

The Swinging Pendulum in the Interpretation of Revenue Statutes in Tanzania: A Strict or a Purposive Approach?

Baraka Melami Saitu*

Abstract

This article examines evolving judicial approaches to interpreting revenue statutes, focusing on the shift from a strictly traditional approach to a more purposive one. In recent decades, courts have contended with the task of balancing these approaches to accurately ascertain legislative intent. While the strict textual scheme remains important, it is insufficient on its own, as modern courts increasingly emphasise the need to consider the statute's purpose and context, as well as the broader legislative scheme. The purposive approach allows courts to interpret revenue laws in light of their underlying objectives, preventing unjust or absurd outcomes that might result from a strict approach. Using a doctrinal legal research methodology, this article examines statutes, subsidiary legislation and relevant Tanzanian case law to demonstrate the application and limits of both approaches. The article highlights recent judicial decisions where the courts have applied either approach, reflecting divergent views on statutory interpretation in revenue law. The article also reviews existing literature on this subject to contextualise the ongoing debate over the shift towards a purposive interpretation. The article concludes that while the pendulum continues to swing between strict and purposive approaches, the purposive approach is increasingly favoured to harmonise statutory text with legislative purpose. The courts must avoid interpreting provisions in isolation and instead consider the entire legislative framework to ensure the just and coherent application of tax laws. This balanced interpretative approach helps to uphold the integrity of revenue statutes and aligns judicial decisions with Parliament's intent, thereby addressing modern tax challenges more effectively.

Keywords

Strict approach, purposive approach, swinging pendulum, tax law.

1. Introduction

The approach to statutory interpretation has undergone significant change over the past few decades, particularly in interpreting revenue statutes. The change is from a strict, or literal, approach to a more purposive one.¹ This shift has been viewed as quite bold,

1 Burrows, J 'The Changing Approach to the Interpretation of Statutes' (2002) 33(3-4) *Victoria University of Wellington Law Review* 984.

* LLB, LLM and PhD in Tax Law (Lecturer at the School of Law and Justice, Dar es Salaam Tumaini University, Tanzania), Advocate of the High Court of Tanzania <<https://orcid.org/0009-0004-8957-3004>>; email: bsaitu@gmail.com



given that revenue statutes have for a long time been considered penal statutes, and have been interpreted accordingly, that is, strictly and in favour of the taxpayer.² But it seems the pendulum is swinging in the interpretation of revenue statutes. There have been arguments about whether it is time to shift the judicial approach to interpreting revenue statutes – to a more purposive approach rather than a strict one.³ The shift from a strict to a purposive approach to interpreting revenue statutes is a pressing issue in contemporary tax jurisprudence.⁴ Traditionally, the courts favoured a strict or literal interpretation of revenue laws, based on the principle that taxes must be clearly imposed.⁵ However, this approach has increasingly come under scrutiny, particularly as modern revenue laws become more complex and as taxpayers, especially businesses, devise sophisticated tax-avoidance schemes that exploit literal interpretations. The purposive approach allows courts to interpret statutes in light of their underlying objectives, thereby preventing outcomes that, while legally permissible, may undermine parliament's intention.⁶

Furthermore, this trend is important in the global context, where tax avoidance and base erosion continue to challenge governments and fiscal authorities.⁷ Consequently, jurisdictions around the world, including those in Africa, are gradually adopting a purposive interpretation to close legal gaps and encourage equitable tax administration.⁸ By doing so, the courts are better positioned to uphold the integrity of tax systems and align judicial interpretation with broader economic and social policy goals. This article focuses on analysing the evolving trends in the interpretation of revenue statutes, particularly the shift from the traditional strict approach to the purposive approach. It also examines divergent views on these evolving trends and concludes by offering a way forward informed by observed judicial developments.

2. Methodology

This article employs a doctrinal legal research methodology, critically examining statutes and case law relevant to the interpretation of revenue statutes. The specific doctrines scrutinised include the strict (literal) and purposive interpretation rules, as applied in various Tanzanian judicial decisions. The doctrinal method also focuses on statutes, subsidiary legislation, and case law, since the primary legal data are obtained through

2 Lonquist, T 'The Trend Towards Purposive Statutory Interpretation: Human Rights at Stake' (2003) 13(1) *Revenue Law Journal* 18.

3 Ali, A 'The Literal Interpretation Rule in Tax Statutes: The Barclays and the Commissioner of Domestic Taxes Cases' (2023) 2(1) *African Journal of Commercial Law* 199.

4 Livingston, M 'Practical Reason, Purposivism, and the Interpretation of Tax Statutes' (1996) 51 *Tax Law Review* 677.

5 Jones, JA 'Tax Law: Rules or Principles?' (1996) 17(3) *Fiscal Studies* 63.

6 Ibrahim, U & Akinde, Z 'Purposive Approach to Statutory Interpretation: Comparative Analysis and Impact on Nigerian Legislative Drafting' (2024) 11(1) *Journal of Commercial and Property Law* 51.

7 Iqbal, N, Khan, N & Khan, L 'The Impact of Global Tax Reforms on Multinational Corporations: A Study of Base Erosion and Profit Shifting (BEPS)' (2025) 3(1) *The Critical Review of Social Sciences Studies* 3291–3310.

