

Assessing the Dichotomy Between Ghana's Complex Tax Provisions and Taxpayers' Rights: Perspective of Section 42 (5) of Act 915 Mandatory Prepayment of Tax Disputes Before Commencement of Litigation

Ephraim Armstrong Awinbugri¹, Andrew Kofi Annan², Edmund Nelson Amasah³

¹senior Lecturer, University of Education, Winneba (Codel-Aamusted)

²legal Consultant, Minkah-Premo, Osei-Bonsu (Bruce-Cathline & Partners)

³commercial Law Lecturer, Kwame Nkrumah University of Science and Technology, Faculty of Law

DOI: <https://doi.org/10.51244/IJRSI.2025.120500145>

Received: 22 April 2025; Accepted: 30 May 2025; Published: 17 June 2025

ABSTRACT

This article critically examines Ghana's mandatory prepayment rule under Section 42(5) of the Revenue Administration Act, 2016 (Act 915), which requires taxpayers to pay 30% of disputed taxes (or 100% for import duties) before objections are entertained. Secondary data was adopted in analyzing the Supreme Court's affirmation of this provision in cases such as *Richard Amo-Hene v GRA* and explores its interplay with Order 54, Rule 4(1) of the High Court (Civil Procedure) Rules (CI 47), which mandates a 25% prepayment for court appeals. Through a comparative lens, the article contrasts Ghana's rigid "pay now, argue later" regime with jurisdictions like South Africa (payment suspensions), Nigeria (hardship waivers), and the United States (no general prepayment), highlighting systemic gaps in fairness and accessibility. The study identifies barriers to taxpayer rights, including disproportionate burdens on low-income disputants and opaque waiver mechanisms under Section 42(6). It argues for reforms such as automatic suspension provisions, transparent criteria for waivers, and alignment of CI 47 with Act 915 to eliminate procedural redundancies. The article concludes that Ghana must balance revenue protection with equitable access to justice by adopting internationally informed safeguards against frivolous disputes while protecting genuine taxpayers' rights.

Keywords: Tax dispute resolution, mandatory prepayment, Section 42(5), Act 915, Order 54 Rule 4(1), CI 47, taxpayer rights, revenue protection, comparative tax law, Ghana.

INTRODUCTION

Tax dispute resolution frameworks serve as a linchpin in reconciling the state's imperative to secure revenue with the rights of taxpayers to contest assessments perceived as inequitable. In Ghana, this equilibrium is governed by section 42(5) of the Revenue Administration Act, 2016 (Act 915), which mandates taxpayers to remit all outstanding taxes (including 100% of disputed import duties or 30% of other contested taxes) before lodging objections¹. This prepayment regime, reinforced by Order 54, Rule 4(1) of the High Court (Civil Procedure) Rules, 2004 (C.I 47), has been judicially validated as a bulwark against frivolous litigation and revenue erosion². However, its interplay with constitutional safeguards for administrative justice and access to courts remains contentious, necessitating a critical appraisal of its efficacy and fairness.

The Supreme Court's jurisprudence underscores the prepayment rule's constitutional validity. In *Richard Amo-Hene v Ghana Revenue Authority*, the Court dismissed claims that section 42(5)(b) violated Articles 17(1) (equality) and 19(2)(c) (presumption of innocence) of the 1992 Constitution, reasoning that the rule safeguards the tax system from abuse while preserving avenues for redress³. Similarly, in *Kwasi Afrifa v Ghana Revenue Authority*, the Court affirmed that the Commissioner-General's discretionary waiver power under section 42(6) mitigates undue hardship, ensuring the rule aligns with Article 23 (administrative justice)⁴. These

decisions collectively position the prepayment requirement as a proportional limitation on taxpayer rights, justified by the state's interest in revenue stability⁵.

