



Disputes and controversy in Africa

2024 KPMG Africa Tax Summit

Johannesburg, South Africa

—
17 April 2024



Agenda

- 01** Legal landscape
- 02** Appellate/Tribunal Process
- 03** Practice & Experience
- 04** Strategies & Best Practices
- 05** Q&A

Today's presenters



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KPMG in Morocco

01

West Africa



Legal and Regulatory Landscape of Tax Dispute Resolution

1

Revenue Authority

- The Revenue Authorities — the (Federal Inland Revenue Service (FIRS) and the Ghana Revenue Authority (GRA), are responsible for the administration of taxes in Nigeria and Ghana respectively.
- The Tax Authorities are authorized to conduct periodic reviews on taxpayers and issue assessments based on its discretion or findings.
- Companies typically would engage the tax authorities upon receipt of assessments/positions in a reconciliation process.

2

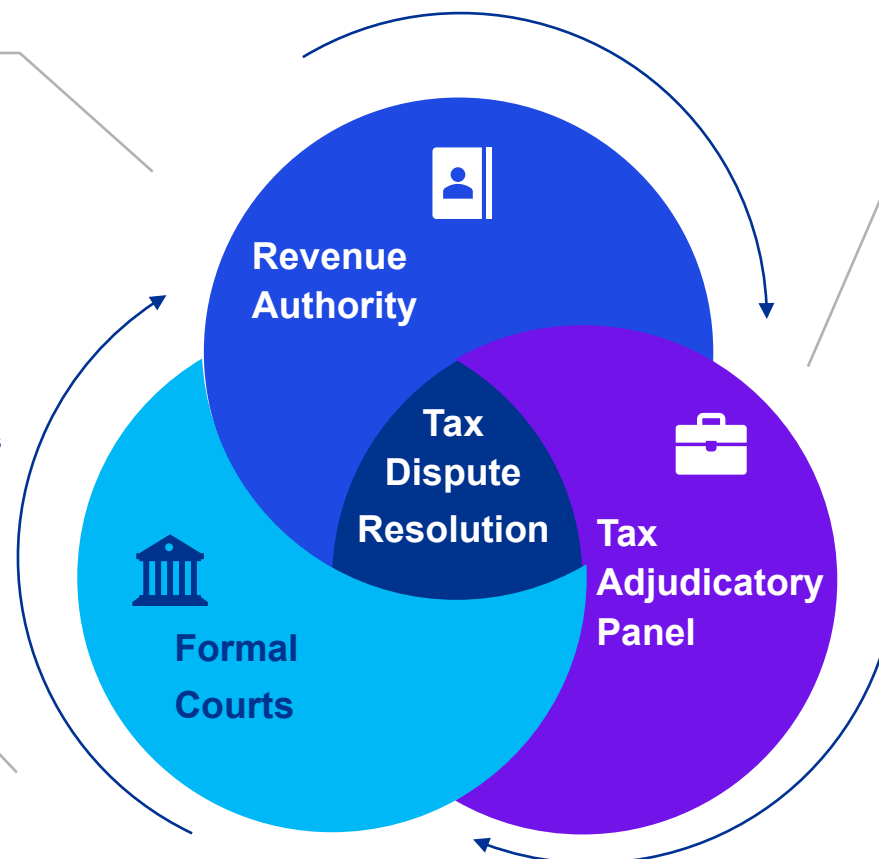
Tax Adjudicatory Panel

- The Tax Appeal Tribunal (TAT)/Independent Tax Appeal Board (ITAB) are the tax adjudicatory panels in Nigeria and Ghana respectively.
- The TAT and ITAB are the final step in the tax dispute resolution process, before action is commenced in the courts.
- Although established by the FIRS Establishment Act in Nigeria and the Revenue Authority Act in Ghana, the TAT/ITAB is independent of the GRA or FIRS.
- The TAT/ITAB does not operate as a court but as an administrative Tribunal, hence the strict rules of the court do not always apply to the TAT/ITAB.
- The decision of the TAT/ITAB is binding on the TAT/ITAB. However, an unsatisfactory decision may be appealed to the regular court system.

