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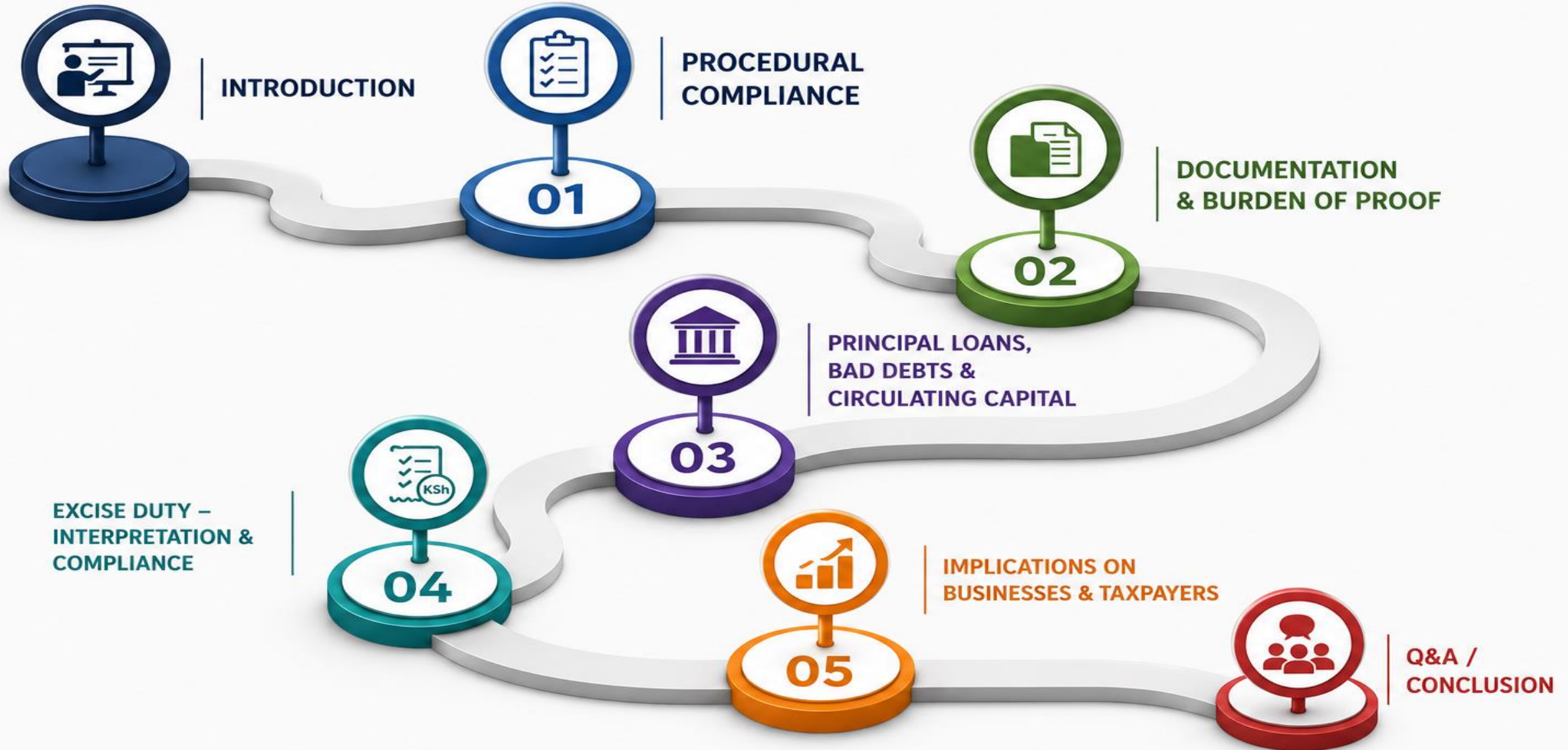


Emerging Trends in Kenyan Tax Jurisprudence: A Review of Tax Appeals Tribunal Decisions



