



Tax Assessments and Dispute Resolution in the Current Tax Systems and Highlights from the Tax Appeals Tribunal

Presentation by:

David Busaule

Business Transformation Office, Domestic Taxes
Department, KRA

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Assessments in the Current Tax System



Currently assessments can be raised manually for those tax periods which returns were filed manually and through iTax for the periods which the returns were filed in iTax.

Effective 1st August 2015 when mandatory online filing and payment was implemented all respective assessments have been done through iTax.

The production of a notice of an assessment or a document under the hand of the Commissioner shall be conclusive evidence of the making of the assessment and that the amount and particulars of the assessment are correct hence both manual and system generated assessments are valid

Types of Assessments



“assessment” means a self-assessment, default assessment, advance assessment, or amended assessment, and includes any other assessment made under a tax law;

“self-assessment” means an assessment made by a taxpayer or his representative under section 28;

“default assessment” means a default assessment made by the Commissioner under section 29;

“advance assessment” means an advance assessment made by the Commissioner under section 30;

“amended assessment” means an amended assessment made by the Commissioner under section 31;

Content of an assessment order



Whether a default or amended assessment is raised manually or electronically it should contain the following minimum information;

- (a) the amount assessed as tax or the amount of a deficit or excess of input tax carried forward, as the case may be;
- (b) the amount assessed as late submission penalty and any late payment penalty payable in respect of the tax, deficit or excess input tax assessed;
- (c) the amount of any late payment interest payable in respect of the tax assessed;
- (d) the reporting period to which the assessment relates;
- (e) the due date for payment of the tax, penalty, and interest being a date that is not less than 30 days from the date of service of the notice;
- (f) the manner of objecting to the assessment.

Default Assessment



The Commissioner issues a default assessment where a taxpayer has failed to submit a tax return for a reporting period in accordance with the provisions of a tax law based on such information as may be available and to the best of his or her judgement.

The main purpose is to enforce voluntary compliance through on time filing and payments as in most cases the estimated assessment liability is higher than what the taxpayer may be liable prompting them to object and provide the original return.

Advance Assessment



- The Commissioner may issue an advance assessment based on the available information and to the best of his or her judgement if the taxpayer has not submitted a return for the reporting period.
- It may be made before the date on which the taxpayer's return for the period is due shall be made in accordance with the tax law in force at the date the assessment is made.

Amended Assessment



- Commissioner may issue an amended assessment by making alterations or additions, from the available information and to the best of the Commissioner's judgement to the original assessment of a taxpayer for a reporting period.
- A taxpayer who has made a self-assessment may apply to the Commissioner, within 5 years of the date they submitted the self assessment to make an amendment to the taxpayer's self-assessment.

Amended Assessment Cont'd



- In practice the commissioner can issue an amended assessment on the original assessment, a previous amended assessment and a default assessment.
- In practice a taxpayer can amend the amended assessment upwards but can only amend the amended assessment by the commissioner downwards through the objection process and that amended assessment will be the current active assessment/return for the taxpayer

