

# Tax Principles Workshop

## Tax Disputes and Litigation Practice



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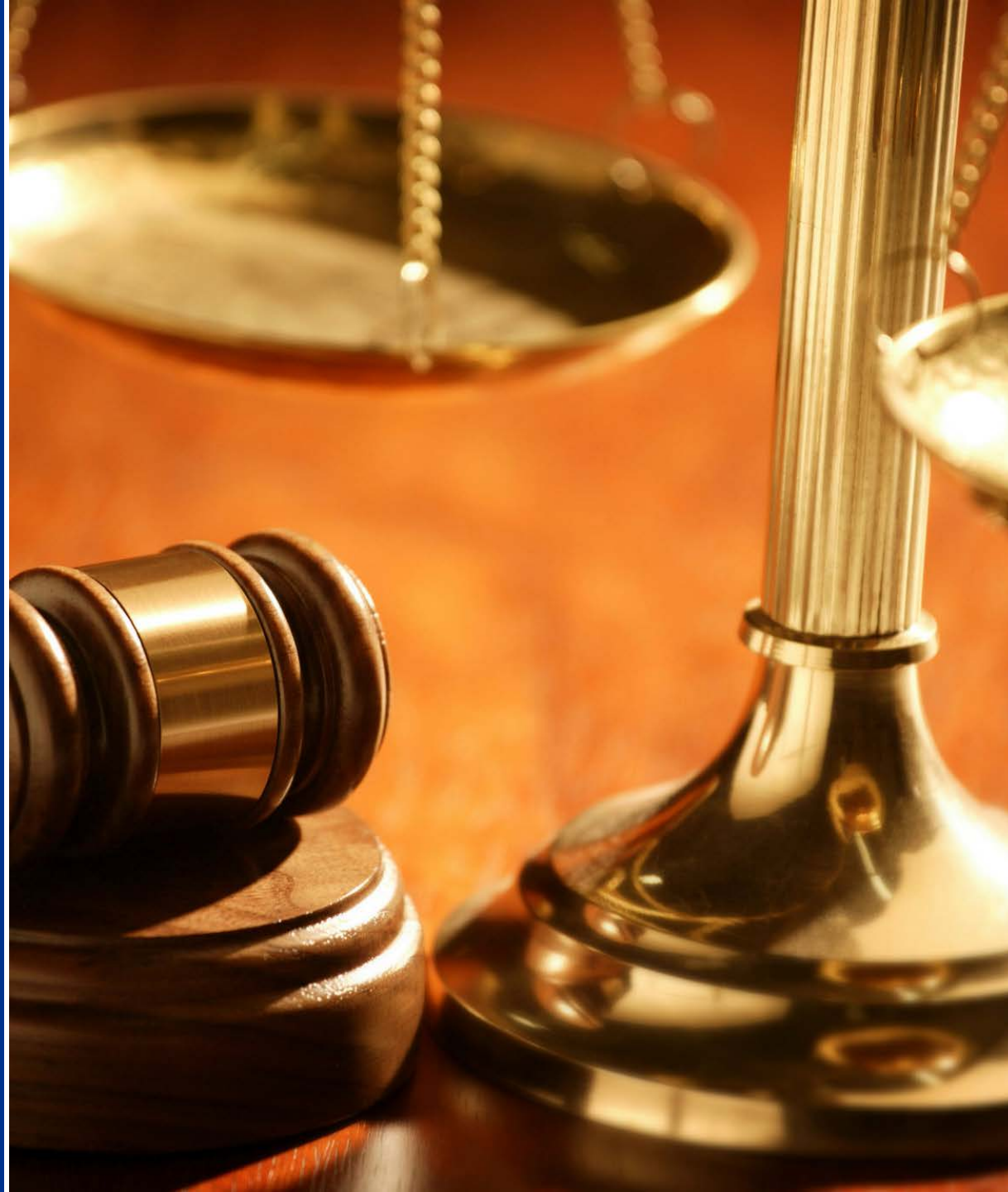
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# Perspective

