

KENYA REVENUE AUTHORITY

Tax Dispute Resolution Division (TDRD)

TAX DISPUTE RESOLUTION MECHANISM IN KENYA

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Scope

- i. Introduction
- ii. How Tax Disputes Arise
- iii. The New Face of Tax Dispute Resolution Process
- iv. The Use of ADR As a Tax Dispute Resolution Mechanism
- v. Conclusion

Introduction

- The tax dispute resolution process has evolved overtime
- The objective is the desire to ensure, faster, objective and efficient resolution of tax disputes
- A lot of reforms have taken place including the use of Alternative Dispute Resolution (ADR) and Independent Review of Objections (IRO)

How tax disputes arise

- 1) **A tax assessment** for which the taxpayer is expected to respond/object within 30 days.
- 2) **Taxpayer's Objection-** Upon receipt of the Taxpayer's Objection, the Commissioner has three options namely;
 - a) To agree with the taxpayer wholly and vacate the assessment altogether, in which case there is no dispute,
 - b) To partially agree with the taxpayer and amend the assessment accordingly, or
 - c) To totally disagree with the taxpayer and confirm the assessment.
- 3) The Commissioner subsequently issues an objection decision within 60 days(in case of objections arising from Income Tax(IT),Value Added Tax(VAT)and Excise Duty(ED) and 30 days (in case of objection arising from Customs & Border Control(C&BC)- Failure to issue objection decision – The taxpayer's objection stands

Right of appeal

- 1) Following issuance of an objection decision a taxpayer (TP) may appeal to the Tax Appeals Tribunal (TAT) within stipulated timelines
- 2) If TP is not satisfied with the decision at TAT, the TP can appeal to the High Court and thereafter to the Court of Appeal.
- 3) At any of the stages indicated above, the taxpayer may seek leave of the TAT/Court to engage in the ADR process.

The New Face of the tax dispute resolution Process in line with Best Practice - Tax Administration Diagnostic Assessment Tool (TADAT)

- Historically, tax disputes post objections are handled by Business department HODs, a process which fails to create expected level of professionalism, efficiency and transparency.
- To harmonize, centralize and ensure objectivity in tax dispute resolution processes, the Commissioner General has delegated powers and functions relating to post assessment disputes to the commissioner responsible for Tax Dispute Resolution thereby separating tax processes up to the assessment issuance level and post assessment dispute resolution processes.
- Dispute resolution process has undergone further transformation in line with good practices in dispute resolution which include having a simple, transparent, and graduated dispute resolution mechanism comprising the following stages:

The New Face of Tax Dispute Resolution Process Cont....

a. First stage

Independent review by the tax administration (i.e., reviews are undertaken by designated review officers independent of the audit department)- (Commissioner Responsible for Tax Dispute Resolution created through GN. No 12048(Vol. CXX-No 141 dated 19th November, 2018)

b. Second stage

Review by an independent external specialist tax tribunal, or court where the taxpayer is dissatisfied with the outcome of an administrative review

c. Final stage

Review by a higher appellate court to resolve remaining disputes concerning legal interpretation.

Justification for the New Tax Dispute Resolution Process.

Performance Indicators: – Tax Dispute Resolution (TADAT)

High Level Indicators

Existence of an independent, workable and graduated dispute resolution process

Time taken to resolve disputes

Degree to which disputed outcomes are acted upon

Use of appropriately graduated mechanism for administrative and judicial review – available and used