Current Tax Dispute Resolution Process

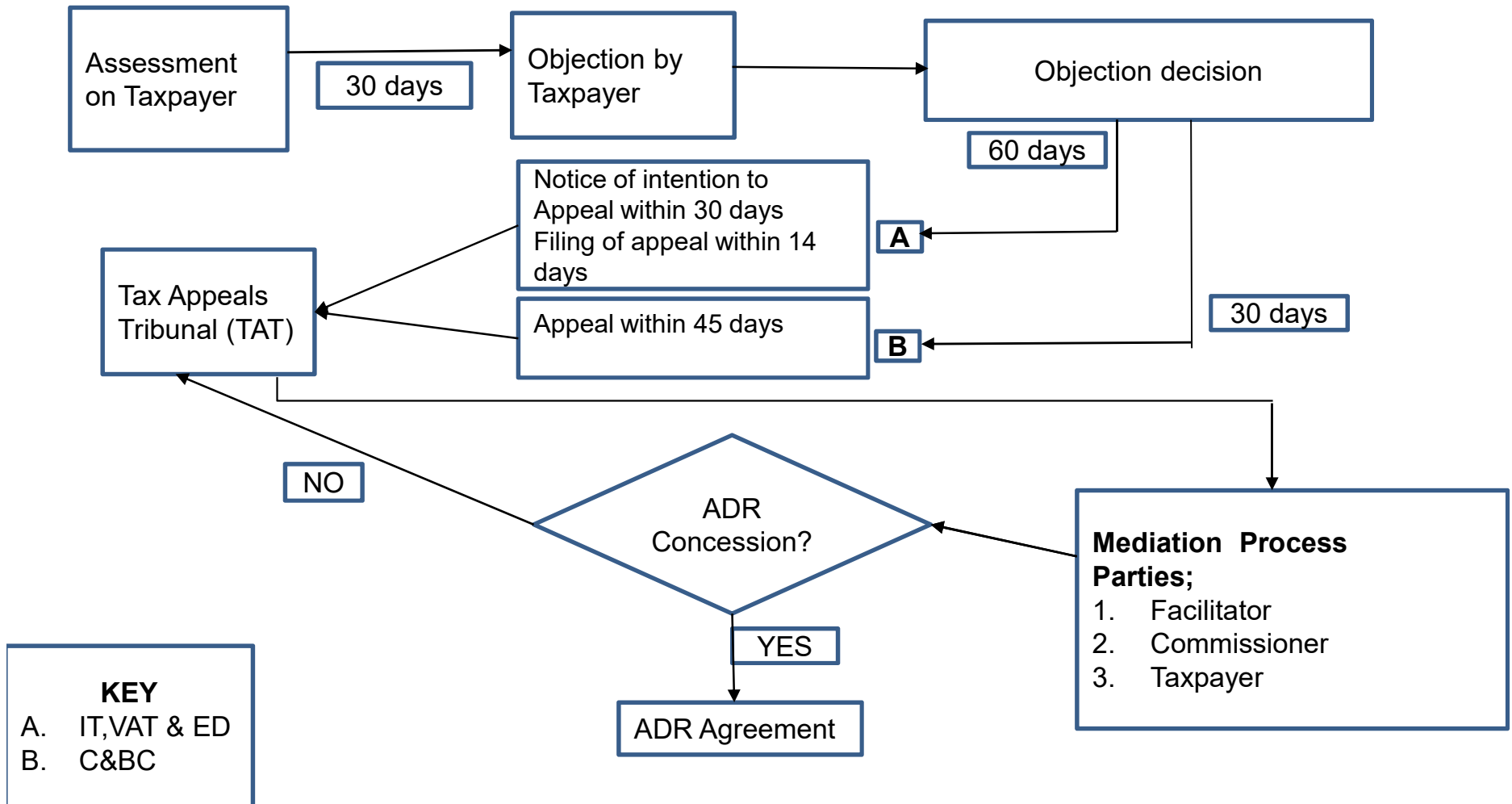


- A taxpayer who is aggrieved and wishes to dispute a tax decision of the Commissioner may lodge a notice of objection in writing with the Commissioner within 30 days of being notified of the decision.
- The objection can be lodged manually if relating to a manual assessment done on a manual return or electronically if relating to a system generated assessment on returns filed online

Objection Process



- A notice of objection shall be treated as validly lodged by a taxpayer if the notice of objection states precisely the grounds of objection, the amendments required to be made to correct the decision, and the reasons for the amendments.
- In relation to an objection to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute.
- A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.



Objection Process



- The Commissioner may allow an application for the extension of time to file a notice of objection if the taxpayer was prevented from lodging the notice of objection within 30 days of being notified of the tax decision because of an absence from Kenya, sickness or other reasonable cause and the taxpayer did not unreasonably delay in lodging the notice of objection.

Objection Process



Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to;

- i) allow the objection in whole by agreeing with the taxpayer wholly and vacate the assessment altogether,
- ii) allow the objection in part hence partially agree with the taxpayer and amend the assessment accordingly.
- ii) disallow it and totally disagree with the taxpayer and confirm the assessment.

The Commissioner's decision shall be referred to as an "objection decision"

Tax Appeals Tribunal



A taxpayer who is dissatisfied with the objection decision of the Commissioner may appeal to the Tax Appeals Tribunal

A notice of appeal to the Tribunal relating to an assessment shall be valid if the taxpayer has paid the tax not in dispute or entered into an arrangement with the Commissioner to pay the tax not in dispute under the assessment at the time of lodging the notice.

Tax Appeals Tribunal



A notice of appeal to the Tribunal shall be in writing; and submitted to the Tribunal within thirty days upon receipt of the decision of the Commissioner.

The appellant shall, 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.

Tax Appeals Tribunal



The appellant shall, unless the Tribunal orders otherwise, be limited to the grounds stated in the appeal to which the decision relates.

The Tribunal shall hear and determine an appeal within ninety days from the date the appeal is filed with the Tribunal.

A party dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court

Appeal to the High Court



A party to proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the High Court may allow, appeal the decision to the High Court.

Appeal to the Court of Appeal



A party to proceedings before the High Court who is dissatisfied with the decision of the High Court in relation to an appealable decision may, within thirty days of being notified of the decision or within such further period as the Court of Appeal may allow, appeal the decision to the Court of Appeal.

Alternative Dispute Resolution(ADR)



It is a mechanism that expedites the resolution of tax disputes.

It is an alternative method of handling tax disputes outside the;

- a) Judicial process (Courts of law)
- b) Quasi Judicial Process – Tax Appeals Tribunal (TAT)

The ADR process;

- 1)Application for ADR;
- 2)Determination of suitability of tax dispute;
- 3)Communication to taxpayer of the outcome of the suitability test;
- 4)Commencement of ADR meeting;
- 5)ADR settlement agreement is prepared and executed
- 6)Consent is drawn and filed at Tax Appeals Tribunal or Courts

*Thank
you*