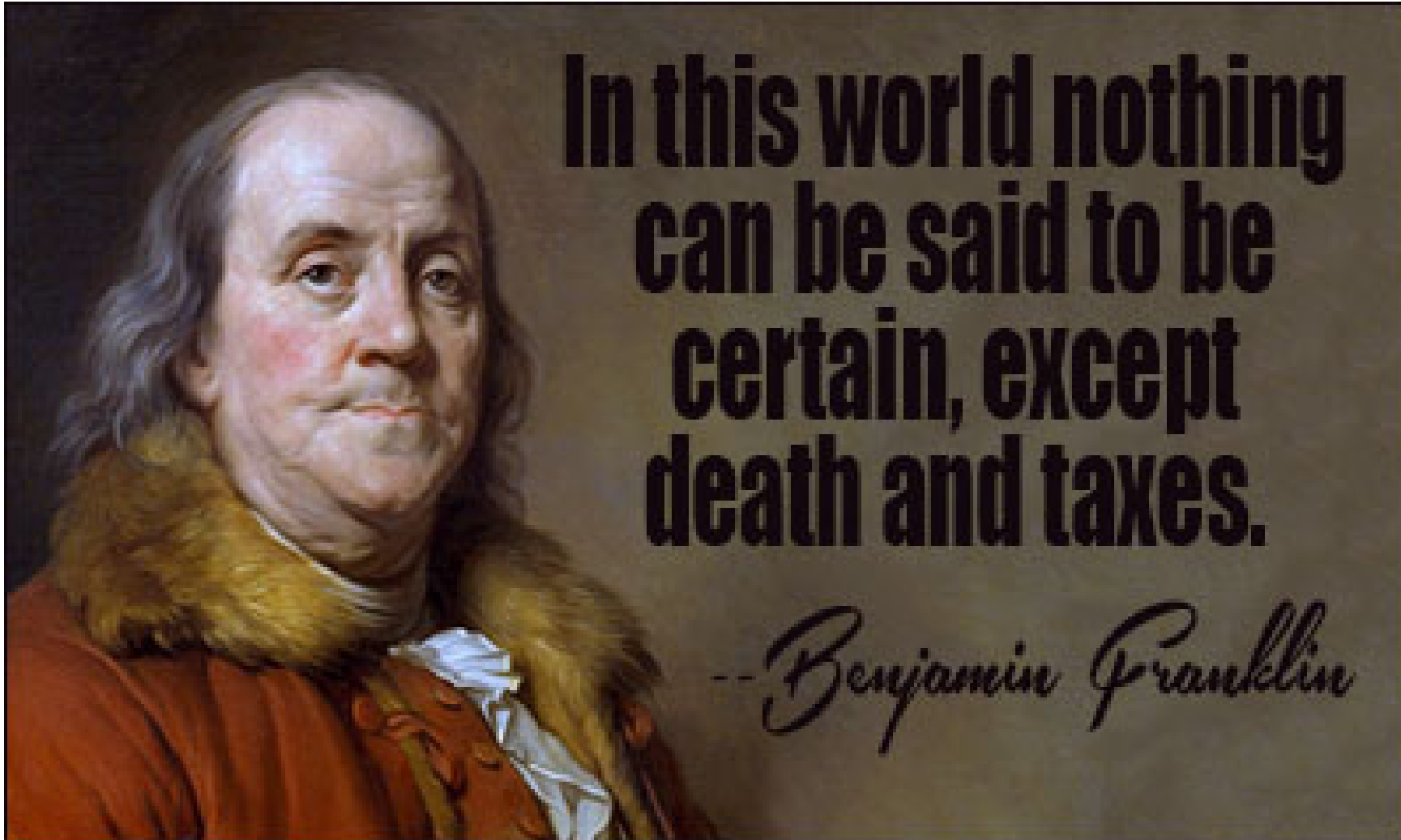
- Overview of tax litigation in Kenya
- Role of Accountant/Tax Consultant in Tax Appeals Tribunal
- Alternate Dispute Resolution (ADR) in Tax dispute Resolution in Kenya
- High Court ruling on ***Sanofi Aventis Vs KRA*** - implications



# Tax Litigation - Overview



# Introduction



## Article 210 - Constitution of Kenya

No tax or licensing fee may be ***imposed***, waived or varied ***except as provided by legislation***.