Critics contend that the prepayment rule disproportionately burdens small and medium enterprises (SMEs) and low-income taxpayers, effectively barring access to justice for those unable to meet the upfront costs⁶. The dual role of the Ghana Revenue Authority (GRA)—as both assessor and initial adjudicator—further exacerbates concerns about impartiality, particularly where objections involve complex valuations or subjective interpretations of tax law⁷. Procedural delays compound these issues: although Act 915

requires the GRA to resolve objections within 90 days, prolonged administrative inertia often forces taxpayers into protracted disputes, undermining the rule's efficiency rationale⁸. Globally, jurisdictions adopt divergent approaches to balance revenue and rights. South Africa's Tax Administration Act mandates full prepayment unless taxpayers prove financial hardship or compliance history, offering structured guidelines absent in Ghana's waiver system⁹. Conversely, Nigeria's absence of prepayment rules prioritizes access to justice but risks revenue leakage, while the U.S. IRS permits phased payments and hardship-based settlements, exemplifying flexibility¹⁰. Ghana's framework, though constitutionally sound, requires reforms to harmonize these comparative strengths: transparent waiver criteria, installment payment options, and strict timelines for administrative decisions¹¹.

This article employs doctrinal analysis of primary sources (Act 915, case law) and comparative legal research to evaluate Ghana's prepayment regime. It first delineates the rule's statutory and judicial foundations, then critiques its operational challenges, and finally proposes reforms anchored in procedural fairness and revenue pragmatism¹². By integrating insights from recent Supreme Court rulings and cross-jurisdictional models, it contributes to the discourse on equitable tax dispute resolution in developing economies.

Legal Framework Analysis

Statutory Basis: Section 42(5) of Act 915 and Order 54, Rule 4(1) of CI 47

Section 42(5) of the Revenue Administration Act, 2016 (Act 915), as amended by the Revenue Administration (Amendment) Act, 2020 (Act 1029), establishes a mandatory prepayment regime for taxpayers seeking to object to tax assessments issued by the Ghana Revenue Authority (GRA). Specifically, section 42(5)(b) requires that, in the case of taxes other than import duties, an objection will not be entertained unless the taxpayer has paid all outstanding taxes, including thirty percent (30%) of the tax in dispute. For import duties and taxes, the law requires payment of the full amount in dispute before an objection is heard. This statutory scheme is designed to deter frivolous objections and ensure a steady flow of revenue to the state, particularly in the context of a justice system that may experience delays in resolving tax disputes¹.

Complementing this provision is Order 54, Rule 4(1) of the High Court (Civil Procedure) Rules, 2004 (CI 47), which requires a taxpayer appealing a tax decision to the High Court to pay at least twenty-five percent (25%) of the disputed tax amount before the appeal can be heard. The intent behind this rule is similarly to prevent abuse of the appeals process and to maintain state revenue during the pendency of disputes¹³.

Regulatory Hierarchy: Supreme Court Clarification

The relationship between section 42(5) of Act 915 and Order 54, Rule 4(1) of CI 47 has been the subject of judicial scrutiny. In a series of landmark decisions—*Richard Amo-Hene v Ghana Revenue Authority*¹⁴, *Attorney-General & Judicial Service, Kwasi Afrifa v Ghana Revenue Authority & Attorney-General*¹⁵, and *Export Finance Company Ltd v Ghana Revenue Authority & Attorney-General*—the Supreme Court of Ghana addressed the constitutionality and regulatory hierarchy of these provisions¹⁶.

The Court held that Order 54, Rule 4(1) of CI 47, as subsidiary legislation, is subordinate to the substantive provisions of Act 915. The Court clarified that Order 54 merely complements section 42 of Act 915 and does not impose an additional prepayment requirement where the taxpayer has already complied with section 42(5)(b). In effect, if a taxpayer has paid the 30% of the tax in dispute as required under section 42(5)(b)

before objecting to the GRA, there is no further obligation to pay the 25% prepayment stipulated by CI 47 when appealing to the High Court¹⁷.

This clarification ensures that taxpayers are not subjected to cumulative prepayment requirements, which would otherwise create an excessive barrier to accessing justice. The Supreme Court further justified the constitutionality of the prepayment regime, reasoning that such limitations are necessary to protect the tax administration system from abuse and to prevent the state's revenue mobilisation efforts from being undermined by frivolous or dilatory objections¹⁸¹⁹.

