



# TAX PRINCIPLES AND EMERGING ISSUES SEMINAR

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Tax Disputes Resolution and Tax Compliance  
Thursday, 18<sup>th</sup> Feb 2021

# Outline



- i. Introduction
- ii. How Tax Disputes Arise
- iii. Tax assessments
- iv. Objections
- v. Appeals
- vi. Tax Dispute Resolution Process
- vii. Conclusion

# Sources of Tax Disputes



- i. An assessment
- ii. Refund
- iii. Demand for a penalty
- iv. Rejection of notice of objection
- v. Procedures and processes of the Tax Authority such as  
Access to premises, records etc.

# Type of Assessments



- A self-assessment
- Default assessment,
- Advance assessment,
- Amended assessment, and
- Any other assessment made under a tax law;

# Assessment Features



- Should be in prescribed form
- Done by due date for self assessment or as duly notified under Commissioners issued assessments.
- Can be amended within 5 years unless due to Fraud or willful neglect
- Can be a nil assessment, Payment or credit (refund/Loss)
- Self-assessment should provide a true tax position

# Objections to an Assessment



- ❖ An objection is an expression of dissatisfaction by a Taxpayer with a Tax decision of the Commissioner which may be in respect of:
  - i. an assessment
  - ii. Refund
  - iii. demand for a penalty
  - iv. a rejection of notice of objection
- ❖ Objections are covered under section 51 of the Tax Procedure Act (TPA) No. 29 of 2015.
- ❖ Where a notice of objection has been validly lodged within time, the Commissioner shall consider the objection and decide either to allow the objection in whole or in part, or disallow it, and Commissioner's decision shall be referred to as an objection decision.

# A Valid Objection



- 1) Lodged within the Requisite period- 30 days though there are cases where a late objection is allowed.
- 2) The notice of objection states precisely the grounds of objection,
- 3) The amendments required to be made to correct the decision,
- 4) The reasons for the amendments;
- 5) Where the objection relates to an assessment, the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute ( payment Plan agreement).
- 6) All the relevant documents relating to the objection have been submitted.

# Role of Commissioner on Receipt of an Objection Decision



- 1.** 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.
- 2.** The Commissioner Independent Review of Objections (IRO) 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 reviews arising from Customs & Border Control (C&BC)).
- 3.** Failure to issue a decision within the time frame stipulated– The Taxpayer's objection/application for review stands.



# Appeals



- Following issuance of an objection decision, a taxpayer may appeal to the Tax Appeals Tribunal (TAT) within stipulated timelines.
- 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.
- At any of the stages indicated above, the taxpayer may seek leave of the TAT/Court to engage in the ADR process.

# Alternative Disputes Resolution



- 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.

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 and Legality 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.
- 4) Legal backing
  - 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

# Parties to an ADR



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

# 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 Timelines and Conditions



- 90 days as provided for in Tax Procedure Act (TPA) section 55;
- Where records are requested for, the 90 days start running from the date the documents are received by the commissioner.
- Court initiated ADR - dependent on Court timelines given
- Where the ADR talk collapses, the matter reverts to the litigation process.

# Case suitability at ADR



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



*Thank  
you*

