

# Managing VAT Audits

Presented by:

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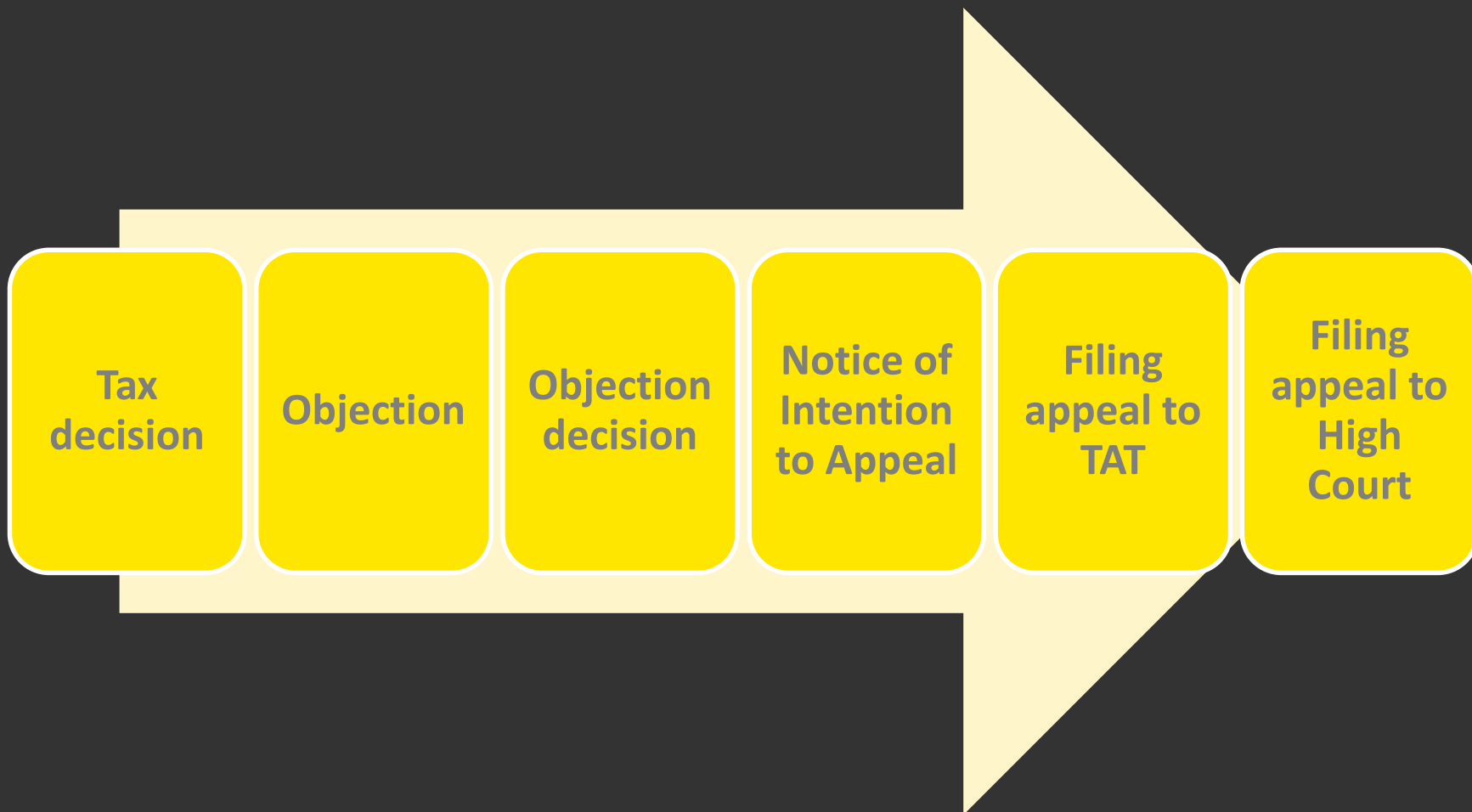
# Types of assessments

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- **Self assessment**
  - ✓ Self declaration by a tax payer
- **Default assessment**
  - ✓ Made when a tax payer has failed to submit a tax return for a period
- **Advance assessment**
  - ✓ Made before the due date for return filing under the below conditions;-
    - Commissioner believes a tax payer is about to leave Kenya
    - Ceasation of business
    - Bankruptcy or liquidation
    - Tax payer has died
- **Amended assessment**

# Dispute process

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# Valid Objection

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- 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

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- 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 appeals procedures

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## 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 to appeal to the Tribunal in writing within ***30 days*** upon receipt of the objection decision of the Commissioner
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# Tax appeal procedures

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- 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** or entered into an **arrangement** to pay the tax
  - The decision of the Tribunal will be **given within 90 days** from the date the appeal is filed.
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# Tribunal procedure

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- 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
  - During the proceedings, it is the burden of the tax payer to prove that a tax decision is incorrect.
  - During the proceedings at the TAT, parties are restricted to the grounds of appeal as contained in the appeal documents. However, any party can apply to the TAT to amend its pleadings subject to approval of the TAT.
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# Tribunal procedure

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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
- The parties may reach an agreement, which they will report to the Tribunal.