Thus, the statutory and regulatory framework governing tax objections in Ghana is structured to balance the needs of revenue protection with the rights of taxpayers to challenge assessments. The Supreme Court's interpretation ensures that while prepayment is required to deter abuse, it does not become an insurmountable obstacle to justice by layering multiple prepayment obligations on taxpayers.

Regulatory Hierarchy: Supreme Court's Clarification on CI 47's Subordination to Act 915

The relationship between section 42(5) of the Revenue Administration Act, 2016 (Act 915) and Order 54, Rule 4(1) of the High Court (Civil Procedure) Rules, 2004 (CI 47) has been decisively addressed by Ghana's Supreme Court in several landmark cases. The Court clarified that CI 47's 25% prepayment rule is subsidiary to Act 915, meaning taxpayers who comply with section 42(5)(b) are not required to fulfil CI 47's separate 25% prepayment requirement when appealing to the High Court²⁰. This hierarchy ensures that taxpayers are not subjected to cumulative financial burdens, thereby balancing revenue protection with access to justice.

Judicial Reasoning on Regulatory Subordination

In *Richard Amo-Hene v Ghana Revenue Authority, Attorney-General & Judicial Service*, the Supreme Court emphasized that CI 47, as subsidiary legislation, cannot override or add obligations beyond those in Act 915²¹. The Court adopted its earlier reasoning in *Kwasi Afrifa v Ghana Revenue Authority & Attorney-General*, where it held that Act 915's objection and appeal mechanisms provide a comprehensive statutory framework that CI 47 merely supplements²². Specifically, the Court noted:

"Order 54 Rule 4 of CI 47 complements section 42 of Act 915 and, being subsidiary legislation, must yield to the parent legislation. Thus, where the appellant has complied with Act 915, compliance with CI 47 is unnecessary²²."

This principle was reaffirmed in *Export Finance Company Ltd v Ghana Revenue Authority & Attorney-General*²³, where the Court stressed that Parliament's intent in Act 915 was to avoid "double payment" obligations, ensuring taxpayers are not penalized twice for the same dispute²⁴.

Constitutional and Policy Justifications

The Supreme Court justified this hierarchy by reference to Article 23 of Ghana's 1992 Constitution, which guarantees administrative fairness. The Court held that Act 915's objection process, coupled with judicial review rights, satisfies constitutional safeguards, even with prepayment requirements²⁵. Key points include:

Avoiding Abuse of Process: The Court cited the *Multichoice Ghana Limited v IRS* precedent, which mandates strict construction of fiscal laws to prevent revenue evasion²⁶.

Public Policy Rationale: The prepayment rule protects state revenue from being jeopardized by prolonged disputes, particularly given Ghana's slow judicial process²⁷.

Procedural Safeguards: Section 42(6)-(7) of Act 915 allows the Commissioner-General to waive, vary, or suspend prepayment, providing flexibility for genuine hardship cases²⁸.

Comparative Context and Implications

While Ghana's framework resembles South Africa's "pay now, argue later" regime, it lacks the discretionary suspension mechanisms seen in Section 164(3) of South Africa's Tax Administration Act²⁹. The Supreme Court's insistence on CI 47's subordination mitigates this rigidity but does not fully address concerns about low-income taxpayers' access to justice, who may struggle to raise even 30% of disputed taxes³⁰.

It must be noted that the Supreme Court's clarification ensures that Act 915's supremacy over CI 47 prevents redundant financial burdens on taxpayers. However, the absence of automatic suspension mechanisms for genuine disputes remains a gap, necessitating reforms to align Ghana's system with international best practices³¹.

Judicial Precedents and Constitutional Validation

Ghana's mandatory prepayment rule under section 42(5) of the Revenue Administration Act, 2016 (Act 915) has faced significant constitutional scrutiny, culminating in landmark Supreme Court decisions that prioritise fiscal stability while permitting limited judicial oversight. The "pay now, argue later" doctrine, requiring taxpayers to remit 30% of disputed taxes before lodging objections³², has been upheld as a necessary tool to prevent abuse of the tax dispute process and secure state revenue³³. Key precedents, including *Kwasi Afrifa v Ghana Revenue Authority (GRA)*, *Export Finance Company Ltd v GRA*, and *Richard Amo-Hene v GRA*, collectively affirm the rule's constitutionality under Ghana's 1992 Constitution³⁴.