8 Seligson, M 'Judicial Forays in Statutory Construction: Endumeni and Its Impact on the Interpretation of Fiscal Legislation' (2021) 12(2) *Business Tax and Company Law Quarterly* 45.

critical reading and analysis of these sources.⁹ Various cases decided by Tanzanian courts are cited and analysed to demonstrate evolving trends in statutory interpretation, highlighting the extent to which courts apply the strict (literal) and purposive interpretation rules in the context of revenue statutes, and showing how the pendulum swings between these two interpretative approaches. Most of the cases cited are recent, and the doctrines emerging from them are outlined to highlight the divergent views on the evolving trends in statutory interpretation. Additionally, relevant literature is reviewed to assess the extent to which it addresses the perceived shift from a strict to a purposive approach to interpreting revenue statutes.

3. Revenue statutes

Revenue statutes are the laws governing the imposition, administration, and collection of revenue for government expenditure or for any other purpose designated by law.¹⁰ Revenue statutes are divided into two groups, namely tax laws¹¹ and non-tax laws.¹² The former are provided for under Part A of the First Schedule to the Tanzania Revenue Authority Act, while the latter appear under Part B of the same law.¹³ Section 15 of the Tax Administration Act mandates the Tanzania Revenue Authority (TRA) to administer and give effect to the tax provisions of the Tanzania Revenue Authority Act. Further, section 5(2)(e) of the same law provides that the TRA has the power to assess, collect and account for all revenues imposed and charged under the non-tax laws specified in Part B of the First Schedule. Generally, the difference between tax laws and non-tax laws is that under tax laws, revenue¹⁴ is collected from income and profits or turnover,¹⁵ whereas under non-tax laws, revenue is collected from sources other than taxes.

4. Interpretation of revenue statutes

The general rule is that the Act speaks for itself. The courts cannot create ambiguity and then seek some principles of interpretation.¹⁶ The courts should not be overzealous in searching for ambiguities or obscurities in words that are plain.¹⁷ The duty to interpret revenue statutes arises only where the language of a statute is not plain or when the words

9 Kiunsi, HB 'Watching the Watcher: Evaluating the Tanzania Revenue Authority in Administration of Tax' (2021) 28(1) *Huria Journal* 55.

10 Section 5(1)(a) of the Tanzania Revenue Authority Act [CAP 399 RE 2023].

11 Section 3 of the Tax Administration Act [CAP 438 RE 2023]. This section defines tax law to include: (a) a law listed in the First Schedule to the Tanzania Revenue Authority Act, excluding the East African Community Customs Management Act; (b) any other law providing for the administration of tax by the Authority; (c) any international agreement concluded under section 7; and (d) any regulations made under this Act or made under any Act mentioned in paragraph (a) or (b).

12 Section 5(2)(e) of the Tanzania Revenue Authority Act.

13 *Ibid*, section 5(1)(a).

14 Section 3 of the Tanzania Revenue Authority Act provides that revenue means taxes, duties, fees, rates, fines or any other monies imposed by or collected under the laws or the specified provisions of the laws set out in the First Schedule.

15 Sections 3, 4 and 100 of the Income Tax Act [CAP 332 RE 2023].

16 Barak, *A Purposive Interpretation in Law* (Princeton University Press 2005) 339–370.

17 Cross, R *Statutory Interpretation* (3rd ed, Butterworths 1995) 59–61.

or phrases used are ambiguous and give more than one meaning.¹⁸ This implies that when the language is plain and unambiguous, and admits of only one meaning, no question of construction of a statute arises. Various rules govern the interpretation of tax statutes: the strict rule, the golden rule, the mischief rule, the *ejusdem generis* ('of the same kind') rule, the *expressio unius est exclusio alterius* ('the mention of one thing excludes others') rule, the *noscitur a sociis* ('it is known by its associates') rule, the harmonious construction rule, the beneficial rule, the construction of machinery provision rule, the purposive approach, the rule on the operation or commencement of the statute, and the rule of rank.¹⁹

The court is not compelled to apply a particular rule of interpretation, as interpreting a statute is an art that requires judicial analysis and assessment of many factors before applying any rule.²⁰ A party to a dispute who wants the court to apply a particular rule of interpretation should advance arguments or provide justifications for the court to apply such a rule.²¹ The practice has been for each party to a dispute to advance an argument before the court in support of the rules which seem to favour their case. A good example is *Commissioner General, Tanzania Revenue Authority v Aggreko International Projects Ltd*,²² where counsel for both parties, recognising that interpreting provisions in tax matters is critical, invited the court to interpret the statute. The appellants' counsel pleaded for the court to use a purposive approach, whilst the respondents invited the court to interpret the relevant provisions by using the plain meaning approach. Each party focused on the rule that would benefit them if the court applied it to their case.

5. Rules of interpretation of revenue statutes

5.1 Strict approach

In *Cape Brandy Syndicate v Inland Revenue Commissioners*,²³ the court stated that a strict approach must be followed when interpreting revenue statutes. Specifically, it emphasised that taxation can be imposed only through clear and unambiguous language. Therefore, there is no room for inference, implication or equitable considerations in matters of tax law. However, this does not mean that tax statutes should be interpreted narrowly or unfairly against the Crown. Rather, the court clarified that the statute must be applied solely on its express terms. This approach ensures that taxpayers are liable for taxes only where the law clearly provides for it, thus promoting certainty and fairness in tax administration.

