the definitions often do provide an indication of what a tax is, they are also usually either "too broad" in the sense that they include other payments that are not taxes, or "too narrow" in the sense that they exclude other payments that qualify as taxes.[274] There has therefore not yet been any definition of a tax to end all definitions of taxes.[275] This study builds on the above discussions and existing definitions to propose a proper definition of a tax under Ghana law as follows: *"a compulsory payment imposed by an Act of Parliament or pursuant to the authority of an Act of Parliament for public purposes."* Under a constitutional dispensation like that of Ghana, the Constitution dictates that unless an imposition is by or pursuant to an Act of parliament, it cannot be deemed to validly impose a tax.[276] The import of this is that in defining a tax, particularly under Ghana law, it must not only qualify as "law", but any such law must necessarily be an Act of parliament or at the very minimum, it must have been imposed by an

[273] Shome Parthasarathi, *Taxation History, Theory, Law and Administration*. (Springer, 2021).
[274] Ari Glogower, 'The Constitutional Limits to the Taxing Power' (2024) 93 Fordham L. Rev., 781.
[275] Parthasarathi, (n 85).
[276] The 1992 Constitution, art 174.

authority that was expressly granted in an act of parliament.[277] Article 174 of Ghana's Constitution provides as follows: "*No taxation shall be imposed otherwise than by an or under the authority of an Act of Parliament.*"[278] A definition of a tax, properly so called, under Ghana law, must therefore include its statutory aspects. The definition proposed herein, this study contends, includes all the aspects of tax, legal, social, and political.

Consequent on the above definition, it must be possible for a court, in the relevant context, to strike down any requested payment in the name of taxation, if such payment is inconsistent with the actual conception and character of a tax.[279] A court exists to ensure that any power granted by law, including the power of taxation is not abused.[280] It is also the court's role to protect the property of the citizen.[281] So, the power of taxation, granted pursuant to the 1992 Constitution, must also not be abused, particularly as any such abuse directly harms the personal property of the person. It is for this reason that a statute ought not purport to define a tax in such broad a manner as that of the Revenue Administration Act, 2016 (Act 915).[282]

That tax, by its definition is necessarily a creation of law is not disputed.[283] The same can however not be said of the concept of law.

[277] The 1992 Constitution, art 174.
[278] Ibid.
[279] *Scancom, & Ors v the Commissioner, Ghana Revenue Authority* [2023] DLHC16658
[280] Parthasarathi, (n 85).
[281] Ibid.
[282] Livingston Michael, 'Congress, the Courts, and the Code - Legislative History and the Interpretation of Tax Statutes', (1990) 69 Tex. L. Rev 819.
[283] Alice G. Abreu and Richard K. Greenstein, 'Tax' (2019) 71 Administrative Law Review 663.

3.2 The Concept of Law

The idea of law, its conception, and its role in the organisation of societies has continued to engage the minds of jurists, lawyers, scholars, and many people from different disciplines.[284] The relationship between law and morality, justice, the role of law in society, legal system, law and development, etc are some of the most theorised aspects of the idea of Law and have given rise to many jurisprudential debates.[285] In these debates, different scholars and legal philosophers have presented different approaches to defining Law.[286] Legal philosophy has therefore produced various jurisprudential schools of thought such as the natural law theory, legal positivism, legal realism, law and economics, etc, who have all propounded their idea of Law.[287] In which of these jurisprudential schools does the concept of 'law" in the law of taxation and tax administration most conveniently fall?

When it comes to the specific topic of the law of taxation, it may be argued that the idea of law in the conception of tax necessarily falls within the idea of law as conceived by the legal positivist tradition. This is because tax is a creation of statute[288] – it is positive law that imposes a tax. It follows that the definition of tax therefore necessarily falls within the positivist's conception of law. This is even more so because, in deciding whether a tax has been imposed, the common law courts, (including the Ghanaian Supreme Court) have consistently held that the courts apply the strict constructionist approach of interpretation to fiscal legislation.[289] Thus, the common law

[284] Vago Steven and Steven E. Barkan, *Law and Society*. (Routledge, 2021).
[285] Ibid.
[286] Ibid.
[287] Wacks Raymond, *Understanding Jurisprudence: An Introduction to Legal Theory* (Oxford University Press, 2021).
[288] John Evans Atta Mills, 'The Basis of Liability to Income Tax: Setting the Record Straight after Republic vrs. Commissioner of Income Tax: Ex Parte Maatschappij de Fijnhouthande NV (Fynhout)', (1978) 15 U. Ghana LJ 1.
[289] Multichoice Ghana Ltd v The Commissioner, Internal Revenue Service [2011] 35 GMJ 87.

courts have often quoted with approval the statement in *Russell v Scott*[290] that 'the subject is not taxed unless the words of the **taxing statute <u>unambiguously</u>** impose the tax on him,' [291] (emphasis mine).

It however becomes a lot more nuanced when one considers taxation in totality, that is, taxation to include tax administration. When taxation is considered in totality, can it be said, that the concept of law in taxation falls exclusively within the positivist conception of law? A brief background to the definition of Law in the light of these jurisprudential schools of thought, is necessary to provide a basis for an answer to this question.

3.2.1 The Natural Law Concept of Law

Natural law theory is a mode of thinking systematically about the connections between the cosmic order, morality, and law. It has a long and distinguished history in legal theory. Natural Law Philosophers argue that there is a necessary, if not a contingent, relationship between law and morality. While aspects of this theory date back to Plato (c429-347 BC), Aristotle (348-322 BC), and Cicero (106-43 BC), among others, it is claimed by some scholars that the Natural Law Theory was given systemic form by Thomas Aquinas (C1225-74).[292]

Natural law and natural rights theories became an integral part of the theological, moral, legal, and political thought in the medieval period through to the renaissance period with the works of writers such as Hugo Grotius, John Locke, Jean Jacques Rousseau, and Francisco Suarez.[293] The natural law proponent believes that all law must be morally justified if it is to be legitimately called "law"

[290] [1948] AC 422 at page 433 per Lord Simmonds.
[291] Russell v Scott, [1936] HCA 35.
[292] Osuagwu Eze Simpson, 'Christian Conception of Natural Law and the Moral Theory of the State' (2020) *SSRN 4103654* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4103654 accessed 31 March 2025.
[293] Ibid.

at all.[294] Thus, any morally acceptable legal order must acknowledge natural law and incorporate its fundamental tenets.[295] Natural law theories are therefore theories about the relation between the moral natural law and positive human law.[296] It is so called because it is believed to exist independently of human will. It is 'natural' in the sense that it is not humanly created.[297]

A diverse family of theories carry the label "natural law." Within legal theory, there are two well-known groupings that cover most (but not necessarily all) of the writing that has carried the label "natural law": (1) "traditional natural law theory", which sets out a moral theory (or an approach to moral theory) in which one can better analyse how to think about and act on legal matters; and (2) "modern natural law theory", which argues that one cannot properly understand or describe the law without moral evaluation. As will be demonstrated below, the two are by no means inconsistent nor contradictory.[298]

Traditional Natural Law Theorists[299]

Traditional Natural Law theorists somewhat traced the root of Law to God, and later reason.[300] So, for the Traditional Natural Law theorists, God, and later reason, is the ultimate source of Law.[301] Natural law therefore perceives Law as divine commands creating moral standards, which humans by their nature must strive for, (the natural law).[302] It is safe to say that for the Traditional Natural Law perspective, natural law traces its source ultimately to God, (for the Christian theorists) or to

[294] Simpson, (n 291).
[295] Ibid.
[296] William C. Starr, 'Law and Morality in HLA Hart's Legal Philosophy' (1983) 67 Marq. L. Rev. 673.
[297] Ibid.
[298] Bix Brian, 'Natural Law Theory' in Dennis Patterson (eds) *A Companion to Philosophy of Law and Legal Theory* (Wiley 2010).
[299] Rafał Mańko, 'Towards an Ideological History of Private Law or What Legal History Can Gain from Critical Legal Theory' (2025) Available at SSRN 5084065, http://dx.doi.org/10.2139/ssrn.5084065. Accessed May 15, 2025.
[300] Ibid.
[301] Ibid.
[302] Mańko, (n 298).

reason, (for the non-religious theorists), and it, natural law, is the human standard that all legislation or positive law must aspire to measure up to in order to be deserving of enforcement and compliance.[303] All legislation must therefore comply with this natural law if such legislation is to create a right to obedience and compliance.[304] In other words, it is the traditional Natural Law perspective that legislation must be consistent with natural law, (i.e., the divine moral command), to elicit compliance or obedience by the citizen.[305]

Traditional or classical Natural Law theorists were concerned with questions such as “how does one act morally,” or “what are one’s moral obligations as a citizen within a state or as a state official,” and “what are the limits of legitimate, (moral) governmental action?”[306] This often raised the question of the relationship between morality and law.[307] Natural Law Philosophers argue that there is a necessary or contingent relationship between law properly so called and morality.[308] Legislation that is inconsistent with natural law, that is, the divine or moral standard therefore fails to elicit a right to compliance or obedience by the citizen.[309] This first group of traditional natural law theorists include theorists such as Cicero, Aquinas, Grotius, Pufendorf, and Finnis, among many others.[310]

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[303] Ronald Dworkin, ‘Natural Law Revisited’ (1981) 34 U. Fla. L. Rev. 165.
[304] Mańko, (n 110).
[305] John Finnis, ‘*Law and Morality* 1st edn (Routledge 2017); and John Finnis, *Natural law: The Classical Tradition* 1st edn, (Routledge 2004).
[306] Osuagwu, (n103).
[307] John Finnis, ‘Natural Law Theories’ in E. N. Zalta and Uri Nodelman (eds.) *The SEP,* (Summer 2025 Edn), (Stanford University, Forthcoming).
[308] Osuagwu (n103).
[309] Ibid.
[310] Osuagwu (n103).

Modern Natural Law Theory

Modern natural law theory on the other hand developed as a response to legal positivism and the way legal positivists portrayed traditional natural law positions. Modern natural law theory argues that one cannot properly understand or describe the Law without moral evaluation. Modern natural law theory therefore focuses more narrowly on the proper understanding of Law as a social institution or a social practice.[311]

Modern natural law theories took shape in the Age of Enlightenment, combining inspiration from Roman Law, Christian scholastic philosophy, and contemporary concepts such as social contract theory.[312] Modern natural law theory became a different explanation for the establishment of legal rights, government, and/or a social contract.[313] It reiterated that humans have certain rights, moral values, and responsibilities that are inherent in human nature.[314] One of the key moments in modern natural law theory is the exchange between H.L.A. Hart and Lon Fuller in the Harvard Law Review in 1958.[315] In this exchange, Hart located the boundary between legal positivism and natural law at the conceptual separation of law and morality, that is, that the question of whether something, (a rule or legal system) was "law" was conceptually separate from its moral merit. The Modern Natural Law Philosophers, will, in response to this, argue that there is a necessary and contingent relationship between law and morality - all positive law must be morally defensible for it to qualify to be legitimately called "law".[316] Consequently, any morally acceptable legal system

[311] Bix Brian, *Law and Morality* (Routledge, 2017), 49.
[312] Christoph Schmitt-Maass, 'Lumen Supernaturale'vs 'Lumen Naturale': Human Rights and their Religious Implications in Natural Law in the Early Enlightenment (Pufendorf–Thomasius–Wolff)' (2025) 78 German Life and Letters 16.
[313] Ibid.
[314] Ibid.
[315] Maurice Okechukwu Izunwa, 'Law's Legitimacy: a Critical Evaluation of the Hart–Fuller, Hart–Devlin, and Hart–Dworkin Debates on the Nature of Law and Its Moral Justification' (2024 5 Law and Social Justice Review 5.
[316] Starr (n 107).

must acknowledge natural law and integrate its fundamental tenets.[317] Modern Natural law theory discussions thus confirm a relationship between morality and the law, and focus on moral obligations such as: what laws should a (good) legislator pass, and when does a (good) citizen have a moral obligation to obey the law?[318]

In a nutshell, Natural law is a philosophical theory that states that humans have certain rights, moral values, and responsibilities that are inherent in human nature.[319] For this tradition, the basic goods of human nature are the goods of a rational creature - a creature who, unless impaired or prevented from doing so, naturally develops and exercises capacities for deliberation, judgment, and choice.[320] So, for the Natural law theorist, there is a link between morality and the law, and humans have certain rights, moral values, and responsibilities that are inherent in human nature.[321] Natural law is so called because it is believed to exist independently of human will. Natural Law Philosophers, whether traditional or modern argue that there is a necessary and contingent relationship between law properly so called and morality.[322]

Every society is subject to constant change and these changes take place from time to time as per the needs of the individuals.[323] This has been the case with the natural law theory as well - it has undergone certain changes since the ancient period.[324] The scope of Natural Law Theory is very wide and covers different aspects of society.[325] It has been used to support different ideologies such

[317] Starr (n 107).
[318] Brian (n 122).
[319] Hubert Cancik, Dignity of 'Man' and 'Persona' in Stoic Anthropology: Some Remarks on Cicero, *Di Officiis'* in David Kretzmer et al, (eds) *The Concept of Human Dignity in Human Rights Discourse* (Brill, 2021).
[320] Robert P. George, 'Natural Law' (2008) 31 *Harv. JL & Pub. Pol'y,* 171.
[321] Finnis, (n 118).
[322] Brian, (n109).
[323] Brian (n109).
[324] Ibid.
[325] John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 2011).

as theocracy, absolutism and individualism.[326] It has inspired various revolutions and has also influenced the development of positive law.[327] At the core of Natural law is a philosophical theory that states that humans have certain rights, moral values, and responsibilities that are inherent in human nature.[328] As demonstrated above, although Traditional Natural Law Theory and Modern Natural Law Theory reflect sets of theoretical concerns sufficiently different that it is rare to find writers contributing to both, they, (Traditional and Modern Natural law) are by no means contradictory or inconsistent.[329]

Section 3.3 discusses the role of natural law in inspiring voluntary tax compliance and the extent to which the natural law theory influences this study's conception of law in tax administration.

3.2.2 Legal Positivism

The legal positivists assert a separation of law from ethics. The positivist identifies justice with legality.[330] Legal positivism conceives of Law as a certain body of rules made in a particular way.[331] According to this school of jurisprudence, these rules are the only rules which may rightly bear the name of 'law'.[332] And this 'law' is the language in which legitimate authority is brokered in modern society.[333] Legal positivism as a jurisprudential endeavour is thus another narrative, about a certain body of rules made in a particular way.[334] According to this story, these particular

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[326] Brian, (n 109).
[327] Donal A. Nielsen, 'Natural Law and Civilizations: Images of "Nature," Intracivilizational Polarities, and the Emergence of Heterodox Ideals (1991) 52 Sociological Analysis 55.
[328] Robert P George, 'Natural Law' (2008) 31 Harv. JL & Pub. Pol'y 171.
[329] Brian, (n 109).
[330] Ibid.
[331] P. Sundhya, 'Beheading the Hydra: Legal Positivism and Development', (2007) 1 Law, Social Justice and Global Development. 1.
[332] Nielsen (n138).
[333] Ibid.
[334] George (n139).

rules are the only rules which may rightly bear the name of 'law'.[335] In the view of the Positivists natural law is built on a fallacy as it, that is Natural Law, confuses what is law properly so called with what ought to be the law.[336]

This study considers positivism in the light of Herbert Lionel Adolphus Hart,[337] its major proponent concept of the term. The reason is that while Legal positivism has evolved over the years and been significantly refined in many respects and by many followers such that hardly anything that can be said today about legal positivism in general can be agreed to by all positivists, Hart's conception of it hovers over these disagreements and his theory remains by far the most interesting and internally consistent version of legal positivism. In his book *The Concept of Law,*[338] Hart has analysed the relation between law, coercion, and morality, and has also attempted to clarify the question of whether all laws may be properly conceptualized as coercive orders or as moral commands. Hart says that there is no rationally necessary correlation between law and coercion or between law and morality. According to him, classifying all laws as coercive orders or as moral commands is oversimplifying the relation between law, coercion, and morality. According to Hart, to conceptualize all laws as coercive orders or as moral commands is to impose a deceptive appearance of uniformity on different kinds of laws and on different kinds of social functions which laws may perform. Hence, it will be mischaracterization of the purpose, function, content, mode of origin, and range of application of some laws.[339]

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[335] Nielsen (n 139).
[336] George (n139).
[337] H.L.A Hart was Professor of Jurisprudence at Oxford University. He was also Principal of Brasenose College and Fellow of University College.
[338] Herbert Lionel Adolphus *Hart* et al., *The Concept of Law* (OUP 2012).
[339] See Dworkin Ronald, 'Hart and the Concepts of Law' (2005) 119 Harv. L. Rev. F. 95.

As with all definitions, the above conceptions of law from the natural law and positivist traditions have their weaknesses, critics and adherents.[340] However, this study will not discuss these differing perspectives. The reason is that the above definition is offered only to assist in the examination of the conception of law in the definition of tax law. It is therefore sufficient to summarise the key difference between Natural Law theory and legal positivism as one that borders on the link between morality and the law. The natural law theorist believes that while positive law consistent with natural law has the power of binding the conscience, unjust laws do not create moral obligations, though one might have an obligation to comply publicly with such laws if this is necessary to prevent a greater evil.[341] The positivists on the other hand deny this and claim that law properly so passed by the appropriate authority in the legitimate way is law, and its validity does not depend on its morality.[342]

The discussion in section 3.3 below examines the extent to which the definition of law in tax law follows the positivists conception of law.

3.2.3 Legal Realism and Critical Legal Studies

American Legal Realism was the most important indigenous jurisprudential movement in the United States during the twentieth century, having a profound impact not only on American legal education and scholarship, but also on law reform and lawyering.[343] It is claimed that Oliver Wendell Holmes, Jr. is its intellectual forebear.[344] It however emerged as a real intellectual force

[340] Ruth Gavison, 'Natural Law, Positivism, and the Limits of Jurisprudence: A Modern Round' (1982) 91(6) YLJ 1250.
[341] Ibid.
[342] Jeffrie G. Murphy, *Philosophy of law: An Introduction to Jurisprudence* (Routledge, 2018).

[343] Leiter Brian, 'American legal Realism' in Dennis Patterson (ed), *A Companion to Philosophy of Law and Legal Theory* (Blackwell 2010) 249.
[344] Ibid.

in the 1920s at two law schools in the Northeastern United States, Columbia and Yale.[345] Karl Llewellyn, Underhill Moore, Walter Wheeler Cook, Herman Oliphant, and Leon Green were among the major figures in Legal Realism associated with these two schools.[346]

The Realists were largely lawyers rather than philosophers.[347] As lawyers, they were reacting against the dominant ‘‘mechanical jurisprudence’’ or ‘‘formalism’’ of their day.[348] ‘‘Formalism,’’ in the sense pertinent here, held that judges decide cases on the basis of distinctive legal rules and reasons, which justify a unique result in most cases (perhaps every case).[349] The Realists disagreed with this view. They argued that a careful empirical observation of how courts actually decide cases reveals that judges primarily make decisions or give rulings based on their sense of what would be ‘‘fair’’ on the facts of the case rather than primarily because of the law.[350] Legal rules and reasons are thus largely post hoc rationalisations for the decisions that judges reached on the basis of non-legal considerations.[351] The Realists never made known, in clear expressed terms what their philosophical presuppositions about the nature of law is nor their conception of legal theory. One of the important jurisprudential tasks for Realists today is therefore a philosophical reconstruction and defense of their claims.[352] Not all Realists were academics.[353] Among legal theorists, the Realists are notable for the sizable number who also enjoyed distinguished careers in the practice of law.[354]

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[345] Ibid.
[346] Leiter Brian (n 154).
[347] Brian Z. Tamanaha, ‘Understanding Legal Realism’ (2008) 87 Tex. L. Rev. 87 731.
[348] David B. Wilkins, ‘Legal Realism for Lawyers’ (1990) 104 HLR 468.
[349] Ibid.
[350] Ibid.
[351] Ibid. See also Leiter (n 154).
[352] Wilkins, (n 347).
[353] Ibid.
[354] Wilkins, (n 347).

All the Realists seem agreed that the law and legal reasons are rationally indeterminate (at least in the sorts of cases that reach the stage of appellate review), so that the best explanation for why judges decide as they do must look beyond the law itself.[355] In particular, all the Realists endorsed what we may call ‘‘the Core Claim’’ of Realism, that is, that in deciding cases, judges respond primarily to the stimulus of the facts of the case, rather than to legal rules and reasons.[356] It is possible to find some version of the Core Claim in the writings of all the major Realists, although they (the major Realist) may differ on the question of how to explain why judges respond to the underlying facts of the case as they do.[357]

The ‘‘Sociological’’ Wing of Realism represented by writers like Oliphant, Moore, Llewellyn, and Felix Cohen, thought that judicial decisions fell into predictable patterns[358] (though not, of course, the patterns one would predict just by looking at the existing rules of law).[359] From this fact, these Realists inferred that various ‘‘social’’ forces must operate upon judges to force them to respond to facts in similar, and predictable ways.[360]The ‘‘Idiosyncracy Wing’’ of Realism, by contrast, (exemplified most prominently by Frank and Judge Hutcheson) claimed that what determines the judge’s response to the facts of a particular case are idiosyncratic facts about the psychology or personality of that individual judge.[361] Thus, Frank notoriously asserted that ‘‘the personality of the judge is the pivotal factor in law administration.’[362]

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[355] Leiter Brian, ‘Legal Formalism and Legal Realism: What is the Issue? (2010) 16(2) Legal Theory 111. See also Calvi Woodard, ‘The limits of legal realism: An historical perspective." *Virginia Law Review* (1968): 689-739.

[356] Ibid.
[357] Ibid.
[358] William Twining, ‘Talk about Realism’ (1985) 60 NYUL Rev. 329.
[359] Leiter Brian and Michael Sevel, ‘Philosophy of Law’ (2015 Encyclopedia Britannica, Sydney Law School Research Paper No. 15/18.
[360] Leiter Brian (n 354).
[361] Leiter Brian and Michael Sevel (n170).
[362] Ibid.

The starting point of legal realism is its critique of formalism.[363] In the realist conception, what is most distinctive about law is that Law is neither brute power nor pure reason; it is neither only a science, nor is it merely a craft; law is neither exhausted by reference to its past, nor is it adequately grasped by an exclusively future-oriented perspective.[364] The Realist, however, did not proffer a definition of law.[365]

3.2.4 Other Categories of Philosophical Discourses in Law

There are other categories of philosophical discourses in law, such as Post Modernism, Law and Society, and Law and Economics (as part of the broader Critical Legal Studies and Theories in International Law).[366] These other discourses are, however, more a philosophy of law, which is essentially a way of thinking and doing, rather than philosophical discourses that proffer a definition of law, (which is what the Natural Law Theory and Legal Positivism do).[367] For this reason, these other categories will not be discussed in this chapter.

3.3 The Conception of Law in Tax Law: Does Taxation Fall Exclusively within Legal Positivism?

Until interrogated further, the ideal(ised) version of law in the discussion of fiscal legislation, such as the law of taxation, is the definition of law as postulated by the legal positivist tradition. This is because a tax, by its very nature, is the creation of positive legislation and it must be levied by

[363] Dagan Hanoch, 'The Realist Conception of Law (2007) 57 U. Toronto LJ 607.
[364] Ibid.
[365] Ibid.
[366] Douglas E. Litowitz, *Postmodern philosophy and law* (University Press of Kansas, 1997).
[367] Ibid.

statute.[368] This much is evident in article 174(1) and (2) of Ghana's 1992 Constitution which provides that:

> *(1) No taxation shall be imposed otherwise than by or under the authority of an Act of Parliament.*
>
> *(2) Where an Act, enacted in accordance with clause (1) of this article, confers power on any person or authority to waive or vary a tax imposed by that Act, the exercise of the power of waiver or variation, in favour of any person or authority, shall be subject to the prior approval of Parliament by resolution.*

The provision is therefore clear, that a purported tax levied otherwise than by positive law properly so passed is not a valid imposition. It may therefore appear, until further interrogation that the conception of law in the definition of taxation must fall within the positivists' conception of law. This puts into perspective Rowlatt J's reasoning in *Cape Brandy Syndicate vrs IRC*, [369]where he said emphatically that when considering whether or not a tax is imposed, one must look only at the actual words of the taxing statutes. Equitable principles or legal presumptions therefore have no place in the determination of whether the citizen has been taxed pursuant to the charging provisions of the taxing statutes.

[368] The 1992 Constitution, art 174.
[369] [1921 1 KB 64, 71]

In the words of the court,

> *"in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*[370]

What looks very clear at a glance may however appear not as plain when one begins to study taxation in its entirety, especially, when one begins to consider taxation to encompass tax administration in a constitutional democracy that not only guarantees a bill of rights to taxpayers but that also demands the observance of the principles of the rule of law.[371]

The ambit of the law of taxation encompasses fiscal policy, fiscal legislation, tax administration, and international taxation.[372] The scope of tax administration borders on the assessment, collection, audit and enforcement of a set of tax laws. Tax administration may be described as the link between the statutory foundation and the operative tax system.[373] Tax administration is a complex phenomenon which is embedded in a country's legal system and forms part of the country's public administration.[374] It is institutionalised by different sets of laws, rules and regulations that vests appropriate powers of administration in the relevant tax authorities, establishes desirable checks and balances for the exercise of these powers, formalises the nature and scope of the relationship

[370] *Cape Brandy Syndicate v CIR*, [1921 1 KB 64, 71].
[371] See Peters Roger Paul, 'Tax Law and Natural Law' (1950) 26 Notre Dame Law 29.
[372] Végh Gyöngyi, 'Tax Administration Good Governance' (1028) 27 EC Tax Review 1.
[373] Ibid.
[374] Ibid.

between the taxpayer and the tax authorities and provides dispute resolution mechanisms for the protection and enforcement of rights.[375]

How tax administration is ordered is determined by a country's legal traditions, and how tax administration is executed is largely influenced by the society's norms and values and the dynamics in the relationship between the government and its citizens.[376] The history of tax administration has thus been largely shaped by three key elements: the administrators themselves, how they are structured, and the technology with which they conduct their business.[377] It is, almost, unanimously viewed among tax scholars that the key to efficient tax administration is voluntary compliance.[378] And, central to the realisation of voluntary tax compliance is the taxpayers' belief that the Tax Administration is fair, impartial, and respects the rights of taxpayers.[379] A deeper appreciation of efficient tax administration, therefore, demands a holistic consideration and a comprehensive approach to the content of tax laws and regulations.[380] Is this holistic and comprehensive approach to tax administration consistent with the conception of law in tax law as solely conceived by the positivist tradition?

The concept of fairness, equity and impartiality largely depend on the context or circumstances of each case.[381] Thus, while perceptions of fairness may differ, there is a certain general perception of the concepts (i.e., the concept of fairness, equity, and impartiality), which will include treating

[375] Gyöngyi (n 372).

[376] Ibid. see also Kunbuor Benjamin, 'The Law and Development Problematics'*;* in AP. Atupare and EK. Quashigah (eds) *As a Matter of Public Law and Rights in Ghana* (LexisNexis: 2021).

[377] Ibid.

[378] Gyöngyi (n 372.

[379] Ibid.

[380] Gyöngyi (n 372.

[381] Kunbour Benjamin, 'The Public and Private Law Dichotomy: An Introduction' in AP. Atupare and EK. Quashigah (eds) *As a Matter of Public Law and Rights in Ghana* (LexisNexis: 2021).

equals equally and treating unequals unequally.[382] Implicit, and indeed explicit in this expectation of fairness, impartiality, and equity, is the requirement for a certain standard, and discussing standards necessarily throws up the conception of law within the natural law theory. Since the goals of taxation essentially must border on efficient tax administration, the conception of taxation must also include the concept of a good tax system,[383] and this will ultimately result in a discussion of the role of 'natural law' in legislating and enforcing positive law. The conception of law as postulated by the natural law theorists is therefore not completely absent in the concept of taxation.[384] This study submits that one can hardly discuss a good tax system, efficient tax administration, rule of law, and respect for human rights, without a discussion on standards for compliance, and a discussion on standards for compliance will invariably throw up issues within the natural law conception of law.

Furthermore, the power of taxation is inherent in sovereignty, and in a constitutional democracy such as Ghana's, this power is expressly given by the Constitution.[385] The law, in this case the Constitution thus mediates and legitimates all powers granted pursuant to law, including the power of taxation. It follows that the power of taxation is subject to the Constitution, and the courts may mediate and legitimise this power in accordance with constitutional principles which may not be expressly stated in the Constitution, but which are consistent with the spirit of the Constitution.[386] This is particularly so given that Ghana's Supreme Court has consistently held that the Constitution is made up of not only its express text (letter) but also its spirit.[387] In the specific case of Ghana,

[382] Ibid.
[383] Kunbour Ibid.
[384] See Paul (n 181).
[385] Kunbour Benjamin et al, supra note 29.
[386] See Tuffuor v Attorney-General [1980] GLR 637.
[387] Ibid.

this study submits that the spirit of the Constitution can be found in the words of the Constitution, especially its preamble, which states inter alia that we the People of Ghana….

> **IN SOLEMN** declaration and affirmation of our commitment to; Freedom, Justice, Probity and Accountability; The Principle that all powers of Government Spring from the Sovereign Will of the People; The Principle of Universal Adult Suffrage; The Rule of Law;
>
> The protection and preservation of Fundamental Human Rights and Freedoms.[388]

This study therefore submits that a constitutional democracy, such as Ghana's, requires positive law to comply with certain minimum standards, and where it fails to, such positive law may be struck down as unconstitutional. This study asserts that constitutional principles maybe regarded as standards within the natural law theory context. All laws, including tax law, must therefore comply with these standards to retain validity. In a republican democracy, such as Ghana's, sovereignty resides in the citizens as a collective, and government power, including the power to pass positive law must be used for the welfare of the citizens, and it must be exercised within the confines and expressed limitations stipulated in the 1992 Constitution or other applicable law.[389] It is the viw of the researcher that the 1992 Constitution is therefore the ultimate standard of law and conduct in Ghana. Any conduct that violates this ultimate standard, that is, the 1992

[388] The 1992 Constitution, the Preamble.
[389] The 1992 Constitution, the Preamble.

Constitution is unlawful, and any positive law that is found to be inconsistent with any of its provisions or its discernible spirit must be declared void to the extent of the inconsistency.[390]

It is the considered view of this study that the scope of the power of taxation is thus not only within the boundaries of article 174, but as well within the context and entirety of the other constitutional provisions and in view of the discernible spirit of the Constitution. This Study therefore submits that even if a tax law complies with the requirements of article 174 but offends other provisions or the spirit of the Constitution, it ought to be held as null and void. Therein, thus, is a 'standard' that tax law must comply with to be valid, and that standard is "the Constitution", which embodies not only its words, (letter) but as well its spirit, that is, the history and aspirations of a people.