Kwasi Afrifa v Ghana Revenue Authority & Attorney-General

In this foundational case, the Supreme Court validated section 42(5) of Act 915, rejecting arguments that the 30% prepayment requirement violated Article 23 (administrative justice) and Article 17 (equality)³⁵. The Court emphasised that the rule is not an absolute bar to justice, as taxpayers retain access to administrative waivers under section 42(6) and judicial review under Articles 140 and 33(5) of the Constitution³⁶. The Court reasoned that the provision balances the state's revenue needs against taxpayer rights by ensuring disputes do not paralyse tax collection³⁷.

Export Finance Company Ltd v Ghana Revenue Authority & Attorney-General

This case extended the reasoning in *Afrifa* to procedural rules under Order 54 rule 4(1) of CI 47, which mandates a 25% prepayment for appeals³⁸. The Court held that such requirements prevent frivolous litigation while preserving judicial recourse, provided the GRA's waiver discretion under Act 915 is exercised fairly³⁹. The decision reinforced that prepayment rules are revenue-protection measures, not punitive presumptions of guilt⁴⁰.

Richard Amo-Hene v Ghana Revenue Authority & Attorney-General

Amo-Hene's challenge to section 42(5) and Order 54 rule 4(1) as violations of Articles 17(1) (equality) and 19(2)(c) (presumption of innocence) was dismissed by the Supreme Court⁴¹. The Court clarified that prepayment obligations do not presume culpability but aim to secure revenue during disputes. It stressed that the GRA's waiver mechanism and judicial review options ensure compliance with constitutional due process⁴².

Policy Justification and Constitutional Limits

The Supreme Court's decisions prioritise fiscal stability, citing risks of taxpayers exploiting objections to delay payments. While acknowledging constitutional rights, the Court defers to legislative intent, requiring strict adherence to prepayment rules unless applied arbitrarily⁴⁴. The availability of procedural safeguards including waiver applications and judicial reviews is deemed sufficient to mitigate rights violations.

Critical Analysis of Precedents

Constitutional Compliance: Courts interpret prepayment rules as reasonable limitations on access to justice, justified by the public interest in revenue collection.

Presumption of Innocence: The Court distinguishes tax disputes from criminal proceedings, holding that prepayment does not equate to guilt.

Judicial Deference: The GRA's administrative discretion under section 42(6) is subject to judicial oversight, ensuring fairness⁴³.

The Supreme Court has established a clear precedent: Ghana's prepayment regime is constitutionally permissible, provided procedural fairness is maintained through administrative waivers and judicial review. While critics argue the rules disproportionately burden taxpayers, the Court's emphasis on revenue protection and anti-abuse mechanisms underscores the delicate balance between fiscal imperatives and individual rights.⁴⁴

Procedural Compliance Under Order 54 And Act 915.

Ghana's tax dispute resolution framework under section 42(5) of Act 915 and Order 54 of CI 47 mandates strict adherence to procedural timelines and prepayment requirements. Courts have consistently dismissed appeals where taxpayers fail to comply, underscoring the primacy of procedural rules in preserving state revenue and preventing abuse of judicial processes⁴⁵. Key cases illustrate how non-compliance leads to dismissal, reinforcing the balance between taxpayer rights and administrative efficiency.

Prepayment Rule under Section 42(5) of Act 915

Kwasi Afrifa v Ghana Revenue Authority & Attorney-General⁴⁶ Facts of the Case

Kwasi Afrifa, a lawyer, was assessed for outstanding taxes from 2012–2016 and paid 30% of the disputed amount under section 42(5) of Act 915⁴⁷. When he applied for a Tax Clearance Certificate (TCC) in 2019, the GRA demanded additional documentation, including client account details and expense records, which he could not provide due to a suspension from legal practice⁴⁸. Afrifa sued, arguing

Holdings

Legal Bases

Rationale

that section 42(5) violated his rights to administrative justice (Article 23) and equality (Article 17) by mandating prepayment before objections⁴⁹.