# Dispute?

- A tax assessment issued by the KRA to a taxpayer following an in-depth audit or a routine compliance check
- Alternatively, an interpretation of facts involved in any dispute, or the law applicable or both
- Section 51 of the TPA - a taxpayer can contest assessments issued by the KRA

# Dispute?...continued

- First - a taxpayer may file a formal objection to a tax decision to the Commissioner
- If the taxpayer is not satisfied with the resulting decision on the objection, they may appeal the decision to the TAT
- Beyond the TAT, the taxpayer may file further appeals to the High Court and the Court of Appeal

# Dispute?...continued

- When an appeal is before the TAT or the courts, the taxpayer or Commissioner may voluntarily request for the dispute to be handled through alternative dispute resolution mechanisms, the ADR





# TAT & Accountant's /Consultant's Role

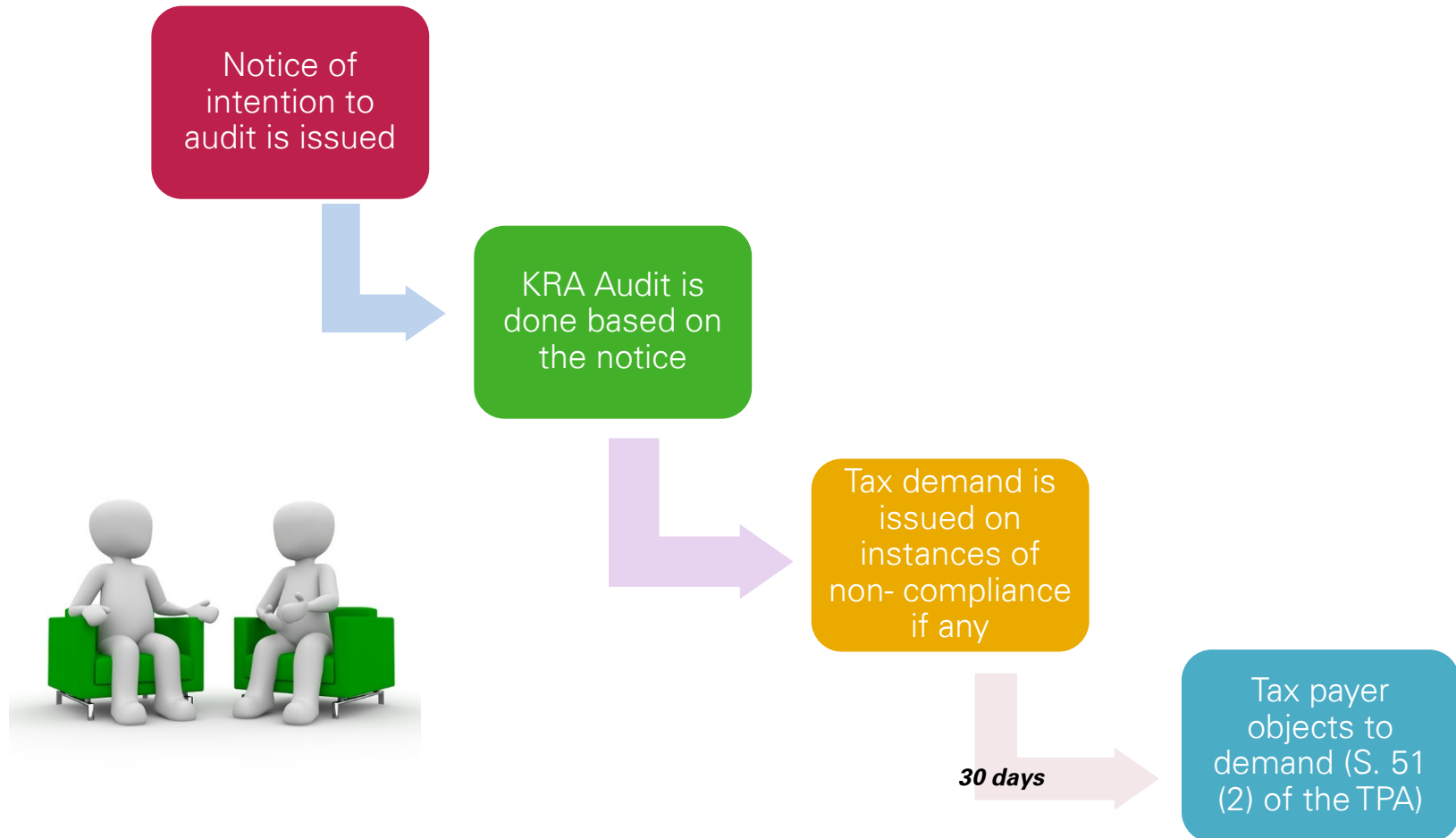


# Basis for ADR

- TPA provides for an elaborate Internal Dispute Resolution Mechanism (IDRM)
- Tax dispute commences with an objection by the Taxpayer to an appealable decision as stipulated under the TPA
- Dispute culminates to an Appeal to the TAT or Courts of Law

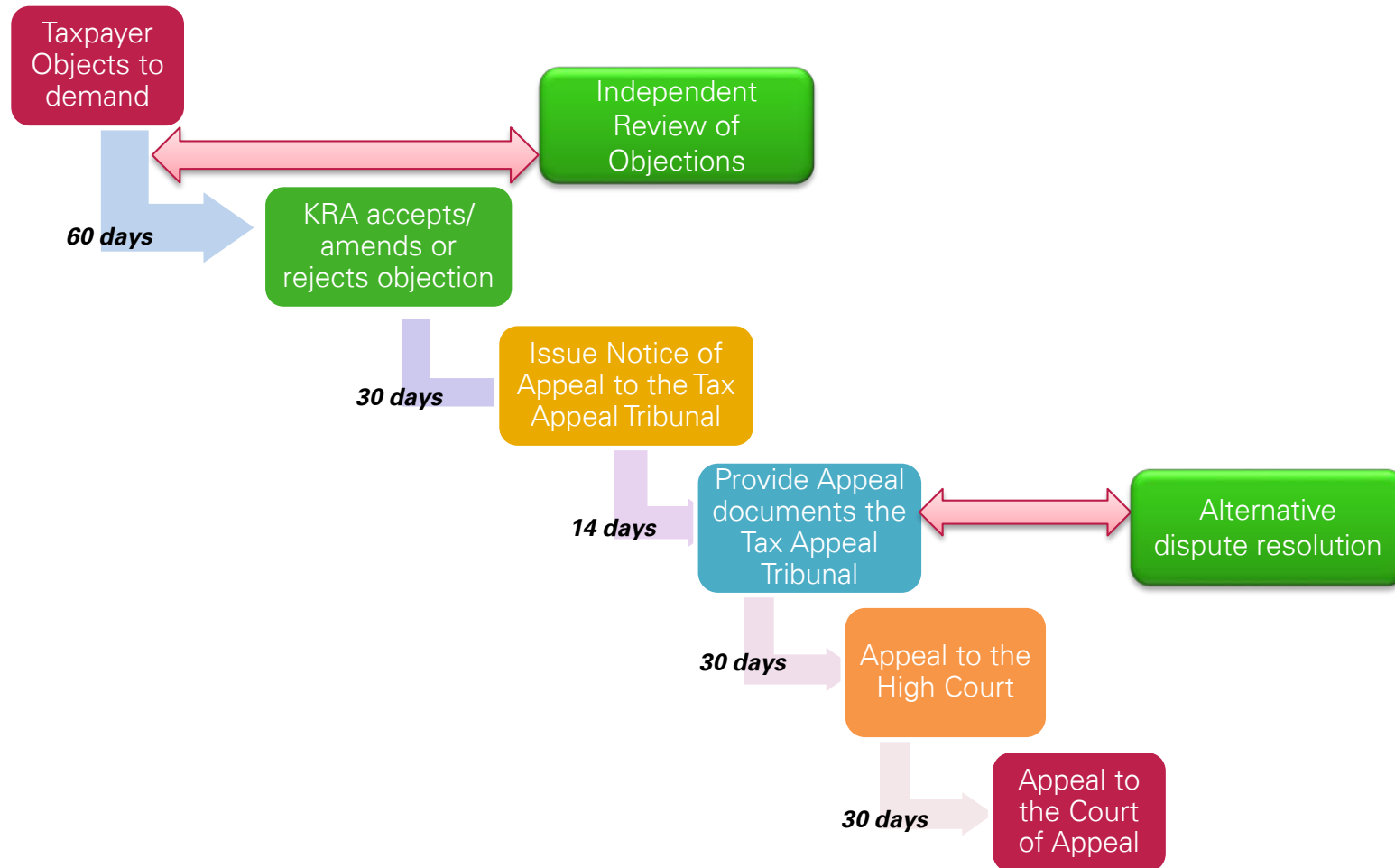
# Alternative Dispute Resolution...continued

