

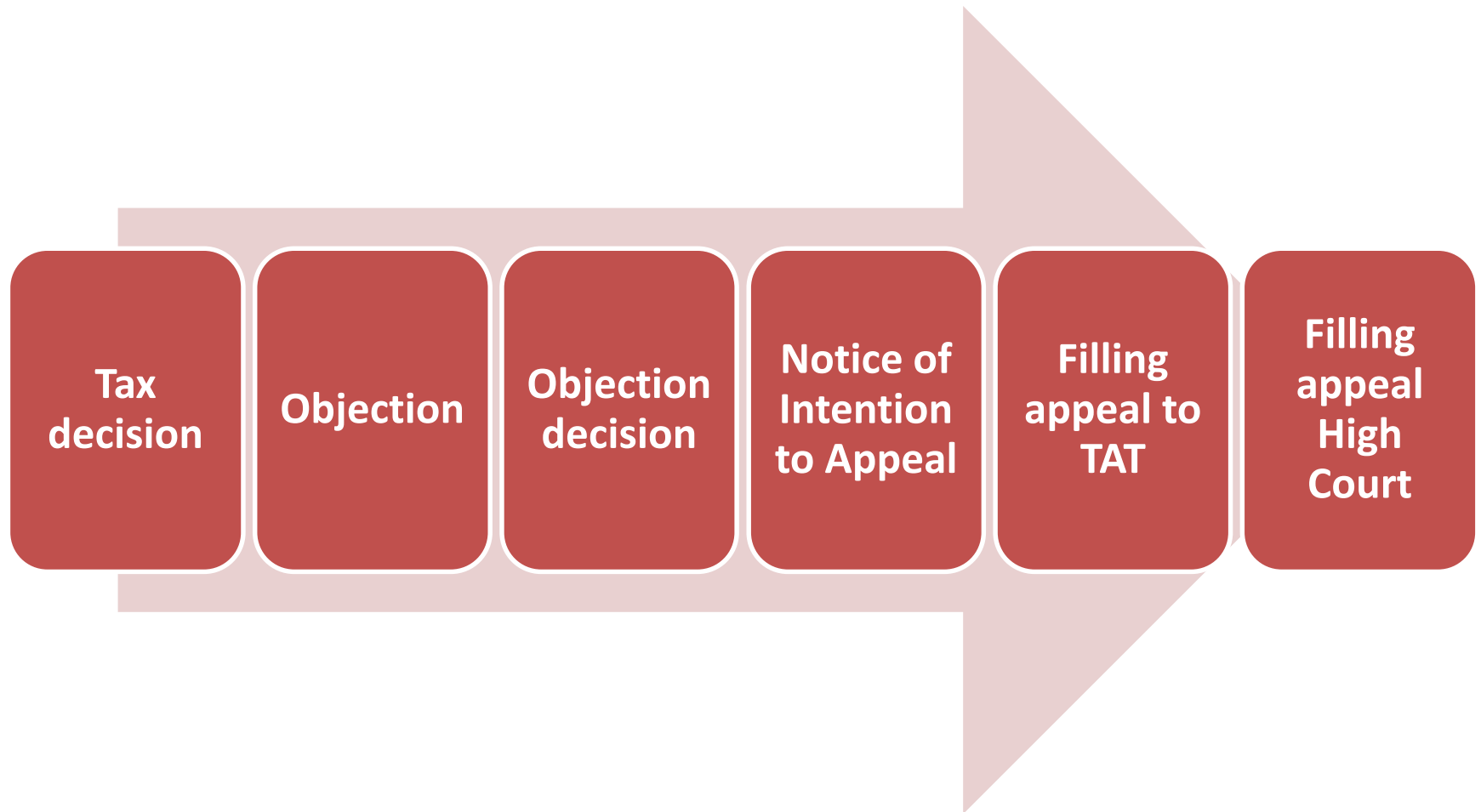
Tax Dispute Resolution Mechanism

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Tax Appeals

Dispute Process



Valid Objection



- Timeliness – lodged within 30 days of receiving tax demand/assessment
- Room to seek extension of 30 days from the Commissioner
- State precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments

Objection Decision



- Commissioner shall consider the objection and decide either
 - to allow the objection in whole or
 - in part, or
 - disallow it,
- Detailed explanation of how decision has been arrived at
- Objection decision must be issued within 60 days from the date when tax payer issued the their objection
- If the Commissioner has not made an objection decision within **sixty days** from the date that the taxpayer lodged a notice of the objection, the objection shall be allowed

Tax Appeal Procedure



GUIDED BY TAX APPEALS TRIBUNAL ACT, 2013

If the tax payer is still in contention with the KRA's objection decision he should;

- Give ***Notice of Intention to Appeal*** in writing to the Commissioner
- Pay a non-refundable fee of ***KES 20,000*** to the Tax Appeals Tribunal on filing the Notice
- Serve a notice of Intention appeal to the Tribunal in writing within ***30 days*** upon receipt of the objection decision of the Commissioner

Tax Appeal Procedure



- Within 14 days from the date of filing the notice of appeal, submit of a ***memorandum of appeal and statements of facts***

“enough copies, as may be advised by the Clerk”

- For the appeal to be valid Appellant to pay tax not in dispute
- The decision of the Tribunal will be **given within 90 days** from the date the appeal is filed.