The Supreme Court upheld section 42(5), ruling that:

Prepayment is constitutional as a “pay now, argue later” mechanism to ensure revenue stability⁵⁰.

Administrative safeguards (e.g., waiver requests under section 42(6)) and judicial review satisfy due process⁵¹.

No violation of equality rights, as the rule applies uniformly to all taxpayers⁵².

Article 23: The Court held that administrative remedies (objections, waivers) and judicial review under Articles 140 and 33(5) provide sufficient due process⁵³.

Article 17: The prepayment requirement does not discriminate, as it is a general tax administration rule⁵⁴.

Section 42(6) of Act 915: Grants the GRA discretion to waive prepayment, mitigating potential rights

violations⁵⁵.

The Court emphasized fiscal stability, noting that prepayment prevents abuse of objections to delay tax collection⁵⁶. It distinguished Ghana's framework from South Africa's stricter VAT law (**Metcash Trading Ltd v Commissioner**), which the Constitutional Court upheld as compatible with access to justice⁵⁷.

Facts

Holdings

Legal Bases

Rationale

Facts

Holdings

Export Finance Company Ltd v Ghana Revenue Authority & Attorney- General⁵⁸

The case challenged Order 54 rule 4(1) of CI 47, which requires a 25% prepayment for tax appeals.

The Court upheld the rule, aligning it with section 42(5) of Act 915⁵⁹.

CI 47, Order 54 rule 4(1): Designed to deter frivolous appeals while preserving judicial review⁶⁰.

Article 23: Procedural safeguards (waivers, judicial review) ensure fairness⁶¹.

The Court reiterated that prepayment balances revenue protection with judicial oversight, preventing systemic delays⁶².

Richard Amo-Hene v Ghana Revenue Authority & Attorney-General⁶³

Amo-Hene contested section 42(5) and Order 54 rule 4(1), arguing they violated Article 19(2)(c) (presumption of innocence) and Article 17 (equality)⁶⁴.

The Supreme Court dismissed the claims, ruling that prepayment is a revenue- protection measure, not a presumption of guilt⁶⁵.

Legal Bases

Rationale

Article 19(2)(c): The Court distinguished tax disputes from criminal proceedings, noting prepayment does not imply culpability⁶⁶.

Article 17: The rule applies uniformly and is justified by public interest⁶⁷.

The Court prioritized state revenue needs, stressing that prepayment ensures operational continuity during disputes⁶⁸.

Critical Analysis

Constitutional Balance: Courts defer to legislative intent, accepting prepayment as a proportionate limitation on taxpayer rights for public benefit⁶⁹.

Procedural Safeguards: Waivers and judicial review under section 42(6) and Articles 140/33(5) mitigate

rights concerns⁷⁰.

Policy Justification: Prepayment prevents “frivolous objections” that could cripple revenue collection⁷¹.

Facts

Holding

Seadrill Ghana Operations Limited v Commissioner-General, GRA⁷²

Seadrill disputed a tax assessment and filed an appeal after requesting a review of the GRA’s objection decision instead of appealing directly⁷². The GRA applied to strike out the appeal as incompetent, arguing it was filed outside the 30-day window prescribed by section 44 of Act 915⁷³.

The High Court and Court of Appeal dismissed Seadrill’s appeal, ruling that:

Section 44 of Act 915 requires appeals to be filed within 30 days of an objection decision⁷³.

Order 54 rules 1–2 of CI 47 codify this timeline, making non-compliance fatal to appeals⁷⁴.

Legal Basis

Rationale

No legitimate expectation arises from GRA’s past conduct (e.g., reviewing objections), as Act 915 explicitly mandates direct appeals⁷⁵.

Section 44(2) of Act 915: Appeals must follow statutory timelines to maintain finality in tax assessments⁷⁶.

