

ALTERNATIVE DISPUTE RESOLUTION



KENYA REVENUE
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WHAT IS ADR?

This is an alternative method of handling a tax dispute outside of the judicial process (Courts of Law) and Quasi – Judicial Process – Tax Appeals Tribunal (TAT)

It is a voluntary *facilitated mediation* process used in settling tax and customs disputes between the Commissioner and a Taxpayer.

Parties to an ADR Process;

- Taxpayer
- Relevant Commissioner
- Facilitator

Role of Parties

- Uphold and maintain decorum, and confidentiality.
- Participate in all discussions fairly and diligently.
- Make full disclosure of material facts and supporting evidence relevant to the Tax dispute.
- Attend all scheduled meetings.
- Strictly adhere to the agreed timelines.



Disputes Appropriate for ADR

All Tax Disputes can be resolved through ADR with the following exceptions;

- The settlement would be contrary to the Constitution, the Revenue Laws or any other enabling Laws.
- The matter borders on technical interpretation of the law.
- It is in the public interest to have judicial clarification on the issue.
- There is judgment/ruling which the losing party has not disputed or appealed against – hence the matter stands settled.
- A party is unwilling to engage in ADR process.
- The matter touches on illegalities.

Stage of Tax Dispute when the ADR Process Applies

- Where the Taxpayer has objected to an assessment and the parties agree to involve a neutral third party (Facilitator) as an intermediary during the review process.
- Where the dispute is before the Courts/Tax Appeals Tribunal but the parties desire an out of court settlement.

What are the ADR timelines?

- 90 days as provided for in the Tax Procedure Act (TPA) Section 55.
- Timelines for a 'Court initiated ADR process' may be dependent on timelines granted by the Court.

Benefits of ADR

- Faster Resolution of disputes.
- Friendly - preserves relationships.
- Accessible to all – conducted virtually and if necessary physically.
- Cost effective – free of charge.
- Confidential.
- Without prejudice.
- Improves compliance.



Legal implications of the ADR process

At the TAT/Court;

- Once an Appeal has been filed at the Tax Appeals Tribunal, either party may apply to have the matter discussed at ADR
- At this Stage, the legal responsibilities and liabilities of the parties include ensuring that;
 - » The applicant has leave/authorization from the Tribunal or court to engage in ADR Discussions
 - » Any guidelines given by the TAT/Court for observation during the ADR Process are adhered to
 - » The TAT/Court process proceeds as guided therein
- The ADR Discussions at this stage will culminate in an ADR Agreement which is executed by both parties and the Facilitator. The executed ADR Agreement will form the basis of the TAT/Court Consent which shall then be filed therein, in the prescribed form
- Once the TAT Consent is signed, the legal responsibilities and liabilities of the parties include ensuring that the TAT consent is enforced in line with the agreed terms failure to which it will constitute breach of the ADR agreement and either party may seek the appropriate orders from the court to uphold the settlement terms



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