Administrative reviewing process independent of audit process

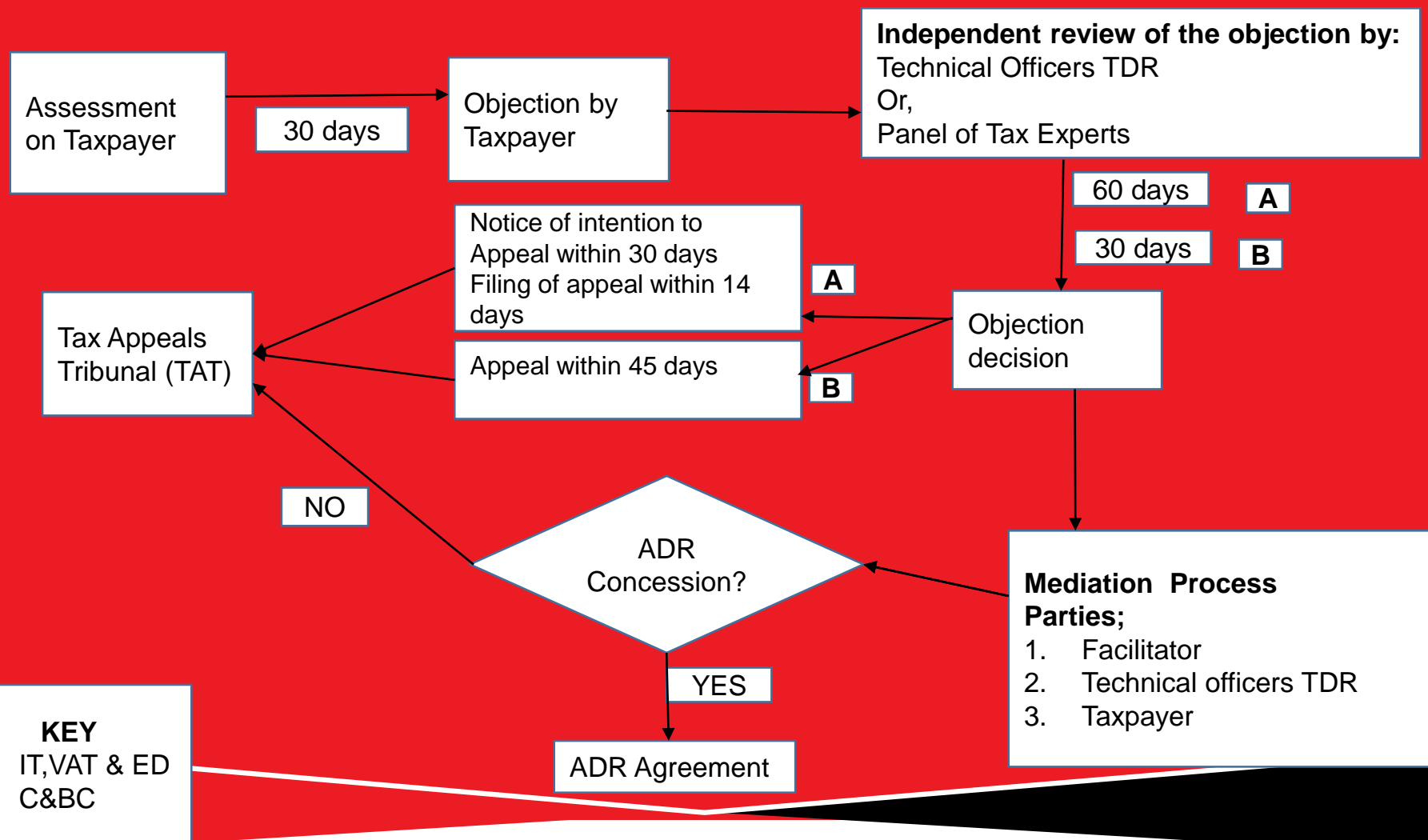
Whether information on dispute resolution process published and taxpayers made aware available

Time taken for completion of administrative review

Extent to which the tax administration responds to dispute outcomes

Dimensions

The New Tax Dispute Resolution (TDR) Process Cycle



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.

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.

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

Why 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 (tax liabilities in their books).
- Less costly, both from a time and cost perspective.

Why ADR? Continued...

- 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.

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,

ADR Facilitated discussions



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

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.