Furthermore, Tanzanian courts have consistently applied the strict approach when interpreting revenue statutes, as demonstrated in several cases. For instance, in *Pan African Energy Tanzania Ltd v Commissioner General Tanzania Revenue Authority*,²⁴ the court,

18 *Pan African Energy Tanzania Ltd v Commissioner General Tanzania Revenue Authority* Civil Appeal No. 172 of 2020 (Court of Appeal of Tanzania at Dar es Salaam).

19 Vogel, K *Double Taxation Conventions* (4th ed, Kluwer Law International 1997) 45–70.

20 Bennion, F *Statutory Interpretation* (4th ed, LexisNexis Butterworths, 2013) 13–18.

21 Smith, J 'The Role of Advocacy in Statutory Interpretation' (2018) 42(3) *Journal of Legal Studies* 567.

22 Civil Appeal No. 148 of 2018 (Court of Appeal of Tanzania at Dar es Salaam).

23 1921 1 KB 64.

24 Civil Appeal No. 172 of 2020 (Court of Appeal of Tanzania at Dar es Salaam).

while referring to the decision in *Republic v Mwesige Geofrey and Another*,²⁵ emphasised that when the language of a statute is clear and unambiguous, the judicial role is complete. Courts must therefore presume that the legislature precisely expresses its intentions in the statute. Consequently, there is no justification for altering or adding to the statutory text, as doing so would encroach upon the exclusive legislative function under the guise of interpretation. Moreover, in *Commissioner General of Tanzania Revenue Authority v ECOLAB East Africa (Tanzania) Limited*,²⁶ the court reaffirmed the strict interpretation approach by relying on the principles established in *Pan African Energy Tanzania Ltd v Commissioner General Tanzania Revenue Authority*²⁷ with regard to interpreting revenue statutes. The application of a strict approach to interpreting revenue statutes was further explained in *Shana General Store Limited v Commissioner General, Tanzania Revenue Authority*.²⁸ The court clarified that the correct method when interpreting tax statutes is to apply the plain meaning rule. Specifically, when a provision uses clear and specific language that leaves no room for doubt or ambiguity, it must be applied strictly as written, without any interpolation.

Based on these authorities, it is clear that courts must not insert or change words in revenue statutes to alter their intended meaning. When the statutory language is clear and unambiguous, the strict interpretation rule applies. The legislature expresses exactly what it intends in the statute and means precisely what it states. In tax matters, the emphasis is placed exclusively on the explicit wording of the law, leaving no scope for implied meanings or assumptions. Tax law does not allow for equity or intendment; nothing should be inferred or added beyond the statute's clear language.²⁹

5.1.1 *Different perspectives on the interpretation of revenue statutes*

Different perspectives exist on the evolving trends in interpreting revenue statutes, with some favouring a strict approach rather than a purposive one. Some advocate applying the strict approach and support the court's use of it. The following reasons are given in support of the strict approach. First, taxation laws deprive citizens of their property interests by imposing pecuniary burdens. In *Commissioner General of Tanzania Revenue Authority v ECOLAB East Africa (Tanzania) Limited*,³⁰ the court emphasised that because taxation laws deprive individuals of their property through monetary obligations, they must be interpreted with caution. Any unclear or ambiguous provision should be resolved in favour of the taxpayer rather than the revenue authorities responsible for enforcement.

Similarly, in *North Mara Gold Mine Limited v Commissioner General of Tanzania Revenue Authority*,³¹ the court recognised that tax laws infringe upon property rights and personal interests, and therefore must be interpreted strictly. Since taxes impose a burden on citizens, they should only be applied when the language is clear and explicit.

25 HC Criminal Appeal No. 29 of 2014 [2014] TZHC 2881.

26 Civil Appeal No. 35 of 2020 (Court of Appeal of Tanzania at Dar es Salaam).

27 See note 26.

28 Civil Appeal No. 392 of 2020 (Court of Appeal of Tanzania at Dodoma).

29 McGee, R *Principles of Taxation Law* (3rd ed, Thomson Reuters, 2018) 120–125.

30 Note 29.

31 Civil Appeal No. 78 of 2015 (Court of Appeal of Tanzania).

Excessive taxation can harm businesses, and if not governed by clear statutory provisions, it may disrupt operations or even force closure due to overwhelming tax liabilities.³² Additionally, heavy taxes can hinder economic growth, deter investments and reduce savings for future projects. For these reasons, a strict approach to interpreting revenue laws is essential.³³ Also, in *Commissioner General Tanzania Revenue Authority v African Barrick Gold PLC*,³⁴ the court endorsed the principle that where statutory language is clear and unambiguous, it must be given its plain and ordinary meaning. To support this position, the court referred to the work of Singh and Kaur;³⁵ the authors state that when the language of a statute is plain and unambiguous, effect must be given to that meaning alone, without resorting to further interpretation.

