

TAX DISPUTES MANAGEMENT & THE EMERGING ISSUES

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Scope

- Objections, Appeals & ADR Cases Management
- The Legal Provisions underpinning the Process.
- Structure of Dispute Management in KRA.
- 2018/19 Budget Policy, Tax Policy & Tax Disputes Management.
- Emerging Issues. Challenges & Way forward.

Objections to a Tax Decision

- Are lodged under **Section 51(1)** of the TPA. **Objection Decision.**
- Timeliness - Lodged within **30 days** – **Section 51(2)** TPA
- Objection grounds – **Section 51(3)(a)**TPA
- States amendments required to correct decision and reasons for amendments- **Section 51(3)(a)** TPA
- **Section 51(3)(b)** TPA.- **Tax not in dispute** - payable
- Commissioner is bound to respond to taxpayers objection within **30 days.**
- The **stock of objections: 2,379No. 838No** Approved , & **176No** Rejected.
- The process is currently **automated**, *itax*. What is the stock of manual cases under objection?

Appeals to TAT

Guided By Tax Appeals Tribunal Act, 2013 No. 40 of 2013 – Effective 2nd December 2013 (TATA)

- Give notice in writing to the Commissioner & pay a non-refundable fee of twenty thousand shillings to the Tax Appeals Tribunal – **Sec 12** of TATA
- Serve a notice of appeal to the Tribunal in writing within **thirty days** upon receipt of the decision of the Commissioner – **Sec 13** TATA
- Within **fourteen days** from the date of filing the notice – **Sec 13** TATA.
- The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal to which the decision relates. – **Sec 13(6)** TATA
- For the appeal to be valid Appellant to **pay tax not in dispute** – **Sec 52** TPA
- Detailed guidelines in The Tax Appeals Tribunal Procedure Rules 2015

Dispute Process

Step 1

- Tax Decision – Section **2 & 50** TPA

Step 2

- Objection by Taxpayer – Section **51(1)** TPA – Within **30** days

Step 3

- Objection decision - Section **51(8) to (11)** TPA – Within **60** days.

Step 4

- Appeal to Tax Tribunal – Section **52** TPA

Step 5

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

The Legal Provisions Underpinning the Process

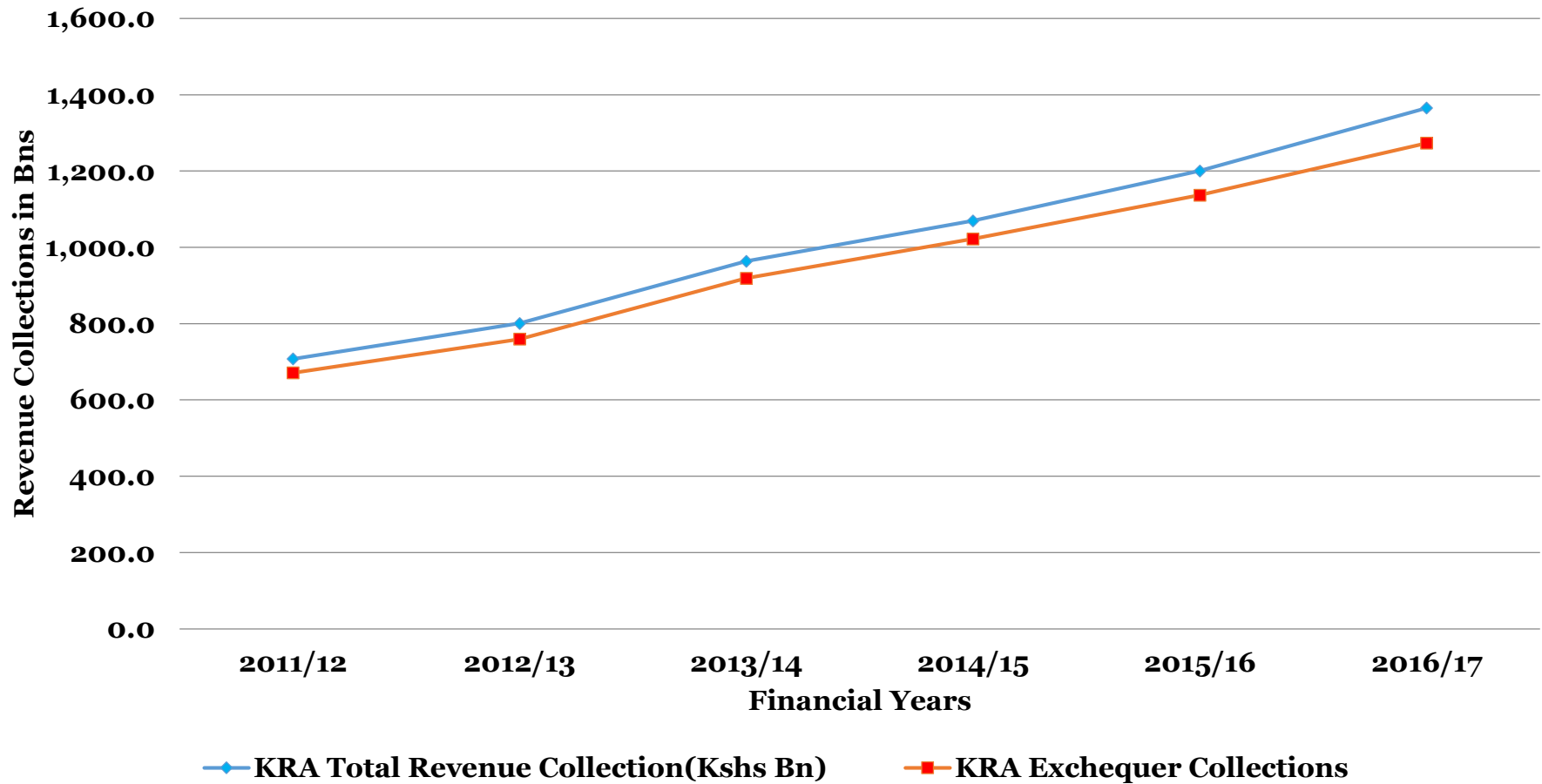
- **Article 159 (2) (c)** of the Constitution- Alternative forms of dispute resolution.
- **Section 28** of TAT Act, 2013 – **Power of Tribunal** where the parties reach agreement.
- **Section 55** of the TPA, 2015 – Settlement of Disputes out of Court or Tribunal.
- **Sec 13** of TAT Act, 2013- Procedure for appeal.(**30 days** upon the receipt of the decision of the Commissioner)
- **Sec 13 (7)** of the TAT Act, 2013 - Tribunal shall hear and determine an appeal within **90 days**.



