



# Tax Appeals Tribunal

By CPA Nathan Omayio

# Presentation agenda



- ❖ Assessments and Objections
- ❖ Introduction and Role of TAT
- ❖ Membership of the Tribunal and office Tenure
- ❖ Arrangement of business
- ❖ Appeals To The Tribunal and procedure
- ❖ Consequence of non-attendance for hearing Expectations
- ❖ Powers of the Tribunal
- ❖ Decisions of the Tribunal
- ❖ Appeals to the High court

**Vision:** A world class Professional Accountancy Institute.

# Assessments, Objections & Appeals



- Self Assessment – A tax payer is required to compute his taxable income and tax payable in respect of the various taxes and submit self assessment return by the due dates. (Section 28 TPA):
- TPA allows the Commissioner to issue to a tax payer with the following assessments (Section 29 to 31 TPA):
  - ✓ Default assessment
  - ✓ Advance assessment
  - ✓ Amended assessment
- A taxpayer disputing a tax decision by Commissioner should lodge a notice of objection within 30 days of being notified of the decision. Section 51(1) & (2) TPA.

# Assessments, Objections & Appeals



- Conditions of a valid notice of objection:
  - ✓ Grounds of objection, amendments required & reason for amendments.
  - ✓ All supporting documents should be submitted at this point.
  - ✓ Pay the entire tax not in dispute or has applied for an extension of time to pay the tax not in dispute under section 33(1). Section 51(3) TPA.

# Assessments, Objections & Appeals



- 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.
- Commissioner decision:
  - ✓ Allow the objection in whole or in part
  - ✓ Disallow the objection fully.

# Assessments, Objections & Appeals



- **Invalid objection;** The Commissioner shall immediately notify the taxpayer in writing that the objection has not been validly lodged.
  - ✓ *The TPA does not provide for the next steps after the Commissioner informs a taxpayer that an objection is not validly lodged.*
- **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.
- **Lodging a notice of appeal:** A person who is dissatisfied with an objection decision may appeal to the TAT in accordance with the TATA and Section 52(1) TPA.

# Appeals to TAT



- Tax Appeals Tribunal procedures are guided by TAT Act, 2013 revised in 2018 and Section 52 of Tax Procedures Act, 2015
- Consolidated all local committees and tribunals that existed previously -VAT, Income tax, Customs
- The TAT hears and determines disputes relating to taxation in Kenya.
- Tax appeal can be made by a taxpayer against a tax decision by the Commissioner under any of the tax laws.

# TAT Introduction



- The TAT serves as the first port of call for an aggrieved taxpayer on technical matters.
- The TAT is a quasi-judicial process that provides some level of confidentiality for the tax payer as opposed to an open judicial process that is usually prone to public scrutiny.
- TAT ensures a level of efficiency that allows for business continuity as it is fast and flexible.
- TAT has favoured Alternative Dispute Resolution to settle cases.

**Vision:** A world class Professional Accountancy Institute.



# Membership of the Tribunal and office Tenure



- Chairman qualifying to be a high court judge and Serves for 5 years only.
- 15- 20 members appointed by CS with the following requirements:
  - ✓ High moral character and integrity (chapter six of the constitution)
  - ✓ Degree in law, business, economics, insurance, public finance or related discipline
  - ✓ At least 10 years experience
  - ✓ Not an employee of KRA/KRA agent
  - ✓ Tax compliant, not convicted of criminal offence and not bankrupt
- Serve for 3 years and eligible for re-election for one more term (3 years).

**Vision:** A world class Professional Accountancy Institute.

# Cessation from office



- Resigns from office by notice in writing
- Becomes a public servant/KRA employee/ tax agent.
- Absent from 3 consecutive meetings with no permission from Chairperson
- Adjudged bankrupt
- Convicted of an offence under any tax law/ criminal offence
- Unable to perform the functions of the office arising by reason of infirmity of body or mind

# Arrangement of business



- Chairperson is responsible for orderly and expeditious discharge of tribunal mandate.
- He should:
  - ✓ Constitute a panel to hear any matter before the Tribunal (at least 3 members one being advocate).
  - ✓ Determine the place at which a panel may sit
  - ✓ Determine the procedure for the conduct of the business of the Tribunal.
- Annual report of the tribunal performance is submitted to the CS in the following year

# Appeals To The Tribunal and procedure: S 12&13



- If a taxpayer disputes the decision of the Commissioner on any tax matter, he /she may appeal to the TAT upon giving notice in writing to the Commissioner.
- The taxpayer before appealing should pay a non-refundable fee of sh. 20,000.
- A notice of appeal to the TAT should;
  - Be in writing
  - Be submitted to the TAT within 30 days upon receipt of the decision of the Commissioner

# Appeals To The Tribunal and procedure: S 12&13 Cont'd



- 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
- Within 14 days from the date of filing the notice of appeal, submit copies to the Clerk Tribunal;
  - ✓ Memorandum of appeal (stating the grounds upon which the appeal is based)
  - ✓ Statements of facts (setting out the circumstances leading to the KRA's decision on the objection notice submitted by the taxpayer).
  - ✓ The tax decision.

# Appeals To The Tribunal and procedure: S 12&13 Cont'd



- The TAT may in writing extend the time for filing the notice of appeal and for submitting the documents if applicant was sick, outside Kenya or other reasonable cause.
- Tax payer will then submit a copy of the appeal on the Commissioner within 2 days after giving notice of appeal to the TAT.
- The Tribunal shall hear and determine an appeal within 90 days from the date the appeal is filed with the Tribunal.