In conclusion on this part of the section, this Study posits that in imposing taxes, one must not ignore the principles of tax administration. In ideal circumstances tax administrators would play neutral roles in resolving the overall fiscal deficit, ensure that the tax burden on the various sectors of the economy correspond with income classes in the country, and see to it that the economy is managed efficiently.[391] Administering the tax laws of a country must both serve the public interest and meet as well the needs of the government and the people that it serves. The task of a tax administration system, thus, is that it must be designed in such a way that it will collect the right amount of taxes that are due to the government at the least possible cost or inconvenience to the tax paying public.[392] Furthermore, a tax administrator must carry out their responsibilities in a manner that elicits the highest degree of public confidence and perception that they are efficient,

[390] Ibid, art 1.
[391] Charles Y. Mansfield, 'Tax Administration in Developing Countries: An Economic Perspective' (1988) 35 IMF Econ Rev 181.
[392] Matthijs Alink and Victor Van Kommer, *Handbook on Tax Administration* (IBFD, 2011).

effective and fair.[393] Given that tax administrators are more or less the interface between the law on the books and they law in action, it is a good policy to involve them in the drafting of tax legislation, or at the very minimum, to ensure that they input into the processes in making fiscal legislation.[394] Ultimately, it is the tax administrators responsibility to implement the tax law.[395]

The taxpaying public should be affirmed in its expectation that the organization responsible for administering the country's tax system will administer the tax laws consistently and fairly so that similarly situated taxpayers will be treated equally and consistently under the laws and that, as a result, all taxpayers pay their fair share.[396] All of these considerations necessarily require reflections of the concept of law along the lines of natural law theory to inform the positive legislation that will eventually express the tax laws. This is particularly so because it is unanimously agreed among tax scholars that the most efficient way to collect taxes is through the voluntary compliance of the tax paying public, and the standards required in the conceptions of the natural law theories illuminate discussions on how to ensure voluntary compliance with law.[397] The more enforcement activities would be necessary, the more expensive the administration of the tax system will be.[398] It is for all of the above reasons that the researcher submits that the conception of "law" in tax law, although falls largely in the conception of law in the positivists tradition, it will be misleading to say tax law falls entirely within the positivist tradition. For there are certain standards that must be complied with if one is to achieve efficiency in tax

[393] Ibid.
[394] Ibid.
[395] Ibid.
[396] Ibid.
[397] Kirchler Erich, et al., 'Enforced versus Voluntary tax Compliance': The "Slippery Slope" framework' (2008) 29(2) Journal of Economic Psychology 210.
[398] Ibid.

administration,[399] and these minimum standards are not unlike the discussions of the natural law theorists on the link of morality and the law. It is to this extent that this Study's view of Law is not completely inconsistent with the conception of law as postulated by Natural Law theorists.

3.4 Classification of Tax Law: Is Tax Law Public Law, Private Law, or Both?

Law is often classified in different ways under different categorisation depending on the relationships that it governs, the ends of the law, or what it affects. The most theorised classification of law is: Public Law and Private Law; Criminal Law and Civil Law; Municipal Law and International Law; and Substantive Law and Procedural Law.[400] Tax law is often categorised under Public Law and Private Law.[401]

The difference between Public and Private Law seems to be whether the act or acts affect society as a whole or is an issue between two or more people.[402] The reality is, however, more complicated, because the same facts that give rise to actions in Public law can give rise to actions in Private law as well.[403] While there is an overwhelming view among scholars that there is a distinction between Public Law and Private Law, and that tax law is Public Law,[404] there is also a considerable view that any distinction between Public Law and Private Law is "old-fashioned" and undesirable in principle.[405] This part of the chapter discusses whether or not there is a distinction between Public Law and Private Law and if so, where does tax law fall?

399 Ibid.

400 See Pound Roscoe, 'Classification of Law' (1924) 37(8) Harvard Law Review 933.
401 Ibid.
402 Kunbour (n 186).
403 ibid.
404 Kunbour (n 186).
405 Mulholland Leslie Arthur, 'The Difference between Private and Public Law' (1993) 1 JRE 13.

Classification according to Public Law and Private Law

While the specifics of the division between Public Law and Private Law may remain controversial and fluid, it is generally agreed among scholars that the criterion of the division is a classification of the goal of the law by its subjects in three classes, namely: the individual; the society; and the State.[406] The categorisation is thus often based on: (i) the method of establishing legal relations; (ii) the way to protect the rights of their participants; and (iii) the subjective structure of legal relationships.[407] Under these categorisations, while the legal relationship between legally equal entities are governed by Private Law, the legal relationship between the legally dominant and subordinate is governed by the Public Law.[408] While Private Law governs the legal relationship where the initiative is to protect an infringed subjective legal right given to the person concerned, Public Law governs where the protection is initiated by the competent authorities; and while Private Law regulates the legal relationship of citizens/entities (subjects) with each other, that is, the legal relationship between persons subordinated not to each other, Public Law, in turn, regulates the legal relationship, where one of the parties is necessarily a state or part thereof.[409]

It is an acceptable characteristic or definition of Public Law that it is the law that moderates the relationship between the state and private persons.[410] So is the definition of Private Law as the law that regulates dealings among private parties.[411] This view was reiterated by Lord Diplock in the

[406] C. Harlow, '"Public" and "Private" Law: Definition without Distinction', (1980) 43(2) The MLR, 241.
[407] Ibid.
[408] Ibid.
[409] Nina V. Teremtsova et al 'Main Differentiation Criteria between Private and Public Law' (2020) Revista Gênero e Interdisciplinaridade 1.
[410] Supra Harlow (n 216). See also Town Investments v. Department of the Environment [1977] 2 W.L.R. 450.
[411] Ibid.

House of Lords majority decision in the case of *Town Investments v. Department of the Environment*[412] when he explained of the difference between Public Law and Private Law thus:

> . . it is not private law but public law that governs the relationship between Her Majesty acting in her political capacity, the government departments among which the work of Her Majesty's government is distributed, the Ministers of the Crown in charge of *various departments and civil servants of all grades who are employed in those departments*.[413]

Public law is thus generally defined, more or less, as the field of legal rules governing the organisation of the State.[414] Private law on the other hand, is centred, as a set of legal rules on: regulation and protection; defense of everyone's interest; the interest of a person as an individual in his/her private life sphere, or those of a legal person within its contractual liberties; businesses; and promotion of private groups' interests within a public order limit.[415] Therefore, while in Private Law the State reserves unto itself more the task of watching and arbitrating legal relations between persons on an equal footing, in Public legal relations the State intervenes more vigorously to defend certain values or rules considered essential.[416]

Examples of Public Law include Criminal law, where stealing (a crime) would be categorised as Public Law, while conversion (torts) is Private Law, although the same facts may found the separate proceedings, that is, the criminal proceedings and the civil proceedings.[417] Other examples of public law include constitutional law, administrative law, while that of private law include

[412] [1977] 2 W.L.R. 450.
[413] Harlow (n 216).
[414] Jakob Bundgaard, 'On Tax Law and Private Law Relations' (2003) 44 Scandinavian Studies in Law 77; Harlow (n 216); and Randy E. Barnett, 'Foreword: Four Senses of the Public Law-Private Law Distinction' (1986) 9 HLR 267.
[415] Bundgaard (N 224).
[416] Kunbour (n 186).
[417] Ibid.

contract law and property law.[418] Historical accounts, however, show that the categorisation of matters as Public Law or Private Law has been quite fluid, as matters which were considered Private Law are now considered Public Law. For example, Horwitz observes that

> as late as the sixteenth century, English judges still analysed taxation, not as an exaction by the state but as a private gift from the donor-the taxpayer. Parliament was thought to have simply arranged this consensual private transaction.[419]

Only with the development of theories of sovereignty in the seventeenth century did taxation begin to be understood as part of public law.[420] The debate on Public Private Law dichotomy in recent times has, however, reignited discussions on whether taxation is Private or Public Law.[421]

The Public/Private Law Dichotomy: A Historical Context

Although there were earlier anticipations of a distinction between Public Law and Private Law, only the nineteenth century produced a fundamental conceptual and architectural division in the way the law is understood.[422] While some argued there ought not to be a distinction between private and public law, others argued the contrary.[423] Proponents of the no distinction argued, among others, that Private law is never strictly separate from the State in the broader sense – neither is there a true Private Law existing in total autonomy where each intervention by the state requires justification, nor can all law be based entirely on the State.[424] In reality, Private Law can remain

[418] Bundgaard (N 224).
[419] Morton J. Horwitz., 'History of the Public/Private Distinction' (1981) 130 U. Pa. L. Rev. 1423.
[420] Horwitz (N 229).
[421] Ibid.
[422] Kunbour (N 186).
[423] Ibid.
[424] Kunbour (N 186).

outside the State only where it creates its own systems, as both the State and Law carry multiple meanings and present multifarious aspects.[425] The emergence of large-scale corporate concentration coupled with widespread perception that so-called private institutions were acquiring coercive power that had formerly been reserved to governments,[426] would also see the emergence of legal thought concentrated, with one of the goals being the creation of a clear distinction between constitutional, criminal, and regulatory law, that is, public law on the one hand, and the law of private transactions, that is, torts, the law of contracts, property law and commercial law on the other hand.[427]

The debate on whether there should be Public law and Private law, and even if yes, what constitutes Private law and what constitutes Public law continues.[428] This Study nonetheless submits that there ought to be a distinction between Public Law and Private Law, even though what constitutes Public law or Private law may in some instances be dependent on the context. Such a distinction serves the promotion and protection of individual rights better, as it allows the actions of Public Law and Public officers to be held to the standards of administrative law, and as well, protects minorities and vulnerable people better.[429] That said, is tax law Public law or Private law?

Is Tax Law Public Law?

Tax law emanates from 'fiscal policy' and therefore involves 'economic power' relations, the hegemony of the state power, and class-interests of the dominant segments of the social space and

[425] Horwitz (N 229).
[426] Kunbour (n 186).
[427] Horwitz (N 229).
[428] Van Thang Mai, 'The Perception of Public Law-Private Law Divide and the Effect of Constitutional Rights on Private Law in the New Context' (2025) 41VNU Journal of Science: Legal Studies 1).
[429] Horwitz (N 229).

political economy.[430] With respect to subject matter, this characteristic would come under Public Law. Second, Tax law deals with the duties and relationships of individuals/entities to government and society.[431] Furthermore, the fundamental principles that guide taxation and tax policy include neutrality, efficiency, certainty and simplicity, effectiveness and fairness, as well as flexibility. These principles are shared by public administrative law.[432] Moreover, Tax law shares Public Law's purposes to influence, modify, or control individual conduct for the public good.[433] This makes tax law part of Public Law in line with the above-discussed categorisation of Public and Private law.[434] While Public law is subject to legal positivism mainly, Private law contains important projections of the natural law.[435]

This Study submits that there is to a sense a distinction between Public law and Private law, although there may be intersections. And, Tax law is Public Law, although there are certain intersections with private law depending on the context, power, goal, and rights. This Study, therefore, agrees with the many categorisations of public matters which invariably list taxation as a Public Law matter but adds that there are certain instances when this may intersect with Private Law.

3.5 Conclusion

In this chapter, the researcher has stated that this study conceives tax as a compulsory payment imposed by an Act of Parliament or pursuant to authority granted under an Act of Parliament for

[430] C. R. D. Butculescu, 'The Relationship Dynamics between Positivism and the Divisions of Law, analyzed from a Systemic Perspective', (2016) 62 Tribuna Juridică, 98.
[431] Kunbour (n 186).
[432] Ibid.
[433] Kunbour (n 186).
[434] Ibid.
[435] Kunbour (n 186).

public purposes. Tax law in Ghana is therefore law properly so passed pursuant to article 174 of the 1992 Constitution, discussed, thereby bringing tax law within the positivist conception of law. However, to maintain its validity, such tax law must be consistent with the letter and spirit of the 1992 Constitution, otherwise, it may be declared null and void. Furthermore, this study asserts that a tax law is unlikely to elicit voluntary compliance if it does not meet certain minimum standards of fairness and reasonability. To this extent, this study conceives the totality of tax law along the lines of the modern natural law theorists, that is, that positive law must comply with a certain minimum standard of fairness and reasonability to elicit voluntary compliance. It is this conceptual foundation that provides the context for the recommendations that this study makes in chapter six.[436]

In the next chapter, I detail the methodological framework of this study.

[436] Dusarduijn Sonja, and Hans Gribnau, 'Balancing Conflicting Conceptions of Justice in Taxation', (2020) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3749951 accessed 31 March 2025. Cordes Joseph J., et a, (eds), supra note 158. Kunbour Benjamin et al, supra note 28.
Susilawati Neni and Ning Rahayu, 'A Systematic Literature Review for Distinguishing Tax Terms: Equality, Equity, Justice, and Fairness' (2022) 13 Journal of Economics and Behavioral Studies 19; and

CHAPTER FOUR

METHODOLOGICAL FRAMEWORK

4.1 INTRODUCTION

A methodology may be explained as a "network of methods with their respective tools and techniques,"[437] and a methodological approach refers to the way in which a researcher intends to carry out his, her or their research from specified or known methods in a discipline, in this case, legal research.[438] There are different types of methodological approaches to academic legal research. These approaches may, however, be broadly categorised into two - doctrinal legal research and non-doctrinal legal research.[439]

4.2. Doctrinal Legal Research

Different legal academics have defined 'doctrinal legal research' differently depending on the contexts. The common thread that runs through all these different definitions is the fact that doctrinal legal research is about systematic enquiry into legal principles, concepts, values and legal texts such as statutes, case laws, etc.[440] Doctrinal legal research may thus be explained as research into legal concepts and principles.[441] It is concerned with the analysis of legal doctrine and how it has been developed and applied.[442] Furthermore, doctrinal legal research involves analysis of case law, the study of legal institutions through legal reasoning or rational deduction and arranging,

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[437] See Nagib Callaos and Bekis Callaos, 'Toward a Systemic Notion of Methodology' (2022) 3 IIIS 19 3.
[438] Ibid.
[439] Callaos an (n 431).
[440] See S. N. Jain, 'Doctrinal and Non-Doctrinal Legal Research' (1982) 23 Journal of the Indian Law Institute 341; and Mike McConville and Wing Hong Chui (ed), *Research Methods for Law* (Vol. 104) (Edinburgh University Press, 2007).
[440] Ibid.
[441] Julien Bétaille, 'From Doctrine to Data: Towards an Empirical Turn in European Legal Scholarship' (2025) 2 European Journal of Empirical Legal Studies 1.
[442] Ibid.

ordering and systematising legal propositions.[443] In short, doctrinal research involves the methodical analysis of legislation and/or legal principles, and the logical and rational ordering of legal propositions and/or principles. These methods are different from field research, such as field interviews which delve into people's perceptions, the impact of a law on social life or how people feel about a particular law and its institutions.[444] Thus, in doctrinal legal research, the researcher puts more emphasis on substantive law rules, regulations, doctrines, concepts, and judicial pronouncements over field research and observations into people's experiences, preferences, or interactions with the law.[445]

Doctrinal legal research may be analytical, historical, or comparative.[446] Analytical legal research is influenced jurisprudentially by the positivist school of thought and is a qualitative inquiry.[447] It involves critical thinking skills and the evaluation of facts and information relative to the research being conducted.[448] Depending upon the reasoning power and analytical skills of the researcher, doctrinal legal research may lead to different 'perceptions' and 'projections' of the same legal fact, doctrine or concept when different scholars of the law analyse it.[449] Unlike analytical legal research, historical legal research on the hand deals with the past.[450] It sheds light on the past to provide context for understanding the present.[451] It investigates the circumstances that led to the

[443] S.R. Myneni, 'Legal Research Methodology', (2014) Faridabad, Haryana 40.
[444] Ibid.
[445] Myneni (n 436)
[446] Filipos Aynalem, 'Legal Research Methods' in Khushal Vibhute & Aynalem Filipos, *Teaching Material* (2005) https://d1wqtxts1xzle7.cloudfront.net/96152033/Legal_Research_Methodology-libre.pdf? Accessed 31 March 2025.
[447] Samuel Geoffrey, 'Can Doctrinal Legal Scholarship Be Defended?' (2022-2023) 4 Amicus Curiae 43.
[448] Ibid.
[449] Geoffrey (n 446).
[450] Ibid.
[451] Geoffrey (n 446).

promulgation of the existing law.[452] It serves as a pointer to the reasons underpinning a particular provision of law or why the law in its entirety was framed in the form in which it now appears.[453] Comparative legal research, on the other hand, involves the comparative study of comparable laws or legal institutions from different jurisdictions.[454] It exhibits the lessons that may be learnt from one another's failures and achievements.[455]

Most of the doctrinal research sources are textbooks, periodicals, commentaries, and case laws decided by the Superior Courts (from the High Court, the Court of Appeal, and the Supreme Court).[456] The quality of doctrinal research, therefore, largely depends on the source materials that the researcher relied upon for her study.[457]

Several criticisms have been levelled against doctrinal or library-based methodology.[458] These criticisms in terms of scope, applicability to social phenomena and depth and breadth of context. There are therefore those who argue that ideological research has a very narrow scope and is restrictive in terms of available choices in range of topics, thereby increasingly withdraws the legal profession and legal research away from the broader social context.[459] This context, they argue, includes not just legal and social theories but also other methodologies based in the natural and social sciences. In addition, there are those scholars who express the view that doctrinal legal research is uncritical, highly theoretical and technical, trivial, conservative and without sufficient

[452] Geoffrey (n 446).
[453] Ibid.
[454] Geoffrey (n 446).
[455] Ibid.
[456] Myneni (n 436).
[457] Ibid.
[458] Gaurav Shukla, 'Doctrinal Legal Research: A Library-Based Research' (2023) IGI Global 226.
[459] Geoffrey (n 446).

consideration of the social, economic and political importance of legal processes or that doctrinal legal research makes the unfounded assumption that the law exists in a doctrinal objective vacuum rather than the reality that the law operates within a social framework or context, among others.[460]

The above criticisms notwithstanding, doctrinal legal research has its advantages, such as the fact that doctrinal research involves consideration of social value, social policy, and the social utility of law.[461] In this kind of research, one endeavours to choose, from available alternatives, what is the best for society or what serves society better.[462]

4.3 Non-Doctrinal Research

Non-doctrinal research[463] is research that uses methods from other disciplines in the social sciences to generate empirical data that answers research questions.[464] Such legal questions may be a problem, policy, or a reform of an existing law.[465] A legal non-doctrinal finding may be qualitative or quantitative, and a dogmatic non-doctrinal finding may be part of a broader project.[466] The non-doctrinal approach allows the researcher to employ research methods that are normally used in other disciplines and to conduct research that analyses the law or specific legal provisions from the perspective of other science disciplines.[467]

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[460] See Kostruba Anatoliy, et al., 'Legal Gaps: Concept, Content, Problems of the Role of Legal Doctrine in Overcoming them' (2023) 44 Statute Law Review 2; Khaitan Tarunabh and Sandy Steel, 'Areas of Law: Three Questions in Special Jurisprudence, (2023) 43 Oxford Journal of Legal Studies 76; and Hellwege Phillip and Marta Soniewicka, *Law and interdisciplinarity* (Mohr Siebeck, 2024).

[461] Ibid.

[462] Ibid.

[463] Also often referred to as social-legal research.

[464] C. O. Nwachukwu, et al., 'Research Ideologies among Legal Scholars and Multidisciplinary and Interdisciplinary Academic Research', (2024) 3 Journal of Ecohumanism, 1734; and C. Karan, 'Which Method Should I Select for My Legal Research?' (2024) 132 *Teisė* 135.

[465] Ibid.

[466] Nwachukwu, et al., (n 463).

[467] Nwachukwu, et al., (n 463).

In non-doctrinal legal research, the researcher tries to investigate through empirical data how law and legal institutions affect or mould human attitudes and what impact on society they create.468 The researcher also endeavours to look into the '*social face or dimension*' of law and the 'gap', if any, between *'legal idealism' and 'social reality'*.469 Non-doctrinal legal research, thus, involves the study of the 'social impact' of law (existing or proposed) or of 'social auditing of law'.[470] In non-doctrinal research, the researcher tries primarily to seek, among other things, answers to questions such as:

- What are the factors that influence courts in interpreting the law?
- Are existing laws and legal institutions serving the current needs of society?
- What factors, if any, are responsible for the poor implementation, (or non-implementation) of a particular law?
- Are laws and legal institutions well suited to support or facilitate the progress of the society in which they are operating?
- What are the forces in society that influence, shape or re-shape a particular set of laws or legal norms?
- For whose benefit is a particular law enacted, and is the law currently being used?
- Have the intended targets of a legislation benefited from the law, and if not, where do the bottlenecks lie?
- Do the laws exist only in statute books, or are they properly implemented and enforced?

[468] See N.E. V. Jason, 'Mapping Doctrinal Methods' in P. Daly and J. Tomlinson (eds), *Researching Public Law in Common Law Systems,* (Edward Elgar Publishing, 2023), 70.
[469] Ibid.
[470] Nwachukwu, et al., (n 463).

- What has been the contribution of the law or legal institutions to changing attitudes of the society or moulding societal behaviour?
- What are the social obstacles that hinder a desired or expected change in behaviour or attitude, etc?[471]

The basic tools of data collection for socio-legal research, thus, are surveys, interviews, observation and published or unpublished materials, such as Census Reports, Official Reports of Governmental or Non-Governmental Organisations, and appropriate literature on the sociology of law, etc.

Non-doctrinal research has many advantages. These advantages include highlighting existing gaps between legislative goals and social reality. This provides an opportunity for policy makers to see a true picture of the law-in-action.[472] It particularly brings to light the gap that may exist in relation to (a) the practice of law enforcers, regulators, and adjudicators and (b) the use or under-use of the law by its intended beneficiaries, etc. Non-doctrinal legal research therefore carries significance in the modern welfare state, as it envisages socio-economic transformation through law and perceives the law as a means of achieving socio-economic or socio-political justice and parity.[473]

[471] J. R. Kirshna, 'Writing of an Effective Legal Research Proposal for Thesis in Empirical or Non-Doctrinal Research', (2021), 4 Int'l JL Mgmt. & Human, 1797.
[472] Ibid.
[473] Roy Urmi, 'Doctrinal and Non-Doctrinal Methods of Research: a Comparative Analysis of Both within the Field of Legal Research' (2023) Issue 2 5 Indian JL & Legal Rsch 1.

4.4 Mixed Methods Approach

It must be noted that it is not uncommon for one to use a combination of doctrinal and non-doctrinal approaches in legal research.[474] The use of mixed methods has made some inroads in legal research.[475] The definition of what constitutes 'mixed methods' as a legal research methodological approach is, however, contested and still evolving.[476] For example, some scholars like Bazeley defined mixed methods research as one that involves the use of more than one approach or method of design, data collection or data analysis within a single program of study. It includes not just the integration of different research approaches or methods in the program of study, but also at its concluding point.[477] Others like Creswell on the other hand defined mixed methods research is a research design or methodology in which the researcher collects, analyses, mixes, integrates or connects both quantitative and qualitative data in a single study or a multiphase program of inquiry.[478] While Greene defines mixed method inquiry as an approach to investigating the social world that ideally involves more than one methodological tradition and thus provides more than one way of knowing, along with more than one type of technique for gathering, analysing, and representing human phenomena, all for the purpose of offering a better understanding of the research problem.[479]

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[474] Langford Malcolm, 'Mixed-Methods in Human Rights Research' in A. A. Bard, et al., *Research Methods in Human Rights* (Edward Elgar Publishing, 2024), 292.
[475] Ibid.
[476] A. Blackham, 'When Law and Data Collide - the Methodological Challenge of Conducting Mixed-Methods Research in Law'. (2022) 49 JLS*,* S87.
[477] J. R. Burke, et al., 'Toward a Definition of Mixed-Methods Research', (2007) 1 Journal of Mixed Methods Research, 112.
[478] Ibid.
[479] Burke, et al (n 476).

The differences in definitions notwithstanding, it is generally accepted that at its core, mixed methods research combines both qualitative and quantitative research methods to understand a research problem.[480] This Study therefore adopts Burke, et al.'s definition of mixed methods as

> the type of research in which a researcher or team of researchers combines elements of qualitative and quantitative research approaches (e.g., use of qualitative and quantitative viewpoints, data collection, analysis, inference techniques) for the broad purposes of breadth and depth of understanding and corroboration.[481]

The reason for this adoption is because Burke, et al. have analysed many definitions, including the above-mentioned definitions in the history of mixed methods as a research paradigm, and sought to come up with a definition that includes the core essence of the method in its evolving history.

4.5 The Research Methodology Employed in this Study

As discussed in chapter 1.2 above, this study examines MSMEs' perception of the fairness of Ghanaian income taxes and the factors underpinning these perceptions. The research design consisted of:

(a) a review and analysis of laws and regulations from Ghana and other jurisdictions;

(b) a review and analysis of the income tax rate structure for MSMEs in Kenya, Nigeria and South Africa;

(c) a review and analysis of previous research data publicly available; and

(d) the administration of survey questionnaires in the sixteen regions in Ghana.

[480] Blackham (n 469).
[481] Burke (n 470).

The methodology employed in this study is thus mixed methods, as it combines elements of doctrinal and non-doctrinal research approaches.[482] The study therefore benefits from the rigours of qualitative doctrinal analyses while simultaneously addressing the criticisms of doctrinal legal research discussed above in section 4.2.[483]

4.5.1 A review and analysis of laws and regulations from Ghana and other jurisdictions

The study undertakes a qualitative analysis of the Constitution, statutes, regulations, decided cases, textbooks, periodicals, journals, commentaries, and survey reports on analyses and impact of the tax law and regulations on MSMEs and recommendations for reforms. The laws analysed include the 1992 Constitution, the Tax Administration Act, 2016 (Act 915); the Income Tax Act, 2015 (Act 896); the Value Added Tax, 2013 (Act 870), the Stamp Duty Act, 2005 (Act 689), and the Ghana Enterprises Agency (Classification of Micro, Small and Medium Enterprises) Regulations, 2023 (L.I. 2470), etc to determine the tax obligations of MSMEs and the income tax rates and legal tax compliance regimes applicable to MSMEs.

4.5.2 A Review and Analysis of the Income Tax Rate Structure for MSMEs in Kenya, Nigeria and South Africa

Furthermore, the study evaluates laws and studies from other jurisdictions like South Africa, Kenya and Nigeria for relevant lessons learnt. In doing this, I present tables on Ghana's corporate and individual income tax rates, and those of Nigeria, Kenya and South Africa. I thereafter do a comparative analysis of these tables, which analysis will show that Ghana's income tax rate structure is weighted against low-income taxpayers and out of line with the income tax structures

[482] Burke (n 470).

[483] See Kostruba Anatoliy, et al., 'Legal Gaps: Concept, Content, Problems of the Role of Legal Doctrine in Overcoming them' (2023) 44 Statute Law Review 2; Khaitan Tarunabh and Sandy Steel, 'Areas of Law: Three Questions in Special Jurisprudence, (2023) 43 Oxford Journal of Legal Studies 76; and Hellwege Phillip and Marta Soniewicka, *Law and interdisciplinarity* (Mohr Siebeck, 2024).

of these other African nations. The reason for selecting these countries is because they grapple with similar challenges to MSMEs tax compliance and have implemented various forms of preferential tax regimes for MSMEs to help in addressing these challenges. Studies and lessons from these jurisdictions are therefore relevant for the recommendations that this study makes in chapter six.

4.5.3 A review and analysis of previous research data publicly available

The study analysed four sources of data on MSMEs taxpayers' experiences and perceptions of fairness of Ghanaian income taxes. All the four sources of data corroborate their various findings that MSMEs taxpayers perceive that the income taxes that they pair are unfair and the way they are collected is problematic. The four sources of data analysed are follows: the CDD Ghana Data, the Ghana Enterprises Agency Data, the Private Enterprise Federation Data and the Afrobarometer Data.

4.5.2.1 The CDD Ghana Data

The CDD Ghana is a not-for-profit, independent research and advocacy Think Tank, that employs research backed analysis to advance democracy, inclusive economic growth and good governance.[484] The CDD Ghana research relevant to this thesis is an opinion survey data collected between August and November 2020, from MSME owners/caretakers, policy makers, policy support or implementing units, and service providers. This CDD Ghana study adopted a mixed-methods approach, involving the application of both qualitative and quantitative research

[484] F. L.K. Ohemeng and J. R.A. Ayee, 'Think Tanks, Governance and Development - the Ghanaian perspective in F. L.K. Ohemeng and J. R.A. Ayee (eds), *Think Tanks, Governance, and Development in Africa* (Edward Elgar Publishing, 2024), 86.

methodologies. The Interviews that it conducted consisted of focus group discussions and key informant in-depth interviews of:

(a) a total of 780 predominantly business owners nationwide, and where the owners of the businesses were not directly involved in the day-to-day management of the business, the interviews were conducted with the managers/caretakers or direct line managers; and

(b) 40 in-depth interviews of key officials of national, regional and district level regulators and policy bureaucrats made up of Planning Units at the District Assemblies, National Board for Small Scale Industries (NBSSI) (now GEA), GRA, Ministry of Trade, Market/business associations, business lawyers and court officials in 3 selected regions (Greater Accra, Ashanti, and Northern regions).[485]

The study samples were distributed across the three enterprise types as follows: Micro, 1-5 employees; Small, 6-30 employees; and Medium, 31-100 employees.[486]

The Survey split the country into three geographical zones – Coastal, Middle, and Northern belts. At least one region was selected from each belt based on the size of MSME sector of regions in the zone. The survey distributed the number of businesses selected in each region across a number of districts based on their share in the MSMEs' population of the region, with the Ghana Statistical Service Integrated Business Establishment Survey (GSS IBES)[487] data as sampling frame. The

[485] Mavis Zupork Dome and Danie Armah-Attor 'Access to Justice and Public Services, Experiences of Micro, Small and Medium Enterprises in Ghana, Findings from Opinion Surveys and In-depth Study' (2021), CDD Ghana, ISBN: 978-9988-614-58-4.
[486] Ibid.
[487] The Ghana Statistical Service is part of the Public Service of Ghana. it was established by law to conduct statistical surveys, collect, compile, analyze, abstract and publish statistical information, whether relating to commercial, industrial, agricultural, social, economic or other activities as well as on the conditions of residents of Ghana, with the objective of advising government on all matters relating to statistics among other things. The Integrated Business

Survey demographics are stated in: Table 1 on Appendix A1 (Sample distribution by business size, sector of operations, and ownership type); Table 2 on Appendix A1 (Sample distribution across regions and districts, August-September 2020) and Table 3 on Appendix A1 (Respondents' social characteristics: gender, status in business, decision-making responsibility, and education level).[488] The sampling approach is useful to this study not only because the CDD Ghana is a well-respected Think Tank with over 25 years of research experience in the research space, but also because their sampling method is consistent with the national requirement set by the Ghana Statistical Service. Furthermore, the CDD Ghana's use of mixed methods with triangulation of data and expert analysis provides a strong basis for corroboration of findings.

4.5.2.2 The Ghana Enterprises Agency Data

The Ghana Enterprises Agency is the apex governmental body dedicated to the promotion and development of MSMEs in Ghana.[489] It was established pursuant to an Act of Parliament, the Ghana Enterprises Agency Act of 2020,[490] to coordinate, implement and monitor the activities of the MSMEs Sector in Ghana.[491] The Ghana Enterprises Agency Act transformed the National Board for Small Scale Industries, (formerly referred to as NBSSI) into the Ghana Enterprises Agency.[492]

The Ghana Enterprises Agency commissioned a survey between 2019 and 2022 of MSMEs in Ghana, that are engaged in business activities where there is value addition, no matter how

Establishment Survey is an economic census that the GSS conducts periodically on the total set of applicable economic and legal units of all establishments undertaking some legal activity in Ghana.

[488] Dome and Armah-Attor (n 281).

[489] The Ghana Enterprises Agency, 2020 (Act 1043), s.3.

[490] (Act 1043)

[491] Ibid the preamble.

[492] Ibid, s.34.

small.[493] The survey was carried out in 245 out of the 261 districts in Ghana.[494] In total, 84,592 firms were surveyed,[495] the highest number of MSMEs surveyed yet.

The survey instrument was divided into the following sections:

- Enterprise Background,
- Entrepreneurial Characteristics,
- Principal Activity and Employment,
- Financial Data, and
- Perceptions about the Business Environment.[496]

Subsequently, the instrument was captured on a Computer Assisted Personal Interviewing device (CAPI).[497] Tablets were obtained from the Ghana Statistical Service (GSS).[498] The survey team comprised Field Enumerators (300), Supervisors (16) and the Research Team made up of 7 members.[499] The Field Enumerators were responsible for administering the questionnaires.[500] Enumerators had at least a first degree, GPS enabled on devices, back-checking of the synched data, on-site visits by researchers, and engagement with a sample of the respondents.[501]

This study has chosen the Ghana Enterprises Agency Data because the Ghana Enterprises Agency is the national regulator of MSMEs.[502] In addition, the Ghana Enterprises Agency study is one that

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[493] James Eshun, MSMEs Reluctant to Legalise Operations Due to Taxation -GEA Study (June 26, 2022), https://www.myjoyonline.com/msmes-reluctant-to-legalise-operations-due-to-taxation-gea-study/ Accessed 15 May 2025

[494] Ibid.

