

TAX APPEAL TRIBUNAL

Presentation by:

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Presentation agenda



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Introduction



- ❑ Tax Appeals Tribunal procedures are guided by TAT Act, 2013 revised in 2018 and Section 52 of Tax Procedures Act, 2015
- ❑ The TAT was set up under the Tax Appeals Tribunal Act 2013 to hear and determine disputes relating to taxation in Kenya
- ❑ Tax appeal can be made by a taxpayer against a decision of the Commissioner under any of the tax laws.

Membership of the Tribunal and office Tenure



- ❑ Chairman qualifying to be a high court judge and Serves for 5 years only.
- ❑ 15- 20 members appointed by CS with the following requirements:
 - ❖ High moral character and integrity (chapter six of the constitution)
 - ❖ Degree in law, business, economics, insurance, public finance or related discipline
 - ❖ At least 10 years experience

Membership of the Tribunal and office Tenure Cont....



- ❖ Not an employee of KRA/KRA agent
- ❖ Tax compliant, not convicted of criminal offence and not bankrupt

❑ Serve for 3 years and eligible for re-election for one more term (3 years)

Ceasation from Office



- Resigns from office by notice in writing
- Becomes a public servant/KRA employee/ tax agent.
- Absent from 3 consecutive meetings with no permission from Chairperson
- Adjudged bankrupt
- Convicted of an offence under any tax law/ criminal offence
- Unable to perform the functions of the office arising by reason of infirmity of body or mind

Expenses and payment of allowances.



- Cabinet Secretary determines payment of allowances to the members for expenses incurred.
- Tribunal expenses and the allowances for expenses of the members are paid out of funds provided by Parliament through the National Treasury

Arrangement of business



- Chairperson is responsible for orderly and expeditious discharge of tribunal mandate. He should:
 - ✓ Constitute a panel to hear any matter before the Tribunal (at least 3 members one being advocate).
 - ✓ Determine the place at which a panel may sit;
 - ✓ Determine the procedure for the conduct of the business of the Tribunal.
- Annual report of the tribunal performance is submitted to the CS in the following year

Appeals To The Tribunal and procedure: S 12&13



- If a taxpayer disputes the decision of the Commissioner on any tax matter, he /she may appeal to the TAT upon giving notice in writing to the Commissioner.
- The taxpayer before appealing should pay a non-refundable fee of sh. 20,000.
- A notice of appeal to the TAT should;
 - ✓ Be in writing
 - ✓ Be submitted to the TAT within 30 days upon receipt of the decision of the Commissioner.

Appeals To The Tribunal and procedure: S 12&13 Cont..



- Within 14 days from the date of filing the notice of appeal, submit copies to the Clerk Tribunal;
 - ✓Memorandum of appeal (stating the grounds upon which the appeal is based)
 - ✓Statements of facts (setting out the circumstances leading to the KRA's decision on the objection notice submitted by the taxpayer).
 - ✓The tax decision.

Appeals To The Tribunal and procedure: S 12&13 Cont..



- The TAT may in writing extend the time for filing the notice of appeal and for submitting the documents if applicant was sick, outside kenya or other reasonable cause.
- Tax payer will then submit a copy of the appeal on the Commissioner within 2 days after giving notice of appeal to the TAT.
- The Tribunal shall hear and determine an appeal within 90 days from the date the appeal is filed with the Tribunal.

Appeals To The Tribunal and procedure: S 12&13 Cont..



- The parties to an appeal may apply to the TAT to settle the dispute out of the TAT. The parties shall report to the TAT the outcome of settlement of the matter outside the Tribunal.
- The Commissioner should submit to the TAT and appellant the following copies within 30 days after being served with a copy of an appeal to the Tribunal:

Appeals To The Tribunal and procedure: S 12&13 Cont..



- ✓ Statement of facts including the reasons for the tax decision
- ✓ Any other document which may be necessary for review of the decision by the Tribunal.

Section 15(1) TAT Act

- The Secretary advises all parties in writing of the time and place of the hearing at least 14 days before the start of hearing.

Appeals To The Tribunal and procedure: S 12&13 Cont..



- Oral evidence or evidence through affidavits is accepted during the hearing as the Tribunal may direct.
- The TAT is permitted to engage the services of an independent expert in any proceedings. Such evidence can be taken into account in the making of its decision.

Consequence of non-attendance for hearing Expectations....



- If both parties don't attend, TAT may dismiss the appeal or give such orders that it may deem appropriate.
- If either KRA/tax payer do not attend:
 - ✓ TAT may proceed where KRA does not attend or dismiss the appeal where the taxpayer does not attend if satisfied that the notice of hearing was duly served.
 - ✓ It shall direct a second notice to be served if not satisfied that the notice was served;

Consequence of non-attendance for hearing Expectations Cont..



- ✓ Postpone the hearing if satisfied that notice was not served in sufficient time or for other reasonable cause, the respondent was unable to attend

Conflict of interest



- A Tribunal member should disclose any interest on the appeal that could conflict with the proper performance of the member's functions.
- Such a member should not take part in the proceedings unless with the consent of all the parties,

Powers of the Tribunal during a proceeding.



- Take evidence on oath
- Proceed in the absence of a party who has reasonable notice of the proceedings.
- Adjourn the hearing of the proceedings.
- Summon a person to appear before it to give evidence or to produce books/records.
- Receive evidence by affidavit and administer interrogations and require the persons to make full and true reply to the interrogations.
- Power to request for examination of witnesses abroad

Contempt of Tribunal S 21



- A person who:
 - ✓ Insults a member/employee of the Tribunal
 - ✓ Interrupts the proceedings of the Tribunal;
 - ✓ Creates a disturbance in or near a place where the Tribunal is sitting,
- Commits an offence and is liable on conviction to a fine not exceeding 100,000 shillings or 2 months imprisonment or both.

Disobedience of summons to give evidence, S 22



- If a person summoned by the Tribunal;
 - ✓ Fails to attend and give evidence
 - ✓ Fails to produce any records, account statements
 - ✓ Refuses or fails to answer all questions lawfully put to him,

Commits an offence and is liable on conviction to a fine not exceeding 100,000 shillings or 3 years to imprisonment or to both.

Decisions of the Tribunal. S

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- Shall be by majority vote of the members present, in case of a tie, chairperson shall cast a vote in addition to his deliberative vote.
- The decision shall be in writing either;
 - ✓ Affirming the decision under review
 - ✓ Varying the decision under review
 - ✓ Setting aside the decision under review and either:
 - (i) making a decision in substitution for the decision so set aside or

Decisions of the Tribunal..



(ii) Referring the matter to the Commissioner for reconsideration in accordance with any recommendations of the Tribunal

- TAT should give reasons in writing for its decision, including its findings on material questions of fact, supporting evidence and a copy of the decision served to each party to the proceeding.

Decisions of the Tribunal Cont..



- Tribunal decision is operational on date the notice of the decision is given or the date specified by Tribunal in the notice.
- It is enforceable as if it were a decision of a court and becomes a public record open to inspection of the public without disclosing confidential information.

Burden of proof.



- The appellant has the burden of proving;
 - ✓ That the assessment is excessive
 - ✓ That the tax decision should not have been made or should have been made differently.
- If the TAT awards costs in any appeal, it should issue a certificate stating the amount involved.

Appeals to the High court on decisions of the Tribunal. S 32



- If aggrieved by the TAT decision, the aggrieved party within 30 days after being notified of the decision may appeal to the High Court and serve a copy of the notice of appeal on the other party.
- The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.

The End