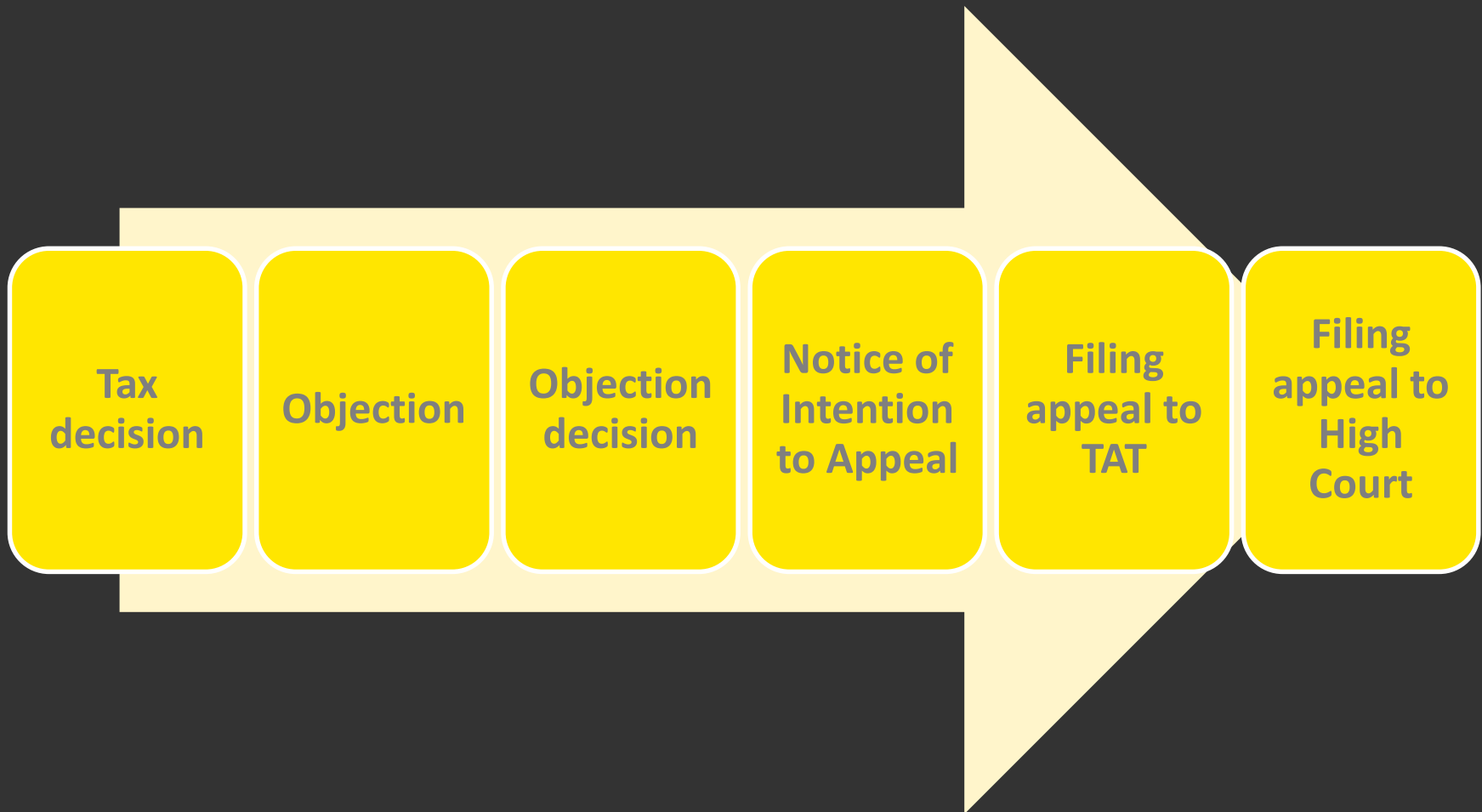
## Next steps after TAT

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- A party dissatisfied by the decision of the tribunal, should appeal to the High Court within **thirty days** of being notified of the decision.
- A party dissatisfied by the decision of the High court, should appeal to the Court of Appeal within **thirty days** of being notified of the decision.

# Dispute process recap

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# Alternative dispute resolution



# Alternative Dispute Resolution (ADR)

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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
- Tax Procedures Act 2015
- The Tax Appeals Tribunal Act – TATA

## ADR Features

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- Is a voluntary, participatory and facilitated discussion over a tax dispute between a taxpayer and the Commissioner.
  - Internal process controlled by KRA
  - An additional approach for dispute management & resolution of tax disputes
  - 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
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## ADR Process

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- Can be initiated at any point
- 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

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- ***Suitability Test***- factors to consider in assessing suitability of Cases for ADR. Not all disputes may be settled under ADR e.g , illegalities or fraud cases
- ***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

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- ***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 ADR Agreements

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- ▶ 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 to be adduced as evidence of conclusion of the case at the appellant body
    - Agreement does not become precedent for cases
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# Benefits of the ADR

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

# Questions & Answers