SCOPE OF REVIEW – WEBINAR ROADMAP

Key Areas of Focus in Recent TAT Decisions (Jan – March 2026)



Introduction

- Tax dispute resolution in Kenya is governed by a structured statutory framework under the **Tax Procedures Act**, the **Tax Appeals Tribunal Act**, and the **relevant charging statutes**.
- The Tax Appeals Tribunal occupies a critical position in this framework because it is usually the first independent adjudicative forum before which factual disputes, documentary evidence, accounting treatment, tax computations, statutory interpretation, and administrative conduct by the Commissioner are tested.



TAX ASSESSMENT

Types of Assessment

- The Tax Procedures Act, 2015 recognises different forms of tax assessments, which are central to tax administration because they determine the amount of tax payable, the basis on which a taxpayer may object, and the procedural route through which a dispute may proceed.
- The main categories under *sections 28 to 31 of the Act* are:
 - i. **self-assessment**
 - ii. **default assessment**
 - iii. **advance assessment**
 - iv. **amended assessment**

Self Assessment

Done by the taxpayer themselves in the prescribed form within a reporting year, commonly known as Tax Returns.

Model under which taxpayers bear primary responsibility for calculating, declaring and paying their tax liabilities.

Default Assessment

Assessment Done by the Commissioner based on information available to them when a taxpayer fails to submit a self assessment.

The assessment will often be based on third-party data, iTax records, withholding tax information, customs data, bank information, supplier declarations, VAT inconsistencies, eTIMS data or other information available to KRA.

Advance Assessment

Done by the Commissioner but before the due date for submission of the taxpayer's return .

It allows the Commissioner to protect the revenue where circumstances justify early assessment, particularly where there is concern that tax may become difficult to collect if the Commissioner waits until the normal filing date.

Additional Assessment

Amendments done by the Commissioner to an original assessment by the taxpayer.

An amended assessment is particularly common after audits, compliance checks, data-matching exercises, sector reviews or investigations.

LIFE CYCLE OF A TAX DISPUTE IN KENYA

Under the Tax Procedures Act & Tax Appeals Tribunal Act

KEY / EXPLANATORY GUIDE

1 TAX ASSESSMENT / TAX DECISION
A tax dispute begins when the Commissioner issues an assessment or any other tax decision pursuant to the Income Tax Act, VAT Act, Excise Duty Act or other tax laws.
Relevant provisions: TPA – various sections.

2 NOTICE OF OBJECTION (Section 51 TPA)

- Must be in writing and received by the Commissioner within 30 days of notification of the tax decision.
- Must state clearly the grounds of objection, the amendments sought and include all supporting documents.
- Taxpayer must pay the undisputed tax or make an arrangement satisfactory to the Commissioner.
- Commissioner may extend the 30 days for good and sufficient reason.

3 OBJECTION DECISION (Section 51 TPA)

- Commissioner must consider the objection and any further information.
- Must issue an Objection Decision within 60 days of receipt.
- Failure to issue the decision within 60 days results in the objection being deemed allowed.
- The Objection Decision is the “appealable decision” for purposes of an appeal.

4 APPEAL TO THE TAX APPEALS TRIBUNAL (Sections 12, 13 & 30 TATA; Section 52 TPA)

4A. Notice of Appeal

- Must be filed within 30 days of the Objection Decision.
- Filing fee: KSh 20,000 (as prescribed in the Tax Appeals Tribunal Rules).

4B. Appeal Documents

- Memorandum of Appeal, Statement of Facts, copy of Objection Decision and all documents relied upon.
- Must be filed within 14 days after the Notice of Appeal.
- Tribunal may extend time on application.
- **Burden of proof:** Section 56(1) TPA & Section 30 TATA place the burden on the taxpayer to prove the tax decision is incorrect.

5 DECISION OF THE TAX APPEALS TRIBUNAL

- After hearing both parties, the Tribunal issues a written decision.
- **Powers include:** affirm, vary, set aside or remit the assessment.
- Decision is binding unless appealed.

