



ALTERNATIVE DISPUTE RESOLUTION (ADR)

Presentation by:

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Uphold public interest

What is ADR,



- 1) 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)
- 2) It is a mechanism that expedites the resolution of tax disputes.

Legal Framework for ADR



- 1) Constitution of Kenya Article 159 (2) (c)
- 2) Tax Procedure Act (TPA), 2015 (Sec 55)
- 3) Tax Appeal Tribunal Act (TATA), 2013 (Sec 28)
- 4) Court Annexed Mediation Process

How do tax disputes arise?



- 1) **A tax assessment** for which the taxpayer is expected to respond within 30 days.
- 2) **Taxpayer's Objection**, the Commissioner has three options namely;
 - a) To agree with the taxpayer wholly and vacate the assessment altogether, in which case there is no dispute,
 - b) To partially agree with the taxpayer and amend the assessment accordingly, or
 - c) To totally disagree with the taxpayer and confirm the assessment.
- 3) The Commissioner subsequently issues an objection decision.

Right of appeal



- 1) Following issuance of an objection decision a taxpayer (TP) is expected to;
 - a) file an intention to appeal the commissioner's decision at the Tax Appeal Tribunal (TAT) within thirty (30) days.
 - b) file a Memorandum of Appeal and Statement of Facts, within fourteen (14) days.
- 2) If TP is not satisfied with the decision at TAT, the TP can appeal to the High Court and thereafter to the Court of Appeal.
- 3) At any of the stages indicated above, the taxpayer may seek leave from TAT/Court to engage in the ADR process.

Parties to an ADR Process



1. A taxpayer may be a legal or natural person and includes;
 - a) A company; or
 - b) Association or;
 - c) Body of persons, Corporate or incorporate;
2. Commissioner – Officer(s) involved in tax audit/investigation (DTD, I&E and C&BC)
3. Facilitator – who Chairs the ADR discussions

ADR application entry point(s)



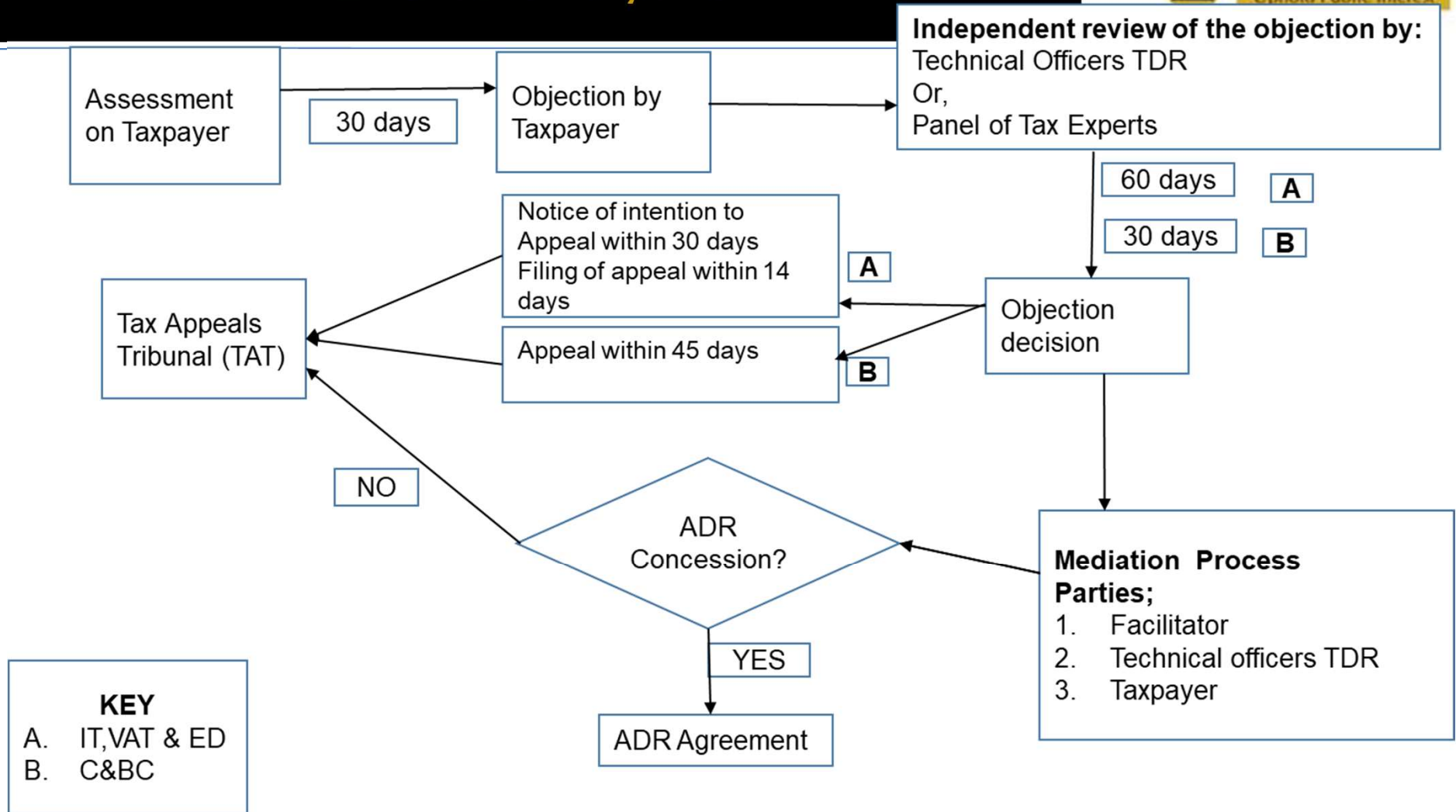
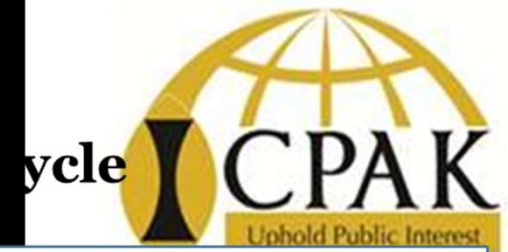
- Tax assessment has been confirmed but parties agree for self review at ADR
- Disputes before TAT/Courts but desire out TAT/Courts settlement