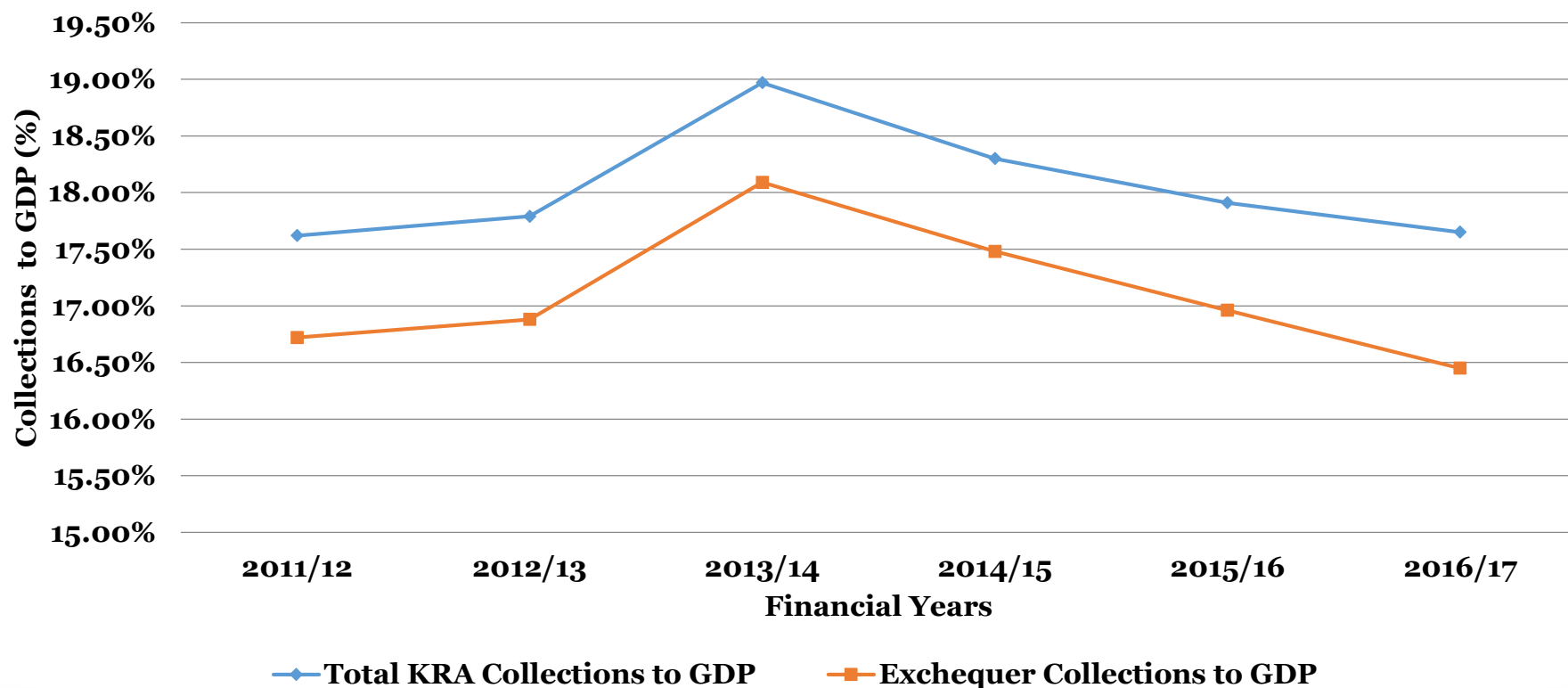
Structure of Disputes Management in KRA

- Currently housed in Legal Services & Board Coordination Dept.
- Strong linkages with Revenue departments, DTD generates highest No. of disputes (**97%**).
- Non Quantitative Disputes – ***‘Kenton College’***
- TAT is independent, constituted **Chairperson, 5** Advocates & **11** other members (professions).
- Quasi Judicial, members appointed by CS-NT, with a term of **5 years** for chairperson & **3** yrs for others.- Term of Members expires on **31st, March 2018**.
- CTDR - LS&BC – ADR- **Restructuring** of Audit & Tax Advisory Firms – **TAC** members now gazette, No 11294 – **17th November 2017**

Trend lines of Revenue Collections & Exchequer



Trend Analysis of Revenue Collections & Exchequer Receipts to GDP.