6 APPEAL TO THE HIGH COURT (Section 53 TPA)

- Appeal lies on questions of law only.
- Notice of Appeal must be filed within 30 days of the Tribunal's decision.
- High Court may affirm, vary, reverse or remit the decision.
- Court may extend time for appeal on application.

7 APPEAL TO THE COURT OF APPEAL (Section 54 TPA)

- Appeal lies on questions of law arising from the High Court decision.
- Notice of Appeal must be filed within 30 days of the High Court decision.
- The Court of Appeal may affirm, vary, reverse

1

TAX ASSESSMENT / TAX DECISION



The Commissioner issues a tax decision, which may be:

- Self-assessment adjustment
- Default assessment
- Amended or Additional assessment
- Any other tax decision

REFERENCE

Tax Procedures Act (TPA)
– Various provisions

2

NOTICE OF OBJECTION



- Taxpayer must lodge a written Notice of Objection with the Commissioner.
- Must also be lodged on the iTax platform.
- Must state grounds, desired amendments and attach supporting documents.
- Pay or make arrangement for payment of the undisputed tax.

TIME LIMIT

Within **30 DAYS** of notification of the tax decision.

Commissioner may extend time where taxpayer shows reasonable cause (e.g. absence from Kenya, sickness). Section 51(1)–(7) TPA

3

COMMISSIONER'S REVIEW & OBJECTION DECISION



- Commissioner reviews the objection and any further information requested.
- Issues an Objection Decision.
- This stage is **paper-based rather than adversarial**.

TIME LIMIT

Within **60 DAYS** of receipt of objection or further info.

If no decision within 60 days – objection is **DEEMED ALLOWED** by law. Section 51(8)–(11) TPA

4

APPEAL TO THE TAX APPEALS TRIBUNAL (TAT)



4A. NOTICE OF APPEAL

- File Notice of Appeal with the Tribunal.
- Pay prescribed filing fee (currently KSh 20,000).

4B. FILING OF APPEAL DOCUMENTS

- File Memorandum of Appeal, Statement of Facts, copy of Objection Decision and all documents relied upon.
- Must be filed within 14 days after the Notice of Appeal.
- Tribunal may extend time for filing Notice of Appeal or Appeal documents upon application. Sections 12 & 13 TATA

TIME LIMIT

Notice of Appeal within **30 DAYS** of the Objection Decision.
Appeal documents within **14 DAYS** after filing the Notice of Appeal.

5

DECISION OF THE TAX APPEALS TRIBUNAL



- Tribunal hears the appeal.
- May affirm, vary, set aside the assessment or remit the matter.
- Burden of proof lies on the taxpayer.
- Sections 56(1) TPA & 30 TATA

OUTCOME

Tribunal issues its Decision in writing.

6

APPEAL TO THE HIGH COURT



- Appeal lies on questions of law only.
- Notice of Appeal must be filed within 30 days of the Tribunal's decision.
- High Court may affirm, vary, reverse or remit the decision.
- Court may extend time for appeal on application.

TIME LIMIT

Within **30 DAYS** of notification of the Tribunal Decision.

Section 53 TPA

7

APPEAL TO THE COURT OF APPEAL



- Appeal lies on questions of law arising from the High Court decision.
- Notice of Appeal must be filed within 30 days of the High Court decision.
- The Court of Appeal may affirm, vary, reverse or set aside the decision of the High Court.

TIME LIMIT

Within **30 DAYS** of notification of the High Court Decision.

Section 53 TPA

SETTLEMENT OF DISPUTE OUT OF COURT (ADR)



A taxpayer is allowed at any point within the process to apply for an out of court settlement (Alternative Dispute Resolution).

The settlement shall be made within **120 DAYS** from the date the Tribunal or the Court permits the settlement.