[495] Eshun, (490).

[496] Eshun, (490).

[497] Ibid.

[498] Eshun (n 490).

[499] ibid.

[500] Eshun (n 490).

[501] Ibid.

[502] The Ghana Enterprises Agency, 2020 (Act 1043), s.3.

has surveyed the highest number of MSMEs yet. Furthermore, the Ghana Enterprises Agency study has among other things contributed to the passing of a legislative instrument, that is the Ghana Enterprises Agency (Classification of Micro, Small and Medium Enterprises) Regulations, 2023 (L.I. 2470). The purpose of L.I. 2470 is to:

(a) provide for the criteria for the classification of micro, small and medium enterprises in the country;

(b) provide a national definition for research activities and data collection relating to micro, small and medium enterprises; and

(c) facilitate the compilation of a national register of micro, small and medium enterprises.[503]

The Ghana Enterprises Agency study therefore emanates from the right state entity and is also relevant to this study.

4.5.2.3 The Private Enterprise Federation Data

The Private Enterprise Federation is an independent not-for-profit entity. Its membership consists of private businesses and trade associations, including MSMEs operating in the formal and informal sectors of the Ghanaian economy.[504] Its main objectives include advocacy for the just and efficient distribution of public resources to enable the private sector to thrive. It also provides leadership in building consensus among private businesses on matters germane to their operations.[505] This study selected the Private Enterprise Federation Research report because its

[503] The Ghana Enterprises Agency (Classification of Micro, Small and Medium Enterprises) Regulations, 2023 (L.I. 2470), reg. 1.
[504] Suad Yakubu and Gifty Owusu Kwarteng, Tax Regime Not Fair to SMEs – PEF, (2018), https://www.graphic.com.gh/business/business-news/tax-regime-not-fair-to-smes-pef.html Accessed 15 May 2025.
[505] Ibid.

membership consists of all businesses, including MSMEs in the informal sector,[506] and because the study also documents MSMEs taxpayers' lived experiences in their interactions with the income tax system, efforts at tax compliance and whether or not they would be willing to formalise their businesses. The Private Enterprise Federation research report is titled *Ghana's Tax Regime and the Need for Reforms in the Taxation of Micro, Small and Medium-sized Enterprises*.[507]

4.5.2.4 The Afrobarometer Data

[Afrobarometer, interviews conducted between 2005 and 3 October 2022].

Afrobarometer is a pan-African, non-partisan and not-for profit survey research network that conducts public attitude surveys on democracy, governance, the economy, and society. It is headquartered in Ghana. Its network encompasses more than 30 national partners responsible for data collection, analysis, and in-country dissemination of findings.[508]

The Afrobarometer data relevant to this study is a survey carried out in 2021 of a sample size of 2,400 adults (from the Afrobarometer Ghana R9 survey).[509] Table 5 on Appendix A4 indicates the demographic distribution sample of the respondents. The Afrobarometer survey is selected in this study because like the CDD Ghana, Afrobarometer has a long history of conducting critical surveys globally, and its surveys are relied upon nationally and internationally for critical developmental interventions.[510]

[506] Ibid.
[507] Yakubu and Kwarteng, (n 503).
[508] Ohemeng and Ayee (n 478).
[509] Mavis Zupork Dome *Summary of Results, Afrobarometer R9 Sruvey*, (CDD Ghana 2022).
[510] Ibid.

4.5.4 The administration of survey questionnaires in the sixteen regions in Ghana

As part of this study, survey questions were administered in the sixteen regions of Ghana to private businesses, civil society actors, tax administrators and tax policy makers. The purpose of this primary data collection was to obtain expert and/or analytical views of selected respondents on tax policy and the discretionary powers of the commissioner-General of the GRA under the tax laws. The category of respondents for these survey questions was therefore limited to senior level personnel.

The Researcher independently designed the survey questionnaires in three categories: private sector business participants; tax policy makers and tax administrators. As part of complying with ethical clearance procedures for the administration of these questionnaires, the researcher applied to the University of Ghana Ethics Committee for ethical clearance for the data collection. The survey questionnaires for the different categories of participants are contained in Appendix B1, the application for ethical clearance is included in Appendix B2, the Dean of the University of Ghana School of Law and my supervisors support for the application for ethical clearance is contained in Appendix B3 and Appendix B4 respectively. It must be noted that I subsequently changed the title of the study from "The Constitutionality of the Ghana Revenue Authority's Administrative Powers under the Revenue Administration Laws and the Role of the Courts in Resolving Tax Non-Compliance in Ghana" to its current title, hence the difference in the titles in Appendix B1-B4.

Upon completion of its review to confirm that the study design, benefits and risks, and informed consent had been adequately addressed, the University of Ghana Ethics Committee for Humanities granted provisional approval for the study and made specific comments for the Researcher to address. The provisional ethical clearance is contained in Appendix B5. The Ethics Committee for Humanities subsequently granted final ethical clearance upon satisfaction that the researcher had addressed all the comments contained in its provisional approval letter. This final approval is in Appendix B6. The researcher thereafter commenced data collection, and the responses to the questionnaires are contained in Appendix B7.

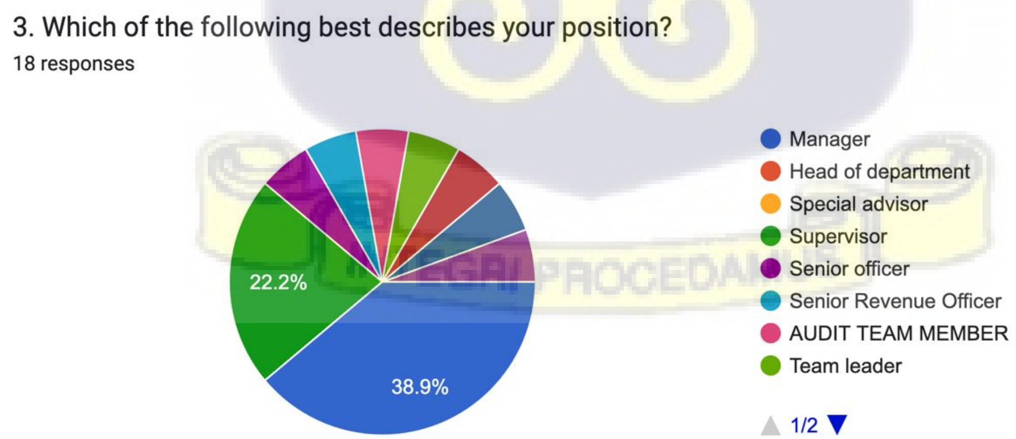
The key focus of the interviews conducted was to elicit views on policy making and the impact of tax laws and policies on private businesses. Although the questionnaire was intended to be administered in nine of the sixteen regions of Ghana, the respondents from the GRA included at least one representative from each of the sixteen regions of Ghana.

4.5.3.1 Demographic Analysis

The Research participants involved were: (i) elected or appointed public officials representing the views of government public policy; (ii) civil society representatives representing the views of civil society; and (iii) private sector businesses representing the views of the private sector.

The private sector respondents comprised: Director, Manager, Managing Partner, Accountant, CEO, Director for Programmes and Policy Engagement, Finance Manager and Fundraising Manager. That for the public sector is presented in the below pie chart.

Figure 4



4.5.3.2 Educational Level

All the respondents from both the private and public sectors had at least a tertiary education, with 50 percent and 61.1 percent of the respondents from the private and public sector respectively having a postgraduate degree. The pie chart below provides the educational background distribution for the private and public sectors respectively.

Figure 5

Educational background for private sector

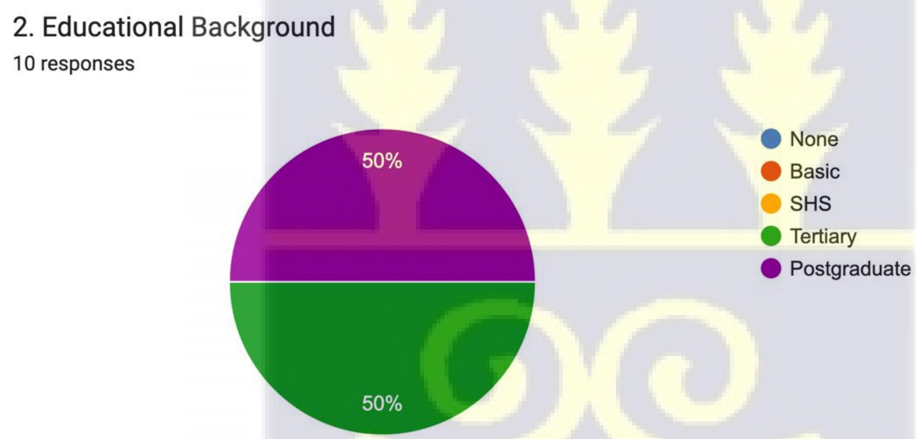
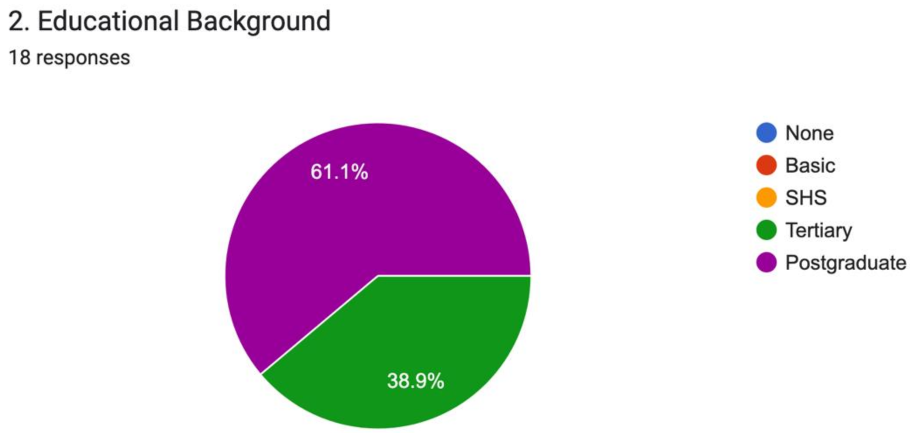


Figure 6

Education background for public sector



The private sector participants comprised 70 percent private business and 20 percent civil society representation as provided in the chart below.

Figure 7

4.5.3.3 Gender

The total gender distribution for both private and public sectors was low for women as fewer numbers of women occupied senior level positions in these organisations. The gender participation from the public sector was however higher than that of the private sector, (22.2 percent for GRA, 33 percent from Ministry of Finance and 10 percent for private sector).

4.5.3.4 Response Rate

The response rate was low. A total of 33 respondents comprising 18 from government sector (GRA), 11 from private sector, and 4 from Ministry of Finance completed and returned the questionnaires. However, these respondents also provided additional empirical data, survey reports and expert analysis of their data relevant to the focus of this study. These additional secondary data cumulatively had over 90,000 sample populations. The additional empirical data was offered freely at no cost whatsoever to the researcher.

4.5.3.5 Limitation

The limitation of this data collection approach is the low response rate discussed above. It is however worthy of note that some of the respondents in the above categories offered additional sources of secondary data relevant to the focus of this study to the researcher freely and at no cost whatsoever to the researcher. These other sources of data largely corroborated the views of the survey respondents, and some of these other sources of data are part of the secondary data discussed above.

4.6 Conclusion

This chapter has sought to clarify the study's methodological approach, that is a mixed methods research approach. Specifically, the Study is a qualitative inquiry that reviews extensively the Constitution, statutes, regulations, decided cases, textbooks, periodicals, and commentaries, in an analytical manner, and these are tools and techniques for doctrinal research. In addition, this Study examines the experiences of MSMEs as captured in survey reports and other field studies. These additional sources of data, to the extent that they include methods within the non-doctrinal approach to legal research means that the methodological approach of this study is mixed methods. The above mixed methods of this study have provided for one research methodology to corroborate or balance the other research methodology in a qualitative manner.

In the next chapter, I analyse and discuss the findings from the data gathered from the three approaches of data collection discussed in this chapter. The triangulation of data finds that MSME taxpayers perceive that the Ghanaian income tax rate structure is unfair to them; that the collection procedures are problematic; and that the factors underpinning the perception of unfairness border on rate structure complexity, distributive injustice, and procedural unfairness.

CHAPTER FIVE

ANALYSIS OF DATA, FINDINGS, AND DISCUSSIONS

5.0 Introduction

This chapter analyses the various sources of data discussed in chapter four and discusses the findings thereof.

5.1 Analyses of MSMEs taxpayers' perception of Fairness of Ghanaian income taxes and Collection Procedures

5.1.1 The CDD Data

Of the 780 MSMEs interviewed in this CDD study,[511] only half (50 percent) indicated that they are always able to afford to pay income tax, while 46 percent said they are always able to afford to pay VAT.[512] Most of these businesses (67 percent) reported that the taxes and levies that they pay are somewhat too much or far too much, and (62 percent) indicate that they are not willing to pay more taxes, even if this means more services.

Furthermore, 78 percent of the MSMEs believe that it is difficult to find out the taxes that MSMEs are subject to.[513] Tables 4 and 5 on Appendix A1 captures some of the questions put to these MSMEs, and their responses to these questions.[514]

5.1.2 The Ghana Enterprises Agency Data

The Ghana Enterprises Agency survey found that a significant majority (87 percent) of the enterprises are micro-sized, that is, they have 1-5 employees and a capital size of not more than

[511] World Bank Group (n 384).
[512] Dome (n 502).
[513] Dome and Armah-Attor (n 479).
[514] Ibid.

GH¢150,000 per annum (about USD9,000 per annum). Figure 11 on Appendix A2 provides the disaggregated data on the size of the enterprise.

Females dominated the MSME sectors in both years, 59.4 percent in 2019 and 56.6 percent in 2020. Despite an overall increase in the number of persons engaged between 2019 and 2020, there was a marginal decline in the number of females engaged**.** Figure 12 on Appendix A2 provides the sex disaggregated data. Most of the female owned firms, (89 percent) are micro-sized, (see Figure 13 on Appendix A2). Most of these female firms, (66 percent) do not keep books of account, see Figure 14 on Appendix A2). There is also a higher proportion of females, (84 percent females) registered with the GEA relative to males, (16 percent). This distribution is provided on Figure 12 on Appendix A2).

Almost all the MSMEs (99.81 percent) are Ghanaian-owned, and most of these enterprises (98 percent) are privately owned. In addition, the survey found that Micro firms employed the highest number of people (54.4 percent in 2019 and 55.2 percent in 2020). Figure 12 in Appendix A2 provides the distribution of persons engaged by firm size.

The ownership of a computer is quite low amongst the surveyed firms, and a little above 61 percent of the firms surveyed indicated that they do not do book-keeping (see Figure 14 on Appendix A2), and this was with regards to keeping records on sales, employees, and turnover.[515] Furthermore, most enterprises do not make use of the internet to conduct business, except for about a quarter that use it for research, development, and marketing of products. [516] Figure 18 on Appendix A2 provides the distribution of ownership of computers by firm size.

[515] Eshun (n 486).
[516] Yakubu and Kwarteng, (n 503).

Most (98 percent) of owners of the enterprises, however, have a personal mobile phone, about 93 percent are on WhatsApp, and less than a fifth (16.8 percent) have a mobile phone for business only. Table 14 on Appendix A2 provides this distribution. Almost all (98.6 percent and 99.4 percent) of enterprises do not have an enterprise email and website, respectively. Mobile money use was highest among micro enterprises.

With respect to formalisation, the Ghana Enterprises Agency data found that although the majority of the MSMEs surveyed (close to 90 percent) are formally registered with the Office of the Registrar of Companies (ORC),[517] only about 12.2 percent are registered with the GRA. The registration distribution is provided in Table 15 on Appendix A2. What this means is that close to 90 percent of MSMEs operate outside the tax regulatory environment, although they may be registered with the ORC.

Over 87 percent of the MSMEs are unwilling to formalise their operations because of taxation,[518] as they are concerned that the high taxes may drive them out of business and thereby shrink livelihoods.[519] It appears that 'formalise their operations' in the context of this 87 percent refers to registration with the GRA. This is because once an entity is registered with the Office of the Registrar of Companies, such an enterprise is deemed to have formalised its operations under the laws of Ghana.[520]

[517] The ORC is also generally referred to as the Registrar General's department.
[518] Eshun (n 486).
[519] Ibid
[520] The laws of Ghana provide for different business vehicles for business registration. These vehicles include Sole Proprietorship, private or public company limited by shares and external companies. Which type of business vehicle to register under is largely a business decision except where the business falls under a regulated sector, in which case the special laws applicable to that sector dictate the type of business vehicle. one must employ. For example, non-Ghanaian nationals may not register as Sole proprietors, pursuant to the GIPC Act.

5.1.3 The Private Enterprise Data

The Private Enterprise Federation research data[521] indicates that MSMEs, though registered with the GRA, do not understand what is expected of them by the tax laws and the obligations they must comply with under the law.[522] The Research report further states that there is a culture of poor tax compliance in the MSME sector of the economy in Ghana because MSMEs face challenges in trying to comply with the various provisions of the tax laws.[523] Table 4 on Appendix A3 captures the specific challenges of MSMEs in complying with specific tax legislations according to this research.

5.1.4 The Afrobarometer Data

The Afrobarometer survey found that the majority of the Ghanaian population (between 61 and 84 percent) cite "*difficulty in determining the right amount of tax payable at the right time*" as a challenge to the payment of taxes. This finding corroborates the Private Enterprise Federation and CDD findings above. It is worth noting that the report further indicates that the percentage of citizens who view rates and taxes as 'most important problem' that needs to be addressed increased between 2012 and 2014 by a sample margin of 2 percent. This margin stayed the same between 2014 and 2019, but more than doubled between 2019 to 2022 (it moved from 5 percent in 2019 to 11 percent in 2022). The trend is captured in Figure 21 on Appendix A4[524]

Furthermore, the majority of Ghanaians in this Afrobarometer survey expressed favourable opinions on citizens' obligation of understanding of taxes owed and contributing their taxes. At the same time, they noted the importance of the government reducing the tax burden, effectively

[521] Yakubu and Kwarteng (n 503).
[522] Ibid.
[523] Yakubu and Kwarteng, (n 503).
[524] Dome (n 502).

using taxes, and, to a slight extent, raising more taxes. The views are expressed in Figure 22 on Appendix A4.[525]

The Afrobarometer survey and the expert analysis corroborate the findings of the CDD Ghana, the Ghana Enterprise Agency, and the Private Enterprise Federation, although all these entities used different methodologies and analyses and conducted their various research at different times.

5.2 Analysis of Primary Data

5.2.1 Private Sector Interviews

Wide Discretionary Powers

The interviews conducted with the private sector revealed a concern that the tax administrators had very wide discretionary powers, such as the power to close down a business and arbitrary powers to determine tax liability. Some of the respondents observed of the wide discretionary power as

- "A bit too much for one institution especially since most of the officers are vindictive."
- "The powers are most often abused and deployed to serve the vindictive agenda of politicians"
- "Discretionary powers can always be abused. They chose who to target and is subject to abuse unless it is properly regulated and there is more accountability."[526]

[525] Ibid.
[526] See Appendix B7.

Interactions with the GRA

Furthermore, when respondents were asked to describe their interaction with tax administrators at the GRA, the responses included the following:

- There was not a lot of accommodation from the tax officials - they were not flexible and insisted that was how they understood the law. And somehow, threatened escalation in some instance.
- "Very fruitful"
- Their assessments were arbitrary and were not very willing to accept any explanation on any lapses or supposed lapses they pointed out.

When asked, "what would you like the GRA to do to encourage the voluntary declaration, filing, and payment of taxes? The responses included:

- If we see what some of the money is actually used for....
- A more understanding approach to tax collection will broaden the tax net. Tax collectors are addicted to low-hanging fruits. As soon as a person registers as a taxpayer, their focus is maintained on the person. Such taxpayers are harassed. This is the main reason why many people avoid the GRA. As soon as they register as taxpayers, they are repeatedly harassed by them. GRA officials will repeatedly extort money from them.
- We would like to receive extensive education on how to use their online portals.
- It, (payment of taxes), has to be very easy to do. You need to know all the taxes you are exposed to and user-friendly information in video, local languages, easy to use and understand. It, (GRA) seems to target only a small kind of people who need tax clearance certificate for their work. But you need to convince ordinary people. So, there must be some kind of balance between fear and understanding and encouragement. So, sanctions,

reasonability, expected punishment if you do not comply - that is missing. It should become a cultural expectation. Legitimate expectation that if you don't comply, the system will punish.

- Tax officials must offer training and engage sensitization campaigns.
- And simplify the tax processes because as it stands it's too cumbersome for the ordinary Ghanaian.
- Work on the integrity of its personnel, enhance the efficiency of the digital collection processes.

The Role of the Court in Encouraging Voluntary Compliance

To the question, "what role do you think the court can or ought to play with respect to tax compliance?", the responses included the following:

- "The courts at the moment are not well equipped with well-trained and justice-oriented officials. Their inclination is to agree with the GRA regardless of the constitutional rules and principles on the exercise of discretion".
- "If we say our constitution is a liberal democracy, then individual rights should tramp state's rights in the event of conflict unless there is a compelling reason. However, it appears from recent court decisions that it is the other way round. It appears that there is a presumption that the State is correct and cannot get it wrong, and for the individual to rebut it, which is inconsistent with what is in the Bill of Rights in the Constitution. Political rights have evolved more in line with the liberal democratic thoughts than economic and social rights. These rights don't seem to evolve. These rights - economic rights should have equal weight, rather than appear to be made secondary to others. Maybe judges do not pay taxes, so they do not have a skin in the game."

- "To help curb the excesses being meted out to poor taxpayers."
- "Support in the enforcement of compliance by ensuring that sanctions for non-compliance and tax evasion is punitive enough to deter others."
- "Prosecution of offenders."

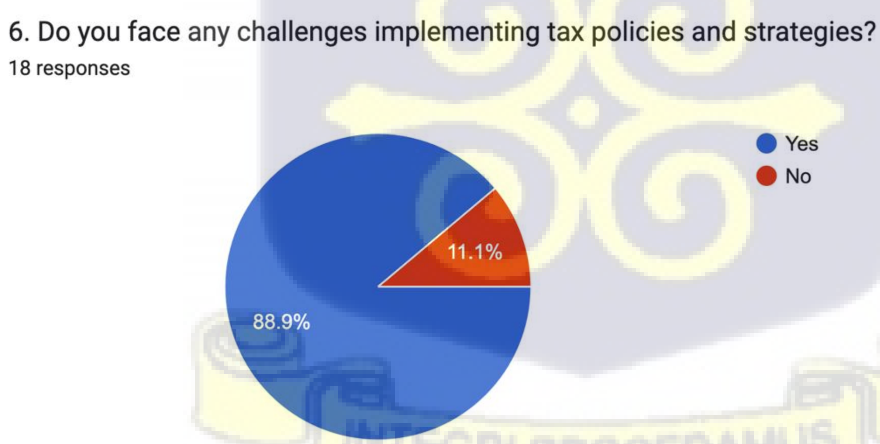
The responses from the private sector also revealed that tax administrators welcomed the idea of a tiered tax system to aid in fair taxation. The responses to the questions are in Appendix A7.

5.2.2 Tax Administrators and Policy Makers Interviews

Challenges in the Implementation of Tax Policies and Strategies

In response to a question on the challenges that tax administrators in Ghana face in implementing tax policies and strategies, almost 90 percent of the respondents from the GRA responded in the affirmative, as provided in the pie chart below.

Figure 8



When asked "what are some of these challenges?", the list that respondents indicated included the following:

- Inadequate stakeholder management and sensitisation.
- Lack of clarity on the scope of the tax.
- Complexity of the tax laws for easy implementation on the part of taxpayers.
- Lack of information about taxpayers' activities.
- Taxpayer population is dominated by the informal sector.
- Low education and the ability to pay the correct amount.
- Lack of logistics, lack of education on the part of Taxpayers, the state of the economy.
- Resistance from some taxpayers.
- Lack of adequate knowledge of some important tax laws.
- Apathy due to biases from political manoeuvrings affecting enforcement etc.
- Unnecessary interference on the part of so-called politicians.
- No keeping of books, under declaration.
- Difficulty in assessment.
- Some of the Tax policy affects industrial growth, hence creating unemployment.

Processes to be included in tax laws/policies/regulations for the protection of taxpayers' rights

When asked, "what steps, procedures or processes should be included in tax laws/policies/regulations for the protection of taxpayers' rights? The responses included the following:

- "Representatives of taxpayers and tax administrators should be involved."
- "Clarify responsibilities and accountabilities of participants in the process."

- “Engage the various traders Unions and CSO.”
- “Implementers should be consulted and involved.”
- “Know the rights of taxpayers.”
- “Get inputs from taxpayers.”
- “The taxpayers should be given more education on their rights, should not be victimized and their identity protected always”.
- “Various stakeholders view must be considered e.g. trade Associations”
- “Legislative safeguards enforceable by court of law”.
- “Industry should be consulted”.
- Selected staff of GRA should stress test the law”.

Other comments included:

- Tax policies should always have equity, certainty, convenience and economy
- Fairness and proper consultations when it comes to tax issues and implementation
- There should be massive tax education and fair and firm relationship between the tax authorities and the taxpayers.

(see Appendix B7).

5.3 DISCUSSION OF FINDINGS

The analyses of the data in this study reveal that the factors underpinning MSME taxpayers’ perception of unfairness relate to rate structure complexity, distributive injustice, and procedural unfairness.

5.3.1 Rate Structure Complexity

Income tax is payable in Ghana by any person who earns a chargeable income and a person who receives a final withholding payment.[527] Ghana's Income Tax Act[528] does not define income as a concept. It however defines Chargeable Income as

> **"…** *the total of the assessable income of that person for the year from each employment, business or investment less the total amount of deduction allowed that person under this Act."*[529]

Ghana Income Tax Law further requires that the chargeable income of a person be determined for each source of income separately.[530] So, a taxpayer cannot aggregate all their sources of income before determining chargeable income; rather, the taxpayer is required to separate income from employment, business, or investment in their respective categories before determining their chargeable income.[531] Taxes on income may be categorised as personal income taxes, corporate income taxes and withholding taxes.[532]

Ghana's income tax rate structure has combined more than one rate structure since 2015. The income tax rate structure for personal income is designed to be progressive, while that of corporate income and withholding taxes are generally designed as proportional. Personal income tax rates apply to employees, sole proprietors or persons in partnership who earn an income above GH¢ 402

[527] Income Tax Act, 2015 (Act 896), s.1.
[528] Ibid.
[529] Ibid, s.2.
[530] Ibid, s.3(4).
[531] See Kunbuor et al. (n 29). This provision has brought closure to the issue which the Supreme Court of Ghana had to determine in Multichoice Ghana Ltd v. The Commissioner, Internal Revenue Service [2011] 35 G.M.J. 87, that is whether a person can aggregate their income all their sources of income before determining chargeable income.
[532] Ibid.

per month (i.e. above USD27 per month),[533] while corporate income tax rates apply to incorporated entities. Over 90 percent of MSMEs are therefore subject to personal income taxes as these operate as sole proprietors.[534]

Ghana's Income Tax Act provides for individuals who earn an assessable income from business to be subject to modified taxation rules under the Second Schedule of Ghana's Income Tax Act. Sole Proprietors therefore qualify for taxation under the modified taxation rules in the Second Schedule subject to specified criteria discussed below.

5.3.1.1 Modified Taxation and Non-Implementation of the Second Schedule of the Income Tax Act

The rules for the modified taxation, as set out in the Second Schedule provide for three categories of modified taxation as follows:

a. Presumptive tax based on instalment;
b. Presumptive tax based on turnover and
c. Modified cash basis.[535]

Presumptive tax based on instalment involves individuals who are assessed to pay a fixed amount as tax based on their turnover. Presumptive tax, based on turnover, on the other hand, involves individuals who are assessed to pay a percentage of their annual turnover as tax. The tax payable is 3 percent of the annual turnover of the business for the year of assessment. The Modified cash basis category applies to individuals who account for taxes using cash basis accounting with some modifications. This category pays taxes using the income tax bands or graduated rates provided

[533] The Income Tax Act, 2015, (Act 896), Sch 1.
[534] Kwadwo Opoku and Others 'Ghana Tax Gap Analysis' (World Bank Group 2020), Report No: AUS0001887.
[535] The Income Tax Act, 2015, (Act 896), Sch 2.

for in the first schedule of the Income Tax Act, 2015 (Act 896) and detailed in Table 6 on Appendix C. [536]

Although the modified taxation in the Second Schedule of the Income Tax Act is intended as simplified taxation for MSMEs, it has been of no benefit to MSMEs for two key reasons: it has not been applied since the law came into effect in 2016; and the scope of its application is rather narrow, with the effect that many MSMEs would be outside its scope for the reasons discussed below.

First, the modified taxation is applicable only to individuals who earn an income exclusively from business and are resident in Ghana.[537] Therefore, if an individual earns any other source of income, such as from employment or a partnership, no matter how small, they fall outside the scope of modified taxation. Second, the individual must earn the income only from Ghana.[538] So, if the individual receives an income from outside Ghana, they fall outside the scope of this modified taxation. Third, if the individual incorporates their business or enters a partnership, they become disqualified for the application of modified taxation.[539] The scope of application of modified taxation in the Second Schedule of the Income Tax Act is therefore narrow. In any case, it has not been rolled out, although it was passed in 2015. So, the modified taxation rules are not being implemented, and MSMEs are subject to same income tax rules and regulations applicable to all other income earners under the Income Tax Act, as discussed above in this section 5.3.1 and below.

[536] Ibid

[537] Ibid, Sch 2.

[538] Ibid.

[539] The Income Tax Act, 2015, (Act 896), Sch 2.

5.3.1.2 Personal Income Tax Rates

The annual personal income tax band for Ghana is GH¢4,824, which is the equivalent of US$322 (as of June 2024).[540] The personal income tax rate for Ghana is a minimum of 5 percent for low-income earners and a maximum of 35 percent for higher-income earners, i.e., persons earning more than Gh50,000 (US$3,333 annually).[541] In determining the applicable tax, one must always also deduct the applicable threshold, i.e., GH¢402, and all other applicable thresholds within the preceding income tax band before applying the respective tax rate.[542] Therefore, tax on incomes in the maximum income tax band of 35 percent is determined by first deducting the threshold amount of (GH¢402), and the next thresholds amounts applicable in the tax bands of 5 percent, 10 percent, 17.5 percent, 25 percent, 30 percent before finally applying the 35 percent rate.[543] This makes the correct determination of the tax due not easy to determine for persons unfamiliar with the tax system, or not knowledgeable in accounting systems. The design of the personal income tax rate structure has remained progressive,[544] although the income tax bands and the maximum rate applicable have differed from time to time. Table 6 on Appendix C presents the personal income tax rates for Ghana since 2015.

5.3.1.3 Corporate Income Tax

Corporate income tax is payable by corporations, (i.e. incorporated entities and external companies).[545] So regardless of their size or other indicator, all MSMEs registered as corporate entities are subject to the same corporate income tax rates with large corporations. Although there

[540] Ibid.
[541] Ibid, sch 2.
[542] Ibid.
[543] Ibid, sch 2.
[544] Kunbuor et al (520).
[545] Income Tax Act, 2015, (Act 896), Schedule 1.

are different corporate income tax rates, these are industry specific, rather than whether it is a large corporate taxpayer or a small corporate taxpayer. The general corporate income tax rate in Ghana since 2015 is 25 percent,[546] but differential rates may apply depending on the industry in which an entity operates, and whether it has been granted specified tax concessions as a free zone company or other such express exemption.[547] The various rates including industry specific rates applicable to all corporate entities in Ghana including MSMEs are provided in Table 7 on Appendix C. The different corporate income tax rates are therefore industry specific, rather than dependent on the size of the company.

