



TAX DISPUTE RESOLUTION & TAX REPORTING AND STRATEGY

Presentation by:

Caleb Mokaya
Senior Advisor, Tax & Regulatory Services, KPMG
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Presentation agenda

Tax Dispute Resolution

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Tax Dispute Resolution



Introduction

- ❑ The Kenyan Budget has been swelling overwhelmingly over the past decade
- ❑ Kenya Revenue Authority (KRA) is under constant pressure to match up revenue collection
- ❑ This has resulted to:
 - Attempt to increase the tax base
 - Increased taxpayer audits;
 - Significant adjustments and penalties; and

Introduction



- Increased tax disputes
- Tax payers should therefore:
 - Prepare for challenges raised by tax authorities;
 - Be aware of the available avenues for engaging the KRA; and
 - Understand the tax assessment objection procedure



Tax Audit Procedure

Uphold public interest

Tax Audit Procedure

- ☐ KRA issues a notice of intention to audit;
 - ☐ Taxpayers prepare and avail the information requested;
 - ☐ KRA perform a desk audit and issue an initial assessment;
- *KRA is striving to move from audits to real time tax payer monitoring

Tax Dispute Process

Tax Dispute Process

Tax decision – Section 2 & 50, Tax Procedures Act, 2015 (TPA)



Taxpayer objection (30 days) –
Section 51(1) TPA



Objection decision (60 days) –
Section 51(8) to (11) TPA



Appeal to TAT – Section 52 TPA



Appeal to High Court/Court of
Appeal – Section 53 & 54 TPA

Dispute Resolution

Dispute Resolution

- ❑ The objective is the resolution of differences or difficulties regarding the interpretation or application of the law
- ❑ Dispute resolution mechanisms:
 - Negotiation;
 - Mediation;
 - Arbitration; and
 - Litigation



Dispute Resolution

- ❑ Dispute resolution mechanisms in Kenya:
 - TAT and High Court (Litigation);
 - Corporate Tax Dispute Resolution (Mediation);
and
 - Mutual Agreement Procedures (Mediation).

Tax Appeals Tribunal

Tax Appeals Tribunal Procedure

Governed by the Tax Appeals Tribunal Act, 2013

File notice of intention to appeal
with the Commissioner and
TAT within 30 days, S. 12

Pay a fee of KES 20,000

Pay all taxes
not in dispute,
S. 52

File memorandum of
appeal, statement of
facts and tax decision
within 14 days of filing
notice, S. 13(6)

Tax Appeals Tribunal

- ❑ Formerly the VAT Tribunal and the Local Committee
- ❑ Litigated disputes had been deferred for years prior to the TAT Act
- ❑ The members of the former Tribunal were unable to deal with technical issues
- ❑ The 2015 rules were intended to speed up the process and give taxpayers more certainty

Tax Appeals Tribunal



- ❑ Appeals are concluded faster, however:
 - Technical issues are still a major challenge;
 - TAT is viewed as being pro-tax authority;
 - Taxpayers are not satisfied with the decisions;
 - Taxpayers are opting to pursue Alternative Dispute Resolution (ADR);
 - A number of Appeals not resolved under ADR proceed to High Court.

Alternative Dispute Resolution

KPMG Alternative Dispute Resolution



- ❑ ADR framework became effective 1st July 2015
- ❑ Objectives of the framework are to:
 - Provide a taxpayer focused approach to dispute resolution
 - Provide an additional or alternative means of resolving tax disputes
 - Provides a voluntary, participatory and facilitated discussion
 - Facilitates early dispute management without limitations of judicial/quasi-judicial processes

Alternative Dispute Resolution

- ❑ ADR negotiations and settlements are permitted under S. 55 of the TPA and S. 28 of the TAT Act
- ❑ ADR can be initiated by either party at any stage in the appeal
- ❑ Either party may reject the request
- ❑ Facilitator of ADR has no power to impose decisions regarding the outcome of the dispute
- ❑ ADR is an internal process controlled by KRA
- ❑ It is a without prejudice process

Alternative Dispute Resolution Procedure

Taxpayer files
notice of
intention to
appeal

Either party raises
request for ADR in
writing to the
TAT/Court and
other party

Parties accept
request and inform
TAT/Court

TAT/Court stay
hearing for
specified amount
of time (max. 90
days)

Facilitator is
appointed from
CTDR office at
KRA

ADR process
concludes with
negotiated/no
settlement filed
with
TAT/Court

Alternative Dispute Resolution



Benefits:

- Expedite resolution
- Decreases costs
- Enhance trust between KRA and taxpayers
- Confidential
- without prejudice process

Challenges:

- Parties acting in bad faith

Mutual Agreement Procedures

Mutual Agreement Procedures (MAP)

- ❑ MAPs are processes arising under double taxation avoidance agreements to facilitate negotiations between tax authorities
 - Arise where double taxation is likely to occur as a result of an adjustment performed by one authority
 - Taxpayer may request for the process
 - MAPs provisions should, but do not compel authorities to reach an agreement

Q & A