KEY PRINCIPLES THROUGHOUT THE PROCESS



- Strict timelines are jurisdictional
- Proper documentation is critical
- Burden of proof lies on the taxpayer
- Pay undisputed tax
- In appeals to TAT, High Court and Court of Appeal, the taxpayer shall rely only on the grounds stated in the objection to which the decision relates unless the Tribunal, or the Court allows new grounds.

QUICK TIMELINE SUMMARY

1	Notice of Objection	30 days
2	Objection Decision by Commissioner	60 days
4A	Notice of Appeal to TAT	30 days
4B	Appeal Documents to TAT	14 days
6	Appeal to High Court	30 days
7	Appeal to Court of Appeal	30 days

* Time runs from the date of notification/service of the respective decision.

Emerging Trends

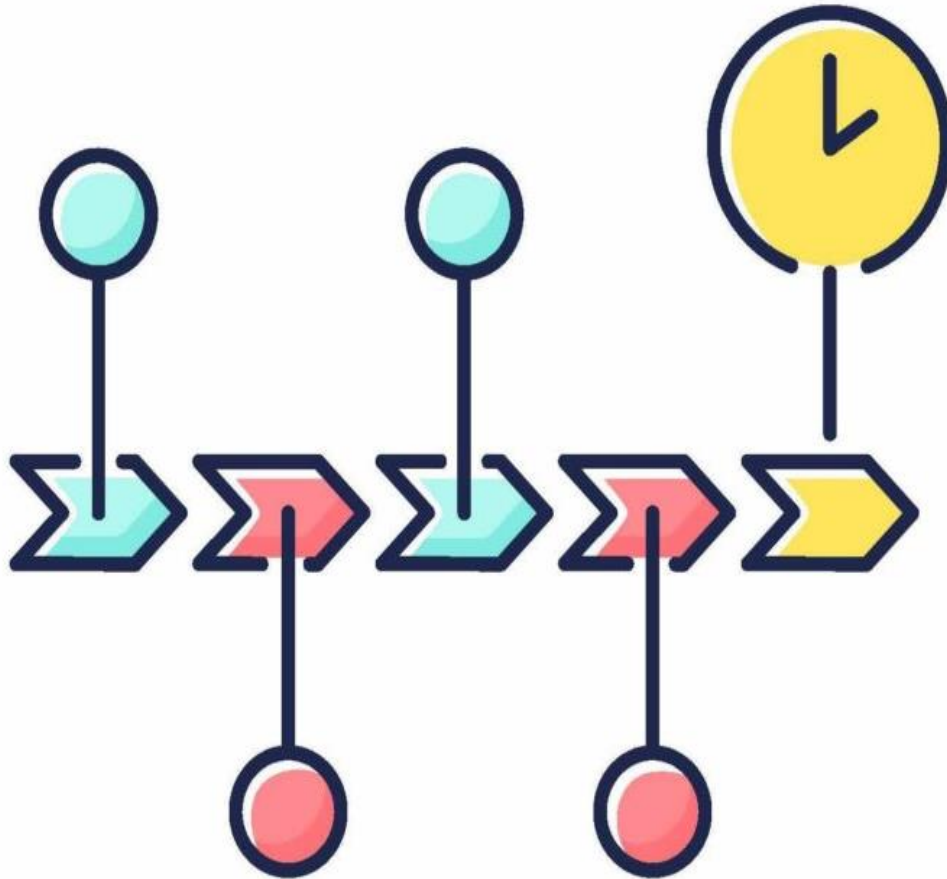




1. Procedural Compliance as a Jurisdictional Gatekeeper

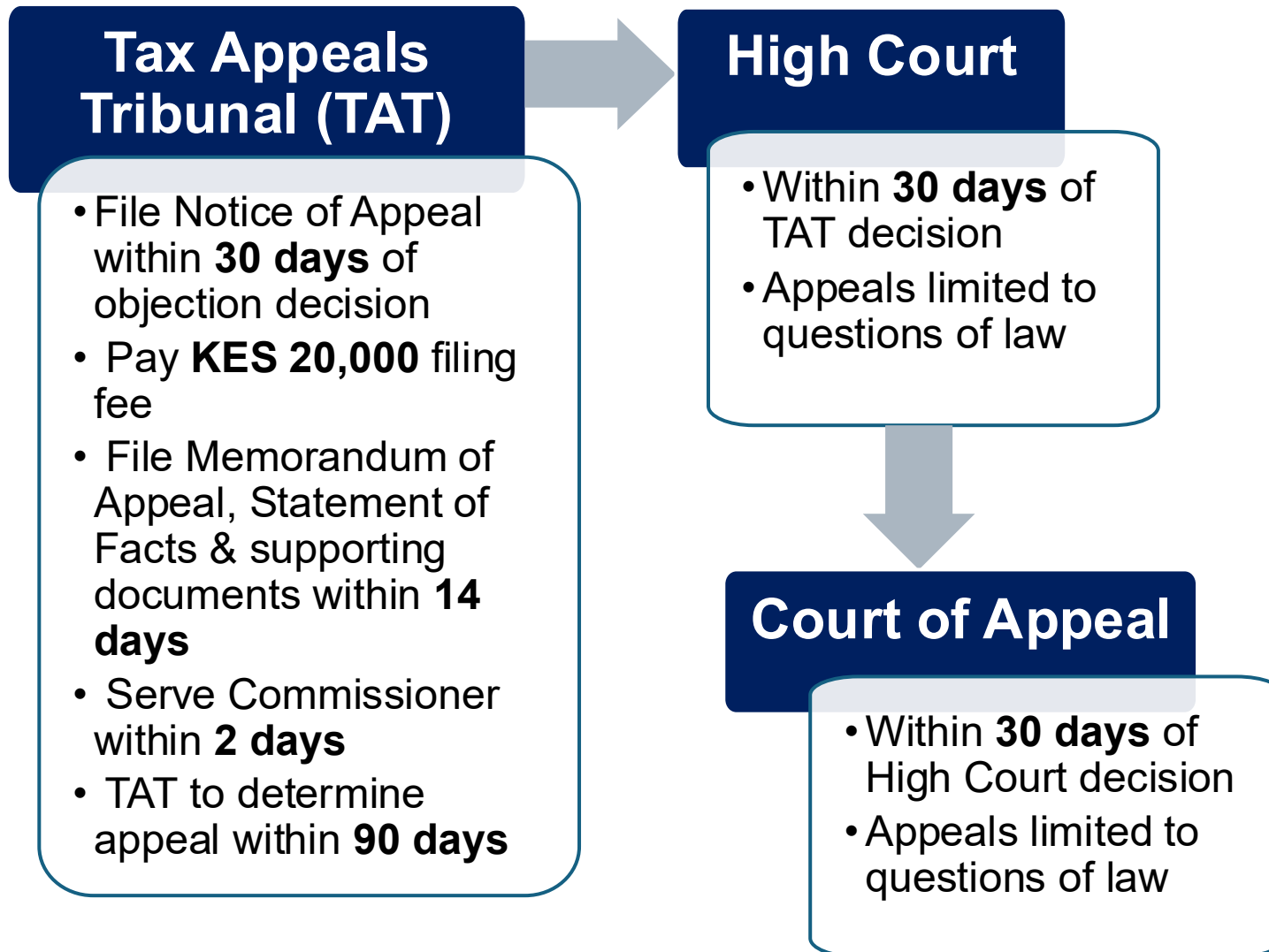
- **Section 51 of TPA** - After taxpayer is issued with a tax decision from the Commissioner, they have 30 days to lodge an objection to the tax decision.
- For an objection to be considered valid:
 1. The notice of objection states precisely the grounds of the objection, the amendments required to be made to correct the objection and the reason for the amendments;
 2. 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; and
 3. All the relevant documents relating to the objection have been submitted

