



Legal Notice No. _____

TAX PROCEDURES (ALTERNATIVE DISPUTE RESOLUTION)

REGULATIONS, 2019

(No. __ of 2019)

IN EXERCISE of the powers conferred by Section 112 of the Tax Procedures Act, 2015, the Cabinet Secretary for the National Treasury and Planning makes the following Regulations.

Citation	1. These Regulations may be cited as the Tax Procedures (Alternative Dispute Resolution) Regulations, 2019.
Interpretation	2. In these Regulations except where the context otherwise requires- “Alternative Dispute Resolution (ADR)” is a voluntary facilitated mediation process of settling tax disputes between a Taxpayer and the Commissioner. “Alternative Dispute Resolution Agreement” means an executed agreement entered into between a Taxpayer and the Commissioner and witnessed by a facilitator, upon the conclusion of the Alternative Dispute Resolution process and the parties reaching a settlement; “facilitator” means a person who assists in the mediation process between a Taxpayer and the Commissioner during the Alternative Dispute Resolution process, and for the purposes of these Regulations, includes the co-facilitator; “working meetings” refers to the periodic meetings held between a Taxpayer and the Commissioner outside of the Alternative Dispute Resolution meeting during the course of the ADR process. “Tribunal” means the Tax Appeals Tribunal.
Initiating Alternative Dispute Resolution	3. (1) Subject to the provisions of these Regulations, parties engaging in Alternative Dispute Resolution shall do so on a voluntary basis.



	<p>(2) The Taxpayer or Commissioner may request for a dispute to be resolved through Alternative Dispute Resolution by using the prescribed ADR application form.</p> <p>(3) A tax dispute pending before the Tribunal or any Court may be referred to Alternative Dispute Resolution at the request of either party to the dispute, at any stage, pursuant to the relevant legislation.</p> <p>(4) Alternative Dispute Resolution shall commence upon written communication by the appointed facilitator that a matter is eligible for ADR and shall be concluded within ninety (90) days thereof.</p>
Eligibility of disputes for Alternative Dispute Resolution	<p>4. A dispute shall not be eligible for Alternative Dispute Resolution where:</p> <ul style="list-style-type: none">(a) settlement would be contrary to the Constitution of Kenya, the respective tax laws or any other law;(b) the matter in dispute regards technical interpretation of the law;(c) it is in the public interest to have judicial clarification of the issue;(d) pursuit of the matter through the court system would promote compliance;(e) the parties have not complied with the provisions of the relevant tax legislation and there is evidence that the non-compliance is consistent or deliberate;(f) one party is unwilling to engage in the Alternative Dispute Resolution process.
Appointment, role and conduct of the facilitator	<p>5. (1) Upon a dispute being found eligible for Alternative Dispute Resolution, the Commissioner shall appoint a facilitator;</p> <p>(2) Notwithstanding the provisions of Regulation 5(1), the taxpayer may also appoint a facilitator, at his own cost, to act as a co-facilitator.</p> <p>(3) The facilitator shall, for the purposes of resolving any dispute:</p>



	<p>(a) hold such number of meetings he or she considers appropriate;</p> <p>(b) guide the parties in the Alternative Dispute Resolution proceedings towards an amicable settlement;</p> <p>(c) remain neutral during the Alternative Dispute Resolution proceedings;</p> <p>(d) assist in a fair and equitable resolution of the tax dispute between the parties;</p> <p>(e) promote and protect the integrity, confidentiality, fairness and efficiency of the process;</p> <p>(f) act independently and avoid any circumstances that may result in a conflict of interest;</p> <p>(g) employ procedures that lead to expeditious resolution of the dispute;</p> <p>(4) The facilitator(s) shall disclose any conflict of interest existing before the commencement of the alternative dispute resolution proceedings or which may arise during the proceedings.</p>
Conduct of the Alternative Dispute Resolution Proceedings	<p>6. (1) The parties to a dispute shall set the date for an Alternative Dispute Resolution meeting as soon as possible and in any case not later than thirty (30) days from the date of application requesting for Alternative Dispute Resolution.</p> <p>(2) At the Alternative Dispute Resolution meeting, the party who made the application shall commence the proceedings by stating the grounds of the dispute and supporting it with relevant evidence.</p> <p>(3) The other party shall be entitled to reply to the issues raised or evidence adduced by the applicant and is entitled to produce evidence in rebuttal.</p> <p>(4) The parties, with the guidance of the facilitator may determine the dispute on the basis of all the evidence submitted by the parties during the Alternative Dispute</p>



Resolution including all documents filed or oral evidence given.

(5) No party to a dispute shall communicate with the facilitator outside the Alternative Dispute Resolution meeting with regard to matters or issues which are the subject of the dispute.

(6) During the Alternative Dispute Resolution meetings, the parties or their appointed representative(s) shall: -

(a) agree to a set of terms and conditions governing the Alternative Dispute Resolution proceedings;

(b) assist to identify the contentious and non-contentious issues in dispute;

(c) uphold and maintain decorum and confidentiality;

(d) uphold the integrity and fairness of the process;

(e) participate in all proceedings fairly and diligently;

(f) make full disclosure of material facts and documentation relevant to the dispute;

(g) be committed to the Alternative Dispute Resolution process and attend all scheduled meetings;

(h) strictly adhere to the agreed timelines, except under reasonable circumstances, which shall be communicated to the facilitator and the other party.

