



KRA Audit approach and tax disputes resolution procedures for PBOs

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Tax laws Governing KRA audit and tax disputes



- ❑ The Tax Procedures Act
- ❑ The Income Tax Act,
- ❑ Value Added Tax Act and Excise Duty Act
- ❑ Any Regulations or other subsidiary legislation made under the Tax Procedures Act or the Income Tax Act, Value Added Tax Act, and Excise Duty Act.

Definition of terms



Tax decision means:

- a) An assessment;
- b) A determination of tax payable made to a trustee-in-bankruptcy, receiver, or liquidator;
- c) A determination of the amount that a tax representative, appointed person, director or controlling member is liable for under specified sections in the TPA;
- d) A decision on an application by a taxpayer to amend their self-assessment return;
- e) A refund decision;
- f) A decision requiring repayment of a refund; or
- g) A demand for a penalty

Definition of terms



- **Appealable decision means**
 - a) An objection decision; and
 - b) Any other decision made under a tax law but excludes—
 - A tax decision; or
 - A decision made in the course of making a tax decision.

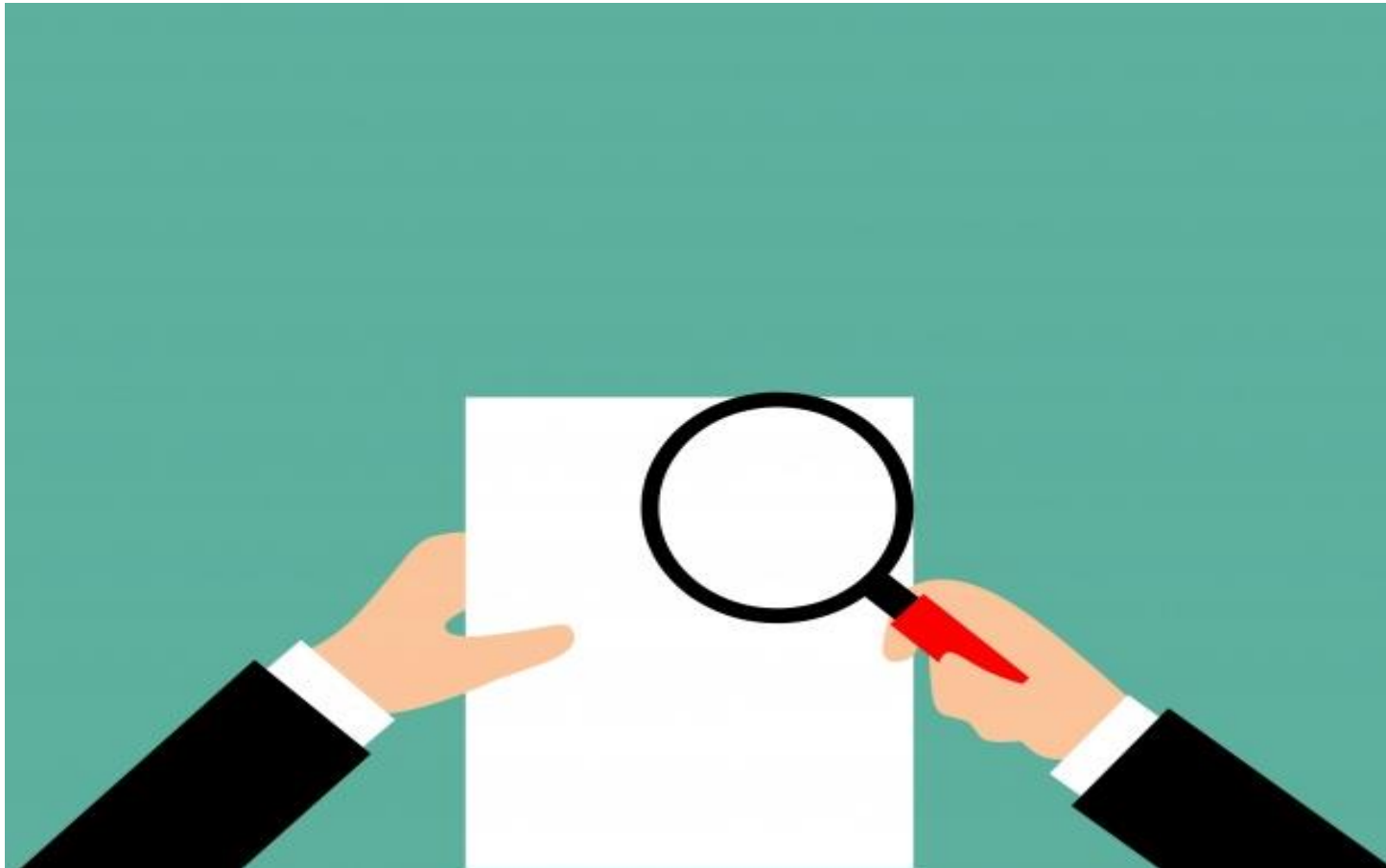
Definition of terms



- **Objection decision means:**

The Commissioner's decision either to allow an objection in whole or in part, or disallow it.