5.3.1.4 Withholding Taxes

A Withholding tax is a tax that must be deducted at source by a person when he or she or it is making a payment to another person and accounted for later to the tax administrator, in this case, the GRA.[548] Although individuals are not subject to withholding tax obligations under Ghanaian tax laws, MSMEs that are registered as a business (including registered sole proprietors) are subject to withholding tax obligations.[549] This is because the law provides that an individual is not required to withhold tax unless it is in the course of a business.[550] Since sole proprietors are in the conduct of business, they are not exempt from withholding tax obligations.[551] Registered MSMEs (regardless of whether registered as sole proprietor or corporate entities), therefore, have the same dual obligations under Ghanaian tax laws as withholding tax agents, just like large taxpayers.

[546] Ibid.
[547] Ibid sch 1.
[548] Thomas Kathleen DeLaney, 'The Modern Case for Withholding' (2019) 53 UC Davis L. Rev. 81. See also Sevendy Tandy, et al. 'Development of Tax Teaching Materials: Withholding Tax', (2023) 1(1) Education and Pedagogical Insights, 20

[549] The Income Tax Act, 2015 (Act 896), ss 85,114-116.
[550] Ibid.
[551] Ibid, ss. 85,114-116.

Tables 22 -23 on Appendix C present the applicable withholding taxes that all businesses (regardless of the size of the business) must comply with.

In addition, registered MSMEs (including sole proprietors) who employ persons in their setup have further withholding obligations as employers.[552] Like the analyses above, these obligations are the same for all registered taxpayer types who have employees, regardless of whether the taxpayer is a large, small, micro, or medium enterprise. The obligation of the employer to withhold the tax prevails over any other obligations or provisions of any law.[553] The withholding tax rates applicable to withholding tax on employment income are the same as those for personal income taxes stated in the above paragraphs and detailed in Table 6 on Appendix C. The income tax rate structure for Ghana is therefore complex, and all the sources of the data analysed above corroborated this, including the high-level interviews from civil society, private business, tax administrators and tax policy makers.

Complex tax rate structures are noted to hinder MSMEs' ability to meet their obligations.[554] Many emerging economies, therefore, adopt preferential tax regimes (PTRs) in the taxation of MSMEs. PTRs are special fiscal regimes that offer a lower tax rate and simpler tax compliance requirements than the mainstream tax regime to their target group. There are different types of PTRs for MSMEs. They include "presumptive regimes", that is, tax regimes that enable MSMEs to calculate their tax liability based on an estimated income. The estimation is computed based on another financial or nonfinancial indicator other than net income, such as turnover, capital assets, employment, electricity consumption or floor space. Other types of PTRs include a discount on the statutory

[552] Ibid.
[553] Ibid, ss. 85,114-116.
[554] Waskita and Ashari (n 177).

CIT rate, also referred to as "small business tax rate" (SBTR). This tax reduction only applies to businesses that have a corporate legal status. Another type includes tax reductions or tax exemptions other than exemptions from income taxation. For example, reductions or exemptions on the VAT. A fourth type of PTR is tax preferences that reduce the total tax load for an MSME, such as investment tax credits, research and development tax credits and reductions or exemptions from capital gains tax on the sale of MSME shares. Furthermore, PTRs for MSMEs generally include simpler compliance requirements in addition to a lower tax rate,[555]

Presumptive regimes are the most common form of PTRs for MSMEs in emerging economies and are mostly used to encourage enterprise formalisation through the simplification and reduction of income taxation.[556] These regimes usually target micro and small businesses and levy tax on a presumed tax base that intends to approximate taxable income by indirect means.[557] Hence, they can be particularly relevant where actual taxable income is difficult or costly to assess accurately.[558]

Some countries apply a mildly progressive tax rate structure, while others may offer a fixed tax rate or even tax exemption for the initial period of operation. African Countries that operate PTRs include Kenya, Nigeria and South Africa. [559]

[555] Marco Marchese, 'Preferential Tax Regimes for MSMEs: Operational Aspects, Impact Evidence and Policy Implications (2021). ILO Working Paper, No. 33.
[556] Ibid.
[557] Marchese (n 552).

[558] Marchese (n 552).
[559] Ibid.

5.3.2. Review of Income Tax Rate Structure Complexity for Kenya, Nigeria and South Africa

5.3.2.1 Kenya

Kenya applies a simplified income taxation regime called Turnover Tax (TOT) to MSMEs, a regime introduced to make taxation easier and more manageable for small businesses, and to encourage compliance among small-scale traders and businesses that might struggle with more complex tax obligations.[560] The Turnover Tax is levied on the gross sales or receipts of a business, rather than on its profits.[561] This means that businesses are taxed based on their overall income before any expenses are deducted.[562] Turnover tax is a lump sum direct tax collected by Governments.[563] Turnover tax is worked out by just applying to a taxable turnover a single tax rate as opposed to income tax system that incorporates use of comprehensive rules and procedures that require maintenance of proof on every expenditure.[564] Countries that apply turnover tax use different parameters to determine when the tax needs to be assessed.[565] The structure of a turnover tax varies with governments and types of goods taxed.[566] This is intended to keep it affordable for everyone.[567]

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560 Victor Otieno, 'What Kenya's Tax Policy Means For SME Businesses', (2022) 12(1) AIJSSR, 30
561 Rose Njeri Gitema, et al., 'Effect of Legislative Reforms on Turnover Tax Compliance among Small-Scale Traders in Ruaraka Nairobi, Kenya (2025), 2 Journal of Finance and Accounting 11.
562 Ibid.
563 Gitema, (n 560).

564 Fabiola Annacondia and Walter van der Corput, 'Overview of General Turnover Taxes and Tax Rates', (2003) VAT Monitor, March/April 2.
565 Richard M. Bird, 'Assessing Tax Performance in Developing Countries: a Critical Review of the Literature', (2013) Taxation and Economic Development (Routledge Revivals), 33.
566 Annacondia, (n 560).
567 Ibid.

To increase small and medium-sized business (SMEs) tax compliance, Kenya reintroduced the turnover tax through its Finance Act 2019. This was less than a year after Kenya's Finance Act of 2018 replaced its 2007 turnover tax with a presumptive tax. Under its Finance Act 2019 individuals with eligible small companies have the option to register for either the conventional tax system or the turnover tax. [568]

The current rate of Turnover Tax in Kenya is 3 percent of the gross turnover,[569] and the tax band is an annual turnover of between Ksh 1 million and Ksh 25 million, (i.e. US$7,700-US$19,000).[570] Businesses below this threshold are therefore exempt, while those above are subject to other forms of taxation, such as corporate tax.[571] Certain businesses and individuals are exempt from paying TOT, including:

- An annual turnover of less than KShs.1 million (GH¢54,000.00);
- Income subject to withholding tax;
- Rental income, which is subject to a different tax regime;
- Management and professional fees;
- Employment income;
- Businesses with a turnover above Ksh 50 million are taxed under the standard corporate tax regime.[572]

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[568] Gitema, (n 557).
[569] The Kenyan the Finance Act 2023.
[570] Otieno, (n 556).
[571] Ibid.
[572] Ibid. See also: Gideon Muhwa, 'Issuance of Agency Notices and Tax Compliance of Small and Medium Enterprises in Nairobi County, Kenya', (2023) 2(1) Research Journal of Business and Finance 49.; Tanui Peninah Jepkogei, 'Demystifying the Key Taxation Concepts to Improve Compliance by SMEs in Kenya, ((2016) 4(6) EJAAFR, 47; and Jenta Itaka Ngali, *Effect of Taxation on the Performance of Small and Medium Enterprises in Voi Town, Kenya* (Diss. Masters Dissertation, Kenyatta University, Nairobi Kenya, 2020).

The monthly income tax rate (TOT) applicable to MSMEs in Kenya are as follows:

- KS83,000 and below — Nil
- KS83,333 up to KS2,083.333 — 3 percent

5.3.2.2 Nigeria

Like Kenya, Nigeria has a separate income taxation regime for MSMEs. Nigeria exempts MSMEs with an annual turnover of N25,000,000 or less from taxation.[573] MSMEs with an annual turnover of more than N25,000,000 but less than N100,000,000) are subject to income tax at the rate of 20 percent . Companies with annual turnover of between N100,000,000 is 30 percent.[574]

Table 10 on Appendix D presents the income tax rate (TOT) applicable to MSMEs in Nigeria.

5.3.2.3 South Africa

Like Kenya and Nigeria, the income tax rate structure for MSMEs in South African is progressive in some respects. However, the corporate income tax rates in South Africa differ not only depending on income turnover but also on the ownership composition of the company, that is whether it is made up of only natural persons.[575] Small business corporations that meet the

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[573] See Abdulhamid Ellawule, et al. 'Effect of Tax Incentives on MSMEs' Tax Compliance in Nigeria' (2024) 14(2) Journal of Business Management and Accounting 339; Shakirat Adepeju Babatunde, et al. 'Taxation Policy and SMES Growth', (2023) 30(2) International Journal of Business, Economics and Law 2289; and Victor E.,Inim, et al. 'Taxation and the Growth of Small and Medium Enterprises in Nigeria' (2020), 7(3) Asian Journal of Social Sciences and Management Studies 229.

[574] Ibid.

[575] See the Davis Committee Report, 2016 and Evans Chris et al., *Tax Simplification, An African Perspective* (Pretoria University Law Press, 2019).

requirements (including only natural persons as members/owners and with gross income of not more than ZAR 20 million) are taxed at the rates as follows:[576]

• ZAR 95,750 or less	**Nil**
• ZAR 95,750 to ZAR 365,000	7 percent
• ZAR 365,000 to ZAR 550,000	21 percent
• ZAR 550,000	27 percent

Under the South African taxation regime, a person qualifies as a micro business if that person is a natural person or partnership or company and has qualifying turnover for the year of assessment not exceeding R1 million. (GH¢400,000.00).[577]

An examination of the income tax rate structure for MSMEs in Kenya, Nigeria and South Africa reveals a less complex rate structure. While the income tax rate structure for Kenya, Nigeria and South Africa are relatively simple, and easy to compute, that for Ghana is complex in various ways, such as: (a) complexity of computation, (personal income tax rates are complex to compute because of the requirements of the law in applying the applicable rate only after deducting the applicable amount within the tax band, which amounts differ depending on the income tax band; (b) applicability of different withholding rate structures to different categories of withholdees to be computed by small and large taxpayers alike as MSMEs no matter how micro have the same withholding obligations as large corporations; and (c) subjecting MSMEs no matter how micro to withholding taxes on their provision of goods in addition to personal income taxes among others.[578]

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[576] Ibid.

[577] Y. Naicker and R. Rajaram, 'The Effectiveness of Tax Relief Initiatives on SMEs in South Africa', (2019) 15 Acta Univ. Danub. Oecon, 3.

[578] Income Tax Act, 2016 (Act 896), Sch 1 and 2.

The Ghanaian income tax rate structure is therefore unfair to micro and small businesses, and out of line with those of other African countries discussed above, that is, Kenya, Nigeria and South Africa.

5.3.3 Lack of Capacity to Correctly determine tax rate

All the sources of data and expert analysis presented above in sections 5.1 and 5.2 indicate that MSMEs taxpayers in Ghana experience difficulties in determining the right amount of tax to pay. The data also reveals that the difficulty borders on capacity – MSMEs simply do not have the requisite capacity to make this determination correctly. Ghana's income tax rate structure complexity requires certain technical expertise or technology to determine correctly, both of which are beyond the capacity of more than 87 percent of MSMEs. As demonstrated in the analyses of the data in 5.1 above, over 87 percent of the enterprises have a capital base of not more than GH¢12,500 monthly (i.e., GH¢150,000 per annum), do not own a computer, and do not employ technology in their business.[579] Pursuant to the data analyses above, the vast majority of MSMEs in Ghana, therefore, simply do not have the requisite minimum expertise, technology, or ability to hire the required expertise to assist them to correctly determine the right tax at the right time.

Furthermore, the high-level interviews with tax administrators reveal that it is not only the MSMEs who have trouble in determining the correct tax at the right time, but that the tax administrators also have difficulties correctly assessing these MSMEs because they (tax administrators) do not have sufficient knowledge of the businesses or activities of these MSMEs. They therefore

[579]Ibid.

arbitrarily assess them. This, therefore, results in structural unfairness for both the MSME taxpayers and the GRA.

5.3.4 Distributive Fairness

Analyses of the above data indicate that MSME taxpayers perceive that the taxes that they pay are too high, raising issues of distributive justice. An examination of the income tax regimes applicable to MSMEs in Kenya, Nigeria, and South Africa, discussed above do reveal different rates from that of Ghana. For example, while Kenya, Nigeria, and South Africa have similar approaches aimed at exempting micro enterprises (including those that are incorporated) from income taxation, Ghana does not. In other words, Kenya, Nigeria, and South Africa exempt MSMEs whose turnover is less than a specified amount from corporate income taxation. Ghana, however, does not.[580] Secondly, these countries apply a progressive corporate income rate structure for MSMEs, while Ghana's corporate income tax rate structure is proportional.[581] MSMEs that are incorporated as companies in Ghana are not exempt from corporate income taxation, no matter how micro they are, nor are they subject to lower corporate income tax rates. Rather, all MSMEs, regardless of size, have the same corporate tax obligations as their large counterparts.[582] A comparison of Ghana's income taxes applicable to MSMEs with other sub-Saharan countries thus supports the arguments of MSMEs actors that the taxes applicable to them are too high. A progressive, rather than a proportional corporate income tax rate structure, would be fairer for MSMEs in the Ghanaian context, as will be discussed in more detail in chapter six.

[580] Naicker, (n 574).
[581] Income Tax Act, 2016 (Act 896), Sch 1.
[582] Income Tax Act, 2016 (Act 896), Sch 1.

5.3.5 Procedural Fairness

Another factor underpinning MSMEs' taxpayers' perception of unfairness borders on procedural fairness. Procedural fairness is the perception that the revenue administrator adheres to procedures that are fair in dealing with taxpayers. [583]

MSMEs in Ghana are subject to Self-assessment, with administrative assessment used only when there is a pre-emptive assessment, adjusted assessment or other assessment consequent on failure to comply with Self-assessment.[584] The Self-assessment system in tax administration is a system designed so that taxpayers can report their own tax obligations, voluntarily determine how much tax is due from them, and file and pay the right tax on time to the tax administrator.[585] In reporting using the Self-assessment system, taxpayers are given the freedom to determine the amount of tax submitted based on their taxable activities.[586] The activities to report and the taxes to pay in this system are therefore an initiative from the taxpayers themselves.[587]

The Self-assessment system has several advantages and contributes to efficient tax administration. For example, the Self-assessment system helps to reduce the cost of tax collection, as no tax administration in the world can have sufficient resources to administratively determine correctly, the tax liability of all its taxpayers.[588] The voluntary compliance nature of the self-assessment system therefore helps the tax administrator to reduce cost of collecting revenue, as it does not

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[583] P. Verboon & S. Goslinga, 'The Role of Fairness in Tax Compliance' (2009), 65 Netherlands Journal of Psychology, 136.
[584] The Revenue Administration Act, 2016 (Act 915), s.108.
[585] M. Nero and K. Amrizah, 'Tax Literacy among Employees in Sarawak' (2005), Jurnal Akademik 22.
[586] Ibid.
[587] Nero, M., & Amrizah, K. (2005). Tax literacy among employees in Sarawak. *Jurnal Akademik*, 22-42.

[588] Amrizah, (n 586).

have to put in many resources to collect revenue using the system. Furthermore, studies have found that the self-assessment system plays a significant role in negative tax evasion.[589]

The above-mentioned advantages of the self-assessment system notwithstanding, how well the self-assessment system works depends on several factors, notably including to a considerable extent, whether the taxpayers to whom it applies have appropriate knowledge of tax regulations and the *appropriate capacity* to comply with their obligations under the tax laws.[590] In addition, it, (the self-assessment system) requires advanced technology as it must necessarily store a lot of information in accordance with reality.[591] Taxpayers who do not have a high knowledge of all their tax obligations, nor the *capacity* to employ expertise or technology for tax reporting are therefore unlikely to be able to adequately comply with their tax obligations in the self-assessment system.[592] Do the majority of MSMEs in Ghana have the capacity to determine correctly their taxes and file same in accordance with the required self-assessment processes in Ghana? The analysis of the data above from 5.1 to 5.4 demonstrates that they simply do not, as the majority state that they have difficulties in determining the right tax at the right time. [593]

The various taxes that MSMEs are subject to include: (i) Income Taxes – personal income tax (for sole proprietorships) and corporate income tax (for incorporated MSMEs); (ii) Withholding Tax; (iii) Value Added Tax; (iv) National Health Insurance Levy (NHIL); (vi)COVID-19 Health

[589] Ibid.

[590] Ibid. See also Madugba, Joseph, et al. 'Self-assessment Regime, Tax Compliance, and Tax Administration: Evidence from Emerging Economy' (2024), 2 Journal of Multiperspectives on Accounting Literature 43.

[591] Ibid.

[592] Ibid. see also Monika Verliana Sunarti and Retno Kurnianingsih, 'The Influence of Income Level, Self-Assessment System, and Tax Literacy on MSME Taxpayer Compliance' (2025) 8 Indonesian Interdisciplinary Journal of Sharia Economics *(IIJSE)* 3681.

[593] See chapter 5.2.

Recovery Levy; (vii) Ghana Education Trust Fund Levy (GETFund Levy); (viii) Property Tax; (ix) Excise duty; (x) Tax Stamp; (xi) Municipal Taxes; and (xii) Communication Service tax.[594]

The above taxes are generally not only subject to different tax rates but are also subject to different filing regimes with different filing timelines. For example, while withholding tax returns must be submitted and paid by the 14th day of each month, VAT returns must be submitted and paid by the last working day of the month following the month to which the return relates,[595] while income taxes must be filed and paid within four months from the end of each year of assessment.[596] In fact, with respect to income taxes, while the due date for filing personal and corporate income tax return is not later than four months after the end of each year of assessment,[597] that for taxes withheld is within 15 days at the end of each calendar month,[598] and that for specific incomes like petroleum income is within 30 days after the end of each quarterly period,[599] and within 4 months after the end of the basis period.[600] Therefore, not only are the procedural compliance obligations of the above taxes generally separate, but they are also generally different.[601]

Furthermore, the tax returns must be furnished together with a separate income and expenditure statement and a statement of assets and liabilities for each business undertaking carried on within that business by the person.[602] In addition, the tax return must contain a declaration that the return is "complete and accurate" and must be signed by the person making it.[603] Failure to file a required

[594] Abdul Malik, et al. *A Survey of the Ghanaian Tax System*, (No. R189. IFS Report, 2021).
[595] The Value Added Tax Act, 2013 (Act 870), s. 52(4),
[596] The Income Tax Act, 2015 (Act 896), s124.
[597] Ibid
[598] Ibid, s. 117.
[599] Ibid, s. 72.
[600] The Income Tax Act, 2015 (Act 896), s. 73.
[601] See Kunbuor et al (n16).
[602] Revenue Administration Act, 2016 (Act 915), s. 28.
[603] Ibid.

tax return within the applicable timeline is a criminal offence.[604] A person required to furnish a tax return may, however, apply to the Commissioner-General of the GRA for an extension of time to enable them to furnish such return,[605] and if the Commissioner-General is satisfied that the inability to furnish the return was due to a reasonable cause, s/he may grant the said extension for a period not exceeding a total of two months.[606] The Ghanaian tax assessment reality is that the nature and complexity of the Self-assessment within the different taxes, different tax rates, and different filing regimes require a minimum knowledge of taxes and/or software and computers to facilitate correct compliance, but over 87 percent of MSMEs in Ghana do not have this capacity, (see discussion in 5.1 above). It is, therefore, pragmatically unfair to expect compliance from these same enterprises that undoubtedly lack the capacity to do so.[607] A fair rate structure is therefore unlikely to achieve substantive tax fairness for MSMESs if implemented within the current compliance regime.

5.3.6 The Role of the Court in Facilitating Fairness

Dispute resolution is critical in every human endeavour. In a constitutional democracy, fair procedures and processes for dispute resolution are a critical part of justice delivery.[608] A key observation that came out in the interviews relates to the role of the court and whether it has upheld economic rights envisaged under the Bill of Rights in the Constitution or whether it has largely sided with the GRA. This section discusses the dispute resolution provisions for tax disputes and the Ghanaian courts' jurisprudence, evidenced by in decisions that they made.

[604] Revenue Administration Act, 2016 (Act 915) s. 31.
[605] Ibid, s. 30.
[606] Ibid.
[607] All the data analysis above corroborates this finding.
[608] Andrew Reynolds, *The architecture of democracy: Constitutional Design, Conflict Management, and Democracy*, (OUP Oxford, 2002).

The nature of a tax dispute and the dynamics in tax disputes are different from other civil disputes. In a tax dispute, the disagreement is between a private person and the State, rather than between commercial entities or private persons.[609] The remedy for a taxpayer who disputes the Commissioner-General's assessment of liability to tax lies in a 'tax appeal' in accordance with the Revenue Administration Act, 2016 (Act 915). Although the Commissioner-General's actions are subject to the remedy of 'judicial review' under Ghanaian law, this remedy is available only when determining whether the Commissioner-General validly and lawfully exercised an administrative power that the law has conferred on them, rather than a disagreement bordering on the right tax at the right time.[610] So, a dispute over tax assessment must be brought pursuant to the rules for a tax appeal in accordance with the requirements of the Revenue Administration Act, 2016 (Act 915), rather than judicial review.[611] Section 44 of the Revenue Administration Act, 2016 (Act 915) requires any person who is dissatisfied with a tax assessment decision of the tax administrator to appeal against the decision to the ITAB within 30 days of receipt of the decision that is the subject of the complaint. After the ITAB determines the dispute, the law requires that any appeal against such a decision must thereon be made to the court and that must be done within 30 days from the date that the ITAB's decision was served on the dissatisfied party.[612]

The legal requirements for a tax appeal are comprehensive, rigid and with strict timelines. First, there are elaborate procedures to follow in the tax appeal process, and failure to follow these rigid procedures strictly is fatal to one's case.[613] As a result, non-compliance with the tax appeal rules

[609] Clara Kasser-Tee, 'Mediation in Ghana: A Critical Examination of how Act 798 seeks to Improve Mediation and the Mediation Process in Ghana', [2017] GIMPA Law Review, 2.
[610] See Marco Greggi and Anna Miotto, 'The OECD Dispute Resolution System in Tax Controversies' (2024) 13(4) Laws, 45.

[611] Kunbuor et al. (n 37). See also the Revenue Administration Act, 2016 (Act 915), s. 44.
[612] The Revenue Administration Act, 2016 (Act 915), s. 44(1) as amended.
[613] Kasser-Tee, (n 605)

means that one's suit will be terminated without a hearing on the merits of the suit, and with the additional effect that the disputed tax becomes final and recoverable by the Commissioner-General regardless of whether the disputed tax is correct or not.[614] This is the implication of sections 41(4)(b) and (c), 46(3) and 93 of the Revenue Administration Act, 2016 (Act 915), ("the Revenue Administration Act"). Section 41(4) (b) and (c) of the Revenue Administration Act provide as follows:

> *The following are conclusive evidence that a tax decision has been made and is correct:*
>
> *(b) in the case of other assessments, the notice of assessment or a document under the hand of the Commissioner-General purporting to be a copy of the notice; and*
>
> *(c) in the case of any other tax decision, written notice of the decision under the hand of the Commissioner-General or a document under the hand of the Commissioner-General purporting.*[615]

A tax assessment by the Commissioner-General that is served on a taxpayer is therefore presumed to be correct by operation of law.[616] Furthermore, section 46(3) provides at the relevant part that "*tax remains payable despite any dispute or review proceedings, irrespective of whether the proceedings are administrative, judicial, quasi-judicial or appellate in nature*.[617] Therefore, an appeal filed by a taxpayer against a tax assessment by the Commissioner-General does not stop

[614] Ibid.
[615] The Revenue Administration Act, 2016, s. 41(4)(b).
[616] Kasser-Tee, (n 605).
[617] The Revenue Administration Act, 2016 (Act 915), s. 46(3)

the Commissioner-General from taking other measures, such as non-judicial measures to recover the tax appealed against, unless the court grants an express order restraining the Commissioner-General from proceeding so to do.[618] This is further made abundantly clear by sections 87 and 93 of the Revenue Administration Act. Section 87 of the Revenue Administration Act is to the effect that any action or proceeding to recover a tax under a specified provision of a tax law does not necessarily act as a bar to simultaneous or separate proceedings to recover the same tax under a different provision of the same law or a provision of another tax law, while section 93 the Revenue Administration Act provides as follows:

> *A tax decision is not stayed or otherwise affected (a) by the institution of proceedings (i) for the recovery of tax; or (ii) with respect to an offence under a tax law; or* (c) *by reason that the Commissioner-General compounds an offence.*[619]

Section 92 of the Revenue Administration Act reinforces the above provisions by stipulating that: "*Section 41(4) provides for conclusive evidence that a tax decision has been made and is correct",*[620] (section 41(4) is stated above on the page immediately preceding this page). The combined effect of the above provisions, that is sections 41(4)(b) and (c), 46(3), 92 and 93 of the Revenue Administration Act is that a tax appeal that has been terminated without a determination on the merits of the case does not terminate any assessment that had been made by the Commissioner-General, and, the Commissioner-General would be entitled to use non-judicial means available to him under the tax laws to recover taxes pursuant to the disputed assessment.

[618]Ibid, s.41(6)).
[619] The Revenue Administration Act, 2016 (Act 915), s. 93.
[620] Ibid, s. 92.

One such non-judicial power is the Commissioner-General's power to distrain and sell a taxpayer's movable property without a court order pursuant to sections 52, 53 and 54 of the Revenue Administration Act.[621]

Section 52 of the Revenue Administration Act provides as follows:

> (*1) Where a taxpayer fails to pay tax on the due date, the Commissioner-General may create a charge in favour of the Government over an asset owned by the taxpayer by serving the taxpayer with a notice in writing specifying*
>
> *(a) the name of the taxpayer;*
>
> (*b) the Taxpayer Identification Number of that taxpayer;*
>
> *(c) the asset charged and the extent of the charge;*
>
> *(d) the tax or taxes to which the charge relates; and*
>
> *(e) the power of the Commissioner-General to take possession and sell the assets as specified under sections 53 and 54.*[622]

It must be noted that the sale referred to in sections 53 and 54 do not require a court order.[623] Section 53(1) and (2) of the Revenue Administration Act provide as follows:

> *53. (1) A taxpayer shall not deal or purport to deal with a charged asset once the Commissioner-General takes possession of the asset.*

[621] Kunbuor et al, (n37).
[622] The Revenue Administration Act, 2016 (Act 915), s. 52.
[623] Ibid.

(2) The Commissioner-General takes possession of a charged asset by serving the taxpayer with a notice in accordance with subsection (3) and

(a) physically securing possession of the asset, in the case of tangible charged assets; and

(b) making the notice publicly available in the case of intangible charged assets.[624]

Section 54 provides as follows:

(1) The sale of a charged asset under this section shall be by public auction.

(2) Where the Commissioner-General takes possession of a charged asset under section 53 and decides to sell the asset, the following rules shall apply:

(a) the Commissioner-General shall issue a public notice of sale before selling the charged asset;

(b) the sale shall be carried out

(i) in the case of an interest in land or a building, thirty days after taking possession;

(ii) in the case of a perishable movable asset, within twenty-four hours after taking possession; and

(iii) in the case of any other asset, ten days after taking possession.

(3) The Commissioner-General may exercise the power of sale

(a) either directly or indirectly through an authorised agent; and

[624]Revenue Administration Act, s. 53(1) & (2).

(b) without a court order.[625]

[emphasis mine].

There are other non-judicial powers of the Commissioner-General granted in the Revenue Administration Act, such as the power to: distrain goods or "*distrain and search premises, a place, conveyance or other asset on or in which the Commissioner-General believes on reasonable grounds that the goods are located"*[626] pursuant to section 57 of the Revenue Administration Act; require third-party debtors, (that is a person who owes money to the taxpayer) to pay the assessed amount to the Commissioner-General pursuant to sections 60 and 61 of the Revenue Administration Act; and require agents of the taxpayer (where the taxpayer is non-resident) to pay the assessed amount to the Commissioner-General pursuant to section 62 of the Revenue Administration Act. A third-party debtor "*shall not pay any amount to the taxpayer until the Commissioner- General withdraws the notice.*"[627] An amount payable to the Commissioner-General by a third-party debtor under the above-mentioned sections is "*a personal tax liability of the third-party debtor*".[628] Third party debtors who pay the assessed amount to the Commissioner-General under these provisions are:

"(a) treated as having acted with the authority of the taxpayer and of all other persons concerned; and

[625] The Revenue Administration Act, 2016 (Act 915), s. 53.
[626] Revenue Administration Act, s. 57.
[627] Ibid, s. 60(5).
[628] Ibid.

(b) indemnified in respect of the payment against all proceedings, civil or criminal, and all processes, judicial or extra judicial, despite any provision to the contrary in an enactment, contract or agreement". [629]

The legal implication of the above provisions is that when an appeal filed in court against a tax assessment terminates without a resolution on the merits, the Commissioner-General has other provisions within the law to employ to recover the disputed tax against the taxpayer (that is, through the non-judicial means discussed above). The taxpayer, on the other hand, does not have any such similar non-judicial means within the law to employ against the Commissioner-General, making the taxpayer the party who ultimately bears the brunt of the termination of the dispute without a resolution on the merits.

The procedures in a tax appeal commence with the filing of an objection to the tax assessment with the Commissioner-General.[630] The Ghanaian courts have consistently held that a taxpayer cannot appeal a tax assessment until: (i) he/she has raised an objection to the assessment with the Commissioner-General, and the Commissioner-General has given or failed to give a decision on such objection within 90 days of its receipt, ("Objection Decision").[631] In the case of *Arghyrou v. Commissioner of Income Tax,*[632] for example, the High Court held that there can be no appeal to the High Court against tax assessment in the absence of an Objection Decision, nor where the Commissioner-General had not taken an unreasonable time to communicate an Objection Decision. The High Court therefore dismissed the taxpayer's suit without hearing the merits of the

[629] Ibid, s. 61(2).
[630] Kunbuor et al, (n 37).
[631] see The Republic v. the Commissioner of Income Taxes, Ex Parte Maatchppij De Fijn Loutlandal N.V. [1974] 1 GLR 283 CA. (Full bench); *Arghyrou v* the Commissioner of Income Taxes [1965] GLR 588; and See Lynne Oats and P. Tuck, *the Relationship between HM Revenue & Customs and Large Corporate Taxpayer: The Changing Role of Accountants* (London: CBP, 2008).
[632] [1974] 1 GLR 283, @ pages 289- 297.

dispute. Similarly, in the case of the *Republic v. C.I.T. Ex Parte Maatchppij De Fijn Loutlandal N.V.* **(**Fyhnout case),[633] the Supreme Court concerned itself only with procedural and technical matters and did not discuss the merits of the tax assessments. In that case, the court dismissed the appeal for non-compliance with the procedural rules.

The next required process upon dissatisfaction with an Objection Decision from the Commissioner-General or where the Commissioner-General does not respond to the objection within the 90-day period is for the taxpayer to appeal to the Independent Tax Appeals Board (ITAB). The ITAB is made up of a chairperson and ten members appointed by the Minister responsible for Finance.[634] A panel of three members of the Board may adjudicate any matter before the Board.[635] The chairperson of ITAB is empowered to form panels of the Board and may constitute more than one panel at any given time. [636] One can appeal to the Court only after they are dissatisfied with the decision of the ITAB, and they must file their appeal to the Court within thirty days.[637]

The Ghanaian Supreme Court adopts the strict constructionist approach to the interpretation of tax statutes.[638] In line with the jurisprudence of the strict constructionist approach to the interpretation of tax statutes, the courts have shut down a contest against the tax appeal rules on grounds of unconstitutionality. In the recent case of *Kwasi Afrifa vrs the GRA and Anor,*[639] the plaintiff sought a declaration, inter alia, that a true and proper interpretation of Article 23 of the 1992 constitution

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[633] [1965] GLR 588.
[634] The Revenue Administration Act, 2015 as amended by the Revenue Administration Act (Amendment Act, 2020), Act 1029, Fourth Schedule, s. 3.
[635] Ibid, s. 5(2).
[636] Ibid, s. 5(3).
[637] Ibid.
[638] *Multichoice Ghana Ltd v. The Commissioner, Internal Revenue Service* [2011] 35 G.M.J, 87 – 102.
[639] [2022] DLSC11869.

will find that section 42 (5) of the Revenue Administration Act of 2016 (Act 915) not only offends the Constitution, but that it also violates his constitutional rights, specifically, his right to administrative justice which is expressly secured under article 23 of the 1992 Constitution. The said section, that is, section 42 (5) of the Revenue Administration Act must therefore be declared unconstitutional and consequently struck down.