Furthermore, the authors caution against an overly zealous search for ambiguity where none exists, emphasising that the role of the court is not to speculate about legislative intent or underlying policy, but to give effect to the words actually used. Therefore, the intention of the legislature must be derived solely from the clear language of the statute, focusing not only on what has been expressly stated, but also on what has been deliberately omitted. This reasoning highlights the need for courts to adhere strictly to the statutory text where its meaning is plain. Second, due to the punitive nature of tax law, it is essential that taxpayers clearly understand, in unambiguous terms, whether and how they are liable for tax. Accordingly, the Court of Appeal of Tanzania in *Mlimani Holdings Ltd v Commissioner General of TRA*³⁶ explicitly recognised and adopted Saiteu's perspective, which emphasises that tax statutes must be interpreted strictly, relying on the plain and ordinary meaning of the words. Therefore, the court stressed that when the language of a tax statute is clear and unambiguous, it must be applied in its strict, literal sense to ensure certainty and fairness in tax liability.

Based on this reasoning, tax statutes must be clear and precise in imposing tax liability. One of the fundamental canons of a sound tax system is certainty; taxpayers must be able to understand their obligations clearly, especially concerning the taxability of their income.³⁷ Therefore, revenue statutes should be interpreted strictly to avoid imposing tax burdens not expressly provided by law. For instance, section 4 of the Income Tax Act,³⁸ which serves as the charging provision, must be construed strictly. When courts are called upon to interpret such provisions, they must ensure that only those individuals or entities expressly covered by the section are subjected to tax, and no one else. This approach upholds legal certainty and prevents arbitrary or unintended extensions of tax liability.³⁹

Third, tax is a creature of statute and the constitution,⁴⁰ and hence the provisions must be interpreted strictly, with interpolation avoided. The constitutions of different

32 Sadiq, A *Taxation and Business Sustainability* (Oxford University Press, 2019) 102–110.

33 Musgrave, RA *Public Finance in Theory and Practice* (6th ed, McGraw-Hill, 2000) 345–355.

34 Civil Appeal No. 11 of 2020.

35 Singh, A & Kaur, H *Introduction to the Interpretation of Statutes* (4th ed, 2020, 23.

36 Civil Appeal No. 505 of 2022.

37 James, S & Christopher, N *The Economics of Taxation* (9th ed, Fiscal Publications 2012) 41–45.

38 CAP 332 RE 2023.

39 Thuronyi, V *Comparative Tax Law* (Kluwer Law International 2003) 56–59.

40 Preston, N 'The Interpretation of Taxing Statutes: The English Perspective' (1990) 7 *Akron Law Journal* 43.

countries have specific articles governing tax matters. This underscores the seriousness of tax matters and the need for their administration to comply with the law. The constitutions of different tax jurisdictions provide for the right to property.⁴¹ The money payable to the tax authority forms part of a person's property and, hence, cannot be taken from the owner without the law clearly providing for it. Therefore, the provisions of the law must be construed without adding words not provided in the specific section of the law. Article 138(1) of the Constitution of the United Republic of Tanzania of 1977 provides that no tax of any kind shall be imposed, save in accordance with a law enacted by parliament or pursuant to a procedure lawfully prescribed and having the force of law by virtue of a law enacted by parliament. This shows that the payment of taxes must be provided for by the law. Therefore, the provisions of the law must be given their literal or plain meaning, and the courts should endeavour to interpret the revenue laws strictly by protecting taxpayers' property (including money). The court should not serve as a tax-collecting agent for the government by assisting the tax authority in collecting revenue, as this will adversely affect taxpayers and economic growth.⁴²

Fourth, the strict approach helps to reduce tax evasion⁴³ and avoidance⁴⁴ because taxpayers will regard the tax system as fair if the law is very clear with respect to their tax liability. Where the courts interpret statutes unnecessarily, the revenue laws become complex and tax planning by taxpayers will be inevitable to reduce their tax liability.⁴⁵ Taxpayers will exploit the complexity of the revenue statutes created by the court to structure their transactions so they fall within the scope of the law, thereby reducing their tax liability. This will be possible because certain sections of the revenue laws can be interpreted in different ways. When the law is strictly interpreted by the court, taxpayers will be certain about how various provisions apply. However, when provisions of revenue laws are interpreted under a purposive approach, taxpayers may regard the system as unfair and resort to tax evasion and avoidance mechanisms to reduce their tax liability.⁴⁶ Such unfairness may result from the court, instead of applying the plain meaning rule to the statute, employing the purposive rule to establish the intention of parliament.

41 Article 24(1) of the Constitution of the United Republic of Tanzania of 1977 [CAP 2 RE 2023] provides that every person is entitled to own property and has a right to the protection of their property held by the law. Further, Article 24(2) provides that it is unlawful for any person to be deprived of their property for nationalisation or any other purposes without the authority of law that provides for fair and adequate compensation.

42 Thuronyi, V (ed) *Tax Law Design and Drafting* (vol 1, International Monetary Fund 1996) 45–60.

43 Tax evasion is an illegal activity in which a person or an entity deliberately avoids paying a tax provided for by revenue laws. Those caught evading taxes are generally subject to criminal charges and substantial penalties. See *African Barrick Mine Plc v Commissioner General Tax Appeal No. 16 of 2015* (TRAT).