# Appeals To The Tribunal and procedure: S 12&13 Cont'd



## **NB: Alternative Dispute Resolution**

- ✓ The parties to an appeal may apply to the TAT to settle the dispute out of the TAT.
- ✓ The parties shall report to the TAT the outcome of settlement of the matter outside the Tribunal.
- The Commissioner should submit to the TAT and appellant the following copies within 30 days after being served with a copy of an appeal to the Tribunal:
  - ✓ Statement of facts including the reasons for the tax decision
  - ✓ Any other document which may be necessary for review of the decision by the Tribunal. Section 15(1) TAT Act

# Appeals To The Tribunal and procedure: S 12&13 Cont'd



- The Secretary advises all parties in writing of the time and place of the hearing at least 14 days before the start of hearing.
- Oral evidence or evidence through affidavits is accepted during the hearing as the Tribunal may direct.
- The TAT is permitted to engage the services of an independent expert in any proceedings. Such evidence can be taken into account in the making of its decision.



# Consequence of non-attendance of TAT hearings



- If both parties don't attend, TAT may dismiss the appeal or give such orders that it may deem appropriate.
- If either KRA/tax payer do not attend:
  - ✓ TAT may proceed 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.
  - ✓ It shall direct a second notice to be served if not satisfied that the notice was served
  - ✓ Postpone the hearing if satisfied that notice was not served in sufficient time or for other reasonable cause, the respondent was unable to attend.

# Powers of the Tribunal during a proceeding.



- Take evidence on oath
- Proceed in the absence of a party who has reasonable notice of the proceedings.
- Adjourn the hearing of the proceedings.
- Summon a person to appear before it to give evidence or to produce books/records.
- Receive evidence by affidavit and administer interrogations and require the persons to make full and true reply to the interrogations.
- Power to request for examination of witnesses abroad

# Contempt of Tribunal S 21



- A person who:
  - ✓ Insults a member/employee of the Tribunal;
  - ✓ Interrupts the proceedings of the Tribunal;
  - ✓ Creates a disturbance in or near a place where the Tribunal is sitting, Commits an offence and is liable on conviction to a fine not exceeding 100,000 shillings or 2 months imprisonment or both.

# Disobedience of summons to give evidence, S 22



- If a person summoned by the Tribunal;
  - ✓ Fails to attend and give evidence
  - ✓ Fails to produce any records, account statements
  - ✓ Refuses or fails to answer all questions lawfully put to him,

Commits an offence and is liable on conviction to a fine not exceeding 100,000 shillings or 3 years to imprisonment or to both.

# Decisions of the Tribunal. S 29



- Shall be by majority vote of the members present, in case of a tie, chairperson shall cast a vote in addition to his deliberative vote.
- The decision shall be in writing either;
  - ✓ Affirming the decision under review
  - ✓ Varying the decision under review
  - ✓ Setting aside the decision under review and either:
    - (i) making a decision in substitution for the commissioner decision.
    - (ii) Referring the matter to the Commissioner for reconsideration with recommendations of the Tribunal

# Decisions of the Tribunal cont'd



- TAT should give reasons in writing for its decision, including its findings on material questions of fact, supporting evidence and a copy of the decision served to each party to the proceeding.
- Tribunal decision is operational on the date the notice of the decision is given or the date specified by Tribunal in the notice.
- It is enforceable as if it were a decision of a court and becomes a public record open to inspection of the public without disclosing confidential information.

# Burden of proof



- The appellant has the burden of proving;
  - ✓ That the assessment is excessive
  - ✓ That the tax decision should not have been made or should have been made differently.
- If the TAT awards costs in any appeal, it should issue a certificate stating the amount involved.

# Appeals to the High court on decisions of the Tribunal. S 32



- If aggrieved by the TAT decision, the aggrieved party within 30 days after being notified of the decision may appeal to the High Court and serve a copy of the notice of appeal on the other party.(Sec 53 TPA)
- An appeal to the High Court or to the Court of Appeal shall be on a question of law only.
- The High Court shall hear appeals made under this section in accordance with rules set out by the Chief Justice.



# Alternative Dispute Resolution - ADR



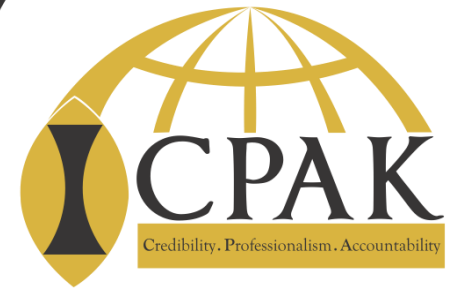
- It is a mechanism that expedites the resolution of tax disputes.
- It is an alternative method of handling tax disputes outside the;
  - ✓ Judicial process (Courts of law)
  - ✓ Quasi Judicial Process –Tax Appeals Tribunal (TAT)
- The ADR process;
  - ✓ Application for ADR
  - ✓ Determination of suitability of tax dispute
  - ✓ Communication to taxpayer of the outcome of the suitability test
  - ✓ Commencement of ADR meeting;
  - ✓ ADR settlement agreement is prepared and executed
  - ✓ Consent is drawn and filed at Tax Appeals Tribunal or Courts.

**Vision:** A world class Professional Accountancy Institute.

# Controversial areas in TAT Appeal process



- Objection decisions issued out of prescribed time.
- Payment of tax not in dispute before filing of appeal
- The TAT not fixing a hearing date on time.
- Moving directly to Judicial Review or constitutional petitions rather than TAT.
- Referral back to TAT from High Court.
- Settlement of disputes out of TAT like ADR process.
- Delay in giving of judgments by the TAT.



# Thank You!

**Vision:** A world class Professional Accountancy Institute.