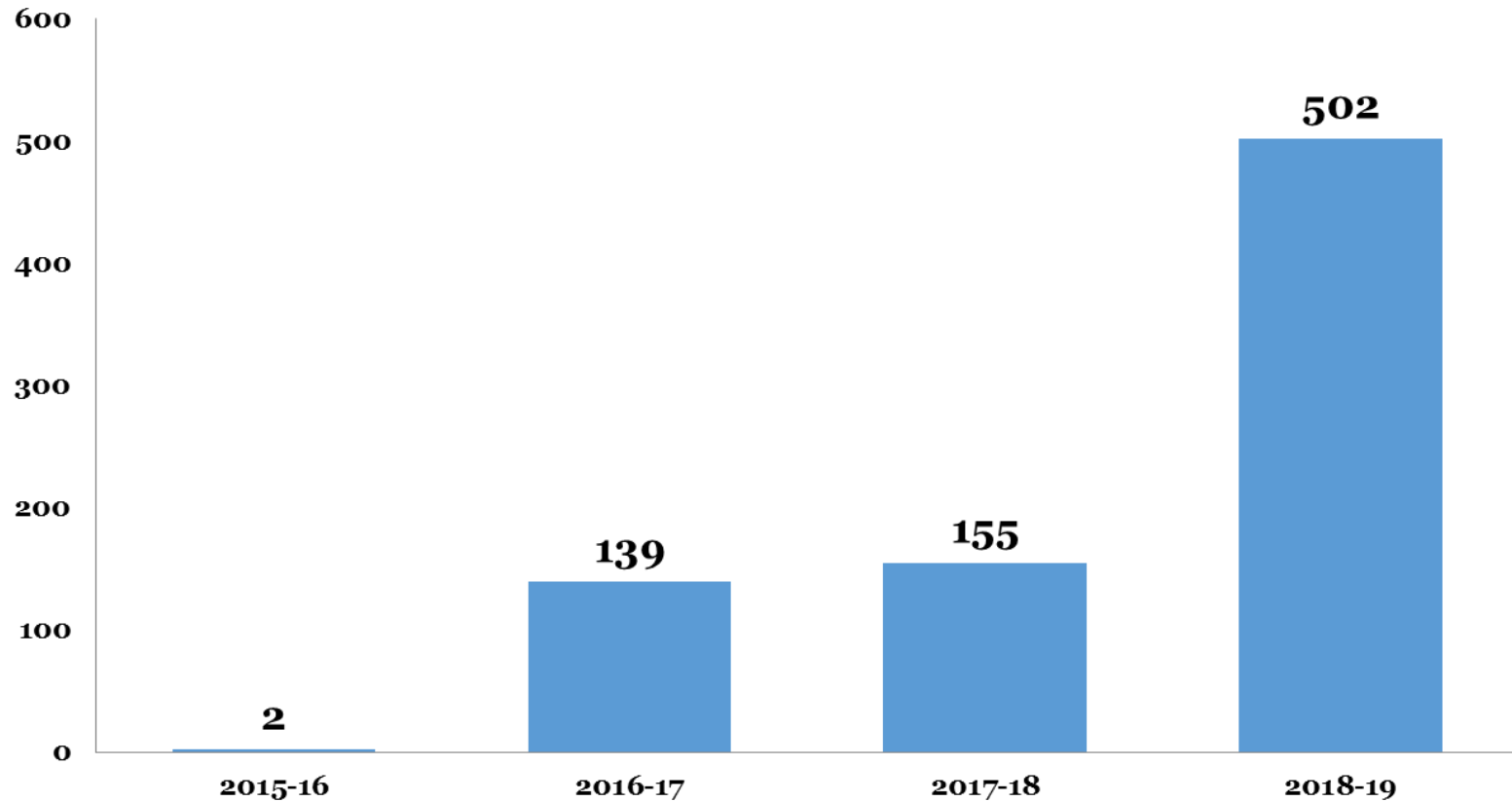
ADR Agreement terms

- 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.