44 The term 'tax avoidance' refers to the use of legal methods or strategies to minimise the amount of tax owed by an individual or a business. This happens when a person or company exploits the tax system to reduce their tax liabilities. See section 8 of the Tax Administration Act.

45 Jones (note 5) 63.

46 Van Brederode, RF & Krever, R (eds) *Legal Interpretation of Tax Law* (Kluwer Law International 2014) 308–316.

This approach may be detrimental to the taxpayer. Hence, it will affect a taxpayer's voluntary tax compliance, tax evasion, and tax avoidance.⁴⁷ This will affect the revenue collected by the tax authority and economic growth.

The reasons for the strict (traditional) approach to interpreting revenue statutes may be summarised into several key points. Firstly, tax laws impose pecuniary burdens that effectively deprive citizens of their property interests. Moreover, given the punitive nature of taxation, taxpayers must clearly and unambiguously understand whether and how they are liable. Furthermore, since tax is a creature of statute and the constitution, its provisions should be construed strictly, avoiding interpolation. Finally, this approach will reduce tax evasion and avoidance by promoting fairness, as taxpayers can clearly understand their tax liabilities under the law.

Courts in Tanzania and other common-law jurisdictions have consistently adopted a strict approach to interpreting tax statutes. This approach is grounded in the principle that tax laws, by their very nature, impose burdens on taxpayers and must be applied only where liability is clearly established by the statute. The courts emphasise that where the language of a revenue statute is plain and unambiguous, it must be given its strict and literal meaning.⁴⁸ This ensures legal certainty and protects taxpayers from arbitrary or unclear impositions by revenue authorities.

5.1.2 Criticisms of the strict approach

The strict approach has been criticised for its inflexibility and its failure to adequately account for the underlying purpose and broader context of tax legislation.⁴⁹ This approach emphasises a narrow, literal interpretation of statutory language, often neglecting the principles of liberal construction and the legislative intention behind the enactment of tax laws. In an age marked by speedily evolving economic realities and technological advancements, such rigidity can hamper the law's capacity to adapt and respond efficiently to new challenges. Moreover, the strict approach may sometimes produce outcomes that are not only unjust but also absurd, frustrating the fundamental objectives of the legislation.⁵⁰ For example, by focusing solely on the literal meaning of words without regard to context, courts may inadvertently permit tax-avoidance schemes or create loopholes that undermine the tax system's integrity. This can impede fair and equitable dispute resolution, erode taxpayer confidence, and ultimately reduce voluntary tax compliance.

These significant limitations have fuelled increased advocacy for the purposive approach to statutory interpretation in tax law. The purposive approach seeks to discern and give effect to the legislature's intention, ensuring that tax statutes are construed

47 Nkundabanyanga, SK et al 'Tax Compliance in a Developing Country: Understanding Taxpayers' Compliance Decision by Their Perceptions' (2017) 4(6) *Journal of Economic Studies* 931.

48 Kirby, M 'Statutory Interpretation: The Meaning of Meaning' (2011) 35(1) *Melbourne University Law Review* 113.

49 Jeffries, JC 'Legality, Vagueness, and the Construction of Penal Statutes' (1985) 71(2) *Virginia Law Review* 189.

50 Smit, JA 'The Limits of Literalism: Balancing Strict and Purposive Approaches in Tax Law Interpretation' (2018) 21(3) *Journal of Taxation Law* 245.

consistently with their underlying objectives.⁵¹ This approach allows for a more flexible and practical application of tax statutes, particularly in complex cases where a strict literal interpretation would produce results contrary to the spirit of the law. Consequently, courts and tax authorities are increasingly favouring purposive interpretation to promote fairness, clarity and the effective administration of tax laws.

5.2 Purposive approach

In *Pan African Energy Tanzania Ltd v Commissioner General Tanzania Revenue Authority*,⁵² the court explained when the purposive approach should be used for interpreting tax statutes. The court emphasised that the most reasonable way to interpret a statute is by examining the legislature's intention through natural and probable indicators such as the words used, the context, subject matter, effects, consequences, and the underlying purpose or spirit of the law. The court stated that what the legislature intended can be legitimately understood only from what it has enacted, either explicitly or by necessary implication. However, the full scope of what is implied cannot be determined without considering the statute's overall purpose and objectives. The court warned that a strictly mechanical interpretation of words, divorced from purpose or concept, would render most remedial and beneficial legislation ineffective. Generally, the primary determinant of legislative intention is the language employed in the statute itself. The court in *Star System International Co Ltd v Agatha Cyril Nangawe*⁵³ reinforced this approach by stating that courts should, in all cases, adopt an interpretation that advances the general legislative purpose underlying the statutory provisions. This confirms the importance of interpreting legislation in a manner that aligns with the law's intended objectives rather than relying solely on a literal reading of the text.

From the foregoing, it is clear that a mechanical interpretation of statutory language, when disconnected from the underlying purpose, may undermine the effectiveness of remedial and beneficial legislation. This is particularly relevant where the literal wording permits more than one interpretation. In such situations, the purposive approach becomes essential for discerning the legislature's true intention.⁵⁴ Therefore, courts should adopt interpretations that align with and promote the legislative purpose behind the provisions in question.