Procedural Compliance



- Where the Commissioner has determined that the objection has not been validly lodged, the Commissioner will notify the taxpayer in writing within **fourteen (14) days** of receiving the objection and request the taxpayer to submit the information within **seven (7) days** after the date of the notice.
- Where the Commissioner has determined that the objection has been validly lodged, they will consider the objection and issue an objection decision whether to allow the objection in whole or in part, or to disallow it. This should be done within **sixty (60) days** of receiving the objection. The objection decision should contain the statement of findings on the material facts and the reason of the decision.
- Where the Commissioner issues an objection decision and the taxpayer is dissatisfied, they may lodge an **appeal within thirty (30) days** of receiving the decision

Procedural Compliance - Appeals



Available at any stage
Settlement to be concluded within 120 days

Procedural Compliance – Case Review

Bariq Enterprises Limited v Commissioner of Domestic Taxes

The taxpayer challenged VAT assessments relating to under-declared sales. The Commissioner objected to the competence of the appeal on the basis that the taxpayer had failed to attach the appealable decision as required by section 13(2) of the Tax Appeals Tribunal Act and had not sought leave to regularise the defect.

The Tribunal held that the appealable decision is a mandatory jurisdictional document and that failure to attach it deprived the Tribunal of a proper basis to exercise appellate jurisdiction.

Great Heights Ventures Ltd v Commissioner

The Tribunal declined jurisdiction in respect of an appeal reportedly filed five years out of time without leave.

Taken together, these decisions show that the Tribunal is enforcing a disciplined gateway model: before the merits of a tax dispute can be heard, the taxpayer must first demonstrate compliance with the procedural architecture of the tax dispute system.

2. Documentation and the Burden of Proof

- The second major trend is the Tribunal's **insistence on documentary proof**.
- The Tribunal is not satisfied by assertions, explanations, oral testimony, or general references to business realities where the taxpayer fails to produce primary records.



Documentation and Burden of Proof

Case Review

Bariq Enterprises Limited v Commissioner of Domestic Taxes

- The Commissioner had requested supporting documents during the objection process, but the taxpayer failed to provide them.
- The Commissioner argued that this failure meant the taxpayer had not discharged the burden imposed by section 56 of the Tax Procedures Act.
- The Tribunal accepted the procedural objection and struck out the appeal.

High-Definition Marine Company Limited v Commissioner

- The taxpayer's position was supported by a detailed breakdown and supporting material with extensive documentation produced, enabling the Tribunal to assess the true nature of the payments rather than accept the Commissioner's broad recharacterization.
- The Tribunal held that once a taxpayer establishes a prima facie case through documentary evidence, the evidentiary burden shifts to the Commissioner to rebut the evidence presented.

Documentation and Burden of Proof

Case Review

Rafiki Micro-Finance Bank Limited v Commissioner of Legal Services and Board Co-ordination

- **Rafiki's Position:** The Appellant argued that interest on defaulted loans should not be taxed as income because it is not yet realised. It maintained that such amounts are held in suspense accounts in accordance with Regulation 48 of the Microfinance (Deposit-Taking Microfinance Institutions) Regulations, 2008, which explicitly states that "the interest in suspense shall not be treated as income".
- **KRA's Position:** The Respondent contended that Kenya's Income Tax Act adopts an accrual basis of taxation, not a cash basis. KRA further argued that the Appellant had misclassified the loans as non-performing and had improperly suspended the accrued interest and penalties.
- **The Tribunal's Ruling:** The Tribunal's found that the case hinged on evidence rather than accounting principles. It thus held that Rafiki had failed to discharge its statutorily mandated burden of proof. The Tribunal stressed that taxpayers must prove compliance. Rafiki relied on general explanations, witness testimony, and regulatory frameworks, but failed to provide specific documents linking the disputed amounts to properly classified non-performing loans. Assertions alone were insufficient.