Tribunal Procedure



- The secretary to the Tribunal shall advise all parties of the time and place of the hearing at least **14 days** before the hearing
- Evidence may be given orally or through affidavits or any other manner as directed by the Tribunal
- The appellant may appear in person or be represented by a tax agent

Tribunal Procedure



Options during appeal;

- A party may withdraw the appeal in writing;
- Tribunal dismisses the appeal for lack of prosecution;
- Tribunal dismisses the appeal when the appellant fails to heed its direction;
- Tribunal upholds the appeal if respondent fails to make appearance;
- The parties may reach an agreement, which they will report to the Tribunal.

Constitution of Tribunal Panel



- The Tribunal consist of a Chairperson and fifteen to twenty other members
- Not more than five members of the Tribunal should be advocates of the High Court of Kenya.
- A person qualifies to be the Chairperson of the Tribunal if they is qualify to be appointed as a Judge of the High Court;

Constitution of Tribunal Panel



Qualifications to be a member of tax tribunal;

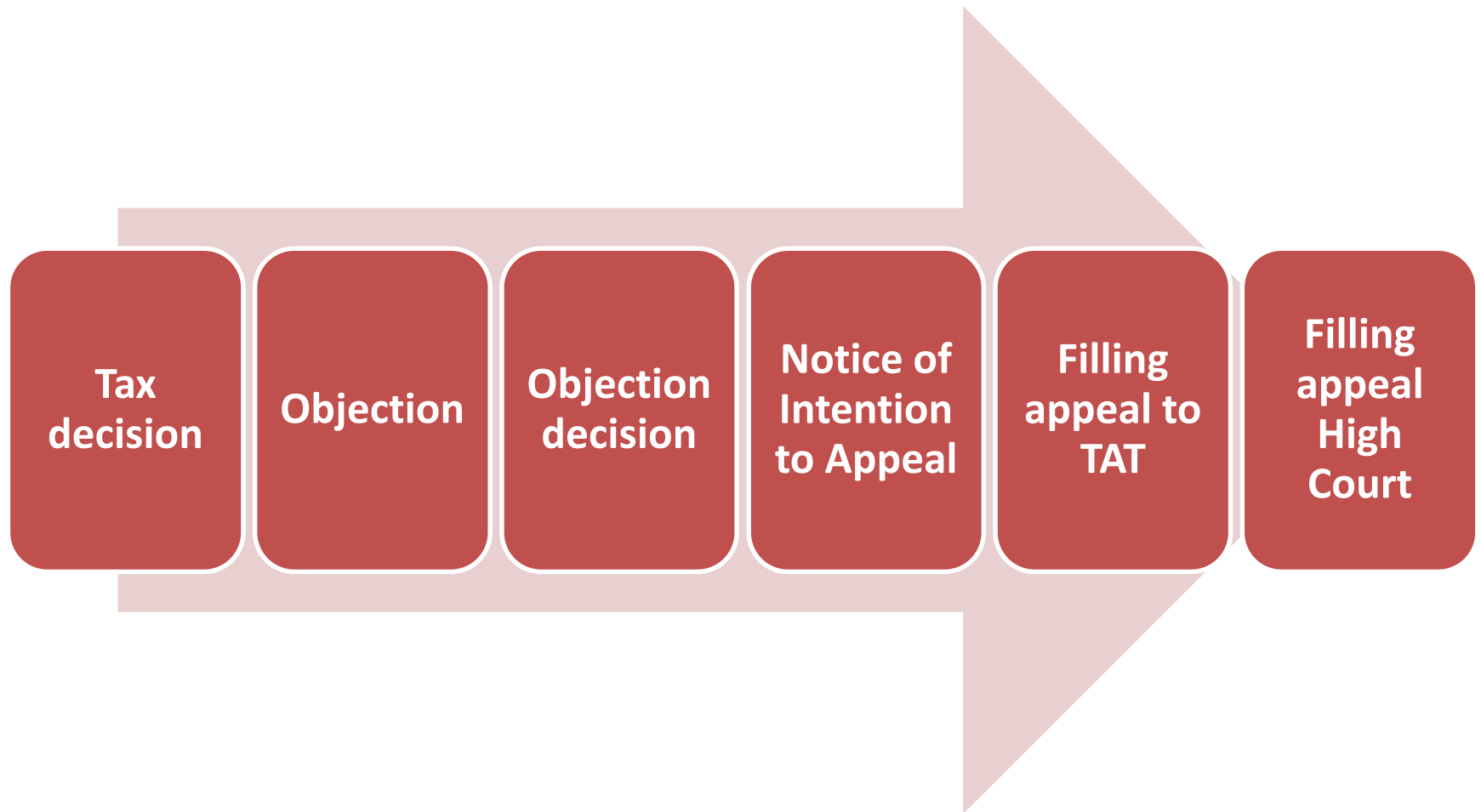
- i. High moral character and integrity in accordance with Chapter six of the Constitution;
- ii. Hold a degree in law, business, finance, public finance, economics, insurance or related discipline from a university recognised in Kenya or any other relevant qualification from an institution recognised in Kenya;
- iii. Has at least ten years' experience in matters
- iv. Is not a public officer or an employee of Kenya Revenue Authority or a tax agent;
- v. Has met his tax obligations;
- vi. Has not been convicted of an offence under any law; and
- vii. Has not been adjudged bankrupt by a Court of Law