Although the purposive approach is increasingly applied to interpreting tax statutes, it remains a subject of debate, with different perspectives reflecting evolving trends.⁵⁵ Some express concern that this approach may compromise the principle of legal certainty. Others contend that this approach provides a more precise reflection of legislative intention, especially in the context of increasingly complex and dynamic tax systems. Supporting

51 Crawford, LB et al *Public Law and Statutory Interpretation: Principles and Practice* (Federation Press 2017) 41.

52 Civil Appeal No. 172 of 2020 (Court of Appeal of Tanzania at Dar es Salaam).

53 Civil Appeal No. 10 of 2015 (High Court at Tabora).

54 Maxwell, JC *Statutory Interpretation* (Sweet & Maxwell 2010) 165.

55 Burton, L & Redmayne, M *Public Law and Statutory Interpretation: Principles and Practice* (2nd ed, Federation Press 2017) 60.

judicial perspectives assert that the purposive approach aids a more flexible and context-sensitive interpretation of tax statutes.⁵⁶

5.2.1 *Perspectives supporting the purposive approach*

The following perspectives are advanced in favour of applying the purposive approach to the interpretation of tax legislation. First, the purposive approach is used to interpret anti-avoidance provisions in tax law. This was clearly articulated in *Tullow Tanzania BV v The Commissioner General, Tanzania Revenue Authority*,⁵⁷ where the court reaffirmed the use of purposive interpretation, consistent with its earlier application in *BP Tanzania* when analysing section 69(e) of the Income Tax Act. In that case, the court focused on giving effect to the legislative intention behind the provision. Additionally, in *African Barrick Gold PLC v Commissioner General*,⁵⁸ the Tax Revenue Appeals Tribunal provided a detailed explanation of the purposive approach, drawing insights from English jurisprudence. Citing the House of Lords' decision in *WT Ramsay Ltd v IRC*⁵⁹ the Tribunal acknowledged Lord Wilberforce's view that although tax statutes are generally construed according to their clear wording, courts are not limited to literal interpretation. Rather, they should consider the statute's overall context, structure and purpose, ensuring that interpretation aligns with the broader legislative objectives.

Consequently, the purposive approach plays a critical role in interpreting anti-avoidance provisions, primarily by closing loopholes that taxpayers might exploit to arrange their tax affairs. Some taxpayers may deliberately structure their financial arrangements to reduce their tax liabilities or render certain transactions non-taxable by exploiting legal ambiguities. Such practices, however, contradict the underlying objective of revenue laws: to facilitate the fair and efficient collection of revenue. Therefore, by adopting a purposive approach, courts can interpret tax laws in a manner that aligns with legislative intent. This, in turn, helps to curb tax avoidance and protects government revenue from erosion through abusive tax schemes.

Second, the purposive approach is used to ascertain Parliament's intention. Normally, to ascertain the intention of the parliament, reference can be made to the words used in the statute, the context, the subject matter, and the effects and consequences of the law.⁶⁰ If it is not possible to ascertain the intention from these aspects, the court will adopt a purposive approach. Furthermore, the purposive approach allows courts to consider extraneous materials that shed light on the background and context in which a statute was enacted. These include legislative history, explanatory notes and other relevant documents.⁶¹

56 Goldswain, GK 'The Purposive Approach to the Interpretation of Fiscal Legislation – The Winds of Change' (2008) 16(2) *Meditari Accountancy Research* 107.

57 Civil Appeal No. 24 of 2018 (Court of Appeal of Tanzania at Dodoma).

58 Tax Appeal No. 16 of 2015.

59 [1982] AC 300.

60 Lowe, D & Potter, C *Understanding Legislation: A Practical Guide to Statutory Interpretation* (Hart Publishing, 2018) 51.

61 *Tullow Tanzania BV v Commissioner General, Tanzania Revenue Authority* [2018] TZCA 82; *PanAfrican Tanzania Limited v Commissioner General, Tanzania Revenue Authority* [2021] TZCA 287.

Third, the purposive approach is used to address the problems of absurdity and injustice. In *Star System International Co Ltd v Agatha Cyril Nangawe*,⁶² the court stated that whenever the interpretation of a statute gives rise to an absurd and unjust situation, judges can and should use their good sense to remedy the situation by reading in words if necessary, to do what parliament would have done had they had the situation in mind. This can be done by applying the purposive approach to the interpretation of statutes. To avoid arriving at illogical or irrational or unjust decisions, the court should employ the purposive approach. The purposive approach was adopted into our legal system in the Court of Appeal's decision in *Joseph Warioba v Stephen Wassira and Another*⁶³ and has been followed in other decisions, including decisions on tax disputes,⁶⁴ as explained above in the cited cases.