The argument of the plaintiff rested mainly on the fact that section 42(5) of the Revenue Administration Act forbids the raising of an objection against a tax assessment, unless one has, paid all outstanding taxes and the total amount of the disputed tax if one is objecting to an assessment that relates to import duty. If on the other hand, the disputed assessment relates to any other tax, (other than import duty), then one must pay all outstanding taxes and at least 30 percent of the disputed tax.[640]

The Supreme Court, however, declined the invitation to strike down article 42(5) of the Revenue Administration Act. The Court, in dismissing the Plaintiff's action reasoned that section 42 (5) must be read together with other provisions of the Revenue Administration Act, which when done reveals that the necessary safeguards requiring the Commissioner-General of the GRA to consider tax objections in a 'fair and reasonable' manner were present. The law was therefore in compliance with the requirements of the 1992 Constitution on exercising administrative power in a fair and reasonable manner. In any case, the Court opined, the law provided citizens with the opportunity to object to tax assessment and further guarantee access to the court in the event of dissatisfaction. The Court further held that one must nor permit litigants to use article 296 of the Constitution to stifle or subvert the independence of administrative bodies, technocrats or experts.[641]

[640] The Revenue Administration Act 2016, s.42(5).

[641] *Kwasi Afrifa v rhe Ghana Revenue Authority and the Attorney General* [2022] DLSC11869

Section 42(5) of the Revenue Administration Act 2016 states that;

(5) *"An objection against a tax decision shall not be entertained unless the person has*

(a) in the case of import duties and taxes, paid all outstanding taxes including the full amount of the tax in dispute; and

(b) in the case of other taxes, paid all outstanding taxes including thirty percent of the tax in dispute.[642]

Article 23 of the 1992 Constitution provides that,

Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a court or other tribunal.

Article 33(1) of the 1992 Constitution states that;

"Where a person alleges that a provision of this constitution on the fundamental human rights and freedoms has been or is being or is likely to be contravened in relation to him, then, without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress."[643]

In *Export Finance Limited v. Ghana Revenue Authority & the Attorney-General,* the Supreme Court again had the opportunity to assess the constitutionality of sections 42(5), 42(6), and section

[642] The Revenue Administration Act 2016, s.42(5).
[643] The Constitution, 1992, art 33.

43(3) of the Revenue Administration Act. In that case, the plaintiff sought a declaration that section 42(6) and section 43(3) violate the 1992 Constitution, specifically article 296 on the exercise of discretionary powers. The Plaintiff argued that the onerous and extremely burdensome financial obligations placed on an aggrieved taxpayers before they can access the courts is a fetter and a clog on their right to a fair hearing and access to the courts. The Respondent however disagreed, arguing among others that the 'pay now, argue later,' provisions in the law are desirable as they balance the taxpayer's rights against the need for the efficient collection of taxes. In this case, the Supreme Court took a position similar to the decision in *Kwasi Afrifa v Ghana Revenue Authority & Attorney General,*[644] declining once more to strike down the offending appeal rules in the Revenue Administration Act. Another suit in Richard *Amo-Hene v The Ghana Revenue Authority*[645] did not result in a different outcome.

In the above cases, the Supreme Court seemed satisfied that the constitutional requirement on the Commissioner-General to act reasonably and fairly pursuant to article 296 of the 1992 Constitution is sufficient protection against abuse. This study takes the view that while this requirement is much more easily implemented where there are regulations to determine what constitutes "fair and reasonable" in tax recovery processes, implementation may not be as clear and straight forward in the absence of such regulations, as invariably, the Commissioner-General, rather than the taxpayer is the person entitled to determine what they consider in their personal view to be fair and reasonable. As the data analysis above show, tax administrators generally do not have much knowledge about the business activities of many MSMEs and so lack the required information to correctly assess them. Yet, when they arbitrarily assess these taxpayers, and they object to the

[644] 2022] DLSC11869.
[645] [2022] DLSC11872.

assessment, a tax administrator may threaten to escalate the assessment. In the face of such a threat, and micro and small taxpayers, unlike their large counterparts, lack the resources to effectively assert their rights under this cumbersome procedure, may feel threatened and therefore unlikely to assert their rights as the appeal processes are cumbersome. Determination of liability is therefore largely left to what they are told by tax officials. A Tax Advisory Service director at KPMG, one of the Big 5 accounting firms globally, made a similar observation when he opined that:

> "There are several instances in which when doing tax audits you will realize some businesses are paying certain taxes they are not supposed to pay, because they are not in that category or have paid it already in another form; but because they do not keep records and lack the knowledge, when tax officers come after them they end up making payment".[646]

It is for these reason that this study recommends that passing the required regulations under article 296 of the 1992 Constitution to guide the exercise of the discretionary power of the Commissioner-General of the GRA protects taxpayer rights better than in the absence of such regulations. Article 296 of the 1992 Constitution provides as follows:

> *Where in this Constitution or in any other law discretionary power is vested in any person or authority –*
>
> *(a) that discretionary power shall be deemed to imply a duty to be fair and candid;*

[646] https://thebftonline.com/2023/07/05/taxes-choking-msmes/

(b) the exercise of the discretionary power shall not be arbitrary, capricious or biased either by resentment, prejudice or personal dislike and shall be in accordance with due process of law; and

(c) where the person or authority is not a judge or other judicial officer, there shall be published by constitutional instrument or statutory instrument, regulations that are not inconsistent with the provisions of this Constitution or that other law to govern the exercise of the discretionary power.[647]

[emphasis mine].

This study therefore submits that the passing of such regulations will not only act as a guide to both the tax administrator and the taxpayer but also act as a guide to the court in balancing the enforcement of duties and protection of rights of all parties in the tax dispute.

5.3.5 A Proposed African Concept of a Fair Income Tax Rate Structure

The literature review in chapter two revealed that while there is considerable literature of an African conception of fairness in the context of dispute resolution, retributive justice and participatory democracy, same cannot be said for distributive justice in the context of fair distribution of the tax burden. However, like the concept of retributive justice, an analysis of African proverbs, culture and practices reveal that Africans had a concept of benefits and burden sharing in the community, and this concept was not very different from the concept of retributive justice or Idowu's 'jurinomics' – it emphasises the interconnectedness of everyone in the community and working towards the common good.[648] Although African society was egalitarian

[647] The Constitution, 1992, art 296.

[648] Christopher Simon Wareham, "African Distributive Justice." *African Ethics: A Guide to Key Ideas* (Bloomsbury, 2022): 337.

in certain respects, like many other traditional societies globally, it was also highly hierarchical in other respects.[649] The traditional African ideal of distribution of rights and burdens may therefore be hierarchical, and apply differently based on gender, age and other denominative categories.[650] Like many other societies, African society have since evolved from these traditional positions.[651]

The modern ideal of an African concept of distributive fairness can be discerned from the aspirations of the African people that fuelled the fight for independence during the colonial times, and that has consistently underpinned the commitment to democracy post-independence. This is because these aspirations have largely included issues of distributive justice in terms of sharing of benefits and burdens.[652] It may be recalled that some of the factors that underpinned the mobilisation for independence were issues of economic injustice.[653] In the case of the then Gold Coast for instance, although indirect rule preserved traditional forms and sources of power, it did not provide meaningful outlets to accommodate the ambitions of the growing number of educated men and women who were eager to find their place in their society 's development.[654] It also failed to provide fairgrounds for competition between indigenous and foreign, (European) businesses.[655] It is this dissatisfaction of what was an unfair environment that contributed to effective collaborations and mobilisations that eventually led into the protests against the colonial

[649] J. G. Flanagan, "Hierarchy in Simple" Egalitarian" Societies," (1989) 18 ARA, 245; and Marie Pauline B. Eboh, "Hierarchy, Gender", (2022) *Encyclopedia of African Religions and Philosophy*, (Dordrecht: Springer Netherlands) 291
[650] Ibid.
[651] Ibid.
[652] Thurstan C. Shaw, "20. Further Difficulties of Indirect Rule in the Gold Coast," (1945) *Man* 45: 27-30.
[653] Sylvan Odidi, and Mavia Imbali. "Issue-Based Politics in Kenya: Assessing the Underlying Factors, Progress Made, and Barriers," (2024) 8 *International Journal of Research and Innovation in Social Science* 881.
[654] Roger S Gocking, "Indirect rule in the Gold Coast: Competition for Office and the Invention of Tradition", (1994) 28 *Canadian Journal of African Studies/La Revue canadienne des études africaines* 42.
[655] James Tully, "The Struggles of Indigenous Peoples for and of Freedom", (2000) 36 *Political theory and the rights of Indigenous peoples,* 50.

administrative and local support for the activities that resulted in the relentless struggle for independence.[656]

After obtaining independence, the quest for economic prosperity and development policies and goals that would ensure that Africa and its people prospered from their vast human and natural resources has shaped the political and economic discourse on the continent.[657] In the case of Ghana, the political and economic aspirations of the people can be discerned from the words of the 1992 Constitution, the supreme law of Ghana. One such express aspiration is found in article 36(1) and (2) of the 1992 Constitution, which provisions instruct the State to take the necessary actions that will ensure that the country's economy is managed so as to maximise economic development and secure to the greatest extent possible, the freedom, welfare and happiness of everyone in Ghana, while providing sufficient means of livelihood and/or suitable employment for the people, and guarantee assistance to the needy. In the words of article 36(2),

> 36. Economic Objectives
>
> *The State shall take all necessary action to ensure that the national economy is managed in such a manner as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy*

[656] Theophilus Ashong, "The Processes of Making Ghana's Independence Constitution and the Triumph of the Unitary State Model" in N. F. Awasom and H. P. Dlamini (eds), *The Making, Unmaking and Remaking of Africa's Independenc and Post-Independence Constitutions*, (Cham: Springer International Publishing, 2024).
[657] Shaw, (n 650).

The State shall, in particular, take all necessary steps to establish a sound and healthy economy whose underlying principles shall include-

1. *the guarantee of a fair and realistic remuneration for production and productivity in order to **encourage continued production and higher productivity**;*
2. *affording ample opportunity for individual initiative and creativity in economic activities and fostering an enabling environment for a pronounced role of the private sector in the economy;*
3. *ensuring that individuals and the private sector bear their fair share of social and national responsibilities including responsibilities to contribute to the overall development of the country;*

[**Emphasis mine**].

It follows from all the above that fairness in income tax rate structure is consistent with an African ideal of distributive justice if:

(i) it is progressive;

(ii) its progressivity ensures that the income tax bands are reflective of market realities, rather than mere formality; and

(iii) distribution of the tax burden in the income taxation system applies differently to different categories of taxpayers but structured in such a manner that they are protective of the least well off, i.e. small taxpayers in a meaningful way.[658]

Fairness therefore equals practical progressivity in an African ideal of fairness in income taxation. Based on the above and influenced by Rawls' concept of justice as fairness, this study thus proposes the following as an African concept of fairness in distributive justice: that

> Benefits and burdens are to be shared equitably, not only in such a manner that is commensurate with the abilities and disabilities of the recipients, but also in such a manner that ensures that the least well off are protected to enable them to thrive in the community.

The above proposed concept of distributive justice when applied to a rate structure, would require the rate structure to be practically progressive. A tax rate structure is practically progressive when it is designed not only to have an upper and lower limit, but also so that the income tax bands, and compliance requirements are not overtaxing of small taxpayers. It is submitted that any appearance of progressivity in a tax rate structure that does not also include this practicality becomes a mere formality of progressivity.

In conclusion of this subsection, this study proposes that fairness in distributive justice in African legal thought envisaged: (a) a benefit sharing where equals are entitled to equality in distribution of benefits without distinction of any kind, and (b) a burden sharing that favoured equals contributing equally and unequals contributing unequally in a manner that is protective of the least well off and persons with known disabilities.

[658] This is also influenced by Rawl's concept of justice as fairness, which invariably underpins the liberal democracy secured by the 1992 Constitution.

5.4 Conclusion

In the case of MSMEs in Ghana, the data and literature examined in this chapter demonstrate that MSME taxpayers perceive the Ghanaian income tax system as unfair to them, and that the factors underpinning the perceptions of unfairness border on rate structure complexity, distributive fairness, and procedural justice. A comparison of the tax rates applicable to MSMEs in Ghana with those of other African countries also shows that Ghana's income tax rate structure is weighted against low-income earners, especially micro and small businesses.

In the next chapter, I make recommendations for a holistic tax policy design that is targeted at addressing the factors that underpin MSME taxpayers' perceptions of unfairness and making the income tax rate structure fairer to MSMEs.

CHAPTER SIX

SUMMARY, CONCLUSIONS, AND RECOMMENDATION

6.0 Introduction

This chapter presents the summary of findings, conclusions, recommendations, and suggestions for future research.

6.1 Summary of Findings

The study's objective was to examine MSME taxpayers' perception of the fairness of the Ghanaian income tax system and the factors underpinning the perceptions of unfairness. The research design employed mixed methods approach by combining elements of qualitative and quantitative research approaches such as interviews, qualitative analysis of various texts and laws, qualitative analysis of data collected by CDD Ghana, Ghana Enterprises Agency, Afrobarometer, PEF, and expert analysis of this data. A summary of the findings is as follows:

5.1.1 Definition of a Tax

This study defines a tax under Ghana law as a compulsory payment imposed pursuant to an Act of Parliament or under the authority of an Act of Parliament for public purposes. Article 1(2) of the 1992 Constitution subjects the power of taxation to the Constitution, and the courts may mediate and legitimise this power in accordance with constitutional principles which may not be expressly stated in the Constitution, but which are consistent with the spirit of the Constitution.[659] It must therefore be possible for a court of law, in the relevant context, to strike down any requested

[659] See *Tuffuor v Attorney-General* [1980] GLR 637.

payment in the name of taxation if such a payment is inconsistent with the actual conception and character of a tax. This enables the court to carry out its vanguard role in the protection of the citizen's liberty and property.

6.1.2 Definition of MSMEs

The GRA definition/categorisation of taxpayers into small, medium, and large taxpayers is significantly different from that of the Classification of Micro, Small, and Medium Enterprises Regulations, 2023 (L.I. 2470) and the GSS IBES data sampling frame for MSMEs. The effect of the difference is that an enterprise classified as micro under L.I. 2470 may be classified as a medium enterprise under GRA categorisation, while an enterprise classified as a small enterprise under L.I. 2470 may be classified as large under GRA categorisation.

The conflict in the definitions poses a challenge to effective collaboration and harmonisation between the two state entities, that is, the GRA and the Ghana Enterprises Agency in matters relevant to the taxation of MSMEs.

6.1.3 Perceptions of MSMEs of Ghanaian Income Taxes applicable to them

MSME taxpayers perceive that the Ghanaian income tax rates are unfair to them, as the taxes that they pay are too high and the way that they are collected is problematic.

6.1.4 Factors underpinning the perceptions of Unfairness

The factors underpinning MSMEs taxpayers' perception of unfairness include rate structure complexity, distributive justice, and procedural fairness.

Rate structure complexity

Ghana's income tax rate structure is complex in various ways, such as: (a) complexity of computation; (b) applicability of different withholding rate structures to different categories of withholdees to be computed by small and large taxpayers alike as MSMEs no matter how micro have the same withholding obligations as large corporations; and (c) subjecting MSMEs no matter how micro to withholding taxes on their provision of goods in addition to personal income taxes among others.

Modified Taxation

The Second Schedule of Ghana's Income Tax Act, which provides for modified taxation for MSMEs, is not being applied. Moreover, the scope of the applicability of the Second Schedule is narrow and therefore excludes many micro and small businesses in Ghana defined as such in L.1. 2470.

6.1.5 Distributive Justice

Ghana combines progressive and proportional rates in allocating the tax burden among the various categories of taxpayers. While personal income taxes are progressive, corporate income taxes are proportional.[660] MSMEs registered as sole proprietors are thus subject to personal income taxes, while MSMEs registered as companies are subject to corporate income taxes.[661] The implication is that MSMEs similarly situated are subject to different income taxation rates only because of the form of registration they opted for. This is also a disincentive for MSMEs to incorporate their

[660] Income Tax Act, 2015 (Act 896), sch 1.
[661] Ibid.

businesses, with the effect that they lose out on the benefits of incorporation. It may largely be the reason that many MSMEs, (about 90 percent) register as sole proprietors.

6.1.6 The Impact of Tax Laws and Policies on the Survival and Competitiveness of MSMEs

How tax laws are designed and implemented directly impacts the survival and competitiveness of MSMEs and ultimately contributes to MSMEs' decision on whether or not to formalise their businesses.[662]

6.1.7 The Link between Voluntary Compliance and Perception of Fairness

There are sufficient research findings that link voluntary compliance and taxpayer honesty with taxpayers' perception and reality of the fairness and decency of the tax system.[663] Voluntary tax compliance has been found to be higher where taxpayers perceive the tax system as fair, and lowest where taxpayers perceive the tax system as unfair to them. [664]

6.1.8 The Concept of Fairness in Tax Law

Fairness is a normative concept underpinned by a people's values and perceptions of the term.[665] The theoretical principles underpinning the allocation of the tax burden must therefore be rooted in African values and perceptions of the term if it is to be perceived as fair. The theoretical foundations of the Ghana income tax rate structure are traceable to the Benefits and Ability to Pay

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[662] Waskita, (n 177).

[663] J. Li, 'Taxpayers' Rights in Canada' (1997). 7(1) Revenue Law Journal, 6598; and C. Fritz, *An Appraisal of Selected Tax-Enforcement Powers of the South African Revenue Service in the South African Constitutional Context* (Doctoral dissertation, University of Pretoria (2017).

[664] Ibid.

[665] Richard Fellows et al., 'What is Fair? Perceptions of Justice' (2011) 2(1) International Construction and Business Management Symposium, Kuala Lumpur 1.

principles.[666] These principles, that is, the Benefits and Ability to Pay principles, are concepts that trace their roots in Western philosophical and jurisprudential concepts.[667]

6.1.9 The Concept of Fairness in Tax Law

Although the concept of fairness or justice is not unknown to African cultures,[668] there is no comprehensive African conception of fairness in the distribution of the tax burden in the law of taxation.

This study postulates that a progressive income tax rate structure conforms more with African values, traditions, customs, and perceptions of fairness than either a proportional or regressive rate structure. Specifically, this study proposes that an African ideal of a fair income tax rate structure must encompass three factors as follows:

a. It must be progressive;
b. its progressivity must ensure that the income tax bands are reflective of market realities, rather than mere formality; and
c. distribution of the tax burden must be such as to exempt the least well off in a meaningful way.

This postulation is a reflection of African culture, values and conception of justice. It is also influenced by Rawls' concept of justice as fairness to a limited extent.

[666] Kunbuor et al, (n 29).
[667] David Kerr et al., 'Historical Development of Taxation From Ancient Times to Modern Day: Implications for the Future' (2025) 25(1) Journal of Accounting and Finance 53.
[668] Gluckman, M. (1964). Natural justice in Africa. *Nat. LF*, *9*, 25.

6.2 Conclusions

While the potential of MSMEs to raise more tax revenue has been the subject of extensive discussion, an interrogation of the normative fairness of the Ghanaian income tax rate structure to MSMEs has not. Neither is there a legal study in Ghana that examines the factors underpinning MSMEs' perception of fairness, such as rate structure complexity, distributive injustice and procedural unfairness.[669] None of the comprehensive works discussed in chapter two, (literature review) has also proposed an African conception of fairness in distributive justice as a theoretical foundation for assessment of the normative fairness of an income tax rate structure. This study has therefore sought to examine the normative fairness or otherwise of the Ghanaian income tax rate structure in the context of the experiences of MSME taxpayers, and the principles of fair taxation. Specifically, the study evaluated MSME taxpayers' perception of the Ghanaian income tax rates, examined the normative fairness of the Ghanaian income tax rate structure, and analysed the procedural fairness of the Ghanaian income tax compliance procedures. The findings from this analysis confirm structural unfairness relating to rate structure complexity, distributive injustice, and procedural unfairness.

Furthermore, although the concept of fairness has been the subject of extensive study dating back to the days of Plato and Aristotle, there is little, if any, theoretical discussion of an African ideal of fairness in distributive justice in the context of an income tax rate structure. This study has therefore sought to contribute knowledge to address these gaps in the literature, and to make recommendations for a holistic tax policy design targeted at addressing the factors underpinning MSMEs taxpayers' perceptions of unfairness.

[669] *Richard Amo-Hene v. Ghana Revenue Authority & 2 Others* [2022 GHASC 103] per Pwamang JSC, 13-39.

6.3 Recommendations

In pursuance of a holistic tax policy design that includes a targeted approach to addressing the factors underpinning MSMEs' taxpayers' perceptions of unfairness, this study recommends a preferential tax regime for MSMEs in Ghana that encompasses six factors as follows:

a. Harmonisation of the definition/categorisations of MSMEs within the Ghana legal system.
b. A practical progressive income tax rate structure that exempts micro enterprises registered with the Ghana Enterprises Agency, whether incorporated or unincorporated, that is, sole proprietorships from income taxation.
c. A separate taxation collaborative compliance regime for MSMEs between the Ghana Enterprises Agency and the GRA;
d. Regulations to Guide the Exercise of Discretionary Powers;
e. A Small Taxpayers Court for MSMEs within the Ghanaian court system; and
f. Enhanced taxpayer education

5.3.1 Harmonisation of the definition/categorisations of MSMEs within the Ghana legal system

The effect of the differences in definitions of MSMEs by the GRA on the one hand and L.I. 2470, (by the Ghana Enterprises Agency) and GSS IBES data sampling framework (by the Ghana Statistical Service) on the other hand is that an enterprise that is defined as a micro enterprise under L.I. 2470 may be defined as a medium enterprise by the GRA, and a Small enterprise under L.I. 2470 is considered a large enterprise by the GRA. In fact, all enterprises defined as Medium enterprises under L.I. 2470 are defined as Large taxpayers under the GRA definition. The conflict in the definitions does not lend itself easily to synergy and policy coherence in respect of MSMEs. It will also pose challenges to collaboration and harmonisation between the two state entities, that is, the GRA and the Ghana Enterprises Agency in matters relevant to MSMEs. A harmonisation of the definitions will therefore be more beneficial for efficient tax administration, synergy, policy coherence and institutional collaboration in matters relevant to MSMEs.

6.3.2 A Practical Progressive Income Tax Rate Structure that Exempts Micro Enterprises from Income Taxation

As argued above, a review of African culture, customs, aspirations, and values reveal that an income tax rate structure must meet three propositions to be perceived fair:

g. it must be progressive;

h. its progressivity must ensure that the income tax bands are reflective of market realities, rather than mere formality; and

i. distribution of the tax burden must be such as to exempt the least well off in a meaningful way.

This study therefore recommends a progressive income tax rate structure to be applicable to all MSMEs, in place of the current combined income tax rate structures. The rate in this progressive tax rate structure, this study submits, may range between 0 percent to 35 percent, so that micro businesses, whether as sole proprietors or incorporated businesses are exempted from taxation.

Under the current income tax regime in Ghana, there are industry-specific businesses that pay up to 35 percent in corporate income taxes, (that is, the mining and petroleum sector).[670] So, a tax band of up to 35 percent is not unknown to income taxation in Ghana. Similarly, a tax band of up to 35 percent has been applied to personal income taxes in Ghana as evident in Table 6 on Appendix C. The income tax rate of 35 percent is therefore not strange for the Ghanaian Republic.

[670] Income Tax Act, 2015 (Act 896), Sch 1.

Furthermore, in this practical progressivity, small businesses are to be treated differently from medium and large businesses, so that small businesses are subject to not more than 10 percent in this progressive order, that is, a progressive rate from 0 percent to 10 percent, while medium and large businesses are subject to between 10 percent to 35 percent. This study suggests that this would be fairer for MSMEs businesses and would also be more consistent with the study's proposed theory of an African ideal of fairness in distributive justice in the context of the allocation of the tax burden. It is also more likely to raise more revenue, as an additional 1 percent from a business that earns GH¢10,000,000 is more than an additional 50 percent of a business that earns GH¢1,000. This makes it imperative that the definition/categorisations of MSMEs be harmonised within the Ghanaian legal system as recommended above.

6.3.3 A Separate, Simplified and Collaborative Compliance Regime for MSMEs: A Collaboration between the Ghana Enterprises Agency and the GRA

As indicated above in chapter five, a fair rate structure must operate within a fair tax system designed to ensure that taxpayers pay the right tax at the right time. The progressive rate structure recommended above is therefore unlikely to yield the desired outcome if it is implemented within the current self-assessment system or with the current Modified Taxation rules in the Second Schedule of the Ghana Income Tax Act discussed in chapter five above. This study suggests that a complementary way to not only simplify compliance procedures for small taxpayers but also facilitate the building of their compliance and other capacities would be for a separate compliance regime to be implemented for MSMEs, specifically, small businesses, as the study's recommendation in 6.3.2 above requires exemption of micro businesses from taxation. The question that arises from this recommendation for a complementary collaborative compliance regime is whether such a regime would not result in an undue tax administrative cost.

This study proposes that there would be no undue costs if this separate compliance regime is implemented using existing structures and institutions like the Ghana Enterprises Agency and the Ghana Revenue Authority. As evident in the objects of the Ghana Enterprises Agency discussed in chapter four, the Ghana Enterprises Agency already has a statutory mandate to design a collaborative tax compliance implementation regime with the GRA for MSMEs.[671] Working on a separate compliance regime for small businesses would therefore be implementing existing law and existing functions of the Ghana Enterprises Agency. This recommendation is thus to encourage the Ghana Enterprises Agency to implement this mandate to provide a fairer tax environment for MSME taxpayers.

Like the Ghana Enterprises Agency, the GRA already has existing framework that it may improve or rely on for this collaboration. The GRA already categorises taxpayers into three segments under Ghanaian tax law: Small Taxpayers, Medium Taxpayers, and Large Taxpayers as discussed in chapter three of this study. While this categorisation has resulted in the GRA dedicating offices to large, medium, or small taxpayers, the law has not provided separate compliance legislation or regime for small taxpayers. The tax obligations, therefore, remain largely the same for all taxpayers irrespective of their size. The GRA can leverage on this foundational structure to establish a collaborative differentiated compliance regime for MSMEs, using and building on the existing structures and with the benefit of enabling legislation to that effect, such as an amendment of the Second Schedule of the Income Tax Act, and the passing of Regulations to guide the collaboration between the GRA, the Ghana Enterprises Agency and the Office of the Registrar of Companies.

671 See section 3 of the Ghana Enterprises Agency, Act, 2020, (Act 1043).

One of the concerns against suggestions for separate or preferential tax regimes[672] for MSMEs is the potential for abuse. For example, would preferential tax regimes for MSMEs not create a disincentive for enterprises to grow beyond the size threshold after which the tax preference is lost,[673] (that is create "threshold effects" or "growth traps")? Although this appears to be a reasonable sceptical view, the concern has, however, not been supported by the empirical literature.[674] M. Marchese[675] for example, finds that although few micro and small business owners mature from the preferential regimes into the national mainstream tax regimes, this was however, not a sign of threshold effects, "*since business owners may not grow simply because of structural limits to their business model or low managerial skills*".[676] A collaborative compliance regime that involves existing state institutions such as the GRA and the Ghana Enterprises Agency is particularly beneficial because not only will compliance be less burdensome on MSMEs, but also that the Ghana Enterprises Agency is able to facilitate and coordinate other capacity building opportunities for MSMEs that would invariably impact positively on their businesses.

Another concern against the use of preferential regimes for MSMEs is that of the potential for fraud, when large companies break into smaller entities to benefit from preferential taxation (i.e. horizontal company break-up).[677] This is a legitimate concern. It is however resolvable within Ghana's company law and regulatory regime. Ghana's Companies Act, 2019, (Act 992) operates a Beneficial Ownership regime that provides an economy-wide regulatory framework for the

[672] Preferential tax regimes (PTRs) are special fiscal regimes that offer a lower tax rate and simpler tax compliance requirements than the mainstream tax regime to their target group.
[673] Marchese (n 359).
[674]Ibid.
[675] Marchese (n 359).
[676] Ibid.
[677] Ibid See also Gift Mugano, Payment of Taxes: Challenges and Options' in Mugano (ed) *SMEs and Economic Development in Africa* (Routledge, 2023). 70.

incorporation of companies.[678] The disclosure requirements in this regime, among others, requires the identification of beneficial owners and members of companies as well as the registration of these relationships in a central register.[679] The definition of beneficial ownership, as stipulated in the Companies Act, encompasses all “companies formed in the Republic of Ghana, “whether before or after the commencement of the Act”.[680] The existing legislative framework is therefore able to address this legitimate concern. These existing legislative frameworks, coupled with regulations that detail the mechanics of the collaboration between the Ghana Enterprises Agency and the GRA will be sufficient to address this concern.

6.3.4 A Small Taxpayers Court for MSMEs within the Ghanaian Court System

There are bound to be disputes in the recommended regime. The current dispute resolution mechanisms are, however, hardly fair to MSMEs, particularly with regard to their capacity to access them effectively. This study therefore recommends a Small Taxpayers Court within the court structure to address tax disputes for small taxpayers. The framework for these small taxpayers' courts may be designed using lessons learnt from processes like Ghana's District Magistrate Courts, as well as models of the small case tax court and small claims courts from other jurisdictions that have practiced this kind of court system for tax dispute resolution or small claims dispute resolution. Some such jurisdictions include the United States of America (for small claims tax court) and Indonesia (for small claims courts).

[678] David Asumda, et al. ‘Ghana's Regulatory Framework and Sustainability in the Mining Sector’ (2024) 4(1) UCC Law Journal 158.
[679] Ibid.
[680] Asumda, et al (n 632).

In the case of the United States of America, there is empirical evidence that the small tax case procedure has been successful in facilitating meaningful litigation by ordinary citizens in tax disputes involving small amounts. For example, Whitford, W. C., observes that

> findings indicate that a majority of taxpayers in small case disputes were not represented by an attorney and that less elite social classes were availing themselves of the procedure. Most of the cases raised deduction issues. In observed hearings, both judges and Government counsel showed respect and understanding for the difficulties facing the litigant. On the basis of findings, it is concluded that small case procedure has succeeded in providing a forum in which it is possible to dispute alleged tax deficiencies with reasonable prospects of success. This success appears attributable to the unique dispute posture for the Tax Court petitioner and the extensive resources assigned to the procedure by the Tax Court and Chief Counsel to the Internal Revenue Service. The expenditure of such resources in the Tax Court apparently reflects a need to legitimate the tax system by providing fair dispute resolution procedures.[681]

Pujiyono et al.[682] make a similar finding upon a normative study that they carried out using statutory, case, comparative law, and analysis content approaches in Indonesia. Their research results showed that a small claims court in the context of small microloans provides benefits because it speeds up the settlement in a maximum period of 25 days.[683]

[681] Whitford (n 408) See also R.D. Sanchez, *One Hundred Years of the US Tax Court (1924-2024): An Examination of the Tribunal, Its Judges, and Firms' Involvement in Tax Litigation* (Doctoral dissertation, The University of Texas Rio Grande Valley 2024)).
[682] Pujiyono, (N 409). See also Sanchez (n 635)).
[683] Ibid.