ADR Entry point



- After objection to the assessment – Make application for dispute to be resolved through ADR.
- At any stage of the appeal process – The taxpayer would seek leave TAT/Court to engage in the ADR process.

The Tax Dispute Resolution (TDR) Process Cycle



ADR Facilitated discussions



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 TAT or Courts

Collapse of ADR



- 1) ADR discussions can be terminated for the following reasons;
 - a) Where either party opts out of ADR;
 - b) Where parties unanimously agree to do so;
 - c) Where a party is of the opinion that the dispute cannot be resolved due to undue conduct on the part of the other party;
 - d) A party consistently fails to honor ADR meeting invitations;
 - e) Where a party fails to carry out a reasonable request by the facilitator with no valid justification.

Disputes appropriate for ADR



- 1) All Tax Disputes can be resolved through ADR with the following exceptions;
 - a) The settlement would be contrary to the Constitution, the Revenue Laws or any other enabling Laws;
 - b) The matter borders on technical interpretation of law;
 - c) It is in the public interest to have judicial clarification of the issue;
 - d) There are undisputed judgments and rulings
 - e) A party is unwilling to engage in ADR process.
 - f) The matter has criminal elements like fraud etc

What are the ADR timelines?



ADR Timelines in a Case pending Before the Tribunal/Court

- 90 days as provided for in Tax Procedure Act (TPA) section 55;
- Court initiated ADR - dependent on Court timelines given

ADR Agreement terms



- 1) The background to the dispute and the issues in contention;
- 2) Agreed and non - agreed issues;
- 3) The processes and specific exercises undertaken during the ADR process;
- 4) Recoverable and non-recoverable taxes and justifications thereto;
- 5) Terms of settlement
- 6) Undertakings given by each party if any;
- 7) Payment plans where applicable.

ADR Agreement Terms cont'...



- 1) ADR Agreement must be put into writing;
- 2) It should be signed by both parties/their representatives and;
- 3) Should be witnessed by the Facilitator
- 4) Each party is to retain a copy of the signed agreement
- 5) Signed agreement shall be binding to both parties.

Challenges Faced



- 1) Timelines
 - Taxpayer – Failure to produce documentation for review in time
 - Departments - Undue delay in seeking and obtaining approvals from the Commissioner
- 2) Uncooperative Taxpayers
- 3) Lack of clarity on certain issues.
- 4) Late objection decision

Plenary Discussions



Areas of Improvements

- Turn around time
- Leveraging on each other

*Thank
you*