KRA Audit process



KRA Audit process cont..



- The TPA allows the Commissioner to issue to a tax payer a default assessment, amended assessment or an advance assessment **(Section 29 to 31 TPA)**.
- It is on the basis of these sections that the KRA undertakes audits on taxpayers.

Open period for KRA Audits



- ❑ **Under the TPA the KRA is allowed to carry out audits for a period of 5 years from the year of assessment (Section 31 TPA).**
- ❑ **In cases of gross or willful neglect, evasion, or fraud by, or on behalf of, the taxpayer, the KRA may undertake an audit for any period (Section 31 TPA).**

Documentation for tax audit



- ❑ **The TPA requires** that a taxpayer maintains tax documents in any of the official languages **(Section 23 TPA).**

Tax document maintenance



- ❑ The TPA provides that documents should be maintained for a period of 5 years from the end of the reporting period to which the documents relate or such shorter period as may be specified in a tax law **(Section 23 TPA).**

Management of KRA Audit



- ❑ During the audit the KRA will ordinarily require a taxpayer to provide information needed by the KRA to undertake the audit.
- ❑ The taxpayer should, as far as possible, provide the required information. Failure to provide documents could lead to issue of additional assessment.

Audit Findings



- On the conclusion of the audit the KRA will ordinarily give their findings prior to the assessment.
- This is a critical point in resolving audit issues before proceeding to an assessment.

Audit Findings



Issue of assessment



- ❑ Upon the conclusion of the audit the KRA will issue an assessment.
- ❑ In the assessment the KRA will state the amount of tax that they deem due and payable from the audit of the taxpayer's records.
- ❑ On issue of the assessment a taxpayer is then allowed under the TPA to lodge, with the Commissioner, an objection to the assessment.

Objection processes-tax payers obligation



Objection processes-tax payers obligation



❑ **Lodging a notice of objection:** A taxpayer disputing a tax decision should lodge a notice of objection within 30 days of being notified of the decision. **Section 51(1) & (2) TPA.**

❑ **Objection out of time:** taxpayer may apply in writing to the Commissioner for an extension of time to lodge a notice of objection **(Section 51(6) TPA).**

Objection processes-tax payers obligation cont..



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 the specified period because of an absence from Kenya, sickness or other reasonable cause; and
- ☐ the taxpayer did not unreasonably delay in lodging the notice of objection.

Conditions of a valid notice of objection:



The following two conditions must be met for an objection to be termed as validly lodged:

- ☐ grounds of objection, amendments required & reason for amendments; and
- ☐ for an objection to an assessment the taxpayer has paid the entire tax not in dispute.

Section 51(3) TPA

Application for extension of time to pay tax



A taxpayer may apply in writing to the Commissioner for an extension of time to pay a tax due under a tax law **(Section 33 TPA)**.

When a taxpayer applies for an extension the Commissioner may, if satisfied that there is reasonable cause;

- ☐ a) Grant the taxpayer an extension of time for payment of the tax; or
- ☐ b) require the taxpayer to pay the tax in such instalments as the Commissioner may determine.

The objection process – Commissioners obligation



By Razu

The Commissioner's obligation



❑ **Objection decision:** where a notice of objection is validly lodged on time, the Commissioner will consider the objection and give a decision (the “objection decision”).

Section 51(8) TPA.

The Commissioner's obligation cont..



- ❑ **Invalid objection;** Where the Commissioner has determined that a notice of objection lodged by a taxpayer has not been validly lodged, the Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.

The Commissioner's obligation cont..



- ❑ **Time period for objection decision:** If the Commissioner does not give an objection decision within 60 days from the date that the taxpayer lodged a notice of objection, the objection shall be allowed. **Section 51(11) TPA**

The Appeal Process to the TAT



The Taxpayers obligation



- ❑ **Lodging a notice of appeal:** A person who is dissatisfied with an appealable decision may appeal to the TAT in accordance with the TAT. **Section 52(1) TPA.**
- ❑ **Conditions of a valid notice of appeal:** A notice of appeal is 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. **Section 52(2) TPA.**

The Taxpayers obligation cont..