In *Pan African Energy Tanzania Ltd v Commissioner General Tanzania Revenue Authority*,⁶⁵ the court applied the purposive approach to avoid absurdity and arriving at an unjust decision. In this case, the court referred to the Bill to understand its purpose and reasoning. The Bill in question was the Special Bill Supplement No. 4 of 12 May 2014, which led to the enactment of the Tax Administration Act. This Act also amended several other tax laws, including the Tax Revenue Appeals Act.⁶⁶

As noted above, there are different perspectives on the application of the purposive approach in interpreting tax laws. While some support its application, others express concerns, particularly given evolving trends in statutory interpretation. Tax jurisdictions have witnessed a shift from a traditionally strict or literal interpretative approach toward a more purposive one. This shift reflects efforts to align legal interpretation with the broader objectives of legislation. The interpretative pendulum continues to swing between the strict and purposive approaches, influenced by prevailing judicial philosophies. This dynamic suggests that there is no fixed or uniform method of interpretation; courts may favour one approach in certain contexts and adopt the other in different circumstances. Such disparity reflects a shifting and evolving trend in legal reasoning, particularly in the interpretation of tax statutes.

5.2.2 Criticisms of the purposive approach

The following are criticisms of using the purposive approach in this context. First, it is possible to commit a purposive error. The modern approach to statutory interpretation

62 Civil Appeal No. 10 of 2015 (High Court at Tabora).

63 [1997] TLR 272.

64 For example, in *SBC Tanzania Limited v Commissioner General of Tanzania Revenue Authority* Civil Appeal No. 54 of 2013 (Court of Appeal of Tanzania at Dar es Salaam), the court applied the purposive approach: 'the entire reading of the relevant Rules and adopting a purposive approach to the interpretation of Rule 23(1), in our respective view, the framers of the Rules could only have intended that the persons vested with authority to sign the decree that is to be issued by the Tribunal thereunder was meant to be the members who heard the appeal.'

65 Civil Appeal No. 172 of 2020.

66 The objectives and reasons included the following: 'Tangu kuanzishwa kwa Mamlaka ya Mapato pamoja na maboresho yaliyofanyika, pamekuwa na ugumu wautekelezaji wa sheria za kodi katika maeneo yafuatayo: (i) Not applicable. (ii) Not applicable (iii) Kuwepo kwa usumbufu kwa walipakodi unaotokana na taratibu za usimamizi na utawala zinazotofautiana kwa kila aina ya kodi ambayo wakati mwingine husababisha walipakodi kupoteza haki zao za msingi bila sababu.'

provides that courts or judicial bodies must use text, context and purpose harmoniously to ascertain legislative intention. There is little guidance on how to use these tools of interpretation. As a result, courts can commit a purposive error under the modern approach. This happens when courts give too much weight to the abstract primary purposes of a statute at the expense of rules, standards and delegations incorporated in the text.⁶⁷ The purpose of the statute can be ascertained either from the text itself or from other sources such as legislative history and preambular statements. The purposive error may arise from the court's acceptance of a rhetorically abstract purpose and its attachment of too much weight to it, without paying sufficient attention to the text, scheme, and secondary purposes. The risk of a purposive error occurring is heightened when courts base their reasoning on an abstract purpose with little textual support. The result is a distortion of how the legislature intended its expression (the text) to apply.⁶⁸ In the context of tax matters, the danger of employing the purposive approach to interpreting tax statutes is that the ordinary, well-intentioned person is at greater risk of being caught by a wide interpretation of sweeping provisions.⁶⁹ The interpretation can be broad enough to include the charge to tax persons or transactions that were outside the original target.

Second, the purposive approach fails to distinguish between the powers of the legislature and the judiciary. This is because it allows greater interpretative freedom by drawing on extraneous materials from the pre-enactment phase of legislation, including early drafts, Hansard, and committee reports.⁷⁰ This freedom allows the court, instead of interpreting the sections of the law according to their plain meaning, to apply them broadly, which can be treated as making the law out of context, contrary to what the legislator intended when enacting a particular law. Sometimes, the court's interpretation seems to contradict the parent Act.⁷¹ Granting judges too much discretion allows them to impose their views and potentially alter the law's meaning based on their interpretation of its purpose.⁷² If the purposive approach is not guided by established principles, it will be difficult to distinguish between the legislator's role and the judiciary's role. The court's interpretation must not infringe upon the powers of the legislator.

Third, the purposive approach can lead to uncertainty and inconsistency in legal interpretation because judges have different views on the statute's purpose, resulting in different outcomes in similar cases.⁷³ This has resulted in conflicting decisions by the

67 Ivor, J 'Courts and Administrative Law' (1936) 3 *Harvard Law Review* 435.

68 Mancin, M 'The Purpose Error in Statutory Interpretation' (2022) *Alberta Law Review* 228.

69 *Greenberg v IR Commrs* (1972) 47 TC 240.

70 Fahey, AE 'United States v O'Hagan: The Supreme Court Abandons Textualism to Adopt the Misappropriation Theory' (1998) 25 *Fordham Urban Law Journal* 507.

71 In *Tanga Cement Public Limited Company v Commissioner General, Tanzania Revenue Authority* (Civil Appeal No. 160 of 2025 [2025] TZCA 1179), the Court of Appeal held that service fees paid to non-residents do not fall under 'business profits' but constitute other taxable income subject to withholding tax. This demonstrates how courts may adopt a broader interpretation of tax provisions, extending their application beyond their literal meaning and potentially creating inconsistencies with the law's intended scope.

72 Greenawalt, K 'Discretion and Judicial Decision: The Elusive Quest for the Fetters that Bind Judges' (1975) *Columbia Law Review* 60.