The KRA audit process is as follows:



# Alternative Dispute Resolution...continued

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# Role of Tax Accountants/Consultants

- Tax Accountant/Consultant/Agent/Legal Advisor interact with parties to ADR disputes from the onset of a tax audit or tax dispute
- Roles include but not limited to:
  - a) Assisting in the interpretation and application of the law and regulation - an integral part of the tax dispute resolution mechanism
  - b) Assisting the parties in initiating the ADR process and provision of the necessary documentation
  - c) Submitting their client's case during the ADR discussions

# Role of Tax Accountants/Consultants

- d) Assisting the parties to identify the contentious and non-contentious issues in a dispute
- e) Assisting the parties in the hearing/discussions and to narrow down issues with a view to reach an expedited conclusion



# Alternative Dispute Resolution



# Introduction

**“Settle matters quickly with your adversary who is taking you to court. Do it while you are still together on the way, or your adversary may hand you over to the judge, and the judge may hand you over to the officer, and you may be thrown into prison.”**  
**~Mat 5:25 NIV~**





# ADR in Tax Disputes

- Voluntary facilitated mediation process of settling tax and customs disputes
- Between a taxpayer and the Commissioner
- Outside of the TAT or Court in the presence of a mediator or facilitator
- Where applicable, upon seeking leave of the TAT or Court as the case may be
- Provides an additional and/or alternative means of resolving tax disputes outside the judicial and quasi-judicial process

# ADR – Kenyan Model

- It is in the form of facilitated mediation
- Not arbitration as envisaged in the Arbitration Act, (CAP 49 Laws of Kenya)
- Facilitator has no power to impose any decisions regarding the outcome of the tax dispute
- Parties are facilitated to find a solution to the dispute
- **Overall objective** - Seeks to enrich the entire dispute resolution process by providing flexibility and timely/early dispute management

# Legal Basis

- Article 159 (2) (c) of the Constitution of Kenya
- Section 55 of the Tax Procedures Act, No 29 of 2015
- Section 28 of the Tax Appeals Tribunal Act, No. 40 of 2013
- Section 59C of the Civil Procedure Act, Cap 21 Laws of Kenya
- Revenue Statutes (the Commissioner may engage ADR at the review of an objection before confirmation)

# Why ADR?

- Builds trust and facilitates relationships between the taxpayer and KRA
- Facilitates timely resolution of matters
- Confidential process
- Clarification of issues on contentious matters to both the taxpayer and KRA
- Less costly (time and costs)
- Process is overseen by an independent and neutral mediator.

# Parties & Timeline

- Taxpayer with a tax dispute;
- KRA officers involved in the tax audit; and
- Facilitator (independent & neutral) who facilitates the discussions.