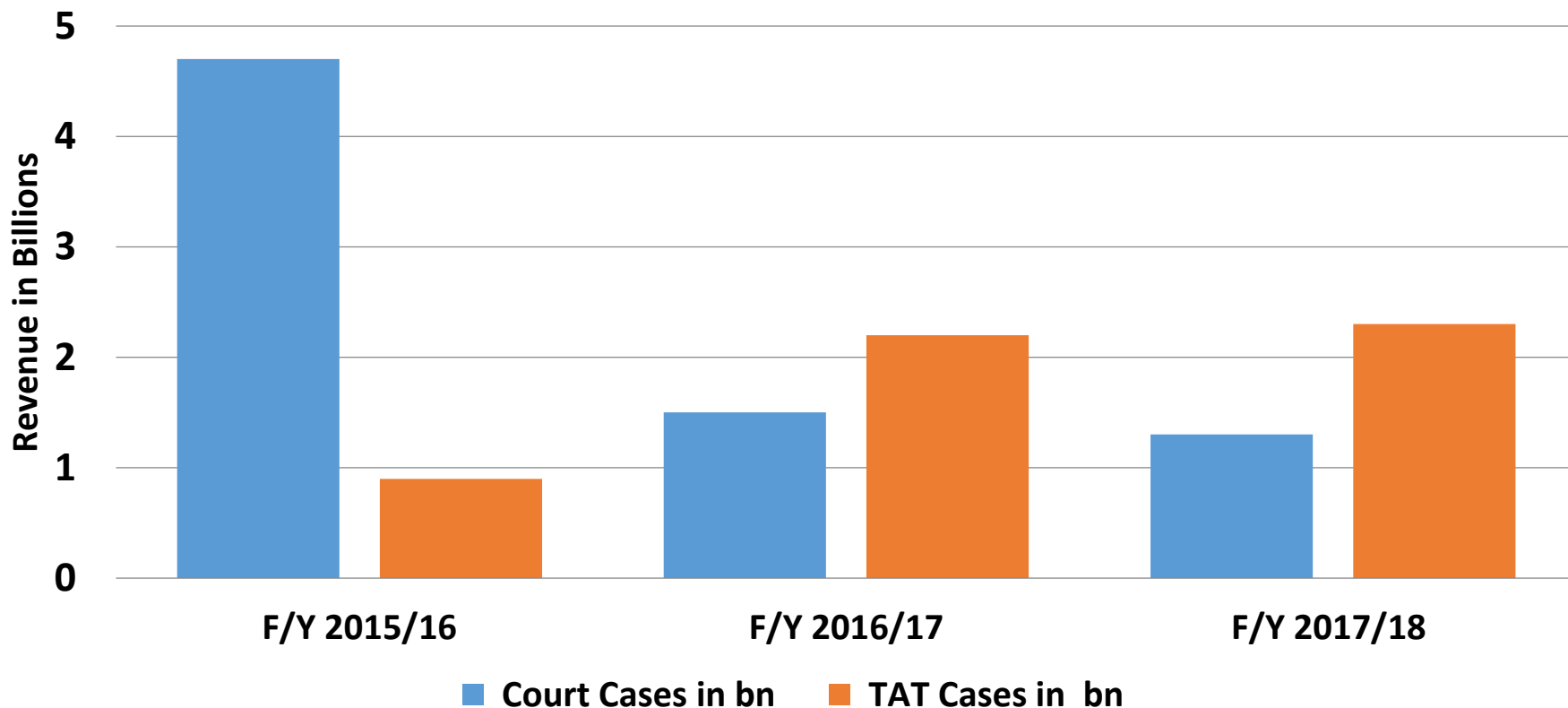


Summary & Tabulation of ADR Performance

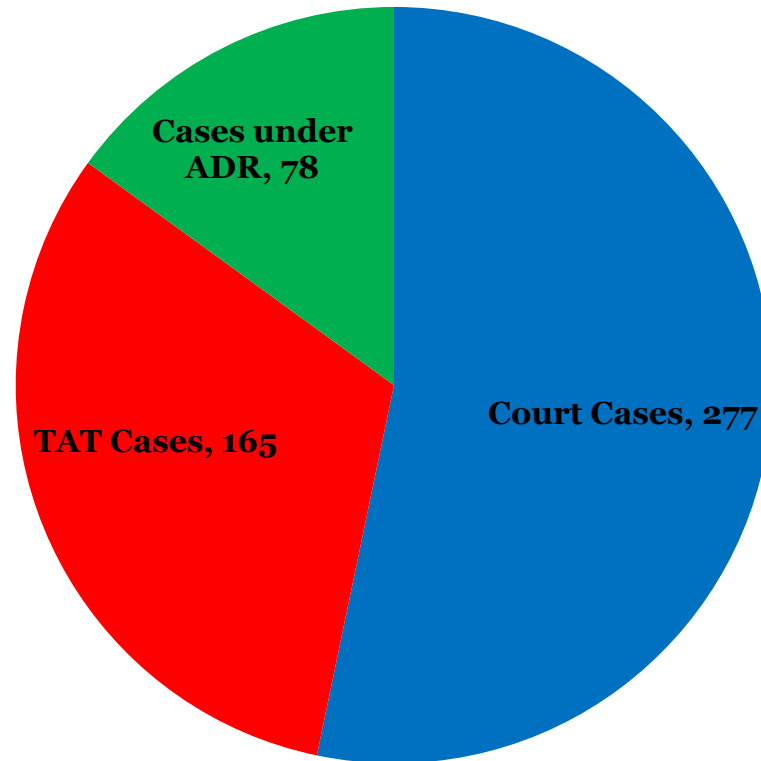
	2015/2016	2016/2017	2017/2018
No. of cases	36	54	24
Disputed Revenue	4,864,241,684	12,845,797,531	23,850,606,812
Revenue Yield	1,674,641,676	4,484,364,285	1,069,705,994
Revenue Foregone	3,189,600,008	8,361,433,246	22,780,900,818
Percentages & Ratios	66%	65%	96%

Trend Analysis since TAT Creation

Trend of Revenue Implications



Cumulative Cases As at December 2017



Emerging Issues, Challenges & Lessons Learnt

- High uptake of ADR to resolve disputes leading - Tax Payer Buy In, Quality Standards, Revenue Implications.
- Capacity (Technical) issues – **Lead Time – Statutory Provisions – Legal Amendments.**
- Taxpayers, Practitioners & KRA – Issue of Books & Records - **>75% objection cases** - lead time & greater appetite for ADR.
- 2018/19 Budget Policy, **Ksh 2Trillion – Tax Policy – Tax Expenditure - Revenue Mobilization** – Role of KRA & ICPAK - Specific Strategies on Disputes Management.
- Opening Stock – **Ksh 23Billion** - Automation & Simplification of Processes – Procedure Manuals & SLAs - Partnerships.
- Independence of ADR & TAT and creation of Special Courts/Benches for Tax Cases

Way Forward

- Overhauling of Incoming Tax Act – Tax Incentives & Exemptions. Review of Rates & Expansion of Tax Base
- Automation & Transformation Process in the Authority - Government & its Agencies – Private Businesses.
- 3rd Party Data and Intelligent driven Tax Compliance Interventions.
- FDIs besides Domestic Tax and Investment Policy Initiatives – **Big 4** & Tax Amnesty initiatives
- **Revamp Dispute Management Program.**
- Comprehensive Monitoring and Evaluation framework for ADR, TAT & Court Cases,