- ❑ **Time for filing notice of appeal:** A notice of appeal should be in writing and should be filed within 30 days upon receipt of the Commissioner's decision. **S.13(1) TAT Act.**
- ❑ **Late filing of appeal:** The Tribunal may, upon application in writing, extend the time for filing the notice of appeal and the appeal papers.

The Taxpayers obligation cont..



- ❑ An extension of time to file the appeal may be granted owing to absence from Kenya, or sickness, or other reasonable cause that may have prevented the applicant from filing the notice of appeal or submitting the appeal papers within the specified period of 30 days.

S.13(1) TAT Act.

The Taxpayers obligation cont..



- ❑ **Filing of appeal papers:** Within 14 days from the filing of the notice of appeal the taxpayer should submit enough copies (usually 9-10) of memorandum of appeal, statement of facts and the tax decision. **S13(2) TAT Act.**

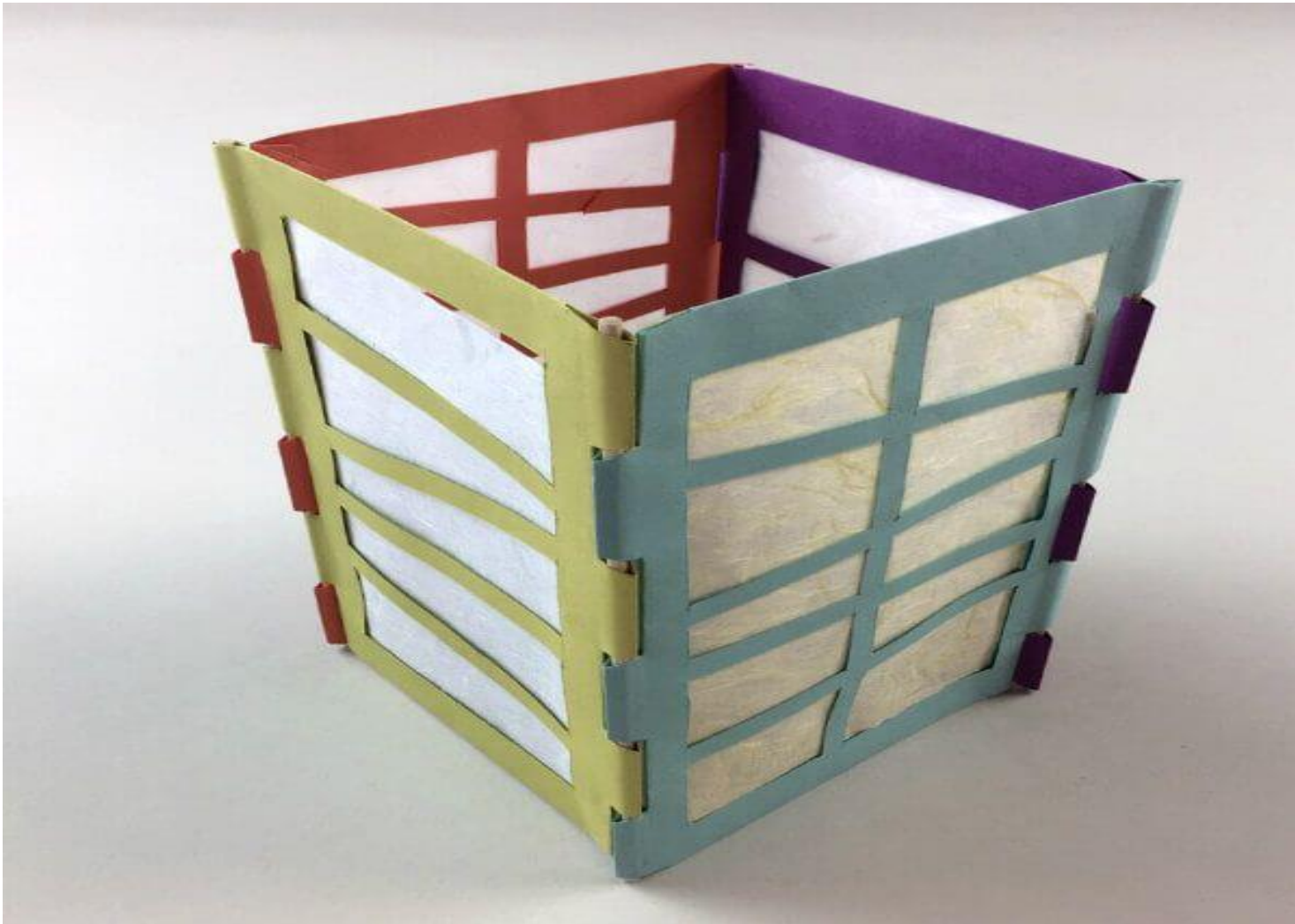
The Taxpayers obligation cont..