73 Elhauge, E *Statutory Default Rules: How to Interpret Unclear Legislation* (Harvard University Press 2008) 3.

superior courts, affecting the application of the doctrine of *stare decisis* and judicial precedent. This inconsistency can make it difficult for individuals and businesses to know how the law will be applied, potentially undermining confidence in the legal system.⁷⁴

6. Conclusion and recommendations

After examining and analysing the different perspectives on applying both the strict and purposive approaches to interpreting revenue laws, the following conclusions and recommendations can be drawn. First, while the textual scheme is important in the modern approach to interpreting revenue laws, it is not conclusive because of the purposive approach. Historically, purpose referred to the mischief that a statute was meant to address. It served as a key tool for courts to interpret legislation according to their understanding of that purpose.⁷⁵ Second, for courts nowadays, the best starting point is the basic principle that the bare text is not the sole determinant of legislative meaning. Instead, the total context of the provision, including its purpose, must be consulted, no matter how plain the disposition may seem upon an initial reading.⁷⁶ Thus, purpose should be considered in every case, not only where there is textual ambiguity. Additionally, the courts can use legislative history⁷⁷ and rely on limited consequential reasoning⁷⁸ to ascertain relevant purposes.⁷⁹

Third, the court should decisively move beyond the purposive error by clarifying that purpose and text must be interpreted harmoniously. In other words, abstract purposes, both on the court's doctrinal terms and normatively, should generally not be permitted to overwhelm specific purposes, means and schemes set out in the text.⁸⁰ While legislative instructions will be recorded in text, this text cannot be understood separately from why it was enacted or the particular purposes undergirding it. These purposes must be given effect in every case. Fourth, it can never be correct to look at a specific provision in a taxing Act, any more than in other legislation, in isolation, and to resort to the context and scheme of the Act as a whole only if that provision gives rise to an apparent equivocation or ambiguity. In recent years, greater emphasis has been placed on discerning the legislative purpose and fitting the particular provision under consideration into a reasonable and coherent scheme.⁸¹ Fifth, a new purposive approach is supplanting the traditional approach

74 This problem is evident in recent Tanzanian tax jurisprudence. In *Amana Bank Limited v Commissioner General (TRA)* (Civil Appeal No 180 of 2025 [2025] TZCA 1281), the Court of Appeal was faced with differing interpretations of Murabahah financing and ultimately held that it constitutes a taxable supply of goods rather than an exempt financial service. Such competing interpretations demonstrate how judicial differences may lead to uncertainty and the inconsistent application of tax laws, making it difficult for taxpayers to predict legal outcomes.

75 The so-called mischief rule originated in *Heydon's* case.

76 *ATCO Gas & Pipelines Ltd v Alberta (Energy and Utilities Board)* 2006 SCC 4 para 48. See also *Chieu v Canada (Minister of Citizenship and Immigration)* 2002 SCC 3 para 34.

77 *Media Q MI Inc v Kamel* 2021 SCC 23. See also Barak (note 16 above) 113.

78 Sullivan, R 'Statutory Interpretation in the Supreme Court of Canada (1998–1999)' (1999) 30(2) *Ottawa Law Review* 175, 178.

79 Mancin (note 68 above) 926.

80 Fallon, RH 'Judicially Manageable Standards and Constitutional Meaning' (2006) 119(5) *Harvard Law Review* 1294.

81 *Chevron UK Ltd v IR Commrs* [1995] BTC 8,034.

in cases where the strict construction of statutory language might lead to an unjust or absurd result unintended by parliament.⁸² On the other hand, what is heralded as a new approach to statutory interpretation may be no more than a ‘fleshing out’ of the age-old presumption against injustice or absurdity.⁸³

Therefore, when interpreting revenue statutes, the pendulum will continue to swing between the strict and purposive approaches as courts try to ascertain the intention of parliament by considering not only the language of the statute but also its context, subject matter, effects and consequences. This ongoing dynamic reflects the challenge of balancing two essential judicial objectives – ensuring legal certainty and giving effect to legislative intent. On the one hand, the strict approach emphasises clear and precise language, thus protecting taxpayers from interpretations that could unfairly increase tax liabilities. This approach upholds predictability and safeguards taxpayers’ rights by limiting taxation to what is explicitly stated in the law. On the other hand, the purposive approach is necessary when a literal interpretation risks enabling tax avoidance or undermining the law’s purpose. In such situations, the courts look beyond the plain text of the legislation to its broader context and objectives, thereby promoting fairness and ensuring the effective administration of revenue laws. Consequently, the pendulum swings as courts carefully balance the need for clarity with the imperative to prevent abuse and achieve justice in tax matters.

In conclusion, there is no fixed or uniform approach to statutory interpretation. Instead, the courts adapt their approach based on context, reflecting a shifting and evolving trend in legal reasoning, especially in the complex realm of tax statutes. This dynamic emphasises the judiciary’s continual balancing act between legal certainty and legislative intent.

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82 Barnes, JW ‘Statutory Interpretation, Law Reform and Sampford’s Theory of the Disorder of Law’ (1995) 23(1) *Federal Law Review* 1.

83 *Mangin v IR Commr* [1971] AC 739.