3

Court System

- Appeals from the TAT/ITAB are made to the regular courts commencing at the High Court, where issues are litigated
- They could go on to the Court of Appeal and ultimately, to the Supreme Court.



Process Map for Tax Dispute Resolution – Nigeria and Ghana



KPMG Tax Dispute Resolution Services in West Africa

KPMG has assisted clients across different industries in resolving their tax disputes, by providing one or more of our tax dispute resolution services. Our Clients operate in industries such as telecommunications, oil and gas, shipping and maritime, and the ICT.

01

Dispute Resolution with the Tax Authorities

- Provision of support for desk reviews and tax audits or investigation
- Resolution of long-standing tax audits/investigation
- Advance rulings on controversial matters
- Negotiation, mediation and out-of-court settlement
- Tax foot-print diagnostics for transactions and deals
- Data Repositories for clients — We provide a cloud-based solution for keeping clients' data in order to better equip them for tax disputes.

02

Dispute Resolution at the TAT/ITAB

- Preparation and filing of Notice of Appeals at the ITAB (Ghana) or TAT (Nigeria)
- Representation and prosecution of cases at the ITAB (Ghana) or TAT (Nigeria)
- Provision of Expert witness services during proceedings at ITAB (Ghana) or TAT (Nigeria)

03

Tax Litigation Support

- Case Management Support
- Expert Witness Services at the Federal High Court (Nigeria)/High Court (Ghana)
- Evaluation of tax litigation including review of originating processes and Briefs of Arguments

02

East Africa



East Africa Legal Landscape

Overview of the legal system in East Africa (Kenya, Uganda, Tanzania and Rwanda)

All the 4 East African countries have a well-established legislative base. Kenya, Uganda and Tanzania legislative systems are largely based on English Common Law while the Rwanda legal system is based on German and Belgian civil law. However, since July 1994, there has been a gradual introduction of the Anglo-Saxon common law system. Therefore, the Rwandan legal system is a hybrid of both civil and common law systems.

- English case law is of persuasive value in the Kenyan, Ugandan and Tanzanian courts, and the formal business sector in East Africa largely follows the European/American model of free market economics and capitalism.
- There are a number of tax legislation enacted to promote regional trade between the East Africa Community member states. These include: The East Africa Community Customs Management Act, EAC Elimination of Non-Tariff Barriers Act, 2017 among others.
- The countries also have double taxation treaties/agreements with various countries e.g. Canada, Denmark, France, Germany, South Africa, Sweden, UAE, the UK, Mauritius, Norway, Italy, among others.