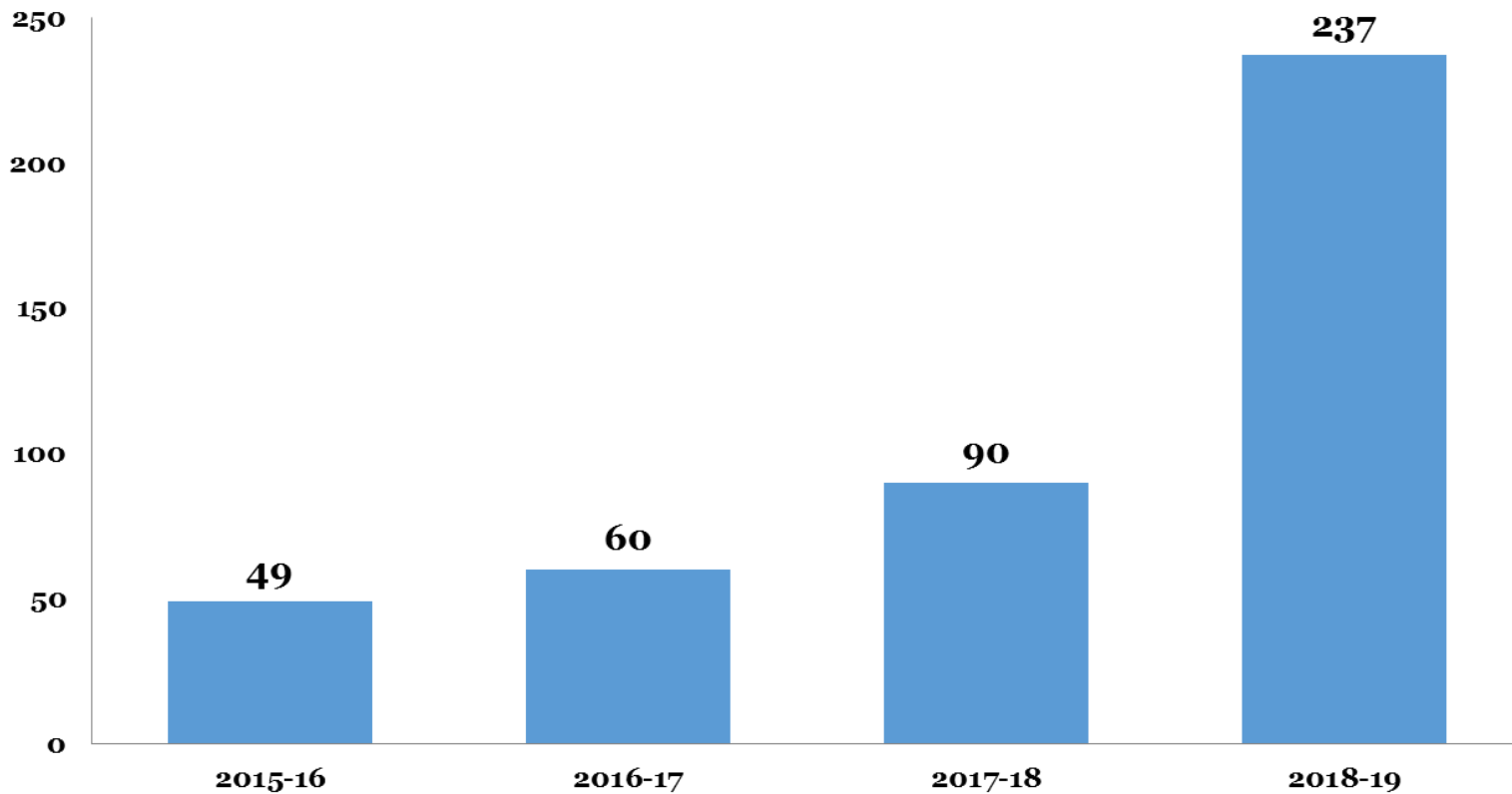
ADR Agreement Terms... continued

- 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.

Tax disputes received in ADR



Tax disputes resolved in ADR



Conclusion

- Emphasis is placed on avoiding or managing disputes at the earliest possible level.
- Intention is to resolve as many disputes as possible internally
- Support/Appreciation Of the Process.
- Sensitization and roll over to other taxpayers/stakeholders

Where to find Tax Dispute Resolution Division

- 1) Physical Location – 7th floor of Ushuru Pension Towers, Wing B. Elgon Road, Upperhill, Nairobi
- 2) Contacts
 - TDR - 0709017026
 - Email – adr@kra.go.ke

Thank
you