Retention of Records

- Taxpayers must also treat record retention as part of the evidentiary burden in tax disputes.
- Section 23 of the Tax Procedures Act requires a taxpayer to maintain documents required under tax law in either English or Kiswahili and in a manner that enables the taxpayer's tax liability to be readily ascertained.
- The records must generally be retained for **five years from the end of the reporting period to which they relate.**



WARNING

Penalty equal to the higher of 10% of the tax payable for the relevant reporting period or KES 100,000 where no tax is payable.



3. Evolving Judicial Approach on Bad Debts, Loan Principal and Circulating Capital

- One of the most commercially significant issues emerging from recent Tax Appeals Tribunal decisions concerns the deductibility of bad debts and, more specifically, whether written-off loan principal may be treated as an allowable deduction for tax purposes.
- This issue is especially important for banks, microfinance institutions, digital credit providers, fintech lenders and other businesses whose income-generating model depends on advancing credit to customers.

Bad Debts, Loan Principal and Circulating Capital – **Case Review**

Branch International Limited v Commissioner of Domestic Taxes



- The Tribunal accepted Branch's deduction of bad debts amounting to approximately KES 797 million. In doing so, it recognised the commercial realities of digital micro-lending, particularly the high-volume, low-value nature of digital loans and the need for practical write-off policies.
- However, the Tribunal disallowed fraud losses of approximately KES 43.5 million because the police investigation had not been concluded. The Tribunal's position was that the loss had not crystallised sufficiently for tax deduction purposes.

Bad Debts, Loan Principal and Circulating Capital – Case Review

Premier Credit Limited v Commissioner of Domestic Taxes

- The Tribunal adopted a stricter capital-versus-revenue analysis.
- The central issue was whether written-off loan principal was deductible as a bad debt under section 15(2)(a) of the Income Tax Act.
- Premier Credit argued that the written-off amounts were bad debts incurred in the production of income.
- The Commissioner argued that loan principal was capital in nature, while interest constituted income.



- The Tribunal agreed with the Commissioner, holding that principal loan amounts are capital assets and that losses arising from unrecovered principal are therefore non-deductible under section 16 of the Income Tax Act.
- On this reasoning, only interest or revenue-related amounts may potentially be deductible when written off, provided the taxpayer satisfies the relevant statutory and evidentiary requirements.

4. Excise Duty and Financial Services

- Excise duty in Kenya applies to specified excisable goods and services.
- The Excise Duty Act regulates the imposition, collection and administration of excise duty on products and services listed in the statutory schedules e.g., specified fees charged by financial institutions.
- The Tribunal's recent decisions reflect the position that excise duty must be imposed strictly in accordance with the statute.

Excise Duty – Case Review

Prime Bank Limited v Commissioner of Legal Services and Board Coordination



- The Tribunal held that excise duty assessed on cheque or bill discounting, credit card interest, late payment charges and over-limit fees was unlawful where those amounts constituted interest rather than fees for an excisable service.
- The Tribunal also found that excise duty on interchange fees for exported services was unlawful where the services were consumed outside Kenya.
- This decision is consistent with a strict statutory approach to excise duty.
- Excise duty applies to specified excisable goods and excisable services, including certain fees charged by financial institutions, but the distinction between interest and fees remains critical.

Impact on Businesses and Taxpayers

1 The strict approach to procedural compliance means that taxpayers must maintain active tax dispute management systems to ensure timely filing of objections, appeals, and supporting documentation.

2 The increasing emphasis on documentation and burden of proof requires businesses to maintain robust record-keeping practices, including invoices, contracts, tax computations, financial statements, and supporting transactional documents. Failure to produce sufficient records may result in otherwise legitimate claims being disallowed

3 The evolving approach on bad debts and loan principal amounts particularly affects financial institutions and lending businesses. The High Court's commercially sensitive interpretation in the consolidates appeals discussed above, signals greater judicial willingness to consider the operational realities of businesses when determining deductibility of losses.



Thank you 