The Revenue Authorities

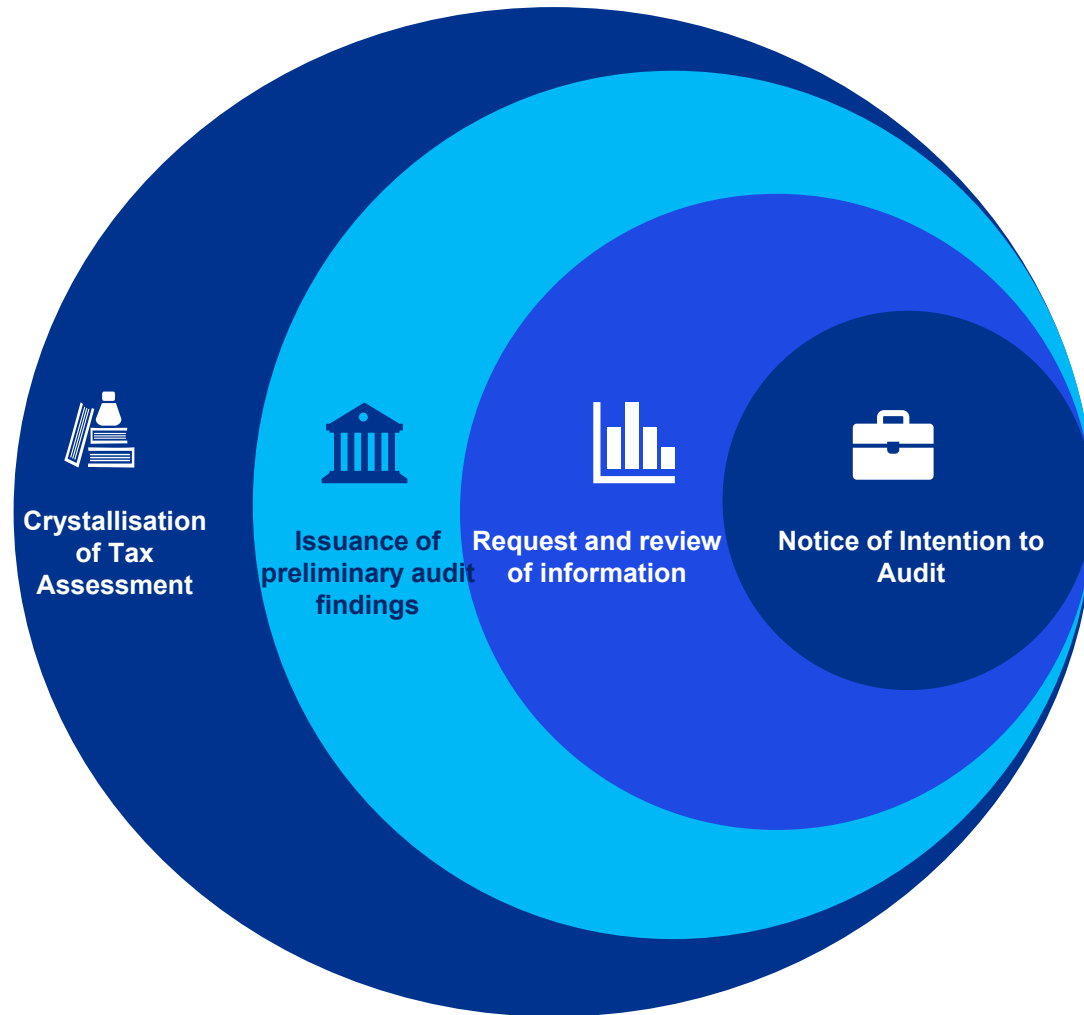
The Revenue Authorities in East Africa are as follows:

- Kenya Revenue Authority (KRA) in Kenya;
- Tanzania Revenue Authority (TRA) in Tanzania;
- Uganda Revenue Authority (URA) in Uganda; and
- Rwanda Revenue Authority (RRA) in Rwanda.

The Tax Authorities have the powers to verify and ascertain that declarations/self assessment returns filed by taxpayers are accurate.

It is from such revenue authority audits that tax controversies typically arise.