Ghana currently does not have a Small Taxpayers Court within its court system for the resolution of tax disputes. Under Ghanaian law, the court with jurisdiction to determine tax disputes is the High Court.[684] The Ghanaian courts comprise the Lower Courts and the Superior Courts. The Superior Courts consist of (in a descending order of importance)

a. the Supreme Court;

b. the Court of Appeal; and

c. the High Court and Regional Tribunals. [685]

The Lower Courts, on the other hand, comprise the Circuit Courts, District Courts, and any other such lower courts or tribunals as Parliament may by law establish.[686] The District Courts are the lowest courts in Ghana.[687] These are the most accessible Courts, and they also handle the highest number of cases.[688] The family courts and motor courts are both District Courts.[689]

The Superior Courts under Ghanaian law have regimented rules and procedures for accessing reliefs in these courts. As discussed in chapter five above, the Ghanaian Supreme Court has been consistent in its holdings that failure to comply with the tax appeal rules is fatal to one's case, with the court dismissing many a suit for non-compliance with the tax appeal rules,[690] without going into the merits of the case. The lower courts on the other hand, are specifically designed to be less regimented and to have simplified rules and processes so that clients can access them with or

[684] Revenue Administration Act, s. 108.
[685] The Constitution, 1992, art 127-142
[686] Ibid.
[687] Ibid, art 127-142
[688] Judicial Service of Ghana, 2025 https://judicial.gov.gh/index.php/the-judiciary Accessed 15 May 2025.
[689] Ibid
[690] See Multichoice Ghana Ltd v The Commissioner, Internal Revenue Service [2011] 35 GMJ 87; Richard Amo-Hene v The Ghana Revenue Authority [2022] DLSC11872; Kwasi Afrifa v The Ghana Revenue Authority [2022] DLSC11869; and Export Finance Co. Ltd. v The Ghana Revenue Authority, The Attorney General [2022] DLSC11866.

without an attorney representing them. In addition, the filing fees for these courts are also considerably lower than those of the Superior Courts.[691] The lower courts are therefore closer to the people and are the most patronised by disputants.[692] Ghana therefore already has a legal framework for a small claims court in the form of the District court, except that such court, (the District court) is currently not empowered by the law setting it up to resolve tax disputes. The tax law remits the resolution of tax disputes to the High Court as the court of first instance.[693] Building on framework for District Magistrate courts, improving on it and learning lessons from jurisdictions that have practiced a small case tax courts and small claims courts will thus provide the framework for a successful Small taxpayer court in Ghana as part of the separate regime recommended for MSMEs above.

The Tax Administration Act permits the Commissioner-General of the GRA to exercise the power to close a business, freeze bank accounts or access and search people's private property without recourse to the court for an order to do so.[694] The study recommends that when a small taxpayer court is established, these provisions will be amended to now require the Commissioner-General to apply to this court for such orders. It is submitted that such a provision is much fairer to all sides, as a neutral impartial person has the opportunity to refuse or grant this power based on law and the facts.

It is worthy of note that an Independent Tax Appeal Board was established in 2024 by the Minister responsible for Finance,[695] this Board is an administrative entity rather than a court. In addition,

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[691] Judicial Service of Ghana (n 642).
[692] Ibid.
[693] The Tax Administration Act, 2016 (Act 915), ss 33-60).
[694] Ibid.
[695] The Revenue Administration Act, 2015 as amended by the Revenue Administration Act (Amendment Act, 2020), Act 1029, Sche 4, para. 3.

the procedures in this court are still within the rigid rule process applicable to tax disputes in the current regime. The ITAB therefore does not perform the same services nor has it the same legal framework of the District court. The ITAB is also not part of the court system in Ghana. The Small Taxpayers Court will however be part of the Ghanaian court system and will be one of the lower courts pursuant to article 126 of the 1992 Constitution. This may require an Amendment of the Courts Act, 1993 (Act 459) and the passing of subsidiary legislation to guide the operations of the Small Taxpayers Court.

6.3.5 Regulations to Guide the Exercise of Discretionary Powers

One of the key concerns among taxpayers is the unregulated wide discretionary powers of the tax administrator. This study recommends that the regulations envisaged by article 296 of the 1992 Constitution to ensure that discretionary powers provided in laws are exercised fairly and candidly have to date not been passed, in spite of the constitutional instruction so to do more than three decades ago, (see chapter 5.3 on the role of the courts). The passing of regulations to guide the exercise of discretionary power will not only ensure standardisation but will also enhance citizens' knowledge and understanding of their rights and empower them to assert these rights when they perceive that discretionary power has been exercised against them unfairly, especially as such regulations will provide clarity on the bounds of these discretionary powers.

This study posits that passing of such regulations is beneficial in at least three ways. First, they provide clear guidance to the tax administrator in balancing the enforcement of obligations and rights of taxpayers especially in grey areas, where there may be lack of clarity on the appropriate action against a taxpayer. For example, some of the respondents from the GRA and the Ministry of Finance listed "Lack of information about taxpayers' activities", "lack of clarity on the scope of a particular tax law or policy" and "conflict in the provisions of various tax laws". Regulations will therefore provide guidance and uniformity in the exercise of discretion, rather than be guided by the individual or personal values of the tax administrators. Second, the benefit of uniformity in the exercise of these wide discretionary powers enhances taxpayers' perception of fairness. As discussed in the Analysis above, many taxpayers perceive that tax administrator exercise the discretionary powers "arbitrarily" or use them selectively against perceived "political adversaries". The existence of regulations guiding the exercise of these powers thus provide for uniformity and standardisation. Finally, the passing of these regulations will empower taxpayers to assert their rights more confidently, especially where there is a small taxpayer court in line with recommendation 6.3.4 above, which provides easier access to justice than the current dispute resolution regime.

6.3.6 Enhanced Taxpayer Education

A consisted finding in all the data analysis, (both primary data and secondary data) is that taxpayers do not have a sufficient understanding of their tax obligation. This is due in part to the complexity of the tax law, (as borne out by the qualitative analysis as well as the empirical data). On simplifying the tax rate structure pursuant to recommendation 6.3.1 above, there must be enhanced targeted taxpayer education on their rights and obligations. With respect to MSMEs, a collaborative taxpayer empowerment and education programme between the GRA, the Ghana Enterprise Agency and civil society would strengthen tax knowledge among taxpayers.

The oversight government ministry responsible for tax policy and the Ghana Revenue Authority is the Ministry responsible for Finance. The Ministry responsible for Finance is therefore the appropriate entity to lead reforms for the above discussed holistic comprehensive policy document embodying the above recommendations, and subsequent legislative interventions in collaboration with the Attorney General. Other stakeholders in the design of this policy document are: the ministry responsible for trade and industry, Ghana Union of Traders Associations, the Trades Union Congress, the Ghana Enterprises Federation and Civil Society.

6.5 Suggestions for Future Research

There were some very important issues raised but the study did not investigate their details. These issues could be captured by interested researchers in the future. Some suggested areas for further research are political interference in tax administration; perception of fairness of appointment and promotion of tax administrators and the effect on staff morale; and capacity and availability of relevant logistics for digital tax compliance.

Another area of suggested research is Rawls' liberal individualism or its compatibility with African communitarian justice.

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APPENDIXES

APPENDIX A1: DATA SURVEYS TABLES

[CDD Survey data, August-September 2020][696]

Table 1: Demographical distribution: by business size, operations, and ownership type

Table 2: | August-September 2020	
Demographics	**Percent**
Business size	
1- 5 employees (micro)	49%
6-30 employees (small)	31%
31-100 employees (medium)	20%
Sector of operations	
Service	83%
Industry	4%
Agriculture	2%
Manufacturing	12%
Ownership type	
Male owned businesses	45%
Female owned businesses	47%
Jointly owned (males and female) businesses	7%

Credit: CDD Ghana.

[696] Centre for Democratic Development.

Table 2: Regional and district level distribution

August-September 2020	
Region / District	**Sample distribution across districts**
Greater Accra Region	
Accra Metropolis	30%
Adenta Municipal	2%
Ashiaman Municipal	2%
Ga East Municipal	3%
Ga South Municipal	4%
Ga West Municipal	3%
La Dede-Kotopon Municipal	3%
La Nkwantanan Municipal	2%
Ledzokuku-Krowor Municipal	2%
Tema Metropolis	7%
Ashanti Region	
Afigya Kwabre District	2%
Asokore Mampong Municipal	2%
Atwima Nwabiagye District	2%
Ejisu Juaben District	2%
Kumasi Metropolis	22%
Kwabre East District	2%

Obuasi Municipal	3%
Northern Region	
Tamale Metropolis	6%
Sagnerigu Municipal	3%
Yendi Municipal	1%

Credit: CDD Ghana.

Table 3: Participants social characteristics

Table August-September 2020	
Social characteristics	**Percent**
Gender of respondents	
Female	52%
Male	48%
Status of respondent in the business	
Owner	68%
Employee	32%
Business decision-making responsibility (all respondents)	
Yes, make decisions for business	93%
No, does not make decisions for business	7%
Business decision-making responsibility (owners vs. caretakers)	
Owners who make decisions for business	99%
Caretakers who make decisions for business	79%

Level of education of respondents	
aNone or informal schooling	4%
Primary (completed & partial)	5%
Junior High school (completed & partial)	22%
Secondary (completed & partial)	29%
Tertiary (post-sec, polytechnic and university)	40%

Credit: CDD Ghana[697]

Figure 9: Some of the questions put to these MSMEs, and their responses to these questions

[CDD Survey data, August-September 2020.][698]

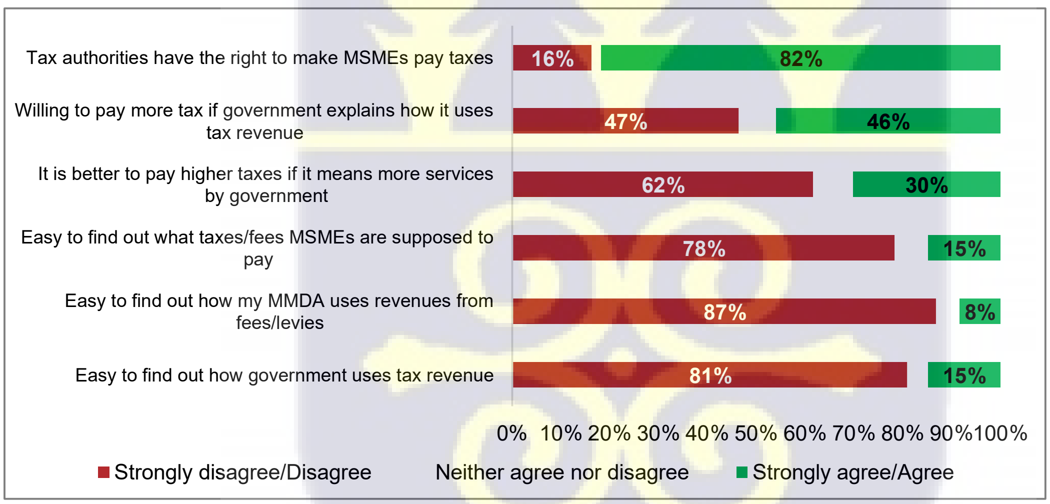
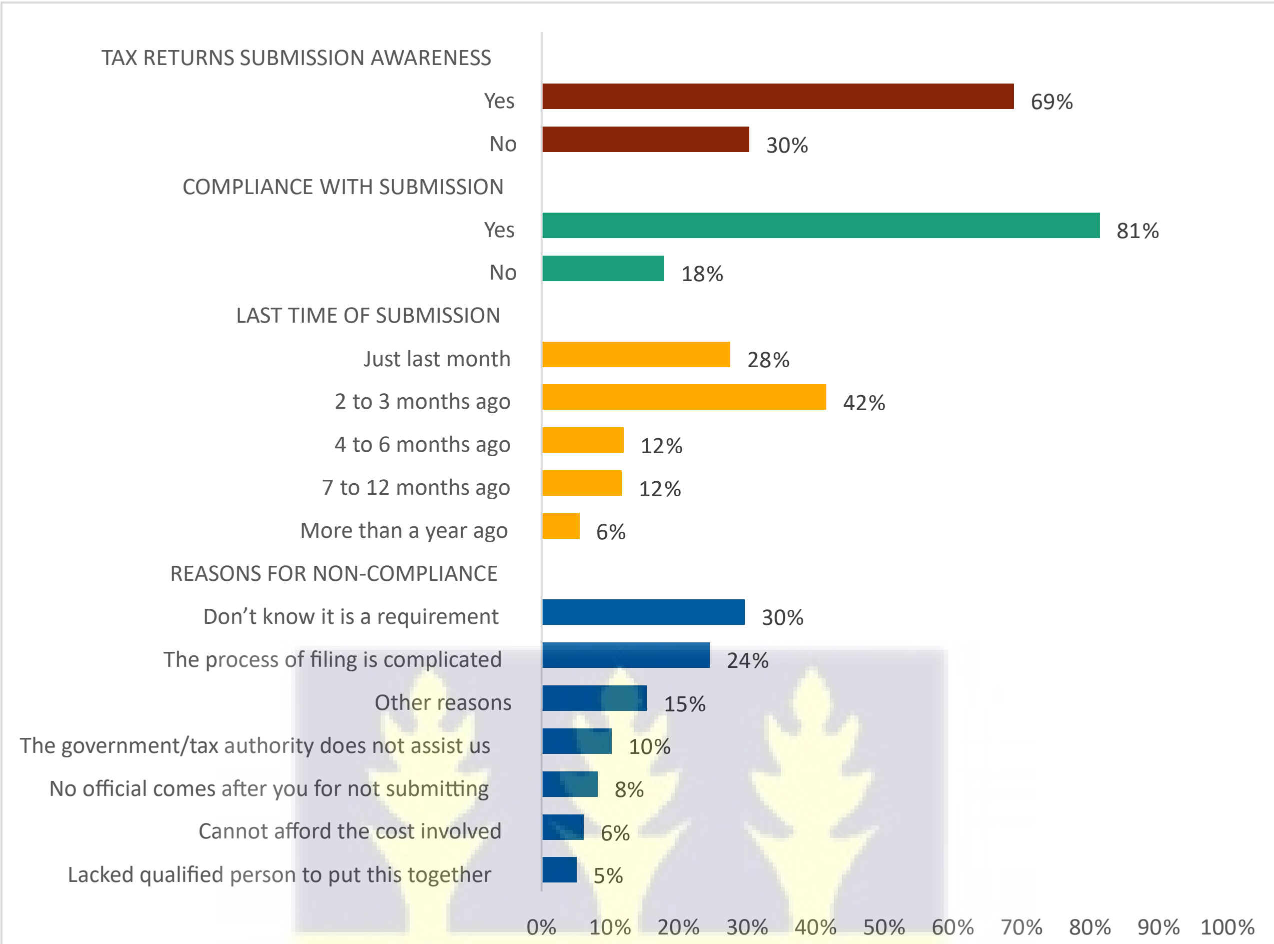


Figure 10: Responses of MSMEs with respect to the filing of tax returns.

[CDD Survey data, August-September 2020.][699]

[697] Centre for Democratic Development.
[698] Centre for Democratic Development.
[699] Centre for Democratic Development.



Credit: CDD Ghana

APPENDIX A2

Figure 11 on Appendix A2 provides the disaggregated data on size of enterprise.

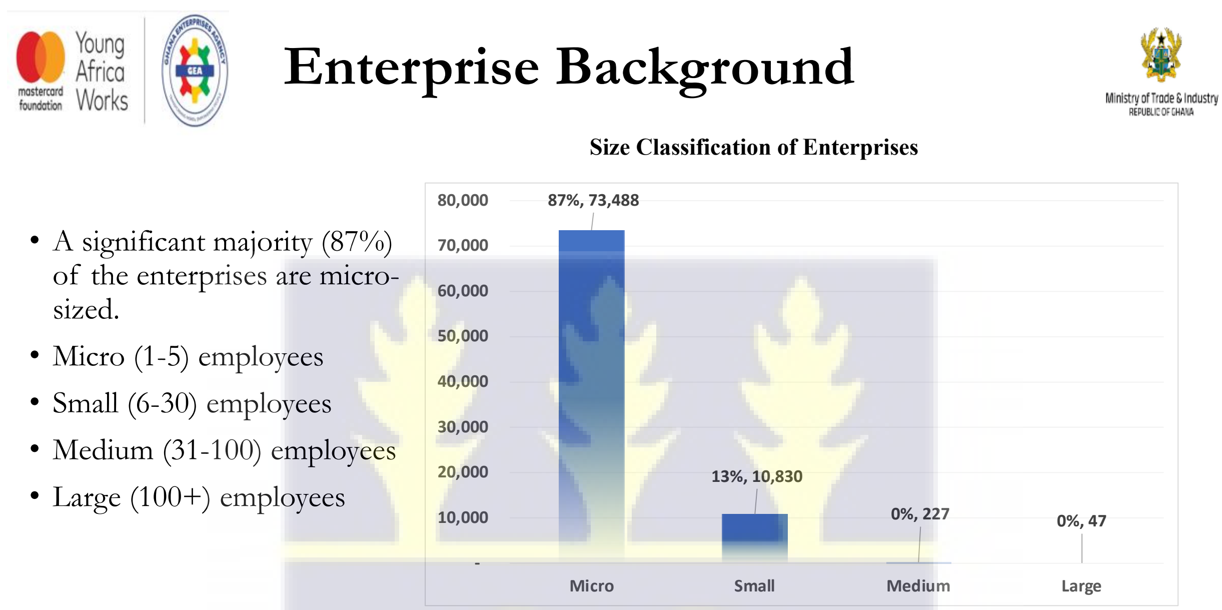


Figure 12: sex disaggregated data

Figure 13: Gendered Analysis of Female Ownership

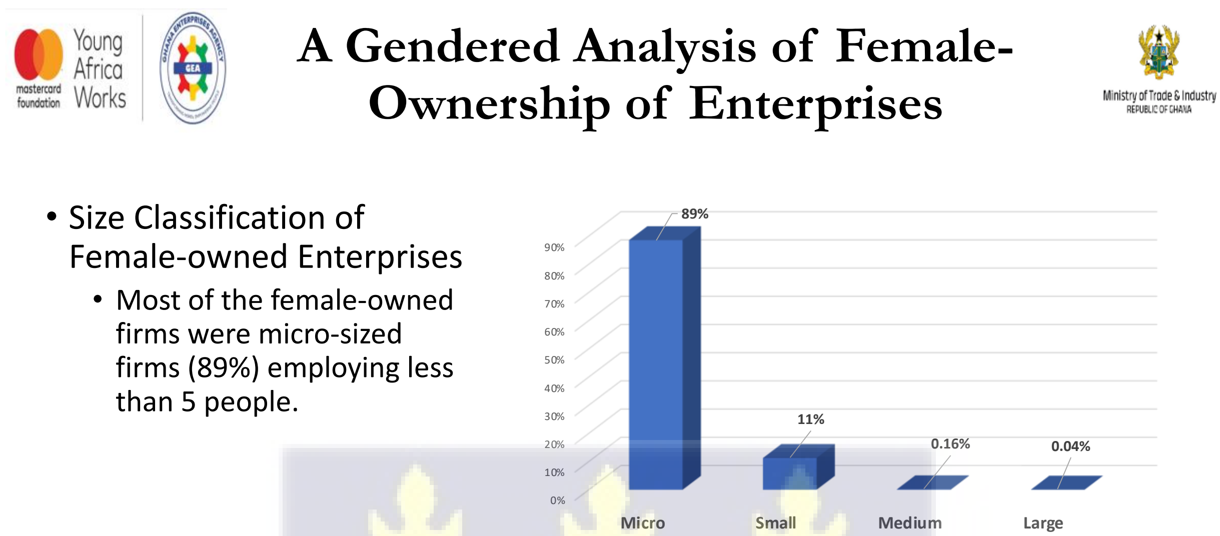


Figure 14: Gendered Analysis: Books of Accounts

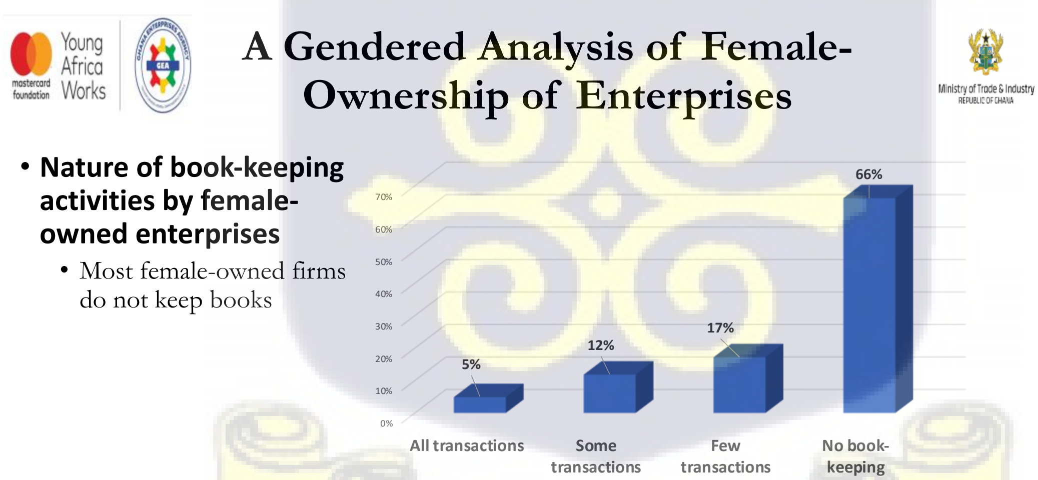


Figure 15: Registration with the Ghana Enterprises Agency

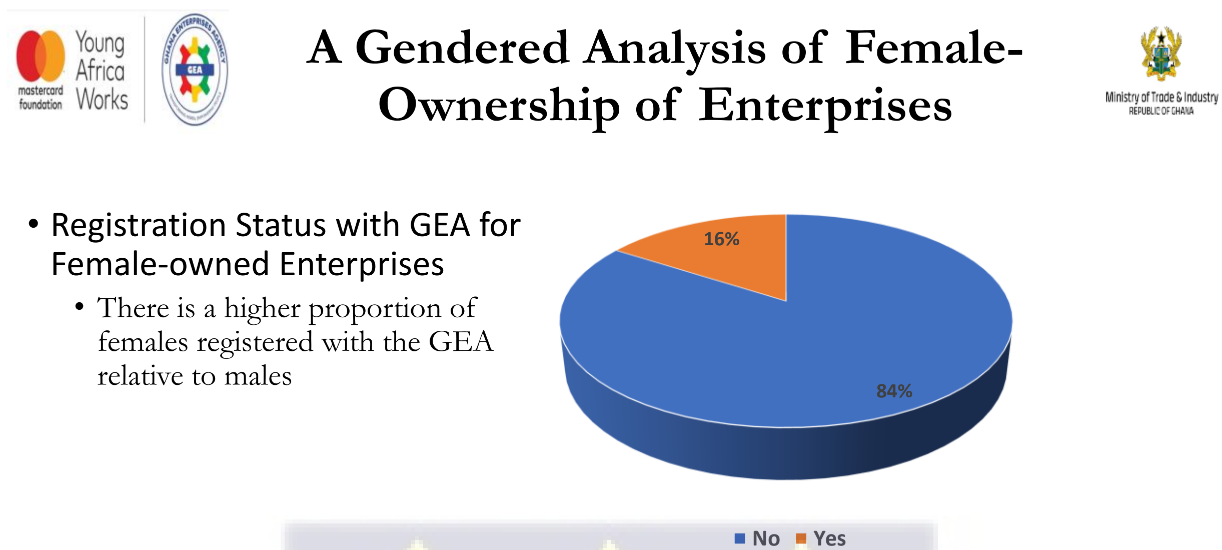


Figure 16: Employment Distribution by Size

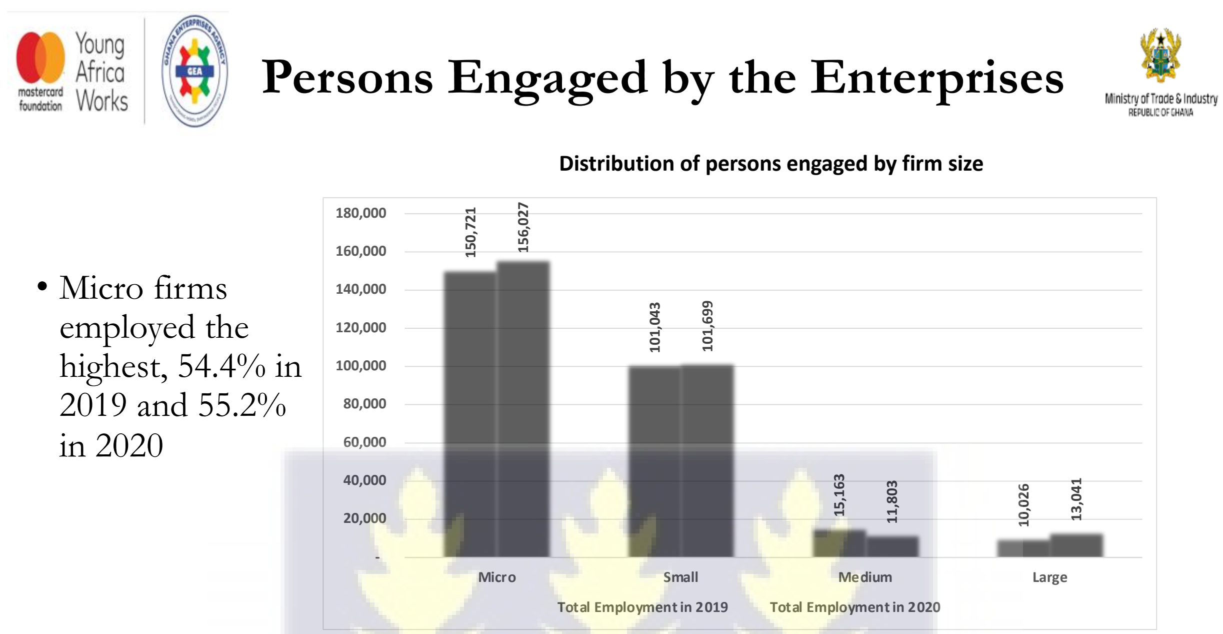


Figure 17: Keeping of Books of Accounts

Business Network and Environment

Ministry of Trade & Industry
REPUBLIC OF GHANA

- A little above 61% of the firms surveyed indicated that they do not do book-keeping, and this was with regards to keeping records on sales, employees and turnover.

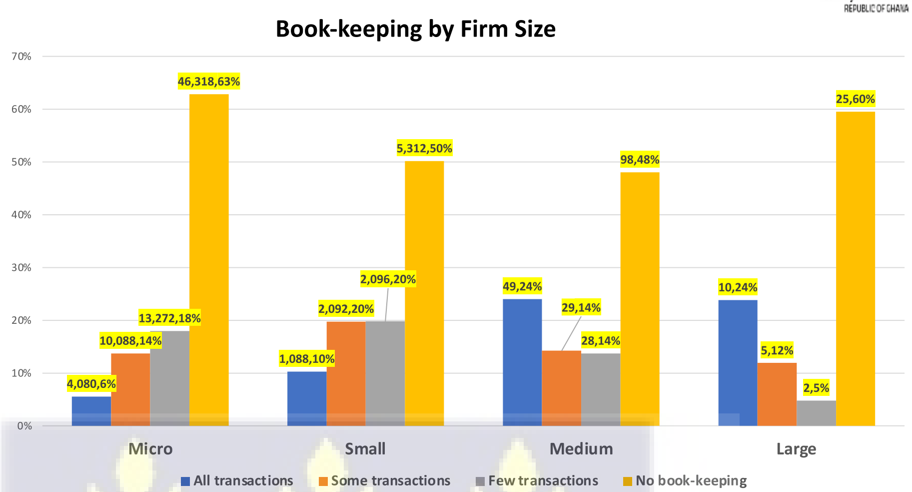


Figure 18: distribution of ownership of computers by firm size

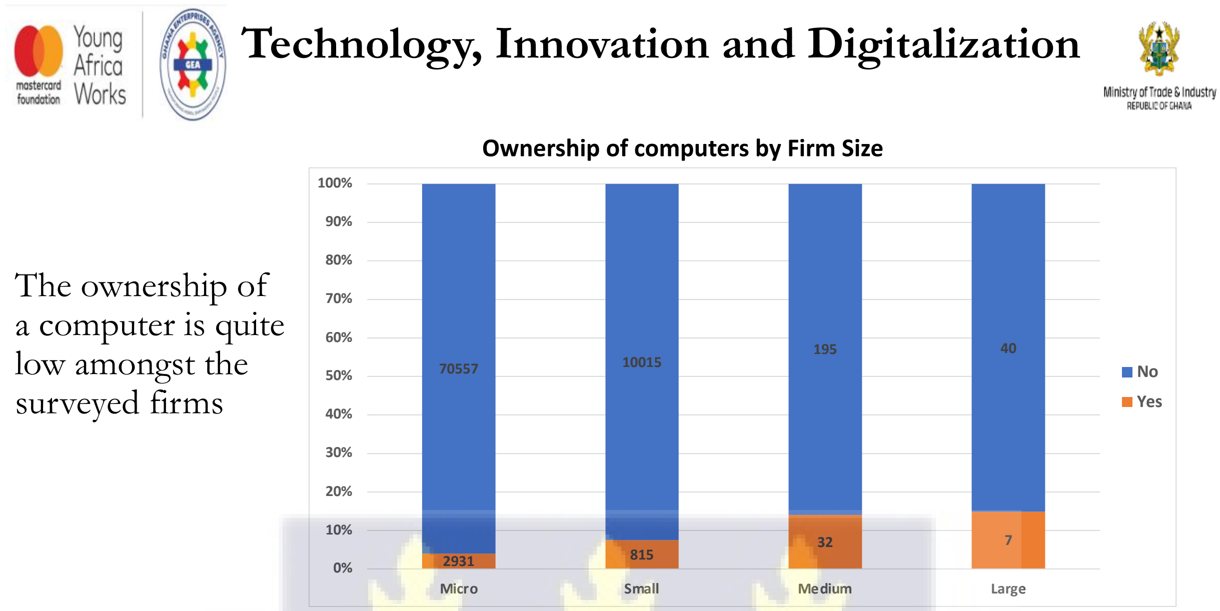


Figure 19: Mobile Phone Ownership and Use

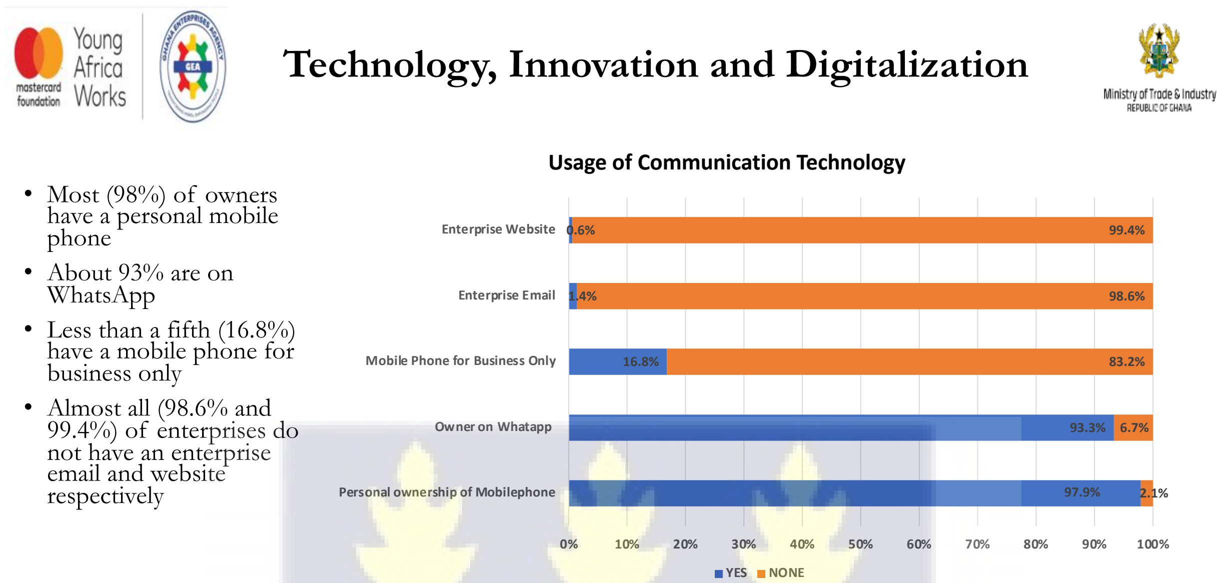
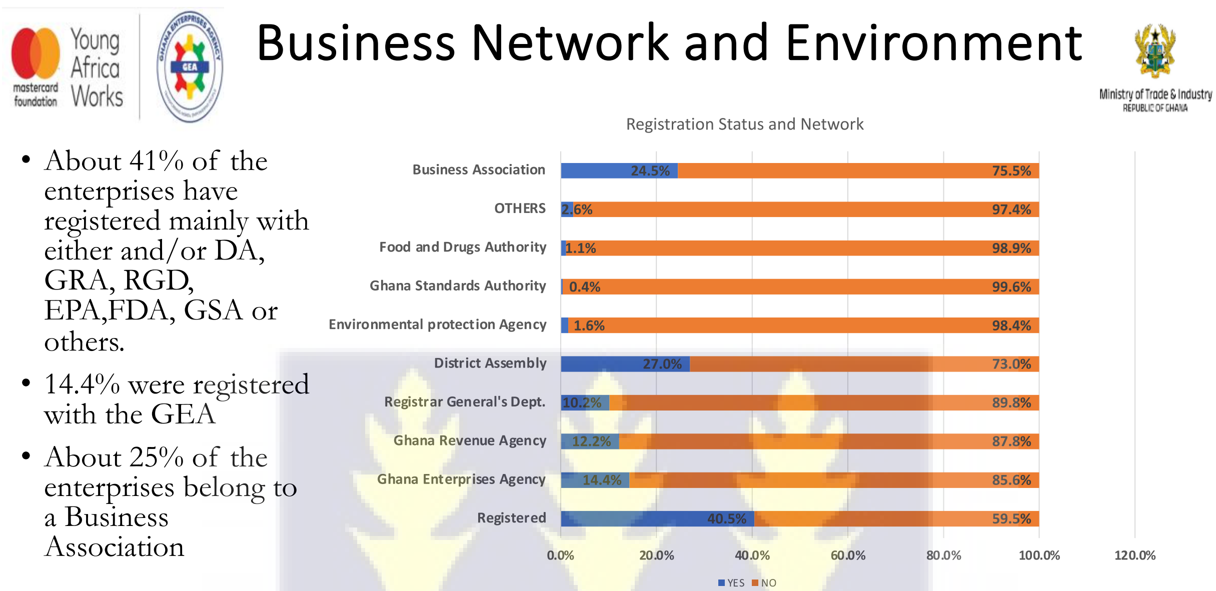


