



# ***Role of Tax Appeals Tribunal(TAT) in tax policy administration***

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# Governing Laws

- Tax Procedures Act, 2015, sections 49 to 57
- Tax Appeals Tribunal Act (*No.40 of 2013*), sections 12 to 32
- Tax Appeals Tribunal (Appeals to the High Court) Rules, 2015
- Tax Appeals Tribunal (Procedure) Rules, 2015



# Tax Appeals Process

- Tax Decision( Sec 50 of TPA)
- Taxpayers Objection(Sec 51,1 of TPA)
- Objection Decision-Within 60 Days (Sec 51,8)
- Appeal to TAT(TPA Sec 52)
- Appeal to High Court( TPA Sec 54,3)





# Key Concepts

- What is a tax decision? (section 50 of the TPA, 2015)
- What is an objection decision (section 51 of the TPA)
- What is an appealable decision?



# Tax Decision

- An assessment;
- A determination under section 17(2) of the amount of tax payable or that will become payable by a taxpayer;
- A determination of the amount that a tax representative, appointed person, director or controlling member is liable for under sections 15, 17, and 18;
- A decision on an application by a self-assessment taxpayer under section 31(2); (amended assessment)
- A decision under section 48 requiring repayment of a refund(erroneous refunds)





# Assessment

- Advance Assessment(TPA30)
- Default Assessment(TPA29)
- Self Assessment(TPA28)
- Amended Assessment(TPA31)



# Objection Process

- Triggered by a Commissioners Decision
- Notice of objection Must be:
  - Be done within 30 days (itax platform)
  - States precisely the grounds of objection
  - The amendments required to be made to correct the decision
  - The reasons for the amendments
- The taxpayer should pay the entire amount of tax due under the assessment that is not in dispute/Agreed payment plan
- A taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection.





# Objection Decision

A person who is dissatisfied with an appealable decision may appeal the decision to the Tribunal in accordance with the provisions of the Tax Appeals Tribunal Act, 2013 (No. 40 of 2013).





# Membership of the TAT

- Consist of a Chairperson and fifteen to twenty other members
- Not more than five member of the Tribunal should be advocates of the High Court of Kenya
- The Chairperson of the Tribunal should be a person who qualify to be a judge of the High Court



# Tenure of Office

- Chairman
  - ❖ Term not exceeding 5 years but shall not be eligible for re-appointment.
- Member
  - ❖ Term not exceeding 3 years and shall be eligible for re-appointment for another 3 years





# Qualification of TAT members

- Tax Compliant
- Hold degree in law, business, finance, public, finance, economics, insurance or related discipline from a university recognized in Kenya.
- Has at least ten years experience in matters relating to taxation
- Not a public officer or any employee of the KRA or Tax Agent.
- Has not been convicted of an offence under any law, and
- Has not been adjudged bankrupt by a court of law
- Meet requirements of Chapter Six of the Constitution (leadership & integrity).



# Ceasing to Hold Office by TAT member

- Resign from office by notice in writing to the CS
- Becomes a public servants or an employee of KRA or a tax agent
- Is absent for 3 consecutive meetings of the Tribunal without Chairman permission.
- Is adjudged bankrupt by a court of competent jurisdiction.
- Convicted of an offence
- Unable or unfit to discharge the function of the office





# TAT Pleadings

- Notice of Appeal
- Statement of Facts
- Memorandum of Appeal



# Notice of Appeal

- Must be in writing
- Must be served within 30 days upon receipt of objection decision of the commissioner
- Payment of ksh 20,000 which is non refundable





# Memorandum of Appeal

- Must be submitted within 14 days from the date of filing the notice of appeal(form TAT 1)
- Be signed by the appellant
- Set out concisely under distinct heads, numbered consecutively, the **grounds of appeal** without argument or narrative
- Contain an index of all documents in the appeal with number of pages at which they appear; and
- Be accompanied by a copy of the tax decision and notice of appeal.



# Statement of Facts

- Must be submitted within 14 days from the date of filing the notice of appeal
- Be signed by the party
- Shall set out precisely all the facts on which the appeal is based (or all the facts on which the response to the appeal is based, in the case of the Respondent's Statement of Facts)
- Shall refer specifically to documentary evidence or other evidence which it is proposed to adduce at the hearing of the appeal.
- The documentary evidence referred shall be annexed to the Statement of Fact.





# Role of TAT

- To hear and determine disputes relating to taxation in Kenya
- serves as the forum of first instance before tax litigation can commence on a tax dispute.
- Where a case is referred directly to the courts, circumventing the pre-litigation procedure set out by the TAT, the courts will often refer that matter back to the TAT



# Alternative Dispute Resolution

- Article 159(2) (c) of the Constitution stipulates various principles to guide the courts and tribunals whenever they are exercising judicial authority in promoting alternative forms of dispute resolution such as arbitration and mediation.
- Section 55 of the Tax Procedures Act as read with section 28 of the Tax Appeal Tribunal Act provides for settlement of disputes out of court too.
- Currently, there is also the KRA Alternative Dispute Resolution Mechanism.





# Alternative Dispute Resolution Cont.....

- ▶ The ADR framework established by KRA was launched on 17<sup>th</sup> June 2015 and became effective on 1<sup>st</sup> July 2015.
- ▶ The ADR framework aims to provide taxpayers having disputes with a second chance to achieve an amicable resolution.
- ▶ This is achieved through the establishment of an internal mechanism that gives taxpayers the option to seek review of a tax dispute outside of the environment where the dispute is generated



# Advantages of ADR

- Shift from enforcement to trust and facilitation
- Addresses delays in conclusion of cases before courts and Tribunals
- Confidential process
- Brings certainty to the outcome for KRA (tax) and taxpayer





## Advantages of ADR Cont....

- Less costly, both from a time and cost perspective
- Has a win-win outcome
- Improves compliance
- Preserves relationships
- Meeting facilitated by an independent and neutral mediator
- Principle that is encouraged by the Kenya Constitution (Article 159 (2))

# Tax Disputes that cannot be solved through ADR

- The settlement would be contrary to the Constitution, the Revenue Laws or any other enabling Laws;
- The matter borders on technical interpretation of law;
- It is in the public interest to have judicial clarification of the issue;
- There are undisputed judgments and rulings
- A party is unwilling to engage in ADR process.
- The matter has criminal elements like fraud, etc





# Reasons for Collapse of ADR

- Where either party opts out of ADR
- Where parties unanimously agree to do so;
- Where a party is of the opinion that the dispute cannot be resolved due to undue conduct on the part of the other party;
- A party consistently fails to honor ADR meeting invitations (sessions);
- Where a party fails to carry out a reasonable request by the facilitator with no valid justification.

# THANK-YOU

## ANY QUESTIONS??

