

# Alternative Dispute Resolution (ADR)

Update on Alternative Dispute Resolution

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Kericho

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# Background

- ADR was introduced in June 2015
- It was conceived as a means of enhancing transparency and speed in tax dispute resolution.
- This was against the background that traditional means of resolving disputes through litigation brought with them the following challenges;
  - ✓ low compliance levels;
  - ✓ excessing litigation costs and long delays in resolving disputes;
  - ✓ uncertainty of outcome for both Taxpayer and KRA.
  - ✓ Risks related to “winner takes it all” approach and damaged customer relationships.

# The use of ADR as a Tax dispute Resolution Mechanism

## What is Alternative Dispute Resolution (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.

# Objectives of ADR

- 1) Standardization of tax dispute resolution procedures across KRA;
- 2) Provision of better governance and transparency in the resolution of tax disputes;
- 3) Reduction of the cost of litigation and delays in the resolution of disputes in the court process.

# 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

# Types of Disputes for ADR

- 1) Income Tax
- 2) Customs
- 3) Value Added Tax
- 4) Excise duty

# 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;  
with a tax dispute at ADR
2. Commissioner – Officer(s) involved in objection/review decision (TDR and I&E)
3. Facilitator – who Chairs the ADR discussions

# Role of Parties

- 1) Uphold and maintain decorum, and confidentiality;
- 2) Participate in all discussions fairly and diligently;
- 3) Make full disclosure of material facts relevant to the Tax dispute;
- 4) Attend all scheduled meetings;
- 5) Strictly adhere to the agreed timelines,



# 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

# ADR Facilitated discussions



# 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

# 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

# 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.

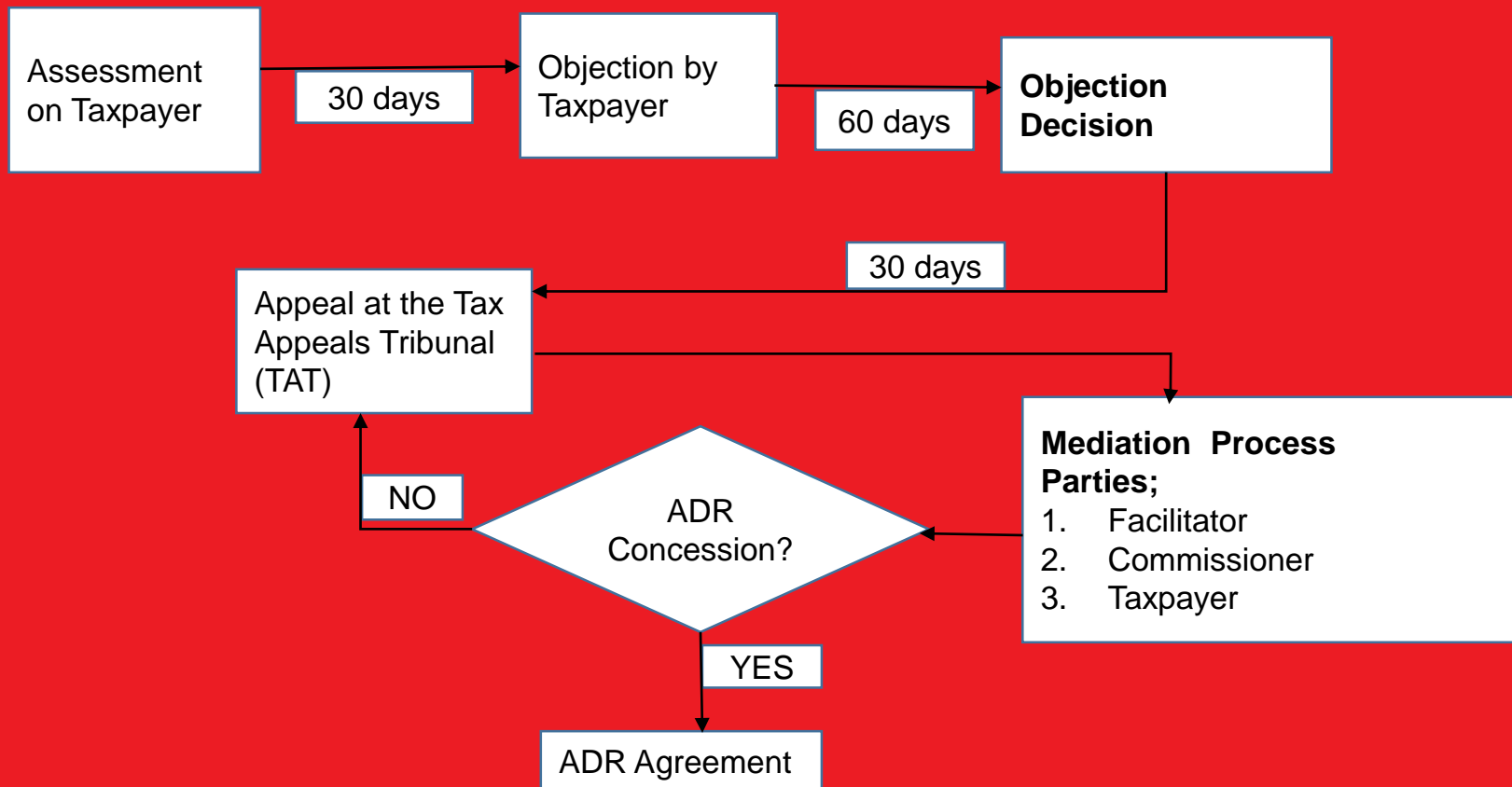
# ADR Agreement terms

- 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... continued

- 8) ADR Agreement must be put into writing;
- 9) It should be signed by both parties/their representatives and;
- 10) Should be witnessed by the Facilitator
- 11) Each party is to retain a copy of the signed agreement
- 12) Signed agreement shall binding to both parties.

# Current Tax Dispute Resolution Process





Thank  
you