Figure 20: Registration and Formalisation



APPENDIX A3

Table 4: Selected Tax Compliance Challenges face by MSMEs

Tax obligations imposed by the Income Tax Act, 2015 (Act 896) as amended ("the ITA") and the Income Tax Regulations, 2016 (L.I. 2244)	**Challenge faced by MSMEs in complying with this provision**
Employment Income Tax (PAYE):	
Regulation 12 of L.I. 2244 require all employers to submit to the C.G, not later than 4 months after the end of the year of assessment, an Employer's Annual Tax Deduction Schedule which specifies the tax withheld in respect of each employee.	With the peculiar non-documentation or poor records keeping nature of MSMEs, this obligation may never be complied with as it requires data for the entire year. For MSMEs, this provision defies the simplicity pillar of the cannons of taxation.
Withholding Tax:	
Withholding Tax from Payments: Section 116 of the ITA provides that taxpayers shall withhold tax from all payments made to both individuals and entities for the supply of goods, works and services at rates prescribed in the first schedule to the ITA.	1. Familiarising themselves with the varied rates of withholding tax is a particularly difficult task, even for the large firms. It is almost an impossible task for the MSMEs. 2. Practically, MSMEs purchase their inputs from similar MSMEs that would not allow for entities to withhold tax from their

	Further, section 117 (3) provides that where the taxpayer fails to withhold the tax as described above, the tax shall be surcharged on the taxpayer.	invoices. This leaves the MSME with two (2) options, (a) not-complying; or (b) gross-up the price of the input so they can pay the difference to the GRA. Obviously, option (b) will not be the favoured option since it increases the cost of doing business and reduces profitability. Applying this withholding tax obligation, including the surcharge provisions to MSMEs defies the cannons of simplicity of imposition as well as fairness.
3	Section 118 (1&2) provides that withholding agent shall deliver to the payee a tax credit certificate setting out the amount of tax withheld together with a statement of the amount of the payment from which tax has been withheld and shall be served on the withholdee within thirty days after the end of the month.	If the MSME is able to withhold (or grosses up and pays the difference to GRA), they are unable to “issue” the TCCs to the suppliers (or follow-up with GRA for the TCCs). This denies suppliers the use of these tax credits, which some in effect are tax payments in advance.

4	**Maintaining Documents:** Section 27 of the Revenue Administration Act, 2016 (Act 915) requires taxpayers to maintain documents relevant to their tax and accounting affairs.	Given that MSMEs are characterised by poor record keeping, it will be practically difficult for them to comply with this provision. This provision can apply when they grow from MSME status into a more organised entity, through continuous education and support by Government.
Company Income Tax:		
Company Income Tax:		
5	**Filing of Self-Assessment returns:** Section 122 of the ITA requires taxpayers to file, by the end of the first quarter of the year of assessment, an estimated statement of tax payable for the year which contains an estimate of the assessable income of the entity, the chargeable income of that entity and the tax payable for the period. At the end of the year, there is a requirement under the law to compare the actual tax liability to the estimated tax liability.	1. Businesses in the informal sector do not have skilled professional personnel such as accountants who have the technical skills to handle complex tax compliance obligations. 2. Knowledge of tax terminologies such as basis periods, years of assessment, and many others may therefore be difficult concepts to grasp by employees of those businesses that may be responsible for handling their tax matters.

	Deviations of 10% or more of the actual from the estimated will trigger significant penalties.	3. MSMEs would not be able to comply with this provision without engaging the services of skilled employees. Determining the chargeable income of ar entity requires knowledge in tax law and practice. 4. In the absence of skilled staff, the MSMEs may have to engage and pay tax consultants in order to comply with this provision. This increases their cost of compliance which is inimical to the principle of convenience in taxation.
6	**Provisional Assessment:** In practice, some taxpayers are assessed to tax by the Commissioner General (C.G) on provisional basis. These taxpayers are served with notice of assessment (an amount of tax calculated by the GRA based on their judgment) for them to pay during the year.	1. Due to poor record keeping, the basis for these assessments by the GRA are often flawed. This results in excessive tax assessed on the MSMEs in view of the pro-revenue posture of the GRA. 2. Given the lack of skilled employees, the MSMEs tend to be unaware of the objection procedures available to them to challenge the GRA. This ultimately results

		either in overpayment of tax, or in non-payment of these assessments.
7	**Filing of Annual Income Tax Returns:** Section 124 of the ITA requires taxpayers to file with the C.G, not later than 4 months after the end of the basis period, a return of income for the year.	1. First, preparation of a return of income requires the taxpayer to have audited financial statements. This can only happen if the MSME keeps proper accounting records which would be used to prepare their financial statements for audit. This is currently a challenge. 2. The completion of the company annual income tax returns is highly technical and requires skilled personnel or the use of tax consultants or external audit firms to calculate the chargeable income, capital allowances, and even make use of unrelieved tax losses (if any), neither of which the MSME has or may be able to afford. 3.

		The above factors would increase the cos of compliance of the taxpayer and defy tl cannon of convenience.

[**Credit: Private Enterprise Federation 2018/2020].**

APPENDIX A4

Table 5: The demographic distribution sample of the respondents.

[The Afrobarometer survey][700]

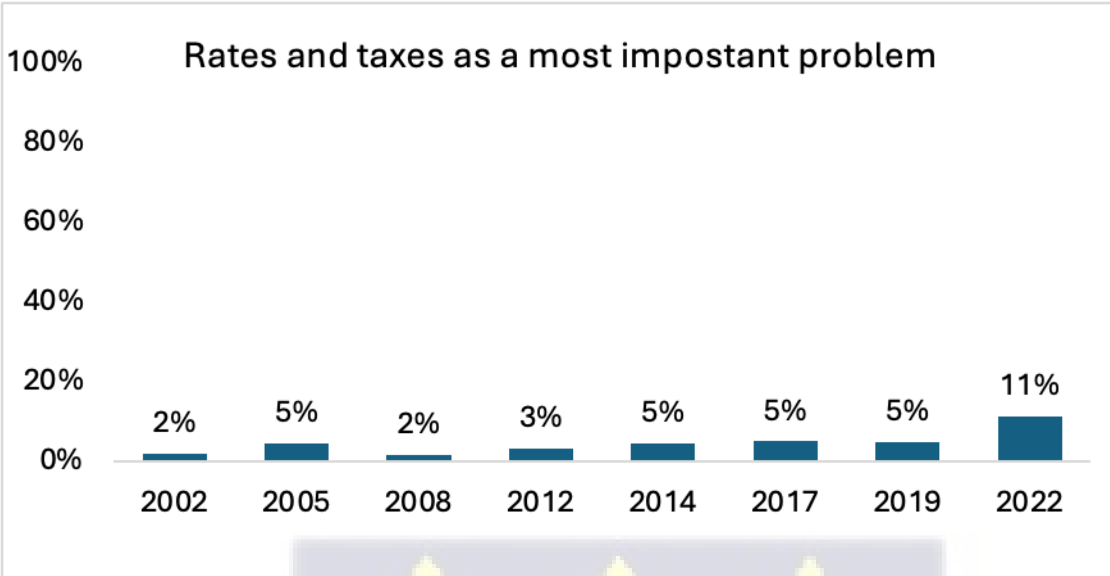
		Unweighted	Weighted
Gender			
	Men	50.2%	50.4%
	Women	49.8%	49.6%
Location			
	Urban	59.8%	59.5%
	Rural	40.2%	40.5%
Region			
	Western	6.7%	6.8%
	Western North	2.9%	2.8%
	Central	9.4%	9.2%
	Greater Accra	19.8%	19.6%
	Volta	5.4%	5.5%
	Oti	2.0%	2.2%
	Eastern	9.8%	9.6%
	Ashanti	17.8%	17.8%

[700] https://www.afrobarometer.org/articles/ghanaians-willing-pay-taxes-find-it-difficult-know-how-tax-revenues-are-used-afrobarometer/

	Ahafo	1.6%	1.8%
	Bono	4.0%	4.0%
	Bono East	3.7%	3.7%
	Northern	6.5%	6.5%
	Savannah	1.9%	1.9%
	North East	2.0%	1.8%
	Upper East	4.0%	4.0%
	Upper West	2.5%	2.8%
Education			
	No formal education	15.4%	15.3%
	Primary	25.8%	24.9%
	Secondary	40.4%	41.0%
	Post-secondary	18.2%	18.7%
Religion			
	Christian	77.4%	77.9%
	Muslim	15.9%	15.9%
	Other	6.7%	6.1%
	Refused		

Credit: Afrobarometer.

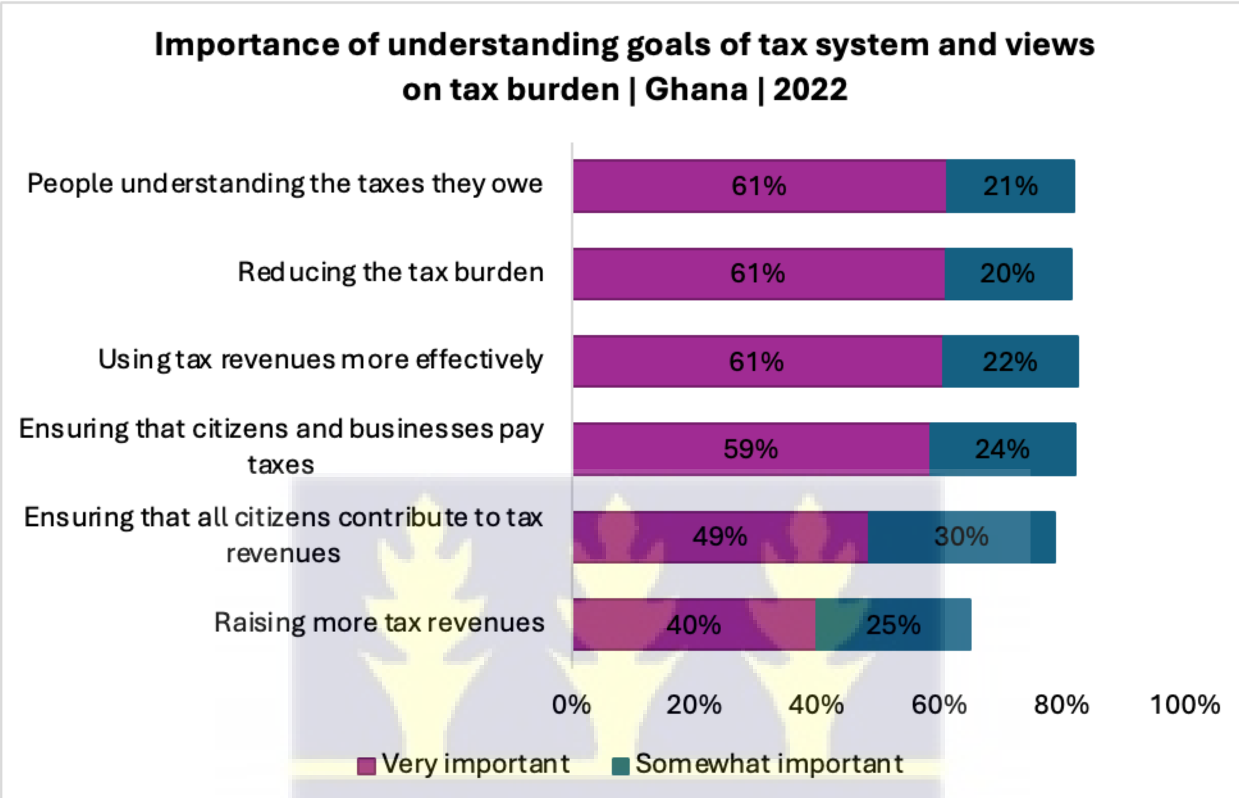
Figure 21: Trend Analysis (Afrobarometer Survey).[701]



Credit: Afrobarometer

701 https://www.afrobarometer.org/wp-content/uploads/2022/10/Summary-of-results-Ghana-Afrobarometer-R9-21oct2022-1.pdf

Figure 22: Views on the importance of government reducing the tax burden (Afrobarometer Survey).[702]



*The question that respondents were asked was: *In your opinion, how important are each of the following goals for Ghana's tax and revenue system?*

[Source: Afrobarometer Ghana R9 survey, 2022][703].

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[702] https://www.afrobarometer.org/wp-content/uploads/2022/10/Summary-of-results-Ghana-Afrobarometer-R9-21oct2022-1.pdf

[703] Mavis Zupork *Dome Summary of Results, Afrobarometer R9 Sruvey*, (CDD Ghana 2022) https://www.afrobarometer.org/wp-content/uploads/2022/10/Summary-of-results-Ghana-Afrobarometer-R9-21oct2022-1.pdf

APPENDIX B1: SURVEY QUESTIONNAIRE

QUESTIONNAIRE:

SELECTED GOVERNMENT OFFICIALS, PRIVATE BUSINESS AND CIVIL SOCIETY

Questionnaire Code: Interview Date:

Organization: .... Department: ....

SECTION A: DEMOGRAPHIC CHARACTERISTICS

1. Sex: Male / Female

2. Position:

3. Educational Background

Non-Basic SHS Tertiary Postgraduate

4. Which of the following institutions are you from? Tick the appropriate

Ministry of Finance

Ministry of Trade

Ghana Revenue Authority

Private Sector Representative Selected Taxpayer

Public Sector Representative Selected Taxpayer

Civil society Representative Selected Taxpayer

5. Which of the following best describes your position?

The business owner

Manager

Head of department

Employee

SECTION B: Interaction with of Tax Administration

1. Have you ever interacted with a tax official?

....

....

2. What was the interaction about?

....

....

3. Describe the interaction

....

....

4. Did you find the interaction respectful?

....

5. What requests did the GRA official make of you?

....

....

6. Did you comply with the requests?

....

....

7. Were your rights violated in any way during your interaction with the GRA?

Yes

No

Explain

....

....

8. What powers do you think the GRA has by law?

....

....

9. What do you think of those powers?

....

....

10. What would you like the GRA to do to encourage the voluntarily declaration, filing and payment of taxes?

....

....

11. Any other issue you want to tell us about in your experience with the GRA, if any?

....

....

12. What role do you think the court can or ought to play with respect to tax compliance?

....

....

13. What taxes in Ghana do you know about?

....

....

SECTION C: TAX EDUCATION

1. Do you know your rights as a taxpayer?

   Yes

   No

2. What are some of these rights?

   ....

   ....

3. What are some of your obligations as a taxpayer?

....

....

4. What powers should GRA officials have?

....

....

5. How should they use these powers?

....

....

6. What are some of the challenges taxpayers faces in receiving services from GRA offices?

....

....

....

INTERVIEW

QUESTIONS WITH THE

MOF AND THE GRA

Questionnaire Code: Interview Date:

Organization: .... Department: .... Position: ....

SECTION A: DEMOGRAPHIC CHARACTERISTICS

Sex: Male / Female

1. Educational Background

   Non-Basic SHS Tertiary Postgraduate

2. Which of the following institutions are you from? Tick the appropriate Ministry of Trade

   Ghana Revenue Authority

   Ghana Investment Promotion Centre Private Sector Representative Selected Taxpayer

3. Which of the following best describes your position? The business owner

   Manager

   Head of department

SECTION B: Tax Policy

1. What is the process for making tax policy?

……………………………………………………………………………………………………

……………………………………………………………………………………………………

2. What steps, procedures or processes should be included in tax laws/policies/regulations for the protection of taxpayer's rights?

   ……………………………………………………………………………………………………

   ……………………………………………………………………………………………………

3. Do you face any challenges implementing tax policies and strategies?

   Yes / No

4. What are some of the challenges?

   ……………………………………………………………………………………………

   ……………………………………………………………………………………………………

   ……………………………………………………………………………………………………

5. Do you have any plan for evaluating tax policies and strategies?

   Yes / No

SECTION C: Challenges in Collecting Tax Revenue (Administered to Tax Administrators only)

1. What challenges do you face in collecting tax revenue?

....

....

2. How does this challenge affect your ability to collect tax revenue?

....

....

3. How can the challenge be addressed:

....

....

APPENDIX B2

University of Ghana School of Law

Postal Box LG 73

University of Ghana,

Legon

April 28, 2023

The Chairperson

Ethics Committee for Humanities

ISSER, University of Ghana

Legon

Dear Chairperson,

Application for Ethical Clearance

I wish to submit to your committee an application for ethical clearance on my PhD thesis proposal – "**The Constitutionality of the Ghana Revenue Authority's Administrative Powers under the Revenue Administration Laws and the Role of the Courts in Resolving Tax Non-Compliance in Ghana**".

Essential documents for approval by your committee have all been incorporated into a single document, as submitted, and as listed below.

I look forward to hearing from the committee soon.

Sincerely,

SIGNED

Clara K. Kasser-Tee

Encl:

1. Submission letter from investigator
2. Cover letter from HoD, (Dean, UGSoL)
3. Cover letter from Thesis Advisors
4. New Protocol Submission Form
5. Protocol Consent Form
6. Research Proposal
7. Work plan
8. Budget/ Budget Justification
9. Questionnaire/ Interview guide
10. CV

UNIVERSITY OF GHANA

COLLEGE OF HUMANITIES
SCHOOL OF LAW

April 5, 2023

The Administrator
Ethics Committee for Humanities
ISSER, University of Ghana
Legon.

Dear Administrator,

Cover Letter: Clara K. Kasser-Tee (PhD Candidate, University of Ghana School of Law)

We are by this letter writing in support of Clara K. Kasser-Tee's application for ethical clearance.

Mrs. Kasser-Tee has successfully presented her thesis proposal on the topic, **"The Constitutionality of the Ghana Revenue Authority's Administrative Powers under the Revenue Administration Laws and the Role of the Courts in Resolving Tax Non-Compliance in Ghana"**.

We would therefore be grateful if she is given ethical clearance to enable her to begin with the data collection on her thesis project.

Counting on your cooperation.

Yours in the service of the University,

Dr. Benjamin Kunbuor
Principal Thesis Advisor
University of Ghana, School of Law

Dr. Abdallah Ali-Nakyea
Thesis Advisor
University of Ghana, School of Law

APPENDIX B3

Prof. Abiola Sanni
Thesis Advisor (External)
University of Lagos, Faculty of Law

UNIVERSITY OF GHANA

COLLEGE OF HUMANITIES
SCHOOL OF LAW

April 5, 2023

The Administrator
Ethics Committee for Humanities
ISSER, University of Ghana
Legon.

Dear Administrator,

Cover Letter: Clara K. Kasser-Tee (PhD Candidate, University of Ghana School of Law)

We are by this letter writing in support of Clara K. Kasser-Tee's application for ethical clearance.

Mrs. Kasser-Tee has successfully presented her thesis proposal on the topic, **"The Constitutionality of the Ghana Revenue Authority's Administrative Powers under the Revenue Administration Laws and the Role of the Courts in Resolving Tax Non-Compliance in Ghana"**.

We would therefore be grateful if she is given ethical clearance to enable her to begin with the data collection on her thesis project.

Counting on your cooperation.

Yours in the service of the University,

Dr. Benjamin Kunbuor
Principal Thesis Advisor
University of Ghana, School of Law

Dr. Abdallah Ali-Nakyea
Thesis Advisor
University of Ghana, School of Law

APPENDIX B4

Prof. Abiola Sanni
Thesis Advisor (External)
University of Lagos, Faculty of Law

APPENDIX B5

UNIVERSITY OF GHANA ETHICS COMMITTEE

FOR THE HUMANITIES (ECH)

P. O. Box LG 74, Legon, Accra, Ghana

My Ref. No… ECH 211/ 22-23…

July 05, 2023

Clara Kasser-Tee (Mrs.) School of Law University of Ghana Legon

Dear Mrs. Kasser-Tee

ECH 211/ 22-23: THE CONSTITUTIONALITY OF THE GHANA REVENUE AUTHORITY'S ADMINISTRATIVE POWERS UNDER THE REVENUE ADMINISTRATION LAWS AND THE ROLE OF COURTS IN RESOLVING TAX NON-COMPLIANCE IN GHANA

This is to inform you that your request for review of your protocol for ethical clearance by the Ethics Committee for the Humanities has been completed. The study design, benefits and risks, and informed consent have been adequately addressed. The Committee has approved your protocol subject to addressing the comments below.

Selection of Participants

- Elaborate on how the sample size was arrived at.

- Clearly state the number of elected or appointed public officials representing the views of government policy to be interviewed. The same should apply to the civil as well as private sector representatives.
- Indicate how gender equity would be achieved in the selection of participants for both the quantitative and qualitative parts.
- Revise the inclusion and exclusion criteria. Elaborate on these from the angle of selecting participants for the study and not from the angle of the topics to be explored, *(i.e., topics relating to participants' own behaviors or the observation of participants' own behaviors.)*

Please respond to the points raised and highlight the corrections/changes (for ease of reference) in your protocol and submit a soft copy ONLY of the revised documents for the attention of the ECH Administrator by Friday, July 07, 2023.

Yours sincerely, ECH Administrator

Tel: +233-303933866

Email: ech@ug.edu.gh

APPENDIX B6

UNIVERSITY OF GHANA ETHICS COMMITTEE FOR THE HUMANITIES (ECH)

P. O. Box LG 74, Legon, Accra, Ghana

My Ref. No: ECH 211/ 22-23

August 1, 2023 Mrs. Clara Kasser-Tee

School of Law

University of Ghana

Legon

ETHICAL CLEARANCE (ECH 211/ 22-23)

The Ethics Committee for the Humanities (ECH) conducted a full board review and approved your protocol titled:

THE CONSTITUTIONALITY OF THE GHANA REVENUE AUTHORITY'S ADMINISTRATIVE POWERS UNDER THE REVENUE ADMINISTRATION LAWS AND THE ROLE OF COURTS IN

RESOLVING TAX NON-COMPLIANCE IN GHANA

PRINCIPAL INVESTIGATOR**: MRS. CLARA KASSER-TEE**

Please note that the final review report must be submitted to the Committee at the completion of the study. Your research records may be audited at any time during or after the implementation. Any modification of this research project must be submitted to ECH for review and approval prior to implementation.

Please report all serious adverse events related to this study to ECH within seven (7) days verbally and in writing within fourteen (14) days.

This certificate is valid until July 31, 2024. You are required to submit annual reports for continuing review.

Please accept my congratulations.

Yours Sincerely,

Professor C. Charles

Mate-Kole ECH Chair

Cc: Dr. Benjamin Kunbour, School of Law, UG Dr. Abdallah Ali-Nakyea, School of Law, UG

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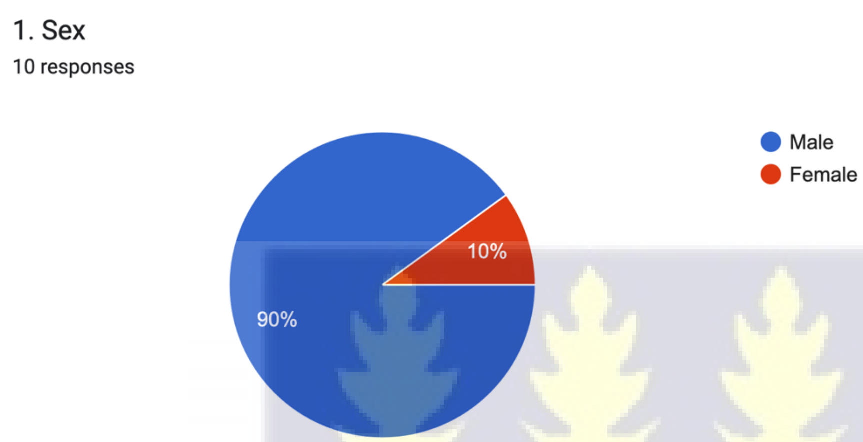
Email: ech@ug.edu.gh

APPENDIX B7

Responses from Private Sector: Businesses, Civil Society, Think Tanks

SECTION A: DEMOGRAPHIC CHARACTERISTICS



Position

Director

Manager

NSS

MANAGING PARTNER

Accountant

CEO

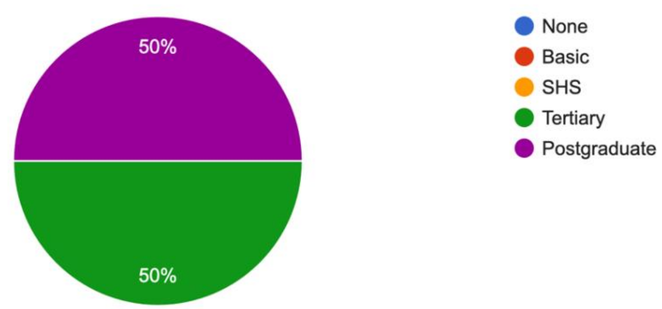
Director for Programmes and Policy Engagement

Finance Manager

Fundraising Manager

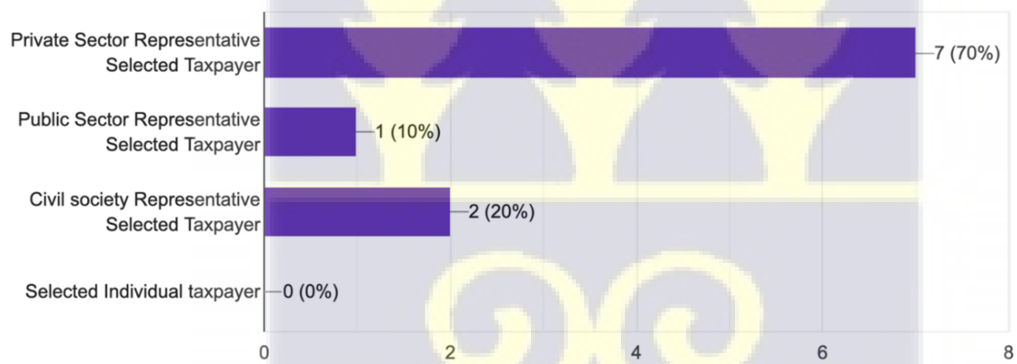
2. Educational Background

10 responses



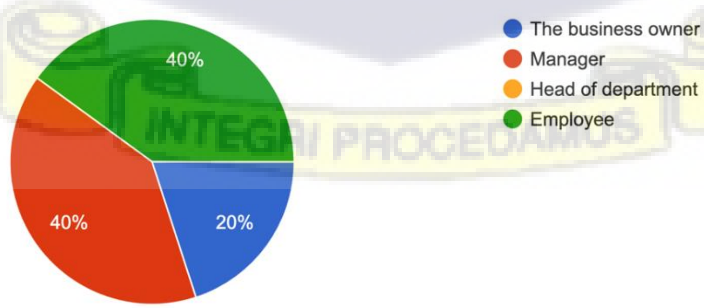
Which of the following institutions are you from? Tick the appropriate

10 responses



Which of the following best describes your position?

10 responses



SECTION B: Interaction with of Tax Administration

Have you ever interacted with a tax official?

9 responses

Yes

Yes

No

What was the interaction about?

9 responses

Tax requirement for a young company

It was about initiating online payment to reduce time wasted at various offices for filling and payment.

Tax audit

Registration for a tax type

Tax payment

Resolving some conclusions on a tax audit

Tax Audit

To obtain a Tax Clearance Certificate

It was about making tax payment easy for businesses

Describe the interaction

9 responses

Too much talk less action

I brought it and was told is on the pipeline and that will soon be implemented, thank God it is now lol

Explaining tax compliance of my company.

This was about registering for Value added Tax after the company I work for had met the threshold target

How to pay tax

There was not a lot of accommodation from the tax officials - they were not flexible and insisted that was how they understood the law. And somehow, threatened escalation in some instance

Tax Audit for 3 years to ascertain compliance

Very fruitful

Face to face discussion

Did you find the interaction respectful?

9 responses

Yes

Exactly

Yes.

Not exactly

Very Respectful

Yes

What requests did the GRA official make of you?

7 responses

To try and make payment duly and timely.

To provide bank statements of my business.

Details of the company and document to show that I had authority to discuss the registration

To help develop Ghana through tax payment

To provide financials, appointment letters of staff, etc.

Proof of my application for a consulting job

They welcomed the idea of a Tiered Tax system

9. What are some of these plans?

6 responses

Easy payment for members involved

Advice on keeping financial reports of the business.

To pay tax

requests with respect to third parties who casually worked with the organisation

Not sure of this question?

Continuous dialogue and education of business owners

Did you comply with the requests?

9 responses

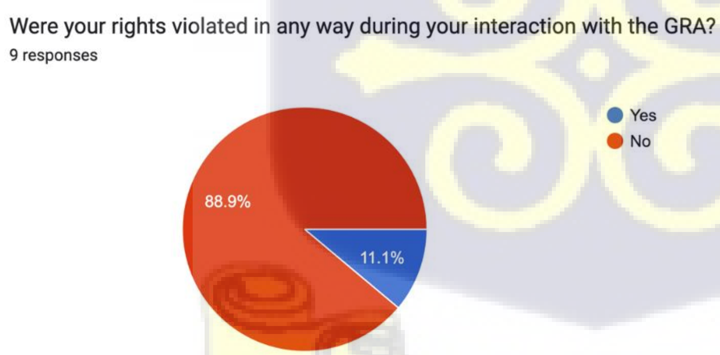
Yes

Yes, and still on

Yes.

Somehow yes

NA



Explain

5 responses

N/A

Really never had issues with GRA, my main issue used to be time spend there for transactions

Their assessments were arbitrary and were not very will to accept any explanation on any lapses or supposed lapses they pointed out.

Non applicable.

What powers do you think the GRA has by law?