(7) Where on the date of the meeting either of the parties or their authorized representative does not appear without a justifiable cause, the facilitator may forthwith schedule another date for the meeting or close the Alternative Dispute Resolution proceedings if he or she deems it appropriate to do so.

(8) Where necessary, the facilitator may advise the parties to engage in working meetings for purposes of narrowing down the issues or resolving the dispute.



	<p>(9) The facilitator may attend the working meetings at any time when called upon by the parties to the dispute.</p> <p>(10) Where in the course of resolving a dispute, a matter arises that in the opinion of the facilitator or parties requires certain expertise or competence, the facilitator or the parties by consent, may call upon a subject matter expert to sit at the Alternative Dispute Resolution meeting for the purpose of providing the required expertise.</p>
Termination of Alternative Dispute Resolution Proceedings	<p>7. (1) Alternative Dispute Resolution proceedings may be terminated for the following reasons-</p> <p>(a) where either party opts to terminate the proceedings or both parties mutually agree to terminate the proceedings;</p> <p>(b) if a party fails to honour three consecutive Alternative Dispute Resolution meeting invitations without any justifiable cause;</p> <p>(c) where the ninety (90) day timeline required to resolve disputes under Alternative Dispute Resolution has lapsed and the party that made the Alternative Dispute Resolution application has not sought an extension of time from either the Tribunal or the Court, as the case may be.</p> <p>(2) Upon termination of Alternative Dispute Resolution proceedings, a notice of termination shall be sent to the parties and the matter referred back to the Tribunal or the Court, as may be.</p> <p>(3) Notwithstanding sub-regulation (1)(a) and (1)(b), a matter may be re-admitted to Alternative Dispute Resolution upon application of either party, with the consent of the other party.</p>
Alternative Dispute Resolution Agreement	<p>8. (1) Where parties have reached an agreement, the issues agreed upon shall be set out in writing.</p> <p>(2) The Alternative Dispute Resolution agreement shall set out:</p>



	<ul style="list-style-type: none">(a) the background of the dispute and the issues in contention;(b) the processes and specific exercises undertaken during the Alternative Dispute Resolution proceedings;(c) both agreed and non - agreed issues;(d) the taxes payable, where applicable, and justifications thereto;(e) the terms of settlement;(f) undertakings given by each party, if any;(g) agreed payment plan, where applicable;(h) that each party shall bear its own costs. <p>(3) The written agreement shall constitute the decision between the parties and-</p> <ul style="list-style-type: none">(a) shall be dated and signed by the parties or their duly authorised representatives and witnessed by the facilitator;(b) a copy shall be retained by each of the parties as evidence of the outcome of the Alternative Dispute Resolution proceedings;(c) shall form the basis for preparation and filing of a duly executed consent before the Tribunal or Court as may be applicable;(d) shall be binding to both parties to the dispute;(e) shall be deemed to be a full and final settlement of the dispute save where the Parties have expressly specified otherwise in the Agreement;(f) shall be confidential and entered into on a without prejudice basis;(g) shall not set a precedent.
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	<p>(4) Parties to Alternative Dispute Resolution proceedings are obligated to adhere to the terms set out in the executed Alternative Dispute Resolution agreement within the stipulated timelines.</p> <p>(5) Where there is no agreement between the parties after an Alternative Dispute Resolution process, the matter shall be referred back to the Tribunal or the Court, as the case may be.</p>
Recognition and enforcement of an Alternative Dispute Resolution Agreement	<p>9. Where a dispute is resolved wholly or partially;</p> <p>(a) a consent stipulating the settlement terms as spelt out in the executed Alternative Dispute Resolution agreement shall be filed at the Tribunal or Court, as the case may be;</p> <p>(b) The consent shall be recorded by the Court or Tribunal as a judgment of the Court or Tribunal</p>
Violation of the Alternative Dispute Resolution Agreement	<p>10. Where either party to the proceedings violates the terms of the Alternative Dispute Resolution agreement, the other party may apply to Court for enforcement of such agreement.</p>
Reservation of Rights	<p>11. Parties to the Alternative Dispute Resolution proceedings shall not be denied any other rights they would ordinarily have had they not resorted to Alternative Dispute Resolution.</p>
General Provisions	<p>12. These regulations may be reviewed from time to time by the Cabinet Secretary in charge of the National Treasury.</p>
Savings and Transitional Provisions	<p>13.(1) Disputes under Alternative Dispute Resolution prior to these Regulations shall proceed to their conclusion under the administrative framework for the time being in force.</p> <p>(2) Any rights and duties arising from disputes resolved or being resolved prior to the coming into force of these Regulations shall be binding on the parties to the disputes.</p>



Dated the _____, 2019.

**Hon. Amb, Ukur Yattani ,
*Acting Cabinet Secretary for the National Treasury and Planning.***