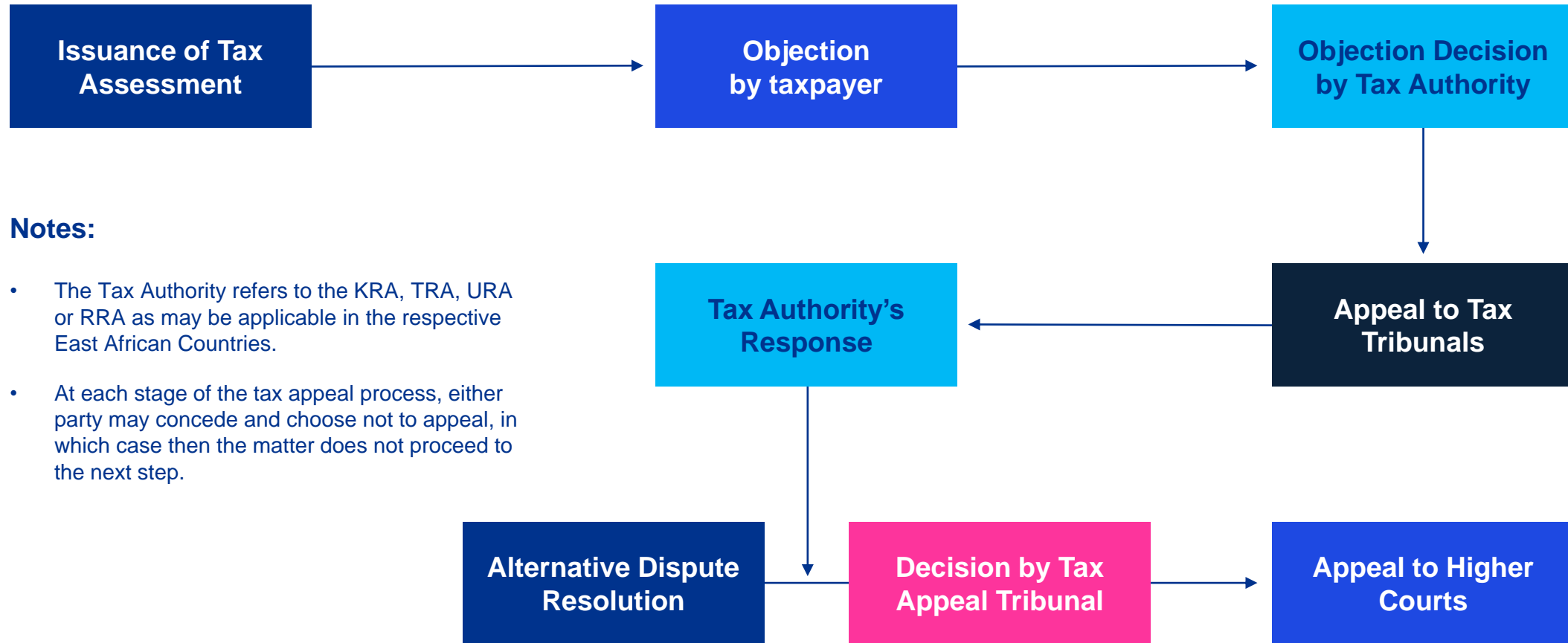
Tax Audit Process



Common Triggers of Tax Audits in EA

- Perennial filing nil returns
- Entities in constant loss-making positions
- Application for tax refunds
- Amendment of returns
- Highly regulated/sensitive sectors such as financial sector, telecommunications and most recently the gaming industry
- Whistle blowing
- Application for tax PIN deregistration

Tax Dispute Resolution Process



Notes:

- The Tax Authority refers to the KRA, TRA, URA or RRA as may be applicable in the respective East African Countries.
- At each stage of the tax appeal process, either party may concede and choose not to appeal, in which case then the matter does not proceed to the next step.

Emerging Issues in EA Tax Dispute Resolution



Technological transformation and e-filing systems

- Introduction of online filing at the Tax Tribunals and the Higher Courts.
- Virtual mentions and virtual Tribunal hearings for tax matters.



Growing interest in Transfer Pricing

- With the alignment of Transfer Pricing Rules in the various countries to Global standards as tax authorities increase their scrutiny on cross-border transactions.
- Effectively, there is a notable increase in tax audit activities on Multinationals resulting in transfer pricing adjustments.



Alternative Dispute Resolution Mechanisms

- The local revenue authorities in EA advocate for voluntary and facilitated out of court negotiation/ discussions between taxpayers and themselves.
- The alternative dispute resolution mechanisms are recognized under the law to provide taxpayers with more opportunities to settle the tax issues amicably and without the court's intervention.



Tax transparency and amnesty programs

- Introduction of penalty and interest waiver programmes to help collect outstanding tax arrears.
- For example, ongoing 100 percent waiver of penalties and interest amnesty program in Kenya till 30 June 2024 on all offences and arrears relating to domestic taxes.
- Part of these waivers/immunity are granted as rewards for voluntary tax disclosure by taxpayers.