8 responses

Power to close down shops or companies that do not obey GRA rules.

Wide powers to determine the tax liability of taxpayers.

Power to assess a taxpayer.

Authority

The power to collect taxes set by parliament. powers to sanction within their discretion, some that they can go to court, etc., no power to set tariffs.

Power to close down a business for non-compliance.

The powers conferred on it by the GRA Act 2009 (Act 791).

Oversee tax administration in Ghana.

What do you think of those powers?

8 responses

Right but then it times it feels our payment are not really been used, sometimes thoughts that come around the mind.

The powers are most often abused and deployed to serve the vindictive agenda of politicians.

It is really great as it helps the GRA verify the accuracy of any information provided by the taxpayer.

Advocacy and Enforcement.

Discretionary powers can always be abused. They chose who to target and is subject to abuse unless it is properly regulated and there is more accountability.

A bit too much for one institution especially since most of the officers are vindictive.

I find their powers consistent with best practices. The requirement of them to publish collections made increases the accountability Parliament, to the citizens of the land binding.

What would you like the GRA to do to encourage the voluntarily declaration, filing and payment of taxes?

8 responses

If we see what actually some of the monies are used for....

A more understanding approach to tax collection will broaden the tax net. Tax collectors are addicted to low hanging fruits. As soon as a person registers as a taxpayer, their focus is maintained on the person. Such taxpayers are harassed. This is the main reason why many people avoid the

GRA. As soon as they register as taxpayers, they are repeatedly harassed by them. GRA officials will repeatedly extort money from them.

Extensive education on how to use their online portals.

Public education.

It has to be very easy to do. You need to know all the taxes you are exposed to and user-friendly information in video, local languages, easy to use and understands. it seems to target only a small kind of people who need tax clearance certificate for their work. But you need to convince ordinary people. So, there must be some kind of balance between fear and understanding and encourage. So, sanctions, reasonability, expected punishment if you do not comply - that is missing. It should become a cultural expectation. Legitimate expectation that if you don't comply, the system will punish.

Offer training and engage sensitization campaigns. And simplify the tax processes because as it stands it's too cumbersome for the ordinary Ghanaian.

work on the integrity of its personnel, enhance the efficiency of the digital collection processes

More engagement and sensitization.

Any other issue you want to tell us about in your experience with the GRA, if any?
7 responses

Not really.

N/A.

Sensitization forums across the country.

Yes. As professionals, i expect that what they see as the role of taxation in economic development, what is transparency in the tax policy advice that they give to government. So, there should be some transparency in what role the GRA plays in taxation policy. The technicalities sometimes get in the way of common sense. - e.g. taxes on condoms.

They usually blow things out of proportion to make you feel vulnerable. Most cases, the actual liability is about 10% of their assessment.

No

NA

What role do you think the court can or ought to play with respect to tax compliance?

8 responses

Encourage us to pay duly to prevent locking down.

The courts at the moment are not well equipped with well trained and justice-oriented officials. Their inclination is to agree with the GRA regardless of the constitutional rules and principles on the exercise of discretion.

Ensure that taxpayers who are not complaint are punished.

Use the available provisions in the law.

If we say our constitution is a liberal democracy, then individual rights should tramp state's rights in the event of conflict unless there is a compelling reason. However, it appears from recent court decisions that it is the other way round. it appears that there is a presumption that the State is correct and cannot get it wrong, and for the individual to rebut it, which is inconsistent with what is in the Bill of Rights in the Constitution. Political rights have evolved more in line with the liberal democratic thoughts than economic and social rights. These rights don't seem to evolve. These rights - economic rights should have equal weight, rather than appear to be made secondary to others. Maybe judges do not pay taxes, so they do not have a skin in the game.

To help curb the excesses being meted out to poor taxpayers.

Support in the enforcement of compliance by ensuring that sanctions for non-compliance and tax evasion is punitive enough to deter others.

Prosecution of offenders.

What taxes in Ghana do you know about?

9 responses

Covid tax

A few

Income, capital gains, withholding, value added and a lot of nuisance taxes.

Personal Income Taxes, Corporate Income Taxes, Value added Tax

Withholding, Corporate, Service, Rent Tax

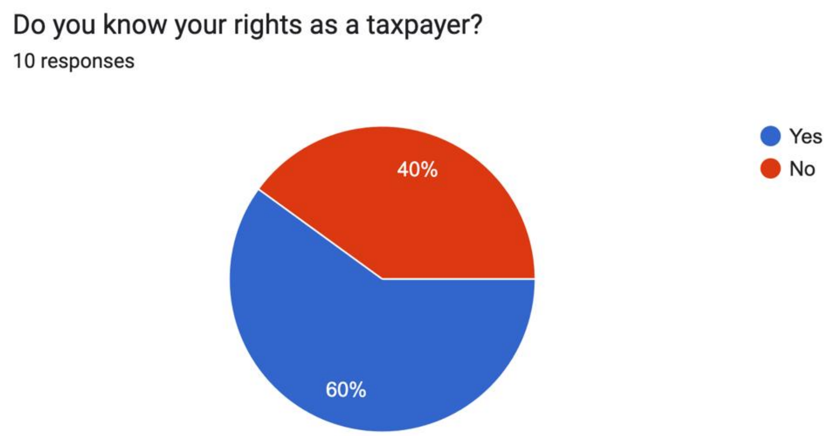
income tax, Capital gains tax, gift tax, taxes charged on benefits to employees, inheritance tax, stamp duty, land transactions, landed property, covid tax, corporate tax, investment tax, custom taxes, etc.

Income tax, corporate tax, gift tax, import tax, VAT, etc.

Income, sales, VAT, gift, custom duty, property rates and taxes on electronic transaction

Corporate Income tax Withholding tax

SECTION C: TAX EDUCATION



What are some of these rights?

6 responses

Right to pay my taxes and also claim tax benefits

The right to challenge a tax assessment.

Right to information from the GRA and the right to appoint a representative on my behalf

To enjoy social amenities such as good roads, water, light, security, good education, etc

I don't think I know enough.

Right to information Right for prompt redress Right to courtesy Right to privacy Right to fairness

What are some of your obligations as a taxpayer?

7 responses

Pay taxes rightly and duly

Ensure I declare and pay the right taxes.

Provide the GRA with all information needed to make an accurate assessment of my taxes

To pay the requisite taxes

Pay taxes Keep proper books Furnish GRA with changes in business File annual returns

paying the necessary taxes within the stipulated time

Prompt payment of taxes at the require rate

What powers should GRA officials have?

7 responses

Take on any person who violates payment

To assess and collect the appropriate tax.

As provided in the law

just like police powers, they should be able to require people to make a declaration on their taxation. so, if they suspect that someone is not complying with their taxes, they should be able to do that.

Not sure they deserve any

powers to prosecute tax offenders

Check the books of business and make recommendation to the appropriate office for needed action

How should they use these powers?

6 responses

Cross checking and making follow ups

The powers should be exercised mindful of the citizen's right to administrative justice and their duty to exercise their statutory powers in accordance with the constitutional principles for the exercise of discretionary power.

As mandated by law

There has to be an objective for the use of powers - and use them when they think that the law is being breach. complement the powers that the OSP and EOCO has. ability to track transactions once needed. And act only when necessary. powers for tackling crime within the confines of the law

To educate the taxpayer and encourage voluntary compliance.

What are some of the challenges taxpayers faces in receiving services from GRA offices?

7 responses

For now, the network issues, at times it is not easy to login to fill or make payment, internet is just hell of a thing.

Taxpayers face poorly trained officials who lack the basic skills in terms of human relations.

NA

Information. It appears that the whole tax filing process is cumbersome, and that the officers are not there to help you but to take from you. so, no one looks forward to filing taxes. There is a lack of trust in GRA officials.

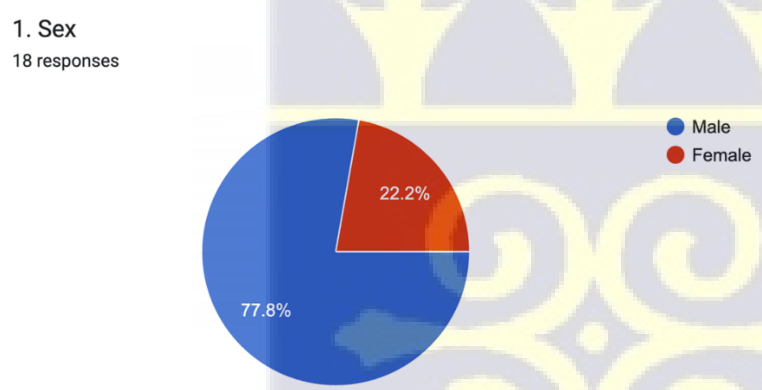
Bureaucracy

Allegations abound that tax official harass traders when they engage them.

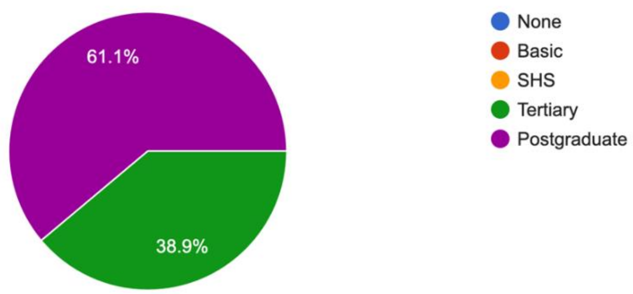
Limited understanding of the tax laws, language barrier.

Responses from Tax Administrators and Policy Makes: GRA

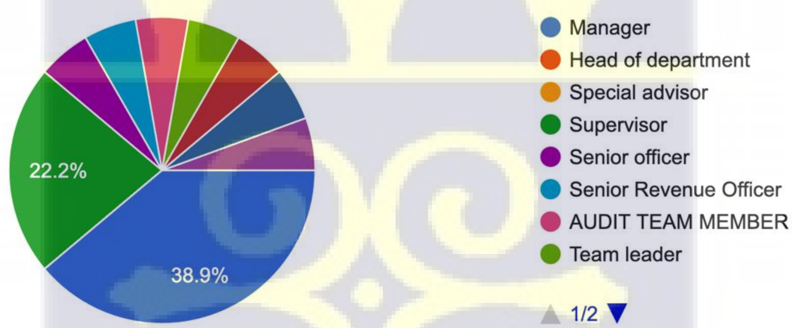
SECTION A: DEMOGRAPHIC CHARACTERISTICS (tick the most appropriate option)



2. Educational Background
18 responses

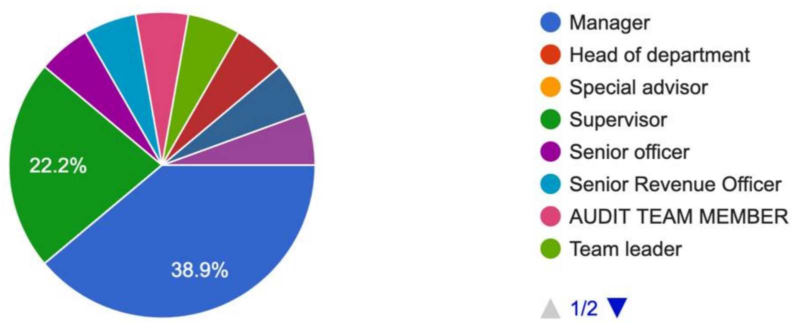


3. Which of the following best describes your position?
18 responses



3. Which of the following best describes your position?

18 responses



SECTION B: Tax Policy

4. What is the process for making tax policy?

16 responses

Through MOF to parliament R

Proposals discussed through public consultation

Consultation with relevant stakeholders

BY CONSULTATION

Stakeholders concerned initiate & discuss the issues procedurally

Gra discusses with the tax policy unit at the MoF, and it goes to parliament for approval

Committees are set

Solicit views and contributions from stakeholders

Using tax laws

The policy is decided, and a team is formed and assigned to deliberate on it and bring their report for deliberation and later consideration.

Tax policy starts from the Executive arm of Government which involves various stakeholders, then the policy moves to Legislators, then to cabinet and then Gazetted into Tax law.

Research on the subject, recommendation to GRA Board and to MOF for final approval

Engaging the stakeholders and also look at areas in tax administration that is least exploited

IT HAS TO START WITH COLLATION OF INPUT FROM RELEVANT STAKEHOLDERS

Tax bill sponsored by MOF, pass by parliament and signed by the president

Collating the views of stakeholders

5***. What steps, procedures or processes should be included in tax laws/policies/regulations for the protection of taxpayers' rights?***

15 responses

Representatives of taxpayers and tax administrators should be involved

Clarify responsibilities and accountabilities of participants in the process

Engage the various traders Unions and CSO

IMPLEMENTERS SHOULD BE CONSULTED AND INVOLVED

1. Know the rights of taxpayers 2. Get inputs from taxpayers 3. Stakeholders deliberate on it etc

Stakeholders' involvement

Thoroughly engaging the taxpayers and general public for inputs before and after before implementation

Seeking the views of taxpayer when making policies

The taxpayers should be given more education on their rights, should not be victimized and their identity protected always.

Various stakeholders view must be considered e.g. Trade Associations

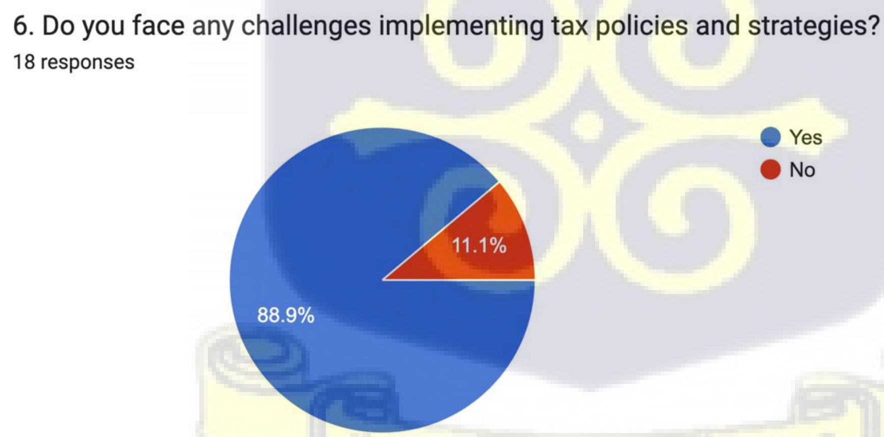
Input from Taxpayers

It is a written statement as part of the document providing protection for the taxpayer

LEGISLATIVE SAFEGUARDS ENFORCEABLE BY COURT OF LAW

Industry should be consulted Selected staff of Gra should stress test the law

Right of taxpayer



7. What are some of these challenges?

16 responses

Ignorance and lack of education on the part of taxpayers

Unwillingness to pay

Lack of Taxpayers understanding, lack of education, ICT challenges.

DIFFICULTY IN IMPLEMENTING THE TAX POLICY

1. Lack of awareness of the policy 2. Use of inexperienced persons to administer the policy etc

1.the nature and level of education on the part of the general public who are directly affected.

Most the taxpayers seem not to understand or aware of their tax obligations

Occasional interference.

Some of Tax policy affects industrial growth hence create unemployment.

Lack of Government commitment

Non filing, non-payment, under declaration

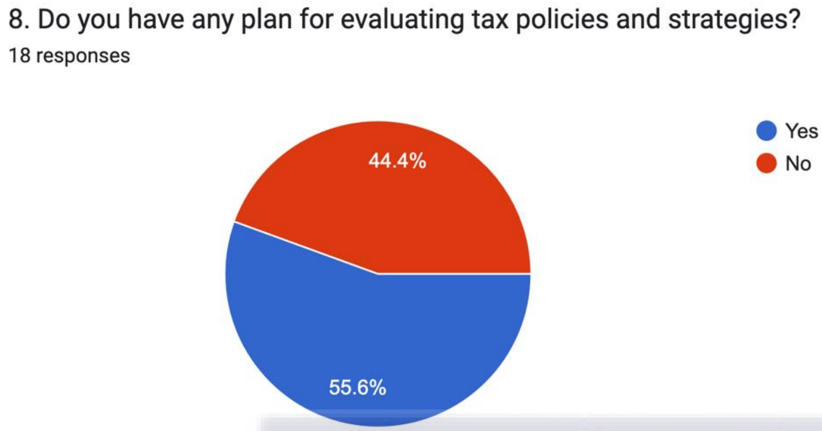
1.THE FLAT RATE REGIME VRS THE VAT STANDARD RATE REGIME 2. A TAXPAYER TO WHOM BOTH SCHEMES APPLY MAY CHARACTERISE STANDARD RATE TRANSACTIONS AS FLAT

Some of the provisions in the same act conflict Some provisions of tax laws conflict with other specific laws such as free zones

lack of information

Taxpayer understanding of the tax laws

Taxpayers' unwillingness to comply



9. What are some of these plans?

10 responses

Tax Policies shall be subjected to regular reviews to ensure its relevance and popularity

Engaging tax Officers and Taxpayers

1. Follow - ups on the ground to ascertain the effects of the policies/strategies 2. Accept & incorporate views of experts with real practical experiences without any biases whatsoever

Education of taxpayers and some of their consultants on tax policies

The value Added Tax (VAT) regime in Ghana does not encourage Tax compliance. The Vat of Flat rate and standard rate with Levies need to be changed.

Annual review of the strategies

Tax policies must factor the interest of the of the investor

EVALUATION OF PERFORMANCE OF DIFFERENT POLICIES OVER A PERIOD

Areas the tax laws conflict Tax policy in response to energy transition

Feedback from taxpayers

SECTION C: Challenges in Collecting Tax Revenue (Administered to Tax Administrators only)

10. What challenges do you face in collecting tax revenue?

18 responses

Taxpayer population is dominated by the informal sector

Low education and the ability to pay the correct amount

Lack of logistics, lack of education on the part of Taxpayers, the state of the economy.

RESISTANCE FROM SOME TAXPAYERS

1. Lack of adequate knowledge of some important tax laws 2. Apathy due to biases from political manoeuvrings affecting enforcement etc

Taxpayer education

Non- Compliance

1.lack of adequate logistics e.g. stationery 2. complexity of the tax laws for easy implementation on the part of taxpayers e.g. VAT 1. lack of motivation and favouritism on the part of top management when it comes to promotions and appointments. 3.unnecessary interference on the part of so-called politicians. 4.appointing in experience people from outside the and ranked them far above we the officer on the job with vast experience

Inadequate logistics and Internet

Human interference in the implementation of the tax laws.

Major challenge is low Tax Compliance by Taxpayers.

Lack of information about taxpayers' activities

Tax evasion. No keeping of books, under declaration

INADEQUATE TOOLS SUCH AS MODERN LAPTOPS ETC

There are many units competing to audit same taxpayers Hedge losses is eroding the tax base in the extractive sector Retirees practicing as tax consultants is affecting staff performance

lack of information

Inadequate information from taxpayers & inadequate logistics

Understanding of the laws to comply.

11. How do these challenges affect your ability to collect tax revenue?

18 responses

They simply do not understand why they should pay tax

Through tax noncompliance

Taxpayers complain of lack of funds, lack of vehicles to convey officers for enforcement.

NEGATIVEL

1. Demoralizes & demotivates personnel 2. It even 'endangers' lives & one’s job especially if you insist to do right against the 'political powers' etc.

Most taxpayers do not appreciate the responsibility to pay and so they try to evade tax

Due to political and management involvement

Low moral less outputs, that leaves to fall in Revenue

Inability to get to review the taxpayer's ledger in terms of internet connectivity and reaching the taxpayer on time

It prevents you from implementing the laws to its maximum.

Low revenue generation, low filing rate of all tax types.

Understand assessment of tax payable

No maximum revenue is collected because of the lack of data

SUCH CHALLENGES MAKE US LESS EFFICIENT

Assessment can’t be raised in the case of hedge laws cause the act allows Time is wasted pursuing taxpayers for audit Multiple tax audit unit is affecting taxpayers and image of officers and Gra

delay tax administration

Delays the process and does not maximise revenue mobilisation

Difficult in assessment tax education

12. How can the challenge be addressed?

18 responses

Regular education

Continues tax education and involvement

Continue tax education, provision of adequate logistics, Continue training of staff

TAXPAYERS WISH TO SEE TAXES PAID USED TO BUILD GOOD ROADS FOR THEM

1. If citizens including politicians allow laws to work to the latter 2. Adequate motivation to staff to do right at all times 3. Adequate punishments to staff for breaches of the law as well

More tax education on the part of GRA and MOF

Tax collector must be allowed to do their work without interference

1.the tax law should be simplified for easy understanding by the trading public e.g. VAT 1. promotion and appointments should be based on merits. 3.adequate logistics should made available. 4.tax revenues collected most be put in good use by the politicians for benefits of society not for their families and friends. 5.politicians should the politics and stop unnecessarily interference.

Availability of adequate logistics and improvement in the network

Through tax education to let the citizenry know the benefits of taxation to the national economy.

Formal and informal Tax education, simply Tax Procedures, Register all registrable Taxpayers. The ruling Government should be accountable to people to promote voluntary compliance.

Use of technology for tax collection and taxpayers' records keeping

Going cashless.

Adequate resources be deployed to institutions mandated to collect taxes.

Amend the tax laws to allow only market values Sign agreement with management staff in DC position prohibiting tax practice up to 5 yrs after retirement Streamline tax audit units

more education

Intensive taxpayer education and provision of adequate logistics

Tax education

13. What other comments do you have?

15 responses

Government should put the tax revenue to proper use

Tax policies should always have equity, certainty, convenience and economy

Promotion process in GRA is counterproductive, management should do something about it. Thank you.

TAXPAYERS SHOULD BE CONSULTED ADEQUATELY BEFORE NEW TAXES ARE INTRODUCED

Obedience to our laws by everyone

Stakeholders and tax officers must be schooled on tax polices

Fairness and proper consultations when it comes to tax issues and implementation

There should be massive tax education and fair and firm relationship between the tax authorities and the taxpayers.

Revenue collected should be used for the development of the country. New area (activities) should be identified for Tax purposes to help expand the Tax net. Similarly, some sectors have been over Tax should see reduction in Taxes.

Use of technology is the way to improve tax collection.

Commitment from the high and mighty.

Regular refresher/ training courses both overseas and local is a must for improved tax yields.

None

Qualified people should be recruited to augment efficient staff performance. Staff should be motivated to put up their best.

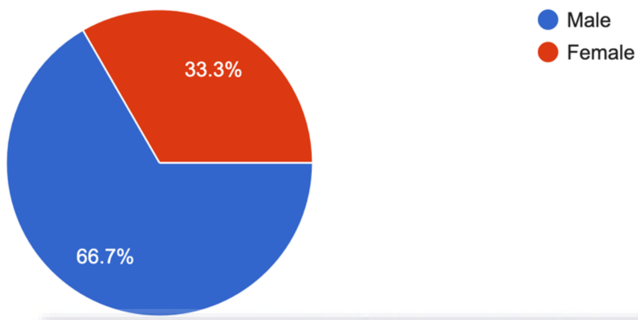
Stakeholder involvement in tax policies.

Responses from Tax Policy Makers: Ministry of Finance

SECTION A: DEMOGRAPHIC CHARACTERISTICS (tick the most appropriate option)

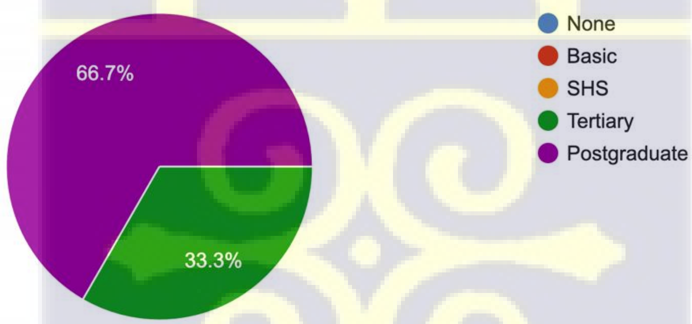
1. Sex

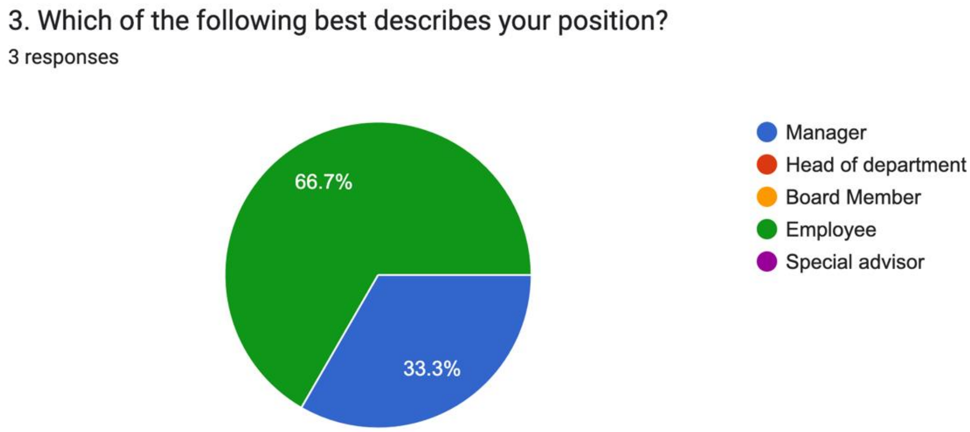
3 responses



2. Educational Background

3 responses





SECTION B: Tax Policy

What is the process for making tax policy?

1 response

Development of concept note for management's approval/ inputs from stakeholders Submission of draft policy to cabinet Preparation of draft bill to Attorney General's office Stakeholder management on the bill Engagement of finance committee of Parliament Submission of bill to Parliament for approval

5. What steps, procedures or processes should be included in tax laws/policies/regulations for the protection of taxpayers' rights?

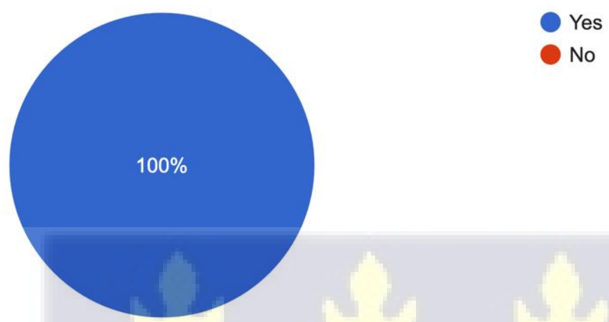
2 responses

Right to appeal assessment Taxpayers should be duly informed of any changes in the rates, policies and scope of the tax. Full disclosure of information

Broad stakeholder consultation to ensure that the rights of all stakeholders are taken into consideration.

6. Do you face any challenges implementing tax policies and strategies?

1 response



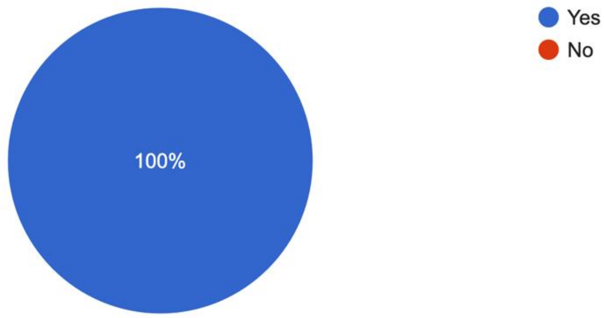
7. What are some of these challenges?

1 response

Inadequate stakeholder management and sensitisation. Lack of clarity on the scope of the tax

8. Do you have any plan for evaluating tax policies and strategies?

2 responses



9. What are some of these plans?

2 responses

Review the tax base Analysis of taxpayers' inputs/ recommendations Analysis of efficiency of the tax policy, i.e. revenue yield, it's impact on consumer welfare

Measuring the purpose of the policy against compliance

10. What challenges do you face in making tax policy?

1 response

Political interference Pressure from the Civil Society Organizations Inadequate stakeholder engagement

11. How do(es) the challenge(s) affect your ability to make tax policy?

1 response

Efficient tax policy measures are sometimes not implemented

12. How can this challenge be addressed?

1 response

Politicians and stakeholders should be part of tax policy design and formulation

APPENDIX C

Table 6: Selected Personal income tax rates for Ghana for the last decade

June 2013 to December 2015 Annual income tax band

	Income	*Tax Rate*	*Tax Charged*	*Cumulative Income*	*Cumulative Taxes*
First	*1,584.00*	*-*	*-*	*1,584.00*	*-*
Next	*792.00*	*5.00%*	*39.60*	*2,376.00*	*39.60*
Next	*1,104.00*	*10.00%*	*110.40*	*3,480.00*	*150.00*
Next	*28,200.00*	*17.50%*	*4,935.00*	*31,680.00*	*5,085.00*
Next	*31,680.00*	*25.00%*			

June 2013 to December 2015 monthly income tax band

	Income	Tax Rate	Tax Charged	Cumulative Income	Cumulative Taxes
First	132.00	-	-	132.00	-
Next	66.00	5.00%	3.30	198.00	3.30
Next	92.00	10.00%	9.20	264.00	12.50
Next	2,350.00	17.50%	411.25	2,640.00	423.75
Next	2,640.00	25.00%	660.00		

January 2016 to date Annual income tax bands

	Income	Tax Rate	Tax Charged	Cumulative Income	Cumulative Taxes
First	2,592.00	-	-	2,592.00	-

Next	*1,296.00*	*5.00%*	*64.80*	*3,888.00*	*64.80*
Next	*1,812.00*	*10.00%*	*181.20*	*5,700.00*	*246.00*
Next	*33,180.00*	*17.50%*	*5,806.50*	*38,880.00*	*6,052.50*
Next	*38,880.00*	*25.00%*			

January 2016 to date Monthly income tax bands

	Income	*Tax Rate*	*Tax Charged*	*Cumulative Income*	*Cumulative Taxes*
First	*216.00*	-	-	*216.00*	-
Next	*108.00*	*5.00%*	*5.40*	*324.00*	*5.40*
Next	*151.00*	*10.00%*	*15.10*	*475.00*	*20.50*

		17.50%			
Next	***2,765.00***		***483.88***	***3,240.00***	***504.38***
		25.00%			
Next	***3,240.00***				

Table 7 Corporate Income tax rates of Ghana, (CIT)

The general corporate income tax (CIT) rate is 25%.

The CIT for Mining and upstream petroleum companies 35%.

The CIT for companies principally engaged in the hotel industry is a reduced rate of 22%.

The CIT rate for companies engaged in non-traditional exports is 8%.

The CIT for banks' lending to the agricultural and leasing sectors pays a CIT rate of 20% on income from those businesses.

The CIT for Lottery operators are also subject to a 20% income tax on gross gaming revenue.

Table 8: Applicable Withholding Taxes: Resident Persons

Income	Rate %
Dividends	**8**
Interest (excluding individuals and resident financial institutions)	**8**
Rent on residential properties	**8**
Rent on non-residential properties	**15**
Fees to resident individuals as invigilators, examiners and part-time teachers or lecturers, and endorsement fees to individuals	**10**
Fees or allowances to directors, managers, board members and trustees who are resident individuals	**20**
Commission to insurance, sales, canvassing and lotto agents who are individuals	**10**
Supply of services by an entity exceeding GH¢2,000 per annum	**7.5**
Supply of general services by an individual	**7.5**
Supply of goods exceeding GH¢2,000 per annum	**3**
Supply of works exceeding GH¢2,000 per annum	**5**
Payments to petroleum subcontractors	**7.5**
Payments for unprocessed precious minerals	**3**
Royalty, natural resource payments	**15**

Table 9. Withholding taxes for Non-resident Persons

Income	Rate%
Dividends	**8**
Management and technical service fees	**20**
Goods, works or any services	**20**
Royalties, natural resources payments and rents	**15**
Income from telecommunication and transportation business	**15**
Payments to petroleum subcontractors	**15**
Repatriated branch after tax profits	**8**
Interest income (excluding individuals)	**8**
General insurance premiums	**5**

APPENDIX D

Table 10: Income tax rate (TOT) applicable to MSMEs in Nigeria

Income	**Rate**
NGN 25 million or less	**Nil**
NGN 25 million and less than NGN 100 million	20%
More than N100,000,000	30%