## Timeline:

- Cases before the TAT ***within 90 days*** - TPA;
- Court – as directed by the Court



# Exempted Matters - ADR

- Settlement would be contrary to the Law (Constitution, Revenue Laws or any other enabling Laws)
- Matter borders on technical interpretation of law
- Matter is in the public interest to have judicial clarification of the issue
- Undisputed judgments and rulings
- Party is unwilling to engage in ADR process

# ADR Process

- Taxpayer/Commissioner submits an application for ADR
- Dispute assessed for suitability
- Applicant informed of the suitability
- ADR meetings commence
- Where agreed agreement is prepared
- Agreement executed and consent is drawn
- Consent filed with the TAT/Court.



# Can ADR Collapse?

- Either party opts out of ADR
- The two parties unanimously agree to opt out
- Either 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 honour ADR meeting invitations
- A party fails to carry out a reasonable request by the facilitator with no valid justification
- Draft Regulations?





# Give unto Caesar



# Tax compliance campaign...continued

## In the headlines

A number of **high profile** individuals and companies have found themselves as the subject of KRA audits for **tax evasion** and **tax avoidance**.



### **Keroche Breweries** owners charged with tax evasion

Daily Nation - 23 Aug 2019

Owners of **Keroche Breweries** Tabitha Karanja and her husband Joseph Karanj have been arraigned Friday morning to answer to up to 10 ...

DPP orders arrest of **Keroche Breweries** owners Tabitha ...

Citizen TV - 21 Aug 2019



### Return money or we'll come after you, **KRA** boss to tax evaders

The Star, Kenya - 28 Aug 2019

Business mogul **Humphrey Kariuki** was arraigned in court on August ... The **KRA** boss said the system has made it easier to spot tax evaders.

[10 top \*\*KRA\*\* bosses grilled over tax evasion racket](#)

Citizen TV - 27 Aug 2019

## 80 KRA managers face probe over claims of tax evasion : The ...

<https://www.standardmedia.co.ke> > Business News ▼

Aug 27, 2019 - Mburu said his office had sought the support of the DCI in ensuring that all KRA staff who aid **tax evasion** are promptly investigated and their ...

# Tax compliance campaign...continued



## Tax evasion claims haunts NLC chairperson nominee

The Standard - 16 hours ago

But curiously, **Kenya** Revenue Authority (KRA) was quick to provide the National Assembly's Lands Committee that was vetting him with ...



## Mombasa tycoon Amin fights Sh2bn tax evasion charges

Daily Nation - 6 Sep 2019

A businessman whom the **Kenya** Revenue Authority (KRA) accuses of failing to pay taxes amounting to at least Sh1.87 billion was Friday ...



## KRA turns its guns on staff in tax evasion crackdown

Business Daily (press release) (blog) - 22 Aug 2019

The **Kenya** Revenue Authority (KRA) has trained its ammunitions on its staff warning that insiders aiding a multibillion **evasion** scheme will ...



## Spirited war against tax evasion shouldn't turn into witch-hunt

The Standard - 24 Aug 2019

Just a handful of Kenyans, about eight million, have carried the **tax** load ... Billionaire **Humphrey Kariuki** is another taxpayer on the spot after his ...

Bring the money or we come for it, KRA boss tells **tax** evaders

In-Depth - Daily Nation - 25 Aug 2019

# Tax compliance campaign...continued

## Raila, four MPs wanted by DCI in car tax probe : The Standard

<https://www.standardmedia.co.ke> › Nairobi ▼

6 days ago - Raila luxury car among 18 seized in KRA tax probe ... A search at the National Transport and Safety Authority (NTSA) for registration particulars ...

## Court quashes orders to probe Humphrey Kariuki accounts ...

<https://www.nation.co.ke> › News ▼

14 hours ago - The prosecution on Monday suffered a big blow in the Sh41 billion tax evasion case against tycoon Humphrey Kariuki, with the High Court ...



## KRA can't trace Sh800bn wired from offshore banks

Business Daily (press release) (blog) - 2 Oct 2019

Kenya Revenue Authority (**KRA**) has lost **trace** of Sh803 billion that wealthy Kenyans **wired** back into the country from **offshore** accounts in the ...



# Q & A Session

Any  
Questions