



Alternative tax dispute resolutions can revolutionize the Tanzania tax regime

Hailed by various stakeholders as a right call for Tanzania, the tax amnesty in July 2018 was the highlight of last year's budget. The measure aimed at reducing the backlog of tax objections and disputes at various levels of the tax appeal machinery, encourage voluntary disclosure and increase government revenues. Taxpayers took this opportunity and applied for the tax amnesty and settled their principal tax liabilities in instalments up until 30 June 2019; enjoying a full waiver of interest and penalties.

The amnesty was a one-off measure requiring quick turnaround from taxpayers. It would require time for a taxpayer to determine whether to concede to all or some of the tax disputes but also understand the consequences of such decisions for future tax obligation. Some organisations require senior management involvement for Tanzanian operations, may be based outside Tanzania. It is therefore possible that some taxpayers unintentionally failed to take advantage of it. One of the highlights of The Controller and Auditor General Report's for 2017/18 indicated was the fact that tax objections worth TZS 77.8 Billion filed by taxpayers were outstanding beyond the allowable period as specified in the Tanzania Revenue Authority (TRA) Service Charter. Further, at various stages of the tax appeal machinery are outstanding tax cases worth 382.6 trillion awaiting rulings.

It is imperative that we now consider a long term measure to resolve tax disputes in the form of Alternative Dispute Resolution (ADR). ADR is broadly referred to as a method of solving disputes outside the normal objection and tax appeal process.

There are two approaches to ADR. The first is the cooperative approach, which is appropriate for large taxpayers. It is based on transparency and trust due to the small number of large taxpayers, quantum of the amounts of tax in dispute and the complexity of matters. This approach would be appropriate in tax disputes involving transfer pricing that are controversial in nature and take long to resolve. It is expected that the tax authority will establish a tax control framework to ensure early knowledge of tax risks, make tax compliance easier and more secure. On the other hand, the taxpayer is expect to act in good faith, thus minimizing exposure of interest and penalties.

The second approach is negotiations. This is divided into mediation, settlement and arbitration. Mediation involves parties accepting a third party in the procedure to get them to agree where it is no longer possible for them to reach an agreement on their own. Settlement is whereby there is an agreement between the tax authority and the taxpayer. When a settlement is reached during litigation, it should be known to the court to incorporate into the ongoing legal action in order to terminate it.

Consistent with the principle of legality, ADR has to be instituted in laws or regulations. It is therefore high time to consider embedding the ADR mechanism into our Tax Administration Law and its related regulations. This action together with public education to the taxpayer will ensure taxpayers are aware of ADR as an alternative to settle their tax disputes.



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The vagueness of the procedures included within the concept of ADR may lead to concerns about possible misuse that is transparency and confidentiality issues. Accordingly, a certain level of formalization is needed including concentrating decision-making at the top levels as they can be better controlled, together with a clear definition of the cases where ADR is possible and a clear strategy and tight governance around reaching conclusions.

Tax authorities may have concerns on issues that should be resolved under the ADR mechanism. The laws should clearly stipulate the type of tax and tax issues that could be resolved under the ADR as this should provide clarity to the taxpayers. The main merits for using ADR mechanism is that it encourages use of expertise, allows flexibility in the procedures and results in efficient resolutions.

Globally it is recommended that at least 80% of tax disputes should be resolved through ADR. South Africa is estimated to have resolved about 66% of its tax disputes through ADR. Kenya introduced the ADR framework in July 2015 and has so far resolved 181 tax disputes and raised KSHS 8.3 Billion as of 30 April 2018. The success of ADR mechanism in these two countries speaks for itself. It should not be ignored but embraced by our government. The challenges that come with it should be addressed early enough when preparing the ADR regime by engaging various stakeholders.

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