☐ **Service of appeal to the Commissioner:**

Within 2 days of filing the appeal the taxpayer should serve the Commissioner with the appeal papers.

The structure of TAT appeal papers



The structure of TAT appeal papers



- ❑ **Memorandum of appeal** The memorandum of appeal should:
- Be signed by the Appellant (in practice an agent could sign for 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 (i) tax decision; and (ii) notice of appeal.

The structure of TAT appeal papers cont..



- ❑ **Statement of facts** Statement of fact should:
- Be signed by the appellant;
 - Shall set out precisely all the facts on which the appeal is based; and
 - Shall refer specifically to documentary evidence or other evidence which it is proposed to adduce at the hearing of the appeal.

Tax appeal process- Commissioner obligation



- ❑ **Filing of appeal documents:** Within 30 days of being served with the appeal the Commissioner is required to file a statement of facts giving the reasons for the tax decision and other document necessary for review of the tax decision. **Section 15(1) TAT Act** .

Tax appeal process- Commissioner obligation



- ❑ **Burden of proof:** The burden of proving that a tax decision is incorrect lies with the taxpayer. **S.56(1) TPA**
- ❑ **Grounds of appeal:** In an appeal by a taxpayer to the Tribunal, High Court or Court of Appeal in relation to an appealable decision, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal or Court allows the person to add new grounds. **S.56(3) TPA**
- ❑ **Admissibility of evidence:** Evidence, however obtained, is admissible. **S.57 TPA**
- ❑ **Filing of submissions:** At the hearing oral submissions are made. The TAT also ordinarily requests parties to file written submissions within a specified number of days after the hearing.

Other appeal procedures before the TAT



Application for extension of time to file appeal

An application for extension of time referred to in rule shall be:

- ☐ (a) supported by an affidavit stating reasons why the applicant was unable to submit the documents in time; and
- ☐ (b) served on the respondent by the applicant within two days of filing with the clerk.

Other appeal procedures before the TAT



☐ Response by the Respondent

The respondent may respond to the application by filing an affidavit within 14 days from the date of service of the application.

☐ Hearing of the application

The Tribunal shall set down the hearing date for the application.

Other appeal procedures before the TAT



☐ Notice of hearing

The Clerk of the Tribunal should give the parties notice of hearing at least 14 days before the hearing date. Subsequent dates may be fixed by the Tribunal.

Other appeal procedures before the TAT cont..



Consequence of non-attendance for hearing **where both parties do not attend:**

- ☐ The Tribunal may dismiss the appeal or give such orders that it may deem appropriate if satisfied that the notice of hearing was duly served to the parties.

Other appeal procedures before the TAT cont..



If either KRA or Appellant (tax payer) do not attend:

- a) Tribunal may proceed ex parte 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;
- b) It shall direct a second notice to be served if not satisfied that the notice was served; or
- c) Postpone the hearing if satisfied that notice was not served in sufficient time or for other reasonable cause, the respondent was unable to attend.

Other appeal procedures before the TAT cont..



Calling of witnesses:

A party to an appeal may call witnesses. The Clerk to issue witness summons.

Application for review of TAT decision:

Rule 19 of TAT Rules provides ‘upon an application by the applicant, the Tribunal, stating the reasons, may set aside, vary or review a decision made under these Rules’.

Alternative Dispute Resolution (ADR)



Legal basis

Inferred under **S.55 of the TPA** Where a Court or the Tribunal permits the parties to settle a dispute out of Court or the Tribunal, as the case may be, the settlement shall be made within 90 days from the date the Court or the Tribunal permits the settlement.

Alternative Dispute Resolution (ADR)



The process

- ☐ The KRA issued the ADR framework that guides the ADR process.
- ☐ Generally, either party may initiate the process by writing to the other party.
- ☐ KRA would ordinarily ask for a settlement proposal where the taxpayer initiates the process.
- ☐ The process is facilitated by the head of Corporate Tax Dispute Resolution Division.

Thank you



THE END

