

ALTERNATIVE TAX DISPUTE RESOLUTION FRAMEWORK

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Principle of Equity in Taxation

- The principle of equity in Taxation which is now anchored in the Kenya Constitution 2010 underscores that every taxable citizen must pay taxes and that everyone must pay their fair share of the taxes.
- Article 201 (a) (i) **“The burden of taxation must be shared *fairly.*”**

Scope Of Presentation

1. Introduction
2. Tax Decisions & Overview of The Dispute Process
3. Valid Objections & Valid Appeals
4. What is the ADR Framework?
5. Objectives/ Purpose of ADR Framework
6. Legal Support for the Framework
3. Salient Features of the ADR Framework
4. The ADR Agreement
5. Improving the ADR Framework
6. Initiating the ADR Process

TAX DECISIONS BY THE COMMISSIONER

The Tax Procedures Act 2015 (TPA) – effective 16th January 2016 is to guide administration of taxes – Section 2(2).

Tax disputes arise from Tax decisions. Tax decisions that may be made by the Commissioner under Section 2 include:

- Assessments – Sections 29, 30 & 31- Default, Advance or Amended assessment
- Determinations under sections 15,17 and 18 on appointed persons
- Refund decision
- Demand for penalty

THE DISPUTE RESOLUTION PROCESS

Tax Decision – Section 2 TPA



Objection by Taxpayer – Section 51(1) TPA



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



Appeal to Tax Appeals Tribunal– Section 52 TPA



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

VALID OBJECTION TO A TAX DECISION

1. Are lodged under Section 51(1) of the TPA before proceeding to any other written law
2. Timeliness - Lodged within 30 days – Section 51(2) TPA
3. **Precisely states objection grounds – Section 51(3)(a)TPA**
4. **States amendments required to correct decision and reasons for amendments- Section 51(3)(a) TPA**
5. **Entire amount not in dispute paid in full – Section 51(3)(b)TPA**

Taxpayer to be notified in writing where an objection is not valid – Section 51(4)TPA

VALID APPEALS TO TAX APPEALS TRIBUNAL

GUIDED BY TAX APPEALS TRIBUNAL ACT, 2013 No. 40 of 2013 – Effective 2nd December 2013 (TATA)

1. Give notice in writing to the Commissioner & pay a non-refundable fee of twenty thousand shillings to the Tax Appeals Tribunal– Section 12 of TATA
2. Serve a notice of appeal to the Tribunal in writing within thirty days upon receipt of the decision of the Commissioner – Section 13 TATA
3. Within fourteen days from the date of filing the notice of appeal, submit enough copies, as may be advised by the Clerk, of a memorandum of appeal, statements of facts and the tax decision – Section 13 TATA.
4. The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal to which the decision relates. – Section 13(6) TATA

Detailed guidelines in The Tax Appeals Tribunal Procedure Rules 2015



What is the ADR Framework

The ADR Framework is a document which governs the Alternative Dispute Resolution process in KRA.

Quick facts about the Framework;

- ❑ Launched on 17th June 2015
- ❑ Effective from 1st July 2015
- ❑ Applies to Tax Disputes
- ❑ Users of the Framework include internal and external stakeholders, i.e. Taxpayers and the Commissioner.
- ❑ Available on the KRA website www.kra.go.ke

What are the Objectives of this Framework?



To provide;

- A 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.
- Guidelines 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

Is ADR anchored in Law?

- ✓ Constitution of Kenya, 2010 Article 159 (2) (c)
- ✓ Revenue Statutes
- ✓ The Tax Appeal Tribunal Act - TATA (Sec. 28)
- ✓ Tax Procedure Act Clause 55 (Tax Procedure Act, Section 55).



Salient Features of the ADR Framework

- ***Suitability Test***- The Framework provides for 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 as in (Section 55 TPA Act).
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.

The ADR Agreement

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.

Improving the ADR Framework

- KRA's ADR Framework is a living document and shall be reviewed from time to time to reflect changes in Law, Policy and other Regulatory Frameworks, as well as to enhance service delivery.



- Strategic and Innovative interventions are key in ensuring the growth of the framework into a dependable and efficient document, which will address the needs of both our internal and external customers.

Initiating the ADR process

- The process begins after an objection decision is communicated to the taxpayer.
- The taxpayer or tax representative make a formal appeal to the Tax Appeal Tribunal first before requesting for the ADR process
- 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
- Settlement of the dispute within 90 days of date the Tribunal/Court permits the settlement - Section 55(1) of the TPA or it shall be referred back to the Tribunal/ Court - Section 55(2) TPA.

- QUESTIONS
- WHATSAPP OR SMS TO
 - +254715476667

END OF PRESENTATION

THANK YOU!