Order 54 rule 2(1): Specifies that appeals must be filed within 30 days of the objection decision⁷⁷

Courts prioritize procedural certainty to prevent indefinite disputes and ensure efficient revenue collection.

This analysis confirms that Ghana’s mandatory prepayment and procedural rules serve as non- negotiable pillars of tax administration, with dismissals for non-compliance reflecting judicial prioritization of revenue protection⁷⁸. And the precedents collectively affirm that Ghana’s prepayment regime is constitutionally sound, provided procedural fairness is maintained through administrative waivers and judicial oversight⁷⁹.

Comparative Analysis

Ghana’s mandatory prepayment rule under section 42(5) of the Revenue Administration Act, 2016 (Act 915) requires taxpayers to pay 30% of disputed tax before their objection or appeal is entertained. This approach is notably more rigid than the tax dispute resolution frameworks in South Africa, Nigeria, and the United States.

South Africa: Flexible Suspension of Payment

Legal Framework: Section 164 of South Africa’s Tax Administration Act allows taxpayers to apply for a suspension of payment of disputed tax pending the outcome of an objection or appeal.

Key Features:

The South African Revenue Service (SARS) may grant suspension if the taxpayer applies and meets certain criteria (such as prospects of success, potential hardship, and the public interest) Payment is not a strict precondition for dispute resolution; instead, SARS exercises discretion on a case-by-case basis.

Contrast with Ghana:

Ghana's rule is automatic and rigid, requiring payment upfront unless the Commissioner-General grants a waiver under section 42(6), which is narrowly applied.

South Africa's system is more taxpayer-friendly, balancing revenue protection with judicial access.

Nigeria: Waivers for Hardship and Business Support

Legal Framework: The Federal Inland Revenue Service (Establishment) Act empowers the FIRS to grant waivers on penalties and interest for taxpayers facing hardship or in support of business continuity⁸⁰.

Recent Practice:

The FIRS has approved full waivers of penalties and interest on outstanding tax liabilities, provided the principal is paid by a set deadline⁸¹.

Section 32 of the Act formalizes these concessions, reflecting a policy to support businesses and recognize economic challenges.

Contrast with Ghana:

Nigeria's approach is more flexible, offering targeted relief and waivers in response to hardship or policy objectives.

Ghana's Commissioner-General has limited discretion to waive the prepayment requirement, and such waivers are rarely granted.

United States: No General Prepayment Requirement

Legal Framework:

In the U.S., there is no general requirement for prepayment of disputed taxes before a taxpayer can challenge an assessment.

Taxpayers may petition the U.S. Tax Court before paying the tax, except in certain high-risk or designated cases.

Key Features:

The system is designed to maximize access to judicial review without imposing financial barriers.

Prepayment may be required only in specific circumstances, such as for "jeopardy assessments" where there is a risk of asset dissipation.

Contrast with Ghana:

The U.S. model is the most taxpayer-centric, prioritizing access to justice and due process over automatic revenue protection.

Summary Table

Country	Prepayment Rule	Waiver/ Mechanism	Relief	Approach to Taxpayer Rights
Ghana	Mandatory (30% upfront)	Limited, commissioner's discretion	at	Rigid, revenue protection prioritized

South Africa	No auto prepayment	Suspension of payment upon application	Flexible, case-by-case assessment
Nigeria	No strict prepayment	Waivers for hardship/business support	Flexible, responsive to hardship
United states	No general prepayment	Not required except for high-risk cases	Taxpayer-centric, broad access to courts

From the table, Ghana's prepayment rule is among the most stringent, prioritizing fiscal stability but potentially restricting taxpayer access to justice. In contrast, South Africa and Nigeria offer more flexible, discretionary relief mechanisms, while the United States largely dispenses with prepayment, reflecting a strong commitment to taxpayer rights and judicial access.