KPMG Tax Dispute Resolution Practice in East Africa

1

Dispute Resolution with the Tax Authorities

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Dispute Resolution at the Tribunals

- Preparation and filing of Appeals at the Tax Appeals Tribunals
- Representation and prosecution of cases at the Tribunals
- Provision of Expert witness services during proceedings at the Tribunals

3

Tax Litigation Support

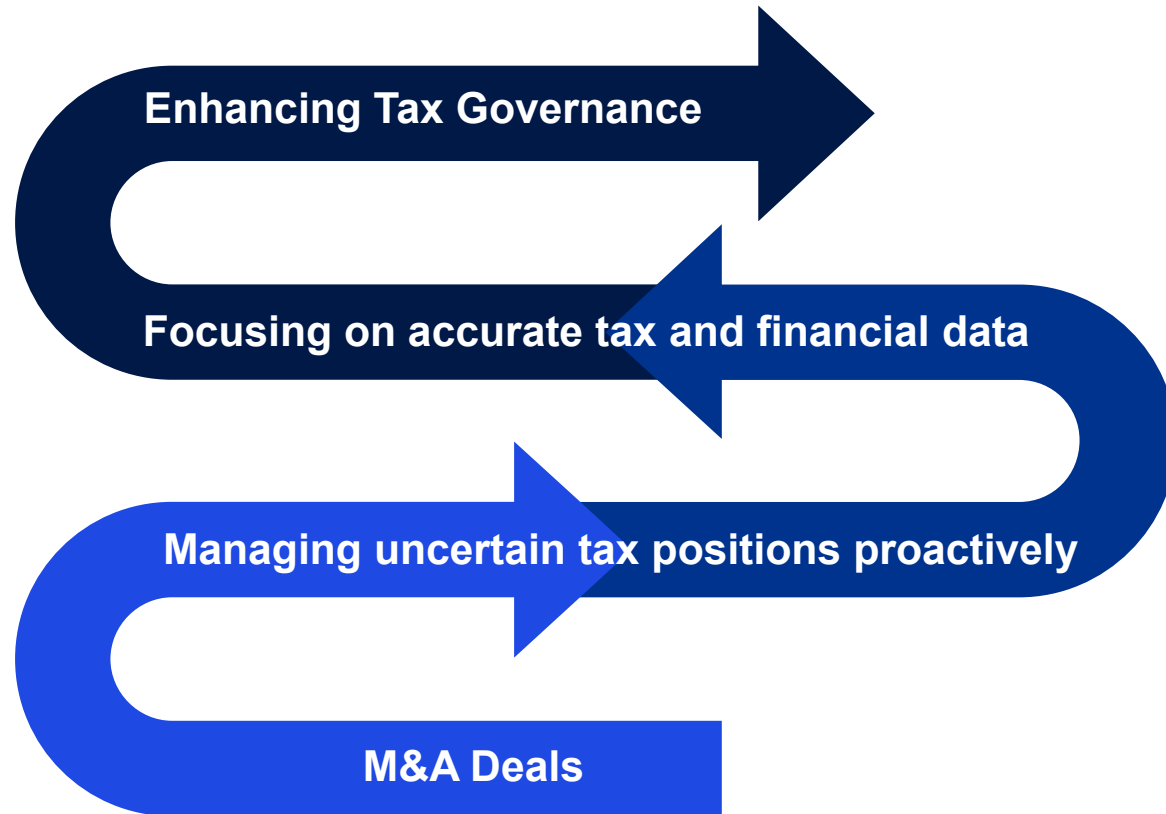
- Case Management Support
- Technical advisors to taxpayer's external counsel at the High Court and higher courts of appeal
- Tax/regulatory specialist review for purposes of financial statement preparation and subsequent audits

03

Southern Africa



Tax Controversy Landscape: Southern Africa insights



- Proactive tax management does not start when Revenue Authorities request information/verification.
- Every commercial transaction has a tax consequence.
- Best practice would ensure that when commercial transactions are contemplated there should be a process for obtaining tax advice-both to maximize efficiencies and manage uncertain tax positions.