Next step after TAT



- If a party is dissatisfied by the decision of the tribunal, should appeal to the High Court within thirty days of being notified the decision
- If a party is dissatisfied by the decision of the high court, should appeal to the Court of Appeal within thirty days of being notified the decision

Dispute Process RECAP



Alternative Dispute Resolution

Alternative Dispute Resolution



ADR was introduced as an additional or alternative means of resolving tax disputes outside the judicial process (litigation and quasi judicial process (tribunals). *Effective July 2015*)

Legal backing anchoring ADR

- Constitution of Kenya
- Revenue statutes
- The Tax Appeals Tribunal Act – TATA

ADR Features



- Initiation is voluntary at stage of demand or at Tribunal or court
- Internal process controlled by KRA
- Does not replace the right to proceed to the Tax Appeals Tribunal/ Courts of Law
- The negotiations and settlements must have legal basis within the Tax Laws
- Independence of facilitators is emphasised
- Taxpayer may represent self or through a tax agent
- Parties may agree to engage the Attorney General as Chief Legal Advisor to Government

Objectives of the ADR Framework



- **Taxpayer focused** approach to dispute resolution
- Internal structures to support tax dispute resolution through oversight, monitoring and management of the ADR processes
- Support for creation of a central database on tax disputes handled in ADR to guide future dispute resolution for consistency

Objectives of the ADR Framework



- Guidelines stipulated for the parties during the ADR discussions
- Timelines for resolving tax disputes so as to bring efficiency to the process.
- An additional approach for dispute management & resolution of tax disputes

ADR Process



- Begins after an objection decision is issued to the taxpayer
- The taxpayer or tax representative makes a formal appeal to the Tax Appeal Tribunal first before requesting for the ADR process
- KRA and tax payer must give consent that they are in agreement to pursue ADR
- A formal application is then made to the Tax Appeals Tribunal and forwarded to Corporate Tax Dispute Resolution Division (CTDR) . CTDR is the office charged with the responsibility of facilitating the ADR process between the Taxpayer and the Commissioner

ADR framework



- ***Suitability Test***- factors to consider in assessing suitability of Cases for ADR. Not all disputes may be settled under ADR e.g , illegalities
- ***Conduct*** - ADR discussions must be held within an environment of decorum, flexibility and parties must subscribe to standards of conduct and rules
- ***Timelines*** - 90 days

ADR framework



- ***Tribunal Court initiated ADR*** - dependent on Court deadlines given
- ***Documentation-ADR discussions*** must be supported by relevant documentation
- ***Termination of Discussions-*** Upon lack of co-operation by either party, conduct unbecoming of ADR discussions, mutual agreement to terminate.

Features of the ADR framework



Where parties to the dispute have agreed on terms;

Agreement terms must be put into writing, signed by both parties/their representatives and witnessed by the Facilitator.

Each party is to retain a copy of the signed agreement

Signed agreement shall be in full & final settlement and shall be binding to both parties.

Agreement can be adduced as evidence

Agreement does not become precedent for cases

Benefits of ADR



- Expedite process of dispute resolution
- Decrease cost of dispute resolution associated with litigation
- Enhance and manage relationships
- Enhance compliance

QUESTIONS



Contacts



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