Procedural Challenges Under Ghana's Mandatory Prepayment Rule

CI 47 Compliance: Dual Obligations and Risk of Procedural Missteps

Ghana's tax dispute regime imposes significant procedural requirements on taxpayers seeking to challenge tax assessments. Section 42(5)(b) of the Revenue Administration Act, 2016 (Act 915) mandates that a taxpayer must pay 30% of the disputed tax before the Ghana Revenue Authority (GRA) will entertain an objection to an assessment. Separately, Order 54, Rule 4(1) of the High Court (Civil Procedure) Rules, 2004 (CI 47) requires payment of 25% of the disputed tax before an appeal can be heard by the High Court.

This dual framework creates confusion and increases the risk of procedural errors. Taxpayers may mistakenly believe they must pay both the 30% (to GRA) and an additional 25% (to the courts), potentially resulting in unnecessary financial burdens or missed opportunities to challenge assessments. However, the Supreme Court has clarified that compliance with the 30% requirement under Act 915 is sufficient; the 25% payment under CI 47 does not constitute an additional obligation for those who have already met the statutory prepayment to the GRA. CI 47 is thus considered complementary and subordinate to Act 915, not an independent hurdle.

"Where a tax objector is compliant with the requirement under Section 42(5)(b) and pays 30% of the tax assessed before raising an objection with the Commissioner-General of GRA, there is no additional requirement for the tax objector to pay a quarter (25%) of the tax assessed before appealing to the High Court in a tax appeal⁸²".

Nonetheless, the existence of two overlapping payment thresholds in legislation and court rules can easily lead to procedural missteps by taxpayers or their advisors, especially in complex or high-value disputes.

Waiver Mechanism: Lack of Transparency and Clear Guidelines

Section 42(6) of Act 915 provides that the Commissioner-General of the GRA may waive, vary, or suspend the 30% prepayment requirement. This discretionary power is intended as a safeguard for taxpayers who may face genuine financial hardship or have strong grounds for objection. However, the law does not prescribe any clear criteria, procedures, or timelines for the granting of such waivers⁸³.

This lack of transparency raises several concerns:

Uncertainty: Taxpayers cannot reliably predict the circumstances under which a waiver might be granted, leading to unpredictability in tax dispute planning.

Potential for Arbitrary Decisions: The absence of published guidelines or a requirement for written reasons

increases the risk of inconsistent or arbitrary application of the waiver power.

Limited Accountability: Without a transparent process or the obligation to provide reasons, taxpayers may have little recourse if a waiver request is denied.

The Supreme Court has acknowledged the existence of the waiver mechanism and held that it does not, by itself, render the prepayment rule unconstitutional or a fetter on the right to object to tax assessments. However, the lack of procedural safeguards and published criteria for the exercise of this discretion remains a significant procedural challenge for taxpayers⁸⁴.

Lessons and Recommendations

Ghana's mandatory prepayment rule under Section 42(5) of the Revenue Administration Act, 2016 (Act 915), which requires taxpayers to pay 30% of disputed taxes before challenging assessments, has generated debate on its compatibility with equitable tax administration. By examining Ghana's framework alongside comparative models from South Africa, Nigeria, and the United States, key lessons emerge to refine this "pay now, argue later" doctrine while safeguarding taxpayer rights.

Lessons from Ghana's Framework

Judicial Prioritisation of Revenue Protection

Ghana's Supreme Court has consistently upheld Section 42(5)(b) as constitutional, emphasising its role in preventing frivolous objections and ensuring stable revenue flows amid systemic judicial delays⁸⁵. The Court's reasoning aligns with the principle that tax obligations are a "social contract," where timely revenue collection underpins public service delivery⁸⁶. However, the rigid 30% threshold risks excluding cash-strapped taxpayers, necessitating the waiver mechanism under Section 42(6)⁸⁷.

Administrative Discretion as a Safeguard

Section 42(6) empowers the Commissioner-General (CG) to waive, vary, or suspend prepayments, offering flexibility absent in stricter regimes like South Africa's⁸⁸. However,

the lack of published criteria for waivers has led to perceptions of arbitrariness⁸⁹, undermining trust in the system.