- There should be an assumption that every transaction will be subject to a tax audit, sometimes in years to come.
- Best practice is to involve the Tax Disputes team, immediately after the conclusion of a deal, to assess the documentation and other evidence through a Revenue audit lens and compile an “evidence binder”, ready to defend a future audit.
- Often, the deals teams suffer “deal fatigue” following the completion of a deal and want to move on. Spending that little bit of time and effort and allowing an experienced disputes team to assess the documentation from a Revenue audit perspective can mitigate substantial taxes, penalties and interest, thus enhancing shareholder value.

04

North Africa



Tax Dispute footprint — Morocco

Bureau focusing on transfer pricing audits

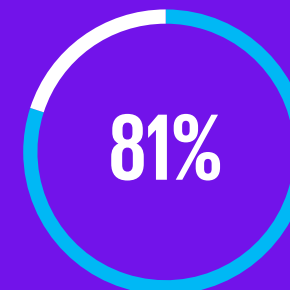
+ 5,200 audits carried out by the MTA in FY22



+5.6 Billions MAD collected by the MTA through tax audit



81% of the tax audits cover corporations



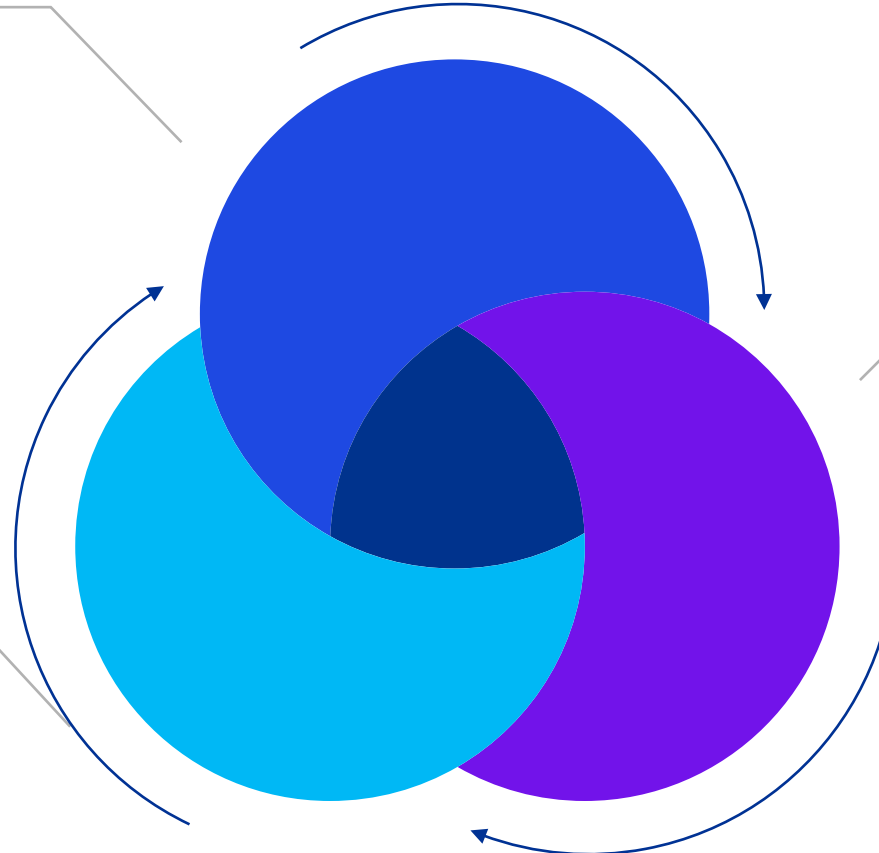
Legal Landscape of Tax Dispute Resolution – Morocco

Tax Authority

- Tax audit conducted by a dedicated team of tax inspectors
- Audit of tax returns, accounting books and supporting documents
- Notification and discussion of tax adjustments with taxpayers and issue assessments

Court Appeal

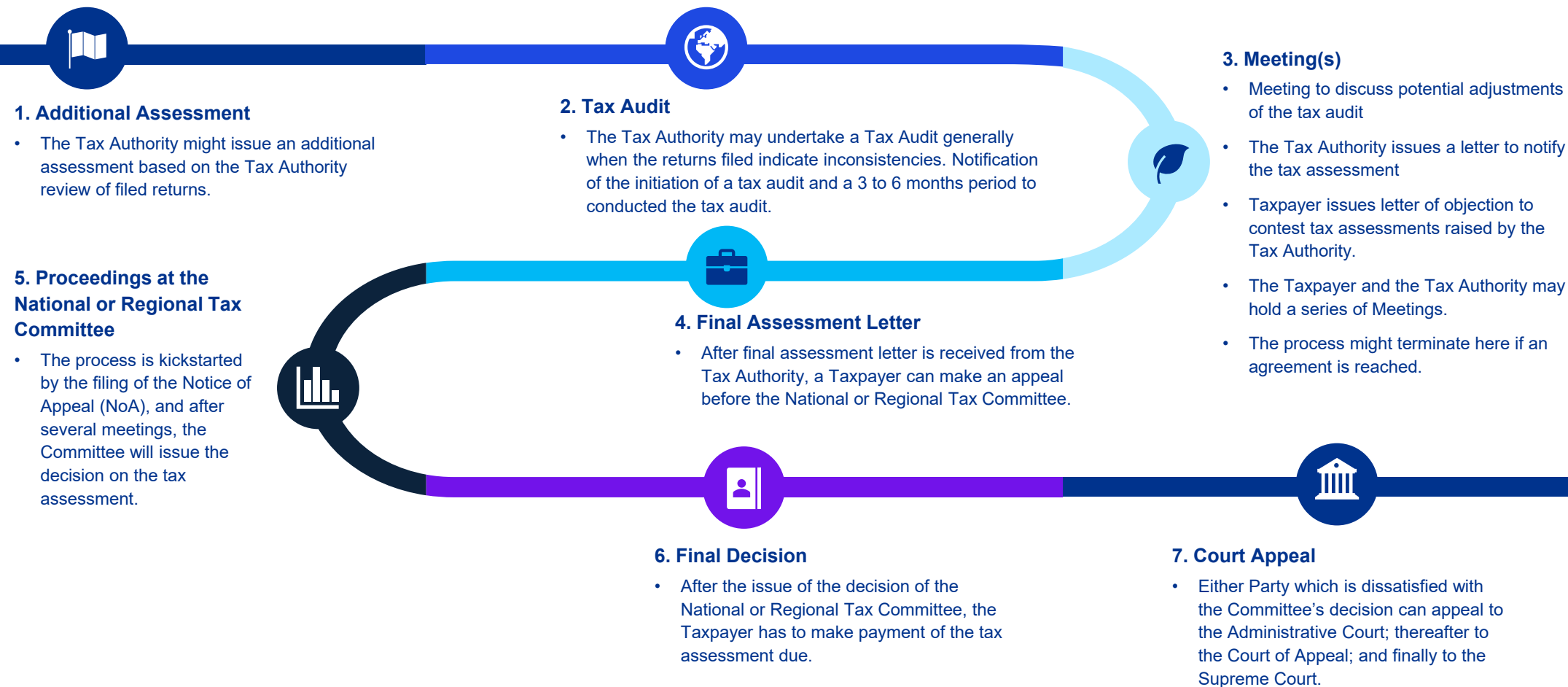
- Court Appeal by the Tax Authority or the Taxpayers against the decision of Tax Committees



Tax Committees

- Local Committee of Taxation
Not applicable to corporations
- Regional Tax Committee
Corporations achieving revenues less than MAD 10m
- National Tax Committee
Corporations achieving revenues of at least MAD 10m

Tax Dispute Resolution Process—Morocco





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