Procedural Synergy with Tax Laws

Act 915's prepayment rule operates alongside the High Court's Civil Procedure Rules (C.I 47), which mandate a 25% prepayment for appeals⁹⁰. Compliance with Section 42(5) satisfies both requirements, avoiding duplication⁹¹. This synergy ensures procedural fairness but highlights the need for clearer taxpayer guidance, as seen in Ghana's recent practice notes on instalment agreements⁹².

Comparative Lessons

South Africa's Rigid but Transparent Model

South Africa's Tax Administration Act (section 164) mandates full prepayment unless taxpayers prove compliance history, financial hardship, or no asset dissipation risk⁹³. While stricter than Ghana's 30% rule, its explicit waiver criteria enhance predictability a feature Ghana could adopt to reduce discretion-related disputes⁹⁴.

Nigeria's Incentive-Driven Approach

Nigeria lacks a prepayment rule, prioritising taxpayer access to justice but risking revenue leakage⁹⁵. However, its use of sector-specific tax incentives (e.g., Pioneer Status exemptions) to encourage compliance offers a

complementary strategy for Ghana to reduce disputes⁹⁶.

United States' Balanced Relief Mechanisms

The U.S. Internal Revenue Service (IRS) permits phased payments via instalment agreements and debt reductions through Offers in Compromise⁹⁷. These mechanisms, absent in Ghana's framework, could alleviate cashflow pressures on SMEs while ensuring revenue collection⁹⁸.

RECOMMENDATION

The author makes recommendations and states as follows:

Ghana may Introduce Structured Waiver Guidelines

Publish criteria for Section 42(6) waivers, incorporating South Africa's factors (e.g., compliance history, asset risk)⁹⁹. The Ghana Revenue Authority (GRA) should issue a practice note detailing eligibility thresholds and application processes¹⁰⁰.

Ghana may Adopt U.S.-Style Phased Payments

Amend Act 915 to allow taxpayers to pay the 30% prepayment in instalments, mirroring the IRS's approach¹⁰¹. This aligns with existing GRA provisions for tax liability extensions under Section 47¹⁰².

Ghana needs to Enhance Transparency and Education

Annual Reporting: Publish anonymised data on waiver approvals/denials to demonstrate accountability¹⁰³.

Public Campaigns: Use mobile platforms to educate taxpayers on objection procedures, building on Nigeria's outreach models¹⁰⁴.

Ghana needs to take Legislative Review of the 30% Threshold.

Conduct biennial reviews of the prepayment rate, indexed to inflation and taxpayer capacity¹⁰⁵. This balances revenue needs with taxpayer liquidity, as seen in Egypt's CIT advance payment system¹⁰⁶.

Ghana needs to Strengthen Legal Aid Provisions

Establish an independent taxpayer advocacy service, similar to the U.S. Taxpayer Advocate, to assist low-income taxpayers in navigating prepayment requirements¹⁰⁷.

Ghana's prepayment rule effectively safeguards revenue but requires reforms to address equity concerns. By integrating South Africa's transparency, Nigeria's incentives, and U.S. flexibility, Ghana can achieve a balanced framework that upholds both state interests and taxpayer rights.

CONCLUSION

Ghana's mandatory prepayment rule under Section 42(5) of Act 915 embodies a critical tension between revenue protection and taxpayer rights. While the rule has been judicially validated as a necessary safeguard against frivolous disputes and revenue leakage, its rigid 30% threshold risks marginalising financially constrained taxpayers, undermining the equitable principles enshrined in Ghana's 1992 Constitution. Comparative insights from South Africa's structured waiver criteria, Nigeria's incentive-driven compliance models, and the United States' phased payment mechanisms highlight pathways to balance these competing interests.

To achieve this equilibrium, Ghana must prioritise transparency in administering the Section 42(6) waiver system, flexibility through instalment agreements, and accountability via periodic legislative reviews of the

prepayment threshold. By integrating these reforms, Ghana can transform its “pay now, argue later” doctrine into a tool that not only secures revenue for national development but also upholds the rights of taxpayers as active participants in the social contract. Such an approach would reinforce trust in the tax administration system, ensuring that revenue protection and taxpayer equity remain mutually reinforcing pillars of Ghana’s fiscal governance.